

SIXTY-SECOND REPORT OF THE
PUBLIC ACCOUNTS COMMITTEE
(1972-73)

श्री श्याम लाल यादव (उत्तर प्रदेश):

श्रीमन्, मैं आप की आज्ञा से भारतीय कृ
अनुसंधान परिषद के संबंध में लोक लेखा
समिति के चौथे प्रतिवेदन (1971-72)
में निहित त्रुटियों पर सरकार द्वारा
की गयी कार्यवाही के बारे में लोक लेखा
समिति (1972-73) के बासठवें प्रति-
वेदन की एक प्रति सभा पटल पर रखता हूँ।
[Placed in Library. See No. LT-
4256/73].

MR. DEPUTY CHAIRMAN: The
House stands adjourned till 2-15 P.M.

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

The House Reassembled, after lunch,
at Fifteen minutes past two of the
clock, MR. DEPUTY CHAIRMAN in the
Chair.

THE ADVOCATES (AMENDMENT)
BILL, 1970

MR. DEPUTY CHAIRMAN: The
Minister.

SHRI V. V. SWAMINATHAN
(Tamil Nadu): Sir, in Andhra Pra-
desh the police force...

MR. DEPUTY CHAIRMAN: Mr.
Swaminathan, nobody has permitted
you to speak now. I called upon the
Minister to move the Bill. You have
not been permitted to speak now.

SHRI V. V. SWAMINATHAN: Sir,
the situation in Andhra Pradesh...

MR. DEPUTY CHAIRMAN: No, I
will not allow you. Whatever you
say goes off the record.

Mr. Minister, please move your
Bill.

THE MINISTER OF STATE IN
THE MINISTRY OF LAW, JUSTICE
AND COMPANY AFFAIRS (SHRI
NITI RAJ SINGH CHAUDHURY):
Sir, I beg to move:

"That the Bill further to amend
the Advocates Act, 1961, as report-
ed by the Joint Committee of the
Houses, be taken into considera-
tion."

Sir, the question of having a uni-
fied and autonomous bar for the
whole country was under considera-
tion ever since independence. Some
aspects of this problem were studied
by the All-India Bar Committee and
also by the Law Commission in its
Fourteenth Report on the reform of
judicial administration. In order to
give effect to the recommendations of
these bodies, the Advocates Act of
1961 was enacted. Shortly after this
Advocates Act was enacted, a Bill to
amend it in the light of the experi-
ence gained in its working was intro-
duced in 1965. It was thereafter
withdrawn and the entire Act was
referred to a Review Committee con-
sisting of Members of the Houses of
Parliament and also the then Attor-
ney-General. On the basis of the report
of the Committee another amending
Bill was introduced sometime in 1968.
But in view of the opinion expressed
in several quarters that the Bill
should also contain provisions with
regard to legal aid, it was withdrawn
with the leave of the House. While
withdrawing the Bill, the then Minis-
ter in the Ministry of Law gave an
assurance that the new Bill would be
introduced after taking into account
these recommendations and that it
would be referred to a Joint Com-
mittee. On the basis of this assur-
ance, this House granted leave for
the withdrawal of the Bill and the
Bill was accordingly withdrawn.
Thereafter, a revised Advocates
(Amendment) Bill, 1970 was intro-
duced in this House in December.
However, it could not be referred
to a Joint Committee on account of
lack of time.

[Shri Niti Raj Singh Chaudhury.]

On 26th May, 1971, this Bill was referred to a Joint Select Committee and this Committee took the trouble of touring the whole country, examining witnesses and discussed every provision in detail and has recommended the present Bill. I am thankful to the members of the Joint Select Committee and its Chairman for the trouble they have taken in bringing the Bill in the form in which it is now before the House.

The Main features of the Bill, I would submit, are as follows. First is the question of legal aid. In the original Bill that was introduced and referred to the Joint Select Committee there was a provision on this and the Joint Select Committee, while considering it, came to the conclusion that there should be a provision enabling the Bar Councils—both at the State level and the Central level—to arrange for legal aid. They also thought that it may not be possible for them to do full justice to this aspect and therefore the Government appointed an expert Committee which is going into the whole matter. In the meanwhile this House has already passed the Criminal Procedure Code and hon. Members are aware that in that section 304 has been amended. The Law Commission in its report on Civil Procedure Code has suggested to the Government to revise Order 33 of the Civil Procedure Code.

The other matter that is referred to is about the three years course. In view of the fact that most of the Universities have switched over to three years course in law, the requirement for practical training and the passing of an examination by law graduates has been done away with.

The special privilege which the Barristers now enjoy of being automatically enrolled as Advocates in this country is being withdrawn. This would only be possible on a reciprocal basis.

Proceedings before disciplinary committees sometimes hang on quite long. The Joint Select Committee has re-

commended that to expedite disposal of these cases certain amendments should be made so that if a disciplinary matter is not disposed of by the State Committee in one year, it will automatically go before the National Disciplinary Committee for decision.

The functions of the Bar Council have also been broadened so as to enable them to bring out Law Journals and other similar publications and to look after the welfare schemes for the members of the legal profession.

To enable Advocates who were practising in Bangla Desh to practice in this country, a provision has been made in the Bill. Regarding enrolment, a provision has been made to the effect that members of the Scheduled Castes and Scheduled Tribes need not pay the full enrolment fee. The Committee recommended that half the fee should only be recovered from them. Section 24A laying down disqualifications for enrolment as Advocates has also been included. In section 48AA, a provision for review has been made and laying of Rules before both the Houses of Parliament has been made obligatory. With these words, I commend the Bill for the consideration of the House.

The question was proposed.

श्री ना० कृ० शेजवलकर (मध्य प्रदेश):

माननीय उपसभापति महोदय, यह एडवोकेट्स एमेंडमेंट बिल आज सदन के सामने विचार के लिए प्रस्तुत किया गया है। माननीय मंत्री जी ने जो उसके तमाम फीचर्स बताए उनमें से जो प्रारम्भिक दो-तीन प्रमुख बातें थीं उनके बारे में मुझे यह कहते हुए खेद है कि बिल में ठीक से विचार नहीं हुआ। सबसे पहली बात तो यह है कि इस बात का सबको अनुभव हुआ कि गरीब व्यक्ति को न्याय सुलभ कराने में लीगल एड की उसकी आवश्यकता है। 20 वर्ष हो गए, यह तो सबको पता है कि विदेशों के अन्दर भिन्न-भिन्न प्रकार की ऐसी व्यवस्थाएं

की गई हैं, जिससे न्याय मिलने में गरीब व्यक्ति को किसी प्रकार की कोई कठिनाई न हो। जैसा कि माननीय मंत्री जी ने बताया, अपने यहाँ क्रिमिनल प्रोसीजर कोड में भी प्रावधान था और सिविल प्रोसीजर कोड में भी पापरिज्म के मिलसिले में प्रावधान था। वह अब बहुत पुराना हो चुका है, आउट-मोडेड हो चुका है, इस बात का अनुभव किया गया था और सी० आर० पी० सी० में कुछ थोड़ा सा सुधार किया गया है। अभी जो आर्डर 33 का हवाला दिया गया तो मैं बता दूँ कि पापरिज्म की जितनी व्यवस्थाएँ हैं, उनके सम्बन्ध में जो प्रावधान है, वह आज 25 वर्ष से अधिक पुराना है और बदली हुई परिस्थितियों में वह उपयुक्त नहीं है। उसमें भी परिवर्तन की आवश्यकता है। सिलेक्ट कमेटी की जो रिपोर्ट प्रस्तुत हुई है, उसके साथ-साथ वह साक्ष्य भी प्रस्तुत की गई है, जो भिन्न-भिन्न लोगों की ओर से उसके सामने दी गई। भिन्न-भिन्न इस्टिड्युशंस, भिन्न-भिन्न संस्थाओं, बार एसोसिएशंस और बड़े-बड़े अधिवक्ताओं की ओर से 65 रेप्रेजेंटेशंस आये। 40 प्रमुख व्यक्तियों के बयान समिति के सामने हुए। मैं उन सबको पूरी बारीकी से नहीं पढ़ सका, लेकिन जो देश के प्रमुख अधिवक्ता हैं, जैसे श्री सीतलवाड, जो हमारे सदन के सदस्य रह चुके हैं, श्री दफ्तरी जो हमारे सदन के सदस्य हैं, डा० सिंहवी और कुछ हाई कोर्ट के जज ने जो साक्ष्य इस समिति के सामने प्रस्तुत की उसको मैंने थोड़ा बहुत पढ़ने का प्रयत्न किया है। सिंहवी जी के सम्बन्ध में पेज 29 से लेकर 35 तक जो उनकी साक्ष्य हुई है वह दी हुई है। वे पहले से लीगल ऐड के लिए प्रयत्न करते रहे हैं। राष्ट्रपति जी ने भी एक बार जा करके उनकी सभा में भाषण दिया है। उन्होंने बार-बार इस बात के लिए प्रैस किया है कि इसके सम्बन्ध में खीच ही कोई कानून बनने की

आवश्यकता है। और कितने भी साक्षियों के कथन हुए हैं उन सबमें ज्वाइट सिलेक्ट कमेटी के माननीय सदस्यों ने इस बात पर जोर दिया। जो भी प्रमुख साक्षी आये उन सबसे इस समिति के सदस्यों ने इस सम्बन्ध में प्रश्न पूछे। प्रमुख साक्षियों ने इस सम्बन्ध में जो अपने मत दिये हैं मैं संक्षेप में उनमें से थोड़ा सा कोट करूँगा। परन्तु मुझे यह कहते हुए खेद होता है कि पृष्ठ 6 पर सिलेक्ट कमेटी ने पता नहीं क्यों अपनी रिपोर्ट में यह कह दिया कि चूँकि शासन इस पर अलग से विचार करने वाला है, इसलिए इसको अभी न लिया जाय। मैं उनके शब्द पढ़ देता हूँ :

"The Committee, after giving a very careful consideration to all aspects of the matter, feels that the Government should bring forth such an enactment regulating all aspects of legal aid to the weaker section of the society. The Committee after taking note of the fact that the Government is engaged in working out such a scheme, has deleted the clause."

यानी यह पढ़ कर मुझे वास्तव में थोड़ा सा खेद हुआ। यह मेरी समझ में नहीं आता कि कमेटी के सामने जो प्रमुख काम था उसको कमेटी ने क्यों नहीं इसमें सम्मिलित किया। यह जो डा० सिंहवी की रिपोर्ट का मैंने हवाला दिया, उन्होंने बड़ी प्रसन्नता व्यक्त की कि इस विधान के द्वारा एक ऐसा अवसर आया है जब कि इसका पूरा-पूरा प्रावधान इसी बिल के अन्दर किया जा सकता है और यह समझ में नहीं आया कि इसको क्यों छोड़ दिया गया। उनका तो यह कहना था कि उसके लिए अलग से इस ऐक्ट में विस्तार से एक चैप्टर जोड़ दिया

जाय, क्योंकि वे समझते थे कि यह एक ऐसा आधार मिला है कि जिसके अन्दर इसका प्राविधान किया जा सकता है। वैसे तो मंत्री जी को पता है कि अगर मैं गलती नहीं करता तो इंग्लैण्ड में लीगल ऐड ऐक्ट, 1949 में ही बन चुका है और उसे लागू हुए 24 वर्ष से अधिक का समय हो गया है। हमारे लिए भी यह संभव था कि उसी आधार पर या उसमें थोड़ा बहुत संशोधन करते हुए एक कानून बना दिया जाता। उसमें क्या कठिनाई आ रही थी, यह मेरी समझ में नहीं आया और उस में कौन सी ऐसी टेक्निकल दिक्कत थी कि जिसके कारण इसमें एक चैप्टर और जोड़ कर उसका प्राविधान नहीं किया जा सकता था। आज यह बात सबको पता है कि किसी गरीब आदमी को न्याय मिलना कितना कठिन हो गया है। आज वह सारे खर्चे बर्दाश्त नहीं कर सकता। आज हाई कोर्ट के खर्चे इतने बढ़ गये हैं कि जो उसके लिए बर्दाश्त करना बहुत कठिन हो गया है और सुप्रीम कोर्ट में तो किसी गरीब के लिए आना असंभव ही है। तो ऐसी परिस्थितियां होते हुए भी इसको क्यों टाला गया, यह समझ में नहीं आता और वस्तुस्थिति क्या है और गवर्नमेंट ने क्या एश्योरेंस दिया है और गवर्नमेंट कब इस को लाना चाहती है और किस आधार पर और किस रूप में लाना चाहती है, यह सारी बातें अभी अस्पष्ट हैं। इसलिए मेरी तो राय यह है कि इस बिल को सरकार को वापस कर लेना चाहिए और फिर से सेलेक्ट कमेटी को भेज देना चाहिए, क्योंकि ऐसा न करने से अकारण ही डवल खर्च होगा। अभी लगभग इस कमेटी की 19 मीटिंग्स हुई हैं और वे लो 7, 8 स्थानों पर गये हैं। उसने बड़े-बड़े अधिवक्ताओं के मत लिए हैं और इस कमेटी द्वारा लिये गये उनके मत का अब उपयोग न करते हुए एक नया बिल लाना और उसमें फिर नये प्राविधान करना,

उसके लिए दुबारा सारे का सारा व्यय नये तौर से करना पड़ेगा और उस बिल पर फिर से उनकी राय लेनी पड़ेगी, क्योंकि हो सकता है कि उस सेलेक्ट कमेटी में दूसरे सदस्य हों और कहें कि हम को उससे कोई मतलब नहीं है। तो यह सब इस बात को टालने के लिए है। इसलिए अधिक उचित यह होगा कि यह बिल पुनर्विचार के लिए उसी सेलेक्ट कमेटी को भेज दिया जाये कि इसके बारे में भी आप विचार कर के एक चैप्टर इसमें अलग से जोड़ दीजिए। इसका प्राविधान एडवोकेट्स बिल में ही अमेंडमेंट करके आप कर दीजिए; क्योंकि कमेटी ने प्रारम्भ में ही कहा है कि इसमें तीन प्रमुख बातें थीं। पहली बात तो लीगल ऐड के बारे में थी। दूसरी कांस्टीट्यूशन के बारे में जो बात रखी गई थी उस पर भी उन्होंने विचार किया है और तीसरा जो एक छोटा सा प्रश्न मैंने उठाया था पिछले समय जब यह बिल इंट्रोड्यूस हो रहा था, तब उस समय मैंने कहा था कि लीगल प्रोफेशन वालों की भी एक कम्युनिटी है और उनको जीवन में कुछ स्थिरता प्राप्त हो, इसके लिए भी सरकार को कोई कदम उठाना चाहिए और मैं मंत्री जी का आभारी हूँ कि उन्होंने उस बात को उस समय एग्रीशिएट किया था और उसे बिल में लाने का प्रयास किया है। लीगल ऐड के लिए भी जो प्रयास किया गया है क्लाज 6 और 7 में, वह बहुत अपर्याप्त रूप में लाया गया है, यह कहकर कि आप नए इंट्रेंट्स से सौ, सौ रुपया इकट्ठा कर लें और उसके सारे खर्चे को कर लेंगे, यह एक हास्यास्पद बात होगी। अगर आप ठीक से आंकड़ों का अंदाजा लगायें तो जो फीर्स आयेंगे उनसे आप को पता चलेगा कि ऐसा करने से कुछ हजार या लाख रुपयों की रकम ही इकट्ठा हो सकती है और उससे जो देश की गरीब जनता है, उसको वास्तविक रूप में कोई लीगल एड मिल सकेगी, इसकी संभावना

नहीं है या जो अधिकतर डिसएबिल हो जाते हैं, उनको भी पूरा लाभ होना संभव नहीं है, उन के केवल उस से आस ही पूछ पायेंगे । अगर ठीक से विचार किया जाता तो यह हो सकता था कि आप इस में टैक्स को कुछ फ्री करने की योजना बनाते और जो अनुदान आपने बार कौंसिल से लेने की बात कही है वह आप ले सकते थे, लेकिन जो वह अनुदान देने वाला है, उसको उससे कोई लाभ नहीं होगा । उसके लिए आवश्यक यह था कि कोई ऐसा प्राविधान होता कि जो रकम दी जायेगी वह उस को आमदनी में नहीं मानी जायेगी और उम रकम को देने के कारण इन्कम टैक्स की दर उसके लिए कुछ कम हो जायेगी । ऐसा होने से जिन अधिवक्ताओं की आमदनी कुछ अच्छी है वे अपने बन्धुओं के लिए या लीगल ऐड फंड के लिए, अनुदान देने के लिए प्रोत्साहित होने और उनको ऐसा करने का कुछ उत्साह होता तो इन बातों पर विचार नहीं किया गया है ।

बाकी और जो टेक्निकल बातें हैं उन से मैं सहमत हूँ । मामलों के जल्दी निराकरण के लिए और डिसिप्लिनरी ऐक्शन के लिए जो विचार किया गया है, उस से भी मैं सहमत हूँ, लेकिन जो दो मुख्य बातें थीं उन के बारे में इस बिल में ठीक से विचार नहीं किया गया है और इस लिए मैं अनुरोध करूंगा कि जब ऐसा अवसर आया है तो उसका पूरा लाभ हम को उठाना चाहिए और बार-बार इस प्रकार का कानून ला कर ऐसी परिस्थिति पैदा की जाये कि जिसमें अधिक समय लगे और व्यय हो, यह मैं समझता हूँ कि अवांछनीय होगा । अगर इस प्रकार की बात संभव नहीं है तो कम से कम सरकार इतना आश्वासन तो दे कि जल्दी से जल्दी लीगल ऐड बिल को पार्लियामेंट का ऐक्ट बनाने के लिए प्रयत्न किया जायेगा और सिविल प्रोसीजर कोड को भी अब सेलेक्ट

कमेटी को रेफर किया गया है । और उसमें आर्डर 33 के बारे में सुधार करने के लिए उसमें सम्मटेडिव प्राविजन्स आप लाने वाले हैं वह तो अलग बात होगी । लेकिन मैं समझता हूँ कि वः उसके स्कोप के बाहर होगा । उसमें कोर्ट फ्रीस आदि रेस्ट्रिक्टेड प्राविजन है सी० पी० सी० की आउट-लाइन में इतने बन्धन हैं कि उनके अन्दर काम करना बहुत कठिन होता है, यद्यपि स्पेशल प्राविजन्स जैसे सूट्स, मैरिज, डाईवोर्स के सम्बन्ध में विशेष रियायतें हैं, लेकिन कोर्ट फ्रीस और व्यय अलग बात है, और लीगल ऐड, वकीलों को सहायत मिलना—चाहे कोर्ट में हो या बाहर हो—इसके लिए कोई भी इस प्रकार का प्राविधान अभी तक हमको नहीं मिलता है ।

मैं माननीय मंत्री जी से निवेदन करूंगा कि वह इस सम्बन्ध में विचार करें । मैं सदन से भी अनुरोध करूंगा कि अधिक रुपये का अर्थ व्यय करने के बजाय अच्छा यह है कि इसको दोवार वापस कर दिया जाए ।

SHRI JAISUKHLAL HATHI (Gujarat): Mr. Deputy Chairman, Sir, I rise to support the Bill and welcome specially the provisions in Clauses 18, 24 and 9. So far as Clause 9 is concerned, I welcome it because it is an enabling clause.—“A Bar Council may constitute one or more legal aid committees each of which shall consist of such number of members, not exceeding nine but not less than five, as may be prescribed”. Clause 9 is an enabling clause which enables the Bar Council to set up legal aid committees. As has just been mentioned, Clause 14 has been deleted from the original bill. Clause 14, as it stood, only empowered the Government to charge Rs. 100 from the new entrants. This amount was meant to be provided for the expen-

[Shri Jaisukhlal Hathi].

diture of the legal aid in addition to some donations and subscriptions. Rs. 100/- from new entrants would not mean a large amount and, as the Committee Report says, it would have been a very meagre amount and it would not have touched even a fringe of the problem. Legal aid is not something which the State Government would like to give as a matter of grace. In a society where we do not want to attach importance to the status and where the rich, the poor have to be treated equally before the law. This amount would not have even touched the fringe of the problem. Therefore, when the Government came forward with an assurance that they would bring forward a measure with a complete scheme, this Clause 14 was deleted. I am happy that the Government has already appointed an Expert Committee which goes into the question of legal aid in a very exhaustive manner. As has already been said, the Directive Policy of the State does say that every citizen shall be treated equally before law and that the State shall not deny to any person equality before the law or equal protection of the laws within the territory of India. The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life. But what do we see in practice today? Today we find that it is easy for the rich to exploit the poor, and even if by chance the poor happen to go to a court of law, it requires a golden key to open the doors of justice. The expenditure involved is so much that a poor litigant cannot do it and it is therefore that the concept of legal aid has been accepted.

In the Criminal Procedure Code we have seen that section 304 provides for legal assistance to be given to all persons in sessions cases. Even that does not go far enough. Why only in sessions cases? Legal assistance

should be provided for everybody. It would be the same amount of cost for litigation—for printing, for lawyers. For a poor man it is as good as it is for a man of riches.

We say, justice delayed is justice denied, if it is also without the reach of the common man, then also, it is justice being denied. Therefore, when the new concept of legal aid has been accepted it should really go further, and I would urge upon the Government that they should, within a very reasonable time, bring forward a comprehensive measure so that the deletion of clause 14 may be fully justified.

Legal aid is not merely providing second-rate lawyers; that should not be the idea. It should mean that the society or the lawyers should consider it a social obligation to take cases voluntarily, defend or prosecute the cases on behalf of the poor litigants. In a country with half its population below the poverty line and with its constitutional ambition—equal treatment of the law—it has to provide legal aid and advice at little or no cost, if the system has to become viable, especially for those persons who serve the country in perilous climes, in distant borders and in the armed forces, those who have been suppressed for centuries, I mean the Scheduled Caste and Scheduled Tribe people, the worker who is exploited but who finds it very difficult to go to a court of law and to afford the cost of litigation. All these weaker sections have to be given legal assistance at the cost of the State. If that is done, this legal aid concept which has been partially accepted by the Government under the Criminal Procedure Code and also in this Bill, then only it will be a democratic instrumentality which, by reaching out to the poor, the backward, the disabled and the weak will deliver the message of law home and become a social tranquilliser, stabiliser and thus enlist them in the camp of its believers. But today we see that while the law says

both are equal, in practice we find that the very thing, the very fact that there is equal law for both itself means some disability on the part of the weaker sections.

I congratulate the Government for clause 18 in this Bill. They have made a law that for the Scheduled Castes and Scheduled Tribes the advocate's fees for enrolment would be half the normal fees. Supposing we have said the law must be the same, if the same law is applied in such cases even in matters of courts, then it must not be a question of discrimination; it is a question as to for whom the law is meant. The law is meant more for the poorer sections and without any legal assistance, if you have the same law, it would not be worth while. We take the example of the Negotiable Instrument Act. A promissory note would be *prima facie* an evidence that the man has signed a note. Now, we have known that a heartless money-lender would give Rs. 500 to a poor farmer, a worker, or a Harijan and take a receipt of Rs. 750. Now, for him it is the presumption against him and he is undefended. How can he get justice? What happens to him. Therefore, if we have to inspire confidence among the people for the law and if we really want 'rule of law', it is very necessary that free or even at a nominal cost legal aid is provided. I, therefore, welcome Bill inasmuch as it has accepted the principle of legal aid. It would have been better had this very Act contained a chapter on legal aid but it was not possible. There were various questions before the Committee. The Government had already appointed an Expert Committee which is looking into it and I am sure the new piece of legislation will be brought forward as early as possible so that really the legal aid which is a social obligation on the State is fully discharged.

With these observations, I support the Bill.

SHRI G. A. APPAN (Tamil Nadu): Mr. Deputy Chairman, Sir, I do not think anybody in this House or anywhere else will oppose a Bill as this, which is congenial Bill. I cannot be an exception to this.

Sir, I have my own bitter experience about the profession of advocates. I am not an advocate myself but my wife is an advocate. It is now about 58 years that I have not gone through the court and naturally there is a maxim or a proverb in Tamil Nadu which means that anybody who goes to court will only have to be dependent on the broken parts. There is another proverb which says: It is better to go and fall at the feet of your enemy or supposed enemy even if he might be deliberately trying to spoil you rather than going and falling at the feet of a witness. I would rather say that to avoid going to a court, you can even go and fall at the feet of these advocates.

SHRI SASANKASEKHAR SANYAL (West Bengal): Sir, on a point of order. If you happen to be a graduate of law, this will be a contempt of Chair.

SHRI G. A. APPAN: I am only speaking stark facts, with all reverence to my friend, Mr. Bhupesh Gupta, who is a Barrister and to my other friend, who is an advocate of the Supreme Court.

SHRI BHUPESH GUPTA (West Bengal): I thought the hon. Member qualified to be the Judge of the Madras High Court.

SHRI G. A. APPAN: Anyhow, I have regards for you because you are a bachelor and you attend the Parliament more than any of us if attendance is to be taken.

Sir, let me make on the floor of this House the following observations, my critical views, my personal experiences. As you know the advocates' fees is very nominal now. I know in 1949-50 or so the enrolment fees to the Bar Council was Rs. 900 odd if I

[Shri G. A. Appan]

am not incorrect, in Madras. But now the fees is only Rs. 250 out of which Rs. 100 is to be appropriated to the Legal Aid Fund. It is very very proper. Now many people are talking about the Legal Aid Committee or the Free Legal Aid Committee. I do not know in many States, in how many districts or in how many taluks you have Free Legal Aid Committees. If there are any Free Legal Aid Committees, it is only the butterflies or the sharks that occupy them. I do not think any poor man can go to these Free Legal Aid Committees. In spite of the fact that these Legal Aid Committees have been advocated for the last ten or fifteen years, as far as I am aware I have not seen any concrete honest free legal aid being given in any part of India. Of course this is subject to correction.

SHRI BHUPESH GUPTA: The point is, everything you say is subject to correction.

SHRI G. A. APPAN: Mr. Deputy Chairman, there are two advocates in a case for the two sides, the petitioners and the defendant. And you know that justice delayed is justice denied and you know, Mr. Deputy Chairman, how these advocates go on simply asking for adjournments.

SHRI BHUPESH GUPTA: The same is the case in Madras. Justice Karunanidhi is justice killed.

SHRI G. A. APPAN: Let us talk it over separately.

Now there is the case of a school which was to be floored with cement. It was mud floor in the past with a thatched hut. For fear of fire it was to be changed to a tiled hut. The landlord of that house went to the court during the vacation period and asked for an injunction not to cement the floor with cement and to keep on the thatched roofing. For full five years the Judges did not study the case properly and the advocates of the other side were unnecessarily helping that man knowing fully well

that he was fighting a wrong cause, an illegal cause, an unscrupulous cause and have been asking for adjournments after adjournments all these years. Mr. Deputy Chairman, Sir, there should be a clause here—I leave it to the hon. Minister—that in no case adjournments can be given more than two or three times for any party. There should also be a stipulation that a case entertained in a court of law should be first studied by the Judge because if the Judge does not study it he goes on postponing it quite a number of times. Even for the admission of the case the Judge should study it and discuss it with the advocates threadbare.

SHRI N. K. SHEJWALKAR: When study is not compulsory to Members of Parliament why should it be compulsory to the advocates and judges?

SHRI SASANKASEKHAR SANYAL: Mr. Appan, there should be no adjournment of Parliament even.

SHRI G. A. APPAN: That is also there. This is one point. Then regarding the membership of the committee, of course, it is stated not more than nine members and not less than five members. People used to say and they mock at me, not a single speech of poor fellow Appan passes without making a reference to the Scheduled Castes and Scheduled Tribes.

THE MINISTER OF STATE IN THE DEPARTMENT OF PARLIAMENTARY AFFAIRS (SHRI OM MEHTA): He is not a poor fellow.

SHRI SASANKASEKHAR SANYAL: He is a fellow, but not a poor fellow.

SHRI G. A. APPAN: Whatever it is, may I request the hon. Minister to please accept it and frame some rules? On any committee at least twenty-five per cent members should be from the Scheduled Castes and Scheduled Tribes. My English is wrong and please excuse me. In our Tamil Nadu in the Temple Entry Act, we have stated that no temple can constitute a managing committee unless there is at

least one member from the Scheduled Caste, even if it consists of two members. In the same way it should be done here.

Regarding education I have been telling the House ever since I came here that law is not a scientific subject or a technical subject where practical training in service is needed. I have known of hundreds and thousands of advocates who have passed law by means of private study. One need not go and spend or waste two years in a college. Previously it was two years and now you have made it three years and you cannot admit all the people who apply for studying in law colleges. Why not you allow people to appear privately for law? I have been telling this to the Education Minister and a number of Members of Parliament also can know what is law. We will be saving a lot of money if we can make this provision. I am not speaking about barristers. They are different. They are drilled. To study for the profession of law for three years, it is a waste of money, unless one is of a mediocre type.

SHRI BRAHMANANDA PANDA (Orissa): Mr. Appan has made a very good suggestion. You should direct the Minister of Parliamentary Affairs to have a cell here for those Members of Parliament who wish to know something about law. The classes may be conducted here. Will it be all right?

SHRI G. A. APPAN: I am prepared to sit for a law examination even without studying, but for a profession like law why should a person be compelled to waste two or three years in a law college and spend his parent's money? At least this time can be spent on employment elsewhere on productive lines.

Furthermore, this fee of Rs. 100 is not very much and apart from the fee of Rs. 100 for this legal aid fund, you are also.....

SHRI JAISUKHLAL HATHI: The fee of Rs. 100 is not there. It has been deleted.

SHRI G. A. APPAN: That is very nice. With these words, I want at least the sagacious Minister of State, Mr. Niti Raj Singh, and Mr. Gokhale to make this honest piece of amendment, namely, anybody can appear for law after two years of graduation. That should be there. Or else, he will not be considered as 3 P.M. equal to that. After two years, Parts I and II; Part I alone, if it is one year after graduation. Then there will be a saving of a lot of money and also the scramble for seats will disappear. Furthermore, when less money is spent, people can collect less charges and fees from the litigant.

Then, one more point. Among the Supreme Court advocates there are different categories, senior advocates, junior advocates and advocates on record. After having passed the Bar Council' examination, even after graduation in law, as many did it, why do you want another examination here called the Advocates on Record Examination? And further, there is also accountancy. Accountancy may be all right for an advocate if he wants to practise chartered accountancy. For that there are separate chartered accountancy and cost accountancy. Why should they also be made compulsory subjects for the examination of the Advocates on Record of the Supreme Court? Further, they have to entertain certain juniors and subordinates when they want to become Advocates on Record. All these things should go.

Then a sum of Rs. 1500 or Rs. 1700 are charged by the senior advocates for a day. When we want Rs. 100 from each entrant for enrolment into the advocates' profession, why don't you levy 50 per cent of this sum of Rs. 1700—I do not know the exact amount, I speak subject to correction; but it is more than Rs. 1500—charged by the senior advocates? There should be a heavy fee from them.

I support the Bill; I also support the views of my very revered good friend Mr. Hathi and also our learned advocates here and other friends.

SHRI H. S. NARASIAH (Mysore): While welcoming this measure, I would like to emphasise only two of its important aspects. One has already been touched upon by several Members, which is regarding legal aid. Legal aid in a country which has been afflicted with considerable poverty has become almost an economic necessity, for the population of this land. No doubt, we have been putting on the Statute Book of this land ever so many enactments declaring and creating over so many legal rights but none of them is in a position of being understood by the masses of this country. Legal aid, as I have been saying, a part of the economic development of the masses of this country, is an absolute necessity, and to the extent the Bill is contemplating some such legal aid, vesting it in the hands, for its administrative purposes, of the Bar Council of India, no doubt, the idea is good. But one thought strikes about this form of legal aid, whether it is desirable to entrust it to the hands of the Bar Council, either of the Centre or of the State. The Bar Councils have got their own responsibility. To the experience of many a member of the Bar they have been rather working in a spasmodic manner. So, it is for the Minister concerned to think if he could not create a separate Legal Aid Council itself for the entire country and for its ramifications both at the State level as well as at the district level so that this body might concentrate on this vital need of many a section of the population of the area. As has been pointed out, the poor farmer, the factory worker does not know what his rights are, and even if he knows he cannot work them out as a result of meagre resources. So I would emphasise on this aspect of the Bill that a separate Legal Aid Council on an all-India basis might be thought about and entrusted with the responsibility of furnishing this legal aid to all the weaker sections of our population. That is my first suggestion, Sir, in welcoming this Bill.

The other suggestion which I would like to point out is that the Bill has

deprived the right of appeal that an advocate possessed under the existing law, the right of appeal at two stages, one to the Bar Council of India and the other, if need be, to the Supreme Court itself. The elimination of the appellate jurisdiction of the Bar Council of India and the Supreme Court, I feel, Sir, may be wrought with its own serious consequences. Now to make this single appellate remedy as against the findings of the Disciplinary Committee at the State level to the High Court of the State, and with that the destinies of the advocates being disposed of, I feel sometimes may not be very safe. From what little experience some of us have at the Bar we find that at the State level various considerations of communalism, linguism, parochialism, all these are rampant, rampant not only at the Bar but I am afraid, Sir, they have invaded also the judiciary. Now to expose the destinies of the advocates, so far as the disciplinary part is concerned because some of these bodies are constituted at the State level, I feel is rather unsafe particularly when our object is to evolve an integrated Bar for the whole country, a Bar which will be free of any of these sad features of regionalism, linguism and communalism. Restricting this appellate right only at the State level is not quite safe. With these few observations on the main issues of this Bill and requesting the hon'ble Minister to take note of them, I support this Bill.

SHRI BHUPESH GUPTA: Sir, this Bill, as reported by the Joint Select Committee, has a long history, and it has been a disappointing one at that. Even now we do not have the needed provisions in the Bill either to provide legal aid to the poorer section of the community in a manner it should be provided or any provisions for reorganising the legal system in general and the Bar of the country in particular.

Sir, the two Notes of Dissent attached to this Bill would show that the Government went back on its pro-

mise to introduce in this Bill or incorporate in this Bill certain provisions for legal aid for the poor sections of the people. Why that was dropped, I do not know. There is a lot of conservative thinking in the Ministry of Law and I do not know if my friend, who is piloting this Bill, is aware of it. Evidently he is not. Being a newcomer to it, he is not quite acquainted with the wily ways of the Ministry of Law where you get more conservatism than dynamism, where there is backward thinking rather than forward thinking, where there is an attempt to stifle growth and advance rather than to push things forward and bring about changes in conformity with the realities of the situation and the needs of our changing times. That is why in the name of a comprehensive Bill, which had been hanging fire all these years, we have a caricature of a legislation. I know it will be passed here, but it is absolutely meaningless in many ways.

Let me say a few things about the system. Now when we look at the legal system in our country, we have in mind the bar and the bench and the co-ordination between the two. Without proper co-ordination and harmony in the functioning of the two, we cannot have a proper legal system in the country. To-day we find that in the High Courts and so on, lawyers are made judges; that is to say, direct recruitment takes place from the both at the Supreme Court and also at the High Court, more especially at the high Court. Now, I do not know how our lawyers friends are thinking, but I think we should look forward to the day when more and more recruits will come not from the services by way of promotion, but from the bar to the bench straight. And the Supreme Court should set an example in this regard. At the moment, the Supreme Court draws its judges generally from the High Court. The Supreme Court should directly recruit judges from the bar, whether of the Supreme Court or of the High Court. This is a task

which is given to the President, that is to say, to the Government, and the Government should apply its mind in this direction. Now we cannot just live in the old days of filling the bench either by promotion or by this kind of recruitment policy where you have an intermediary stage when one has to serve as a judge in the High Court or some other court for some time before he comes to the Supreme Court. Well, that arrangement is not good. I am not saying that it should be given up. But other methods also should develop. Secondly, as far as the Supreme Court is concerned, I think the legal world should demand, at least we should demand here—and I am surprised the legal world is not demanding it—that the appointment of the Chief Justice should be made on the basis of merit, not on the basis of seniority. This is an antiquated idea. Why the Chief Justice of the country, the highest legal authority, should be appointed on the basis of mere seniority, I cannot understand. With the changing times, certainly the nation should have an option to choose from among the brother judges as to who is the best or to find one from outside, from the bench if one likes so, because the Supreme Court Chief Justice occupies a very important position in the country and there, I think, the idea of appointment on the basis of seniority should be given up as a matter of policy. Our Constitution does not provide that it is obligatory. But it has become a practice over the last 20 years to appoint the Chief Justice of the Supreme Court on the basis of seniority, even if he will be there for one or two years only. I am told that one of our ex-Members of the Rajya Sabha is to become Chief Justice of the Supreme Court for a year or so. I can understand his ambition and his aspiration although his ideas I do not share at all. They are very reactionary ideas. We saw him here. I am not reflecting on him as a judge. But when he was here, Mr. Hegde's ideas were entirely reactionary. He may be good or he may be bad. I am not going into it. But why should

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we have this practice? Now, before he comes there, another will be there as Chief Justice for a month or two. Why should this be so? Why should not the Government think in terms of appointing a dynamic judge from out of the Bench if they find anybody suitable, or else, from outside, ignoring the rule of seniority. This is how you should set standards in our legal system, not by going by the hackneyed outmoded, rule of seniority which today does not answer the requirements of our time. Certainly it is contrary to the social objectives and other things that we have in mind. Therefore, I say this one point should be borne in mind. I am not reflecting on anybody. I am frightened of the honourable judges. I do not wish to say anything against anybody. But I would like Parliament and the country to retain its right to choose who the head of the Supreme Court should be, and should not leave it to the practice of appointment by seniority. We should keep it to the judgment of the nation, the vigilance of the nation, the understanding of the nation, as to who should occupy the highest court of the land. This is all I want. It is for you. Parliament can discuss it, such appointments. In fact, I would like judges to be appointed on the basis of a panel prepared by the Government and sanctioned by Parliament where we can discuss the thing. Why should judges be free from discussion? I should like to know. A judge can be criticised. Everybody, all of us, can be criticised by anybody, in and outside Parliament. Judges are very touchy about the so-called contempt of court. The moment you say anything, they say 'contempt of court'. What is all this bunkum "contempt of court"? Why cannot we say anything about them? Then let the judges also appear before the bar of the nation and answer before the bar of Parliament in order that we can express our opinion about their knowledge, learning, ability, antiquity and character. Why should this thing not be done here when it is done in other

countries? Are they so sacrosanct? Therefore, I say this is another suggestion. I know I give some suggestions. And here is my friend, an ex-judge. Why is he here? Is it because he found justice very boring? Why has he left judgeship? Tell me, Mr. Gokhale, why have you left it? Surely you did not leave it for a smaller amount of salary. You are getting much less now. There the salary is very high. Of course, here you get many other things. Here you are a perquisited Minister, not a salaried Minister. As a judge you were getting slightly more. You left it. Why? Because, you were tired, you were bored. Or, perhaps your talents would be better in Company Law Affairs or Petroleum and Chemicals. that also for a short time. That is what you must have thought. Now, today you are here. Therefore, I ask Mr. Gokhale to tell me why I should accept the position. that the Chief Justice of the Supreme Court should be appointed according to the so-called seniority rule. Our Constitution does not give us any mandate whatsoever to do so. You are free to appoint anyone you think otherwise qualified to be a judge as Chief Justice of India. That is as far as that is concerned....

SHRI MAN SINGH VARMA (Uttar Pradesh): He should be appointed on the recommendation of the Communist Party of India.

SHRI BHUPESH GUPTA: Sir, I have always tried to be understood by my friend. Somehow or other he has taken a vow before Mr. Balraj Madhok that he will never understand me. I do not utter a word. You discuss it.

SHRI MAN SINGH VARMA: Do you want a committee?

SHRI BHUPESH GUPTA: No, no. Parliament can discuss it, here in Parliament where you are stronger than we are, where your voice is heard before mine. You can have your say, I can have my say, they can have their say. Let there be a rational

thinking and let the country watch what we say, how we talk. We suggest and then let the Government decide on the basis of the discussion in Parliament as to what should be done. Let Parliament give the necessary direction to the Government. Why bring in the poor Communist Party of India. If we were in power toady, many of the judges would not have been in the High Courts, in the Supreme Court, sitting today. We would have found better places for them. I am sure some of them would be in the Jan Sangh Party. Shri Hegde would not have been in the Supreme Court. May be when I come to power, Shri Hegde will be in the Jan Sangh, Syndicate or Swatantra Party. I have not the slightest doubt....

SHRI PITAMBER DAS (Uttar Pradesh): Mr. Deputy Chairman, Shri Bhupesh Gupta is talking about the time when he comes to power. When he comes to power, I am afraid these Parties will not be even allowed to exist for Shri Hegde to join.

SHRI S. D. MISRA (Uttar Pradesh): He is in power. Whatever he wants is being done.

SHRI BHUPESH GUPTA: There is some confusion among my friends on a very simple issue, namely, whether I am in power or not. I suggest you to appoint a Commission of the House to settle this question.

SHRI S. D. MISRA: Not necessary, because you are in power.

SHRI BHUPESH GUPTA: But anyway, my friends' interruptions were interesting. I raised this matter, because somebody first referred to it. Let us leave it at that.

Coming back to the Bill, we have a Bar. But the dual system still remains. For instance, there is the original side in Bombay and Calcutta. It should go. We have been crying hoarse on this.

Then there are Barristers. I belong to that class just by education, not

by faith or profession. It is just by accident of education. Barristers are still a class. Why should they enjoy a special privilege? I do not think any kind of advantage should be attached to them in any manner. I would like this kind of discrimination, direct or indirect, to be abolished completely. All Advocates of the country should be on par without any kind of advantage being attached to some simply because they were called to the English Bar.

Then, what about this Gown and My Lord business? You were being called My Lord when you were on the Bench not only by your 'Lady Lords' but by others also in the court. Why don't you do something about this 'My Lord' business.

SHRI SASANKASEKHAR SANYAL: Shri Bhupesh Gupta has no Lady Lord to call him 'My Lord'.

SHRI BHUPESH GUPTA: I am very conscious of it. Why should this continue in a court of law, I do not understand. These are little things—not that they matter very much. Still they betray an attitude or mentality of servility and an attempt to hang on to the past inability to overcome them. Suppose a lady Judge sits there. Will you call her 'My Lady'?

SHRI SASANKASEKHAR SANYAL: She is overlord.

SHRI BHUPESH GUPTA: My friend will call her 'Overlord'. He will not call her 'My Lady'. But I do not know how she will treat him. Therefore, this should go. I am told some discussion took place on this. Still that is not going. Then comes the gown. Members of the Bar should be asked to give it up. As I said before, this is monkeying or apeing. Indians to be in this gown not only look funny and comical, but sometimes atrocious even. Somehow or other, it does not fit in with our genius nor with our physique. Should we put on this kind of gowns and appear in the court? This should go.

[Shri Bhupesh Gupta.]

You have organised a single Bar. But what about income disparity? Even in the Bar you have 'haves' and 'havenots'. Some members of the Bar are Mercedes Benz lawyers who go in Mercedes Benz cars and some are Scooter lawyers who go on scooters. In the Supreme Court also I find some Advocates are going in scooters whereas others go in Mercedes Benz cars. And it would cost more than a lakh of rupees if they pay the tax. And, Sir, you know the lawyers who go by the scooter. But this is only an expression of it. Some of them would be earning and are earning lakhs and lakhs of rupees whereas others do not earn at all and this is more so at the High Court level and still worse at the lower levels. What about eliminating those disparities in their incomes? I should, therefore, suggest that there should be a collegium of lawyers and advocates all over the country, at all levels, and it should have a proper system of distributing cases and briefs amongst its members keeping in view that those who were young should be helped and those who are at the top can forgo some of the briefs and so on. Even distribution should take place and the collegium should run the whole institution with a greater social outlook to take all the lawyers, to help them and to see that the income disparities are at least reduced and the juniors get a fair chance. The juniors do not get a fair chance unless they are related to some lawyers who are seniors or related to the judges and so on. I know, for example, in Calcutta how the juniors rose to the top of the Bar because of their relatives who were sitting at the Bench. You know it very well and you know it, Mr. Gokhale. You know the tricks of the trade more than I do. I, therefore, say that there should be a collegium at each Bar. Each Bar should have such system which should have a proper code and the briefs shall be distributed not only according to the merits and importance of the case, but also keeping in view the fact that the entire profession has

to be fed. Further, it is also to be seen that too many people are not brought into the profession. Of course, it is another matter.

Then, Sir, about fees: My friend mentioned that the Supreme Court fees are the highest fees, Rs. 1,750/- per day. This is the fee which is shown in their Income-Tax returns. But this is not the fee which is taken actually! Am I right or wrong Mr. Gokhale?

SHRI MAHAVIR TYAGI (Uttar Pradesh): He cannot confess it.

SHRI BHUPESH GUPTA: Yes, he cannot confess it. This is the fee taken openly. What is given under the table is not known and that is how evasion of tax takes place. Otherwise, how is it that some of your lawyers, when they do not like to live in this world and seek heavenly abode leave millions of rupees by charging fees at the rate of Rs. 1,750/- and paying Income-Tax at that rate? Do not think that only our Big Money people evade Income-Tax. Our grand lawyers at the top, some of them, are past-masters in evasion of Income-Tax and that is how they make money. I know cases where five thousand or six thousand or seven thousand rupees is charged. It is taken in cheque or it is taken in currency cash. You would not know that. You do not know how to stop it. I say, fix the fee at a much lower rate and make all payments to be made compulsorily through cheques. You should lay down that no payment would be legal unless it is made through a crossed cheque. And, if anybody is found taking above a certain limit in cash, he should be prosecuted and punished and provision should be made for imprisonment and for simultaneously debarring him from legal practice.

MR. DEPUTY CHAIRMAN: Mr. Bhupesh Gupta, please wind up now, because the Railway Budget is to be presented now.

SHRI BHUPESH GUPTA: Yes, Sir, I am winding up now.

Otherwise, you cannot eliminate this malpractice. On the one hand, there

are poor people suffering in the legal profession; on the other hand, people at the top earn too much. Otherwise, how is it that some of the lawyers are being appointed collectively by the Big Business and other people in order to challenge even the provisions of the Constitution or the laws made by Parliament and so on? When they are acting for the vested interests, you know, how much is being spent? Now that should be stopped. This is another suggestion.

Finally, you reduce the fees. You make a minimum fee and a maximum fee and enforce it in a manner so that there is no tax evasion of malpractices and everybody gets a fair deal in the legal profession.

We find that legal delays are taking place also. This is another point. Somebody said that adjournments are long and all that. In Bengal and other places, many Naxalite prisoners are in custody as under-trials for years and years, without any legal aid and without any assistance. It is so in Andhra Pradesh, in Punjab, in Orissa, in Bihar and West Bengal, as also in other places. Why should they suffer as under-trial prisoners for years and years? If you do not have a case, release them. If you have a case, try them. In any case, give them proper legal assistance, and so on. But that is not provided. Therefore, I say that even on that account Government's failure is colossal.

The administration of law is very important, in the context of which lawyers play an important part. And it is there that all the difficulties have arisen, and the administration is very unfair, very unjust, and to the disadvantage of the poorer sections of the community and to the advantage of the rich sections of the community. The principle of 'Equality before Law' which we have enshrined in our Constitution has, in practice, become a colossal hoax, when, on the one hand, big lawyers like Palkhiwalas are available at the disposal of the rich and moneyed people whereas the poorer sections of the people, agricultural labourers,

workers, poor peasants and Government employees and the Haryana teachers who are being suppressed by the Bansilal Ministry like hooligans, do not get any support or an advantage whatsoever. This is entirely wrong. Therefore, I say, Mr. Deputy Chairman, that not only the law must be fair in this world, but also the administration must equally be democratic and fair and must take into account the outstanding facts of our life, and the majority of the people should not be denied a fair deal even in the courts of law and courts of justice, while the exploiting classes have all the advantages together with the corrupt officials and corrupt people.

Therefore, I hope that Mr. Gokhale will kindly pay attention to these very fundamental aspects of the matter, and think of bringing a Bill which would make certain radical changes and orientation to the entire legal system.

THE BUDGET (RAILWAYS) 1973-74

MR. DEPUTY CHAIRMAN: Mr. Qureshi.

THE DEPUTY MINISTER IN THE MINISTRY OF RAILWAYS (SHRI MOHD. SHAFI QURESHI): Sir, I beg to lay on the Table a statement (in English and Hindi)....

SHRI MAHAVIR TYAGI (Uttar Pradesh): It is a small one, it may better be read, so that we can understand....

SHRI MOHD. SHAFI QURESHI):... of the estimated receipts and expenditure of the Government of India for the year 1973-74 in respect of Railways.

THE ADVOCATES (AMENDMENT) BILL, 1970—contd.

MR. DEPUTY CHAIRMAN: Mr. Gadgil.