

further the period for submission of the final Report of the National Coal Development Corporation Committee (English and Hindi). [Placed in Library. See No. LT-1507/68]

NOTIFICATIONS UNDER THE MINES AND MINERALS (REGULATION AND DEVELOPMENT) ACT, 1957

SHRI CHOWDHARY RAM SEWAK : Sir, I also beg to lay on the Table a copy each of the following Notifications (in English) of the Ministry of Steel, Mines and Metals, under sub-section (1) of section 28 of the Mines and Minerals (Regulation and Development) Act, 1957:—

(i) Notification S. O. No. 1527, dated the 24th April, 1968.

(ii) Notification G. S. R. No. 1177, dated the 15th June, 1968.

(iii) Notification G. S. R. No. 1263, dated the 29th June, 1968.

[Placed in Library. See No. LT-1362/68 for (i) to (iii).]

AUDIT REPORT (1965-66) ON THE ACCOUNTS OF TEA BOARD

THE DEPUTY MINISTER IN THE MINISTRY OF COMMERCE (SHRI MOHD. SHAFI QURESHI) : Madam, I beg to lay on the Table a copy of the Audit Report on the Accounts of Tea Board for the year 1965-66. [Placed in Library. See No. LT-1509/68.]

STATEMENT BY MINISTER RE FLOODS IN THE COUNTRY

सिचाई तथा विद्युत मन्त्रालय में उपमन्त्री (प्रोफेसर सिद्धेश्वर प्रसाद) : महोदया, मैं डा० के० एल० राव की तरफ से देश में बाढ़ की स्थिति के सम्बन्ध में एक विवरण सभा पटल पर रखता हूँ। [Placed in Library. See No. LT-1492/68]

RE RECENT TALKS BETWEEN U.S.A. AND INDIA

SHRI BHUPESH GUPTA (West Bengal) : When is the hon. Minister of State for External Affairs going to make

a statement on the talks between the Indian Government representatives and the representatives of the U. S. Government? The talks are over. The joint communique has been issued and all kinds of reports have appeared in the Press. In the fitness of things, when the Parliament is in session, *suo motu* the Government should come here to make a statement; but today they have not come and made a statement on this subject. Instead of our giving a calling attention notice and so on . . . (Interruption) When is he going to make that statement?

THE DEPUTY CHAIRMAN : Is the Minister of State for External Affairs going to make a statement?

THE MINISTER OF STATE IN THE MINISTRY OF EXTERNAL AFFAIRS (SHRI B. R. BHAGAT) : Yes, Madam, tomorrow.

THE TELEGRAPH WIRES (UNLAWFUL POSSESSION) AMENDMENT BILL, 1968

THE MINISTER OF STATE IN THE DEPARTMENTS OF PARLIAMENTARY AFFAIRS AND COMMUNICATIONS (SHRI I. K. GUJRAL) : Madam, I move for leave to introduce a Bill further to amend the Telegraph Wires (Unlawful Possession) Act, 1950.

The question was put and the motion was adopted.

SHRI I. K. GUJRAL : I introduce the Bill.

THE ADVOCATES (AMENDMENT) BILL, 1968

THE MINISTER OF LAW (SHRI P. GOVINDA MENON) : Madam, I move:

“That the Bill further to amend the Advocates Act, 1961 be taken into consideration.”

Madam, the object of this amendment is to rectify a mistake which was committed by the administrative side of the High Court of Mysore with respect to enrolment of advocates. After the Advocates Act, 1961 came into force it was obligatory for advocates to have training as apprentices before they could be enrolled. But the High Court of Mysore

on its administrative side, misunderstanding certain provisions of the Advocates Act, ignored this provision and enrolled about 174 advocates. Later this enrolment was found wrong and the Bar Council of India came to that conclusion. The result was that these 174 advocates were not properly enrolled as advocates and the various matters in which they would have appeared in one court or other would have been defective. It was pointed out to us that this defect should be cured and, therefore, this matter was dealt with by an ordinance which was issued a few days before the Parliament assembled. The ordinance became necessary because a writ, which these advocates filed before the Mysore High Court, was pending for long and unless the ordinance was issued they would have been in trouble. The writ before the High Court, it was evident, would have gone against the advocates and the stay issued vacated. Thus the only object of the amendment is to save these 174 advocates of Mysore.

I hope the House will take it that this is a very non-controversial matter, a step taken in order to help these people who were misled and, I hope, without much controversy the Bill would be passed.

The question was proposed.

SHRI AKBAR ALI KHAN (Andhra Pradesh): What is your reaction to the amendment of Mr. Mulka Govinda Reddy?

SHRI P. GOVINDA MENON : The amendment of Mr. Mulka Govinda Reddy will go against the second proviso to clause 2 of the Bill. The proviso reads:—

“Provided further that the seniority of such person, whether his name is borne on the State roll of the State Bar Council of Mysore, or on the State roll of any other Bar Council, shall, for the purposes of clause (d) of subsection (3) of section 17, be determined by reckoning the 16th day of May, 1964, as the date of admission.”

Now, Madam, Mr. Reddy wants that their seniority shall be counted from the date of their respective enrolment dates commencing from the 28th day of February, 1963. This is a small matter, Madam because the troubles in which these advocates landed themselves on account of misdirection is sought to be cured,

and the period also is very restricted, 28th February 1963 to a date in 1964, and the number of advocates also is only 174. Before the 28th February, there was no such enrolment. Those who were enrolled before the 28th February were enrolled properly. Section 21(1) of the principal Act says :—

“Where the date of seniority of two or more persons is the same the one senior in age shall be reckoned as senior to the other.”

So if all these gentlemen are taken to have been enrolled on 16th May, 1964 the question of seniority also is automatically resolved. By this section they will be senior according to their age. We are trying to help these people. It would create further complications if his amendment is accepted and the proviso also will then have to be amended. Therefore, this amendment is not needed.

PANDIT S. S. N. TANKHA (Uttar Pradesh): That is to say, the persons whose enrolments will be considered as proper after the passing of this Bill will be deemed to be duly enrolled from the date on which they were wrongly enrolled.

SHRI P. GOVINDA MENON : Yes that is the idea.

THE DEPUTY CHAIRMAN : The time allotted for this Bill is one hour. Mr. Mulka Govinda Reddy.

SHRI MULKA GOVINDA REDDY (Mysore) : Madam Deputy Chairman, I support this Bill. This question was raised during the debate in this House last time on the Advocates Act. For the last four years this question was pending before the Central Government. It was no fault of the advocates of Mysore when they were enrolled as pleaders first by the Mysore High Court in the administrative side, and later on they were enrolled as advocates by the Bar Council of Mysore. I agree that it should have been done. But once they were enrolled as advocates by the Bar Council of Mysore the Bar Council of India should not have disenrolled them. After the enrolment of advocates as advocates in the Mysore High Court, we have seen instances in different States where advocates or persons who went to get themselves enrolled as advocates were insisted upon to pass a test or an apprenticeship course. But that was waived

[Shri Mulka Govinda Reddy.]

in different cases in different States including the State of Delhi. So whatever was done by the Bar Council of Mysore should have been approved and they should not have been disenrolled by the Bar Council of India. This representation was made to the Central Government by the State Bar Council, by the Anglo Bar Association, by the Members of Parliament coming from Mysore and by leading advocates of Mysore. For the last four years the Government of India did not take any action except to constitute a Committee to go into this question and later on they have issued this ordinance. Instead of issuing this ordinance they should have brought forward this amendment long before. This case was pending before the High Court of Mysore for nearly three years. So a representation was made to them. Now the Government of India has realised the import of the representation of these advocates as well as the Bar Council of Mysore.

My amendment is very simple. It says that their enrolment should be effective from the date on which they were enrolled as advocates of Mysore by the Bar Council of Mysore. But the Law Minister is not prepared to accept this amendment and he wants to say that this 16th May, on which the President gave the assent to the Amendment Bill, should be taken as the date on which these advocates were enrolled.

The hon. Law Minister has further said that if you do not validate the enrolment of these advocates there will be some doubt whether the judgments that were delivered by the different courts in which these advocates appeared would be valid or not. It is quite likely that some of these advocates might have become Munsifs or Magistrates. So in order to cure this lacuna this amendment has been brought forward. But the same reason holds good for the period, that is from 28-2-63 to 16-5-64 if my amendment is not accepted. What are you going to do to validate the actions of these advocates or the cases in which they appeared before the different courts during this period? For the same reason as you have now adduced for validating the enrolment of these advocates, it should be extended for this period also. He has said that for deciding the question of seniority of the advocates, seniority in age will be taken. If we adopt 16th May,

1964, as the day on which they were deemed to have been enrolled as advocates of Mysore, Madam Deputy Chairman, the period is about 14 or 15 months, and if this benefit is given to them some of them will be qualified to appear for different examinations conducted by the Public Service Commission in Mysore for the posts of District Judges or Munsifs or Magistrates. If this amendment is not accepted, then a precious time of 14 to 15 months will be lost to these advocates and it will be very difficult to cure the lacuna that may appear because of the argument that has now been put forth by the Law Minister that these advocates in effect were not advocates because they were dis-enrolled by the Bar Council of India, and so we are trying to cure the defect which is there now. I, therefore, say that the Government should not have any objection in accepting my amendment which is very simple, *i.e.*, to give effect to it from the date on which these advocates were enrolled as advocates of Mysore. If there is any conflict between my amendment and the second proviso in the Bill, I have no objection in suitably amending my amendment; or the Government itself can bring forward an amendment accepting the spirit of the amendment that I have moved. I support this Bill and I would also request the Government to accept my amendment.

SHRI N. R. MUNISWAMY (Madras): Madam Deputy Chairman, I rise to support this Bill. This Bill envisages the replacement of the ordinance issued in May, 1968 and incidentally, as many as 174 members of the profession will be very happy because their enrolment is being made valid. The hon. Minister while piloting the Bill said that the enrolments of these 174 persons were by inadvertence taken into consideration by the High Court, which was against the law. I would respectfully state here that the Act itself is defective and there is a lacuna in the Act itself in that anybody who qualifies himself as a law graduate is entitled to get himself enrolled. This position was not visualised when the principal Act was passed. After the Act was passed and after the President's assent was given to it, many persons who had got their law degrees straightway applied for and got enrolled as advocates, and this created a furore. This indicates that there was a lacuna in the Act itself. There was agitation all over the country that either the Act should be amended or the apprenticeship course of six

months or one year should be got rid of. Thereafter, some rules were framed and some law graduates were enrolled as advocates. Things in Mysore were the same as they were in Madras. They were enrolled and subsequently, after the passing of this Act, their enrolment was found to be defective and they wanted to validate their enrolment. For that purpose, this Bill has come in handy. To that extent, we are grateful to the Minister for having lost no time in seeing that these 174 members of the Bar are not kept in abeyance and their enrolment is validated. Now two provisos have been given here. The main proviso is with regard to the reckoning of seniority from a particular date. The previous speaker has also made out a case that there should be no discrimination in enrolment of members from 28th February, 1963 to 31st March, 1964. Many of them had been enrolled on a particular date and some of them on a subsequent date during this period of 14 months, and so the seniority of some people is being affected. Clubbing all of them together and giving them seniority from a particular date seems to be anomalous. I think that something should be done to maintain proper seniority since they have been enrolled on different dates. Because we are validating the enrolment of advocates from a particular date, they need not be lumped together and given a seniority from a particular date. This aspect has to be looked into.

In this connection, I would like to make one or two observations which, though not quite germane to this Bill, will be for the consideration of the Minister when he views the position on an over-all basis. Now, when a student passes his Pre-University Examination, he straightway joins the professional colleges—engineering college, medical college, etc. The course is for five years. The moment he passes his B. E. he gets absorbed as an engineer. The moment he passes his veterinary course, he becomes a veterinary surgeon. The moment he passes his M.B., B.S., he starts practising. But in the case of law degree also one has to study for five years—three years for B. A. and two years for the law degree. But he has to undergo a course of apprenticeship for one more year. Why is this discrimination? The legal profession is as much a profession as engineering, medicine or any other profession. But then why is this discrimination? I wish the Law Minister would think well to see

that this apprenticeship is altogether abolished. There is no use of having such a thing. There was a hue and cry in this House when there were so many engineers who were qualified but who were not absorbed. But so far as lawyers are concerned, we have not seen any demonstration by them. We can see them with their starched collars and bands decorating the corridors of the High Court and the *verandah* of the Supreme Court. I only wish that this course of six months or one year is altogether eliminated. Again, after taking the degree, it takes about five years for a lawyer to earn some money. And it is one profession where I have not heard of any strike. Every day they are going to the courts to see what is going on. My only wish is that the hon. Minister will think well and see that this course of six months or one year is altogether abolished.

SHRI P. GOVINDA MENON : That has been done already, Madam.

SHRI N. R. MUNISWAMY : I know in Bombay it was once said that the course will be for three years. The result was, there was no admission and seats were lying vacant. Now they have reduced it to two years again. So this apprenticeship course of six months or one year should also be abolished.

SHRI P. GOVINDA MENON : It has already been done.

THE DEPUTY CHAIRMAN : He says it has already been done.

SHRI N. R. MUNISWAMY : I am thankful if it has already been done. I had been under the impression that it had not been done.

Then, a reference was made by the previous speaker to judgments. The judgments delivered already will not become invalid because a particular advocate's enrolment had not been validated. The appearance of an advocate has nothing to do with the judgment. The judgment is on the merits of the case only. So the argument put forward by the previous speaker is not valid.

Therefore, I would say that the Bill has come in very handy and those 174 persons will certainly thank this House as well as the Minister for eliminating this lacuna so far as their practice is concerned.

श्री बी० एन० मंडल (बिहार) : महोदया, एडवोकेट्स अमेडमेट बिल इस सदन के सामने इस समय है। इसका मकसद है एडवोकेट्स अमेडमेट आर्डिनेंस, जो राष्ट्रपति के द्वारा जारी किया गया था, उसका ही पर्मनेट ला के रूप में स्थान ग्रहण करना। इस जरूरत को पूरा करने के लिये यह बिल आया हुआ है। इसमें साफ कह दिया गया है कि मैसूर हाई कोर्ट से भूल हुई है इस भूल का यह नतीजा होता था कि वहां के 174 एडवोकेट्स अपने काम से वंचित हो जाते और उनके द्वारा जो केसेज टेक-अप किये गये थे वे सब केसेज खारिज होने की स्थिति में आ जाते। इसी भूल को सुधारने के लिये यह अमेडमेट लाया गया है।

एक बात इससे स्पष्ट हो जाती है कि आज अत्यधिक कानून इस देश में बन रहे हैं जिसे कानूनों का एक जगल हो गया है। इस जगल की वजह से देश के लोगों को तो मालूम ही नहीं होता है कि कानून में क्या क्या तब्दीली हो रही

है यही कारण है कि मैसूर हाइकोर्ट के जज I P.M. जैसे रिसपान्सिबल आदमी, एडवोकेट जनरल जैसे रिसपान्सिबल आदमी हाइकोर्ट रजिस्ट्रार और बार असोसिएशन में रहने वाले, ऐसे ऐसे रिसपान्सिबल आदमी तक भी इसको मालूम नहीं कर सके कि एडवोकेट ऐक्ट—कानून—में तब्दीली हुई है। इसी का नतीजा हुआ है कि इस विधेयक को लाना पडा। पहले से एडवोकेट का जो एडमीशन होता था लीगल प्रैक्टिस में, उसका एक कानून था जिसको लीगल प्रैक्टिशनर ऐक्ट कहते हैं। 1961 ईसवी में दूसरा कानून बना जिस कानून का नाम था एडवोकेट्स ऐक्ट। उस एडवोकेट ऐक्ट के चैप्टर 3 के द्वारा लीगल प्रैक्टिस में, एडवोकेट के एडमीशन की व्यवस्था थी। उम व्यवस्था में यह था कि एक जो निर्दिष्ट एक्जामिनेशन था वह पास होना था—प्रोफेशनल ट्रेनिंग लेना था—चाहिये था। लेकिन बिना इसको किये उन लोगों का एडमीशन हो गया था। कितने दिनों तक लोगों को यह मालूम नहीं हुआ। बाद में जो वहां की बार कौंसिल थी उसने एक रिजोल्यूशन पास किया कि गलती से एडमीशन हो गया है, उनका नाम काट

दिया जाय। इसलिये मैसूर हाइकोर्ट में उन लोगों ने मुकदमा दायर किया जो अभी तक पेडिंग है। वह इसलिये पेडिंग है क्योंकि एडवोकेट्स की तरफ से हाइकोर्ट को कहा गया कि इस पर कोई कानून बनने वाला है। उसके लिये आर्डिनेंस जारी हुआ और इसके बाद यह बिल आया है उसको कानूनी रूप देने के लिये। हमारे हिन्दुस्तान में जो कानून चलते हैं, उसके बारे में एक प्रावर्ब है “इग्नोरेन्स आफ ला इज नो एक्सक्यूज”। यहां पर इग्नोरेन्स आफ ला उन्ही के द्वारा है जो एडवोकेट हैं क्योंकि लीगल प्रैक्टिस के अदर ऐसे लोगों को एडमिट कराने में उन्होंने भूल की है क्योंकि एडवोकेट्स ऐक्ट के अंतर्गत उनका नाम दर्ज कराना चाहिये था। इस सारी की सारी भूल का नतीजा यह होगा कि अगर उनका मुकदमा खारिज हो गया तो उसका फल पहले मुक्किल और फिर एडवोकेट्स को सहना पडेगा; जब कि भूल करने वाला हाइकोर्ट का रजिस्ट्रार एडवोकेट जनरल, बार कौंसिल या हाइकोर्ट का जज है। तो अगर जज भूल करे, अपने एडमिनिस्ट्रेटिव्ह ऐक्ट में, “इग्नोरेन्स आफ ला” की वजह से तो क्या वह सजावार हो सकता है या नहीं हो सकता है; सिविल लाएबिलिटी हो सकती या नहीं हो सकती है, क्रिमिनल लाएबिलिटी हो सकती है या नहीं हो सकती है? मैं इस बात पर सरकार का ध्यान खींचते हुए इसका समर्थन करता हूँ।

THE DEPUTY CHAIRMAN : The House stands adjourned till 2 30 P.M.

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

The House reassembled after lunch at half-past-two of the clock, THE VICE-CHAIRMAN (SHRI RAM NIWAS MIRDHA) in the Chair.

श्री राजनारायण (उत्तर प्रदेश) : उप सभाध्यक्ष महोदय, मुझे मालूम नहीं कि कानून मंत्री जी हमारी बात को ध्यान से सुनेंगे या नहीं। मुझे यह भी मालूम नहीं कि हमारे मित्र श्री मुल्का

गोविंद रेड्डी जी, जिन्होंने सशोधन पेश किया है, वे भी हमारी बात सुनेगे या नहीं। अगर मैं यहाँ पर अपनी बात नहीं कहता हूँ तो अपने कर्तव्य से च्युत होता हूँ। मैं भारत की प्राचीन सस्कृति को सदन के सामने रखना चाहता हूँ कि एक सभामद का कर्तव्य क्या है। सभामद पहले तो सभा में जाये नहीं। अगर जाय तो सत्य का पक्ष ले। जो सभामद किसी डर या भय से असत्य के पक्ष का समर्थन करता है वह सभासद किल्बिषी है। किल्बिषी का मतलब पापी होना है, तो वह पापी हुआ। तो मैं यह जानना चाहता हूँ कि 20 वर्ष से यह जो मुल्क आजाद हुआ है और जो मुल्क बराबर महात्मा गांधी का नाम लेता रहा है, तो उसके सबंध में मैं यह कहना चाहता हूँ कि महात्मा गांधी जी ने क्या कहा था। गांधी जी ने भी वकालत पास की थी और वे बैरिस्टर थे। इन बातों को ठीक से समझो। क्या जरूरत है कि इन 25 वर्षों से इधर उधर और दर पर दर घूमते रह रहे हो।

अभी मैं सेन्ट्रल हाल में जनसघ के नेता श्री मधोक जी से बातचीत कर रहा था। मान लीजिये मधोक साहब लायर नहीं हैं और उन्होंने वकालत पास नहीं की है। यदि नवाब साहब किसी मुकदमे में बुरी तरह से फसे हुए हैं और श्री मधोक साहब उस मुकदमे को ज्यादा अच्छी तरह से बिना वकील के पेश कर सकते हैं, तो फिर मधोक साहब को अदालत में जाने की इजाजत क्यों नहीं दी जाती है ताकि वे नवाब साहब की पैरवी कर सकें? मधोक साहब नवाब साहब के एडवोकेट क्यों न बने? इसलिए मैं कहना चाहता हूँ कि हमारे सामने बड़ी मुसीबत है।

SHRI AKBAR ALI KHAN : With due respect and with your permission I would tell my friend that I am 'Akbar Ali Khan' and not 'Nawab Saheb'.

श्री राजनारायण : हम को नवाब साहब कहने में रस मिलता है।

श्री अकबर अली खान : हमें तकलीफ होती है।

श्री राजनारायण : इसलिए देखा जाय। मैं अपना ही केस ले लेता हूँ। मैं अपने मुकदमे

में पैरवी कर सकता हूँ, चाहे मैं वकील हूँ या न हूँ। यो खुशकिस्मती से या बदकिस्मती से हमने एल० एल० बी० कर लिया है मगर हमने ट्रेनिंग नहीं ली है। तो चाहे मैं अपने मित्र श्री मुल्का गोविंद रेड्डी को कितने ही अच्छी तरीके से क्यों न समझूँ, मगर मैं उनके मुकदमे की पैरवी अदालत में जाकर नहीं कर सकता हूँ। अभी हमारे मित्र ने कहा कि 750 रुपया जमा करो और एडवोकेट बन जाओ और फिर हमारे मामले में आ जाओ, मैं इस के मूल में जो पेच है, उसको आपके द्वारा सदन के सामने रखना चाहता हूँ।

विषय क्या है? विषय यह आ गया है कि सरकार के दिमाग में यह बात आ गई है कि जो बार कांसिल है, उसके अन्दर साल भर ट्रेनिंग लो और ट्रेनिंग लेकर बाद में एडवोकेट बन सकते हो। अगर कोई आदमी बिना ट्रेनिंग लिये हाईकोर्ट में चला गया तो उसको काम करने की इजाजत नहीं दी जाती है। उसके काम करने पर पेचीदगी पैदा होगी। तो मैं यह जानना चाहता हूँ कि भारतवर्ष में वह दिन कभी आयेगा जब बिना ट्रेनिंग लिये कोई वकालत कर सकेगा? कोई आदमी अदालत के सामने मुकदमे की हकीकत को अच्छी तरह से समझकर निष्पक्ष ढंग से अपनी बातों को रखने की क्षमता रखता हो, चाहे वह ट्रेनिंग लिये हो, चाहे साल भर शागिर्दी किये हो या न किये हो, उसको भी पैरवी करने का हक दिया जाना चाहिये और कानूनी हक दिया जाना चाहिये। मैं जानना चाहता हूँ कि इन 20 वर्षों में हमारे देश में इस सबंध में क्या हुआ है जबकि हमें आजाद हुए 20 वर्ष हो गये हैं? गांधी जी ने और जितने भी महापुरुष हो गये हैं, उन सभी ने कहा कि जितने ज्यादा कानून के जगल होंगे, उतने ज्यादा बधन होंगे। इसलिए नवाब साहब से मैं अदब के साथ अर्ज करना चाहता हूँ कि वे अपने आपको ज्यादा न समझें। उनसे ज्यादा न मालूम कितने पेच दर पेच बंधे हुए हैं।

आखिर हमने अपने मित्र श्री मुल्का गोविन्द रेड्डी का सशोधन देखा, मगर हमारे नवाब का जवाब कही नहीं है। हमारा सीधा सवाल

[श्री राजनारायण]

है और बुनियादी सवाल है। मैं चाहूंगा कि कानून मंत्री जी हमारी बातों को सुनें और भविष्य में कोई ऐसा संशोधित विधेयक लायें जिसके द्वारा यह बात पैदा हो कि एक प्रिसक्राइड कोर्स हो जाय। इस प्रिसक्राइड कोर्स को जो पास कर ले, उसको बिना किसी ट्रेनिंग में गये, बिना इधर उधर जाये, वह अच्छी तरीके से ऊंची सी ऊंची अदालत में जाकर वकालत करने का हक मिले।

मैं आपको यहां पर बतलाना चाहता हूं, हमारी वकीलों के साथ बड़ी बड़ी बातों में चर्चा हो जाया करती है। एक हमारा केस था और उसके लिए हम सुप्रीम कोर्ट के एडवोकेट के पास गये और कहा कि आप इसमें खड़े हो जाइये। उन्होंने कहा कि हम ऐसे ही केस की पैरवी कर चुके हैं और हार चुके हैं और अब हम आपका केस कैसे जीतेंगे। मैंने कहा कि आप चले जाइये और इस ढंग से खड़े होइये; तो उन्होंने कहा, अच्छा साहब खड़ा होऊंगा और जो ढंग हमने बताया था उस ढंग ने जीता दिया। तो वे बाद में कहने लगे, गुड लक, गुड लक, गुड लक। इसीलिए मैं कानून मंत्री जी से कहना चाहता हूं कि हमें आजाद हुए 20 वर्ष हो गये हैं। आप जनतंत्र का नाम लेते हो, विकेन्द्रीकरण का नाम लेते हो, तो एक कानून के लिए कोई कोर्स बना दो। उस कोर्स को विद्यार्थी पास कर लें बिना किसी विशेष दिक्कत के, तो यह एक अच्छी चीज होगी। आप उसमें 2, 4, 5 रुपया एडमिशन फी रख दोगे, तो मुझे कोई एतराज नहीं होगा। इसके बाद उसमें कोई प्रतिबंध नहीं होना चाहिये। अगर उसमें योग्यता होगी, क्षमता होगी, कैपेसिटी होगी, कूबत होगी तो वह अच्छी तरह से किसी भी अदालत में पैरवी कर सकेगा। एक बार महात्मा गांधी जी ने, जब वे दक्षिण अफ्रीका में एक मुकदमे की पैरवी कर रहे थे तो कहा था कि कानून से ज्यादा उस काम के बारे में जो ज्यादा अच्छी तरह से जानता है वह मुकदमे की अच्छी तरह से पैरवी कर सकता है। इसलिए मैं फिर निवेदन करना

चाहता हूं कि आप इस चीज के लिए एक प्रेसक्राइड कोर्स लागू कर दीजिये। इसमें एक नामिनल फी लागू कर दीजिये और जो इस कोर्स को पास कर ले, उसको कोर्ट में जाकर पैरवी करने का हक मिलना चाहिये। इसलिए मैं चाहता हूं कि कानून मंत्री जी इस नुकते नज़र और इस मकसद का कोई विधेयक इस सदन में प्रस्तुत करें। इतना ही मुझे निवेदन करना है।

SHRI C. ACHUTHA MENON (Kerala):

Mr. Vice Chairman, Sir, this Bill may be passed into law, but I have to make a few observations. It is a strange thing that you have been forced to pass this amendment because of certain lapses on the part of the Mysore High Court. It seems that even after the Advocates Act had been passed into law and it came into force on the 1st of December, 1961 the Mysore High Court was ignorant of the implications of the new law. And it was because of a lapse on their part that this situation has been created, and it is a very strange thing to say what has been said here. We can understand ordinary people misunderstanding a law. Somebody here was referring to the maze of laws that have been created in this country. I do not know whether it is a feature peculiar to this country. I think, every civilised country has a maze of laws. The necessary laws have to be made. Now an ordinary person may be excused for not knowing a law correctly, but how does it happen that a body of advocates of a High Court and the High Court itself are misled into wrongly admitting certain people on the roll of advocates of the High Court while they were not entitled to be so enrolled? And now, finally, Parliament is asked to rectify whatever mistakes have been committed. Of course, we have to do it but, as I was observing, this is a very anomalous state of affairs, and it passes my comprehension how the learned Judges of the High Court could themselves commit this breach of the law. The hon. Minister for Law carefully put it by saying that it was an act of omission on the part of the administrative side of the High Court. I do not know what the position actually is, but so far as my information goes, the Judges also have to do something with this. After all, in the matter of enrolment of advocates of a High Court, it is the Judges' function also to see to it, they

have something to do with it. So let us hope that hereafter at least Parliament and this country will not be called upon to rectify such mistakes on the part of High Courts.

Sir, coming to the actual enactment, this Bill itself. I have to make one observation. I do not understand why those advocates alone who have been admitted after the 28th of February, 1963 have been given the benefit of this amending Bill, the benefit of regularizing their admission as advocates of the High Court. The Advocates Act came into force on the 1st December, 1961. Now after December, 1961, is it the position that up to February 28, 1963, no pleader was wrongly enrolled on the rolls of advocates of the Mysore High Court and we are not asked to regularize their enrolment? Or is it a fact that all the while, from 1961 onwards, pleaders were being wrongly enrolled as advocates and this enactment is for the purpose of regularizing their enrolment? If so, what is the distinction between those advocates who have been enrolled up to the 28th of February, 1963, and those who have been enrolled thereafter? I can well understand that those pleaders who have been wrongly admitted after March 31, 1964, that is to say from the day on which the amendment to the Advocates Act came into force by getting the Presidential assent, shall not enjoy the benefit of this amending Act. But why the pleaders who were admitted as advocates before the 28th of February, 1963, should not enjoy the same position, I do not understand. Nothing is there in the Statement of Objects and Reasons. The Minister also did not explain why this has been done so. I think, if an act has been done wrongly and we are seeking to rectify it, then all those persons who have been adversely affected by this wrong done by the Mysore High Court should get the benefit. This is the only point I wished to make.

SHRI KESAVAN (THAZHAVA) (Kerala) : Sir, I oppose this Bill, and if we allow this Bill to be passed, we will be putting Parliament to ridicule.

Sir, the Advocates Act, 1961, came into force on the 1st of December, 1961, and thereafter the High Court of Mysore had no power to give licence to people to practise as pleaders. So the mischief was started by the Mysore High Court. The Law Minister was saying that the administrative side of the Mysore High Court committed a mistake. It is not correct.

The Mysore High Court was allowing pleaders to practise against the provisions contained in an enactment passed by Parliament and assented to by the President. Now it cannot be said that the Judges of the Mysore High Court were ignorant of this law. If a common citizen is brought before a court of law for even a petty offence committed and if he pleads ignorance of the law, the presiding officer, whether he is a magistrate or a judge, will immediately say that ignorance of the law is no plea. But here the Judges of the High Court have done an act against the provisions contained in an enactment passed by Parliament and assented to by the President. It is stated in the Statement of Objects and Reasons for this Bill, that they committed a mistake. And if it is a mistake that they have committed—they being Judges of High Court—that mistake should not be condoned. And the lives of the people and the property of the people would in that case be in danger—if they are ignorant of the law of the land. It cannot be said that they were ignorant. I think they have deliberately ignored the provisions contained in the Advocates Act, 1961 and enrolled the legal practitioners; not on one day but for a year they were continuing to do this illegal act giving the pleaders the licence to practise. Of course, the Mysore State Bar Council constituted of advocates also agreed to it, and instead of rectifying the mistake if it was a mistake committed by the High Court and they enrolled them as advocates. So the mischief continued to be perpetrated by the members of the Mysore State Bar Council. Then the Bar Council of India did not approve of the action of the Mysore State Bar Council. Then these 174 people filed a writ petition before the Mysore High Court, before a Judge presiding over the matter, he himself being the accused, he being one of the Judges of Mysore High Court which started the mischief. Now he issued a stay order. But then, that illegal act was started by the Mysore High Court and it continued to be indulged in by the members of the State Bar Council and then the very same High Court giving the stay order taking the law into their own hands, the accused himself taking the law into his own hands. So we find everywhere that there is something fishy in this. Now the decision on the writ petitions is pending disposal. The matter was heard but they were getting the judgment postponed making the representation that some law be enacted by Parliament so that the illegal acts done by them could be condoned. My submission is that there is something

[Shri Kesavan (Thazhava)]

wrong somewhere. How could these people, these 174 persons, who are also expected to know the law of the land, and who have filed these petitions, come to know that we will pass a law to condone the illegal acts done by the Mysore High Court and the Bar Council? So that cannot be. So in the Statement of Objects and Reasons it is said that they will be put into difficulties—the persons who are really the culprits, persons who have done acts against the provisions contained in an Act passed by Parliament. Really they have done wrong and my submission is that this should not be done. If it was a casual mistake one can understand in condoning it but here it is not a case like that. If the Judges of the High Court do not know law then where is the safety for the citizens? So my humble submission is if we pass this Bill we will be really condemning ourselves. From the Statement of Objects and Reasons it is seen that these people approached the Central authorities and somehow own them over and so my submission is that this Bill should not be accepted.

Another thing which I have to say is that the provisions contained in the Act of 1964 also are not very happy. On the basis of those provisions contained in the Act of 1964 some persons who have not seen even the doors of the law colleges got themselves enrolled as advocates in Kerala. I want to bring this fact to the notice of the hon. Law Minister. Some persons in the former Travancore area used to appear in Magistrates' courts as agents of accused. They may get some authorisation from the accused and they were allowed to appear for the accused and they were called law agents. They have not studied any law; in fact they have not studied in any class; they have not passed any examination at all. In fact I know some such persons whose only qualification is that they know how to read and write Malayalam. Apart from that they have not passed any examination. (Interruptions) No muktiarship or anything of that sort. They are called law agents and they have not passed any qualifying examination. As I said, they have not seen even the doors of the law colleges and such illiterate persons were in a position to appear for the accused in the Magistrates' courts. And under the provisions contained in the 1964 Act they got themselves enrolled as advocates. It is a disgrace. At the same time it is stated that those who have passed the B.L. or the LL.B. examinations must undergo a period of

apprenticeship and then pass some other examination also before getting themselves enrolled. So this is a farce.

SHRI A. D. MANI (Madhya Pradesh) :
Why did you allow them?

SHRI KESAVAN (THAZHAVAN) :
We are not responsible for that. The Act was passed by Parliament and under the provisions of that Act they could get themselves enrolled as advocates. There are a few persons like that. I know them personally. Two of them knew only to read and write Malayalam; that was their only qualification. Previously they were vakil's clerks; they used to carry case bundles from the vakil's office to the courts. It is such people who have got themselves enrolled as advocates. So this matter has to be gone into by the Law Minister and he should see that the position is rectified by appropriate amendments.

Another thing which I have to bring to the notice of the Law Minister is that in some High Courts the High Court Judges find pleasure in preferring Barristers for appointment as Judges especially in Calcutta. There are good lawyers who have passed the B.L. or LL.B. examinations, very famous lawyers, very able lawyers but they are not preferred; only the barristers are preferred. There seems to be some mania existing in favour of the barristers. Of course, there was a time when only barristers were entertained. In some places that position still obtains and this has also to be gone into.

SHRI B. T. KEMPARAJ (Mysore) :
Mr. Vice-Chairman, I support this Bill that has been introduced by the Law Minister before this House. The circumstances under which this Bill to amend the Advocates Act has been brought before us have been misconceived by many of the previous speakers. It is not as though there was any lacuna or any illegality in the enrolment of these people by the Mysore High Court. The Advocates Act came into force, as has been stated in the Statement of Objects and Reasons, in the month of December, 1961. It is a well-established practice in the Mysore Bar that a law graduate as soon as he took his degree used to be enrolled as pleader. Then he would enter the chamber of some senior advocate and then he would undergo training for a period of one year or more. Afterwards in most of the cases they used to be enrolled as advocates through their seniors. This is the practice that has been in vogue in the State of Mysore. Now what happens to those

who got their law degree and got enrolled as pleaders prior to the coming into force of this Advocates Act? Where do they stand? This is applicable to those graduates who took their law degree after the coming into force of this Act, they have to undergo an apprenticeship for one year or so and also passed the Bar Council examination after which they could get enrolment as advocates. But here is this specific case of those who have passed their law examinations prior to the coming into force of this Advocates Act. Here is the clear case of these 174 law graduates who took their degree prior to the coming into force of this Act and who have enrolled themselves as pleaders. Therefore, it is not the mistake of either the High Court of Mysore or of the Mysore Bar Council and there is no question of anyone being taken to task for that. Some hon. Members went to the extent of passing sarcastic and unpalatable remarks about the Judges of the High Court and also about the Members of the Bar Council of Mysore. Sir, I, as a member of the Advocates Association of Bangalore, have been closely watching the frustration and disappointment of the youngsters who had taken up this law profession. What amount of suffering, what amount of agony and what amount of mental torture, these people would have been subjected to in the circumstances which I have just now narrated, can be imagined by hon. Members. After their apprenticeship was over as juniors those pleaders were enrolled by the Bar Council as advocates according to the practice prevailing in Mysore State. Where is the lacuna? Where is the mischief and where is any wrong that either

the Bar Council or the High Court of Mysore has committed? Therefore, the President of the Mysore Bar Council, Mr. A.C. Bariappa, the Members of the Mysore Bar Council, Mr. N. S. Narayan Rao, Mr. S. K. Venkatappa, Mr. V. Krishnamurthy, Mr. S. Gundappa—they were ex-Presidents, Advocates' Association, Bangalore—and also other senior advocates of the Bar Council went regularly in deputation to all the quarters, to the Government of Mysore, to the Central Government and also to several leaders of the country. The Mysore Government also took up this cause. The then Chief Minister, Mr S. Nijalingappa, and the then Law Minister, Mr. M. V. Rama Rao, and Mr. S. R. Kanthi, took up this question and continuously made representations to the Central Government, to see that some relief was given to them and that they might be regularised

as advocates. In the meanwhile, it so happened—hon. Members can peruse the Statement of Objects and Reasons—after four years nearly, the All India Bar Council passed a resolution cancelling the enrolment of these youngsters on the rolls of the Bar Council. The situation became aggravated. Thereafter continuous efforts were made, with the support of Members of both the Houses and also of the Chairman, who was the Governor of Mysore State, and the Deputy Chairman of this House, who all knew the inconvenience caused to these youngsters. Words like 'mischief' and other words have been used on the floor of this House. It is not a correct picture. As far as I know—I am one of the senior members of the Advocates' Association, Bangalore—the situation became so grave and it so inconvenienced the youngsters' work that they could not enrol themselves as advocates because they had taken their law degree prior to December, 1961, when this Act came into force. Therefore, this is the dilemma. These 174 law graduates were actually placed between the devil and the deep sea and how to overcome it. In spite of the lapse of four or five years nearly, I am thankful to the Law Minister for his bold step to regularise it by this amending Bill.

Another point, which I want to make clear to this House, is that Mysore has taken up the cause and pioneered it, i.e., the second proviso, to which one of the hon. Members, Shri Mulka Govinda Reddy wants to move an amendment. It provides that wherever such law graduates want to enter the Bar to practise and enrol themselves as advocates, their cases would also be regularised. That is also made clear. Therefore, it is not as though somebody has committed some blunder, as if there is some mischief or there is something fishy. All these points that have been raised in this House are not correct. I make it very clear that there was no such thing that had been done by any quarters at any stage. Therefore, I request hon. Members of this House—also I think the hon. Members who have co-operated with the members of our Bar Council—to see that this amending Bill has been introduced in time to facilitate the 174 junior advocates to practise and serve the country and the nation.

Thank you.

SHRI N K SHEJWALKAR (Madhya Pradesh) : I want one clarification from the hon. Member. The point is, from 1st December, 1961 to 28th February, 1963, has any member been enrolled by the

[Shri N. K. Shejwalkar]

Mysore High Court or not, what happened to them and in what way they were enrolled?

SHRI A. D. MANI : You ask the Minister, why ask him ?

SHRI N. K. SHEJWALKAR : The hon. Minister may please reply to it. Kindly enlighten us.

SHRI N. PATRA (Orissa) : The Advocates Act, 1961 came into force on the 1st December, 1961 and consequently the provisions in other enactments relating to the admission and enrolment of legal practitioners stood repealed. The Mysore High Court, either through an oversight or without taking cognizance of this Act, went on enrolling advocates in the usual way, those people who did not have practical training or passed the requisite examination. Subsequently, as you will see, the Advocates Act, 1964, which was passed and which got the assent of the President of India regularised this irregularity. After one year, though the Advocates Act, 1964 had regularised the 174 affected cases, the Bar Council, without taking cognizance of it, went a step further. They said that the advocates who were enrolled and allowed to practise in the Mysore High Court should be deprived of their practice. If they had closely scrutinised and gone through the Act, which had received the assent of the President, they would not have taken this step. However, these people got stay order from the Mysore High Court and staged an India-wide agitation. I had the privilege of leading a deputation, on behalf of these 174 affected advocates, to the President of India last year. I am very glad that the Government is now going to regularise this irregularity and allowing these advocates to continue their practice. Not only we will be helping these 174 advocates who are hanging in the air just like "Trisanku", but we will be also helping the litigant public who preferred these advocates to plead their cases. Unless we do this, the litigant public will also be affected severely. Therefore, I thank the Government for regularising it through this enactment and for allowing the advocates to practise as usual.

SHRI A. D. MANI : Sir, I extend my support to this Bill and I would like to be very brief in my remarks on the various provisions. I would like to ask one question of the Law Minister as to why it was necessary for three years to elapse before

this mistake was discovered by the Mysore High Court. If a Government servant, other than one who is employed as a High Court Judge, had committed a mistake of this character, he would have been dismissed from service. He would have been demoted. His name would have been mentioned in Parliament or in the State Legislature. He would have been publicly censured. These are High Court Judges. These are persons who are likely to occupy a place in the Supreme Court any one of these days provided they are recommended by the Chief Justice of India for appointment. If such persons commit mistakes, it is certainly a very sorry state of affairs, and we would like the hon. Minister to conduct an enquiry about the manner in which this mistake occurred. How was it possible after the Advocates Act was passed, when there is a provision...

SHRI MULKA GOVINDA REDDY : For the information of the hon. Member I may tell him that it was the very same High Court, the Mysore High Court which overruled this enrolment of pleaders and it passed strictures, and it was the Mysore High Court which pointed out that it was a mistake which should not have been made.

SHRI A. D. MANI : Even then it is a very sorry state of affairs. Since my hon. friend, Mr. Reddy, has clarified the point, I would not like to pursue the point of enquiry.

I would also extend my support to the amendment of my hon. friend, Shri Mulka Govinda Reddy. I feel that once these persons are going to be treated as advocates, they should be treated as advocates from the day they are accepted by the High Court as advocates, that is, 20th day of February, 1963. I understand that in other States also pleaders have been enrolled as advocates and they do not want to give this edge of advantage to advocates enrolled in Mysore. This is a point that does not appeal to me at all. An amendment is being brought to the Advocates Act only in respect of 174 persons who were enrolled wrongly as advocates by the Mysore High Court. Since a special Bill is being brought forward, since a special Ordinance has been promulgated, there should be no difficulty in the Law Minister accepting Mr. Reddy's reasonable amendment.

I would like to go on to another point. We are now dealing with persons who had not passed the Bar Council examination,

174 of them, who had been enrolled as advocates of the Mysore High Court. The Bar Council of India had been so strict about this matter that they disapproved of what had been done in Mysore. At the same time as an hon. friend, Mr. Kesavan pointed out, while we are very particular about the qualifications of our lawyers and persons who are enrolled to practise before High Courts, we are permitting legislation which allows a class of unauthorised lawyers, untrained lawyers, to come up in this country. My hon. friend, Mr. Kesavan, said that some people appear as agents. In the State of Maharashtra there is a spate of legislation where lawyers are debarred from practising before certain tribunals if objection is raised by the other party. In 1947, before the Constitution was promulgated, we passed the Industrial Disputes Act. Under section 36 of the Industrial Disputes Act, in a labour Court, if one of the parties objects to the other party being represented by a counsel, the other party cannot engage a counsel. A good deal of litigation before the High Courts and the Supreme Court is largely concerned with labour affairs, particularly in respect of wages and dismissals. One of the most important judgments delivered by the Supreme Court of India in its history, after it has been established under the Constitution, was the judgment given in the Express Newspapers case regarding the principles of wage determination. This is one of the classic cases of the Supreme Court which adjudicated on this matter of the Wage Committee's order passed some years ago. Labour legislation has become very important. It is most vital. There are questions in Parliament about labour. If that is so, how could you allow a class of unauthorised lawyers to come before the Labour Court? What is happening? Under section 36, an advocate gets himself enrolled as President of a labour union. As long as he is President of the labour union, he can appear before the tribunal in his capacity as the President. But he will always object to the other party being represented by counsel saying, "You be represented by an officer of your Federation". Then the Madras High Court has laid down that no advocate should conduct himself in such a way as to allow the *bona fides* of his role to be questioned if he appears for another party, that is to say, if a Chamber of Commerce or a Trade Association engages an advocate as one of its office-bearers, he should be an honorary office-bearer. In that capacity alone he can appear for the employer. I do

not want any trade unionist to feel that trade unions should be debarred from stating their case. It is the right of an aggrieved party to present his case in person before any tribunal, before any High Court. Aggrieved persons have appeared in person before the Supreme Court. Dr. Ram Manohar Lohia argued his own case. But if he wants to engage somebody let it not be unauthorised lawyers, who have not been properly trained, who are using all this administrative forum for gaining some advantage. These unauthorised lawyers take fees for their work at the rate of Rs. 10 or Rs. 15. My suggestion to the hon. Minister is, let there be no piecemeal amendment of this Advocates Act. It is bad enough to come forward with an amending Bill saying that a mistake has been committed and you want to rectify the mistake. I would like to suggest that the rules must be framed by the High Courts concerned, and I do not know which authority can issue directions in this matter, but the Central Government can certainly indicate its views that it is the considered view of the Government and the Parliament that a man who has spent a lot of money on his education and on his training as a lawyer must have the means to practise. We are so busy in ordinary life that we do not know the intricacies of law. If a person is involved in law, he must have the right to engage an advocate to argue his case before a tribunal. Necessary amendments to the Advocates Act should be made and the rules should be amended to enable lawyers to appear under section 36 of the Industrial Disputes Act and also under various sections of State legislations particularly the legislation of Maharashtra.

These are the points I wanted to make in connection with this Bill. I support this Bill and I feel that the Bill should be passed without any dissent.

SHRI GULAM NABI UNTOO (Jammu and Kashmir) : Mr. Vice-Chairman, I rise to support this Bill because I understand the hardship that is being caused to those 174 advocates who have been enrolled by the Mysore High Court. But when a person looks to the Statement of Objects and Reasons, one feels as to why it feel only to the Mysore High Court in the entire country, where we have about 20 High Courts, that it should regularise some enrolments which apparently defeated the Bar Council of India Act. As it is said, the High Court of Mysore in her executive capacity enrolled some members, but in her judicial capacity gave a

[Shri Gulam Nabi Untoo]

different view. It is a very sorry state of affairs that such occasions should have arisen, that the Courts should have been so lenient in interpreting the law and allowing the provisions of the Advocates Act to be defeated. And still one does not understand why, when after the Advocates Act of 1961 the amending Act of 1964 came into force from the 16th of May, these 174 advocates could not have been benefited by that. When we discuss this Bill, in whatever shape we discuss it, there is an effort to peep as to how our judiciary not only in Mysore but elsewhere also in the country works. And for that, the time has come when we should look into the entire system of judiciary in the country. We believe, and in some places we made the judiciary independent of and separate from the executive. But in practice, we do not act upon it. Therefore, when the Law Minister is present, I would humbly submit about the All India Judicial Service as we have the All India Forest Service and other Services. So, a proper Bill may be brought forward in Parliament to regularise the judicial service of India, not only the service of the Judges but also of the District and Sub-Judges who should be liable to transfer from one State to another. Socio-economic developments are fast developing and they are bound to influence these people, as they influence other branches of the administration. And we should be honest and make judiciary independent of the executive. For that, the basic thing is this. When the appointment of a judicial officer is made, from the cadre of Sub-Judge to the level of a Judge of the High Court, it should always be done by the Chief Justice of India or the Chief Justices, and either with regard to the question of promotion or of appointment or otherwise, the States must have no hand in it. They alone should be competent to appoint them and for that a regular examination should be conducted. In a democratic set-up the position of the judiciary is supreme because this is the institution which can safeguard the rights of the people from the encroachment of the executive and which can rightly interpret the lapses of the Acts or the repugnancy of the Acts passed by the Legislature. Therefore, only people who are highly efficient and whose integrity and honesty are beyond doubt should be appointed and the appointment must be made by the Chief Justices or the Chief Justice of India from a panel of judicial service officers. Besides, the amenities for the judicial service officers should be such

that they are not forced or compelled to depend upon outside or external sources. Also a code of conduct should be framed that no Judge or any judicial officer should be called upon to attend any State or public functions, except on some occasions like the Republic Day and the Independence Day. A rule should be there that no judicial officer should be called upon to attend other functions. Also, residential and other facilities should be provided to them so that they can efficiently and independently function in their departments.

This alone can save our judicial department from the day-to-day social and administrative encroachments which are being worked upon them.

Besides this, it is time that we thought of setting up a separate Department of Administration of Justice which should be directly under either the Chief Justice of India or a person of very high calibre and eminence, a lawyer or a Judge. This can save our judiciary from those influences which are in the present day having their effect on the judiciary.

SHRI THILLAI VILLALAN (Madras) :
Sir, If rise up to support the Bill and I want to add one or two points while supporting it. So far as the main Act is concerned, which has been passed in the year 1961, it is a well-thought-out piece of legislation on the recommendations of the Law Commission which was presided over by one of the Supreme Court Judges and in which so many legal luminaries took part. After framing the Bill, it was sent to a Select Committee and after that, it was passed. Originally, it was framed as the Legal Practitioners' Bill. Then it was changed into the Advocates Bill and was enacted as the Advocates Act. After that, that Act has undergone three changes. In the year 1964, an amending Bill was passed, in the year 1966 another amendment was passed. Now, in the year 1968, we are discussing another amending Bill. These three amending Bills have been brought before the House only for rectifying certain technical defects. The first and the second relate to the election of members of the Bar Council and the present Bill is brought forward only with a limited purpose, that of validating the enrolment of 174 advocates of Mysore. They were enrolled by the Bar Council of Mysore and it was approved by the High Court. Subsequently, it was found that their enrolment was not valid according to the provisions of the main Act.

In the statement by the Law Minister he said that this was due to some oversight but some of the Members say that this mistake has been committed by eminent persons, persons at the top of the judiciary and that it should not be allowed. There is a legal maxim we all know—*ignorantia juris non excusat*, that is, the ignorance of law cannot be excused. But my humble submission is this—there is no ignorance on the part of the Judges or on the part of the members of the Bar Council. From the statement itself we know that it is only inadvertence or oversight. There is a lot of difference between inadvertence and ignorance. There is no question of ignorance on the part of the Judges, it is due to the inadvertence of the persons who are on the administrative side, who have committed some mistake. They have committed some mistake. But we all know, to err is human. That is why in all the business of legislation we find a provision for amendment. Even for the basic law, there is our Constitution which is the bottom of all branches of law; we have got a provision for amendment. Because, due to the circumstances we have to change certain provisions. Due to some technical defects we have to change certain provisions. That is why we have got provision for amendment. Amendment is only a usual process that has been adopted here. But here it becomes peculiar because usually advocates will take advantage of these defects in Acts. Here the Act is meant for advocates. We know rats used to cut nets; but in this case nets used to cut the rats. Advocates are now getting into the net. Usually they will take advantage of the amendments. Usually they will take advantage of the loopholes in the Act; but here they are the victims. That is why this amendment Bill becomes somewhat curious, somewhat specific, somewhat conspicuous. We all know, there is an old saying in our country: What cannot be mended must be ended. Certain things cannot be mended at all. Then that should be destroyed; that should be thrown out. But what can be mended must be amended. This sort of Acts and other legislations are after all products by human beings. We have written laws. We are changing laws. We are bringing in new laws. So we are amending the Act by way of this Bill because it can be amended. But my humble submission is this. We are only interested in the amendment for the purpose of rectifying technical difficulties and technical flaws. But we forget amending the whole structure of the judiciary; the whole structure of the

legal education, the legal profession and the position of lawyers as a whole. That is the main defect. I want to bring to the notice of the hon Law Minister that during the time of passing the main Act so many suggestions were poured down by the members of the ruling party, and by the members of the opposition before the Law Minister in both the Houses—regarding legal education, regarding the abolition of dualism, regarding seniors and juniors, regarding the legal aid to the poor and so on and so forth. After seven years we are coming with an amendment Bill but without amending the situations suggested and without amending so many things suggested by the members. So far as the suggestions are concerned, the main and the most important one was suggested at that time that legal education should not be a hobby. It should not be leisure time education. So far as seniors and juniors are concerned, there must be a provision for taking juniors under seniors. So far as needy lawyers and disabled lawyers are concerned, there must be a fund for them. So far as legal aid to the poor is concerned, it was agitated by so many members. The members wanted to get an assurance from the then Law Minister Mr Sen that this thing would be taken into consideration. He said: "We are on the verge of elections and I do not know who will come as my successor." But the members asked him: "Why cannot you assure us on behalf of your successor?" He then assured that this suggestion would be taken into consideration. My submission is this that so far as the amendment Bill is concerned, we are concerned with the difficulties due to the technical defects. But we are not amending the real situation. That should be taken into consideration. I want to bring this thing to the notice of the honourable Law Minister. So far as the amendment to the amendment by Shri Govinda Reddy is concerned, I would like to request the honourable Law Minister to accept that amendment. There is no harm in it. It is more or less the same thing that he has given as an amendment. Here we have brought this Bill for rectifying a mistake committed by somebody; we are not placing the fault on this body or that body or this person or that person. Anyhow there is a mistake. We have come forward to rectify that. We are rectifying the mistaken enrolment of 174 advocates. Their enrolment is faulty. Then why cannot you rectify it deny the right from the date of the enrolment? There is no harm in it. If there are advocates wrongly enrolled, then it must be taken from

[Shri Thillai Villalan]

the date of enrolment. That is the amendment. That is the amendment given by Shri Govinda Reddy. It is only to that effect. He says it must be counted, it must be calculated from the date of enrolment. Further, if you allow a person as a valid advocate, for instance, he has filed a *vakalat* in a High Court or in some other court on the 28th February, 1963 or the next day what will happen now? You say that he is a valid advocate; but he has filed a *vakalat* in a case on 28th February, 1963. But the Act says he will be a valid advocate from the date of 16th May 1964. We are further inviting another amending Bill. That is how we are going to heap up the table with so many files. We are making the bundle swell once again by inviting another amendment Bill. So I may humbly request the hon. Law Minister to consider that amendment also. It may be included in this Bill itself. Lastly I want to give only one suggestion though it is not pertinent or relevant. So far as the advocates are concerned we have changed everything. We have got a unified Bar council. We have got a unified codification. At the same time my request is this. So far as the dress and band are concerned, it is not suitable to the climate or the culture or the customs of our country. We are having a band just like a tail to a goat or a cow. We are having a band in the collar. Why cannot you remove that band? What is the harm in it? We can fix any dress to an advocate. We can change it according to our customs. It is Anglo-Saxon; because they are in a cool country they are having all such things. But we can remove it. After 20 years we are having the same dress. This can be changed. A black closed coat and white pants can be prescribed. We can have it. We can go to any court with that dress. Uniformity, we think is the gateway of unity. We want uniformity in all respects. Why can we not have uniformity in dress also for the advocates? In all walks of life we are having big changes. Therefore, let us have a change in this respect also. That is my humble submission.

With these words I support the Bill and also the amendment given by my honourable friend, Shri Mulka Govinda Reddy.

श्री ना० कृ० शंजवलकर : माननीय उप-सभाध्यक्ष महोदय, इस संशोधन के सम्बन्ध में चार तिथियां महत्वपूर्ण हैं, 1-12-61

जिस दिन एडवोकेट्स एक्ट अमल में लाया, 28-2-63 वह तिथि जिसके बाद के एडवोकेट्स के बारे में समस्या उत्पन्न हुई है, इसके अलावा 31-3-64 और 16-5-64 विशेष ध्यान देने योग्य हैं। जब 1-12-61 को यह एडवोकेट्स एक्ट अमल में आ गया तो म्हासूर हाईकोर्ट ने 1-12-61 और 28-2-63 के बीच एडवोकेट्स को एनरोल किया या नहीं किया? मैं समझता हूँ कि यह नहीं हो सकता कि इतने समय तक कोई एडवोकेट्स एनरोल न किए हों। हाईकोर्ट ने बाद में जो प्रणाली अपनाई, बिना ट्रेनिंग के और जो एडवोकेट्स एक्ट में प्रोवीजन है उसकी ओर ध्यान न देते हुए 174 एडवोकेट्स को एनरोल कर लिया। हो सकता है कि 28 फरवरी, 1963 के पहले कुछ एडवोकेट्स को एनरोल कर लिया होगा। उनके बारे में अब तक सवाल क्यों नहीं पैदा हुआ, यह मुझे जानकारी नहीं है। शायद यह हो सकता है कि उनके बारे में भी सवाल पैदा हो। क्या शासन उनके लिए कोई दुबारा एमेंडिंग एक्ट लाएगा?

एक बात में निवेदन कर दूँ कि संशोधन विधान की जो मूल भावना है उसके मैं पक्ष में हूँ और जो 174 एडवोकेट्स को असुविधा होने वाली है उनकी मदद करने के लिए जो संशोधन है उसका मैं समर्थन करता हूँ। परन्तु एक बात मेरी समझ में नहीं आती कि जो संशोधन अभी प्रस्तुत किया श्री रेड्डी जी ने इसमें उन्होंने जो सुझाव दिया है उसको मानने से क्यों इनकार किया जा रहा है। 16 मई, 1964 की तिथि ली जा रही कि उनकी सीनियोरिटी उसी समय से गिनी जाय। यह दलील पेश की गई है कि अगर उन्हें पहलेसे सीनियोरिटी दी जाय तो कम्प्लिकेशन्स हो सकते हैं। यह बात मेरी समझ में नहीं आती। जिस दिन से उन्हें एनरोल किया गया है उस दिन से सीनियोरिटी दिए जाने में क्या आपत्ति हो सकती है? इसलिए मैं श्री रेड्डी जी के संशोधन का समर्थन कर रहा हूँ कि जिस दिन से हाईकोर्ट ने एनरोल किया उसी दिन से वे एनरोल माने जायें और सीनियोरिटी उसी दिन से समझी जाय।

एक निवेदन और है। जैसा कि मैंने प्रारम्भ में कहा था, 1-12-61 और 28-2-63

के बीच जो एनरोल हुए उनको भी इस बात का लाभ दिया जाय और उनको भी उसी तारीख से एनरोल माना जाय ।

अन्तिम बात । जो आर्डिनेन्स निकाला गया और आर्डिनेन्स निकालने के जो कारण बताए गए कि किन परिस्थितियों में निकाला गया, मैं उनसे सहमत नहीं हूँ । जब 1965 में मैसूर हाई कोर्ट के अन्दर रिट पिटीशन दायर कर दी गई तब से लेकर तीन साल तक यह खामी क्यों रहने दी गई । एडवोकेट्स की जो कठिनाई है वह इतने समय तक शासन की समझ में नहीं आई और आर्डिनेन्स निकालने के समय ही समझ में आई ? 1966 हो गया, 1967 हो गया, 1968 के प्रारम्भ में यह आया है । यह कोई अच्छी बात नहीं कही जा सकती । ऐसी बातों में शासन का शीघ्र सचेत होना अत्यन्त आवश्यक है । जो उसका मूल हेतु है, जैसे एडवोकेट्स का विशेष दोष न होते हुए सबकी भूल के वे शिकार हुए इसका उस पर कोई प्रभाव नहीं पड़ना चाहिए, लेकिन मैं समझता हूँ कि यह ज्यादा अच्छी बात नहीं है कि इतने विलम्ब से आर्डिनेन्स निकाला । वैसे तो एडवोकेट्स एक्ट के बारे में अनेक बातें कही जा सकती हैं लेकिन अभी तो मैं समझता हूँ कि विषय बिल्कुल स्पेसिफिक है और उसी के ऊपर मैंने यह निवेदन सदन के सामने प्रस्तुत किया है ।

SHRI P. GOVINDA MENON : Mr. Vice-Chairman, Sir, much more interest has been created in this House than I thought would be done by this simple amending Bill. In the light of the speeches which have been made here with respect to this amendment, I would like to state what exactly are the reasons for bringing forward this Bill now.

As you know, before the Advocates Act 1961 was passed the enrolment of advocates was done by the different High Courts and we used to speak about an advocate of the Mysore High Court, an advocate of the Rajasthan High Court or an advocate of the Calcutta High Court. It was thought that there should be unification of the Bar in India. The Supreme Court also enrolled advocates as advocates of the Supreme Court of India. In order to effect a unification of the Bar in India it was decided to pass as Advocates

Act under which advocates could be enrolled, not by the High Courts but, by the different Bar Councils in the different States.

There was a Bar Council proposed for Delhi also and the names of the Advocates on the rolls of the High Court were transferred to the rolls of the Bar Council, and any advocate who has been enrolled on the rolls of a State Bar Council would be an advocate who could practise in any court in India including the Supreme Court. It was decided that there should be a common roll, that is, the rolls of all the State Bar Councils will be put together and there would be a common roll, there will be a common *inter se* seniority also between the different advocates in the different State rolls. That was the main object with which the Advocates Act was passed in 1961. But I should confess now that on account of a certain provision in the Advocates Act there has been a good deal of trouble for the Government created by the students and also supported by teachers in the Law Colleges who thought that the provision that before a law graduate is enrolled as an advocate on the rolls of the States Bar Council the graduate should have undergone training under a senior for a period of one year and passed an examination conducted by the Bar Council, would create difficulty.

As was pointed out by certain friends in this House, in an extremely competitive profession like that of law, after having spent so many years in the art and science college, and then two or three years for getting a law degree, to insist that a person should undergo a course of a year's training under a senior was resented to by students in all centres in India and also objected to by experienced university teachers in various parts of India. The result was that from time to time my distinguished predecessors have been giving extension of time for enforcing this provision in Part III of the Act. Section 24 of the Act which provides that there should be a training, finds a place in part 3 of the Act. On account of these difficulties and on account of my personal opinion that this provision for a training and examination after a law degree is taken is unnecessary, I decided to cut the Gordian knot by nullifying that provision. Hereafter it is not necessary for a graduate to undergo this training. He can get himself enrolled directly.

The trouble is with respect to the past. What happened, Sir, was this. The third

[Shri P. Govinda Menon]

chapter of the Advocates' Act was brought into force initially on the 1st December, 1961. Now it is only when the third chapter comes into force that the need to get training arises. So after the 1st December 1961, the need for training before enrolment arose. On account of demands from students, 1st December, 1961 was changed to 28th February, 1962 and subsequently to 28th February, 1963. And herein comes the significance of the date of 28th February, 1963. So much so, up to the 28th February, 1963, it was open throughout India, including Mysore, for any law graduate to get himself enrolled as an advocate without training. And that is the answer to the point raised by Mr. Achutha Menon first and later by Mr. Shejwalkar. Before 28th February, 1963 if advocates had been enrolled in Mysore State, they have been enrolled validly. Then from 28th February, 1963 to 16th May, 1964 was a period when the law insisted that training should be there; that is to say, no extension was given during that period. During that period, in spite of the law as it was, the High Court of Mysore enrolled graduates who did not have training.

SHRI MOHAMMAD YUNUS SALEEM : The Administrative Bench of the High Court.

SHRI P. GOVINDA MENON : Yes, the Administrative Bench of the High Court. No judicial interpretation arose on that occasion and this happened in Mysore only. And I am aware, Sir, of graduates from other parts of India who went to Mysore knowing that there, enrolment was possible even though they had no training. Many law graduates without training got themselves enrolled in the Mysore High Court on account of the policy which the Mysore High Court had been following, and thereafter they transferred their sanads to other High Courts. That is what happened. So the position is this: Between the period 28th February, 1963 and 16th May, 1964, when no law graduate without the apprenticeship course and training and examination could get himself enrolled in any of the State Bar Councils, in Mysore alone this happened. I do not say that it is the fault of those students who got themselves enrolled. Now I felt, Sir, Government felt, that their enrolment should be protected and, therefore, this amendment has been brought. Before the amendment was brought, I had the benefit of the recommendations

of a very strong committee called the Advocates Review Committee, and the members of the Advocates Review Committee included at least one lawyer from Mysore. The members were : Mr. G.S. Pathak, Chairman; Mr. C.R. Pattabhi Raman ; Mr. C.K. Daphtary, Attorney-General; Mr. P. N. Sapru, Member, Rajya Sabha; Diwan Chaman Lall, Member, Rajya Sabha; Mr. Debabrata Mookerjee, Member, Rajya Sabha ; Mr. Hem Raj, Member, Lok Sabha; Mr. N. C. Chatterjee, Member, Lok Sabha; Dr. L. M. Singhvi, Member, Lok Sabha; Mr. Frank Anthony, Member, Lok Sabha; Dr. Sarojini Mahishi, Member, Lok Sabha and Mr. S. V. Ramaswami, Member, Lok Sabha. All these twelve were very eminent and famous lawyers. Adherence to the case of these 174 lawyers of Mysore was made, and this is the recommendation of that Committee :

“It is recommended that the enrolment of 174 advocates made by the Mysore State Bar Council between the period 28th February, 1963 and 31st March 1964, should be treated as valid with effect from 16th May, 1964, the date on which the Advocates (Amendment) Act, 1964, received the assent of the President. Suitable provision may also be made to validate appearances made by those advocates before any court or other authority and other professional acts performed by them during the period between the respective dates of their enrolment and the 16th May, 1964”.

Now, Sir, if you will refer to clause 2 of the Bill, you will find that the last portion before the ‘proviso’ says :

“...on the basis of his having obtained a certificate of pleadership from the High Court of Mysore, shall, save as otherwise provided, be deemed to have been validly admitted as an advocate on that State roll and accordingly entitled to practise the profession of law (whether by way of pleading or acting or both);”

Then there is a proviso :

“Provided further that the seniority of such person, whether his name is borne on the State roll of the State Bar Council, or on the State roll of any other Bar Council, shall, for the purpose of clause (d) of sub-section (3) of section 17, be determined by reckoning the 16th day of May, 1964, as the date of admission.”

I would have liked very very much to accept the amendment of Mr. Mulka Govinda Reddy but for the fact that if I accept that, it would lead to a discrimination, a very bad discrimination. Throughout India, in other States, we were preventing by law persons from getting themselves enrolled without training and in all the other States they observed the law. In Mysore alone certain persons on account of a wrong interpretation of the law got enrolled and some of them got themselves transferred to the Bar Councils in other States. Now we are having a common roll throughout India and seniority *inter se* between advocates of different States is also being observed. If this amendment is accepted, the result will be that an undue advantage would be given to these persons, 174 of them who got themselves enrolled during this particular period. That is why, Sir, I am opposed to accept the amendment of Mr. Mulka Govinda Reddy. On the one hand, on human considerations—may I use that word?—on considerations of the good of these 174 persons, their enrolment is sought to be protected and supported. On the other hand, I do not want to give them an undue advantage over other advocates who could not get enrolled during this short period. That is the reason why this amendment is not accepted.

4 P. M.

THE VICE-CHAIRMAN (SHRI RAM NIWAS MIRDHA) : The question is :

“That the Bill further to amend the Advocates Act, 1961, be taken into consideration.”

The motion was adopted.

THE VICE-CHAIRMAN (SHRI RAM NIWAS MIRDHA) : We shall now take up the clause-by-clause consideration of the Bill.

*Clause 2—Insertion of new section
58AB*

SHRI MULKA GOVINDA REDDY :
Sir, I move :

4. “That at page 2, lines 8-9, after the words and brackets ‘(whether by way of pleading or acting or both)’, the words ‘and their seniority shall be counted from the date of their respective enrolment commencing from the 28th day of February, 1963’ be inserted”

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5. “That at page 2, lines 15 to 20 be deleted.”

SHRI P. GOVINDA MENON : Sir,
I move :

3. “That at page 1, line 7, for the words and figures ‘the Advocates Act, 1961,’ the words ‘the principal Act,’ be substituted.”

The questions were proposed.

SHRI MULKA GOVINDA REDDY :
Sir, I do not want any of the Advocates enrolled in Mysore to get advantage over the other Advocates. This has occurred only in the Mysore State and nowhere in the country. Only in Mysore these 174 Advocates were enrolled and they were enrolled between 28th February, 1963 and 31st March, 1964. The Law Minister says that he is giving effect to the recommendation of the Committee and that he does not want to give any advantage to those Advocates, who are enrolled in Mysore, over those who were denied this opportunity of enrolling themselves without undergoing this one-year training. As I said just now, he has done away with one-year training. I am not interested in giving any seniority to these Advocates over the Advocates of other High Courts. What I am interested in is that their seniority should be protected from the day of their enrolment in the Mysore High Court for purposes of eligibility for seeking the post of Munsiff or Magistrate or District Judge in Mysore.

With regard to the common roll, I understand that the common roll is yet to be prepared; it has not been prepared so far by the Bar Council of India. Therefore there is no conflict between the amendment that I have moved and the contention of the Law Minister. Moreover, in the Statement of Objects and Reasons it has been stated as follows :

“They also suggested that suitable provision should be made to validate appearances made by these individuals before any court or other authority between the dates of their enrolment and the 16th May, 1964. The recommendation has been examined and accepted by the Government.”

If we do not approve the enrolment of these Advocates on the date on which they were enrolled, the appearances made by these Advocates in the different courts during that period, *i.e.* before the 16th May, 1964 cannot be validated. Once

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we accept part of the recommendation that their appearances should be validated, their enrolment should also be validated, and it is not going to affect adversely the seniority of the members of the Bar Council as there is no uniform list so far prepared by the Bar Council of India. I, therefore, press that this amendment should be accepted.

SHRI P. GOVINDA MENON :
I cannot accept it for the reasons already explained by me.

THE VICE-CHAIRMAN (SHRI RAM NIWAS MIRDHA) : The question is :

4. "That at page 2, lines 8-9, after the words and brackets '(whether by way of pleading or acting or both)', the words 'and their seniority shall be counted from the date of their respective enrolment commencing from the 28th day of February, 1963' be inserted."

The motion was negatived.

THE VICE-CHAIRMAN (SHRI RAM NIWAS MIRDHA) : Amendment No. 5 is barred.

Now the question is :

3 "That at page 1, line 7, for the words and figures 'the Advocates Act, 1961,' the words 'the principal Act,' be substituted."

The motion was adopted.

THE VICE-CHAIRMAN (SHRI RAM NIWAS MIRDHA) : The question is :

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

The motion was adopted.

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

Clause 3 was added to the Bill.

New Clause 1A

SHRI P. GOVINDA MENON :
Sir, I move :

2. "That at page 1, after line 6, the following new clause be inserted, namely :—

'1A. Amendment of section 24—In clause (a) of sub-section (3) of section 24 of the Advocates Act, 1961 (25 of 1961)

(hereinafter referred to as the principal Act), the words, figures and letters 'before the 31st day of March, 1964' and 'then in force' shall be omitted'."

The question was put and the motion was adopted.

New Clause 1-A was added to the Bill.

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

SHRI P. GOVINDA MENON :
Sir, I move :

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

The question was proposed.

SHRI MULKA GOVINDA REDDY :
Mr. Vice-Chairman, I must thank Mr. Govinda Menon, the Law Minister for having brought forward this Bill and getting it passed. For the last three years I was one of those who consistently and persistently tried to convince the Government to see that this amendment was brought forward and their enrolment, the enrolment of the 174 Advocates was validated. But unfortunately the then Minister-in-charge did not heed to our request. I am glad that the present Minister has done it. I am very thankful to him as also the Advocates in the Mysore Bar Council are very grateful to him.

Thank you.

THE VICE-CHAIRMAN (SHRI RAM NIWAS MIRDHA) : The question is :

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

The motion was adopted.

THE REQUISITIONING AND ACQUISITION OF IMMOVABLE (PROPERTY AMENDMENT)

BILL, 1968

**THE MINISTER OF WORKS,
HOUSING AND SUPPLY :** (SHRI
JAGANNATH RAO) : I beg to move :

"That the Bill further to amend the Requisitioning and Acquisition of Immovable Property Act, 1952, as passed by the Lok Sabha, be taken into consideration."

In the wake of the Chinese aggression, the Defence of India Act, 1962,