

for the purpose for which this clause is made, namely, to deal with minor and technical thing and that it will not be used for anything else.

Mr. Deputy-Speaker: The question is:

"That the Bill further to amend the Essential Commodities Act, 1955, be taken into consideration."

The motion was adopted.

Mr. Deputy-Speaker: There are no amendments. The question is:

"That clauses 1, 2, the Enacting Formula and the Title stand part of the Bill."

The motion was adopted.

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

Shri S. K. Patil: Sir, I beg to move:

"That the Bill be passed."

Mr. Deputy-Speaker: The question is:

"That the Bill be passed".

The motion was adopted.

13.33 hrs.

LEGAL PRACTITIONERS BILL

The Deputy Minister of Law (Shri Hajarnavis): Mr. Deputy Speaker, I beg to move:

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

Sir, it is a privilege and a good fortune that I, who have descended from three generations of lawyers, have the very rare honour of moving this Bill which provides for an autonomous and self-governing All India Bar where there should be only one class of legal practitioners, namely, advocates who have equal rights.

The Bill itself was debated at length when it was referred to the Joint Committee. I express on behalf of the Government my sincere gratitude to those hon. Members of the Joint Committee who sat long hours and deliberated at length and have produced a very good report which has achieved a wide measure of agreement. I must acknowledge that as it has emerged from the Joint Committee, there have been considerable improvements in the measure, improvements starting from the very first clause.

When we brought this Bill for consideration earlier, it was called the Legal Practitioners Bill. A suggestion was made in the Joint Committee that there was only one class of legal practitioners, namely, the advocates and this Bill deals with the advocates and so it should be called the Advocates Act. That suggestion was accepted and it is suggested that the name of the Bill be changed from Legal Practitioners Bill to Advocates Bill.

In clause 3 as it originally stood there was no bar council for Delhi. It was suggested that in the All India Bar Council there shall be three representatives of the Supreme Court Bar Association. But then it was considered in the Committee that there is a fairly strong bar in Delhi which ought to have a bar council of its own. So, Delhi has been provided with a separate bar council and it will send its representatives as any other State bar council to the Bar Council of India. The strength of the elected members had been increased from 10 and 15 to 15 and 20 respectively; it is 20 in the case of large States and in the case of smaller States, 15. There will be proportional representation by means of the single transferable vote and it will ensure that all groups, territorywise or in other manner in which they choose to group themselves, will find adequate representation in the State bar council.

[Shri Hajarnavis]

In clause 4, the representation granted by the original Bill to the separate bar associations, and the Supreme Court Bar Association had been taken away. We have now a separate bar council for Delhi. The functions of the bar council have also been enlarged and they have been statutorily provided now though that was understood throughout, that the bar council shall be entrusted with the functions of safeguarding the rights and privileges and interests of the advocates on its roll. We accepted an excellent suggestion which came from the South, I believe from Madras to be particular, that the State bar council may take steps to constitute fund for financial assistance to indigent and disabled advocates.

Clauses 9 and 10 are merely enabling provisions. The Committee considered that in the case of large States it would not be possible for one disciplinary committee to dispose of all the complaints that were made so that if necessary more than one committee shall be constituted.

In clause 11, the original proposal was to have an accountant, in the case of every State bar council. Now it has been made optional because it was represented to the committee that some bar council may not have adequate funds and the accounts are simple. In these circumstances, it would not be proper to burden the State bar council with the pay of an accountant. Therefore, that has been made optional.

Then about clause 17, I would like to say this. It is another suggestion which I believe came from South India; it was again from Madras. When we are raising the vakils, pleaders and attorneys to the level of advocates, the question of giving them seniority does arise. It was provided in the original Bill that those who are now statutorily enrolled shall get their seniority from the date on which they were originally admitted as Vakils, Pleaders or attorneys, and so, there is no reason why

that principle should not have been applied to those who had been enrolled as advocates earlier. So, both the clauses are now brought into line.

Clause 18 is a new clause. I submit that it is a good clause. It is an improvement, because it requires that each advocate shall choose in which Bar Council he shall enrol himself, and he shall not be entitled to enrol in more than one Bar Council. If he ever wants to change it, he would have to take the permission of the Bar Council of India.

Clause 24 provides for enrolment as advocates of those citizens of India who obtain legal qualification either in this country or abroad. The Joint Committee have rightly said that a degree in law is sufficient qualification for enrolment as an advocate and that it is not necessary to provide for any additional qualification or degree in arts, science or commerce. It is only for the individuals concerned to consider whether he would enter this profession after he has obtained some knowledge or degree or some distinction in any other subject or whether he would straightway enter the law profession as soon as he qualifies in law.

There is also a provision whereby the enrolment fee has been reduced from Rs. 500 to Rs. 250.

Now, clause 30 makes it clear that the restrictions which the Constitution imposes upon the judges of the Supreme Court and of the high courts should continue. Of course, as a matter of fact, it requires no clarification, but since all the law has to be in one place, it has been done.

Clause 35 is again a good provision. Unless *prima facie* a complaint which has been made to the State Bar Council discloses a real grievance or shows that it is a good case, which needs investigation, it may be dismissed *in limine*.

Clauses 37 to 40 provide that, as in the rest of the cases, this matter is

also subject to appeal being made to the Supreme Court. Even without this provision, the Supreme Court could be approached under article 136, but since it is a question of debarring a man from his livelihood, from the profession which he has chosen . . .

Mr. Deputy-Speaker: Order, order. There are some voices that are continuously interfering.

Shri Hajarnavis: . . . the Joint Committee decided that, as of right, the person aggrieved should go to the Supreme Court.

Clause 51 is merely a definition clause which makes the definition of an advocate self-contained and which can be consulted whenever a question arises as to what the word an advocate means.

There are two other questions on which the Joint Committee have expressed an opinion. One is in respect of certain exclusive groups who have formed themselves into an association and exclude other members of the Bar in the high court buildings. The matter was debated at great length and the Members of the Joint Committee also have expressed their opinion.

Then there is the vexed question of stamp duty. I have personally a great deal of sympathy with the advocates. As in other professions, lawyers or advocates also ought not to be asked to pay an onerous sum before they enter the profession. It has been rightly pointed out that the engineers or doctors or accountants are not paying any sums when they enter profession. It is only the lawyers who, in some States, have got to pay as Rs. 1,000 when they start work. When I became an advocate, I had to pay nearly Rs. 1,000 which I could ill-afford to pay. But this, as we understand and as was pointed out in the Joint Committee, is within the legislative domain of the States. But powerful and contrary views have been expressed both in this House and in the report. Therefore, the matter must be

decided in the courts. It may be put like this: suppose the matter concerns the States, and the State legislatures have no legislative competence, as has been contended, to impose the stamp duty, any person could decline to pay and have the matter settled in the courts. No one would be happier than I shall be if the objection to the levy of such a stamp duty by the States is upheld, but till the matter is decided by the courts, we shall go by the opinion which we think is correct.

With these words, I again thank the Joint Committee for the excellent report which they have submitted to the House, both on behalf of the Government and myself, I commend the Bill to the acceptance of the House.

Mr. Deputy-Speaker: Motion moved:

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

Shri Sadhan Gupta (Calcutta—East):
Mr. Deputy-Speaker, Sir, I rise to give my general support to this Bill with certain reservations in respect of certain provisions which I want to modify as I will indicate presently. But there is no doubt that this Bill deserves every support from every section of the House, with of course the modifications which I shall presently suggest. This Bill introduces two very welcome features into the legal profession. First of all, it seeks to do away ultimately with the needless and futile discrimination that existed between the different classes of legal practitioners in our country. Secondly, for the first time, it invests in the legal profession the right to control itself. Both these are very welcome features.

In the first place, due to historical reasons, certain legal practitioners came from England; certain legal practitioners were entitled to enrol themselves in the high courts; certain legal

[Shri Sadhan Gupta]

practitioners were in the district courts and some were confined to criminal courts alone. Due to all this, a distinction had sprung up between the advocates who were only the people who had qualified abroad, originally, and the vakils, pleaders and mukhiars. Gradually, with the growth of the national movement, the distinction between advocates and vakils disappeared, and both barristers and members of the Indian Bar who enrolled in the high courts as vakils were enrolled as advocates, and gradually they succeeded in achieving the self-same rights. Even then the distinction between advocates and pleaders, between pleaders and mukhtiar, continued and still continues. It is a needless distinction; it is an irrational distinction, if I may say so. I think this type of distinction would not be found in any independent country. So, from that point of view, this Bill is a very welcome Bill.

But the most striking characteristic of the Bill is that for the first time, the legal profession has been given the right to control its affairs by itself. I must express the greatest satisfaction over the fact that the Joint Committee has omitted the inclusion of Judges in the Bar Council. I believe the Judges themselves were against it and very rightly so, because if you allow the profession to control its affairs, there is no sense in introducing the Judges. I am conscious that objections may be raised and had been raised from time to time about the capacity of the legal profession to control its own affairs and the objections are based on certain unhappy traditions which have sprung up—I should not call them traditions; I should say certain unhappy circumstances that have evinced themselves from time to time in the legal profession.

We must admit that in managing its own affairs, the legal profession has not earned a great reputation, but then that cannot be made a ground

for denying it a right which other professions enjoy, viz., the right to control its own affairs. The fact that the legal profession has not made a good show of itself, I think, is due more to the denial of this right than to anything else or any weakness in the profession itself. So long, the legal profession has been working under a tutelage. It has been under the control not of itself, but of the Judges, because the Judges dominated the Bar Councils practically, the disciplinary jurisdiction was entrusted in the High Court and so on. This kind of a tutelage is not the best method of inculcating a sense of honour and consciousness that we have to build up our profession in a way that would attract the respect and esteem of the public at large. Now that we possess, that we are going to possess under the Bill, the right to control ourselves, the right to discipline ourselves and the right to regulate our own affairs, I believe the profession will rise up to the occasion and show to the world that it can also develop the highest standards of honour, the highest standards of efficiency and integrity, that any profession can expect.

Therefore, I am not pessimistic about the capacity of the profession to control itself and to manage its own affairs. I believe that this comfort of responsibility, the conferment of this privilege, will redound to the credit and to the benefit of this profession and to the benefit of all concerned through the evolution of an honourable, respectable profession, setting before itself the highest standards of integrity as well as efficiency. These are the welcome features of the Bill, for which I would no doubt support the Bill.

But there are certain things in which the Bill falls short, which I will now indicate. The first thing is—the hon. Deputy Minister has referred to it—the exclusiveness of certain groups. I would not be ashamed to name the group—the exclusiveness of the barristers. I am myself a barrister and it pains me that this exclusiveness should

continue. The Law Commission has gone into this exclusiveness, tried to ascertain its causes and has deprecated it. The Law Commission thinks that the exclusiveness was due to the fact that barristers enjoyed superior privileges and wanted to shut out the others from those privileges. That may be so. Barristers, for instance, may be the exclusively preserve of the original side of the Calcutta, Bombay and Madras High Courts. But then that is not the whole story.

The exclusiveness has a strong element of contempt for the native, because the barristers formerly were all Europeans and certain Indians who were also birds of the same feather. Naturally both the Europeans and the anglicised Indians looked down upon the natives. As a result, this exclusiveness manifested itself not only in the Calcutta, Bombay and Madras High Courts, but also practically in all other High Courts, where there was no cause for exclusiveness. In the Allahabad or Patna High Court, barristers and vakils do not have very different rights of practice. They have practically the same rights. Afterwards, when vakils became advocates, there ceased to be any reason for continuing this exclusiveness, but yet it continued and continued for years beyond independence. That shows that really the exclusiveness was based not on the privileges alone, not on the natural, though not very laudable objective of preserving one's privileges, but also on a sort of contempt for the native, which continued. Otherwise, how can you explain the exclusiveness in the other High Courts continuing, when the difference of rights ceased?

The exclusiveness has disappeared from other High Courts, because the number of barristers have dwindled. The number of barristers is gradually dwindling, because there are very few new recruits. But in Calcutta, the number of barristers is considerable and therefore, the exclusiveness prevails. In Patna, although the number of barristers is not too great, there are one, two or three barristers who run

the whole show, because otherwise, the other barristers by their subscription would not be able to run it. That is how it continues.

It is very necessary that it should not be allowed to continue any further. That is where the Bill falls short. It is no use leaving it to the High Courts, because the High Courts feel rather embarrassed for obvious reasons. For instance, take the barristers in the Bar Library Club of Calcutta. It is quite understandable that the Chief Justice or whoever is in control is embarrassed by the fact that the person involved is held in great respect in the profession and naturally in great respect by the Judges also. It becomes very difficult to say, "You quit this room. Leave it. Take up everything of yours, go and find some other place". You cannot leave it to the High Court, because every Judge in the High Court feels—maybe some Judges do not feel—that it cannot be done in this way, because of the obvious embarrassment it will cause to the High Court. Therefore, we should come to the rescue of the High Courts by providing that such associations should not have any facilities to function within the precincts of the court. I would have liked to do away with such exclusive associations altogether, but then, apart from the constitutional question, the legislation on association is a State subject and therefore we cannot do it. But we certainly can deny them the facilities in the High Courts. It is our preserve, and if we do it those associations will cease to function, because no one is going to be a member of an association which has no room in the precincts of the High Court. Therefore, I would have desired the Government to be bold enough to incorporate a provision in the Bill that such exclusive associations should not have any facility to function within the precincts of the Court. Let them function outside if they want to, but not within the precincts of any High Court. That would serve the real purpose. Even at this stage I would request the hon. Minister to bring forward such an amendment.

[Shri Sadhan Gupta]

14 hrs.

I am very painfully conscious that compulsion is the last resort, but it is unfortunate that nothing can be done without such a compulsion. I do not mean to suggest that all barristers in Calcutta, or Patna for the matter of that, are for exclusiveness. As a matter of fact, a very large number of them are ashamed of this exclusiveness. But, then, it happens, in Calcutta at least I know, there is a small majority in the Bar Library Club who prefer it, and that is the unfortunate part of it. I would have wished that this majority realise that it is not proper for our national honour and pride that on the basis of qualification achieved in a foreign land we should treat ourselves as an exclusive community, having an exclusive bar and denying others entry to that bar on the simple ground that the persons concerned have been qualified not in England but in India. This is very unfortunate, and I wish that they had realised it like a very large number of their brothers who are unfortunately in a minority. I wish the majority had realised it and made their own amends. But since it is not going to be made, it is necessary that law should come to the aid of reason and a very considerable minority of barristers who are in the Bar Library Club in Calcutta. It is painful, because that Bar Library Club has had as its members men like Deshbandhu C. R. Das and Deshapriya Sen Gupta, who would have shuddered on this exclusiveness. It is, therefore, my very fervent appeal to the Government to incorporate the amendment and come to the aid of those of us who want to establish reason in such exclusive associations.

The next thing which I am unhappy about is the continuation of the dual system. The dual system is prevalent today in its fullest rigour in Calcutta and Bombay in the original side of the High Court. It means, as all lawyers know—may be many non-lawyers also know—that there are two sets of

lawyers, the solicitors who merely act and advocates who merely plead. This is the dual system. In considering the dual system I am very conscious that I am up against an opinion of considerable weight, that is to say, the Law Commission and the All India Bar Committee. But then, I am not prepared to accept *ipsi dixit* the opinion of the Law Commission. I know that the Law Commission has made many wonderful suggestions, many valuable suggestions in many other matters. But the weight of the opinion of the Law Commission must depend not on the fact that it is the opinion of the Law Commission, not on the fact that they consist of such and such persons, but on the conviction that their arguments carry. In this respect I am afraid they have not made a very good show of themselves.

Let us see the grounds on which they have advocated the continuance of the dual system in the High Courts. What they have said is that the High Courts may continue this system till they think it fit to discontinue. Their grounds are: firstly, the business community which is most affected, which is the principal litigant community in the original side, prefers the dual system, and, secondly, the dual system makes for efficiency.

The first argument can be very easily dealt with. The business community has good grounds for preference for the dual system. The dual system is not hard on those who engage in litigations of considerable value, litigations covering thousands of rupees or lakhs of rupees. It comes out to be cheaper for them because there is no court fee on the original side.

Shri Nathwani (Sorath): There is. Since 1954 there is court fee on the original side.

Shri Sadhan Gupta: Not in Calcutta.

Shri Nathwani: So far as Bombay is concerned it applies.

Shri Sadham Gupta: It may be so in Bombay, but in Calcutta it does not apply. The scale of court fee in

Calcutta is Rs. 22. I do not know what scale of court fee is there in Bombay and how they are affected by it. Anyway, they can afford to pay two sets of lawyers, and perhaps they agree because of that. Therefore, this argument that because the business community is the principal litigant community and they prefer it cannot be made a ground for continuing a system which is very expensive to poor litigants. There is no doubt that in larger cases, in big cases, the dual system leads to considerable efficiency—I will come to that in detail when I consider the second argument—but here it is sufficient to say that all cases are not big cases and in small cases it is useless to have two sets of lawyers or two lawyers to deal with two aspects. For instance, if the decision on a case depends on two witnesses and three documents, it is useless to entrust one part of the case to one and another part of the case to another, because one can do it very easily. The point is, that it should be left to the litigant to choose. There should be no compulsion. On this aspect of compulsion also the Law Commission has given certain arguments, and I will return to it later; but what we want is that there should be no compulsion on the litigant, however big or small his litigation, to engage two lawyers where one is good enough. Let the litigant choose, that is what we want. The business community is not the sole litigant community, and we must look rather at the poor people than the business community because it is from the point of view of their benefit that cost of justice should be regulated, not from the point of view of benefit to the business community who might be engaged in many cases.

Now, Sir, the second argument is that it makes for efficiency. It undoubtedly does, but, then, even here it makes for efficiency only in the big cases, as I have pointed out. In the small cases, either it does not make for efficiency or, if it does, it is quite out-weighted by the tremendous expenses involved. Therefore, in the

smaller cases, for instance, undefended cases, which are quite plentiful in many High Courts, and ejectment suits, it is absolutely unnecessary to force the litigant to engage two lawyers. The Law Commission says, "You cannot object on the ground of compulsion, because there is compulsion for the payment of court fees". I would not like to use harsh words about the Law Commission, but what argument is this? Because you are compelled to pay court fees, therefore, you have to be compelled to engage two lawyers, specially when it is admitted that this practice of payment of court fees is a very undesirable practice and the consensus of opinion is that the court fees should be abolished in the form in which they exist. Therefore, this argument of compulsion, that one wrong thing rights another, is a very strange argument and it is not worthy of a body like the Law Commission.

Then, with regard to efficiency, I would submit that the dual system is not the only way to ensure efficiency. The dual system, as it is known today, results in efficiency. I would readily admit that in difficult cases it is necessary to divide the labour and some should confine themselves to acting and others should confine themselves to pleading. In that way, the acting part is better looked after, the pleading part is better looked after and the preparation is better done; there is no doubt about it. But is it necessary to have a class of solicitors and a class of lawyers for doing it? Can't different classes of people do it? Can't different classes of advocates do it in one case and another class of advocates combine and function in another case where the functions can be combined? In the Supreme Court we have this kind of dual system, where the advocates on record can both plead and act. But it is found in practice, that where cases are complicated, a senior advocate is engaged and the advocate on record does not plead. He does the acting part. He helps the senior in the preparation and the senior pleads or argues. This can be achieved in

[Shri Sadhan Gupta]

every other court—in the High Court and district courts.

It is no doubt true that in the original side of the High Courts the cases are efficiently prepared. What is the reason? The reason is that their lawyers are entitled to combine into firms and the solicitors are entitled to combine into firms. That is how they achieve economy and, as a result of that, they become efficient. Now, if the solicitor had to practise of his own, he had to act of his own and had to engage an advocate to plead, in that case, I am sure that he would have fared just as well as the district pleader does in preparing the cases. He could not do it of his own. If he were not allowed to appoint others, he could not run the office, he could not engage staff like stenographers, typists and so on, and he cannot appoint clerks to attend cases in court, and if he could not do that, he could not function with efficiency. Therefore, the fact that the dual system has contributed to efficiency is not because there is a difference between solicitors and advocates, but because the acting lawyers, namely, the solicitors, are allowed to combine themselves into firms and divide the labour between themselves and to take advantage of the resulting economy.

Can't we have this economy of allowing the advocates to combine, by allowing the advocates to have the right to act, plead as well as to combine into firms? The reason why the preparation on the appellate side of the High Court and in the district courts has not been as well as on the original side is because the advocate on the appellate side in the High Court and in the district court has to do the work all alone; he cannot combine with others. And because one person has to work of his own, it is difficult for one individual to manage everything. He can keep in his office one clerk; not more than one. If he cannot get more than one clerk, it will be very difficult for

him to keep track of the cases and he cannot appear in several places whereas if he can combine with others, as he does in the Supreme Court, one could appear in one court and another can appear in another court and all these cases could have been better managed and the preparation part of it and the acting part of it, everything would have been efficient.

Therefore, I wanted a dual system of quite another sort. It is a dual system where the advocates will be able to combine and divide the labour and will be able to take advantage of the economy, and not a dual system where one side would be denied the right to act and the other side would be denied the right to plead.

Mr. Deputy-Speaker: The hon. Member should conclude.

Shri Sadhan Gupta: I do not think that many hon. Members would be participating in this Bill.

Mr. Deputy-Speaker: He has already taken half an hour. Perhaps he does not know that I have a list of 12 names. I find there are at least half a dozen more who have not sent the chits but who are preparing themselves for speaking.

Shri Tyagi (Dehra Dun): It should not be limited to lawyers alone. Others must have a say in the matter.

Mr. Deputy-Speaker: Hon. Members like Shri Tyagi have not sent in their chits; but, I am sure, they are very much interested in this.

Shri Sadhan Gupta: I will finish soon.

Therefore, that is the kind of dual system I want, and they should be allowed to combine. Then, in all courts, in the Supreme Court, in the High Courts and district courts, the cases would be better prepared. I would, even at this stage, ask the Gov-

ernment to adopt this course and not leave it to the High Court because the High Courts may feel some embarrassment in abolishing it.

Then there is the question of stamp duty, which is an unfortunate thing. I am glad that the Deputy Minister has expressed his sympathy. I would request him to go further and be bold enough to include a provision by way of an amendment that an advocate will be entitled to practise on payment of the bar council fees. I am quite conscious that stamp duty is a State subject, but then the regulation of the legal profession is our preserve; and where the State's preserve and our preserve conflict, under the Constitution we prevail. Therefore, it is worthwhile adopting this amendment because then we can override the State law and through this amendment if we are legislating on the right of practice of advocates, then the States' power of legislating on stamp duty will be over-ridden and our law would prevail. Even if there is any doubt about it, it is worthwhile having it tested in a court of law by passing the Bill with this amendment. If it is not done, it becomes very hard because any person will have to pay Rs. 1,000 to enrol himself as an advocate, and more in some cases, which is very unfair to the aspirant to the legal profession.

There are one or two other things which I would have liked to refer to, but I do not think I will take the time of the House by encroaching on the time of others. So, with these words I give my support to this Bill. But I hope the Deputy Minister will agree to incorporate the amendments according to the lines suggested by me here, as well as in my minute of dissent to the report of the Select Committee.

Shri Raghubir Sahai (Budaun): It is an admitted fact that there was a very persistent demand in the country since long for an All India Bar or a united Bar, that there should be no distinction between

one class of legal practitioners and the other, that they must enjoy the same rights and privileges, and that the Bar Council or Councils should be autonomous bodies. This plea was supported by the All India Bar Committee which gave its report in March 1953. And this was unanimously supported by the Law Commission. In accordance with the recommendations of the Law Commission and of the All India Bar Committee this Bill was brought forward by the Government.

I am very glad to say that the Bill was referred to a Joint Select Committee and the Joint Select Committee have done a very good job. After the Bill has emerged from the Joint Select Committee we find that it comes out in an improved form than the Bill that was originally placed before Parliament. I am still more glad to find that it is almost a unanimous report arrived at by the Joint Select Committee. If there are some differences, they are here and there in regard to details; with regard to fundamentals there is perfect unanimity. As I said, after the emergence of the Bill from the Joint Select Committee we find it in an improved form and, with your permission, I shall place before the House some of the improvements that have been made by the Joint Select Committee.

You would find that in this Bill there are certain clauses, which define the functions of the Bar Council, the State Bar Council and the Bar Council of India. Two very important functions have been added to them. One of them is to safeguard the rights, privileges and interests of advocates, and the second is to promote and support the reform of law.

Every lawyer, and for the matter of that everybody, knows very well that our judiciary is an independent body and that it should enjoy the greatest respect from everybody concerned. But sometimes there are cases, and genuine cases at that, where individual presiding officers

[Shri Raghubir Sahai]

go out of their limits and by their behaviour antagonise the entire Bar, or sometimes they are rude to lawyers and sometimes they cross the limits of decorum of the court. Till now there was no remedy against such high-handed actions on the part of the presiding officers. I remember that in specific cases where complaints were made against the behaviour of the presiding officers, even the High Courts refused to interfere. In one particular case—I remember it came from the district of Muzaffarnagar in Uttar Pradesh, and my friend Shri Sumat Prasad will bear me out—a lawyer of that district was insulted by a presiding officer. The entire Bar Association took up the matter and protested. The matter was referred to the Allahabad High Court. You will be surprised to hear that the Allahabad High Court took a rather unjust view and charged the entire Bar with contempt of court.

Shri Tyagi: They rightly did it.

Shri Raghubir Sahai: And when the matter was referred to the Supreme Court it was set aside.

I believe when this function is entrusted to the Bar Councils, with regard to the safeguarding of the rights and privileges of lawyers, such complaints would not arise hereafter; because, they would see that their rights are fully safeguarded.

There is another matter in regard to the functions of the Bar Councils, on which I congratulate the Joint Select Committee, that is the promotion and support of the reform of law. This is another addition which the Joint Select Committee has made to the functions of the State Bar Councils and the Bar Council of India. Everybody knows that although we have got this system of administration of justice as a legacy from the Britishers and we are proud of this system and it has

worked for a pretty long time, there are defects in this system and those defects have to be remedied. Even the Chief Justice of India, only very recently, after his return from the tour of Japan, was pleased to make this remark. He suggested to the jurists in the country to consider whether in India, where the trend of law and litigation was fast changing, we should not reform our legal system so as to conduce to speed and effective administration of justice. You are very well aware that with all the good points about the administration of justice, we find that our system does cause delays in the decision of cases. It is a very costly system. There is perjury prevalent in law courts. And sometimes there are cases where miscarriage of justice takes place. All these things will have to be looked into. And here are the remarks of the Chief Justice who, after his return from Japan, pointed out to the jurists here that in Japan there is speedy dispensation of justice, and effective also. There they follow the continental system of law and justice, rather than the common law system which we follow here. And he made an appeal to the jurists in this country to study the subject thoroughly and to make their own suggestions. It would be open for the Bar Councils, both in the States as well as the Bar Council of India, to go into this subject thoroughly; because, who can be a better judge and a better critic of this system than the lawyers themselves?

There is another important improvement in this Bill, and it is this. It has been provided that the State Bar Councils will constitute a fund for financial assistance to indigent and disabled advocates. Everybody knows that there are no pensions given to lawyers, and there is no provident fund. But there are hard cases where very old and disabled lawyers have to go on in their profession just to eke out their existence. This fact was brought to the notice of the Joint Committee, and they have now made

a specific provision here that the Bar Councils will look to this matter also, and they will make suitable provisions for such indigent lawyers.

Shri C. R. Pattabhi Raman (Kumbakonam): I want to assure my hon. friend that the benevolent fund has been started in other places. This is working in Madras. There is a regular benevolent fund from out of which contributions are given to the needy lawyers, and sometimes, even lumpsum payments are made in case of accident or anything like that.

Shri Raghurir Sahai: I hope other States will follow suit.

With regard to the stamp duty, in the Joint Committee itself, there were very strong feelings, as would be evident from the paragraph that has been incorporated in the report. It appears that here also, my hon. friends are very anxious that this stamp duty should not be introduced. The Law Commission itself was opposed to the imposition of any such stamp duty. And the All India Bar Committee also was of the opinion that an exorbitant fee should not be imposed. We find that in the original Bill, it was proposed that an enrolment fee of Rs. 500 should be imposed; it has now been reduced to Rs. 250. But the Law Commission was of opinion that it should be reduced to Rs. 125. We would have been very glad if that recommendation of the Law Commission had been accepted, but we are sorry that that recommendation has not been accepted, and that matter has been left to the States to decide for themselves.

After the Joint Committee had done their job, and their report came out, the Law Ministers of the several States met at Srinagar last year, and they rejected that recommendation outright. Perhaps, their plea was that if we did away with the stamp duty or reduced it to a very great extent, then, their revenues would suffer. That is a very poor argument that could be advanced. The Law Commission was of the opinion that for

dispensation of justice, no duty and no court fee should be charged, and the dispensation of justice should be free of every charge. This consideration should not have been neglected. I think that the State Bar Councils which are going to be constituted now would assert themselves and would press for this very legitimate and just demand on the part of the lawyers, because, here we have made a consolidated Act in which all kinds of lawyers would come under one category. We want that every one of them should be enrolled, and, therefore, the fee that should be charged from them should be kept at the very minimum.

There is also a very salutary provision with regard to the examination after training of those who enter the profession of law. It is clear that at the present moment, in the present state of things, every person, any Tom, Dick and Harry would like to enter this profession.

Mr. Deputy-Speaker: All lawyers, at least? I hope Tom, Dick and Harry are all lawyers, at least?

Shri Tyagi: He means that everybody who is not a lawyer is either a Tom or a Dick or a Harry.

Mr. Deputy-Speaker: I think he is including B.A., LL.B.'s in the category of Tom, Dick and Harry.

Shri Tyagi: I suppose they are not laymen.

Mr. Deputy-Speaker: He is only referring to those who have the B.A., LL.B. degrees, not the others who do not have those degrees.

Shri Raghurir Sahai: I am referring to those who do not possess any aptitude for law or for the legal profession.

Pandit K. C. Sharma: (Hapur): How could they get the law degree?

Shri Raghurir Sahai: This provision has been made so that they may

[Shri Raghbir Sahai]

acquire certain training, and after training, they may undergo an examination. It is a very salutary provision whereby many of those persons would be excluded who should not, in the ordinary course of things, have entered this profession.

I welcome this Bill. It is a very advanced step in the direction of safeguarding the rights and privileges of the members of the legal profession.

Mr. Deputy-Speaker: Now, let us hear Shri Tyagi and listen to what he has to say against lawyers. Shri Tyagi.

Shri Tyagi: Law, as originally conceived, and as laymen understand it, was only a registration of the recognised moral values in the past, and lawyers were just giving an interpretation to those values, and that was always in conformity with the recognised pattern of the society. I had heard stories in my boyhood that barristers mostly had pockets behind, and they never transacted business for the sake of fees, and whatever the clients put in their pockets was accepted by them, like good Brahmins.

Mr. Deputy-Speaker: Now, whatever is put there would be taken away.

Shri Tyagi: Now, that pious profession has lost its charm. It has now become a regular profession for earning money and for making a livelihood out of it. Therefore, that old tradition of law has practically passed away.

It is a good thing that the lawyers are organising themselves, but after all, the Bar Council is a sort of trade union. Of course, it is a trade union, because trade union is not a bad term by itself. Let lawyers be accustomed to the pattern that is prevalent in society, where every profession has got its own trade union.

But I have got my own doubts about the wisdom of this law. After

all, in this world, the whole lot of lawyers are competitors; just as there are competitors in society, these people also compete with one another. So far, there has been one balancing factor, and that is the High Court judge, who has his influence in the Bar Council, and who could set right anything unprofessional, or anything resulting on account of rivalries. Let it not be considered that the whole lot of the lawyers are angels; after all, they are as good or as bad as we people, their cousins, are. My fears are that to give absolute autonomy to the Bar Councils might perhaps prove to be injurious to the profession as a whole, because, in due course, there will be elections by the single transferable vote and there will be cliques, and there will be politics, and then the professional misconduct etc. may all be decided on the party-politics system. That is happening in the most elite society of politicians who always eschew all personal types of considerations; but, at the same time, there are groups; and those groups might come into existence in these Bar Councils also. That is my fear. And one group will go against the other, and consequently, that balance may not be kept in due course. This is the warning that I want to give to all the lawyers in the country and also the advocates etc.

Of course, they can have their Bar Councils, but I find that they are now eschewing the judge. I wonder why Government had not thought about it. There is no other profession in India to which so much of absolute power of control has been given. After all, it is a private sector. And to what extent can we give them the liberty to decide about their own conduct? Should Government at least not lay down certain principles to guide them as to what things would be deemed to be unprofessional conduct? I want to have an answer to one question in this connection, from the hon. Minister. What does he think about a lawyer evading income-tax, for inst-

ance, and also just advising his clients to evade income-tax? Is that not misconduct? Will that be deemed as misconduct? At least, certain things about which there is no dispute, and which constitute unprofessional conduct or professional misconduct should have been incorporated in this Bill so as to make it known to everybody that such things constitute misconduct. But, now, these Bar Councils will decide, and if most of these persons have taken to this practice themselves....

Mr. Deputy-Speaker: Is that a disqualification for being elected as a Member of Parliament?

Shri Tyagi: I think there must be some disqualification regarding members of Bar Councils becoming Members of Parliament. Because after all, they are now organising themselves into a profession. Let them be there. Why should they come to Parliament? Courts have been respected in the country not because of the fear which weighed on the clients or litigants; courts were respected because the lawyers respected the courts. The lawyers did it because they knew that the ultimate authority vested in the courts as regards their discipline etc. Now, as soon as you take away the jurisdiction of the courts in this matter, the Bar Councils become supreme in the matter of disciplinary action on their lawyer friends or fellow-members.

Shri Nathwani: May I point out that clause 38 of the Bill provides for appeal to the Supreme Court in some matters?

Shri Tyagi: Of course, it does. But is the Minister justified in taking out the jurisdiction of the High Courts over the Bar Councils? Why has he done it? That case has not been proved before Parliament. He is asking Parliament to agree to this. We cannot agree to this blind-foldedly. Let us be told what harm had come. After all, we have got a history of law for the last 200 years. In a case or two, there might have been a

difference of opinion. But I want to know what has justified the taking out of the control of the High Court over the Bar Councils. The result is that lawyers hence onwards will not respect the courts any more now. In due course, you will find that the courts of the land would lose their prestige, and I say that will be through the members of this Bar Council. That is my fear.

In that crowd—I will not say 'crowd'—in that batch of competitors, the High Court judges were keeping the balance. Now even that balance will be lost. My fear is that ultimately the Bar Councils themselves will regret that they took this much of freedom. That is one point which I would like the Minister to consider.

Shri Narayanankutty Menon (Mukandapuram): What does he want Government to do?

Shri Tyagi: They can at least maintain the present position. It is no use making any change. Why take away the influence of the High Courts? They say they can go to the Supreme Court. Everybody can go to the Supreme Court whenever any injustice is done.

Shri Narayanankutty Menon: The Judges themselves say that they do not want to come in.

Shri Tyagi: Factually speaking, the Bar Councils even today have not been able to bring any moral effect to bear on the Bar Associations. The only thing is that litigation has become costly. Everybody knows that law has literally become a sort of fiction. It is not a reality. It has no real value recognised in society. Words and meanings are stretched. Basically and primarily, lawyers are responsible for delayed litigations, because they can get their fees. On small, little, frivolous technical grounds, cases get postponed, and they have no moral sense to realise the unfairness of it.

Shri C. R. Pattabhi Raman: May I point out that the Bar Councils come

[Shri C. R. Pattabhi Raman]

down very heavily on advocates who swerve from the right path, just like what is done to accountants? Many of them are struck off the rolls. The recommendations are there.. What is more, with regard to these fees, they are State levies. The Bar Councils have protested against them. In connection with stamp charges I have often quoted the *Magna Carta* saying that "to no one will sell justice" Stamp duties should be reduced.

Shri Tyagi: My hon. friend should not get annoyed. My lawyer friends must be prepared for a little criticism also. They criticise everybody. They have nothing but criticism to offer. That is all that they do. Let them be prepared for a little mild criticism from their brothers.

Then there is one point I would like to stress. There must be some control over their fees. Even in the case of tonga-wallas, hackney-coach drivers, buses and so on, the fares are controlled.

Mr. Deputy-Speaker: In legitimate criticism, why should he drag these poor lawyers to the hackney-coaches and tongas.

Shri Tyagi: I am mentioning them as a contrast. Even the smaller people, poorer lot, who deserve greater freedom, have their fees controlled by Government. Lawyers are big people. Their fees are comparatively fat fees. I say they are of a more dignified profession, no doubt.

Therefore, I submit that Government must see to it that persons who are entitled by means of government licences and government permission to practise in government courts must accept some control over their fees. Their fees are becoming absolutely exorbitant, to the extent that litigation has become must costly in India. The lawyers go on realising their fees. There is no control over their fees.

I agree that lawyers, like doctors, are a necessity. After all, lawyers would be needed in human society.

There must be lawyers. I am not so much against the profession as such. But then there must be some control over their fees. Litigation is becoming so costly. All round in Parliament, there are lawyers. They should voluntarily accept control of fees. We are controlling the profits of practically all concerns, all industries. All profits are controlled. So why not control the lawyers' fees?

Shri M. B. Thakore (Patan): Would he get cases?

Shri Tyagi: My fear is that if these Bar Councils come into power.....

Shri Narayanankutty Menon: Without interrupting my hon. friend, may I ask him for a change to speak on the Bill? We are considering a very important matter which concerns a very high profession in this country. He may also bear that in mind apart from a little bit of loose talk he is indulging in.

14:46 hrs.

[SHRI JAGANATHA RAO in the Chair]

Shri Tyagi: I am sorry. I thought that the profession of labour was higher in dignity than the profession of lawyers. People talk quite lightly about labourers. My hon. friend must know the dignity of labour. I thought he was a Communist. But by profession he is not; he is something else.

Anyway, everybody has his dignity in India and, therefore, all are at par. I am not going to agree to a supreme type of standard for lawyers alone. We are all one, whatever the profession. There must be dignity of labour. There may be intellectual labour; there may be other labour.

Shri Narayanankutty Menon: I accept that.

Shri Tyagi: Therefore, it is not a question of being disrespectful to them. Does he mean to say that their

fees should not be controlled? Are lawyers born directly of Gods or angels? After all, they are also citizens. If Government can control the profits of all the professions, why should the profession of lawyers be left untouched?

Shri Subbiah Ambalam (Ramana-thapuram): May I say that advocate's fee is prescribed and limited unlike the fees of those belonging to other professions? That is a very fundamental thing.

Shri Tyagi: Then, wherever it is found that any advocate has realised from his client more than what was prescribed, that must be misconduct.

Shri Narayanankutty Menon: That is a misconduct.

Shri Tyagi: It is not so. Everybody knows it. Everybody pays the fees. That is another matter. Those who realise the fees may forget about that, but those who pay remember very well how much they pay.

Even if there has not been any control so far, the time has now come when the fees of lawyers must be controlled by law. They must not think that they can make profits more than the normal profits that may be granted to them.

Shri Hajarnavis: May I tell the hon. Member that the correct position is that the fees are not prescribed by any Act, so that it is not an offence to charge any fee which has been agreed to as a matter of contract between the client and the lawyer? But under the Legal Practitioners Act, if there is no contract, what the schedule lays down shall be presumed to be the contract between the parties. The reason why high fees are charged is that one particular lawyer may be very much in demand. Every member of the legal profession will say that one lawyer is nearly as good as another. But if you want one particular lawyer and many people go to him, he puts up his fees in order to save himself. Most of it goes towards income-tax.

Shri Tyagi: I am sorry. All around me there are lawyers. I should not be misunderstood.

Shri C. R. Pattabhi Raman: Will not the hon. Member choose his own doctor?

Shri Tyagi: I should not be misunderstood. When I fall ill, I have to consult a doctor. If I am arrested, I shall have to approach a lawyer for help. It is not as though I do not value the services they are rendering to the nation and to society. I do value their services.

Shri Hajarnavis: If he goes to the topmost lawyer, he will consider it an honour to plead for him.

Shri Tyagi: I cannot; that is what my hon. friend has misunderstood. I cannot because I cannot pay for a topmost lawyer. It is not possible. There are many people who are losing their cases only because they cannot afford to have higher talents. Therefore, I submit there must be some consideration. In the past, it was left to the clients. I hear that in England they never transacted any business with their clients; there was no haggling. But now here there is regular bargaining going on.

श्री जगदीश इन्दुरी (दिहौर) : जिन देशों में वकील नहीं हैं, वहाँ क्या होता है ?

Shri Tyagi: Therefore, my submission is this. I do not want to starve this profession. They are talented people. Let them have good fees; but let the clients know what they have to pay. It should not be left to haggling. It would be graceful both to the lawyer and to the profession also.

Shri Narayanankutty Menon: Are you prepared to guarantee a minimum income to the lawyer?

Shri Tyagi: I think, perhaps, some such consideration would be helpful. (Interruptions). My other difficulty is that they are also impatient. Anyway, my only warning at this

[Shri Tyagi.]

hour is that ultimately, perhaps, the lawyers and advocates might regret the waning of the influence of the High Court Judges from the Bar Councils. My hon. friend has not yet given sufficient explanation as to why there has been this departure. Why is it that the High Court Judge's influence is taken away from the matter of discipline? After all, he would consult the Bar Council and he was not going beyond the Bar Councils. The views of the Bar Councils were taken into account and their views were generally accepted. Up till now even big lawyers like Motilal Nehru, Sir Tej Bahadur Sapru and C. R. Das had submitted to this. There was good relationship between the Bar and the High Courts. Why are you so much set against the High Courts that their influence is also being thrown out altogether? My fears are that, in due course, the Advocates themselves will regret the day when they shunted off the influence of the High Courts. The courts will lose a lot of their dignity if the lawyers refuse to respect them.

Shri Amjad Ali (Dhubri): As I was hearing my hon. friend, Shri Tyagi...

Shri Narayanankutty Menon: His peroration.

Shri Amjad Ali: As I was hearing his learned peroration, I heard him with patience—I am profited by the discourses he has given. All the time he spoke about the elimination of the High Court Judge from the Bar Council, I felt that he, as a glaxo boy, feels helpless in the midst of difficulties and does not know what to do.

Shri Tyagi: You are correct.

Shri Amjad Ali: I am glad he has accepted that. He should know that we have come to such a pass and to a stage when the lawyers in India are being given this opportunity of managing their own affairs after a long lapse of about 150 years of British rule in India. If not on any

other ground, at least on this ground, that we are going to come to our own, that we are now feeling that we can manage our own affairs without the help of the Higher-ups like the High Court and the Supreme Court Judges, we should congratulate ourselves and say that the Joint Committee has done at least the good thing in eliminating the High Court Judges from the Bar Councils of the State—and the Bar Council of India. That will give us an opportunity to meet and deliberate and also to manage our own affairs in a manner which is consistent with the dignity of the profession, which is consistent with the learned profession to which we belong.

Regarding fees, Sir, you may be aware, being a lawyer yourself, that lawyers' fees are always grudged. If they get fat fees, others who are not lawyers would always grudge it. But the profession is such that to command big fee is the pride of the profession. That is the aspiration of any lawyer or any aspirant in the legal profession, that he would earn big fees. And if he cannot, he will slip down. That way his profession will have its end and will be simply marred. The beauty of the thing is that the real import of big fees is not understood. Big fees will be commanded by those high up in the legal profession. All are not able to command big fees. Big fees are commanded only by those that have become Seniors and have acquired a good deal of efficiency in the Bar. Devoid of efficiency you are not going to engage a senior lawyer at a very big fee.

Shri Tyagi has admitted that in case he is involved in litigation surely he will have recourse to a lawyer. In that case he may not be able to grudge the fees that may be charged from him, because a good lawyer who has spent years in the profession, a good lawyer who has done really good service throughout his career will

require a certain amount of good fees if he has got to accept a brief. That way juniors will have scope.

The other thing which I wanted to bring before this House—and it has been referred to by two of the speakers who preceded me—and with regard to which I feel strongly is the question of the dual system. This system obtains at Calcutta and Bombay. That is on the Original Side. This is a legacy of our British masters. This came into vogue at the time of British rule and it is still continuing. It is a legacy at Calcutta and Bombay—these two big cities—it is said, on account of businessmen and business magnates. It might have been a question of convenience. But there is a background. Barristers unacquainted with local languages needed help.

Solicitors and advocates are both lawyers. Both are engaged in preparing for litigation. Solicitors, as a matter of fact, pass on the briefs to the Advocates who plead. The Solicitors cannot plead; the Advocates do plead. As a matter of fact Advocates are engaged; but they are not allowed to do the work of Solicitors. The Solicitors, as a matter of fact, hold the king-pin. They have everything in their hands, either to make or mar the Advocates. Sometimes, it is said that in order to make himself a successful barrister he should marry the ugliest daughter of a Solicitor. There was a time, when, to become very successful, the Barrister had always to go to the Solicitors and ask them for their help. Without that they could not do. This is the other part of the story.

The question of litigants also is there. As a matter of fact, litigants also suffer because they have got to engage two sets of lawyers, one for pleading and other for preparing the cases. Here in India, we find the best example and it has been referred to by some hon. friends. A system has been evolved in the Supreme Court. There are a set of lawyer advocates and they prepare the cases.

They draft plaints and also present the cases to the Court and at times they are allowed to go and practise in case the senior does not appear. But that system is not in vogue in Calcutta or in Bombay or, possibly in the original side of Madras High Court. . . (Interruptions).

15 hrs.

An Hon. Member: In Madras they have done away with the dual system.

Shri Amjad Ali: In great industrial cities like Kanpur and Ahmedabad, big business cases are also filed and these centres are carrying on without the help of solicitors at all.

The other point which I wanted to make about the barristers is about their exclusiveness in some High Courts. It has appeared in the Press and it has been criticised on the platforms. The barristers do not allow other advocates to occupy the same chamber or use the same library. This system was possibly handed down to us from the English masters. There was a time when this exclusiveness was there. The British barristers came; they did not understand our language. That was possibly the first difficulty with them. Later on, it developed in such a way that even when Indians returned from England, they also felt that in their borrowed plumes they should share the exclusiveness. They did not allow the advocates to come and sit there. This is something which should go immediately. I want to make some suggestions to improve the deteriorating condition of studies in laws. The process of deterioration was going to be accelerated when the suggestion was made that after pre-university course people should be allowed to enter the law classes and after undergoing this study, they would become lawyers and join the profession. This is a very dangerous thing. Till now, the position is that a commerce graduate or an arts or science graduate can go to the law classes and after

[Shri Amjad Ali]

passing from there, they can become a lawyer. If the suggestion that undergraduates or persons who have passed the pre-university courses can enter the law colleges it will be dangerous; it will deteriorate the standards further. After the graduation stage, my suggestion is, that instead of three years there should be only two years of law course. Some people who are in service attend the law classes at night or in the morning and during the day-time they go to their offices; this is not a wholetime job for them. I mean to suggest that law as a study should be as any other course. If law is taken seriously, it should be studied for two years. After that, they should go to an Articled clerkship, as it is in vogue in England. The Articled clerkship should be strictly enforced. Senior lawyers should see that the Articled clerks do not simply come to the court, sign and then go away. If he is allowed to do so, the efficiency is lost and the certificate obtained after six months or one year, will be in vain. I suggest that the seniors should be very strict in giving certificates.

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

Shri Amjad Ali: There are only one or two points which I would refer to. During the discussion of the Demands for Grants of the Ministry of Law, the question of Legal aid to the poor was exercising our minds and some such provision could have been made in this Bill so that we would be satisfied that we are making a good beginning and that the poor in this country were in a position to get the aid of lawyers. The question of stamp duty was raised by some hon. Members. I think stamp duty should be there but uniform throughout the country. Not only in the interest of State revenue but also a check on the huge influx in the profession. To a great extent it will minimise the overflow in the Legal profession.

A very healthy provision has been incorporated in clause 6(2) that a State Bar council may constitute a fund in the prescribed manner for the purpose of giving financial assistance to indigent or disabled advocates. I believe a good beginning has been made. I hope the hon. Minister will give us an idea, while replying to the debate, how this can be effected. I have no idea of how a fund of that nature would be created and worked. If it could be done, it is welcome.

The last thing which I want to refer to is about clause 52. It says:

"Nothing in this Act shall be deemed to affect the power of the Supreme Court to make rules under article 145 of the Constitution (a) for laying down the conditions subject to which a senior advocate shall be entitled to practise in that Court (b) for determining the persons who shall be entitled to act in that Court."

I have difficulty in understanding why this particular clause has been included. If it is the idea of this Bill that all the lawyers or advocates who are enrolled are allowed to practise from the lowest to the highest court, why has this provision been put in here? Why are these impediments put? The lawyers should be allowed to appear unhindered. Why should the Supreme Court lay down that such and such people should be allowed to appear?

That is all that I have to say.

Shri Tyagi: The hon. Member has united the Opposition with the Treasury Benches!

Mr. Chairman: Order, order.

Shri Shree Narayan Das (Darbhanga): Before you call the next Member, the time for the various stages of the discussion may be decided.

Mr. Chairman: What is the sense of the House?

Shri N. R. Muniswamy (Vellore): The time may be extended by two hours.

Shri Ram Krishan Gupta (Mahendragarh): The time for general discussion should be extended.

Shri Braj Raj Singh (Ferozabad): I may also submit that you will have to extend the time for the Bill, because there are many hon. Members who would like to participate. We shall continue with the general discussion till the end of the day and take up the Bill again tomorrow.

Mr. Chairman: The House rises at 5 O'clock today. The general discussion may continue up to 5 O'clock.

Shri Braj Raj Singh: But it will not be limited up to 5 O'clock only today.

Mr. Chairman: Let us see.

Shri Nathwani: Mr. Chairman, Sir, the Bill has been welcomed by all sections of the House as it gives a statutory form to the long cherished dream of an all-India Bar. I want to say something about the provisions of the Bill so far as they relate to the continuance of the dual system, but before I do so, I would like to refer to the speech just now made by my hon. friend Shri Tyagi. He tried to make two important points as far as I could see. Firstly he said that judges should have been continued as members of the Bar Council and their dissociation does not spell good for the associations themselves. In this connection, I want to point out what the All India Bar Committee has stated. Their recommendation was that in order to preserve the autonomy of the Bar Council it was not desirable for the judges who had not practised as advocates to be associated as members of such committees. The Law Commission also unanimously recommended that the judges should not join as members of these associations.

Shri Tyagi: They are men of the profession. The Government ought

not to be dictated to by men of the profession!

Shri Nathwani: If the hon. Member has patience enough, he would himself be satisfied, after listening to me, that judges should not be on these committees. The judges themselves do not want to be associated with these bodies. Therefore, my hon. friend Shri Tyagi was asking for something which the judges themselves have disavowed. If he knew this background I do not know how far he would have been enthusiastic in championing the cause of the judges being associated with bar councils. That is why I want to read out a passage from page 576, paragraph 48, Vol. I, of the Law Commission's report, where they observe as follows:

"We wish to emphasize the principle of autonomy thus sought to be given effect to by the Committee.—

That is, the All India Bar Committee:

"Our considered opinion is definitely against Judges who have never been advocates being brought into these autonomous bodies. . ."

Then they say:

"The recommendation of the Committee that the Judges nominated should have been persons who had been advocates was, it appears, made deliberately with a view to prevent Judges who had not been advocates from becoming members of the Council".

Then they proceed further and say:

"It may be pointed out that, notwithstanding the provision in section 4(1)(b) of the Bar Councils Act, in some of the States, the High Court has not chosen to nominate Judges as members of the Bar Council."

[Shri Nathwani]

So, the high courts themselves have refused to nominate, because the judges may be embarrassed if they associate themselves as members. When their views are expressed, the advocates who appear before them may oppose their views and this would stand in the way of their dignity. That is why the high courts did not nominate the judges as members of this committee. I know that the Bombay High Court always refused to nominate judges as members of this committee. It is not only the Commission who feel that the judges should not be associated, but several high court judges have taken this view, and it is in consonance with that view that the Joint Committee had dropped the provision in relation to the judges being taken as members of the committee.

I then come to the second point referred to by my hon. friend. He said that the remuneration of the advocates should be controlled or regulated. I know it is a laudable object. But you cannot view the subject in isolation, because it implies putting ceiling on the income of people belonging to other professions also, and the businessmen as well. But I know also that several eminent members of the legal profession have self-imposed upon themselves certain limitations on their income. I do not want to mention the cases, but a sort of tradition is being created whereby some eminent members of the profession do impose conditions of limitation upon their income. Shri Tyagi also should know that the fat income which a very few lawyers get is subject to income-tax.

Shri Tyagi: May I explain one thing? Most of the bigger, fat fees come out of the funds of companies, corporations, etc., which are income-tax free at that end, and those bodies can pay any amount.

Mr. Chairman: They are taxable at the hands of the lawyers.

Shri Tyagi: 12 annas, or sometimes 14 annas in the rupee come

from the income-tax coffers, and therefore they can liberally pay. In the hands of the advocates also these amounts remain hidden; they are not shown in the returns.

Mr. Chairman: They are taxable at the hands of the advocates.

Shri Nathwani: Are not the lawyers liable to pay income-tax and super-tax on their income? They are. My learned friend should know that for a lakh of rupees that they may get by way of income, they pay Rs. 58,000 by way of tax. So, the balance is only a sum of Rs. 42,000, and if you do not allow some of them to get a fee like that, you will fail to attract brilliant people to the profession.

Shri Tyagi: Will my hon. friend agree if it is made a sort of malpractice—that is, if evasion of income-tax is resorted to by this way?

Shri Nathwani: Evasion applies to all classes. Wherever you go, it is a general problem. You cannot say that the legal profession is particularly susceptible to this sort of evasion, as you call it. Is it suggested that there is some peculiarity in this profession whereby they are evading the payment of tax? It is a large, general problem and I do not want to enter into the merits and demerits of that aspect.

I wanted to deal with the question of continuance of the dual system. There are three notes of dissent in which contrary views have been expressed, though while listening to my hon. friend Shri Sadhan Gupta, I felt that his position was rather half-hearted and he expressed it in a halting manner. It is known that recently the question has been gone into by two extremely weighty committees—one is the All India Bar Committee and the other is the Law Commission. Both of them went into this question and examined the pros and cons of it and came to a conclusion. The Joint Committee also fully went into this question and though most of the Members of the Joint

Committee were lawyers, still, barring three hon. Members who differed, all have agreed to the recommendation of continuing the dual system. It is admitted that this system is an efficient one and it makes for expeditious disposal of the matters. It is based on division of labour and, therefore, it leads to a better and thorough presentation of the case and enables a quick disposal of cases. These are the merits of the system.

But the principal objection to it has been its costliness. I say the objection, namely, that this is very costly, is mainly based on ignorance of facts, and partly it is based on prejudice. I practise in the Bombay High Court on the original side, and I know the conditions which prevail there. I know that during last 15 years, from time to time, the scale of fees to be paid and the rules for taxing the bills have been revised and improved upon, and the amount of costs involved has been considerably reduced. In 1954, when the Court Fees Act was applied, still this system was allowed to be continued. My friend, Shri Sadhan Gupta, was referring to this fact. He tried to make a point that in cities like Bombay and Calcutta, the commercial community could pay two sets of lawyers—attorneys as well as advocates—because there was no Court Fees Act, but then after the introduction of the Court Fees Act in Bombay, the system has continued there. In this connection, in order to appreciate whether and how far it is expensive and costly, you must bear in mind certain facts, viz., so far as the Bombay High Court is concerned, its original side jurisdiction is restricted only to suits of the value of Rs. 25,000 and onwards, with the result that there are hardly about 400 cases, which are of a complicated nature or serious nature involving large amounts that are tried on the original side.

Secondly, in 1954, when the Court Fees Act was applied, the then Chief Justice, Mr. Chagla, got an analysis of the bills of costs for two years

made, which conclusively proved that the system was not costly, as it was alleged to be. Lastly, it has always been stated that if you find the system costly, the remedy would be by way of devising ways and means by which you can reduce the cost.

I have read carefully the arguments which are referred to in the dissenting note of Shri Sadhan Gupta. He also adverted to them briefly here during the course of his speech. He tried to say, it may be that the business community which is a well-to-do community can afford to pay higher costs and get more efficient service, but what about other cases which are of a simple nature and which do not involve any extra labour and do not require the service of two sets of lawyers—attorneys as well as advocates. To that my reply is, if the case is a simple one, if the case is one under Order 37 of the CPC, which is the class of cases he has referred to in his note, if my friend has studied the rules on the original side, he would have been surprised to find that it is not necessary to engage two sets of lawyers. Solicitors do appear in a matter like this when summons for judgment is taken out. He appears if it is a suit regarding promissory note, hundi, etc. A summary suit will always lie at this stage and it is the attorney who appears. As far as the Bombay High Court is concerned, it is not true that he cannot plead. He does plead; he does appear on summons for judgment. He appears in insolvency cases, testamentary cases, etc. It is only when a case is controversial and heavily contested, that it is transferred to the long cause list and he cannot appear. Two sets of lawyers are then engaged, which according to him also, would be necessary in a case like that.

He has said there is a sort of compulsion, because you must engage two sets of lawyers. To that an effective reply has been given by the Commission itself. Arguments have been adduced showing how under the present system, in other parts and in other conditions also, there is a compulsion

[Shri Nathwani]

Firstly, in this Bill itself, we have a statutory provision for junior and senior advocates. The senior advocate cannot act in certain cases without the assistance of a junior. Is there no compulsion in that kind of thing?

Shri Sadhan Gupta: The litigant is not obliged to engage a senior.

Shri Nathwani: Here also it is left to an advocate to choose voluntarily and enrol himself as an attorney or as an advocate. Where is the compulsion upon him to choose to be an attorney or advocate? Just as a man chooses to be a senior, likewise he can choose to be an attorney or advocate.

Shri C. R. Pattabhi Raman: Bombay is slightly different from Calcutta.

Shri Nathwani: Secondly, under the system which prevails in the Supreme Court, have we not got advocates on record? An advocate who is not an advocate on record, cannot appear unless he is instructed by an advocate on record. Therefore, there is nothing unique in it. There are other parallel, analogous and similar provisions where you find that an advocate cannot plead in every court wherever he likes.

Another point made out in the note of dissent by Shri Sadhan Gupta is, he says, it prevents interchanging of functions. So far as Bombay High Court is concerned, I can tell him that there is nothing in the way of an attorney converting himself into an advocate. There are several examples of eminent attorneys having changed themselves into advocates. No question of his inability to secure Rs. 500 or Rs. 750 which would be necessary for him to enrol as an advocate has arisen. He succeeds in his profession as an attorney and after earning a reputation as an attorney, he wants to display his forensic ability and therefore, he converts himself into an advocate. Likewise, an advocate also finds no difficulty if he wants to convert

himself into an attorney; but in his case it is generally considered that a man has failed in his profession as an advocate tries to become an attorney.

Lastly, it has been said that this system only exists in the High Courts of Bombay and Calcutta. It is true it has been abolished in Madras. But may I read a passage from an issue of a magazine called *Lawyer* published from Madras, which contains the following observations on the dual system:

"The plan of the Bill is to ensure a single and uniform type of legal practitioner to be called advocate.... But then the new Bill aims to perpetuate the dual agency in the High Courts of Bombay and Calcutta on their original sides.. Speaking for ourselves, we entirely approve of that step as we have always felt from personal knowledge and experience that a well-organised and efficient dual agency definitely makes for better and more thorough preparation of cases and the reasonable sharing of heavy responsibilities between the two agencies, which lends scope for a more satisfactory disposal all round. We cannot help feeling that the abolition of the dual agency on the original side of the Madras High Court was the result of a hasty decision coloured to some extent with some prejudice on the part of those who were in a position to decide the question... Many persons in the know, including several experienced members of the Judiciary, hold a different view today."

This is position regarding the Madras High Court.

I submit that there is no case made out for making any departure from the provisions regarding dual system as they are in the Bill.

Shri Mulchand Dube (Farrukhabad): I congratulate the hon. Minister

for bringing up this Bill, which has the effect of not only unifying the bar, but also conferring an independent status on it. I should like to quote a passage from the Law Commission's report:

"We have been at pains to find out how and on what principle entrance to this profession came to be taxed when no similar impost is levied on entry into other professions. We have not been able to discover any sound reason or principle for this levy. So far as we know, though payments have to be made to professional bodies like the Inns of Court or the Law Society, no fees are levied in England by the State for the issue of a licence to practise the profession. Nor are we aware of any such fees being levied in the United States. In our view, this imposition is totally unjust and should be abolished."

The hon. Deputy Minister has also taken a similar view. He said in his opening speech that the matter may be taken by some advocate to the High Court and a decision obtained therefrom. My submission is that this kind of thing does not seem to be necessary.

The question is, how this is to be done. In my view the Union is quite competent to make a law in that respect. Only the actual rate of stamp duty has been left to the States, but the items on which the duty is to be levied are the special provisions of the Union. If the item which imposes duty on entry as an advocate, an attorney or a solicitor is omitted from the Stamp Act, the States I think have no power to impose that duty. That duty differs from State to State. To the best of my information, the duty varies from Rs. 500 to Rs. 1000. The Bar Council charge a fee of Rs. 250. I am grateful to the Joint Committee for having reduced the duty from Rs. 500 to Rs. 250. Therefore, Rs. 250 plus Rs. 1000 or Rs. 500 makes Rs. 1250 or

Rs. 750. Whatever it may be, it is a very large sum for any entrant to the profession.

There is another aspect of the matter also. When we want a unified Bar and there is only one class of members in the Bar, the question arises as to how we are going to attain this. At the present moment, as entered in the definition clause, a legal practitioner means an advocate, vakil or attorney of any High Court, a pleader, mukhtar or revenue agent. How are we going to improve the status of a revenue agent or mukhtar, if we continue to levy that fee and we also continue to discriminate against them and say that those persons will not be entitled to be enrolled as advocates because the clause that prescribes the qualification for entry as an advocate does not mention that revenue agents or mukhtars will be able to do so?

Sir, my submission is that revenue agents or mukhtars, who are a dying race, should also be permitted to enrol themselves as advocates if they have put in a certain number of years service. We might fix the period as 10 years, 15 years or even 20 years. In my State the examinations for revenue agents and mukhtars have been abolished. There are a few persons who have put in 15 or 20 years service and who are at the present moment practising. I do not think it would be at all proper to debar those persons from being enrolled as advocates. I think that this permission should be extended even to the mukhtars and revenue agents. I have seen those people working, and I can say with confidence that they are in no way inferior to the advocates in that branch of practice to which they are entitled. So there is absolutely no reason why this should not be done.

With regard to stamp duty, I may point out some provisions of the Constitution. To being with, Sir, I shall quote entry No. 78 of List No. 1, which is the Union List. It reads:

"Constitution and organisation of the High Courts except provi-

[Shri Mulchand Dube]

sions as to officers and servants of High Courts; persons entitled to practise before the High Courts."

Therefore, the Union has power to organise the persons who would be entitled to practise before the High Court.

Then we come to item No. 63 of List No. 2, which reads:

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

Therefore, the State Governments are only entitled to fix the rates of stamp duty. The documents on which duty is to be paid have to be prescribed by the Centre. Therefore, the legislation with regard to the documents on which duty is to be imposed is the province of the Union and for that reason my submission is that the matter should be left to be decided by the same power without somebody saying that the State Government has no right to impose that stamp duty.

My submission is that this kind of thing is not necessary, because in the Concurrent List, in item No. 44, it is said:

"Stamp duties other than duties or fees collected by means of judicial stamps, but not including rates of stamp duty."

Therefore, it is only the rates of stamp duty that are the special province of the States, and the rest of the thing, as to whether a particular document is or is not liable to stamp duty is the province of the Union. My submission, therefore, is that this legislature is quite competent, in spite of the provisions of article 246 of the Constitution, to enact a law and say that this duty is not leviable.

Apart from this, if we do not do that, we shall be defeating the very object for which this Act is being enacted, for the simple reason that in

spite of the fact that we want one class of persons as advocates as shall still have a large number of classes and those classes of persons will continue to exist in spite of the laws that exist in the States. The hon. Minister should consider this matter afresh and if necessary take the opinion of the Attorney-General or some other competent authority, with reference to the articles of the Constitution and then come to the conclusion as to whether the duty is to be levied or not.

There is one other aspect of the matter, and that is whether the High Court will have the power to allow or disallow a person from appearing or practising in a particular court. My submission is that the High Courts should not have that power. If the Bar is going to be an autonomous Bar, a unified Bar for the whole of India, the matter should be left to the Bar Council alone. They should be the persons entitled to enrol advocates, and once an advocate is enrolled there does not seem to be any reason why that advocate should still have some permission to obtain or some rule to follow before he is allowed to practise. The Supreme Court and the High Courts have been given this power. My submission is that that power does not seem to be necessary.

Sir, I welcome the Bill and congratulate the hon. Minister for bringing it. I support the Bill.

Shri Narayanankutty Menon: Mr. Chairman, Sir, regarding the Bill as reported by the Joint Committee I only wish to make certain general references regarding the Bill as a whole. When discussion began on this Bill, certain voices were heard from different parts of this House which have a tendency to cast certain doubts and, to an extent, aspersions on the provisions as a whole. I am speaking on the lawyers' profession as a whole, and I wish to submit before this House that those aspersions and also misgivings expressed in the speeches of some of the hon. Members

are not at all supported by reason or have got any factual basis. In spite of all that has been said against this profession, and is being said, in this country, I wish to express myself that I am still proud to say that I am a lawyer and I am still proud to be in the lawyers' profession in the country.

Shri Khadilkar (Ahmednagar): There is no more exploitative profession in this country.

Shri Narayanankutty Menon: I will come to that. When hon. friends like Shri Tyagi, who have got more and more experience than me in public life, who have got opportunities to come into contact with persons in the profession and also deal with the profession, when they make certain observations like this, we are only sorry that they have not been a little more informed or they have not been a little more reasonable in their remarks regarding this profession. And if there is any basis for the allegations and aspersions made against the lawyers' profession as a whole, that basis emanates from the fact that the lawyers are part and parcel of the society that we are living in today, as my hon. friends are part and parcel of the society, and whatever prevails in this society finds a reflection in the lawyers' profession. So, I wish to submit that whatever shortcomings are found in the profession are not a special feature of this profession, because the entire creed of the society finds its own reflection in every profession and I do not doubt that any hon. Member of this House will disagree with me when I say that all the characteristics of this society will be reflected even in this highest august body, that is, the Parliament of India. Therefore, to isolate this profession for attack, even though legitimately for substantial grounds, is certainly a disservice to one of the noblest professions of not only this country but of the whole world. If there are legitimate criticisms to be made, if hon. Members feel, as quite rightly I also feel, that a lot has to be said against this pro-

fession in general, this is not the way to deal with it, because, as responsible people who have been given the authority of legislating upon this particular profession, they should spend some more time in thinking over what are the roots of this malady. Then they will understand that what I have submitted earlier is the most legitimate explanation that could be given.

The first point that has been dealt with by Shri Tyagi is the exorbitant fee charged by the legal profession in general. If I say that the hon. Member was talking with total ignorance behind it, I may be accused of presumptuousness, but I say that he has dealt with only such cases of lawyers who are numerically the smallest number in the profession, and that is why he is talking like that. Throughout the States, and even in the Supreme Court of India, there are a large number of lawyers who are finding it impossible to be in the profession, because they are not able to get even the minimum necessities and requirements of life. I would have been quite satisfied if a senior member of this House, when he talked about the exorbitant fees charged by a minority of lawyers in this country, also said something about the thousands and thousands of lawyers who are quite unfortunate in this profession and who are trying their level best and just fighting for their existence in the profession and, at the same time, to be in this profession. I am sorry that it has been completely left over by the hon. Member.

A little attempt has been made in this Bill that by means of the community's interest certain assistance may be given to the members of this profession, and that itself signifies that the members of the Joint Committee were conscious that something serious is there, as far as a large majority of the members of this profession are concerned, and a humble and earnest effort should be made in order to find out some sort of financial support to the profession in general.

[Shri Narayanankutty Menon]

It is not the case of anyone in this House that some of the lawyers should charge exorbitant fees and we do express ourselves that good reason and conception of their own morality should prevent them from charging a higher fee. But it will not be possible for this House to legislate and put a ceiling upon the fees because it will be completely impracticable to implement that provision.

Today the situation in the country, as my hon. friend Shri Raghubir Sahai has put it, is deplorable as far as getting of justice is concerned. The main reason is not the lawyers alone. There are so many other reasons. The first point is that the cost of litigation is mounting up in such a manner that those legislatures which are fixing up the ceilings of the court fees in this country are not taking into account the *per capita* national income in the country. The fundamental rights guaranteed by the Constitution are guaranteed to every citizen irrespective of the fact whether he has got in his pocket Rs. 25 or Rs. 50 to file a writ application in the court.

My friend talks about lawyers' fees. Let him forget about it, because there are abundant numbers of lawyers throughout the country who are conscious about their own profession, about the fundamental rights of people, and who are prepared to give free service to those citizens who are really in danger. But my friend forgets that in spite of the availability of the free lawyer, the person will be prevented from entering the doors of the temples of justice unless he has Rs. 25, while that man does not earn a single pie. If my friends on the other side give a little more thought to the real impediment of getting justice they will see whether the lawyers are responsible or other factors. If they say that the lawyers are responsible, they will be doing the greatest disservice to the profession and to the people of this country, because a large number of lawyers today are actually serving the people.

They are conscious of their rights, irrespective of the money they are getting. Otherwise you will not find in the High Courts the number of writ applications mounting up like anything. And where the fundamental rights of even the humblest citizen are affected, irrespective of the question of fees you will find many lawyers taking up these cases and getting justice to these people.

Therefore, if my friends want to find out the real place where justice is delayed and prevented, it is not due to the lawyer, even though a small numerical minority in the profession might in a manner be found fault with, but due to other reasons.

There is one other aspect concerning this point itself which, for want of time, I could not go into. Let my hon. friend Shri Tyagi, and I would include Shri Khadilkar also because he gave me a warning that he was going to speak about this question of exploitation, consider this. Apart from the Rs. 25 for writ application aggrieved by an order of the High Court—not on the civil side where property is involved, but with respect to the property which has been guaranteed to him and vested in him under Part III of the Constitution—if he feels aggrieved and wants to go to the Supreme Court, he should have Rs. 2,500 in his pocket if he wants to vindicate the right guaranteed to him under Part III of the Constitution. Even in respect of articles 32, where he has got a fundamental right which is incorporated in Part II of the Constitution and which the people of India in all earnestness have given to him, if he wants to get his right vindicated in the Supreme Court under article 32 of the Constitution, he should have Rs. 2,500 in his pocket. But you say in this Parliament that the *per capita* national income in this country is only Rs. 216. This anachronism requires serious consideration from Members on that side, rather than any consideration about a few advocates working here and

there who are supposed to be the real impediments to justice.

Shri C. B. Pattabhi Raman: My hon. friend was not here when the hon. the Law Minister assured the House on another occasion, that is during the discussion of the Demands of the Ministry, that he will convey the feeling of the House to the Supreme Court on this point. He himself felt that it was too much.

Shri Narayanankutty Menon: The hon. the Law Minister will himself agree. But I was reminding the House as to where the actual impediment is.

Now, a point was made regarding the advocates getting cases postponed and about the delay in justice in these courts.

Pandit K. C. Sharma: That was due to ignorance..

Shri Narayanankutty Menon: That question was also dealt with in the Law Commission's report, and many people have thought over it. I do consider that, apart from stray cases, you cannot find fault with the lawyers themselves, that they are responsible for getting the cases postponed and therefore delay in justice is there.

I agree with Shri Tyagi when he says that he is supposed to express the sentiments of the people. There is unfortunately a feeling in this country in the minds of the ordinary citizens that the lawyers are an exploiting class and a detestable class. And a sort of feeling is almost rising in the minds of the people that a lawyer is not to be believed much. Unless you are driven to a corner to protect your rights or your liberty or your life, you should not go to a lawyer at all; it is only then that you are driven to a lawyer, and that too, not in a formal way. That is the feeling that is rising. That is not because the individual concerned in this profession has gone too bad; the individual concerned in this profession has

not gone worse than the individual who is **his neighbour in the medical profession** or in any other profession or the hon. Members of this House. There is a certain social background to this, and I would come to that again. That social background is there, and in the context of that social background, this sort of feeling is there, and we, the Members of this House, and the members of this profession should try our level best to see that this sort of feeling in the minds of the people is removed by our own conduct. That is the only remedy to remove this apprehension from the minds of the people.

I would like to say a word about the preparation of cases by the lawyers, and the other matter to which it undoubtedly leads me on, namely the position of legal education in our country. At this time, when we are passing this law, even though it is not directly concerned with this, I should express my feeling, a feeling which I have got from the opinions of eminent and learned men, that the standard of legal education in this country is going down day by day. This deplorable fall in the standard of education is inevitably reflected in the standard of the Bar and to an extent in the standard of the Bench too, because that is inevitable. Therefore, when we are passing this Bill, we should express our apprehensions un-animously about the fall in the standard of legal education, and the consequent fall in the standard of the profession and also in the standard of the Bench, and some serious thinking will have to be done so that there should be a lifting up of the standard of legal education and a consequent lifting up of the standard of the profession.

As regards the standard of the profession, you will find in any Bar today that the very conceptions of the legal rights, the legal obligations and the legal liabilities, and the standards of the law and the nature of the law, are undergoing fast changes, even as our economic and social conceptions

[Shri Narayanankutty Menon]

are undergoing a revolutionary change. The old conception of property rights, the old conception of the land tenure system in which many lawyers used to have many cases, are fast disappearing, and new avenues are being opened for the lawyers, by means of the new types of law, just like the industrial law, or the taxation law and so on, because law also changes just as society changes. An ample opportunity is there, and a wonderful vista is being opened for the lawyers. But, unfortunately, we find that many of the lawyers do not take advantage of the new openings in law, and consequently, there is a lowering of the standard in all these facets of law, whether it be the industrial law or the taxation law or any other law. In order to justify the eminent position that this profession should hold in the society, the lawyers should endeavour their best to appreciate the spirit of the changing times and the changing laws, and then only they can say that they belong to this noble profession which is the custodian of the rights of the citizens of this country.

Lastly, when we are passing this Bill, I would like to say that certainly it is a glorious day for the entire profession in this country. For a long time, the legal profession in this country has been aspiring for a unified Bar throughout India, and we are achieving that position now, and not only that, but, as all the hon. Members have remarked, for the first time, the destinies of this profession are being relegated to the members of the profession themselves, and they are the masters of their own destiny. My hon. friend Shri Tyagi made a very sorrowful remark that if we delegate to ourselves the entire rights of deciding about ourselves, certainly, that would be open to malpractices. My hon. friend forgets that he is a Member of this House and this House has got complete sovereignty to decide the destinies of this country. Is it not possible that because of our own shortcomings the entire destinies of

this country may go astray? Therefore, as it is in the case of this House that there must be sovereignty for us to decide our destinies, we will have to place reliance on the members of the profession to see that the standard that is required is maintained by the members of the profession themselves. We should hope that the members will certainly discharge the responsibility and trust placed on them.

In conclusion, I wish to make an appeal. It is not possible for every citizen in this country to get his rights vindicated. There are so many impediments economic impediments. The members of the legal profession should take it upon themselves as part of their sanctified duty to see that they are in the vanguard in the service of the people in the vindication of the rights conferred upon the people by the Constitution. The lawyer should be the jealous guardian of the rights of the citizen. Wherever the executive infringes the citizen's rights, the lawyer should, irrespective of monetary or any other considerations, stand in the forefront to vindicate this right and prevent the executive from infringing upon the rights of the citizen. By this alone, the profession can command the greatest respect that it should, and then only the name of this noble profession will be written in golden letters in the annals of this country.

Mr. Chairman: Pandit K. C. Sharma. Hon. Members may limit their speeches to ten minutes each, as there are many hon. Members who want to speak.

Pandit K. C. Sharma: Shri Tyagi and an hon. Member behind me questioned the very claim of the lawyers to what is called an intellectual profession of some dignity and some respect. I may quote Baner:

"Laws and lawyers are today the most important and directive element in our civilisation. Our technique of production may be determined and controlled by science and machinery, but our

institutional life is dominated by law and lawyers. Ours is as much a lawyer-made civilisation on its institutional side as the civilisation of Assyria and Rome was a military one and that of the middle ages a religious one".

Even in the days of Roman supremacy when the Roman lawyers took to excesses, it was the Greek stoic lawyer who stood against mighty forces and showed him the law of truth and wisdom. Later on, it was an English lawyer who fought against slavery and suffered for it. Then it was a lawyer President who got the shot for the protection of liberty.

Not only that. In our own land, it was the lawyer-saint who received three bullets for standing for the right of man as such. No other profession in the world has sacrificed so much for the common good of the common man as the profession of law has done.

Take the recent history of India. All the great names, Tyag Murti, Deshbandhu, Tyagapriya Deshpriya and Lokamanya, belong to the legal profession. Who gave them the spring of action to fight for the noble cause? Training in the legal profession. The instinctive courage to fight for the righteous cause is the lawyer's privilege; throughout the long history of human progress, the legal profession has played its prominent part.

16 hrs.

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

As Ruskin has put it, the lawyer's duty is to enforce justice in life and if an occasion arises where he has to countenance injustice, it is his duty even to lay down his life. Every lawyer—every member of the profession—is not up to the standard; but, lawyers; as a class, have played their part well.

So far as this Bill is concerned, I am grateful to the Joint Committee for improving the Bill. They have done wonderfully well. There is the question of stamp duty. It has been

dealt with by so many friends. The Law Commission has said about it that it cannot be supported on any ground. They have said:

"We have not been able to find any sound reason or principle for this levy." That is the stamp duty. "In our view, this imposition is totally unjust and should be abolished."

So, this stamp duty needs to be abolished and a directive or advice may be issued by the Central Government to all the State Governments.

The other thing is this examination business. In England, the practice is that a man is qualified by examination in law to be called to the Bar. He has to get some training with a senior Advocate and he joins a Chamber. Here, in section 24d, it is:

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

My respectful submission is that once a graduate has got the degree in law and has undergone certain training with a senior at the Bar, there need be no further examination for enrolment. It is wrong. You may make the curriculum for the law examination more strict or the examination much more detailed. But, after having graduated and after having got the requisite training with an Advocate, it is not necessary to undergo an examination. Many complications arise and this is rather iniquitous. So, I think the Law Minister will accept that it is not necessary.

So far as the dual system or grouping is concerned, Shri Sadhan Gupta has dealt with it quite extensively and he has better experience in this respect than I can claim to

[Pandit K. C. Sharma]

have. About this the Law Commission says:

"The division into groups seems to owe its origin to the division between Advocates and Vakils which prevailed in Calcutta and some other High Courts. The Advocates who practised mainly on the original side were members of the English Bar, both Englishman and Indian. They formed themselves into Bar Associations or Bar Library Clubs and segregated themselves from Vakils who had their own associations. These Associations were probably started by members of the English Bar who, for a considerable number of years, had made the Original Side of the High Court, their exclusive preserve. Indeed, it was believed for a considerable time by the litigant public that the Barristers who formed these Associations were a type of lawyers superior to the Vakils who had Indian qualification."

Further they say:

"We are living under a Constitution which enjoins equality before the law. The bar throughout, it is hoped, is about to reach its ideal of unification. The profession when united can rise to even greater heights of distinction and service. It is certainly anomalous that in these circumstances that the bar should still remain split in different groups."

So, if some members of the English bar and some Indian barristers also from a different group, it does not look very decent or dignified and it should be done away with. So far as the dual system is concerned, it is not only unnecessary but it is cumbersome and it costs people much. In small cases, there is no sense in engaging two sets of persons, one simply drafting the brief and the other simply pleading. Even in the Supreme Court, I suppose, after due

consideration, they have devised a way of doing things which is much more helpful and is working quite satisfactorily.

I hope that the provisions will work in a much better way and would be servicable to the people and that the Bill, when passed into law, will improve the condition of the profession.

Shri Aurobindo Ghosal (Uluberia): Mr. Deputy Speaker, my hon. friends, Shri Narayanankutty Menon and Pandit K. C. Sharma have tried to vindicate the position of the lawyers. I am delighted to hear their speeches but the grievances or complaints made by the people are also generally true to a great extent. What are the conditions of the courts in the districts and sub-divisional towns? They are dens of thousands of malpractices and corruptions. I can cite thousands of instances as to how these malpractices and corruptions are being practised by the lawyers themselves for the interest of the litigants. They do it, of course, due to economic reasons; because they are poverty-stricken. Still these are being practised by them for earning money.

Mr. Deputy-Speaker: If I may be allowed to interrupt, I have to say that I take strong exception to this attitude by some hon. Members. When the hon. Members have spoken, they just pick up their papers and go away; they do not show this much courtesy to the House to resume their seats after finishing their speech. They finish their speech and without even resuming their seats, they just walk away as if they had been invited here to make a public speech. It is very bad and very wrong on their part. Hon. Members would show this much courtesy to the House; after finishing their speech, they must resume their seat and afterwards, if they want to go away, after some time, they may go.

Shri Aurobindo Ghosal: The economic conditions of the lawyers are also

very much appalling. For this reason, I welcome this Bill it tries to iron out the differences that exist at the present moment among different categories of lawyers. Secondly, it is for the first time that a norm is going to be set up for the legal profession. In spite of it, I doubt how far this Bill would reduce the gap of earning between persons who are at the top and persons who are at the base. The difference is bound to be there between person and person in respect of intellect and merits. Moreover, fortune and opportunity, apart from talent and merit, play an important role in shaping the future of the lawyers. Nevertheless, the wide gap that exists at the present moment will be reduced to a great extent if the provisions of the Bill are implemented correctly.

My first suggestion would be to raise the standard of legal education. At present, in most of the States, legal education is offered as an off-time study. In the Calcutta University, I know that this is a by-product of post-graduate education. The students themselves do not know when they pass the law examination. They have to attend only for one hour every day for the law courses, and naturally, when the students pass the law examination, they do not acquire any legal knowledge from the colleges. With this poor equipment, they come to the courts, and so, I suggest that in order that there should be an element of seriousness in the subject, the law course should be synthesised into two years, and the course should be a whole-time one.

Secondly, I refer to the probation period. I do not know the conditions in other States, but in Bengal in the district courts, they have introduced a system of proxy. Just as in colleges, in my State, there is a tendency for the probationers to be absent, and they have introduced, as in colleges, the system of proxy. Most of the probationers go on working merrily elsewhere, and com-

plete their probation by meagre attendance in the district and other courts. Thus they do not acquire any experience in their probation period. Therefore, this matter as to how this probation period could be utilised by them to acquire experience in the legal profession should be looked into.

Thirdly, I may refer to the bar libraries. Many Members have the experience of visiting the mofussil courts and they have seen that these bar libraries have got no important law books. These libraries cannot even subscribe to good law journals. So, some provisions should be made to this effect, if they want to raise the standard of the legal profession. Some provisions should be made to equip the bar libraries at least with the fundamental law books and important law journals.

Lastly, I refer to corruption. I submit that the whole administrative section of the judicial system has been perforated with the gangrene of corruption. Tips and bribes have been fixed according to the court and according to the subject-matter of the case. If there is an injunction petition, Re. 1 is given; for sanctioning postponement of time, it is ten annas. If it is the sub-judge's court, it is ten annas, and if it is a munsiff's court, it is five annas! These are the expenses and even the judges say in their judgments or orders that the legal expenses are so much, etc. This question has to be gone into.

For instance, in the Howrah district court, there are civil and criminal registration sections, and there, we once took an approximate account of the expenses incurred. It showed that Rs. 20,000 per day come out of the public pocket as bribe to the court people. We made one good attempt in the Howrah district court when Shri Sukumar Sen, who is an ex-Election Commissioner, was the district judge there. We placed some boxes there and the following inscription used to be written thereon was: "Both giving and taking of bribes is.

[Shri Aurobindo Ghosal]

"sin". If an anonymous letter is dropped into the box, it will be also attended to. But after two years, when the boxes were opened—there were about 15 boxes—not a single letter of complaint was found in them. Then we started reviewing the position. I told them that it was impossible to get any complaint because these tips and bribes are given and taken on mutual agreement. The procedural law is so bad; there are many loopholes. In order to get some advantage in litigation pay these bribes. On the other hand, the salary of the people who work in the courts as clerks, etc., is so low that they are bound to accept these tips and bribes in order to supplement their income. A graduate clerk is getting just Rs. 70 a month. Naturally, he has got to earn Rs. 2 or Rs. 3 a day as extra, that is good for him; and unless he gets it, it is not possible for him to maintain himself and his family.

Again, a man who is giving a bribe wants to avoid payment of say, Rs. 12 or so, which should otherwise be spent. If we have to proceed legally and wish to engage a lawyer and make an application and move the court and get the permission of the court to see the records before the sheristadar that takes time, as the Sheristadar of the court is a very busy man. But if I pay just ten annas to the clerk concerned, I can get a piece of information, a single fact, from the file! That could be done in two minutes. So, one thinks as to why one should not pay just 10 annas as bribe and get the information. The whole procedure should be amended in such a way that there is left no loophole for corruption.

Then, the salaries of the poor officials should be increased. In Bengal, there are peons who get Rs. 17 per month. Even our servants get more than Rs. 20 for a few hours' work a day, but the peons in the civil courts get Rs. 17, because the Government know fully well that they will get

money by bribes. This system should be abolished.

Regarding high rates of fees of lawyers, it is quite true that some lawyers are taking high rates of fees. Shri Nathwani said that it will be realised by way of income-tax, super-tax, etc. I have had dealings with so many lawyers. They want fees in cash, so that income-tax may be avoided. They are not issuing any receipts also. That is the actual state of affairs. So, it is no use saying that if they earn more, that will be deducted by way of super-tax, income-tax, etc. Everywhere there are honest people and excepting a few lawyers who are honest, this is the general practice. So, I would like some sort of arrangement or some sort of persuasion to be made, so that big lawyers can curb their appetite for higher fees.

Regarding the practice of retired Judges and retired Government officials, recently in industrial courts, retired Judges have begun practice as soon as they have retired. What happens? The employers throng to give them briefs in the expectation that the retired judge will be able to influence the existing judge, who was once his colleague. In some cases, in the district courts and other courts, the law officers of all the railways after their retirement, at the fag end of their life, come as lawyers and take away all the railway cases, because the law officers can have an influence on the law department of the railways. One or two law officers have been heaped with briefs. This is wrong. They should not be allowed to practise at the fag end of their retired life, while drawing their gratuity and provident fund from Government, because this will instill a sort of corruptive influence amongst the litigants.

Regarding the court fee charges, much has been already said. We talk of free legal aid, but first we have to reduce the court fee charges, which are very high. Considering the financial condition of the people of our country, the court fees are too

high for them to get justice from the courts. Even when justice has been done, it is very difficult to get it implemented. For instance, suppose in a partition suit of Rs. 5 lakhs, there are 5 co-sharers and a man gets a preliminary decree. Before taking the final decree, he should pay the court fee on the whole amount of Rs. 5 lakhs, which the other co-sharers do not pay. It is impossible to get the final decree unless he pays all the court fees on the whole amount of Rs. 5 lakhs. So, he sits with the preliminary decree for all his life, without being able to get the final decree, because of the high court fee system that is prevailing at the present moment.

It has been already pleaded that solicitors can prepare briefs very well. But in the district courts also there are many civil lawyers, many well known lawyers who can also prepare pleadings, the best from of pleadings. Naturally, I do not find any need of the solicitors in the High Courts, because the huge amount paid to solicitors can be realised by Government by way of court fee. In order to provide for these solicitors, the Government is losing. Sir, I always favour the abolition of solicitors from the Calcutta and Bombay High Courts.

Regarding stamp duty, I would like to plead that the stamp duty for lawyer's or advocate's license should not be prohibitive. It will have to be brought down. We have to look to the appalling conditions of lawyers at the bottom who are not in a position to pay the advocate's license fee if it becomes prohibitive.

My hon. friend Shri Sadhan Gupta has already said that option should be given to litigants to decide which set of lawyers they should appoint, whether junior lawyers or senior lawyers. My suggestion would be that option should be given to them to appoint either a senior or a junior lawyer but it should be made clear that if any person appoints a senior

lawyer, if any person has the luxury to appoint a senior lawyer, he must appoint a junior lawyer, because otherwise the purpose of this Bill will be thwarted if junior lawyers are not given that opportunity.

Shri Sadhan Gupta: That is the existing law. Senior advocates must be accompanied by juniors.

Shri Aurobindo Ghosal: In conclusion, I would like to repeat the words of the Finance Minister who said while inaugurating a conference of Chartered Accountants, that much of the ills of society can be eliminated if these two professions are upright—the profession of chartered accountants and the profession of lawyers. I totally agree with him at least on this point. If this profession is not set in proper order, then this profession will get rebuffs even from intellectual persons like Bernard Shaw who had called this profession as an “intellectual prostitution”.

Pandit K. C. Sharma: Sir, on a point of personal explanation, I want to say that I was hard pressed and I had to go out immediately after my speech. I have the greatest respect for the Chair. I did not mean any disrespect.

Mr. Deputy-Speaker: I am not saying that I should be respected. The Chair is to be respected. But this amounts to disrespect to the House, not to the Chair alone. I was not talking of the hon. Member alone. I have noticed that other hon. Members also as soon as their speech is finished pick up the papers and walk away very comfortably. That should not be the procedure.

Shri Ram Krishan Gupta.

श्री राम कृष्ण गुप्त : उपाध्यक्ष महोदय,
ला कमीशन ने अपनी चौदहवीं रिपोर्ट में
यह कहा है :—

“A well-organised system of judicial administration postulates a properly equipped and efficient Bar.”

[श्री रामकृष्ण गुप्त]

यह बिल्कुल सही है और इसी बात को देखते हुए इस बिल को इंट्रोड्यूस किया गया है। आज हमें यह देखना है कि ला कमीशन का इस बिल को इंट्रोड्यूस करने में जो मुद्दा था वह इस बिल के पास होने से कहां तक पूरा होगा? ज्वाइंट सेलेक्ट कमेटी ने भी इस बात पर विचार किया और बहुत से इम्प्रूवमेंट्स पेश किये लेकिन मैं फिर भी समझता हूं कि दो, चार बातें जो कि बहुत जरूरी थी, रह गई हैं, और मुझे पूरा भरोसा है कि माननीय मंत्री मेरी इन दो, चार तजवीजों पर गौर करेंगे ताकि इस में जो कमी है वह भी पूरी हो जाये। मैं यह बात इसलिये कह रहा हूं कि एक युनिफाइड बार की बहुत जरूरत है और जिस के कि बारे में ला कमीशन की रिपोर्ट में भी जिक्र किया गया है :—

"The united Bar of India can be a powerful influence for welding the country together and for combating all sectional, regional and communal trends. It can largely mould public opinion in matters relating to law, legislation and the administration of justice. The impact of the lawyer on public affairs is wanting."

इसलिये आज हमें यह देखना है कि इस बिल के पास होने से हमारा यह मकसद पूरा हो सकता है या नहीं। मैं यह महसूस करता हूं कि जहां तक इस बात का ताल्लुक है सबसे पहला सवाल हमारे सामने यह है कि इस बिल के सैक्शन ६ और ७ में जो बार बनेगी उसके फंक्शन्स का जिक्र किया गया है। मैं यह महसूस करता हूं कि वह बहुत लिमिटेड है। मैंने ज्वाइंट सेलेक्ट कमेटी की रिपोर्ट को खूब गौर से पढ़ा और जो मेम्बर्स ने अपने मिनट्स आफ डिस्सैंट दिये हैं उनको भी पढ़ा है। उनमें भी मेरी इसी बात की तारीफ की गई है। मैं यह महसूस करता हूं कि सबसे जरूरी बात यह थी कि उन फंक्शन्स को बढ़ाया जाता और ज्यादा पावर्स बार कौंसिल को दी जाती ताकि बार कौंसिल का जो ऐम और

मकसद था उसको वह पूरा कर सके। इसके लिये मेरी सबसे पहली अपील यह है कि जहां तक सेलेक्शन आफ जजेज का सवाल है मैं यह महसूस करता हूं कि बार कौंसिल का इसमें कोई हाथ नहीं होगा कम से कम बार की इस मामले में राय जरूर ले लेनी चाहिये क्योंकि उपाध्यक्ष महोदय, आप भी इस बात को तसलीम करेंगे कि किसी भी मुल्क के अन्दर जुडिशियरी का दारोमदार एक अच्छे जज के होने पर डिपेंड करता है। आज भी हाउस में यह क्वेश्चन आया था और ला कमीशन ने भी अपनी रिपोर्ट में इस बात को कहा है :—

"Political, communal, regional and executive influences are the main factors which influence the appointment of judges at present."

मैं यह महसूस करता हूं कि अगर बार कौंसिल को इस मामले में कौन्फिडेंस में लिया जाय उसकी राय ली जाय तो यह ईबिल काफी हद तक दूर हो सकती है और जज मैरिट पर चुने जा सकते हैं। इसलिये मेरी यह अपील है कि इस बात पर विचार किया जाय और बार कौंसिल की पावर्स और फंक्शन्स को बढ़ाया जाय।

दूसरी बात मैं स्टाम्प ड्यूटी के बारे में कहना चाहता हूं। इस बिल के क्लॉज नम्बर २४ में इस बात का जिक्र किया गया है और यह कहा गया है :—

"that he has paid an enrolment fee of Rs. 250 to the State Bar Council;"

इसका मतलब यह हुआ कि जो भी ला ग्रेजुएट्स ऐडवोकेट बनना चाहेंगे उन्हें स्टाम्प ड्यूटी के अलावा २५० रुपये भी देना पड़ेगा। अगर मैं आपके सामने तमाम स्टेट्स की फीगर्स रखूं तो आप को यह जान कर हैरानी होगी कि बहुत सी ऐसी स्टेट्स हैं जहां ७५० और १००० रुपये के करीब भी स्टाम्प ड्यूटी लगी हुयी है। इसका मतलब यह हुआ कि १०० रुपये से ज्यादा ऐडवोकेट बनने के लिये हर

महीने पे करना पड़ेगा । अब हमारे देश के अन्दर बहुत से ऐसे वकील हैं जिनकी कि आमदनी १०० रुपये से ज्यादा नहीं है और ऐसी हालत में आप ही मुझे यह बतलायें कि वह इतना बड़ों कैसे बर्दाश्त कर सकते हैं ?

इस रिपोर्ट में भी इस बात का जिक्र किया गया है और इस बात को महसूस किया गया है । यह कहा गया है कि स्टेट्स अपील कर सकेंगी और वह इस बात पर विचार करेंगे लेकिन मुझे इस बात का डर है, मुझे यह ऐंप्रीहेंशन है कि अगर सेंट्रल गवर्नमेंट की तरफ से इस बात पर पूरा जोर नहीं दिया गया तो शायद स्टेट्स इसके लिये कोई अमली कदम न उठायें बल्कि मैं तो यह देख रहा हूँ कि जो स्टाम्प ड्यूटी है उसको बढ़ाने की कोशिश हो रही है । बहुत सी स्टेट्स ने, यह तजवीज की है कि इसको और अधिक बढ़ा दिया जाय । इसलिए मेरी यह अपील है कि इस बारे में मजबूत कदम उठाया जाय और इसको एबोलिश कर देना चाहिये क्योंकि जब आप चाहते हैं कि तमाम मुल्क के अन्दर ऐडवोकेट्स का स्टैण्डर्ड ऊंचा हो तो एक यूनिफार्म बार बने और वह २५० रुपया पे करें जो मैं महसूस करता हूँ कि स्टाम्प ड्यूटी का जो ऐडिशनल बर्डेन है वह रिमूव कर दिया जाना चाहिये ।

उपाध्यक्ष महोदय : यह सालाना नहीं है ।

श्री रामकृष्ण गुप्त : इस के बारे में जो ला कमीशन की १४वीं रिपोर्ट है उसमें भी इस बात की तार्ईद की गई है और यह कहा गया है :—

“We have been at pains to find out how and on what principle entrance to this profession came to be taxed when no similar impost is levied on entry into other professions. We have not been able to discover any sound reason or principle for this levy. So far as we know, though payments have to be made to professional bodies like the Inns of Court or

the Law Society, no fees are levied in England by the State for the issue of a licence to practise the profession. Nor are we aware of any such fees being levied in the United States. In our view, this imposition is totally unjust and should be abolished.”

मैं समझता था कि ज्वायंट सिलैक्ट कमेटी इस बात पर विचार करेगी और इस बिल में कोई न कोई ऐसी क्लॉज जरूर होगी, जिससे कि स्टाम्प ड्यूटी को एबोलिश कर दिया जाये । जहां तक ज्वायंट सिलैक्ट कमेटी के तमाम मेम्बरान का सवाल है, मिनट्स आफ डिसेंट को भी देखने से पता लगता है कि वे इस बात के बहुत ज्यादा हक में थे । जहां तक कांस्टीट्यूशनल डिफिकल्टी का सवाल है, मैंने उसको देखा है और मैं महसूस करता हूँ कि इसमें कोई कांस्टीट्यूशनल डिफिकल्टी नहीं है, बर्ना डाउट का सवाल पैदा ही नहीं हो सकता था । इसलिये मैं इस बात पर खास तौर पर जोर देता हूँ कि मेरी इस बात को जरूर स्वीकार कर लिया जाये और मुल्लतलिफ स्टेट्स में जो स्टाम्प ड्यूटी लगाई गई है, उस को टोटली, मुकम्मल तौर पर एबोलिश कर दिया जाये ।

Shri C. R. Pattabhi Raman : It is rather academic, if I may say so. Hereafter the Bar Council is the body that has to levy this. In future, when the Bill becomes an Act, all this will become academic. It will not be leviable by the States.

श्री रामकृष्ण गुप्त : यह बात ठीक है कि आइन्दा जो बार कौंसिल बनेगी, वह इस मामले पर विचार कर सकती है और वह इस बारे में जो राय देगी, उस पर विचार हो सकता है, लेकिन मैं महसूस करता हूँ कि इसके साथ साथ आप इस बात को क्लेसिफ करेंगे कि यह एक तब तक सही होगा, जबकि यह बिल पास हो जायेगा । हिन्दुस्तान में काफी से ज्यादा वकील ऐसे हैं, जो यह एक्स्ट्रा बर्डेन बर्दाश्त नहीं कर सकेंगे और

[श्री रामकृष्ण गुप्त]

अपने आपको विदिन टु यीअर्स बतौर एडवोकेट एनरोल नहीं करा सकेंगे। इसलिये मैं महसूस करता हूँ कि इस बिल के पास होने से पहले.....

Shri Amjad Ali: Possibly, the hon. Member is under a misapprehension that the fee of Rs. 250 has got to be paid annually. It is only once during the entry into the profession.

Mr. Deputy-Speaker: I tried to correct him twice, but he does not care to listen.

Shri Amjad Ali: I am pointing this out, because, in this process, possibly something wrong is going into the records. It is the official record of Parliament, and the correct thing should be there.

Mr. Deputy-Speaker: My interruption must have also gone into the record, as also the hon. Member's.

पंडित कृ० चं० शर्मा : उन की जवान से निकल गया है।

श्री राम कृष्ण गुप्त : ला कमीशन की रिपोर्ट में इस बात को कहा गया है कि हमारे सामने दूसरा सबंध बड़ा मवाल यह है कि हमारे प्रोफेशन का, एडवोकेट्स का, स्टैंडर्ड आफ लिबिंग कैसे ऊंचा किया जाये। मैं समझता हूँ कि इसके लिये बार कौंसिल की राय ली जाय और उसको यह पावर दी जाये कि सिस्टम के रिफार्म के लिये वे जो तजवीज पेश करें, उन पर विचार हो सके। हम देखते हैं कि हमारा मौजूदा सिस्टम ब्रिटिश सिस्टम की लिगेसी है और इसमें बहुत से डिफेक्ट्स हैं। इस सिलसिले में मैं खास तौर पर दो बातों का जिक्र करना चाहता हूँ।

सबसे पहली बात यह है कि फ़ैसलों में इनफ़ॉर्मिडिबल डिले होती है। इस बात का जिक्र मुझ ने पहले कई मासमीय सदस्यों ने भी किया है। इस तरफ ध्यान देने की बहुत ज्यादा

ज़रूरत है, ताकि मुकदमाजात के फ़ैसलों में ज्यादा डिले न हो, क्योंकि आप इस बात को तस्तीम करेंगे कि जस्टिस डिलेड इज जस्टिस डिनाइड।

इसके अलावा हमारा मौजूदा सिस्टम बड़ा कास्टली है और ग़रीब आदमी इससे फायदा नहीं उठा सकते हैं। हाईकोर्ट और सुप्रीम कोर्ट में जाने के लिये बहुत ज्यादा रुपया खर्च करना पड़ता है। इसलिये मैं समझता हूँ कि मौजूदा सिस्टम को चीप और मिम्पल बनाने के लिये भी कोशिश की जाये, ताकि हर आदमी आसानी से इस से फ़ायदा उठा सके और कोर्ट्स से जस्टिस हासिल कर सके।

ज्वायंट सिलेक्ट कमेटी ने मोड आफ इलैक्शन के बारे में जो तजवीज पेश की है, मेरे स्थान में वह बहुत अच्छी है और पहले सिस्टम पर एक इम्प्रूवमेंट है। आरिजनल तजवीज यह थी कि बार कौंसिल का इलैक्शन होगा, लेकिन ज्वायंट सिलेक्ट कमेटी ने उस को इम्प्रूव किया है और अब सिस्टम आफ प्रोपोर्शनल रिप्रेजेंटेशन बाई मीन्स आफ दी सिंगल ट्रांसफ़रेबल वोट के मुताबिक इलैक्शन होगा। मैं समझता हूँ कि इस तरीके से हर एक सैक्शन के वकील और एडवोकेट क्लैक्ट हो सकेंगे और बार कौंसिल पर एक ग्रुप या एक सैक्शन की मानोपत्ती नहीं हो सकेगी।

आखिर में मैं सिर्फ़ इतना कहना चाहता हूँ कि जो २५० रुपये की फ़ीस रखी गई है, उसके बारे में ज्वायंट सिलेक्ट कमेटी के दो मेम्बरों ने यह जोर दिया है कि वह १२५ रुपये से ज्यादा नहीं होनी चाहिये, क्योंकि जैसा कि मैंने पहले भी जिक्र किया है, उन को स्टाम्प ड्यूटी के तौर पर इकट्ठा रुपया देना पड़ेगा। इसलिये मैं समझता हूँ कि इस बर्डेन को ज्यादा कम किया जाये।

इन शब्दों के साथ मैं यह उम्मीद करता हूँ कि इन बातों पर जरूर विचार किया जायेगा और इस बिल में जो दो चार कमियाँ हैं, उन को दूर करने की कोशिश की जायेगी। खास तौर पर जो स्टाम्प ड्यूटी का मामला है, उसको मैं बहुत ग्रहण समझता हूँ और मुझे उम्मीद है कि उस को एवालिश करने की पूरी कोशिश की जायेगी।

Shri N. R. Muniswamy: I welcome this Bill mainly for one reason namely that it regulates the legal profession in a manner which is most acceptable to many of the Members here. I would like to make a few observations on the salient features of this Bill, and they are as follows.

The previous speakers have commented on the professional conduct of the members of the legal profession which is derogatory to the moral standards, and they have emphasised that the members of the Bar should maintain the highest standards of dignity and professional conduct. I would submit that this is due to the overcrowding of the profession. Not only is there overcrowding, but there is also a sort of competition in respect of the fees. A good deal has been said about the fact that the seniors' charges are heavy, and sometimes, they do not even accept cheques, but only cash payments. It is all a question of contacts. At the time of engaging the senior, the junior makes all these arrangements, and the payments are made. My only suggestion, which will probably arrest this tendency, will be to put a ceiling on the number of Members of the Bar for each State. It may look somewhat odd, but this is the only profession which allows any number of persons to be enrolled as advocates. I know that in the initial stages, when the members of the Bar do not have proper practice, they will be going from court to court, wearing their gowns, and making no impression on the entire profession. Therefore, if there is a ceiling on the number of members of the Bar who

could be enrolled, we can certainly maintain the standards, and the great efficiency and decency of the profession as well.

This suggestion, as I have stated earlier, may look odd, but it is mainly by way of stop-gap arrangements that students go in for law, thinking that they might be absorbed somewhere in Government services. They wait for two or three years, and after having qualified, if they do not get a Government job, they try to enrol themselves again by paying a sum of Rs. 500 or Rs. 675 as the case may be as the enrolment fee; even after enrolment, they go on trying for some job, until at last they either get an aptitude for the profession itself or they get another job.

So if we have a ceiling, as obtains in Pondicherry as well as in France, whereby a certain number of practitioners only will be enrolled, the names of others who come in the field being kept in reserve and they coming into the list as members already in the list retire or die, the level and standard of the profession will be maintained. As it is, it is an overcrowded profession. So many things have been said about it, that it is a noble profession and all that. But when illustrations are given, we do not find it a very happy state of affairs.

We all know that the seniors are suffering while the juniors are starving. At a time when the seniors are suffering, we cannot expect them to dole out their income to the juniors. At the same time, when the juniors are starving, it is quite natural that there should be some sort of arrangement whereby they have also some income. Therefore, when we fix a ceiling for the number of members of the Bar, the system of juniors and seniors has also to be adhered to. The relationship between the senior and junior must be maintained in such a way that the senior takes care of the junior. More often the juniors are not encouraged by the seniors for their

[Shri N. R. Muniswamy]

own reason. The reason is that they do not wish to part with their income. That is the reason why the ceiling must be put in.

As regards the other aspect, namely, with regard to persons admitted as advocates in the State Bar, vakils, attorneys and pleaders are given a period of two years to get themselves enrolled as advocates. These two years count after the coming into force of this enactment. But I do not know what will happen if they do not get themselves enrolled. In case they try to get themselves enrolled within a period of two years, they will have to pay over again Rs. 250 each as has been prescribed. Nothing has been said as to whether they would automatically get themselves converted into advocates within a period of two years or they should be enrolled as advocates after payment of Rs. 250. Nothing has been said in this Bill about that. It may be that it might be left to the Bar Councils to frame rules. But even rule-making power also has not been provided in this Bill indicating how this category of people, pleaders and vakils, could be enrolled as advocates. This is an aspect that has to be looked into by Government.

As regards funds, it is quite right to provide certain funds to help disabled advocates and practitioners. At the fag end of their life, some of them sometimes do not have anything to fall back upon. We know of cases of people who are 90 years of age, who cannot read or even follow things, sometimes getting brief from juniors because they have got the ability to put forth things properly. That is the reason why they are still able to practise. I only wish that an age-limit is put in for advocates, just as we have an age-limit for all professions. I am myself a lawyer; at the same time, I feel that this must be done (*Interruptions*).

Mr. Deputy-Speaker: What about politicians.

Shri N. R. Muniswamy: You have rightly drawn my attention to politicians. But politicians need not have any qualifications, any educational qualification or any other qualification. The only qualification needed is manoeuvrability. If they have got that, they can continue.

Mr. Deputy-Speaker: Does he recommend an age-limit so that the older people retire to make room for younger people?

Shri Narayanankutty Menon: I want to add a little qualification to the remark that he made that it must apply to one side alone.

Shri N. R. Muniswamy: I agree that there must be some age-limit. After having done so much work, they should retire; otherwise, they would be overworked. In England I was told that the Judges could serve for many more years; that is, as long as they are alive and they want to serve, they can be Judges. In India, Sir, you have occupied the highest position in the judiciary, Sir and you have yourself known the difficulties. You would have seen when you were a Judge how the juniors argued and the seniors argued. The Joint Committee has not thought it fit but I feel that there should be some age limit put in this Bill.

Mr. Deputy-Speaker: Mostly a lawyer does not survive without practice; as soon as he gives up practice, he dies.

Shri N. R. Muniswamy: For enrolment, there is an age limit of 21 years. When you prescribe the minimum age for enrolment, there must be an upper age limit. It is not that their name should be struck off from the register.

For the purpose of actual practice, we must have an age limit; it may be 40 or 50 years of practice or the age of 65 or 70. Beyond 70, it is not safe to entrust any case. Of course it is left to the clients. If they chose to entrust him with their case, then it is a different thing. I am saying that we should see whether it is advisable.

Mr. Deputy-Speaker: There ought to be some distinction. Whereas a public servant with an advanced age is there on account of his office, a lawyer cannot be forced upon a litigant; he is to be chosen by the client. If on account of the advanced age a lawyer is not suitable, then the client can go to another quite easily, to any other younger man like the hon. Member himself.

Shri N. R. Muniswamy: I do not want to transgress into points which are not relevant for the purpose of this Bill and I shall conclude soon. Shri Tyagi said that this Bill was somewhat on the model of a trade union. I do not know the background or the idea behind his suggestion. I appreciate his point to some extent that even lawyers are supposed to be traders.

Pandit K. C. Sharma: No, no. There is difference between profession and trade.

Shri N. R. Muniswamy: With great respect to the hon. Member I want to point this out. What is meant by saying that a person is a trader? He trades merchandise . . . (*Interruptions*). Lawyers are merchants in the sense that they are merchants of wisdom; they are paid for their wisdom.

Mr. Deputy-Speaker: Merchandise is passed on to another person who can keep it for himself. But wisdom cannot be passed on like this.

Pandit K. C. Sharma: With all respect to my hon. friend, I may point out that there is a difference between profession and trade; there is a differ-

ence between profession and learned profession.

Mr. Deputy-Speaker: He knows it all right.

Shri N. R. Muniswamy: Since I have not much time at my disposal, I will pass on to another point from this controversy. Article 145 of the Constitution is referred in clause 52. It says—article 145—that the Supreme Court can make rules for the admission of advocates, junior or senior. But there they make such a distinction such as advocates who are on record and advocates who are practising without being on record. This distinction works havoc with regard to some advocates who had been enrolled in 1952, 1953 or 1954. Unless an advocate happens to sit for a particular examination, he cannot practise as an advocate, unless he appears on behalf of somebody else. So, this should not be made applicable to the advocates who had been enrolled before 1955 or 1956 or before these changes came into effect. I only want that there should be some sort of provision as regards this aspect of the matter, so as not to have retrospective effect in respect of the advocates who had been enrolled in an earlier period, before they brought in these changes. So, article 145 does not cover the case that I am pleading. Therefore, the Supreme Court should take into consideration this aspect. Any provision that they want to make will be made applicable only prospectively and not retrospectively.

With these words, I resume my seat.

Mr. Deputy-Speaker: Shri D. C. Sharma.

An Hon. Member: He wants to speak on law also!

Mr. Deputy-Speaker: He is very anxious that he should contribute to this debate. An objection has been taken from this side that as Shri D. C. Sharma belongs to the teaching profession—he is a professor—he need not come into the legal profession!

Shri D. C. Sharma (Gurdaspur): Mr. Deputy-Speaker, Sir, I would come to that point later on. One of the regrets of my life is this: that I did not study law.

Shri Hajarnavis: That is the lawyers' regret also.

Shri D. C. Sharma: I believe that proficiency in law, whether one practises it or not, is one of the great assets that any intelligent man can have in this 20th century. I feel that lawyers have done a great deal of service to our country at least before India became free. I think of the great freedom-fighters amongst the lawyers. I think of those lawyers who manned voluntarily some of our social services and who ran our educational and other institutions which did a lot of good to our country. I also think of some lawyers who, out of the fulness of their pockets, gave away large sums of money to public institutions. I also think of some lawyers who were always ready to respond to any call of distress on behalf of the public and who were always ready to serve those causes which did not bring them either money or goodwill at the hands of the rulers that we had. This was the situation before India became free.

Now, as I go about this country, I find that if there is one class of people in the country which suffers from a great deal of frustration, it is the lawyer class.

Shri Nagi Reddy (Anantapur): Why?

Shri D. C. Sharma: Why it is so is evident from the fact that most of them want to come to Parliament and some of them want to go to other avenues of service. I judge this Bill only by one test and it is this: Is this Bill going to diminish the sense of frustration from which the lawyers in India are suffering today? It may or may not be that, but the fact of the matter is this. I have divided the lawyers into three classes. There are

some who belong to the indigent class; there are some lawyers who belong to the marginal class; they make just enough to keep the pot boiling. Then there are some lawyers who belong to the affluent class. This affluent class of lawyers does very well.

One of the wholesome provisions that this Bill has made is this: it has given some kind of tardy, remote, half-hearted insurance to the lawyers who belong to the indigent class or who belong to the marginal class. It has given them some kind of hope that they will enrol themselves as junior advocates and can find some work. But this is not the only thing that this Bill has done.

I think this Bill might have done a little better. It should have been a kind of social insurance for those lawyers who are trying to make their way in the world of the legal profession, who are trying to climb the different rungs of the ladder of the legal profession. On the face of it, it is a professional Bill. It is a Bill which wants to level up the standards of the profession. It wants to unite the profession in one bond. It wants to give them standards of service and all that kind of thing.

But I think this Bill is sadly lacking in one thing, viz., it has not provided any kind of social insurance for those lawyers who are just beginning their career or who, in spite of their efforts, have not been able to make good. I feel this is the greatest defect from which this Bill suffers. What is the good of saying to a lawyer, "You will do this or you will do that; you will have this or you will have that" unless you tell him also that there are certain avenues which are open to him for earning a decent living? From that point of view, this Bill is not very good. Of course, there is a provision here that there should be a benevolent fund for indigent lawyers, but my feeling is that that kind of provision should have been enlarged and some help should have been given

to those lawyers who are not able to make good.

Again, this Bar Council has been saddled with so many functions that I am afraid it will lead to a great deal of defeat of its purpose, because no human institution can look after all these things. I find that almost all the letters of the alphabet have been exhausted in order to enumerate the functions of the Bar Council. My feeling is that those functions should have been simplified and they should not have been given in such a great degree. I think only three functions should have been there. They should have safeguarded the rights and privileges, they should have promoted law reform and they should have tried to provide legal education.

I think the legal profession is not doing very well in free India. When I go about in my constituency, I hear a large number of complaints from the lawyers saying that they are not treated well by the magistrates and judges, not at the higher level, but at the lower level. By means of this, will they be able to ventilate their grievances against any judge or any magistrate? They will not be able to do so, because unfortunately the legal profession has lost that spirit of independence which it had, when you were practising as a lawyer. It has lost that spirit which it used to have when persons of your generation were manning that profession.

Pandit K. C. Sharma: He belongs to the present generation.

Shri D. C. Sharma: You belong to a generation that is dead; I do not know why you are there.

Mr. Deputy-Speaker: Order, order.

Shri D. C. Sharma: I was submitting this with reference to my friend here.

Pandit K. C. Sharma: I am young and living.

Shri D. C. Sharma: This safeguard is there. But I wonder if they will be able to make use of it.

17 hrs.

Mr. Deputy-Speaker: That was rather too much, though it was towards the end of the day.

Shri D. C. Sharma: No, Sir. What I mean to say is that this is spoken in a spirit of irony. I mean just the reverse of it. He belongs to the present day and I hope he will live very very long.

I was submitting very respectfully that so far as law reform is concerned, there cannot be any law reform in this country so long as we are following the pattern of British justice. British justice has many advantages, I do not deny it. But British justice is a series of entanglements, it is a series of so many complications, and I believe that India requires a simpler kind of justice, a less involved justice, a justice which does not depend too much on case law, too much on precedents and too much on the All India Reporter, the Madras High Court Reporter, the Bombay High Court Reporter and the Punjab High Court Reporter. I think our law has become a big jungle, if I can put it like that, and on account of so many interpretations it has become more complicated than necessary. I believe even our Law Commission has not been able to do anything. Our Law Commission has done some tinkering here and there, but it has not been able to change the basic structure of the law. As long as the basic structure of the law remains the same as it is now in India, I think to talk about the fees of these lawyers, to talk about the stamp duty and to talk about other things is infructuous. As long as this system of justice remains, the fees are bound to go up, as long as this system of justice remains you cannot abolish stamp duty because we are in for a very expensive, outlandish system of justice. It may be good, it may be bad, but I would say

[Shri. D. C. Sharma]

that we are in for that kind of justice which is not wholly suited to our genius and to our climate. I would like some man, a genius to be borne in India who would give us that kind of justice which suits the conditions of India.

I hope this Council will do its best so far as legal education is concerned. Legal education is in a very sorry state of affairs. Legal education in some States is only an appendix of other kinds of education where people study late in the evening when everything else is over. I think legal education should be taken more seriously, if legal education is taken more seriously then the legal profession will be taken more seriously, and if legal profession is taken more seriously the lawyers will also reap that advantage. But, unfortunately, legal education in my country is not having that kind of charm which it should have.

So far as disciplinary court is concerned—I do not want to say anything about the enrolment fee of Rs. 250; it has been already said that it is exorbitant and I agree with my hon. friends—I think the procedure for it has been made very cumbersome. We have the anti-corruption department, the vigilance department and other departments which we have evolved in free India to rid ourselves of corruption and other things. What is the result of these departments? No case is proved. Even if you take a case to a court of law, it does not serve its purpose. So all these departments

are there without producing any result. Similarly, the disciplinary body will have very good intentions but its procedure is going to be so cumbersome that it will be infructuous and it will not be able to catch any culprit. But it will have the capacity to harass some persons. It will harass some persons without doing anything substantial. I wish that the legal mind should have got out of the way of thinking in an involved manner and should have evolved some simple formula. I think the whole problem of law in my country is the problem of simplification of law and the whole problem of this Bill should have been simplification. But I think, in spite of simplifying things, they have made things more complicated, and I am sorry to say that this Bill may prove as infructuous as other things have proved. All the same I wish it well.

Mr. Deputy-Speaker: Shri Khadilkar might begin.

Shri Khadilkar: Just now the hon. Member said that a lawyer is one who deals in some sort of wisdom which is a merchandise.

Mr. Deputy-Speaker: He might continue tomorrow. The House stands adjourned.

17.07 hrs.

The Lok Sabha then adjourned till Eleven of the Clock on Thursday, April 27, 1961|Vaisakha 7, 1883 (Saka).