

and Transfer of Undertakings) Bill, 1977—2 hours.

(ii) The Gresham and Craven of India (Private) Limited (Acquisition and Transfer of Undertakings) Bill, 1977—1 hour.

(iii) The Indian Iron and Steel Company (Acquisition of Shares) Amendment Bill, 1977—2 hours.

(iv) The Enemy Property (Amendment) Bill, 1977—1 hour.

2. Discussion on the Resolution regarding report of the Railway Convention Committee—one day (On yesterday, the 6th December, 1977).

श्री उपसभापति : सदन की कार्यवाही 2 बजे तक के लिए स्थगित की जाती है ।

The House then adjourned for lunch at three minutes past one of the clock.

The House reassembled after lunch at five minutes past two of the clock, **Mr. DEPUTY CHAIRMAN** in the Chair.

THE ADVOCATES (AMENDMENT) BILL, 1977—contd.

SHRI D. P. SINGH (Bihar): Mr. Deputy Chairman, Sir, when we passed the Advocates Bill, we did it on the knowledge that the head of the Bar, the leader of the Bar, would invariably be appointed as the Advocate-General in the various States and, therefore, it was not unreasonable to assume that such a person, the leader of the Bar, would automatically be the Chairman of the Bar Council. But, I congratulate my hon. friend, the hon. Minister for his anticipation because under the existing Government he feels that preferment goes not by ability but by petty political considerations. All right, by election whoever is considered suitable may come in; we have no objection whatsoever to this in the changed circumstances.

I also congratulate the hon. Minister for one of the most brilliant Judges that he has given to the Supreme Court, i.e., Justice D.A. Desai, in spite of all the criticism. I have known him in the High Court and I have known him functioning here in the Supreme Court. He is easily one of the most outstanding and most brilliant Judges, apart from having the correct social perspective that would be needed.

But, Sir, having said so, it is equally my duty to mention that in the matter of appointment of Judges of the various High Courts a little more circumspection would be needed. Much more is expected of him by the junior Bar in the Supreme Court who have formed an association and, I am told, they are leading a deputation or a delegation to wait on the hon. Minister because they have many many legitimate grievances and their rights and claims are being sometimes not properly looked into and they need justice.

The hon. Minister—well, I do not know advertently or otherwise—has created a situation, or is a silent spectator to a situation, wherein the Bar is the victim and the Bar is the casualty. In this connection I might refer to one instance, namely, what is happening in the Shah Commission. The procedures that are being followed by the Shah Commission are unknown to law anywhere. We have a codified law here, the law which would regulate the procedure. The Constitution guarantees that whenever and wherever the reputation of any person is in jeopardy, in doubt, in difficulty sought to be maligned, that person has the right to be defended by a counsel; that is the provision of law. But then that is sought to be circumvented by holding what is not an inquiry but what is said to be an investigation, primarily the job of a policeman, but that job is being arrogated by a Commission. Strangely, Sir, reports are being made, reports are sought to be put on affidavit, on oath and those reports are being read

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out and the protection of a lawyer for the purpose of cross-examination is being denied. Strangely, we have never heard an investigation can be secret, confidential and surreptitiously a person goes and inquires into the matter at various places, various houses, and tries to find out the truth.

But the anxiety for finding out the truth is such...

THE MINISTER OF PETROLEUM, CHEMICALS AND FERTILIZERS (SHRI H. N. BAHUGUNA): You appear to be in love with surreptitious ways.

SHRI D. P. SINGH: Yes, the hon. Minister is operating in a field which is beneath the surface of water, in the bottom of the sea. What objection can he have to this now?

THE MINISTER OF STEEL AND MINES (SHRI BIJU PATNAIK): I am coming to my seat; it is becoming interesting now. I was being thrown out from there.

SHRIMATI PURABI MUKHOPADHYAY (West Bengal): I told him if he shouts from here, I will throw him.

SHRI D. P. SINGH: In these circumstances, what is happening today is complete denial of justice, complete denial of the procedures guaranteed by the Constitution. Peculiarly, what is said is: "Yes, I am holding an investigation". Now, in that investigation, you have appointed a Commission of Inquiry and, therefore, you must hold the procedure which is relevant to the inquiry and then you hold, what you yourself say, an inquiry. In that investigation, what happens is, he says: "I am trying to find out evidence *prima facie* for the purpose of determining whether I will hold an inquiry." Now, you are investigating into hundred matters, out of which ultimately you may de-

cide about only 90 matters yourself, or you decide about 10 matters. Now, what about those 90 matters in which there is the glare of publicity day in and day out of the machinery at your command? The television, the radio are all used to denigrate the reputation of a person. Now, should the Law Ministry be a silent spectator to such a thing? Have they agreed to it? Have they envisaged a situation like this? It is completely amazing, to say the least, Sir... (Interruptions) Under the Constitutional guarantees upon which we have the jurisdiction of this House, I seek your indulgence to see that these injustices, these deliberate injustices are no longer perpetrated.

MR. DEPUTY CHAIRMAN: Please say something about the Bill also

SHRI RANBIR SINGH (Haryana): Let him say, Sir. It is very interesting.

SHRI D. P. SINGH: It is the denial to the advocates around which I am building my argument. I am saying about the Bill.

SHRI RANBIR SINGH: How can he forget that?

SHRI H. N. BAHUGUNA: How can he forget that it is the hang-over of Indira Radio?

SHRI D. P. SINGH: What happens, you kindly see. No right of cross examination of the persons who are appearing is given; no right to put up the defence is being allowed. Something is prepared, something cooked up and something comes and a person is not in a position to refute the allegation and then it is published day in and day out. Strangely, Sir, the greater grievance is this that Mr. Justice Shah himself said that he had consulted the Law Ministry in this regard. Now, the Law Ministry and my friend of eminence, my learned friend, the hon. Minister, it is surprising, having appointed a Commission, according to the admission of the Commission itself,

were hand in glove and in league. What business has the Law Ministry got to advise the Commission? And, Sir, the question arises in this manner. Article 74 of the Constitution says: No Court can inquire into what advice was given to the President. Article 75 along with the Third Schedule says that whatever a Minister comes to know in his capacity as a Minister cannot be disclosed at all. In spite of these two constitutional sanctions, the Law Ministry goes and advises that you must do it in this particular manner and that there is no secrecy about it. Is the oath that is guaranteed by the Constitution, is the secrecy which is guaranteed by the Constitution, is it going to be whittled down by an executive order, by the advice of the Law Ministry in this manner? In fact, I would have expected the hon Minister, the Law Minister, eminent as he is, to have this matter referred to the Supreme Court for advice under article 143 of the Constitution. The President could have given the advice whether such a matter can be enquired into at all, whether a Minister can be obliged to break his oath, break the secrecy, because, Sir, herein arises a political question, a question of prime importance in regard to the functioning of this House and in regard to the functioning of the Cabinet system of Government. You are in a situation, you are creating a situation, whereby it exposes all the decision-making processes to the scrutiny of a commission and is bound to make the future decision-making by any Government difficult, if not impossible. Who is going to decide whether the Cabinet has given the correct advice? Many unpleasant decisions, many unpleasant opinion or advice, have to be given, which in retrospect may appear to be unpalatable or avoidable. But a person having taken the oath of office, takes the full responsibility for running the Government and in the interest of the people gives the correct advice, however, unlikeable or unpalatable it may be. But it is that

political principle, it is the principle of running the Government in a democratic set-up which is in jeopardy, which is in risk, today. It is on that basis, Sir, I would like to invite the attention of the House. Is it not incumbent upon the Law Ministry that it should function independently? I have made serious allegations that the tentacles of the Home Ministry is spreading far and wide. Today, the External Affairs Ministry is under the thumb of the Home Ministry. The External Affairs Minister had announced that passports would be issued freely. After ten days, the order is countermanded and now there has to be an investigation by the C.B.I. I feel that this may be so in the case of the Law Ministry also. The Law Minister, left to himself, I have no doubt, would not have succumbed to this kind of pressure, unless the pressure was so great, as to impel him to a course which is not guaranteed and which is forbidden by the Constitution and which is forbidden by the Acts. Sir, in this context, if I may point out...

SHRI H. N. BAHUGUNA: When will you talk about the Bill?

SHRI RANBIR SINGH: It is the Advocates Bill. It is a free-for-all.

SHRI H. N. BAHUGUNA: He is not interested in the Bill.

SHRI BIJU PATNAIK: He is a devil's advocate.

SHRI D. P. SINGH: Sir, about a fortnight back, the report of the Mathew Commission was laid on the Table of this House. He was a Supreme Court Judge and he took into account the constitutional and legal provisions. If, ultimately, there is anybody whom you have to try, you have to keep in mind article 20, clauses (1), (2) and (3). You cannot force a person into testimonial compulsions. You cannot ask him to give an oath or say something on oath which he is not bound to say. This might ultimately land you in trouble. So, all these things come

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within the ambit of salutary Constitutional provisions that I am trying to place for consideration of the hon. Law Minister.

Sir, these are the broader things. When you are making this provision, it appears, you are making it for the purpose of reforming the judiciary, the people who will work in running the judicial process, the advocates, the judges at the end and so on and so forth. But then what is the use of training good lawyers by examinations? The Law Ministry itself is a party to a procedure which is unknown to the Law and unknown to the Constitution and is creating a machinery whereby the reputation of the citizens is in jeopardy. (*Time bell rings*). Sir, I will take only two or three minutes. I am winding up. These are very serious things.

THE MINISTER OF STATE IN THE MINISTRY OF LABOUR AND PARLIAMENTARY AFFAIRS (DR. RAM KRIPAL SINGH): Nothing on the Bill.

श्री डी० पी० सिंह : सारी बात कह गये, तब भी नहीं समझे ? एडवोकेट्स का ही बिल है, उसकी ही बात कह रहा हूँ। जरा समझिये, जरा गौर से देखिए। ला मिनिस्टर साहब समझ रहे हैं और मुस्करा रहे हैं।

It is in this context that again I would like to remind, through you, the Law Minister that he will see to it, he may see to it and we request him to apply his mind and see to it. The Commissions are not appointed to function as a wing of the Government and to further the interest of a political party. Commissions are appointed to uphold independence to find out the truth for the purpose of justice and all that. In a functioning of a Commission if all that is being denied, what is the use of making a law whereby a good advocate will be turned out from a court. You are creating a machinery

where the advocates will be the first casualty. They are shut out from courts with the result that there is no cross examination. Witnesses, who go, are helpless, defenceless, they are degraded. Finally, Sir, again I reiterate that nothing must be done which might impair the functioning of the future Government.

Thank you.

SHRI BIR CHANDRA DEB BURMAN (Tripura). Mr. Deputy Chairman, Sir, I support the Bill, I think the Bill should have been passed earlier—better late than never—because had it been passed earlier the articulated clerks could have appeared in the Attorneyship examination held in June 1977. That would have done more justice to them. However, it is better to be late than never. I think this Bill should now be processed so that the articulated clerks could sit in the Attorneyship examination to be held in January 1978.

Mr. Deputy Chairman, Sir, at the time when the Amendment Bill, 1976, was processed in this House, we, on behalf of our party, had protested about this clause, that is, nomination of Chairmen in place of the elected Chairmen, but we are sorry, our protests remained unheeded to. We are glad that now the proviso for elected Chairmen...

SHRI KALYAN ROY (West Bengal): Two speeches are going on; one by Mr. Burman and the other by Mr. Patnaik.

MR. DEPUTY CHAIRMAN: And the third by Mr. Kalyan Roy.

SHRI BIR CHANDRA DEB BURMAN: Self-government need no substitute. It is not always be a good government. We may elect some bad people and the consequences will be bad. We may elect some good people and the consequences will be good. But for that reason no one will be willing to sacrifice self-government for a nominated government. So it is

no solution that a nominated Chairman will solve every thing. Rather, we think that an elected Chairman elected from the best intellectual brains, will lead to the betterment of these Bar Councils. Therefore, we support this provision of giving elected Chairman to the Bar Councils.

Sir, it is said that money plays a great part in the elections. I think it is a curse of the capitalist system. So long as the capitalist system will be there, the money will play an important part but not the dominant part in election. If money were to play a dominant part, this Government would not have come into existence. The Janata Government would not have come into power by throwing out the previous Government. So in the capitalist system, money plays an important part but it is not the only part in election. So an elected Chairman is the only solution for the betterment of our Bar Councils.

Sir, in this connection I want to say that if we want to improve the legal system, we must try to look into the question of legal aid to the poor. In Sections 7 and 8 of the Advocates Act, one of the functions of the Bar Council is to give legal aid to the poor, to organise legal aid to the poor in the prescribed manner. That is also the objective of the State Bar Councils. I must say that unless and until Government reduces the court fee, we will not get justice. Unless and until the required court fee is paid you cannot get justice. This is the most nauseating feature. The Law Commission have suggested in their recommendations that the court fee must be nominal; it must not be heavy. But the State Governments are vying with each other in increasing the court fee. Unless and until the court fee is minimised and only a nominal court fee is taken, there cannot be any justification to say that we are going to prescribe a procedure for legal aid to the poor. The Governments should show the way and then the advocates will come forward

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to minimise their fees and costs. Therefore, a procedure should be evolved by which legal aid to the poor can be made effective. It is only then that the Bar Council of India and the State Bar Councils can come in. The required funds have to be given to them to translate this into action. So we all should think over this problem, and this is the only problem that faces us. We have said in our Constitution that we must extend justice—social, economic and political—to the weaker sections of society. There is also the Directive Principle that the weaker sections will get justice. These will remain only pious words unless and until we lay down a detailed procedure in this respect and give adequate funds to Bar Council of India, the State Bar Councils and also the Bar Associations at different places. These should be taken into confidence in making a detailed programme and in working it out.

So whatever reform you may make—you have merged pleaders, mukhtars, advocates etc. into just advocates—that will not solve the problem. The problem will be only solved when the Government comes out with a determined effort to make out a programme whereby we can give justice to the poorer section, to the weaker section of our society. Now justice is limited only to the influential section of our society. Those with money can purchase justice. They can appoint the best lawyears. They know that whatever wrong they may do, whatever injustice they may do they will ultimately win because they can appoint the best lawyers of the country.

SHRI KALYAN ROY: They have black money.

SHRI BIR CHANDRA DEB BURMAN: Yes, they can dole out black money. So this is a curse on our society and until and unless we come to a determined programme to fight out this evil a mere Advocates Act will not do.

[Shri Bir Chandra Deb Burman]

So far as the question of extending the period from four years to five years is concerned, I have nothing to protest against. It is immaterial whether it is for four years or for five years. Shri Banerjee has spoken about those enrolled for Articleship, for Apprenticeship but have not given any examination. Here one of the provisions is that those who have given the preliminary examination they will be given a chance for appearing Intermediate and final examination. But there are persons who have completed the course, but have not yet appeared in any examination, Preliminary, Intermediate or Final. But they have registered their name as apprentice, their case should also be considered. They may be given a chance for appearing in the examination to be held before 31.12.1980. With this observation I support the Bill.

MR. DEPUTY CHAIRMAN: I think we have exceeded the time limit for the Bill. Therefore, I would now request the Law Minister to reply.

SHRI SHANTI BHUSHAN: Mr. Deputy Chairman, Sir...

SHRI L. R. NAIK (Karnataka): Sir, I may be given four minutes.

MR. DEPUTY CHAIRMAN: We have already exceeded the time limit. There are a number of names. We must be conscious of the time limit that is allotted to us.

SHRI SARDAR AMJAD ALI (West Bengal): I do not want to make a speech. I just want to make a small submission.

SHRI BIJU PATNAIK: We have already exceeded the time limit.

SHRI SARDAR AMJAD ALI: My honourable colleague has made some interesting remarks. I think the Law Minister referred to some of the Members from my Party. They would also like to place their viewpoint. I

request you to kindly consider whether they should not be given time.

SHRI L. R. NAIK: May I also submit that Mr. D. P. Singh made a very interesting point about the working of the Shah Commission? As a matter of fact, the working of the Shah Commission is so derogatory to the existing principles of law it would be necessary for this House to take cognizance of the matter and give their own reaction. I, therefore, request that since the matter raised by Mr. D. P. Singh is so interesting the House may be give full time separately to discuss the matter.

श्री कल्पनाय राय (उत्तर प्रदेश) :

आदरणीय उपसभापति महोदय, आज पहली बार इस सदन में कांग्रेस पार्टी की तरफ से एक व्यक्ति बोला और उधर से एक व्यक्ति। ऐसे में ही समय चला गया। लोक सभा में पन्द्रह-पन्द्रह स्पीकरों ने भाग लिये।

MR. DEPUTY CHAIRMAN: Order, please. Yes, Mr. Minister.

SHRI SHANTI BHUSHAN: Mr. Deputy Chairman, Sir, I am very happy that the hon. Members never allowed this debate to become dull although the subject-matter of the debate was a Bill which, I thought, would be rather dull. And so far as the hon. Member, Shri Dilkishore Prasad Singh, was concerned, repeatedly the other hon. Members were asking him to say something about the Bill but he probably kept on thinking that he was being presented with some bill of which he had to make payment and he, therefore, completely evaded the Bill.

SHRI KHURSHED ALAM KHAN (Delhi): He was making an interesting point.

SHRI SHANTI BHUSHAN: Now, Sir, the first point which has been made by the hon. Member, Shri B. N. Banerjee, was as to why all those who had signed their articles before the

31st December, 1976 are not being permitted to take these examinations up to 31st December, 1980. Now, Sir, it is not that this matter escaped our attention. We devoted very careful thought to this problem and that was the reason why the Ordinance could not be brought earlier. Of course, in the first session, which was before June, it was not possible to bring any Bill. It could have been only by means of an Ordinance, if at all, that provision could have been made for these people taking an examination which might have taken place in June, but this was a complicated problem. We had to study it in all its depth, various facets had to be examined and then only a decision could be taken.

Now, Sir, the information that I have with me indicates that there are 56 persons who had signed articles before the 31st December, 1976 but who had not passed even the first examination, the preliminary examination, before that date and the question is as to whether these persons should also have been given the facility to appear in and pass three examinations before 31st December, 1980. Now, Sir, the information indicates that out of these 56 persons, even though some of them signed articles as far back as 1970, four signed in 1971, some again signed in 1972, as many as 11 signed in 1973, nine signed in 1974, 15 signed in 1975 and 13 signed in 1976. Yet, out of them, 48 were those who never even sit for an examination, what to say of passing. They never even attempted to sit for an examination. Of course, in the Bar we have known many people who come to the High Courts because the High Courts or the various courts are like clubs and therefore it is very enjoyable to go to these clubs and gossip with other people. They are not serious about this profession, namely, practising law. So, many of these people who might have signed these articles as far back as 1970, if they did not even make an attempt for six years even

to sit for a single examination, then, of course, it can be concluded that they were not really serious and they might have been well provided for otherwise. Only eight persons made an attempt to sit for an examination and they failed so that it could be concluded that there was hardly any point for making provision for these people as that they were not really suffering any hardship. And if as was just told to this House by a very experienced Member, Mr. Banerjee himself these examinations are much tougher than the examinations for the degree of LL.B then, in that case, it is expected that these gentlemen can sit for the LL.B examinations instead of passing these three examinations, pass those other three examinations for LL.B. which are easier and therefore, get admitted as advocates because even after passing these examinations they would have become advocates. So it is clear that no hardship has been caused to them and that is why this view was taken.

Then the point made by the hon. Member, Shri Dhabe, was that this is instance of the misuse of the Ordinance-making power. Now, so far as the spirit behind that criticism is concerned, I welcome the spirit because, so far as this Government is concerned, it does believe that the power of issuing an Ordinance should not be lightly used and should be used rarely when it is urgently needed.

But then perhaps the criticism has been levelled under some misapprehension. In the other House, if I may be permitted to make a mention, an hon. Member, Shri Som Nath Chatterjee, got up and said that he welcomed it because this was an occasion for a very proper use of the exercise of the power of issuing an ordinance and that, if the ordinance had not been issued, the Government would have been failing in its duty. And the reason is this. It is true that some people's approach may be that after all if some persons, some poor persons, lose six months of their life-

[Shri Shanti Bhushan]

time unnecessarily, without any utility, it does not matter, it is not a matter of emergency.

श्री कल्पनाथ राय : जो पास करते हैं क्यों पास करते हैं ?

SHRI SHANTI BHUSHAN: Now, Sir, what I was saying was that, if the ordinance had not been issued in the beginning of November, then in that case the position would have been that it would not have been possible for an examination to be held in January and the examination would have been possible only in June. It is only because an ordinance was issued that these poor people could save six months of their life-time for utility. They would be able to become advocates six months earlier. Therefore, I dare say that this charge is not properly levelled and the ordinance issuing power has not been misused . . .

SHRI BIJU PATNAIK...and the Bill may be passed.

SHRI SHANTI BHUSHAN: No, Sir. I would say that some important matters have been raised and it is important that now that these things have been said, I should put the proper side of the picture before the House.

SHRI BIJU PATNAIK: To set the records straight,

SHRI SHANTI BHUSHAN: Now, Sir, I need not refer to all those matters, namely, that Attorney-General and Advocates-General are eminent people. Nobody disputes that they are not eminent people. Naturally, when somebody is appointed an Advocate-General he must be an eminent person. Otherwise, he would not be appointed an Advocate-General. But, at the same time, if, by virtue of the fact that he has been appointed Advocate-General by the Government, he automatically becomes entitled to preside over the Bar and become the

Chairman of the Bar Council which has important functions to perform, he would not wield that authority, he would not have that much moral authority to direct the affairs of the Bar as he would have got if he were elected by the willing consent of the members of the Bar. Therefore merely because a person is appointed Advocate-General, it does not make him incompetent to become Chairman.

AN HON. MEMBER. It is a debatable point.

SHRI SHANTI BHUSHAN: Very well. Now, if I may be permitted to mention my own case, I had the privilege of having been elected unanimously on two occasions as the Chairman of the Bar Council; I also happened to be an Advocate-General at that time. But, because I was elected I had the feeling that the members of the Bar would listen to something which I would say and they would be guided by the views that I expressed, the advice that I gave...

SHRI D. P. SINGH: The Bar would have listened to you even otherwise because you were eminent.

SHRI SHANTI BHUSHAN: No, Sir. That is the true basis of democracy when we say: All right. The mandate has expired. The person does not cease to be eminent. But the whole question is that he has got the feeling that he has the mandate and therefore he has to function on the basis of that mandate. Therefore, a person with the mandate of the Bar can function certainly more effectively than a person who does not have the mandate of the Bar and who can only say that, because the Government appointed him as Advocate-General, he should wield authority. And that is why, Sir, it was felt that there was no reason to disturb the autonomy of the Bar in this respect merely on the ground that elections have mischievous or bad things about them, and so on. Of course, every good thing may have other aspects. But, on the whole, one has to see that we

cannot discard the elective principle in this Government; nor was an attempt made. The members of the Bar Council are elected, but only in the matter of Chairmanship the members of the Bar Council should not have the authority to have their own Chairman and submit to the jurisdiction of such a Chairman, is something I have not been able to comprehend.

Then it was said that the elective process, even though it provides for proportional representation by the Bar to the Bar Council, does not make adequate provision for regional representation. But it occurs to me that, whenever proportional representation is provided, if the members of the Bar so want, if the electors so want, they can certainly utilise their first preference voter in such a manner as it will ultimately make for regional representation. If there is a particular member of members of the Bar practising in a region, then certainly they can decide to have their first preference votes cast in favour of one person from there, with the result that that region will get adequate representation in the whole Bar Council.

Then Sir, it was said that in these elections, even the issue of post cards etc. was expensive, that people are spending about Rs. 6,000 on the post cards and that the total expenditure comes to about Rs. 10,000 or Rs. 15,000. It may be happening in some cases, but I do not see any reason why it should happen. After all, the membership of a Bar Council is a means of serving the Bar and through the Bar of serving the people of the country. If that is so and if this office is taken in that light, there is no reason why a person should go about spending his money, valuable money, just for the purpose of placing himself in a situation in which he would be called upon to do service to the people without charging any remuneration for it. I feel that the best course for the Bar would be that the people should persuade others, people should be persuaded to serve the Bar that they must be nominated for the member-

ship of the Bar Council, not that the people should spend money and so on and so forth but that eminent persons and popular members should be elected because the people want them to serve the Bar. That way, therefore, the question of spending money should not arise.

Then, Sir, it was said that the function of legal aid to the poor and the welfare schemes for indigent, disabled and other advocates etc. are also the functions which have been entrusted to the Bar Councils. Now, Sir, I am very happy that a reference has been made to that through this debate. Attention of the members of the Bar Council and the Bar as a whole would be drawn to this fact that these are their functions, and that, therefore, they should come forward with measures so that these important functions could be discharged. I know some things are being done by various Bar Councils in various places. For instance, in U. P. there is a collective insurance scheme. Every member of the Bar automatically becomes entitled to that collective insurance scheme, and if any person happens to die at any time, his dependants get an amount which was earlier Rs. 5,000, and now, I believe—I am not quite sure about it—it is probably Rs. 10,000. So, in the event of any member of the Bar dying any time, his dependants, family members, are assured of Rs. 5,000 or Rs. 10,000. The premiums are very low. These are the things which the Bar can think about. Evidently, when we have recognised the autonomy and import of the Bar, it has done so much for the country as a whole even during the freedom struggle and so on. Then, there is no reason why the Bar cannot do all these things for its members. There are persons in the Bar who are well-to-do and so on so that the Bar will certainly be able to look after them in due course, and it should of course, it has gone a little slow in this direction. Perhaps we can express the hope that it will go faster in this direction so far as their welfare is concerned.

[Shri Shanti Bhushan]

Turning to legal aid to the poor, I would say that so far as legal aid is concerned, we know that a large section of the people in this country are poor and indigent. So many people, about 50 per cent of the people are living below the extreme poverty line. So, so far as legal aid is concerned, it is a problem of a very big magnitude. This magnitude cannot be minimised. Sometimes there is attempt to minimise it merely by setting up a few committees etc. here and there, as if the problem can be tackled that way alone. It is a very serious problem and it requires to be tackled in that way. Every one knows that there are financial constraints and so on. I am not saying that on account of the financial constraints, the problem has to be neglected. The problem has got to be tackled whatever the circumstances are. The best possible method has to be found out and formulated by a very clear study of its full implications with clarity of mind etc. It is a hazardous exercise, but without going into the matter very deeply, may I be permitted to say that ultimately so much will depend upon the goodwill of the Bar? The people of this country, I think, would rightfully expect from the Bar to rise to the occasion because ultimately, it depends only on utilisation and harnessing of the energies of the members of the Bar.

Now, the strength of the Bar has been given in this House as 1,80,000. I have no reason to suspect that the figure would not be almost accurate. If we have such a big force of members of the bar and a very large number of them are idle or at least comparatively idle, their energies can be harnessed with benefit to themselves as well as to the society, and a proper scheme can be formulated if the members of the bar would not grudge—I have no reason to believe that they would grudge—to make their services available for this work of legal aid to the poor, without taxing the society itself. So far as the other expenses of legal aid schemes

are concerned, namely having an office, a machinery and so on and so forth, certainly the State in any case should afford it. But so far as the expenses of lawyers are concerned, that is, expenses for the lawyers' energies *prima facie* it seems to me that only if the members of the bar would be willing to undertake this social duty, everyone of them—right from the top to the bottom, each one of them should perform his due share of this work of very important social service—only then perhaps this problem would be capable of being solved in its entire magnitude. I express the hope that such a thing would emerge.

Then, of course, that committee's report—the committee of Mr. Justice Bhagwati and Mr. Justice Krishna Iyer—has already been received. It is being studied in depth. After it has been studied, the Government would come forward with proposals and everyone will be consulted about it.

Then reference has been made to some Acts prohibiting the appearance of lawyers. From time time this has been said. Of course, this is a problem on which there are two views. It is said that there is some kind of litigation which probably is better conducted through negotiations—labour disputes and so on and so forth. So one view is: the technicalities of law are not to be gone into, it is only the common sense things which have to be understood. And if I mistake not, even the committee of Mr. Justice Bhagwati and Mr. Justice Krishna Iyer has recommended the setting up of panchayat courts where small matters, etc., without the assistance of counsel, can be settled. So that is a matter....

SHRI S. W. DHABE: Even in revenue tribunals under the land reforms legislation, lawyers are not allowed.

SHRI SHANTI BHUSHAN: I am not aware as to which are those revenue tribunals and which are those States where lawyers are not allowed.

SHRIMATI MARGARET ALVA (Karnataka): In Karnataka they are not allowed.

SHRI SHANTI BHUSHAN: Well, that is a matter where the hon. Members on the other side would be in a position to have the problem solved more easily than myself because if there is some Karnataka legislation, then in that case....

SHRI NAGESHWAR PRASAD SHAHI: That is a State law.

SHRI SHANTI BHUSHAN: That is what I am saying. Perhaps the hon. Members on the other side would be able to tackle this problem more easily than myself. In any case that is a matter which requires being looked into. But so far as labour courts are concerned, of course, I know that there is a provision that unless both sides agree, until then lawyers are not permitted. Now it is a matter of argument as to whether this is a good provision or a harmful one. In any case, since this is a controversial matter, I would not like to say more about it at this stage.

Then the hon. Member, Mr. Shahi, made some reference to the appointment of State Counsel in the various States. Now that is a matter for the States and the State Governments appoint their own counsel. Only one aspect I would like to point out. He suggested that the Bar Council could have a role in the appointment of the State Counsel. After all, the very basis of this system is that the client should have a lawyer of his choice. Now between the Government and its counsel, the relationship is the same as between a client and a counsel. Therefore, evidently the counsel has to enjoy the confidence of the client, the confidence of the Government also. But, at the same time, matters of efficiency, ability, etc. have to be kept in view. The hon. Member had said that consultation of the district judge and the district magistrate is normally insisted upon. Perhaps that is normally the proper way to find out whether the person would be able to deliver the goods. I do not see anything wrong in that system. Ultimately every system depends upon the human

element. So, if the human beings who work that system perform their functions properly, in that case everything turns out very well. Otherwise, merely by writing down something here and there....

श्री नागेश्वर प्रसाद शाही : मैंने निवेदन यह किया है कि जज के नाम की रिकमैन्डेशन परफार्मेंस के आधार पर होनी चाहिए न कि फेवररिज्म के आधार पर ।

SHRI SHANTI BHUSHAN: I see. What had been suggested was that. But perhaps it would not be practical, namely, to have all the lawyers and an analysis made of all the cases that they have conducted in the last five or ten years to see how and what has been the result and so on. No litigant, I believe, when he goes to engage a counsel, gets an analysis done of the performance of the counsel during the last ten years and sees how many cases the counsel had won and how many he had lost and so on and so forth . . .

SHRI NAGESHWAR PRASAD SHAHI: Government is not an individual. There is a difference between Government and an individual.

SHRI SHANTI BHUSHAN: But at the same time there is a much easier and better way. The reputation of a lawyer is a very important thing. The reputation speaks for itself, and if his reputation and honesty are kept in mind, then in that case I do not see there is any difficulty in selecting proper people for these appointments . . .

SHRI MOHAMMAD YUNUS SALEEM (Andhra Pradesh): No favour should be shown in these appointments.

SHRI SHANTI BHUSHAN: I entirely agree that it should not be a matter of a favouritism. I have not the slightest doubt about it. Every client would be well advised when he selects a counsel for himself, not to engage counsel in favouritism; otherwise, he does it at

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his own peril. Any client, even the Government, if it proceeds to select counsel on the basis of favouritism and nepotism, it will be doing it at its own peril because ultimately it is the Government which will suffer by having incompetent counsel representing it in courts . . .

SHRI NEGESHWAR PRASAD SHAHI: Again I say it is not the Government which suffers; it is the country which suffers. It is not the Minister who suffers; it is the country which suffers.

SHRI SHANTI BHUSHAN: Only some time back the honourable Prime Minister said, it is very hard to satisfy some Members. May I repeat the same thing and say that there are some honourable Members whom it is very difficult to satisfy?

Now, I am specially grateful to my friend, the honourable Shri D. P. Singh—Shri Dilkishore Prasad Singh—for having congratulated me on the appointment of one of the most brilliant judges to the Supreme Court, namely, Justice D. A. Desai. I must express my very grateful thanks to him for this compliment, for this support, and his appreciation, if I may say so with great respect to him, is very right, because I have also heard very high reports about his performance in the Supreme Court. However, having said that and having congratulated me on that appointment to the Supreme Court, although it was undeserved on my part because he should have congratulated the Supreme Court on that appointment, Shri Singh probably thought that as one of the eminent members of the opposition here, he had gone too far in giving such support to the Government and, therefore, he wanted to retract from it and come to the appointments to the High Courts. I expected him to say that even appointments to the High Courts which are being made, are being made very objectively and the best possible persons are being selected. In any case, I would like to

tell him that if any junior members of the bar, competent members of the bar, have a feeling that somebody has been neglected, perhaps they should try to catch the eyes of the Chief Justices of the various High Courts, because it is the Chief Justices of the various High Courts who make the selection, and, therefore, the initiative lies with the Chief Justices. Merely by catching my eye no purpose will be served . . .

SHRI MOHAMMAD YUNUS SALEEM: The difficulty is that at the time of selection, the Chief Justice closes his eyes and, therefore, you cannot catch his eye.

SHRI D. P. SINGH: If I may remind my honourable friend, the Law Minister, I used the expression. "A little more circumspection is needed in the matter." This has all the significance and I take responsibility for suggesting and using the words and I hope my learned friend will appreciate it in this sense that I am trying to convey. I will however, privately talk to him.

SHRI SHANTI BHUSHAN: Very well. But otherwise, I can assure the honourable Member that the main initiative lies, as I said earlier, with the Chief Justice of the High Court. Perhaps the honourable Member referred to the members of the bar practising in the Supreme Court. They are certainly in a rather peculiar situation, namely, since they are practising in the Supreme Court normally, they find it difficult to catch the eyes of the Chief Justices of the various High Courts. This also happens in another category, namely, members of the Income-Tax Tribunal. Some of the members of the Income-Tax Tribunal are very eminent judges, persons who have gone from the Subordinate Judicial Services of different States they also know and feel that they are not directly before the eyes of the Chief Justices since under the procedure the initiative is to be taken by the Chief Justices of the High Courts. There-

fore, may be, some eminent members of the Supreme Court Bar get neglected. Then certainly that requires a little more attention so that members who are practising in the Supreme Court do not get neglected . . .

3 P.M.

SHRIMATI MARGARET ALVA:

Wherever they practise, women never seem to catch the eyes of the Chief Justice.

SHRI SHANTI BHUSHAN: I am very happy that the hon. Member, Shrimati Margaret Alva, has raised this point because she must have noticed that now, recently, lady advocates have started catching the eyes of too many people . . .

SHRIMATI MARGARET ALVA: I must say that they succeed in catching the eyes of only the Law Minister.

SHRI SHANTI BHUSHAN: In the last session I was happy to say that two lady advocates, for the first time, had been appointed Judges of the Calcutta High Court. And I am very happy to say that I have read in the newspapers this morning—I consider the newspapers reliable—that another lady advocate has been appointed Judge of the High Court and some birds come and tell me that more lady advocates are to be appointed in the near future.

SHRIMATI MARGARET ALVA: Because they have caught the eyes of the Law Minister, not of the Chief Justice.

SHRI SHANTI BHUSHAN: Now, may I say something about a serious matter which has been raised by Shri D. P. Singh, even though it might not have been relevant to the Bill? Like some bad pay masters who always try to avoid the bills, Shri D. P. Singh wanted to avoid the Bill. But he has raised some matters about the Shah Commission. When I refer to the Shah Commission, I would like to say that there is so much of public respect, universal respect for Chief

Justice Shah throughout the country that everyone recognises him as a picture of dignity, as a picture of Judicial attitude and as a picture of integrity—everywhere, throughout the country. Shri D. P. Singh himself must have noticed that everyone, with one voice, has been praising the manner in which the Shah Commission has been functioning.

I would like to refer to some of the matters which have been raised by Shri D. P. Singh. He said or he has tried to make out as if the procedure which is being applied by the Shah Commission is not in accordance with the law, namely, that it is unfair procedure, it is not calculated to do justice to the persons who might be affected by the proceedings before the Shah Commission. Principally, he has raised the point that there are certain persons whose reputation has been in jeopardy or is being affected and they are not being given the facility of being represented by lawyers. Perhaps, Shri D. P. Singh is an eminent member of the Bar. Sir, you are aware that members of the Bar have a function. Even when they are given a very weak brief, they have to make the best out of it. Sometimes they produce brilliant arguments in a case which cannot be defended at all. They are trained in that art. Shri D. P. Singh is a very accomplished artist in that function of trying to make out some point where no point can be found out . . .

SHRI D. P. SINGH: May I give the same compliment to my hon. friend?

SHRI SHANTI BHUSHAN: Let us not make a mutual admiration society. He said that there is a difference between an inquiry and investigation and the manner in which the proceedings are being conducted before the Shah Commission gives the impression that it is an investigation rather than an inquiry. May ask: What is the function of a Commission of In-

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quiry? It is not like the departmental inquiry against a charged officer where it is known as to what charges are being leveled against the employee and therefore he is handed over a charge sheet and an opportunity of defending himself is given. What is the purpose of a Commission of Inquiry? In what matters is a Commission of Inquiry appointed? When, Sir, there is a matter of great public importance, it is not known as to what the facts are. Let us take even the Mathew Commission, the Commission of Inquiry relating to the death of Shri L. N. Mishra, to which a reference was made. Certain things are not known at all. Yet, these matters are of very great public anxiety. Then, the idea is to tell: "Yes, All right. Let the investigation be carried out before the public eye by a person whose objectivity can be relied upon by the people of the country so that he will carry on with the investigation." So, it does not start with a premise. When a commission is appointed, it does not start with a premise. When a railway accident takes place and when a commission of inquiry is appointed, it does not start with a theory. It is left to the commission of inquiry to formulate, when it is appointed, the method by which the facts would be investigated. That is why, the first thing is to issue a public notice saying that anybody having any fact, anybody having any information, which has bearing on the subject-matter of the inquiry, may come forward to give those facts or information, saying, "Well, All right. Anybody having such information may come forward and give that information to the commission so that the commission will have the preliminary facts to fall back upon, the commission can have some hypothesis or theory and so on". And, thereafter, it can summon people, get important evidence, get important documents and so on and ultimately, by sifting the evidence, by the process of searching cross-examination, etc., it will arrive at a finding which will con-

vince the people of the country. That is the purpose of a commission of inquiry and it is really an investigation into certain facts. Now, therefore, all kinds of things—news, information, suspicion, rumour, rumour about the excesses of the emergency, etc.—all these are the matters to be gone into. The last Lok Sabha elections were the direct outcome of those excesses of emergency. The people's verdict was based on the excesses of the emergency, the misuse of power during the emergency . . .

SHRI H. N. BAHUGUNA: Emergency itself.

SHRI SHANTI BHUSHAN: Yes, the emergency itself. All these matters are of great public concern and the people have their own views and the people do not know what has exactly happened, how things happened, how the emergency was proclaimed, how power has been abused, and, if it has been abused, by whom it has been done, under what circumstances it has been done and so on. All these matters are of very great public concern. Therefore, these matters needed being gone into by some eminent person who would enjoy the reputation of being a very objective Judge. And, Sir, who could be thought of, except a person like Mr. Justice Shah who, it is known, is a picture of dignity and who is a picture of impartiality? No finger can be raised against him at all. I would like to tell my honourable friends that it would be much better if they do not get the impression that there would be any injustice done to anybody. Do not get the impression that there would be any injustice to anybody at the hands of the Shah Commission.

With regard to the procedure adopted by the Shah Commission, Sir, insofar as I have been able to understand the procedure...

श्री कल्पनाथ राय : आदरणीय उप-सभापति महोदय, प्वाइंट ऑफ आर्डर । क्या ला मंत्री साहब को मालूम है कि 190 एम० पीज० ने जस्टिस शाह के खिलाफ, राष्ट्रपति को इम्पीचमेंट करने के एक मेमोरेण्डम दिया था या नहीं । उनकी इन्टेग्रिटी की बहुत बड़ी बातें कर रहे हैं, इनको यह मालूम है या नहीं ?

SHRI SHANTI BHUSHAN: Now, the facts are too well known to the entire people of India—under what circumstances that had happened and what the ultimate outcome of it was, etc. It had brought no discredit to Mr. Justice Shah and I may assure Mr. Kalp Nath Rai and the whole House that no discredit was there to Mr. Justice Shah, absolutely not. This is a very wrong fact which is being used and it will not cut any ice with anybody in the country. Nobody would say that.... (Interruptions)...

श्री कल्पनाथ राय : मैं फिर पूछना चाहता हूँ क्या 2 बार श्री जार्ज फनन्डीज, मिनिस्टर फार इंडस्ट्रीज की देख रेख में, जस्टिस, शाह के भ्रष्टाचार के संबंध में इम्पीचमेंट करने का प्रतिवेदन राष्ट्रपति को दिया था या नहीं । क्या जस्टिस शाह ने बैंकों के राष्ट्रीयकरण के खिलाफ अपना जजमेंट दिया था या नहीं ? पूरे देश की जनता जिस व्यक्ति को कण्डेम करती है ...

(Interruptions)

SHRI SHANTI BHUSHAN: Sir, I would not like to enter into any argument with the honourable Member. But I would only like to assure this House that none of such things can cut any ice with anybody, with the people of the country. Mr. Justice Shah's image is so high . . .

SHRI N. G. RANGA (Andhra Pradesh): Sir, my honourable friend, the honourable Minister himself said earlier that it is not relevant. At the same time, he wants the forbearance

of the House for him to enable him to say something about this Commission. Has he not said enough?

SHRI SHANTI BHUSHAN: No, Sir. I have to make the position clear... (Interruptions)

SHRI U. G. RANGA: Sir, what is the use of creating at this stage an atmosphere of controversy in this House when the Members are not ready to listen to what he is saying... (Interruptions)

SHRI NAGESHWAR PRASAD SHAHI: No controversy.

SHRI N. G. RANGA: It is not proper if something is imposed upon the House in this manner through your intervention, through your patience.

श्री कल्पनाथ राय : जो एडवोकेट ऐक्ट है मुझे भी उसमें भाग लेना था । मैं पूछना चाहता हूँ कि क्या जस्टिस शाह का बैंकों के मामले में कुछ पर्सनल शेयर था या नहीं । क्या जस्टिस शाह के ऊपर भ्रष्टाचार सम्बंधी 190 एम० पीज० का एक प्रतिवेदन राष्ट्रपति को दिया गया था या नहीं ? यह बतलाने की कृपा करें (Interruption) मैं मंत्री जी से कहना चाहता हूँ कि हम यहां भाषण सुनने के लिए नहीं आये हैं ।

SHRI SHANTI BHUSHAN: Sir, may I proceed with my speech?

श्री कल्पनाथ राय : उनके ऊपर भ्रष्टाचार का आरोप है ।

श्री उपसभापति : आप कह चुके हैं ।

SHRI SHANTI BHUSHAN: Sir, I am not yielding the floor... (Interruptions) Now, if any Member is so inclined to raise objection that the Shah Commission matter has not relevant, that means that... (Interruptions) Having said this, I must proceed on the basis that it has some relevance, which must be permitted... (Interruptions)

SHRI N. G. RANGA: He cannot impose himself in this way.... (*Interruptions*).

SHRI SHANTI BHUSHAN: Now, reference has been made... (*Interruptions*).

SHRI KALP NATH RAI: On a point of order.... (*Interruptions*).

SHRI SHANTI BHUSHAN: The point that was raised by the hon. Member Shri D. P. Singh is that the Ministers cannot disclose anything, on account of their oath, they cannot disclose any facts to their knowledge in the capacity of Minister. Sir, it was said that on that matter the Law Ministry had recorded an opinion, which opinion has been utilised, and that on the basis of that opinion a lot of material is coming before the Shah Commission and even Ministers are making statements about facts which came to their knowledge. Now, Sir, since this point has been raised and since particularly reference has been made to the opinion of the Law Ministry, it is necessary for me to explain the position as I understand it. Now, Sir, if the hon. Members would themselves look at the oath, there is a portion at the end of the oath which says:

"...except will not directly or indirectly communicate or reveal to any person or persons any matter which has been brought under my consideration or shall become known to me as Minister for the Union as may be required for the due discharge of my duties as such Minister."

The question that arises is that if there is a statutory Commission of Inquiry, its function is to find out certain facts and find out what has happened. But there are two matters. One is the question of privilege, namely, something may be privileged and its disclosure cannot be permitted in public interest. That is a separate matter, to which I will come separately. But so far as the oath is concern-

ed, there is no absolute bar. The bar is that the Minister is not supposed to voluntarily give out matters which have come to his knowledge as a Minister. But when it becomes his duty, then in that case he has to do it. If the function of a statutory Commission or court is to investigate something and to find out the truth and if the Minister has some knowledge, even though that information was required by the Minister in his capacity as Minister, then it is his duty, because if there is a statutory court or a statutory tribunal or statutory authority whose function is to determine the truth of a certain kind—it is the duty of that person who might be summoned to appear as a witness, to assist... (*Interruptions*).

SHRI D. P. SINGH: I am sorry to interrupt the hon. Minister. That is not the interpretation of the Constitution...

SHRI SHANTI BHUSHAN: Well, it is a question of opinion... (*Interruptions*)... May I have my say first... (*Interruptions*).

SHRI D. P. SINGH: How can that be his duty to reveal what is forbidden?

SHRI SHANTI BHUSHAN: The hon. Member may have his own views on the whole question.

SHRI D. P. SINGH: He skilfully skips over Article 74 which says that no Commission shall inquire into or no court shall inquire into any advice that was given to the President. This is in Article 74. There is Article 75 also. Can it be his duty to reveal what is a secret matter? That is the point I have predominantly raised about the principles of running constitutional government. If the advice is revealed, then the functioning of future governments will become difficult. Supposing what we have been doing with Bangladesh, good, bad and indifferent, is revealed and the file rolls on the table of Justice Shah—and all such things are forbiddings—

this will create a disaster in the country.

SHRI NAGESHWAR PRASAD SHAHI: Go to the Supreme Court.

SHRI SHANTI BHUSHAN: These are not matters on which ample authority is not available... (*Interruptions*). If the hon. Member would care to look into it... (*Interruptions*)...

I am not yielding the floor. Therefore, I may be permitted to go on.

SHRI D. P. SINGH: Sir,....

MR. DEPUTY CHAIRMAN: You have made your point.

AN HON. MEMBER: You go to the Supreme Court... (*Interruption*).

SHRI SHANTI BHUSHAN: Courts of law are there. Now approach to court on every matter has been opened... (*Interruptions*). Therefore, if anybody feels that some wrong is there, it is always open to him to go to a court of law. If I may say so with great respect to the hon. Member, he is not right in his interpretation of Article 74. The purpose of Article 74 is entirely different. The purpose of Article 74 is that the legality of a decision of the Government cannot be questioned before a court because a court cannot inquire into the matter. If a certain order duly authenticated in the name of the President has been issued, nobody can challenge its validity on the ground that a proper Minister who was required to deal with it has not done it properly or that the rules and procedures have not been complied with. It is a matter which has been put beyond any controversy in a court. Here the matters are entirely different. Here the question is not as to what advice was tendered. Now, some material comes in the possession of the Minister. It is true that he cannot make any voluntary disclosure thereof on account of the oath. It is not a voluntary disclosure when a Commission of Inquiry or a court is

inquiring into certain facts and some materials which may have a bearing...

SHRI PRANAB MUKHERJEE (West Bengal): May I seek a certain clarification from the hon. Minister. Can he cite a single case of a court pronouncement in respect of his interpretation of the clause relating to oath and secrecy?

SHRI SHANTI BHUSHAN: I may assure the hon. Member that if this question is ever raised before a court where it can be raised, all the rulings and authorities etc. shall be cited and references shall be made to the authorities and to the views held in England also. It is not that every information which comes in the possession of a Minister can never be disclosed. There is a well-established practice on these matters even in England. Even matters which have transpired in the Cabinet can be allowed to be referred to by the Government subsequently and they have been referred to even in the memoirs of the Ministers and Prime Ministers with the permission of the Government.

श्री कल्पनाथ राय : श्रीमन्, मेरा व्यवस्था का प्रश्न है। प्वाइंट आफ़ आर्डर। माननीय मंत्री जी को अब बैठ जाना चाहिए। मेरा व्यवस्था का प्रश्न यह है कि श्री डी० पी० सिंह जी ने शाह आयोग के प्रोसीजर के संबंध में प्रश्न उठाया। ला मिनिस्टर ने शाह को उस की न्यायप्रियता के लिये विश्व का सब से अच्छा सर्टिफिकेट दे दिया। मैं समझता हूँ कि सारा हिन्दुस्तान इस बात को कंडम करता है।

(*Interruptions*)

श्री उपसभापति : यह कोई व्यवस्था का प्रश्न नहीं है।

SHRI SHANTI BHUSHAN: Now, Sir, so far as the law of privileges is concerned, of course, in recent years it has been discussed in various countries including India and the United

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States. The question of privileges was raised in the United States Supreme Court on behalf of Mr. Nixon. The tapes were said to be absolutely privileged. These were presidential conversations and, therefore, they were completely sanctified. They could not be disclosed before the Watergate Commission. The United States Supreme Court took the view that other matters sometimes take precedence over matters of privilege. They said that if a very important matter is being investigated by the Watergate Commission, then the presidential privilege cannot stand before it because the requirements of justice are too important for these presidential privileges and so on and those tapes were required to be produced before the Watergate Commission. I had the honour to rely upon that decision when, in 1974, a question came up about the privilege of certain documents in connection with Mrs. Gandhi's election petition before the Supreme Court and the Supreme Court also came to the conclusion by a unanimous decision, in 1974, that the Government's privilege is not absolute. Even when the Government claims a privilege in regard to certain documents on that ground that public interest would be affected by their disclosure, ultimately the court will have the power to see and, if necessary, even to inspect those documents and then decide as to whether the privilege should be conceded or not. So far as the Government is concerned, the Government would be justified in claiming privilege in respect of certain documents only if their disclosure would be contrary to public interest. But if the disclosure of certain documents will advance public interest, not only the Government would not be justified, it will be the Government's duty to make those documents public so that history, posterity and this country can judge as to what happened in the name of emergency during emergency. Why? Mainly for the pur-

pose that such a thing may never happen in future. Conditions have to be created, whatever went wrong has to be rectified and it has to be ensured that such things do not occur in future. It is so important. The whole future of the country and the future of the people of this country is so clearly involved in this matter that no consideration of privilege, etc., can come in the way. The truth must be found out.

(Interruptions)

Now Sir, one more point and I conclude...

SHRI MOHAMMAD YUNUS SALEEM: The Law Minister is a very eminent jurist and lawyer but I am very sorry to say, Sir, that the question of sanctity of the oath of secrecy and the question of privilege cannot be treated on the same footing. The law which has been laid down with regard to privileges is entirely different from the question of oath of secrecy. I request my hon learned friend to cite one ruling where it has been held either in our Supreme Court or the Supreme Court of any country that a person who is bound by the oath of secrecy not to reveal certain facts brought to his knowledge may be revealed under the Commission of Inquiry Act as such. Sir, if this would have been the position, Mr. Justice Shah whose eminence the Law Minister has praised so much would not have taken this attitude when he simply said, "I have requested certain persons, certain Ministers to come and help us. If he is not prepared, it is left to him." If it was a question of privilege, he would have been forced to come and appear and give his statement. Therefore, this point should not escape his notice. There is a lot of difference. I am also a student of Law, I do not claim to be as eminent a lawyer as he claims to be. But I know a little bit of law. This is my submission.

SHRI SHANTI BHUSHAN: Sir, I am happy that the hon. Member has

by this diversion raised a point and, therefore, reminded me of what I was forgetting to make clear that there are two stages in the Shah Commission. One is only trying to find out what the facts are. Thereafter, if those facts as they emerge disclose that there is a *prima facie* case against somebody and, therefore, some reflection is likely to arise against somebody, etc. then, at that stage, even the Shah Commission has made it clear... (Interruptions) May I proceed, Sir?

श्री कल्पनाथ राय : आदरणीय उप-सभापति महोदय, व्यवस्था का प्रश्न है।

श्री उपसभापति : क्या व्यवस्था का प्रश्न है? ... (Interruptions)

श्री कल्पनाथ राय : जस्टिस शाह के मामले में जो जांच चल रही है, दुनिया के किस देश के अन्दर पूरे बयान रेडियो द्वारा प्रसारित होते हैं? ...

(Interruptions)

श्री उपसभापति : यह व्यवस्था का प्रश्न नहीं है। ...

(Interruptions)

SHRI SHANTI BHUSHAN: Now, Sir, there need not be any doubt about the power of the Shah Commission or any Commission of Inquiry to summon any witness for giving evidence before a Commission. That is a provision which is very clearly there. (Interruptions)

SHRI N. G. RANGA: Mr. Deputy Chairman, do you want us to be patient with you also and with the House? We have requested that let there be a separate discussion on that question. Why do you allow this? My hon. friend prefaces his remarks by saying all this. (Interruptions).

श्री कल्पनाथ राय : आदरणीय उप-सभापति महोदय, मेरा कहना है कि ...

(Interruptions)

श्री उपसभापति : आप कृपया स्थान ग्रहण कीजिए, इस पर बहस नहीं हो सकती।

(Interruptions)

श्री कल्पनाथ राय : शाह को हम हिन्दुस्तान का सबसे खराब जज मानते हैं। उनके ऊपर (Interruptions) वह पूंजीपतियों के ...

(Interruptions)

श्री उपसभापति : माननीय सदस्यों से मैं निवेदन करूंगा कि जजों या किसी प्रतिष्ठित व्यक्ति के प्रति ऐसे ऐक्सप्रेशन यूज न करें। ...

(Interruptions)

सदन की परम्परा का ख्याल रखिये।

श्री बीजू पटनायक : Let it be expunged. इसको ऐक्सपंज कर دیجिए।

श्री कल्पनाथ राय : हम जस्टिस शाह को भगवान नहीं मानते हैं।

(Interruptions)

श्री उपसभापति : आप जो मानिये, लेकिन सदन में व्यवधान न पैदा करें।

AN HON. MEMBER: May I ask one question?

MR. DEPUTY CHAIRMAN: No more questions now.

SHRI SHANTI BHUSHAN: As I said, Sir, there is one point that remains to be answered, and I conclude. That is the last point raised by my hon. friend, Shri D. P. Singh on the basis of article 20. He said, "Look here. Article 20 gives a Fundamental Right to a person not to be compelled to be a witness against himself or herself." Entirely true. There is no controversy. That Fundamental Right is there. But I am reminded of an occasion when somebody was sum-

[Shri Shanti Bhushan]

moned in a court of law to prove a document because he happened to be a marginal witness. And he was asked to make a statement and certain questions were put to him. But he said, look here, if you put certain questions to me, you would be contravening article 20. The judge was puzzled and asked where does the article come in, it is a civil case and there is nothing article 20 and article 20 does not apply. He said, look here, I have committed so many crimes in my life and if you put a question to me on any matter, you do not know that there may be some criminal case pending against me some day and what I say here may be used against me. (*Interruptions*). Of course, each individual knows best as to whether any crimes have been committed by him or not. He may be knowing but the others don't know. The Shah Commission does not know. They are still trying to find out if something has happened and who has done it. Then if that person says if you go into it even though no accusation has been levelled...

SHRI MOHAMMAD YUNUS SALEEM: But this is not a civil proceeding. (*Interruptions*).

SHRI D. P. SINGH: What did the Mathew Commission say in Shri L. N. Mishra's case?

SHRI SHANTI BHAUSHAN: I am fully aware of that. What the Mathew Commission said was that a criminal case had already been started and it was going on. And, then he said that now that this criminal case was going on against certain persons in which a particular line had been taken, then in that case it would not be right for him to inquire into that very matter which was already pending before a criminal court because certain accusations had been levelled. If the hon Members thinks that already in these matters there has been commission of criminal offences on the part of somebody, which is known to the hon. Member,

Shri D. P. Singh, then it is a different matter, but these matters are not known to everybody. So unless the stage comes when somebody is charged with the commission of a criminal offence, article 20 has no application. Thank you.

MR. DEPUTY CHAIRMAN: Now I will put the motion.

The question is:

"That the Bill further to amend the Advocates Act, 1961, as passed by the Lok Sabha, be taken into consideration."

The motion was adopted.

MR. DEPUTY CHAIRMAN: We shall now take up clause by clause consideration of the Bill.

Clauses 2 to 8 were added to the Bill.

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

SHRI SHANTI BHUSHAN: Sir, I move:

"That the Bill be passed."

The question was put and the motion was adopted.

THE SMITH, STANISTREET AND COMPANY LIMITED (ACQUISITION AND TRANSFER OF UNDERTAKINGS) BILL, 1977

THE MINISTER OF PETROLEUM, CHEMICAL AND FERTILIZERS (SHRI H. N. BAHUGUNA): Sir I move:

"That the Bill to provide for, in the public interest, the acquisition and transfer of the right, title and interest of the undertakings of Messrs. Smith, Stanistreet and Company Limited, Calcutta and for matters connected therewith or incidental thereto, as passed by the Lok Sabha, be taken into consideration."