Panchayat and Cooperatives. [*Placed in Library. See* No. LT-3818/62].

REPORTS OF THE LAW COMMISSION

**The Deputy Minister of Food and Agriculture (Shri A. M. Thomas):** On behalf of Shri R. M. Hajarnavis, I beg to lay on the Table a copy each of the following Reports of the Law Commission:—

(i) Twenty-first Report on Marine Insurance. [*Placed in Library . See* No. LT-3619/62].

(ii) Twenty-second Report on the Christian Marriage and Matrimonial Causes Bill, 1961. [*Placed in Library. See* No. LT-3619/62].

---

**12.04 hrs.**

## COMMITTEE ON PETITIONS

FIFTEENTH REPORT

**Shri Barman** (Cooch-Behar): I beg to present the Fifteenth Report of the Committee on Petitions.

---

**12:04¼ hrs.**

## MESSAGE FROM RAJYA SABHA

**Secretary:** Sir, I have to report the following message received from the Secretary of Rajya Sabha:—

"In accordance with the provisions of sub-rule (6) of rule 162 of the Rules of Procedure and Conduct of Business in the Rajya Sabha, I am directed to return herewith the Appropriation Bill, 1962, which was passed by the Lok Sabha at its sitting held on the 19th March, 1962, and transmitted to the Rajya Sabha for its recommendations and to state that this House has no recommendations to make to the Lok Sabha in regard to the said Bill."

**12:04½ hrs.**

## COMMITTEE ON PETITIONS

MINUTES

**Shri Barman** (Cooch—Behar, Reserved—Sch. Castes): Sir, I beg to lay on the Table a copy of the Minutes of the sittings (Fifty ninth and Sixtieth) of the Committee on Petitions, held during the Sixteenth Session, 1962.

**Mr. Speaker:** He read the other one item No. 10 first. The hon. Members must stick to the Order Paper. The same mistake was committed by Shri Dasappa yesterday.

---

**12:04¾ hrs.**

## ESTIMATES COMMITTEE

HUNDRED AND SIXTY-FIFTH AND HUNDRED AND SIXTY-SIXTH REPORTS

**Shri Dasappa** (Bangalore): I beg to present the following Reports of the Estimates Committee:—

(1) Hundred and sixty-fifth Report on the Ministry of Commerce and Industry-Office of the Textile Commissioner (Part IV)—Art Silk Industry.

(2) Hundred and sixty-sixth Report on the Ministry of Commerce and Industry-Office of the Textile Commissioner (Part IV)—Export Promotion of Cotton Textiles.

---

**12:05 hrs.**

## ADVOCATES (AMENDMENT) BILL—*contd.*

**Mr. Speaker:** The House will now take up further consideration of the following motion moved by Shri R. M. Hajarnavis on the 27th March, 1962, namely:—

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

Shri Muniswamy, I think, was concluding. He has taken eleven minutes already. The total time allotted for this is one hour. We have spent 35 minutes already and 25 minutes are left.

**Shri Braj Raj Singh** (Firozabad): The time may be extended by an

**Mr. Speaker:** We have to get through some other work also. I will give half an hour more, if necessary.

**Shri N. R. Muniswamy** (Vellore): Mr. Speaker, Sir, yesterday I was stating the hardships of the junior advocates of the Supreme Court because of the rules framed in 1959 or 1960. I have elaborately dealt with them on a previous occasion. I may now be permitted to read the relevant parts of the Advocates Act. relevant IV of the Act has not come into existence. An Ordinance had to be issued in the meantime to allow the rules to continue. Clause 29 of that Act says that subject to the provisions of the Act and any rules made thereunder there shall, as from the appointed day, be only one class of persons entitled to practise the profession of law, namely, advocates. At present there are barristers, there are junior advocates, senior advocates and advocates on record and so no. There is no such distinction under this Act according to definition clause and to that extent I welcome it. The word 'practice' has been used here; it has not been defined in the Act. In ordinary parlance and in the General Clauses Act it means 'to plead and act' Nowhere has it been stated that one can plead and another can act. People who can act can also plead. Practice means pleading and acting. They go hand in hand. They are co-extensive. From the rules framed by the Supreme Court, it looks as though one set of people can plead but not act and another set of people can act. Those who have got the right to act have the right to plead also but those who have got the right to plead have no right to act. It comes to that because these rules bifurcate the functions of advocates. It is not in consonance with the spirit and scheme of the entire Act.

**Pandit K. C. Sharma:** (Hapur): The rules were framed before the Act.

**Shri N. R. Muniswamy:** They want to continue the same rules. My point is that the scheme and the spirit of the Act never contemplate bifurcation. I want that the rules and regulations framed must be in consonance with the spirit of the Act. The advocate has been defined here. There are advocates in the High Court. They can enrol themselves in the All India roll and they can practise in the Supreme Court. Before the coming of this Act, the rules were that all those who were practising in the other high courts must have at least ten years' standing, if they want to enrol themselves as advocates in the Superme Court. That has been thrown out. But I do not know why the functions of the advocates should be bifurcated in this way.

Then, in section 52 of the Act, they have cautiously introduced a saving clause. Section 52 of the Act reads as follows:

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

I shall come to the Constitution later—

> (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."

Now, I am concerned only with sub-section (b) of this section. Now, they have used the word "act." But the word "practice" means both pleading and acting. They have omitted the word "plead" and have used only the word "act." This bifurcation is quite derogatory to the basic principle of the Act and to the policy of the legislatures and Parliament and also against the intentions which the Parliament had in mind. The intention of Parliament is that the function should not be bifurcated. It looks as though

[Shri N. R. Muniswamy]

people who plead anybody's cause cannot act and that people who act cannot plead!

Then, I could quite appreciate the principle that there must be some examinations. But then the examinations are such that it is difficult to pass in them. It seems to be very funny. The papers set may be all right for a young student who can sit for an examination and get through. But for aged persons like many of us, it is difficult. There are in fact four papers. The first paper deals with the Supreme Court's practice and procedure including the Civil Procedure Code and the Constitution and the limitation laws, etc. Paper II deals with drafting of pleadings. Paper III deals with elementary book-keeping and accounts. Paper IV deals with professional conduct and ethics. The last one may be easy. In each paper, the candidate must score not less than 50 marks and in the aggregate, 60 marks. The percentage of passes is not even 20 to 30.

The majority of candidates are scored out. It seems strange that an advocate who could be enrolled should be compelled to sit for such an examination, unless it is believed that he cannot "act". When he has got the ability to plead how can you curtail his power of acting? I am anxious to know what is the kind of imagination that the authorities are having so as to bifurcate these functions and not club them together.

Then, one could envisage only one kind of advocates. In the Supreme Court, there are three categories: the senior advocate, the junior advocate and advocates on record. Whatever might be the rules that are framed, they should not be derogatoy or contradictory to the scheme and the vision with which the Constitution has been framed and sought to be perpetuated. But sections 16 and 17 contemplate otherwise.

The Constitution is clear on this subject. Article 145 of the Constitution says as follows:

> "(1) Subject to the provisions of any law made by Parliament, the Supreme Court may from time to time, with the approval of the President, make rules for regulating generally the practice and procedure of the Court including—
>
> (a) rules as to the persons practising before the Court;".

I am only on this sub-article. I am not bothered with the rest, which deals with limitation, pleading, etc. So, subject to the laws made by Parliament, the Supreme Court may frame "rules as to the persons practising before the Court." "Practising before the Court," means that the advocates can plead and act. It contemplates pleading and acting. They cannot bifurcate the two functions and say that people who want to plead cannot act, and people who act cannot plead! So far as you want to act, you must have to undergo a certain examination. I am saying that it is not correct to bifurcate the functions, because the rule does not contemplate it. Whatever may be the approval that they may have from the President, it should not be against the provisions of the law made by Parliament. Parliament has made a law that the persons can practise, and the word "practise" as such contemplates two aspects. These aspects cannot be bifurcated with a view to limit the practice of certain persons and thus opening the floodgates to others. It looks as though, after solemnising the marriage of one with the other, they are not allowed to live together! It looks as though the advocates can only plead and not act.

It is not as if the Supreme Court is making rules only now. It has

been making rules from time to time. From year to year, they may be framing rules to suit certain contingencies. Therefore, in case it is not possible to modify these rules, these may be passed on to the Supreme Court to see that those persons who were enrolled prior to 1961 are not compelled to sit for any examination and that it is insisted upon only on those who come in for the first time to get themselves enrolled as advocates.

As I said, there are now several categories of advocates, senior advocates junior advocates and advocates on record. These distinctions must be given a go-by. The Advocates Act does not contemplate that there should be such varieties of advocates. Barristers, vakils or others are all allowed to practise. There is only one category called "advocates". Why should there be three categories of advocates practising in the Supreme Court These distinctions must also be abolished. Otherwise, there is no meaning in the whole scheme. You are well aware that the Act also provides something for the original side of the Calcutta and Bombay High Courts. The original side practice has been thrown out in the Madras high court. Formerly, they used to have solicitors and attorneys. That has now been given up. Still, in the Bombay and Calcutta High Courts, that system is being maintained. I wish all that all these distinctions are given up.

Whether my amendment is in order or not,—I am only too willing to have it redrafted through the experts in the drafting department—I have expressed what I wanted to say, and I have brought in the amendment only to see that the persons for whom I have been arguing here are not affected by any legislation that this House may make.

With these words, I resume my seat.

**Shri Sinhasan Singh** (Gorakhpur): Mr. Speaker, Sir, I rise to voice my feelings which are the same as those expressed by my hon. friend Shri N. R. Muniswamy. The very essence of this measure, as already argued, is to provode one class of advocates, and the amendment is only to continue the practice that was in vogue before the Advocates Act comes into force in its entirety or *in toto*. Because of the fact that the Act could not be made applicable infull earlier, this amendment has been brought here.

My hon. friend Shri N. R. Muniswamy only wants that sub-clause (3) of clause 4 should apply to all those advocates who were enrolled prior to 1st December, 1961 and they should continue to work as of right as advocates. To that end, he has put in an amendment to the effect that exemption should be given to those who have not appeared in the examinations, as laid down by the Supreme court. He wants the same privileges to those advocates who had not appeared in the examination. The very essence of the amendment, as I said, is to continue the very old practice which was in vogue before the Advocates Act was passed. In the Advocates Act, there is only one class of advocates and not three classes. My hon. friend wants to have only one class. I think the Government will have no hesitation to accept the amendment. This amending Act is going to lapse within four or five months, the moment chapter IV comes into force. The moment chapter IV comes into force with a few exceptions that cover the particular clauses, sub-clause (3) will not be applicable, because, the moment chapter IV comes into force, all the advocates in all the States will be alike throughout India. Since certain States have failed to have their own Bar Councils, you are continuing the right to those High Courts to enrol advocates as they were doing before. In the high courts you were giving rights even to those advocates who had enrolled prior to 1st December, 1961, to practise in the Supreme Court. My hon. friend wants these rights to be extended to those advocates on record. Even those advocates who were enrolled in the high

[Shri Sinhasan Singh]

courts prior to 1st December, 1961, will have the right to practise in the Supreme Court. Why not those advocates who were enrolled at Junior advocates be allowed practise as of right? What my hon. friend wants is, the privileges that were being extended to those advocates who were enrolled in the high courts before 1st December, 1961 and who were not even junior advocates or advocates on record, in Supreme Court should also be extended to the advocates on record and junior advocates in the Supreme Court. They should be given the same right I think the Government should have no objection to accept this amendment.

There may be some verbal changes necessary here and there. But, if the amendment is accepted, it wil give the benefit to a lot of people who will be saved from the pangs of the examination. Even my hon. friend Shri C. R. Pattabhi Raman, who may have opportunities to plead the cause of Government, may fail in the examination if he sits at the examination. Many of us, lawyers, if allowed to sit in an examination, will fail. What he wants is that all people who have been practising and acting should be allowed to practice and act, without having to appear for any further examination. I support his amendment. When clause 4 comes into force with this amendment, all advocates wil be able to be enrolled alike and practise alike. I hope the Government and Shri Pattabhi Raman will accept this amendment.

**Shri Prabhat Kar** (Hooghly): Sir, I have only one small point. Section 24 of the Advocates Act lays down that a person who has obtained a degree in law before 1st December, 1961 can be enrolled as an advocate. This gives an idea as to how the law can be interpreted by the lawyers. The Maharashtra Bar Council, in its notification, stated that a person who has not got the certificate, although he has passed the examination, will not be entitled to be enrolled. I was surprised to find that the Bar Council wrote the following letter to the Secretary of the Committee of Law Graduates:

> "Your petition dated 22nd February was considered by the Bar Council of Maharashtra. The Bar Council is of the opinion that the words "person who has obtained a degree in law before the appointed day" can only mean a person on whom the degree was actually conferred before the appointed day and not a person who has passed the qualifying degree examination before the appointed day."

**12.23 hrs.**

[SHRI HEDA *in the Chair*]

The Bar Council is supposed to be composed of eminent lawyers, who are supposed to interpret law in the name of equity and justice. If this is the way the Bar Councils are going to interpret laws, what will be the position of the common man who does not understand law? A number of law graduates made the application and this is the reply of the Maharashtra Bar Council. I am glad that the Government is making an amendment in this regard. I request the hon. Deputy Law Minister to bear in mind that this is how things are being interpreted by intelligent persons. It should be interpreted in a manner which will appear cogent to a lay man and not simply to lawyears.

I have nothing to add. I had a talk with the Deputy Law Minister and he said that neither the Parliament nor the Government had dreatmt at that time that this sort of interpretion was possible by any Bar Council. I am glad he Government is making an amendment in this regard, so that all law graduates may be allowed to enrol themselves as advocates.

**Shri Sadhan Gupta** (Calcutta—East): Sir, I am happy that even if it be by a sideway, the process of uni-

fication of the Bar is about to commence through the passing of this Act. I must, however, draw the attention of this House and the Government to the unfortunate fact that this legislaion has been necessitated because the Bar Council could not be set up by the time they were expected to be set up. This is very unfortunate and this reflects on the officiency of persons concerned with it., I do not see why Bar Councils could not be set up in all the States and the All-India Bar Council could not be constituted in all this time that has lapsed after the passing of the parent Act.

While supporting this legislation, I have to meet the points made by Shri N. R. Muniswamy. First of all, he has made a grievance that in the supreme Court there is a distinction between advocates on record and other junior advocates, *i.e.* advocates on record who are entitled to act and plead and other advocates who are entitled to plead, but not act. He has made a grievance of this distinction. I think, however, that this distinction is essential for a court like the Supreme Court. In the Supreme Court, advocates come from various places to practice and naturally so. It is necssary that the advocates who will act in the Supreme Court must be readily available at the place where the Supreme Court is situated. The principal stipulation for an advocate on record is that he should maintain an office here within a certain distance—10 miles—from the Supreme Court. This is necessitated by the fact that if you start practising and acting from a thousand miles away from the Supreme Court, you will not be available for service of notice and for doing things you are expected to do, because one cannot be expected to run to Delhi every day for the purpose of acting. Therefore, this kind of restriction is absolutely essential.

Regarding the examinations, I have no view, because I am not very well acquainted with the examination, but some kind of qualifying test is necessary. The Supreme Court has a particular procedure. That is not contained in the syllabus in the university examinations. Therefore, when we come after obtaining the degree in law, we do not come with the knowledge of the practice and procedure of the Supreme Court, *i.e.* the acting part of it. If we do not come with that knowledge, it is certainly a very great handicap for the advocate himself as well as for the Supreme Court, if the advocate concerned does not have sufficient knowledge of the procedure in the Supreme Court, as far as acting is concerned, *i.e.* to file applications, what stamps to put in and so on. As a result of this, the advocates as well as the clients suffer. So, some kind of qualifying test has to be evolved. It may be provided that there should be some kind of apprenticeship before an advocate is enrolled on record of the Supreme Court. If that is provided, that would be equally good. I do not know what the standard of examination is, but it should not be a too much menticulous eamination; a general knowldge of the principles and main things of procedure should be enough. Some kind of qualifying test should be necessary, though I am not in a position to prononuce whether the examination actually prescribed is or is not a proper examination.

Then Shri Muniswamy referred to the distinction between senior and junior advocates. There is nothing in this distinction or, for the matter of that, in the distinction between advocates on record and other advocates which is repugnant to the scheme of the parent Act, that is, the Advocates Act. The Advocates Act pre-supposes one class of practitioners, not advocates, pleaders, Muktiyars and so on. There is nothing derogatory to one class of practitioners in the present amending Bill, because advocates are advocates. And some of them are classified as senior advocates and some as junior advocates, not becaues there is any fundamental distinction in their right to practise; both senior and junior advocates can plead; the only thing that is taken into consideration in marking out a person as senior advocates is his eminence, and in marking him out as eminent, he is rather at a handicap

[Shri Sadhan Gupta]

than in a position of advantage. This is very necessary in the interests of junior advocates. Now a senior advocate of the Supreme Court is not allowed to draft pleadings or to draft anything; that is the function of the junior advocate; he can only settle. This is a great benefit to the junior advocates because otherwise people would go to the senior advocates for having different things drafted and junior advocates would suffer.

Secondly, a senior advocate cannot appear without a junior advocate. That is also very advantageous to the junior advocate. Conceivably, if this was not stipulated, a client would not appoint a junior advocate. Therefore, this distinction is quite natural and beneficial to the junior advocate and should not be cavilled at; no one should grudge it.

Therefore, before resuming my seat, I once more commend this Bill for the acceptance of the House. But, at the same time, I want to draw the Government's attention to the fact that this Bill has been necessitated by the most uncalled for delay in the setting up of Bar Councils. So, I would urge upon the Government to be more vigilant and more up and doing in the future so that this kind of thing can be avoided.

**श्री ब्रजराज सिंह** : सभापति महोदय, वकीलों के सम्बन्ध में कोई कानून इतनी जल्दी इस सदन के सामने संशोधन के लिए आ जाएगा इसकी आशा नहीं की जा सकती थी । लेकिन कानून बनाने वाले इतनी लापरवाही के साथ कानूनों के मसविदे बनाते हैं कि वह खोज ही नहीं सकते कि इसमें क्या खामियां रह जाती हैं .....

**The Deputy Minister of Law (Shri Hajarnavis):** May I rise on a point of order? When the Bill has been passed by the whole House, is it proper for the hon. Member to say that it was done in a careless manner, especially when he is himself a Member of that House, and such a distinguished Member at that?

**श्री ब्रजराज सिंह** : तो इतनी जल्दी हमारे सामने यह संशोधन के लिए आया यह बड़े अफसोस की बात है और सिर्फ इसी वजह से इतना अफसोस न रहा होता कि यह हमारे सामने संशोधन के लिए आया, बल्कि इस बीच में सैकड़ों लोग जो अपने को एडवोकेट दर्ज कराना चाहते थे एडवोकेट दर्ज कराने से रह गये और ऐसा सरकार की गलती की वजह से हुआ ।

अभी मेरे मित्र श्री प्रभातकार ने महाराष्ट्र के कुछ लोगों की शिकायत की और सदन का ध्यान आकर्षित किया । वह शिकायत यह थी कि महाराष्ट्र की बार काउंसिल ने एक व्यवस्था की जिसके मुताबिक कानून की परीक्षा की डिग्री बिना प्राप्त किये हुए कोई अपने को एडवोकेट दर्ज नहीं करा सकता था । खैर खुशी है कि अब यह जो संशोधन पेश किया जा रहा है उसमें यह व्यवस्था की जा रही है कि कानून की डिग्री प्राप्त करने का क्या मतलब है । लेकिन मैं यह अर्ज करना चाहता हूं कि मसविदा बनाने से सरकार के लोग यह सोच सकते थे कि इसकी और कोई व्याख्या तो नहीं हो सकती है जिससे लोगों को परेशानी हो, जैसा किहुआ है । खैर—देर आयद दुरुस्त आयद—की कहावत के मुताबिक अब जो कुछ किया जा रहा है वह स्वागत करने योग्य है ।

लेकिन मैं अपने अन्य मित्रों के साथ हूं जिनका कहना है कि इस कानून के बनने के बाद भी, एडवोकेट्स एक्ट बनने के बाद भी, यह अफसोस की बात है कि वकीलों या एडवोकेट्स के कई वर्ग रह जाते हैं । अभी मेरे मित्र श्री साधन चन्द्र गुप्त कह रहे थे कि यह तो जूनियर एडवोकेट्स के फायदे के लिए ही है । मुझे अफसोस है कि अभी भी कुछ जूनियर एडवोकेट्स की बात कही जाती है हालांकि कानून में कोई ऐसी व्यवस्था नहीं

है कि कोई जूनियर एडवोकेट होंगें । कानून की व्यवस्था के मुताबिक एक सीनियर एडवोकेट होंगे और उसके अतिरिक्त कुछ दूसरे एडवोकेट होंगे यानी अदर एडवोकेट्स होंगे, जूनियर एडवोकेट कोई नहीं होगा । लेकिन हमारी जो पुरानी परम्परा पड़ी हुई है विभिन्न वर्गों में छोटे बड़े की, उसके मुताबिक ही लोगों को अभी यह पचता नहीं कि सब एक ही तरह के एडवोकेट हो सकें । मैं सरकार से कहना चाहूंगा कि अब समय आ गया है कि हमको जूनियर और सीनियर का भेद भुला देना चाहिये ।

यह कहना कि हम यह संशोधन किसी खास वर्ग के फायदे के लिए कर रहे हैं उचित नहीं है । जैसे हम राजनीति में और जीवन के दूसरे क्षेत्रों में योग्यता को स्थान देते हैं और जो योग्य होते हैं वे अपने आप ही चोटी पर आ जाते हैं, इसी तरह वकीलों के पेशे में भी यह ध्यान रखना चाहिए । जो काबिल होंगे उनको मुकदमें लड़ने वाली जनता सीनियर मानेगी और जो काबिल नहीं होंगे उनको जूनियर मानेगी । इसलिए किसी को सीनियर या जूनियर निश्चित करना ठीक नहीं होगा । अदालत को यह निश्चित करने की आवश्यकता नहीं होनी चाहिए । इसलिए मैं चाहूंगा कि यह जो संशोधन हो रहा है उसमें सरकार का ध्यान उस व्यवस्था की तरफ जाए जिसमें सीनियर और जूनियर एडवोकेट की बात कही गई है । सब एक ही तरह के एडवोकेट हों और यह मुकदमा लड़ने वाली जनता पर छोड़ दिया जाए कि वह किसको सीनियर समझती है और किस को जूनियर । कानून की निगाह में कोई सीनियर या जूनियर न रहे। मैं एक उदाहरण देना चाहता हूं । महात्मा गांधी हिन्दुस्तान के ही नहीं बल्कि सारी दुनिया के बड़े आदमी माने जाते थे । लेकिन ऐसा करने के लिए किसी कानून की व्यवस्था नहीं थी । जनता ने अपनी ओर से उनको मान लिया था । इसी तरह से मैं चाहता हूं कि कानून में सीनियर और जूनियर एडवोकेट की कोई व्यवस्था नहीं होनी चाहिए ।

इसी सम्बन्ध में मैं अपने संविधान की आर्टिकल १४५ के बारे में कुछ कहना चाहता हूं । इस आर्टिकल में लिखा है :

> "Subject to the provisions of any law made by the Parliament, the Supreme Court may from time to time, with the approval of the President, make rules for regulating generally the practice and procedure of the Court...."

तो इसमें ये सब बातें कही गई हैं । इस कानून को बनाते समय सरकार की तरफ से कहा गया था कि सर्वोच न्यायालय को इस तरह का अधिकार प्राप्त है, इसलिए गवर्नमेंट इसमें कुछ नहीं कर सकती । मैं कहना चाहूंगा कि इस अधिकार के रहते हुए भी क्योंकि यह अधिकार प्रेसीडेंट की मंजूरी के साथ बंधा हुआ है इसलिए सरकार जब चाहे तो इसमें परिवर्तन कर सकती है, और अब समय आ गया है जब सरकार को बदल देना चाहिए सुप्रीम कोर्ट के नियम में भी, और कोई नियम ऐसा नहीं होना चाहिए जो हमारे इस कानून की व्यवस्थाओं के खिलाफ जाता हो । अगर सुप्रीम कोर्ट का कोई नियम ऐसा है—जो कि मैं समझता हूं कि आज —जो इस कानून की व्यवस्थाओं के खिलाफ जाता है, तो उसे बदला जाना चाहिए । सरकार को उसे स्वीकृत नहीं करना चाहिए । सरकार को सुप्रीम कोर्ट को सुझाव देना चाहिए कि इसमें संशोधन किया जाए और ऐसे ही नियम स्वीकृत किये जाने चाहिए जो कि इस कानून की व्यवस्थाओं के अन्तर्गत हों ।

[श्री ब्रजराज सिंह]

तीसरी बात जो मैं कहना चाहता हूं वह यह है कि न सिर्फ इसके मस्विदे में सरकार की तरफ से गलती रक्खी गई है बल्कि कानून बनने के इतने दिन बाद भी मैं जानना चाहूंगा कि क्या किसी स्टेट बार कौंसिल ने कोई नियम बनाए हैं आल इंडिया बार कौंसिल तो अभी तक बन नहीं पाई है और मंत्री महोदय उस के लिए कहेंगे कि चूंकि वह बन नहीं सकी इसलिए उसकी तरफ से कोई नियम बनाने का सवाल नहीं था। लेकिन मैं जानना चाहूंगा कि स्टेट बार कौंसिलों ने यह काम क्यों नहीं किया। दी एडवोकेट्स एक्ट, १९६१ के क्लाज २८(१) में यह दर्ज है :—

"A State Bar Council may make rules to carry out the purposes of this Chapter."

इस धारा २८ के मातहत क्या कोई नियम बनाए गये हैं क्या इन बार कौंसिलों की तरफ से कोई फौर्म्स बनाये गये हैं जिनके कि मुताबिक नये ऐडवोकेट्स एडमिट और इनरोल किये जायेंगे मेरी अपनी सूचना तो यह है कि इस तरह की कोई बात अभी तक उनके द्वारा नहीं की गई है। ऐसी हालत में कैसे नाम दर्ज होंगे और नये एडवोकेट्स बनेंगे यह एक ऐसा प्रश्न है जो कि परेशानी पैदा करने वाला है और सरकार का ध्यान इधर तुरन्त जाना चाहिए। मैं आशा करूंगा कि जब हम इस कानून को अमेंड करने जा रहे हैं तो वह पुरानी दिक्कतें और गलतियां जो कि पिछले कानून में रह गई थीं और जिनके कि रहते लोगों को परेशानी हुई, उनको आवश्यक सुधार करके दूर कर दिया जायगा।

सरकार इस बात का भी ध्यान रखेगी कि जिन नियमों की व्यवस्था उसने इस कानून में की है चाहे वह राज्य बार कौंसिलों की तरफ से हों अथवा अखिल भारतीय बार कौंसिल की तरफ से हों, उन नियमों को तुरन्त बनवा लिया जाए और उनके मातहत जो लोग एनरोल होना चाहेंगे उनको एनरोल करने की सुविधा दी जायगी। मेरी सूचना है कि अभी भी एनरोलमेंट के मामले में और एडवोकेट्स बनने में परेशानियां होती हैं। मेरा तो कहना है कि अगर वह पहले से वकालत करते आ रहे हैं तब तो कोई परेशानी का सवाल आना ही नहीं चाहिए। नये लोग भी यदि एनरोल करना चाहें तो उनके वास्ते भी यह दिक्कत तलब न होना चाहिए और उनके वास्ते भी इन्तजाम होना चाहिए। इसके बारे में कोई जांच पड़ताल हो रही है और कोई रिपोर्ट आ रही है और अगर रिपोर्ट आने के बाद यह होगा तो इस काम में महीने दो महीने या तीन महीने तक लग सकते हैं। मैं आशा करूंगा कि विधि मंत्री महोदय इन तमाम बातों पर सफाई देंगे और ऐसी यवस्था करेंगे ताकि नये दर्ज होने वाले ऐडवोकेटों के लिए कोई परेशानी नहीं रह जायगी।

**Shri Ramesh Prasad Singh** (Aurangabad): Mr. Chairman, Sir, while welcomeing this amending Bill I would like to mention that the whole difficulty has arisen because of bringing into force certain chapters of the parent Act piecemeal. If the Ministry concerned had given a little more thought to the subject while drafting the original Bill much of the present difficulties would have been avoided. The parent Act, that is, the Advocates Act, was passed not long ago and it has become very necessary to bring forward this amending Bill long before the Act itself could be brought into force. While drafting a legislation an attempt should be made to put it in a manner so as to cover all possible contingencies. But this aspect of the rule of drafting was not taken into consideration. Even then I congratulate the Ministry concerned for bringing forward this amending Bill which is a measure in the right direction.

After the repeal of sectons 6 and 7 of the Legal Practitioners Act, there

was a complete absence of any machinery which could give certificates to practising pleaders and *mukhtiars*. It appears that there was a complete vacuum. So the difficulty had arisen and that was a real difficulty. It is to remove that difficulty that this amendment is being sought to the parent Act.

Criticism has been made with regard to the distinction between senior and junior advocates. I beg to say that that criticism is unfounded. That distinction will remain. There will remain senior advocates as well as junior advocates and both will play their valuable role in the legal profession. As we find today, there are senior advocates and junior advocates. The senior advocates are aways assisted by the junior advocates in matters of drafting, in searching for refernces, case laws and in hunting out a lot of rulings on any subject that has to be agrued before the court. Therefore the point that has been made out by some of my hon. friends, more particularly by Shri Braj Raj Singh, that that distinction should be abolished, I think, is a point which does not deserve much consideration. It appears to be criticism only for criticism's sake.

I commend this Bill to the House and I request that this may be passed into law.

**Pandit K. C. Sharma:** Mr. Chairman, Sir, I appreciate the efforts of the Law Ministry to have brought the Advocates Act and to take speedy action to amend it wherever some lacuna was found. The problem with regard to this Act is closely associated with the problem of doing justice to the people. It is a fact that law courts, as constituted, as also the bar councils and the profession of advocates are not very helpful to do real justice to the people. It is not only a question of the form or system so much as the question of the man at the desk, be he a judge or be he an advocate. The unfortunate thing is that we have adopted a system of dispensing justice to the people as well as the system of law which is 2,000 years or more old. It was taken up by the English people under very suitable circumstances and was imposed upon us. We are carrying on our burden under a very old system which is not quite suited to the conditions of society in India.

This advocates' profession, as Shri Gupta said, is doing its best and all glory to this learned profession. But I do differ and do very strongly differ from the rule adopted by the Supreme Court for holding an examination. It is a point of principle that examinations should be confined to the universities and not to the professional bodies. It may be possible to advise the universities to have certain courses in procedure, information about rules and other things. But it is bad on principle to hold examinations either by the High Courts or by the Supreme Court. Taking a practical view of things, it is superfluous. Take, for instance, the Delhi University. A student has to undergo two years study course and then one year for proficiency. Proficiency is nothing else but procedure, rules and all these things, A boy or a girl, having spent one year only to learn how to plead in the courts, how to darft things, etc., a further examination is unnecessary. It does no good to anybody. It is bad in principle. Because professional bodies and executives are not meant for examination. It is for the University. Whatever is lacking in a student—a student may be lacking in so many things—the Supreme Court may advise the University and add to the curriculum. There the business ends.

So far as junior advocates and senior advocates are concerned, there are no junior advocates. There are advocates and there are senior advocates. This distinction is not very conspicuous. As a practising lawyer, I think it is not always a correct thing to hold that any advocate, however prominent he may be, would be prominent in every class of cases. It is wrong to say so. An advocate who might not have had a long standing in the bar, who might not have shone in many other cases

[Pandit K. C. Sharma]

is likely to shine in a particular class of cases or even in a particular case. My experience at the bar is, in some cases, a lawyer, not normally very prominent in the bar, does his best and gets the best and at times, gets so much that no other lawyer is expected to have done so well as this particular lawyer. It is a particular way of doing things. Life is so complex. This profession at the bar is still more complex. So, a lawyer, by nature is a complex entity. He is not a simple person. This distinction is not useful. In these days of looking at things from an egalitarian view-point, it is not very logical. With regard to the other amendment that the hon. Minister has brought, I add my voice of approbation and I am very grateful to him for bringing this Bill.

**Shri Hajarnavis:** Mr. Chairman, I thank hon. Members for generally extending support to the Amending Bill. But, there have been one or two voices in criticism, particularly about drafting. It is meet, as my term is coming to an end, that I, who have been associated with the Ministry should say a word or two about it. I state and I state with the greatest amount of conviction that drafting in the Government of India is of a higher quality than you find anywhere in the Anglo-saxon world. Those who dispute it, I would request them, to go through the statutes of other countries which write their laws in English. Let them read the American statutes, Australian statutes and the statutes in the United Kingdom. Firstly, let us also remember that our draftsmen are writing in a language which is not their mother tongue. Secondly, in drafting the statutes, they are trying to conform to a Constitution which contains a large number of limitations, territorial, subject-wise as well as restrictions placed by fundamental rights. To try to steer clear of all these obstacles and yet express clearly the intention of the legislature in which various points of view must be reconciled, I think is almost a super-human task. I would say that our draftsmen have been more than equal to it. Let us read any statute. It is couched in language having the greatest amount of lucidity. In most cases, where the subject would permit it, it also achieves a certain amount or elegance of style. I can always understand dissatisfaction whether of Judges or lawyers who are called upon to decide or advise in a given case. But after all, what is the function of a law. The function of law is not to give solution to a particular problem. It has to state the rule. If, for instance, the legislature occupied itself with providing solutions for all types of cases that would arise, I think, they would set themselves almost an impossible task. The permutations and combinations of various factors are so innumerable and therefore to say that in a given provision, we were giving an exact solution for every combination of circumstances would be absolutely impossible. A lawyer advising a litigant or a Judge who is deciding a case must then find out which would be the rule which would appply to a particular case. He would certainly be angry with us because the law does not give him an exact answer. You cannot, as in a certain quiz toy just press a button and get an exact answer. We cannot get an exact answer in law. If that were so, you would not find, whether in the House of Lords in England, in the Supreme Court in the United States or the High Court in Australia or our own Supereme Court, for the same language, different Judges giving different interpretations. Merely because different persons undertsand it in a different manner, you cannot find fault with the drafting. Always the question would be, in a given case, which of the competing rules would apply: does it fall within the principles of one rule or within the principles of another rule? That is where mostly

difference of opinion arises. It is bound to arise. For, after all, a legislation is always interpreted in courts where the various theories or principles which would be applicable to a given set of facts are canvassed and their reasoning are tested. I submit that in a case like that, the draftsman is surely not at fault at all. As I said earlier, I as the Law Minister in charge am entirely responsible. But, after the legislation has received the approval of this House, then, I submit, a certain part of the responsibility rests upon the legislature. We always say in the court that the legislature in its wisdom has provided the law.

**13 hrs.**

Take, for instance, this case. I, with my experience of the procedure which obtains in the High Court in which I was practising, had no difficulty in understanding the words 'Obtained a degree' means passed the qualifying examination. In Nagpur, for instance, as soon as a person is said to have passed the LL.B. Examination, he need not have to wait for the convocation to confer a degree before he could enrol himself. That was not thought to be necessary. Under the present Act, I have been informed that the Bar Council in Mysore and the Bar Council in Gujerat have not interpreted this, if I may say so, in the narrow sense as the Bar Council in Maharashtra has done it. We should have been extremely loth to interfere with the working of this Act both in its interpretation and implementation by the Bar Councils. It was our desire that this should be a completely self-governing profession; it will make its own law; it will administer its own law and Government's interference would almost be nil. We have interfered only because the All-India Bar Council which ought to have been set up by this time has not been set up, not due to any deficiency of drafting ability in a draftsman, but because in one State the Bar Council was not constituted, for which neither the Government of India nor its draftsman are in any way responsible. I had almost expected my hon friend Shri Sadhan Gupta who belongs to that to tell us what difficulties prevented them to set up the Bar Council as has been done in other States. In the meantime persons desirous of entering the profession in other States are likely to suffer. It is only in their interests that we have come with this legislation. If the All India Bar Council had been set up this is a matter which would have been decided by them. Our intervention in this case is purely temporary in the interests of the class of persons who were likely to suffer, for no fault of theirs. I submit that the criticism of the draftsman in this case, so far as this provision is concerned, is entirely unjustified.

Then Mr. Muniswamy has raised certain points. He thinks that persons who were advocates before the rule made by the Supreme Court came into force requiring the advocates on record to pass certain examinations should be exempted. I might remind the House of the practice which prevails in the Supreme Court. To start with, when the Supreme Court began to function, there were advocates and agents. I do not know whether agents had to pass any qualifying examinations. They were replaced by advocates on record and then in 1959 after the system was in vogue for some time the Supreme Court has framed rules directing that whoever henceforward intends to join the profession must fulfil certain conditions. Mr. Muniswamy and Mr. Sinhasan Singh will agree that the condition that an advocate on record must have an office

[Shri Hajarnavis]

in Delhi is absolutely essential. It is a *sine qua non* of his functioning as an advocate on record, for processes and notices have to be served for applications or matters which come for immediate hearing. Therefore they must have an office in Delhi. That is essential.

As regards the second point, I am sorry to say that though I have considerable sympathy with him, I have not been able to understand his reasoning. He says that those who have passed in law must be presumed to be acquainted with the procedure and other matters which are tested in the examinations. Surely, if he knows them, he should not mind his being tested because he will be tested daily. After all, an advocate who intends to practise as an advocate on record must be acquainted thoroughly with the procedure in the Supreme Court: he would have every provision at his fingers' tips. The Supreme Court is the highest court in the land; it is the last court of appeal; that is where the litigant comes in the last resort. Therefore, both in the interest of the State and also in the interest of the Supreme Court the litigant should have the most efficient service in the profession. I have argued several cases in the Supreme Court. But if I were asked as to what the procedure in the Supreme Court is, I would not be able to answer. I would consult a friend of mine who is an advocate on record, what exactly is the limitation for various applications. I would not really know. Therefore, a paper which tests the knowledge of practice and procedure and limitation, I think, is absolutely necesary. If I were to practise in the Supereme Court as an advocate on record I would make myself thoroughly acquainted with the provisions relating to practice and procedure, limitation, etc. and if anyone asks me to appear for an examination I would certainly be prepared for it. I do not agree with Shri Muniswamy's view that if a person has passed a University examination, he should not be asked to pass it over again.

Then we come to accounts. An advocate on record handles large sums of money of his client. An elementary knowledge of accounts is certainly essential for him. If for instance, he fails to render account in a proper manner and says that he has no knowledge of accountancy, he would be able to escape his responsibility. Therefore the Supreme Court says that he must know these. As regards professional ethics, Mr. Muniswamy himself admitted that they are essential; so there is no question about it. These provisions are healthy, salutary and essential and the Supreme Court was right in laying them down.

Under article 145 any rules made by the Supreme Court are of course under the control of this sovereign Parliament. But I am quite sure that this Parliament would respect any decision made by the Supreme Court in this behalf for it is they who are primarily concerned with the advacotes who practise before them and the qualifications they ought to have and once the Supreme Court has made such a rule and applied it for six years or so, I think this House ought to be guided by their advice. In any case, if any Member has any representation to make it should, in the first instance, go to the Supreme Court and I am quite sure that judges who are trained in judicial habits would certainly give due consideration to any representation that is made and any legitimate grievance would certainly be redressed.

Then, Sir, a question was asked about the Central Legal Service. I am sorry I was not able yesterday to tell the exact provision under which it

was constituted and its terms. It has been constituted on the 25th September 1957 and it was done in exercise of the powers vested on the President by article 309 of the Constitution of India. The qualifications are laid down in 2(c) which reads: "Qualified legal practitioner" means in relation to recruitment to grade III of the service, an advocate of the High Court who has practised as such for at least ten years, or as an attorney of the High Court of Bombay or Calcutta, at least for eight years; and in relation to grade IV of the service, advocates of the High Court who have practised before the High Court for seven years and attorney for five years.

Therefore, a man who enters a Central Legal Service has already considerable legal training. He has passed his degree examination and has spent five or seven years in the judicial service or in the profession. Such a man is exempted from the qualifying examination.

Under the present law, all the practising advocates are exempted from passing the qualifying examination. It is only those who will enter the profession henceforward who would have to pass the qualifying examination which the profession thinks is absolutely necessary.

As I said, all the practising lawyers today are exempt from that examination. There are persons who have entered either the judicial service or who have enrolled themselves in the legal profession. They might, after their retirement or their resignation or discontinuance for any other reason like to enter the profession. For them a similar exemption is being extended. It is being extended to a class of persons who would certainly be granted an exemption. Therefore, there is no question of discrimination as Shri V. P. Nayar apprehended yesterday. I pay my tribute to him though he is not here. I have always listened to him with interest and profit and I can assure the House that many of us would certainly miss his fine presence, his melodious voice and words of ripe wisdom. I hope his apprehension about his own health is not true and that he will continue to serve the society and the profession for a long time to come.

As regards the view taken by the State of Maharashtra, as I said, an appeal could have been filed by the All India Bar Council. But since it might take considerable time to sit up we have thought it fit to interfere by way of an amendment. I find from my papers that an amendment in this respect has been tabled by Shri Oza. I had myself given notice of that amendment, but I find that Shri Oza's amendment is very much better than mine. I would certainly have accepted it in the form in which he has given it, but after he gave that amendment I myself have given some thought to it and I would like to make certain minor suggestions or modifications to his amendment, and if he is pleased to accept the same I will certainly accept his amendment. That would obviate all the difficulties which have arisen.

I, therefore, commend the motion for the acceptance of the House.

**Mr. Chairman:** The question is:

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

*The motion was adopted.*

**Mr. Chairman:** We will now take the Bill clause by clause.

**Clause 2— (*Amendment of section* 24)**

**Mr. Chairman:** There is an amendment standing in the name of the hon. Minister, but he has just now stated that he has no desire to move it.

**Shri Naushir Bharucha** (East Khandesh): It is a formal amendment.

**Mr. Chairman:** Is he moving it.

**Shri Hajarnavis:** That will come later, Sir.

**Mr. Chairman:** Is the hon. Minister talking about some formal amendment? There is no need for it, I think. Already in the Bill "1962" is there, and no amendment is needed.

**Shri Oza** (Zalawad): I beg to move:

Page 1,—

*for* clause 2, *substitute*—

'*Amendment of section* 24.—in section 24 of the Advocates Act, 1961 (hereinafter referred to as the principal Act), in sub-section (1),—

(i) in paragraph (ii) of the proviso to clause (d), for the words "is a member", the words "is or has been a member" shall be substituted;

(ii) the following Explanation shall be inserted at the end namely:—

"*Explanation.*—Where a person passes an examination for a degree in law held by a University in India, he shall be deemed to have obtained a degree in law within the meaning of this sub-section on the date on which the results of that examination are published by the University on its notice board or otherwise." (3)

The hon. Minister has agreed to accept my amendment. It is also self-explanatory and I do not think an elaborate speech is necessary in support of the amendment. As he has rightly pointed out in his speech, when a person passes an examination he should be deemed to have got his degree and he need not wait till the convocation is held and he actually gets the degree. In section 24 of the parent Act we find that people are entitled to be enrolled as advocates if they obtain a degree before the appointed day. It may be that the convocation takes place after the appointed day, that is in relation to that, and in that case there may be some hardships to those persons. Therefore, the passing of the examination is the crucial date. Since the hon. Minister has accepted the amendment, I do not think I need say anything more on this.

**Shri Hajarnavis:** As I said, I am prepared to accept the amendment moved by my hon. friend with the following modification.

I beg to move:

'That in the amendment moved by Shri Ganshyamlal Oza, printed as No. 3 in List No. 3 of Amendments,—

*for* the Explanation, the following shall be *substituted*—

"*Explanation.*—For the purposes of this sub-section, a person shall be deemed to have obtained a degree in law from a University in India on the date on which the results of the examination for that degree are published by the University on its notice board or otherwise declaring him to have passed that eamination'." (4)

I will accept it in this form.

**Shri Oza:** That is only a question of form and I will agree to that form.

**Shri Prabhat Kar:** I do not know whether the hon. Minister has seen that in the degrees issued by the Maharashtra University there is no date for passing of the examination. It only says: University's examination held on such and such date—passed. Here the wording is: "We, the Chancellor etc.....and so-and-so has been examined for the degree of Bachelor and he has been placed in such-and-such degree and such-and-such class has been conferred on him on this day of such-and-such month

of the year". There is no date of passing of the examination in the Maharashtra degree.

**Shri Oza:** That is why the amendment is necessary. It may be that six or eight months after the passing of the examination the convocation may be held.

**Mr. Chairman:** I will now put the amendment moved by the hon. Minister to the amendment of Shri Oza.

**Dr. M. S. Aney** (Nagpur): It is a substitute amendment.

**Mr. Chairman:** No. So far as the Explanation is concerned, the hon. Minister has modified certain words. So it is not a substitute amendment.

The question is:

'That in the amendment moved by Shri Ganshyamlal Oza, printed as No. 3 in List No. 3 of Amendments,—

*for* the Explanation, the following shall be *substituted*—

"*Explanation.*—For the purposes of this sub-section, a person shall be deemed to have obtained a degree in law from a University in India on the date on which the results of the examination for that degree are published by the University on its notice board or otherwise declaring him to have passed that examination'." (4)

*The motion was adopted.*

**Mr. Chairman:** I will now put Shri Oza's amendment, as amended.

The question is:

Page 1,—

*for* clause 2, *substitute*—

'Amendment of section 24.—In section 24 of the Advocates Act, 1961 (hereinafter referred to as the principal Act), in sub-section (1),—

(i) in paragraph (ii) of the proviso to clause (d), for the words "is a member", the words "is or has been a member" shall be substituted;

(ii) the following Explanation shall be inserted at the end, namely:—

"*Explanation.*—For the purposes of this sub-section, a person shall be deemed to have obtained a degree in law from a University in India on the date on which the results of the eamination for that degree are published by the University on its notice board or otherwise declaring him to have passed that examination."

*The motion was adopted.*

**Mr. Chairman:** The question is:

"That clause 2, as amended, stand part of the Bill."

*The motion was adopted.*

*Clause* 2, *as amended, was added to the Bill*

*Clause* 3 *was added to the Bill*

**Clause 4**— (*Insertion of new sections* 58 *and* 59)

**Shri N. R. Muniswamy:** I beg to move:

Page 2,—

*after* line 12, *add*—

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

[Shri N. R. Muniswamy]

The hon. Minister has a slight misconception of what I urged during the First Reading. I do not have any quarrel that the advocates on record should not pass an examination. They have to pass. They should have also to establish an office in the City of Delhi so that notices may be served and the date of adjournment fixed into consent. All these things must be there. My only point is that in 1959 when they passed this rule they allowed the other advocates that if they so chose they could, without passing any examination, enrol themselves as advocates on record. This position was made clear to them, and many of them have availed of this facility. But, unfortunately, some of them have not been able to avail of it due to certain reasons. Of course, they cannot be excused, because ignorance of law is no excuse. But I would submit that since we have opened the flood-gates to allow them to enrol themselves as advocates on record, without sitting for the examination, we should view their cases with sympathy. Of course, the question of having an office in the city of Delhi etc. must be insisted upon. They must have an office in Delhi. I am limiting the scope of my amendment only to a particular purpose, namely that they should not be asked to sit for the examination. Earlier, we had allowed them to enrol themselves as advocates on record, without sitting for the examination. Simply because they failed to do so within a stipulated time, why should it now be insisted upon that they should sit for the examination? They must be given exemption from sitting for the examination.

My point here is that they must be given such an exemption that even though the time allowed is over, they will not be precluded from enrolling themselves as advocates on record after 1959, for the first time, since they were already on the record as advocates, and they were already having the facility which they had not availed of after 1959. I submit that his exemption could be given to them under the rule-making powers. If it is considered necessary, some penalty also be may be provided for. I am limiting the scope of my amendment only to this.

I am not saying that the other things should not be insisted upon. They must have their permanent residence here, they must have a clerk and so on. All that I am saying is this that those advocates who are to get themselves enrolled now for the first time, who were already on the record under the Supreme Court rules, and who failed to get themselves enrolled in time now may be exempted.

The wording of my amendment may appear to be somewhat comprehensive, and it may give the impression that the exemption would extend to other things also; it may appear as if it seeks to provide that they need not have their office or establishment here, or they need not have a clerk and so on. But I am limiting my amendment only to the exemption from sitting for the examination. The draftsman is there. And he can redraft it so as to bring out this idea more clearly.

It is not as if these advocates are not able to understand the Limitation Act or the Constitution or the Civil Procedure Code and so on. They have already gone through these things. As a matter of fact, all advocates in other High Courts have to pass an examination; they have to sit for the examination, and they have to pass the apprentice test. So, they have finished all these things. But, here, in the Supreme Court, they have got the old tradition of maintaining what the original side of the High Court was having in Madras, Bombay and Calcutta etc.

Evidently, I had not made myself clear when I spoke during the gene-

ral discussion and probably I gave the impression that I wanted exemption from all the requirements. I want exemption only from sitting for the examination and not from other things in respect of thos persons who are already there as advocates on record; for them alone exemption may be given and not for others. That is the only short point which I want to make. I hope when the time comes for framing the rules, the authorities may be requested to consider the cases of these persons very leniently and make proper amendments in this regard.

**Mr. Chairman:** The amendment is now before the House.

**Shri Hajarnavis:** I regret to say that for the reasons which I have already mentioned to the House, I am not in a position to accept the amendment.

**Mr. Chairman:** Does the hon. Member press his amendment?

**Shri N. R. Muniswamy:** Yet, let it to be put to vote.

**Mr. Chairman:** I shall now put amendment No. 1 to the vote of the House.

*Amendment No. 1 was put and negatived.*

**Mr. Chairman:** The question is:

"That clause 4 stand part of the Bill."

*The motion was adopted.*

*Clause 4 was added to the Bill.*

*Clause 5 was added to the Bill.*

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

**Shri Hajarnavis:** I beg to move:

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

**Mr. Chairman:** Motion moved:

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

**Shri Braj Raj Singh:** May I seek a clarification?

**Shri Hajarnavis:** I am sorry I did not give the clarification which I had promised. If my hon. friend were to turn to section 57 of the Act, he will find that it reads thus:

> "Until a Bar Council is constituted under this Act, the power of that Bar Council to make rules under this Act shall be exercised—
>
> (a) in the case of the Bar Council of India, by the Supreme Court;
>
> (b) in the case of a State Bar Council, by the High Court."

So, the rules under section 24 of the Act were made by the various High Courts. We gave them model rules, we supplied them with model rules so as to enable them to proceed with the enrolment quickly. The High Courts did frame their own rules, and the elections have been held, and the enrolment is proceeding under the State Bar Council.

**Shri Braj Raj Singh:** Does the hon. Minister mean to say that the model rules which were provided by Government have been accepted by the High Courts?

**Shri Hajarnavis:** They may have changed them. They could change them, because the power was with the High Courts. They could change them to any extent; they could change them wholly. These model rules were sent only by way of assistance to the High Court.

If my hon. friend is interested in any particular State I could tell him the date on which that State Bar Council was formed.

**Shri Braj Raj Singh:** I would like to know in respect of U.P. and Delhi.

**Shri Hajarnavis:** In the case of U.P., it was formed on 3rd December, 1961, and in the case of the Union Territory of Delhi, it was formed on 1st December, 1961.

**Shri R. C. Sharma** (Gwalior): What about Madhya Pradesh?

**Shri Hajarnavis:** As regards Madhya Pradesh, it was formed on 16th December, 1961.

**Shri Braj Raj Singh:** Since the hon. Minister announced yesterday that even the West Bengal Bar Council has been constituted, does he hope to get the All India Bar Council constituted very early?

**Shri Hajarnavis:** I join the hon. Member in the hope. All that we can do is to hope that it will come into existence immediately.

**Mr. Chairman:** The question is:

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

*The motion was adopted.*

---

**13.27 hrs.**

## AIR CORPORATIONS (AMENDMENT) BILL

**The Deputy Minister of Civil Aviation (Shri Mohiuddin):** On behalf of Dr. P. Subbarayan, I beg to move:

"That the Bill further to amend the Air Corporations Act, 1953, as passed by the Rajya Sabha, be taken into consideration."

The proposed amendment to section 18 of the Air Corporations Act has aroused opposition from some quarters. I hope there is no opposition in this House to this amendment.

It has been alleged that this amendment is a retrograde step, that it will lead to denationalisation of air services and that it is against the terms of the Industrial Policy Resolution. All possible motives have been attributed to the proposed amendment. I would request hon. Members not to read into the amendment anything more than what is really intended.

I wish to state categorically that Government stand by the Industrial Policy Resolution, and there is no change, not even the slightest shade of an intention to introduce a change, in that policy.

You may recall that on the 5th December, 1961, there was a discussion in this House on the service started between Bombay and Baroda by a non-scheduled operator. During the discussion I had stated that Government had not given specific permission for the operation of the Bombay-Baroda service, as no permission was necessary under the permit issued to the non-scheduled operators. I had also stated that I had no knowledge about it. The hon. Speaker was surprised at that time at my answer that I had no knowledge about it. I had explained that under the licence issued to them, they could start a service between two points not served by the IAC. In November, 1961, there was no service operated by the IAC between Bombay and Baroda. Consequently, under the permit, the private operator could run a non-scheduled service until such time as the IAC stepped into the field. As soon as we decided to run the Bombay-Baroda service ourselves, the private operator had to withdraw.

Questions have also been raised in this House regarding the meaning and significance of the so-called non-scheduled services operated by private operators under a permit granted by the Central Government. Views have been expressed that the frequencies and timings of the non-scheduled services have been such that they can be regarded as scheduled services, thereby impinging the provisions of the Air Corporations Act. It was obvious that if a non-scheduled operator ran about