

SHRI K. DAMODARAN (Kerala) : I beg to lay on the Table a copy of the Thirty-third Report of the Public Accounts Committee (1968-69) on action taken by Government on the recommendations of the Public Accounts Committee contained in their 58th Report relating to Appropriation Accounts (Civil), 1964-65 and Audit Report (Civil), 1966 relating to Departments of Atomic Energy, Aviation, Cabinet Secretariat and Ministries of Commerce and External Affairs.

THE ADVOCATES (SECOND AMENDMENT) BILL, 1968—contd.

SHRI B. K. P. SINHA : Before you call Mr. Mandal, I would like to know from Mr. Gupta if he is very angry with Mr. Govinda Menon because he is trying to cut down the Communists to their size?

SHRI BHUPESH GUPTA : On personal explanation. He has cut down himself to his size. He has cut down the Congress also to its size by his criminal actions.

श्री बी० एन० मंडल (बिहार) : उपसभापति महोदया, अभी हम लोगों के सामने एडवोकेट अमेडमेंट बिल है। इस बिल के पहले जो कुछ भी हुआ उसे भी सक्षेप में मैं कह देना चाहता हूँ। सन् 1961 में एडवोकेट ऐक्ट पास हुआ था। उस ऐक्ट का कसेप्शन था कि एक यूनिफाइड बार हिन्दुस्तान में कायम किया जाय, लेकिन उस के जुरिसडिक्शन से जम्मू-काश्मीर वगैरह अलग कर दिया गया था और जो यूनिफाइड बार का कसेप्शन था उस के अदर में यह भी बात थी कि कौन लोग एडवोकेट होंगे। उसमें ऐसा कर दिया गया था कि जो लोग लाँ में प्रेज्युट होंगे उनको उस के बाद एक वर्ष की ट्रेनिंग लेनी पड़ेगी और उस के बाद वे एडवोकेट बार काउन्सिल एक्जामिनेशन में एपियर हो कर एडवोकेट बन सकेंगे। यह भी हुआ था कि जितने भी एडवोकेट होंगे उनके नामों की जो लिस्ट रहेगी वह बार काउन्सिल आफ इंडिया रखेगी। यह सब निश्चय वहाँ उस समय किये गये थे। इसके बाद कुछ इम्प्लीकेशन पैदा हुए। मैसूर में हाई कोर्ट को और एडवोकेट जनरल को यह मालूम नहीं

हो सका कि इस तरह का कानून पास हुआ है और पहले का जो लीगल प्रैक्टिशनर ऐक्ट था वह उठ गया है और अब एक क्लास के लायर्स रहेंगे। यह बात उनको मालूम नहीं थी। इस का नतीजा यह हुआ कि वहाँ के जो लीगल प्रैक्टिशनर ऐक्ट के अदर के जो लायर्स थे उन्होंने कुछ दिन के बाद अपना एडमिशन एडवोकेट के अन्दर करवा लिया। उस के बाद यह बात सामने आयी कि जिन का एडमिशन एडवोकेट के तौर पर हुआ है उन लोगों ने ट्रेनिंग नहीं ली है एक वर्ष की। इस का नतीजा यह हुआ कि बाद में उन लोगों को डिबार कर दिया गया कि ये लोग एडवोकेट बन कर प्रैक्टिस नहीं कर सकते हैं। ये प्राबलम भी हम लोगों के सामने आयी थी।

उसके बाद एक अमेडमेंट ऐक्ट 1965 में आया। उस के बाद एक रिव्यूइंग कमेटी भी कायम हुई। जब डिस्कशन चल ही रहा था 1965 के बिल पर, वह फ इनल लॉ नहीं बन पाया था, उसी बीच में गवर्नमेंट ने यह ऐलान किया कि हम अपने बिल को विट्टा करने हैं और बाद में एक कंफ्रिहेसिव बिल आयेगा जिस में जितनी भी समस्याएँ लीगल प्रैक्टिशनर्स के संबंध में हो सकती हैं उन सब पर विचार कर के, उनको हल करने की कोशिश होगी। और उसी के फलस्वरूप यह बिल हमारे सामने है।

इस में कुछ बातों में सुधार किया गया है। पहले जो आल इंडिया का बार था उस में जम्मू और काश्मीर आदि को एक्सक्लूड कर दिया गया था। इस बार में जम्मू-काश्मीर को और गोआ, दमण, दीव को इक्लूड कर लिया गया है। दूसरे आगे में पहली जनवरी 1969 में जो लाँ का कोर्स होगा वह 3 वर्ष का होगा और जो लोग 3 वर्ष तक पढ़ कर उसे पास कर लेंगे उन के लिये किसी स्पेशल ट्रेनिंग की जरूरत नहीं पड़ेगी। पहले एक बार हुआ था मैसूर वाले कप्लीेशन में कि 1964 के पहले तक जितने लोगों ने

ट्रेनिंग नहीं ली थी वे सब एडवोकेट होंगे, लेकिन इस बिल के जर्जिये 1 जनवरी, 1969 के पहले के जितने भी लायर होंगे वे सीधे सीधे एडवोकेट हो सकते हैं, इस तरह की गुंजाइश इस बिल के जर्जिये की गयी है।

जहां तक एडवोकेट्स को एनलिस्ट करने का ताल्लुक है, पहले यह राइट सेटल बार काउन्सिल की था, लेकिन अब ऐसा है कि जो प्राविशियल बार काउन्सिल होगी वे एडमिशन ले सकती है और उस की एक कापी जो सेटर की आल इंडिया बार काउन्सिल है उस को दे दी जायेगी। इस तरह की व्यवस्था इस में की गयी है।

इस के अंदर एक पुराना प्राविजन था कि जो गरीब लायर्स थे उन को मदद दी जानी चाहिये। इस नये बिल में उस की व्यवस्था में सुधार किया गया है और अब गरीब मुकदम लड़ने वालों को भी आर्थिक सहायता दी जा सकती है उस के लिये फंड कायम करने के लिये कहा गया है जिस में से यह सब खर्च किया जायेगा। इस अतिरिक्त बार काउन्सिल आफ इंडिया का मंत्र्य इंटरनेशनल लीगल बाडीज से भी रहे इस बात की व्यवस्था भी इस बिल के जर्जिये में की गयी है।

अब जो सबसे अहम सवाल आज इस देश के लायर्स के सामने और बार काउन्सिल के सामने है उस के बारे में कोई प्राविजन इस बिल में नहीं किया गया है। वह समस्या यह है कि लायर्स की संख्या कितनी होगी इस पर कोई लिमिट नहीं है। इस का नतीजा यह हुआ है कि जिन लोगों को कोई दूसरा काम नहीं मिल पाता, ह. य. जो कोई दूसरा कोई काम नहीं करते हैं वह सब लायर्स बन जाते हैं और नतीजा यह है कि लायर्स की संख्या इतनी बढ़ गयी है कि बहुत से लोगों को काम ही नहीं मिलता। देश में बहुत से लायर्स को नतीजे के तौर पर गरीबी का जीवन व्यतीत करना पड़ता है। यह भी एक समस्या बार काउन्सिल के सामने होनी चाहिये थी लेकिन इस के बारे में कोई इंडिक्शन

या कोई प्राविजन इस बिल में नहीं किया गया है। दूसरी ओर कुछ एडवोकेट्स का इतना इम्प्लीयमेंट हो जाता है कि जिस की वजह से उन को कपिटेशन में बहुत ज्यादा फीस मिलती है और वह बहुत सप्या कम ते हैं। इस तरह से जो देश का मंत्रियन है, जो प्लान है और उस की जो भावना है, जिस में आमदनी की असमानता को कम करने की बात मानी गयी है उस से बिलकुल ठीक उल्टी बात यहां हो रही है। इस लिये इस समस्या पर भी विचार होना चाहिये था, लेकिन इस पर विचार नहीं किया गया। इस के लिये, जैसा कि मुझ से पूर्व वक्ता श्री भूपेश गुप्ता जी ने कहा है, मैं भी चाहता हू कि कोई इस ढंग का प्रबंध हो कि जितने भी लायर्स एंगेज हो उन का एगजमेंट इस भावना से होना चाहिये कि उन को डिस्ट्रिब्यूशन आफ जस्टिस में हेल्प करनी है। गवर्नमेंट भी इस बात को समझे और लायर्स भी इस बात को समझे और उन को जो मिलता है उस का डिस्ट्रिब्यूशन गवर्नमेंट की ओर से हो। उन की इन्कम का डिस्ट्रिब्यूशन इस ढंग में हो कि सब को अपने हिसाब से कुछ न कुछ मिल सके। जो बहुत ज्यादा काम करने वाले हैं उन की आमदनी में और जिन को कम काम मिलने की वजह से आमदनी कम होती है उन की आमदनी में अत्यधिक डिस्पैरिटी रिमूव हो। इस तरह की कोशिश भी इस में होनी चाहिये थी जो कि नहीं की गयी है।

पाकिस्तान में भी कई लायर्स यहां पर आये हैं। उन के बारे में भी इस में प्राविजन है कि वे सब भी यहां पर आ कर काम करेंगे और वही काम करेंगे, उसी दर्जे का काम करेंगे जिस दर्जे का काम वह पाकिस्तान में करते थे। गोआ, दमण, दीव या जम्मू और कश्मीर के लोगों को राइट दिया गया है कि वे एडवोकेट हो सकते हैं, लेकिन कोई आवामी अगर ऐसा एप्लेकट करे कि हम अपना एन्रोलमेंट एडवोकेट्स में नहीं करावेंगे तो भी उन को जिस तरीकत से वह काम करते थे उसी तरीकत से उन को

[श्री बी० एन० मंडल]

काम करते रहने की गुंजाइश रखी गयी है। उन पर पहले जो लीगल प्रैक्टिशनर ऐक्ट के मातहत ऐक्शन हो सकता था वह जो 1961 का ऐक्ट था उस से खत्म कर दिया गया था। लेकिन इस बिल के जरिये फिर वह पोर्शन जिमके जरिये वे डिमिप्लिन्ड हो सकते हैं उस पोर्शन को रिवाइव किया गया है और मैं समझता हूं कि यह बहुत ही अच्छा है।

कोई जज वगैरह के बारे में, जैसा कि अभी भूपेश गुप्त जी ने जिक्र किया था कि वे सब रिटायर होने के बाद प्रैक्टिस करने नहीं आये, मैं भी समझता हूं कि उनका आना अच्छा नहीं होता है क्योंकि उनका पर्सनल वेट कुछ ऐसा रहता है जो इनफ्लूएस करता है। नोटगली नहीं, अनजाने तरीके से भी जो जज रहता है उस पर इन सब बातों का इनफ्लूएस होता है। इसलिये कोई ऐसी बात नहीं होनी चाहिये जिस से कोई जज इनफ्लूएन्स्ड हो सके। आज कानून बना हुआ है कि अगर कोई लायर इस तरह से अपियर रहा हो किसी ऐम इजलास में जिस के प्रेसाइडिंग आफिसर या जिस के जज से उसका कोई सम्बन्ध हो तो उस लायर को वहां पर नहीं अपियर होना चाहिये। उसके लिये इस तरह की व्यवस्था है कि जज को चाहिये कि वह उस केस को ट्रांसफर कर के किसी दूसरे इजलास में भेज दे। इस तरह का एक कनवेंशन हाई कोर्ट्स में चला आता है लेकिन हमने अपने भी केम में देखा है कि इस ढंग की बात नहीं होती है। जानबूझ कर ऐसा भी होता है कि एक जज जो कि इंटरस्टेड है किसी मुकदमे में उसके इजलास में अगर वह मुकदमा चला जाता है तो उसका रिलेशन वगैरह यद्यपि कोई अपियर कानूनी तरह से नहीं होता है, लेकिन उसको फीस दे कर ठीक कर लिया जाता है। इस तरह से एंडमिनिस्ट्रेशन आफ जस्टिस में गड़बड़ी होती है और मैं सरकार का ध्यान इस ओर खींचना चाहता हूं कि हर वह उपाय जिस से एंडमिनिस्ट्रेशन आफ जस्टिस ठीक तरह से चल

सके, उसे करना चाहिये [और इसलिये इसका भी प्राविजन इसमें रहना चाहिये। यह सिर्फ कनवेंशन पर चल रहा है और इसके लिये कोई प्राविजन कानून में नहीं है। इसलिये मैं यह भी चाहता हूं कि इस तरह का कोई प्राविजन कानून में रहना चाहिये।

SHRI D. L. SENGUPTA (West Bengal): Madam Deputy Chairman, I welcome this Bill. And in welcoming this Bill I must congratulate the law students of Delhi and Calcutta in particular for their serious campaign that ultimately led the Government to amend the Advocates Act, 1961, and bring in this Advocates (Second Amendment) Bill, 1968.

The important provision in this Bill when this will be passed into law is that henceforth the law graduates shall not be required to undergo practical training in law for one year and then pass the prescribed examination. The position as at present stands is that because of the stiff resistance from the law students that section of the Advocates Act had already become redundant, because there is no examination now-a-days and there is no practical training period now-a-days. There was a bargain struck between the Bar Council and the students as a result of which it was ultimately decided, "Let not the students appear for any examination but let them undergo only practical training for a year." But under whom to take this training? A busy lawyer has no time to teach anybody, and a lawyer who has no practice has little scope to train anybody. On the two earlier occasions when the Advocates Bill came to Parliament since my becoming a Member of the House, I stoutly refused to lend support to any such legislation where the students will be compelled to undergo one-year practical training and appear in an examination. I said that the clause providing for this had no meaning. I was a lawyer myself and I know that in one year's time one could learn practically nothing. What I learnt was at the Bar. But, unfortunately, by a brute majority the Congress got the Bill passed, and the inevitable followed, the students resisting it. They made representations, and now this Bill has been brought forward in its present form deleting that clause which compelled the law graduates, before their enrolment, to undergo one-year practical training and appear in an examination. And this feature, though late, must be welcomed.

Now Section 30, sub-section (ii) of the principal Act says that every advocate shall be able to appear "before any tribunal or person legally authorised to take evidence" But this Section 30, sub-section (ii) is in conflict with Section 36 of the Industrial Disputes Act, because, under Section 36 of the Industrial Disputes Act, a lawyer can only appear with the consent of the other side and with the leave of the tribunal But under this Section 30, sub-section (ii) an advocate has unfettered right I find this requires an amendment and the Act, as such, even after this amendment, does not remove the irregularity, and in that sense a better and more comprehensive Bill was necessary

Now, I have given notice of a series of amendments and I can tell the House at this stage that amendments Nos 8 and 9 are important and I shall press them seriously because of the impact of the term "barrister" because of barristers continuing to be advocates of the Indian Bar though there is no reciprocal arrangement between Indian advocates and the British Bar. When the advocates of this country are not entitled to practise in England, why the barristers, who are members of the English Bar, should be allowed to practise here in India as a matter of right? Either there must be reciprocal arrangement, or there should be positive and definite discouragement to the sons of this country going abroad just to become artificially important after becoming barristers there I feel, from the national point of view, from the point of view of national honour and prestige that even the few who go to foreign countries, take to law education there, obtain foreign degrees and then come back here with an air of superiority over local talent, should be discouraged from going there if there is no reciprocal arrangement for recognition of each other's degrees with the right of the holders of such degrees to practise in either country. Madam Deputy Chairman, in India we have seen many legal talents, those who were not barristers but advocates, those who learnt law in this country, who passed law in this country and practised law in this country and yet proved superior to even the barristers. They did not go abroad nor did they require to go abroad to learn law Only the other day our friend, Mr Madhu Limaye, argued his case before the Supreme Court and he did it better than many lawyers, either barristers or advocates So my amendment shall be very very pointed and serious so far as that particular Section of the parent Act is concerned In this connection I would like to draw the attention of the

House to a question of mine which was Starred Question No 271 answered on Friday the 29th November, 1968 My Question was (a) whether Government are aware of the grievances of the advocates of the Calcutta High Court in regard to the preferences allowed to the Barristers on the original side and (b) if so, the steps Government propose to take to remove their grievances The reply given by the Law Minister was (a) The Government of India has no information and (b) Does not arise But nothing could be a greater travesty of truth than this statement by the hon Minister in answer to my question, for the Advocates of Calcutta had boycotted the Bench for two months They made representations to the Chief Justice of India, to the Law Minister, to the Government of India and to the Prime Minister and for two months there was a boycott And the boycott was against the attitude taken by Mr Justice D N Sinha recommending a permanent status for the Barristers who are appointed as Judges of the Calcutta High Court while the advocates who were senior in the Bar, who were made Judges at the same time were given temporary status The consequence of this was—this was the calculation—in no time in the next 24 years never any advocate will adorn the Chair of the Chief Justice of the Calcutta High Court It will be a Chair for the Barristers and this was an unmerited insult to the advocates A Barrister because he is a Barrister is made a permanent Judge of the High Court while an advocate must be seen how he fares So a protest was lodged by boycotting the Bench of the Chief Justice.

Secondly, everybody should know that there is the original side I share the views of Mr Bhupesh Gupta in regard to Mr Govinda Menon As a lawyer he should have known at least that there is original side in the Calcutta High Court which is fed by the attorneys It has become a monopoly practice or a near monopoly practice for the Barristers But there is no sense in maintaining artificially this original side. There is the City Civil Court and if there is anything in the original side it should go to the City Civil Court Excepting in Calcutta, Bombay and Madras there is no original side This original side business should go So this answer of the Law Minister only shows that he was not true to his soul, was not true to his conscience and was not true to the House He has either pretended ignorance or he has suppressed the truth

Madam Deputy Chairman, my friend, Mr. Bhupesh Gupta, has suggested that

[Shri D. L. Sengupta]

there should be a ceiling on the income of lawyers. I fully agree with him though I am a lawyer by profession. In every court there is a near monopoly condition so far as a few lawyers are concerned. Why is this so? It is either because they are ex-Judges or because they are former Attorney-Generals or Advocate-Generals, or because they were Standing Counsels or because they are son-in-laws of some Judges or Ministers. These extraneous factors give them added weight with the Judges on the Bench. Madam Deputy Chairman, allow me to say without meaning any disrespect to the judiciary itself that the Judges are also very weak-minded people now-a-days. They consider a man not by the facts and points of law made out but by who says it. And the client's naturally feel that this particular man has got better respect of the Judge and they naturally try to engage that man by spending unnecessarily huge amount of money only to get better advantage of his personal weight with the Judges of the Bench. This is a very very serious thing. These Judges are supposed to be the defenders of democracy and justice but they have stooped low in many cases. I know this is not the place to criticise any individual Judge but this is a fact. Madam Deputy Chairman, you are also in the Bar and I do not like to tell you much about this.

SHRI BHUPESH GUPTA : Don't you think the lawyers would look prettier in sky-blue close-necked jackets?

SHRI D. L. SEN GUPTA : One thing I would like to tell Mr. Bhupesh Gupta who was never in the Bar, so far as his conception of lawyers is concerned only a few lawyers get handsomely paid. He wants that there should be a number of cases fixed; not more than so many cases to each lawyer. There is a schedule of rates in the Supreme Court in respect of lawyers' fees but no lawyer ever hesitates to accept blackmarket rates. Then what is the sense in having the schedule? Is it for costing purposes only? What I want to say is if we are opposed to monopoly in the industrial sector we should be opposed to monopoly everywhere. Let us legislate in that line so that people may feel assured that whoever may be the man, the Judges will ensure justice by hearing what the lawyer says and not by seeing the face of the lawyer who argues the case. Then only this system of earning money can be stopped.

SHRI KESAVAN (THAZHAVA) (Kerala) : These amendments are introduced on the basis of the recommendations made by the Advocates Act Review Committee consisting of lawyer members of Parliament and also on the basis of the experience gained in the practical working of the Advocates Act, 1961. My submission is, the Committee might have made certain recommendations after due consideration and the proposed amendments may be in the light of experience gained by the working of the Advocates Act. And of course the persons in authority might have felt some necessity for certain modifications. But in this country there are various States and in each state there is a Bar Council. They also must have gained experience of the working of the Advocates Act and the Bar Councils Act. There are various High Courts in the country and the Judges who preside over the High Courts also have experience of the working of these Acts. They are also directly connected with the advocates and interested in the welfare of the advocates. They may also have some amendments to propose. So also there are the various Bar Associations in the country the members of which are directly interested in the Advocates Act and they too may have some amendments to suggest. So before introducing this Bill it was incumbent on the part of the Law Minister who is also considered to be an eminent lawyer to circulate this to the various Bar Councils, High Courts and the Bar Associations in the country for their opinion and suggestions for amendment of the Advocates Act. However much the Law Minister might have thought of his amendments, my submission is that the amendments now proposed by certain Members of this House are very important. So, it is clear that the Law Minister has not gone deep into the matter and considered these amendments. It is highly necessary that in the interests of the advocates and of the profession he should circulate this for eliciting public opinion. I request the Law Minister to withdraw this Bill and circulate it for eliciting public opinion and invite amendments, and then introduce an amending Bill.

In addition, in his speech introducing the Bill, he stated that now the apprentice course has been taken away and a three-year course has been introduced for the LL.B. examination. My submission is that our Law Minister himself has undergone only a two-year course for his B. L. degree examination and he has not undergone any apprenticeship course. After passing his B. L. degree examination, he directly

came and enrolled himself as a lawyer. We can see that most of the eminent lawyers of the land are persons who have undergone only a two-year course in law and they have not undergone any apprentice course. The Law Minister said that a three-year law course has been introduced. My submission is that it is not at all necessary. The argument which he advanced was that during this three-year course the students are taught civil procedure code and criminal procedure code. While I was studying for the B. L. examination some thirty eight years ago, I have studied penal law and my friend studied penal law while he was a law student. He is also a product of the Madras University. He might have studied the criminal procedure code for his B. L. degree examination. My submission is that whatever we study as students in the law college may not be of much use when we enrol ourselves as advocates and come to the field for conducting cases. However intelligent he may be, there are various circumstances and other matters that give incentive for the success of a lawyer. So, the Law Minister's statement that the three-year course has been introduced because during this period the criminal procedure code and the civil procedure code are taught to the students and it is for that purpose this three-year course is introduced and the apprenticeship course taken away, is not convincing. By increasing it by one year the most valuable time of the youth is taken away. He has to study for some fifteen years to become a graduate. Then, he has to undergo a three-year course for a law degree. It means that eighteen years of his important period of youth he has to spend on studies. Even without passing law examination and even without passing any degree examination, and not even passing the seventh standard in the mother-tongue of the person, he gets himself enrolled as an advocate because of the provisions contained in the Bar Councils Act, 1961. As a matter of fact I know of at least two persons in my place who have enrolled themselves as advocates and who have not passed any examination in their life. The only qualification is that they have appeared in certain criminal cases as law agents, i.e., when a man is chargesheeted for an offence, for theft, etc., they will appear before the Magistrate and file an application to allow them to appear on behalf of the accused. There was such a system in my place. He need not pass even the seventh standard in a Malayalam school. Such persons, at least two of them, are now practising as advocates. They do not know A, B, C, D in English and they have

not seen even the doors of a high school. If such persons can be enrolled as advocates, why should these youth be compelled to spend their valuable time on a three-year course? Of course, the apprentice course has been taken away. So, my submission is that the three-year course may be reduced to two years as a whole, so that the youngsters may not be loitering in front of offices in search of jobs. They can directly go and enrol themselves as advocates and begin practice so that they can get something for their maintenance. My submission is that this Bill may be withdrawn.

Another thing which I wanted to say is this. Now, the High Court Judges who retire and also District Judges who retire can come and practise again. When a High Court Judge happens to practise again and he appears before his colleagues in the High Court, there will be something wrong in the minds of the High Court Judges presiding over the Bench at that time. If the retired Judge happens to appear before the District Judge, then the District Judge would unknowingly get up from his chair, because a High Court Judge is appearing before him. He may sit down immediately recollecting that he is no more a High Court Judge. Be they High Court Judges or District Court Judges, they should not be allowed to practise after retirement. There must be a provision for all these.

There is a provision for legal aid for the poor. In Kerala there is some Act to give aid to the poor people, both in criminal courts and civil courts. It has been in existence for the last so many years. In the Kerala Bar Council to help the advocates after their retirement and also to help the disabled advocates or advocates who are actually in need, some rules were drafted. It has been circulated among the various Bar associations in the State for their opinion. This provision enables us to help the disabled advocates. There are advocates who are actually in need. Not only that. When he retires, whether he may be at the top or at the bottom, there must be something to go to his help. For that, they must contribute to some fund. A provision must be made, so that they must contribute to a fund and also the Government must come forward with their quota to help them. They should contribute to that fund. Such provisions must come in here. For all these reasons, it is highly necessary to circulate the Bill not only for eliciting opinion, but also for receiving amendments from the various Bar Councils

[Shri Kesavan (Thazhava)]

in the country, from the High Courts and also from the various Bar Associations. I humbly submit that this Bill may be withdrawn.

SHRI G.A. APPAN (Madras) : Madam, speaking on the Advocates (Amendment) Bill, 1968, I presume that these amendments are the result of certain observations and recommendations made by the advocate-Members of Parliament and by the Attorney-General. I am really surprised to note that such eminent people, as they supposed to have been advocates of this House, and the Attorney-General have not been able to do real justice to the poor, prospective advocate generation of India who would like to emerge in the field of the noblest profession of law from 1961. My point is that the advocates course or the law degree course of two years is itself too long. The subjects concerned can be studied and passed even by an ordinary man of ordinary eminence and intellect in one year, if I may be permitted to say so. Anyhow I have been associated with law from my 16th year of age when I was only a matriculate, when I was a teacher in a small village, when I studied the criminal law, the civil law, the Civil Procedure Code, the Indian Penal Code, and things like that including the Evidence Act. It was in 1930 when I was after all a village teacher. That being the case, I do not know why there should be three years for this course in future. The explanation given in the memorandum is that we are abolishing the apprenticeship course of one year and so a three year course for first law degree is necessary. Is it not a fact that these courses are run as part-time courses in the Delhi University and in the Bangalore University and as non-collegiate courses in universities like the Utkal University, the Bhaugapur University and the Tribhuvan University? Is it not a dogmatic fact that so many have passed these examinations by studying straight at homes? Can it not be done by others as well? It is really unfortunate that certain Vice-Chancellors of some Universities do not permit some of these people to appear independently and as private candidates for law. Whereas others extend this benefit under certain conditions. I request the University Grants Commission, the Minister of Education and the Minister of Law to provide a clause here that hereafterwards private candidates, and non-collegiate candidates should also be allowed in every university to appear

for the law courses not only for the first degree examination but for the post-graduate degree and for the doctorate degree in law as well, for it is not a very difficult examination. So, this will be saving a lot of money not only to the parents, to the students and to the universities but to the nation and to the various States who spend a lot of money in form of grants, in the form of aid etc. for staff buildings and all these things. This being the case, affecting the interests of students, affecting the financial interests of parents and the financial interests of the States, has this Bill been circulated for public opinion? Can this Bill be passed without any public opinion at all? I think this cannot happen in democracy. It can never be democracy. Democracy can function only on the basis of public opinion and by will of the majority. It is really a lacuna in the Indian Constitution that it has not provided a "Referendum" and "Initiative" even in such important subjects like this. Some of us will have to see that these two provisions are introduced in the Constitution rather than so many miscellaneous amendments which are brought before the Houses of our Parliament.

It is really unfortunate that most of the senior lawyers are not giving anything to the juniors unless they take some cases to them, and even if they take cases, the senior lawyers are giving these poor junior lawyers only one-fourth or one-fifth. I would like to request the Minister concerned and the Government of India to make a provision in this Advocates Bill and restrict and ration the cases, as my other friend has put it earlier. It is a fact to say here that we have very great regard for the barristers. Why? Because there is better merit and status for them all over the world. There is some speciality in the training, in the efficiency and in the cadre of the barristers. (Interruption) I have reasons to say that. It is to be discussed separately for a longer time than this. My time is short. Why do I say that? Because such eminent training is being given to them. Of course barristers learn how to eat dinners or take tea in an elegant society. This is their qualification. They learn better lofty table manners. They move with society in a laudable way. They study the psychology, culture, civilisation and various other things of the contemporary society because they are able to move with the society on the appropriate lines which will enable them also to tackle the human problems in an appropriate way worthy of and befitting, the

situations. I would also add here before this august House, Madam Deputy Chairman, that courses on psychology, adult psychology, abnormal psychology, criminal psychology, child psychology and things like that, which contribute to the main causes for all these human behaviour—acts, actions, conduct, irregularities and anti-social activities, should be there. Unless people could know them, they cannot discharge properly their missionary and legal duties as worthy advocates better. This will also have to be there. So, introduction of the three year course should be deleted immediately.

I also join with my other friends that this Bill may be dropped or referred once again back for public opinion and to consult the universities because this law degree course and the university courses of study fall in the domain of the autonomy of the universities. Did the Government consult the universities in this respect? I do not think that they have. What an additional expenditure to the Governments in the various States and at the Centre would the three-year course adumbrated now would mean, cannot be taken lightly.

THE DEPUTY CHAIRMAN : Please wind up

SHRI G. A. APPAN : If I speak anything irrelevant or things spoken by others, you can stop me. It is a very important thing. This will help the nation to a great extent. This will help the economy of our country. This will help the efficiency of our country. I request you to give me some more time.

THE DEPUTY CHAIRMAN : As it is, we have finished the time that was allotted.

SHRI G. A. APPAN : This is an important thing, Madam.

THE DEPUTY CHAIRMAN : You must not repeat yourself. Please be brief and mention the points.

SHRI G. A. APPAN : The professional prospects of a number of these law graduates are very very poor. I know any number of law graduates who are unemployed for a long time everywhere. So, the training course for the profession of law should be restricted in a Bill like this and even the income limit of lawyers should be restricted in a statute like this. Clause 34 of the Bill amending section 4—43 R. S./68

49A(1) and (2), is arbitrary. If the Government could interfere with the autonomy of the Bar Council of India and of the States, I think it is no democracy. It can never be democracy. Unless this clause is removed, there will be no due discharge of the functions of the Bar Councils. The Bar Councils consist of eminent jurists like the Attorney-Generals and leading lawyers. Do you mean to say that the Government will have better knowledge to advise them on better lines? I think "No". So the sections will have to be deleted in the amendments.

THE DEPUTY CHAIRMAN : Please wind up.

SHRI G. A. APPAN : Regarding the provision of free legal aid, the services of *amicus curiae* could be utilised for these cases also instead of creating a separate cadre of free legal counsel for which the Government also will have to reimburse or sanction grant. Regarding the provision for starting old age pension and other benefits for the lawyers, I would feel that a form of National Advocates Insurance could be resorted to, collecting something every month from each of the lawyers to help them in their distress; or else it will become another almsgiving. We cannot please the advocates by giving Rs 20 or Rs 30 as we give for the poor people. We will have to give a lot of money to them.

So, I request that the period of training should be only two years, and people should be allowed to appear privately in all the universities as external candidates, if necessary, even increasing the number of marks now prescribed for a pass.

THE DEPUTY MINISTER IN THE MINISTRY OF LAW (SHRI MOHAMMAD YUNUS SALEEM) : Madam Deputy Chairman, several hon. Members have expressed their views on the proposed amending Bill. Briefly, I will try to deal with all the important points which have been raised by different hon. Members.

Firstly, I will take up the point made by the hon. Pandit Tankha. Pandit Tankha yesterday has made a point that the amendment which has been proposed required the serious consideration of the Law Ministry. He was of the opinion that a person would be entitled to practise as an advocate only if he has completed a law course of three years. And then he said that it would not be possible for all

[Shri Mohammad Yunus Saleem]

the universities to accept this situation. For his consideration, Madam, I will draw the attention of the House to the relevant provision of the Act, section 24(1) (c) (3) which reads as follows :—

“Subject to the provision of the Act and the rules made thereunder, a person shall be qualified to be admitted as an advocate on the State roll if he fulfils the following conditions, namely...”.

I leave out the others. The relevant clause is this.

“(c) 1, 2 and 3.

“After the 28th day of February, 1963, from any university in the Territory of India, if the degree is recognised for the purposes of this Act by the Bar Council of India or...”.

This is not relevant.

So, the Bar Council of India has made a rule stating that only degrees obtained by the 3-year course of study would be recognised for the purposes of enrolment. There are universities, Madam, where still the two-year course is being taught. Such universities have been permitted to continue such degree courses only for a year and after that, all these universities would adopt the three-year law courses and only such persons who have completed the three-year course would be recognised under the provision of the Act to practise as lawyers in any court of law of the country.

Then, I come to certain points raised by the hon. Mr. Bhupesh Gupta. Mr. Bhupesh Gupta perhaps did not know that in our country at present the rules are such that the Attorney-General and the Solicitor-General are not permitted to have private practice. He was perhaps under the impression that the Attorney-General and the Solicitor-General are having private practice also and are accepting briefs from private parties also. For his information, I may submit, Madam, that neither the Solicitor-General nor the Attorney-General can accept briefs from private parties.

SHRI D. L. SEN GUPTA : Are you very sure that the Solicitor-General is debarred from taking up private practice? It is true for the Attorney-General, but not for the Solicitor-General.

SHRI MOHAMMAD YUNUS SALEEM : I think what I have said I

have said with a full sense of responsibility that the Solicitor-General and the Attorney-General are not permitted to accept private practice.

As regards the other Law Officers, the rules are also quite clear. I will quote the relevant rules for the information of the House :

“A Law Officer shall not—

(a) hold briefs in court for any party except the Government of India or the Government of a State or any university, Government school or college, local authority, Public Service Commission, Port Trust, Port Commissioners, Government-aided or Government-managed hospitals, a Government company as defined in section 617 of the Companies Act, 1956, any corporation owned or controlled by the State or any body or institution in which the Government has a preponderating interest;

(b) advise any party against the Government of India or in cases in which he is likely to be called upon to advise, or appear for, the Government of India;

(c) defend an accused person in a criminal prosecution without the permission of the Government of India; or

(d) accept appointments to any office in any company or corporation without the permission of the Government of India”.

This rule, Madam, I have read from the Law Officers (Conditions of Service) Rules, 1967. Therefore, all the persons who accept a law office are bound to comply with these rules. Therefore, the point raised by Mr. Bhupesh Gupta is clarified by quoting these rules and the information given regarding the Attorney-General and the Solicitor-General.

Then, Mr. Bhupesh Gupta has also suggested that legal aid should be provided to such poor litigants who are not in a position to incur heavy expenses of court fee and other legal charges which are necessary for a litigant to face a court of law. For his information, I may submit, Madam, that provision to that effect has been made and perhaps the relevant provision has escaped his notice. Clauses 6 and 7 of the Bill provide for that. I am sorry that Mr. Bhupesh Gupta is missing here and he is not able to hear my reply. Anyhow, it says—

"6. (2) A State Bar Council may constitute a fund or funds in the prescribed manner—

(a) for giving financial assistance to indigent or disabled advocates;

(b) for giving legal aid to the poor."

So, it has been provided in the proposed amendment to the Bill. Then there is another provision which is clause 7 which says—

"(2) The Bar Council of India may constitute a fund in the prescribed manner for giving legal aid to the poor."

Therefore, what I submit, Madam, is this that provisions have been made empowering the State Bar Councils and the Bar Council of India to raise suitable funds, and wherever, in their opinion they find it necessary that certain poor litigants are not able to bear the expenses of the litigation, they may offer reasonable help to them. Had my friend, Mr. Bhupesh Gupta, carefully gone through the proposed clauses of the Bill, he would not have troubled himself by making these remarks.

SHRI BHUPESH GUPTA : That I know. Nothing is there.

SHRI MOHAMMAD YUNUS SALEEM: You have not seen them, you have not cared to see, Mr. Bhupesh Gupta. That is the trouble. You simply speak and you do not see the relevant Bill.

SHRI BHUPESH GUPTA : Your senior is Mr. Panampalli Govinda Menon?

SHRI MOHAMMAD YUNUS SALEEM : Then he also . . .

SHRI KESAVAN (THAZHAVA) : Why cannot the Government come forward and help the poor? For that purpose, a Bill may be passed and money may be found, as is done in Kerala.

SHRI MOHAMMAD YUNUS SALEEM : For the hon'ble Member's information I may submit that to provide legal aid to the poor is a State subject. It can be a State legislation. If a State thinks that such provisions should be created and aid to the poor litigants should be provided, they may suitably legislate in their respective States. We have no objection. But so far as this proposed amendment Bill is concerned, it is not within the scope of this Bill to consider these points.

Mr. Bhupesh Gupta said something about amendment to clause 34. What he meant to say was that the Bar Councils of the States and the Bar Council of India would be subject to the directives issued by the Law Ministry. Perhaps here also he did not consider the wording of the existing section and the proposed amendment; otherwise he would have also come to the conclusion that this amendment has been introduced only to maintain the autonomous character of the Bar Councils of the States and also the Bar Council of India. I would quote the relevant section and then the proposed clause under consideration before the House. Section 49A says :

"(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act including rules with respect to any matter for which the Bar Council of India, or a State Bar Council has power to make rules.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for—

(a) qualifications for membership of a Bar Council and disqualifications for such membership..."

Now the proposed amendment is this. Clause 34 of the Bill says :

"For section 49A of the principal Act, the following section shall be substituted, namely :

"49A. (1) Where the Central Government considers it expedient so to do, it may, by order in writing, direct a Bar Council to make any rules or to amend or revoke any rules already made within such period as it may specify in this behalf."

[THE VICE CHAIRMAN (SHRI M.P. BHARGAVA) in the Chair]

Regarding this amendment if one cares to see the object of introducing this amendment and the note, it will not be difficult to come to the conclusion why this amendment is proposed before the House. I am reading from page 19 of the Bill :—

"Under section 49A of the Act the Central Government has the power to frame rules for the purposes of the Act. Any rules so made would override rules made by the Bar Council of India or by a State Bar Council.

[Shri Mohammad Yunus Saleem]

In order to preserve the autonomy of the Bar Council and to avoid requests being made for interference in their day to day matters, it is proposed to delete the provision. However, it is proposed to empower the Central Government to issue directions to the Bar Council."

Similarly, on page 15, in the Statement of Objects and Reasons, the subject of amendment of section 49A has been discussed. It says :

"Section 49A of the Act empowers the Central Government to frame rules for the purposes of the Act. Any rules so made would over-ride rules made by the Bar Council of India or by a State Bar Council. In order to preserve the autonomy of the Bar Councils and to avoid requests being made to the Central Government to interfere in their day to day working, it has been decided to delete the section. In its place it is proposed to empower the Central Government to issue directions to the Bar Councils on the analogy of the provisions contained in section 30A of the Chartered Accountants Act, 1949."

Therefore, had this point been considered by Mr. Bhupesh Gupta, he would not have raised objection regarding the proposed amendment. The main object of introducing this amendment was to maintain the autonomous character of the Bar Councils of the States and the Bar Council of India.

SHRI G. A. APPAN (Madras) : On a point of order, Sir. The hon'ble Minister says that to maintain the autonomy of the Bar Council this 49A(1) and (2) are being amended. Is it not a negation of the provision of the autonomy that is given now by this? Further, the wording itself in the amendment denotes :

"The Central Government.., by order." Is not "order" an imperialistic and a dictatorial term? I would suggest that the word "instruction" will be better than the word "order". The Chairmen of the Bar Councils are great juristic personalities, personalities of great eminence in the field of law, next only to personalities like the President, the Prime Minister, the Governors and the Chief Ministers.

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA) : This is no point of order. Anyway, you have had your say. Mr. Sen Gupta.

SHRI D. L. SEN GUPTA : My point of order is that the hon'ble Deputy Minister is referring every time to what Mr. Bhupesh Gupta said. This is the substance of his speech. Let him also answer the points raised by other Members which are of substantial interest.

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA) : The Minister can take care of it.

SHRI MOHAMMAD YUNUS SALEEM : Mr. Vice-Chairman, Sir, some hon'ble Members have also raised certain objections regarding not circulating the Bill for public opinion....

SHRI BHUPESH GUPTA : You have not answered my one point. I suggested that Mr. Govinda Menon should quit the Law Ministry.

AN HON'BLE MEMBER : He wants everybody to quit.

SHRI MOHAMMAD YUNUS SALEEM : Are you prepared to quit first? If not, what right have you to ask anybody else to quit?

SHRI BHUPESH GUPTA : I am not Law Minister.

SHRI MOHAMMAD YUNUS SALEEM : You are a Member of the House all right.

SHRI B. K. P. SINHA : Mr. Vice-Chairman, may I suggest a compromise? The Law Minister would agree to withdraw and quit if the hon. Member on that side agrees to Mr. Abid Ali becoming the Law Minister.

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA) : No reference to Members who are not present, please.

SHRI BHUPESH GUPTA : Mr. Vice-Chairman, it is very unfair that by proposing this name the office of the Law Minister has been defiled in this manner.

THE VICE-CHAIRMAN (SHRI M.P. BHARGAVA) : I have already said there should be no reference to Members who are not present.

SHRI MOHAMMAD YUNUS SALEEM : What I was submitting is this. Certain hon'ble Members have raised objection that this Bill, after being introduced in this House, should have been

circulated for eliciting public opinion. For the information of the House I may submit, Sir, that the copies of the Bill were circulated to all the State Bar Councils and also the Bar Council of India, and after the receipt of their views, which have been taken into consideration an amendment was proposed to be introduced. But in view of the amendment which had been proposed by certain hon'ble Members these amendments have not been thought necessary. However, all the suggestions made by the Bar Councils and the Bar Council of India, by and large, have been accepted in the proposed amendment. Therefore, that argument also has no substance. Therefore, I submit that the Bill may be passed.

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA) : 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 M. P. BHARGAVA) : We shall now take up clause by clause consideration of the Bill.

Clause 2 was added to the Bill.

Clause 3—Amendment of section 2

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA) : There is one amendment by Shri Mohammad Yunus Saleem and Mr. B. K. P. Sinha.

SHRI MOHAMMAD YUNUS SALEEM : Sir, I move :

1. "That at page 2, for line 19, the following be substituted, namely :—

'(a) for clause (a), the following clause shall be substituted, namely :

(a) "advocate" means an advocate entered in any roll under the provisions of this Act and includes a person who has been a vakil or a pleader or an attorney and is entered in any such roll;

(aa) clause (f) shall be omitted;."

The question was proposed.

SHRI BHUPESH GUPTA : What is the amendment ? You speak on it.

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA) : It has been circulated.

SHRI BHUPESH GUPTA : He has moved the amendment. Let him tell us as to what it is.

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA) : It is very simple; it is about the definition of "Advocate."

SHRI BHUPESH GUPTA : What is that definition ?

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA) : You want it ? I can read it out.

SHRI BHUPESH GUPTA : Does the definition include Mr. Govinda Menon ?

SHRI MOHAMMAD YUNUS SALEEM : Yes.

SHRI BHUPESH GUPTA : Then I do not accept the definition.

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA) : The question is :

1. "That at page 2, for line 19, the following be substituted, namely :

'(a) for clause (a), the following clause shall be substituted, namely :

(a) "advocate" means an advocate entered in any roll under the provisions of this Act and includes a person who has been a vakil or a pleader or an attorney and is entered in any such roll;

(aa) clause (f) shall be omitted;."

The motion was adopted.

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA) : The question is :

"That clause 3, as amended, stand part of the Bill."

The motion was adopted.

Clause 3, as amended, was added to the Bill.

Clause 4—Amendment of section 3

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA) : There is one amendment by Shri Syed Ahmed, Shri Arjun Arora and Shri D. L. Sen Gupta.

SHRI SYED AHMED (Madhya Pradesh) : Sir, I move :

2. "That at page 3, after line 10, the following be inserted, namely

'(c) for sub-section (3), the following shall be substituted, namely :

"(3) (a) For each of the Bar Councils of the States referred to in clause (a) of sub-section (1), the Advocate General of the State concerned shall be its Chairman;

[Shri Syed Ahmed]

(b) for the Bar Council referred to in clause (b) of sub-section (1), the Advocate-General of the State of Assam or, as the case may be, the Advocate General of the State of Nagaland, whoever has been holding such office continuously for a longer time, shall be its Chairman;

(c) for the Bar Council referred to in clause (c) of sub-section (1), the Advocate General of the State of Kerala shall be its Chairman;

(d) for the Bar Council referred to in clause (cc) of sub-section (1), the Advocate General of the State of Madras shall be its Chairman;

(e) for the Bar Council referred to in clause (ccc) of sub-section (1), the Advocate General of Maharashtra shall be its Chairman;

(f) for the Bar Council referred to in clause (d) of sub-section (1), the Advocate General of the State of Punjab or, as the case may be, the Advocate General of the State of Haryana, whoever has been holding such office continuously for a longer time, shall be its Chairman;

(g) for the Bar Council of Delhi, the Chairman shall be elected by the Council in such manner as may be prescribed.

(3A) There shall also be a Vice-Chairman of each State Bar Council elected by the Council in such manner as may be prescribed.” ”

The question was proposed.

SHRI MOHAMMAD YUNUS SALEEM : We are accepting this amendment.

SHRI BHUPESH GUPTA : Sir, I would like to say something on this. This amendment which the Government is accepting says that the Advocate General of the State concerned shall be the Chairman of the Bar Council. Why should it be like that? He should be elected, because the appointment of the Advocate General is a political appointment. The Government of the day appoints the Advocate General in a State. Now why should it be that *ipso facto* or *ex officio* he becomes the Chairman of this Council? Mr.

Vice-Chairman, there are some funny Advocates-General, especially when they are appointed by the Congress Government. That is what I have seen. Therefore, it should be left to the Bar Council to decide as to who will be the Chairman and it should not be imposed from the top. This is very wrong and I do not know why he gave this amendment. The amendment says :

“...the Advocate General of the State of Assam or, as the case may be, the Advocate General of the State of Nagaland...”

I cannot understand as to why we are again and again going to Nagaland and all these things.

SHRI SYED AHMED : Because the High Court is the same for Assam and Nagaland.

SHRI BHUPESH GUPTA : Let the Bar Council decide the whole thing. I do not think these amendments are good amendments; they cannot be accepted. Then there is again “Haryana”. Well, Haryana is haunting us all the time. Then, it reads :

“...for the Bar Council referred to in clause (d) of sub-section (1), the Advocate General of the State of Punjab or, as the case may be, the Advocate General of the State of Haryana, whoever has been holding such office continuously for a longer time, shall be its Chairman.”

Now, you see, this is the crux of the matter. Now the Advocate General of Haryana would be appointed by a Ministry; we do not know whether it exists or not. Similarly in Punjab he may be appointed by Mr. Gill or by somebody else. Now why should he become Chairman? Let the Bar Council decide it. Therefore, I say this is not a very sound approach. I do not know why my friend gave notice of such an amendment.

Now about the Bar Council of Delhi, why should you take such a fancy ...

SHRI SYED AHMED : The Advocate General is considered to be the leader of the Bar.

SHRI BHUPESH GUPTA : He may not be leader of the Bar. The Leader of the Bar may be somebody else. Now, for example—do not misunderstand me—there is a Congress Government in some

State. Then comes a Jana Sangh Government. They will change it. They will make somebody else Advocate General, according to their likes. Now when a new Government comes and changes the Advocate General, does it mean that because of the change of Government, the leadership of the Bar Council also should change? No. You cannot first make him Advocate General and then impose him as Leader of the Bar. It is a wrong concept. Advocate General is a political appointment which is done by the Government. In fact, in the U. K. he is a member of the Government. Why should he *ipso facto* become the Chairman of the Bar Council? I cannot understand. Therefore, I oppose this amendment. They should always be elected by the Bar Council. Let the Bar Council decide it. It may well be that and Advocate General sometimes enjoys the confidence of the majority of the members of the Bar Council and he gets elected. It may also be that he does not command the confidence of the majority and people do not like to see him in that particular role, even if the Council of Ministers for the time being likes him. So, why are you binding them to this kind of commitment? I say, do not have a fancy for the Advocates-General. We are tired of some of them.

श्री सुन्दर सिंह भंडारी : उप सभाध्यक्ष महोदय, भूपेश गुप्त जी ने जनसंघ का नाम ले लिया, मैं केवल इतना ही आश्वासन दे सकता हूँ कि सरकारें बदलने से या पार्टियों की सरकारें बदलने से साधारणतया सरकारी काम के लिये जो व्यक्ति नियुक्त हैं, नियमों की अवहेलना कर के उनको बदलना किसी भी प्रजातंत्र में विश्वास करने वाली सरकार के लिये शोभा नहीं देगा। ऐडवोकेट जनरल की नियुक्ति के जो नियम हैं उन्हीं के अन्तर्गत वे वहाँ पर रहेंगे चाहे वह जनसंघ की सरकार हो, चाहे वह कांग्रेस की सरकार हो। मुझे नहीं मालूम कि कम्युनिस्ट पार्टी की सरकार में कौन से नियम लागू होंगे।

दूसरा इस संशोधन का विरोध किया गया कि बार कौंसिल के चेयरमैन के रूप में ऐडवोकेट जनरल को स्वयंमेव नहीं आ जाना चाहिये, वह भी वहाँ इलेक्टैड हो अगर ऐडवोकेट जनरल साधारणतया वहाँ की बार का

लीडर है, उसकी प्रतिष्ठा उतनी है, तो फिर उस जगह पर उसको आ जाने में कोई आपत्ति नहीं होगी। अर्थात् ऐडवोकेट जनरल का पद इसके लिये बार नहीं होना चाहिये। लेकिन एक्स आफिशियो इसको यहाँ पर लागू करना उचित नहीं है। इस लिये मैं इस संशोधन का विरोध करता हूँ।

SHRI AKBAR ALI KHAN : May I just point out, Sir, that in these days we should have some progressive legislation and not a retrograde legislation? In a Bar Council, if the Advocate General is really the leader of the Bar, he will be elected. We should not force it on them that he should be the Chairman. I think there is much in what Mr. Bhupesh Gupta and Mr. Bhandari have said. I would like the Government to reconsider it. It is not necessary to accept this amendment.

SHRI G. A. APPAN (Madras) : Sir, I support the views expressed by Mr. Bhupesh Gupta and other friends. If the Bar Councils are Government institutions, then there is every right for the Government to provide that the Advocate General should *ipso facto* be the Chairman of the Bar Council. If they are statutory bodies, then I think it should be on the basis of democratic principles and the Chairman should only be elected. It is an office of election and, not an office of imposition.

SHRI KESAVAN (THAZHAVA): Why is it necessary to impose the Advocate General as the Chairman of the Bar Council?

SHRI KRISHAN KANT : Sir, the point raised by Mr. Bhupesh Gupta and supported by Mr. Akbar Ali Khan is a very valid point. For instance, the Advocate General in Bihar was changed with the change of Government. So the provision should not be like this. I think it is better the amendment is not accepted by the Government.

श्री सुन्दर सिंह भंडारी : माननीय सदस्य गलत जानकारी दे रहे हैं।

SHRI BHUPESH GUPTA : If, for example, Mr. C. D. Pande or Mr. Abid Ali lives in Bihar and they are lawyers, they can be appointed. How do I know?

SHRI MOHAMMAD YUNUS SALEEM : Sir, in every State Bar Council, the Advocate General is *ex officio* a member of the Bar Council. He need not contest any election whereas other members of the Bar Council have got to contest elections to become a member of the Bar Council. Similarly, the Attorney-General is *ex officio* a member of the Bar Council of India. Now this point was considered on the basis of the recommendations received from certain State Bar Councils.

SHRI AKBAR ALI KHAN : Which States?

SHRI MOHAMMAD YUNUS SALEEM : Particularly Uttar Pradesh. And this point was also considered by the Bar Council of India. What I am submitting is this, that when a person, who is the Leader of the Bar, is *ex officio* a member of the Bar Council, it is in the fitness of things that he is the Chairman. The position would be very embarrassing for an Advocate General having put in 15 years' practice if a member junior to him is elected as the Chairman, whereas the Leader of the Bar who is the Advocate General sits as an ordinary member. Therefore, there would have been many complications in the successful working of the Bar Council. On the basis of those considerations this amendment proposed by the honourable Members has been accepted by the Government.

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA) : How do you explain (g) then because in (g) you have provided that the Chairman shall be elected by the Council in such manner as may be prescribed?

SHRI G. A. APPAN : Sir, let this amendment not be accepted by the Government at all.

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA) : In a legislation it does not look nice to have individual States. It should be a principle which should be in the legislation. Now, you have named so many States and for Delhi you say, the Chairman shall be elected by the Council in such manner as may be prescribed.

SHRI SUNDAR SINGH BHANDARI : And what will be the position for the rest of the States?

SHRI MOHAMMAD YUNUS SALEEM : There were certain practical difficulties. In the State of Delhi we have

no Advocate General. Therefore, in order to overcome that difficulty this provision has been introduced.

SHRI KRISHAN KANT : The Bar Councils are elected bodies who represent the profession. Here what are we doing? The Government will first appoint an Advocate General and he will become the *ex-officio* chairman of that Council. It is a very wrong thing for democratic functioning. As a matter of fact, the nominated person, as and when the Government changes, he is morally bound to resign. Mr. Vice-Chairman, the point which you have raised is a very valid point. The Bill should provide for a principle which should be accepted in all the States, not different things for different States. I would appeal to the honourable Deputy Law Minister that this amendment should not be accepted. If he wants time, let us postpone this.

SHRI BHUPESH GUPTA : On a point of order, Sir. I would like to know the Government's position. Mr. Vice-Chairman, here is a question of principle that has been raised. How is it that the Minister himself who is the pilot of the Bill, is not present? Are we to take a policy decision...*(Interruption)* I am not referring to you, Mr. Deputy Law Minister. You are an excellent man, certainly more likeable than the other one. But we are not concerned with that. Do not take it in a personal sense. Any way, I like you better than Mr. Panampalli Govinda Menon ..

SHRI MOHAMMAD YUNUS SALEEM : I am piloting the Bill. There is no question about it. I had given a reply and at that time you did not raise any objection.

(Interruptions)

SHRI BHUPESH GUPTA : We want this to be held over. You are very right Mr. Vice-Chairman, when you pointed out this thing. It is the most absurd thing they are doing. Now, the honourable Minister stated that the Bar Councils recommended it. Did the Bar Councils recommend it from the various States?

SHRI AKBAR ALI KHAN : No.

SHRI BHUPESH GUPTA : Then how are you imposing such a thing over the head of the Bar Councils, on the Indian Bar Council and on the State Bar Councils? Therefore, I think this clause should be held over till tomorrow.

SHRI MOHAMMAD YUNUS SALEEM : No, this need not be held over.

THE LEADER OF THE HOUSE (SHRI JAISUKHLAL HATHI) : Sir, in these things, the views expressed by Shri Bhupesh Gupta have some force. But the position is this. Under the old Bar Councils Act it is there. The Advocates-General of Bombay, Madras and Calcutta were *ex-officio* chairmen of the Bar Councils of the States concerned. After the bifurcation of Bombay into Gujarat and Maharashtra also they are there as *ex-officio* chairmen. That system is already there. Therefore, it is with these considerations that the Government is accepting it.

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA) : What is provided for Delhi covers everything because in their own States they have that *ex-officio* provision ...

SHRI JAISUKHLAL HATHI : In Delhi there is no Advocate General.

SHRI AKBAR ALI KHAN : In other States also, Mr. Leader of the House, you will see they are elected and at least no opinion is there that this should not be so.

SHRI BHUPESH GUPTA : I would like to know the position. I wanted the Law Minister himself to come and explain the position because it is an important point. Now suddenly we are told by the Government that it accepts the amendment which certainly is absurd, is harmful and is insulting...

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA) : Mr. Bhupesh Gupta, you know the rules. The House is the master.

SHRI BHUPESH GUPTA : Yes, the master we are already, but our mistress is not here.

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA) : That is all right. Mr. Syed Ahmad, are you pressing your amendment?

SHRI SYED AHMED : Yes, Sir.

THE VICE-CHAIRMAN : The question is:

2. "That at page 3 after line 10, the following be inserted, namely :—

"(c) for sub-section (3), the following shall be substituted, namely :—

"(3) (a) For each of the Bar Councils of the States referred to

in clause (a) of sub-section (1), the Advocate General of the State concerned shall be its Chairman;

(b) for the Bar Council referred to in clause (b) of sub-section (1), the Advocate General of the State of Assam or, as the case may be, the Advocate General of the State of Nagaland, whoever has been holding such office continuously for a longer time, shall be its Chairman;

(c) for the Bar Council referred to in clause (c) of sub-section (1), the Advocate General of the State of Kerala shall be its Chairman;

(d) for the Bar Council referred to in clause (cc) of sub-section (1), the Advocate General of the State of Madras shall be its Chairman;

(e) for the Bar Council referred to in clause (ccc) of sub-section (1), the Advocate General of Maharashtra shall be its Chairman;

(f) for the Bar Council referred to in clause (d) of sub-section (1), the Advocate General of the State of Punjab or, as the case may be, the Advocate General of the State of Haryana, whoever has been holding such office continuously for a longer time, shall be its Chairman;

(g) for the Bar Council of Delhi, the Chairman shall be elected by the Council in such manner as may be prescribed.

(3A) There shall also be a Vice-Chairman of each State Bar Council elected by the Council in such manner as may be prescribed."

(The House divided)

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA) : Ayes—32; Noes—12.

AYES—32

Ahmad, Shri Syed

Bhadram, Shri M. V.

Bindumati Devi, Shrimati

Chaudhary, Shri Ganeshi Lal

Doogar, Shri R. S.

Gaikwad, Shri B. K.

Gilbert, Shri A. C.

Hathi, Shri Jaisukhlal

Jairamdas Daulatram, Shri

Kaul, Shri B. K.

Mallikarjunudu, Shri K. P.
 Mangladevi Talwar, Dr. (Mrs.)
 Maniben Vallabhbai Patel, Kumari
 Mehta, Shri Om
 Menon, Shri Balachandra
 Mishra, Shri L. N.
 Mitra, Shri P. C.
 Muhammad Ishaque, Shri
 Muniswamy, Shri N. R.
 Parthasarathy, Shri R. T.
 Patra, Shri N.
 Purkayastha, Shri M.
 Puttappa, Shri Patil
 Salig Ram, Dr.
 Shanta Vasisht, Kumari
 Sherkhan, Shri
 Shukla, Shri M. P.
 Sinha, Shri B. K. P.
 Upadhyaya, Shri S. D.
 Vaishampayan, Shri S. K.
 Varma, Shri C. L.
 Vidyawati Chaturvedi, Shrimati

NOES—12

Antani, Dr. B. N.
 Appan, Shri G. A.
 Basu, Shri Chitta
 Bhandari, Shri Sundar Singh
 Gupta, Shri Bhupesh
 Kesavan (Thazhava), Shri
 Khan, Shri Akbar Ali
 Misra, Shri Lokanath
 Panda, Shri Brahmananda
 Thengari, Shri D.
 Varma, Shri Man Singh
 Yadav, Shri J. P.

The motion was adopted.

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA) : The question is :

“That clause 4, as amended, stand part of the Bill.”

The motion was adopted.

Clause 4, as amended, was added to the Bill.

Clause 5—Amendment of section 4

SHRI SYED AHMAD : Sir, I beg to move:

3. “That at page 3, for lines 11 to 14, the following be substituted, namely :

‘5. Amendment of section 4.—In section 4 of the principal Act,—

(a) in clause (a) of sub-section (1), after the words “*ex-officio*” the words “who shall be the Chairman of the Council” shall be inserted;

(b) in sub-section (2), for the words “There shall be a Chairman and a Vice-Chairman,” the words “There shall also be a Vice-Chairman” shall be substituted.

(c) in clause (i) of sub-section (3), after the words “his election”, the words “or till he ceases to be a member of the State Bar Council, whichever is earlier” shall be inserted.”

The question was proposed.

SHRI BHUPESH GUPTA : I am surprised that we are just passing this kind of amendments. Mr. Vice-Chairman, this is not a party matter. This is not anything of that sort. Here we can perhaps go by consensus and if possible, by agreement. I find that the Government is arbitrarily accepting certain amendments and certainly is not doing justice to the autonomy or dignity of the Bar Councils. I oppose this kind of ‘*ex-officio*’ business. Again it is said: ‘who shall be the Chairman of the Council’. It follows from what you have passed but still I would oppose it and I am surprised that we are passing such things as far as this ‘*ex-officio*’ business is concerned. We are not ruling out in some cases that the Advocate General would occupy that position but what you are making is, you are putting him on top of them and giving him an office from here, rather than make him derive his authority of office from the institution of which he is a member and to which he belongs. This is wrong in principle and certainly this is not creating a healthy climate and I tell you, if you do such things, it is quite possible that needless conflicts will arise between the Bar Councils on the one hand and the Government on the other. The officers of such kind would be the subject-matter of controversy and debate when actually there need not be any such situation. I do not know but then we have a Law Minister singularly lacking in imagination, commonsense and good sense...

SHRI AKBAR ALI KHAN : It was not in the original.

SHRI BHUPESH GUPTA : I know that. It seems that here things are being accepted. Why did not the Government itself bring this yesterday and tell us? I do not know how suddenly this thing gets accepted by the Minister even without the full Minister being present in the House. Certainly these are matters for the Cabinet or the Sub-Committee of the Cabinet to decide. We are doing it in a very casual manner here and I think it is unfair to the legal profession and to the Bar Councils. Therefore I oppose it. I do not know why suddenly you took such a position.

SHRI SYED AHMED: You are the only man who is entitled to speak, you think.

SHRI BHUPESH GUPTA : I am not questioning your title. Certainly you are fully entitled but we are also entitled to tell you that your talents should be better used. You are a senior man. If I put five amendments you should put 50 amendments. I will whole-heartedly support if they are good amendments.

SHRI SYED AHMED : Support this also.

SHRI BHUPESH GUPTA : So I say that I oppose this. It is very very wrong. I do not like the taste of it and the manner in which the Bill is being passed here. I hope the Lok Sabha will take care of it—I hope it is going to the Lok Sabha—and therefore I oppose this.

श्री सुन्दर सिंह भंडारी : उपसभाध्यक्षजी, यह जो संशोधन रखा गया है इसका मैं विरोध करना हूँ। जो तर्क श्री भूपेश गुप्त ने उपस्थित किए हैं लगभग वे ही तर्क मेरे हैं। इस प्रकार बार-कौंसिल के गठन में हम किसी को पदेन सदस्य बनाए यह व्यवस्था अप्रजातांत्रिक है, इसको रोकना चाहिए।

SHRI AKBAR ALI KHAN : In many States that has been the convention that the Advocate General used to become automatically the Chairman. Let that convention stand. Why do you want to force it? In 90 per cent. of the cases the Advocate General himself becomes the Chairman. The first thought was more mature. When you brought the Bill with their consent and consideration, you did not take up this position. So I would like the Law Ministry to reconsider the position.

SHRI SUNDAR SINGH BHANDARI : Why not this be held over? I would request that because there are substantial matters.

SHRI SYED AHMED : I have moved the amendment and I want to know whether he is prepared to accept it or not.

SHRI MOHAMMAD YUNUS SALEEM : I have accepted it. I wanted to assure the House that this issue has received the serious consideration of the Law Ministry and this amendment was accepted only on the basis of certain proposals and suggestions received from different quarters and after due consideration it was thought necessary to accept this. On the analogy of the previous clause, the Attorney General is the *ex-officio* member of the Bar Council of India. Therefore it is better that he is *ex-officio* Chairman of the Bar Council of India.

SHRI KRISHAN KANT : Sir....

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA) : After the Minister has spoken there is no chance for others. Mr Krishan Kant, you should have said what you wanted to say earlier.

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA) : The question is :

3. "That at page 3, for lines 11 to 14, the following be substituted, namely :

"5. Amendment of section 4.—In section 4 of the principal Act,—

(a) in clause (a) of sub-section (1) after the words "ex-officio" the words "who shall be the Chairman of the Council" shall be inserted;

(b) in sub-section (2), for the words "There shall be a Chairman and a Vice-Chairman", the words "There shall also be a Vice-Chairman" shall be substituted;

(c) in clause (i) of sub-section (3), after the words "his election", the words "or till he ceases to be a member of the State Bar Council, whichever is earlier" shall be inserted."

The motion was adopted.

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA) The question is :

"That clause 5, as amended, stand part of the Bill."

The motion was adopted.

Clause 5, as amended, was added to the Bill.

Clauses 6 to 9 were added to the Bill.

New Clause 9A.

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA) : There is an amendment by Mr. Ahmed for a new Clause '9A.

SHRI MOHAMMAD YUNUS SALEEM : Sir, I accept it.

SHRI SYED AHMED : Sir, I move:

4. "That at page 4, after line 18, the following new clause be inserted, namely:

'9A. *Amendment of section 9.*—In section 9 of the principal Act,—

(a) in sub-section (1),—

(i) the words, brackets and figures "who possess the qualifications specified in the proviso to sub-section (2) of section 3 and" shall be omitted ; and

(ii) after sub-section (1), the following proviso shall be inserted, namely :

Provided that no person who does not possess qualifications specified in the proviso to sub-section (2) of section 3 shall be eligible for being elected or co-opted, as the case may be, as a member of any disciplinary committee,

(b) after sub-section (2), the following sub-section shall be inserted, namely :

(3) Notwithstanding anything contained in sub-section (i), any disciplinary committee constituted prior to the commencement of the Advocates (Second Amendment) Act, 1968, may dispose of the proceedings pending before it as if this section had not been amended by the said Act."

The question was put and the motion was adopted.

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA) : The question is :

"That new Clause 9A stand part of the Bill."

The motion was adopted.

New Clause 9A was added to the Bill.

Clauses 10 and 11 were added to the Bill.

Clause 12—Amendment of section 17

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA) : There is an amendment by Mr. Syed Ahmed.

SHRI MOHAMMAD YUNUS SALEEM : Sir, I accept Mr. Syed Ahmad's amendment.

SHRI SYED AHMED : I beg to move:

5. "That at page 4, for lines 29 and 30, the following be substituted, namely:

'12. *Amendment of section 17.*—In section 17 of the principal Act,—

(a) in clause (a) of sub-section (i), for the words "and who within the prescribed time", the words "including persons, being citizens of India, who before the 15th day of August, 1947, were enrolled as advocate under the said Act in any area which before the said date was comprised within India as defined in the Government of India Act, 1935, and who at any time" shall be substituted;

(b) in sub-section (3) clause (c) shall be omitted."

The question was put and the motion was adopted.

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA) : The question is :

"That clause 12, as amended, stand part of the Bill."

The motion was adopted.

Clause 12, as amended, was added to the Bill.

Clause 13—Substitution of new section for section 20

SHRI BHUPESH GUPTA : Sir I move :

6. "That at page 5, after line 8, the following provisos be inserted, namely :

'Provided that no person whose name is entered in the roll shall be a member of any Bar Library Club or similar other association which was formed exclusively for barristers:

Provided further that all clubs or associations meant exclusively for

barristers shall stand dissolved with effect from the first day of January, 1969.'"

The question was proposed.

SHRI BHUPESH GUPTA : It is a very simple amendment, very patriotic amendment, very nationalistic in its approach, in the good sense of the term and self-respecting. I do not know but if the Minister accepts it, I need not make a speech. Do you accept it?

SHRI MOHAMMAD YUNUS SALEEM : I oppose it. I would like you to withdraw it.

SHRI SUNDAR SINGH BHANDARI : Has he replied to the amendment?

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA) : He wanted his reaction and he has given it.

SHRI BHUPESH GUPTA : He would not accept it. How can he? How can they, Mr. Vice-Chairman?

SHRI AKBAR ALI KHAN : You are also a barrister.

SHRI BHUPESH GUPTA : That is why I have taken special care to move only one amendment, and this amendment relates to that, because I owe it to the country and this Parliament that whenever I get a chance I should get up and demand the abolition of the special arrangements or special caste that exist in any manner to keep the barristers together, away from the other advocates.

Now Mr. Vice-Chairman, in Calcutta—you know—in the Calcutta High Court if you go into the premises of the Calcutta High Court, you will find two associations. One is called the Bar Library Club which is meant exclusively for the barristers—it was started under the British and then you have got the Bar Association where the others are there, the non-barrister advocates are there. So we have got it that way. And previously, in my time, when sometimes I used to go there, I found that during the lunch hour nobody could enter there except those members of the English Bar. And there was a time—you will be surprised to hear—when, in the Bar Library Club, people could not speak in any other language than English. Even if you were a Bengali or any other

person from any other language group of India, you would have to speak only in English in the Bar Library Club. Now that, of course, went much earlier than the dawn of independence, but it started like that; number one. They would keep together and I know it for a fact that there was an attitude of contempt on the part of the members of the English Bar towards other advocates irrespective of whether they were more qualified or less qualified. In any case there should not have been that contemptuous attitude on any ground; but that was so.

Then we found that under the British they had been enjoying some special privileges, and as my friend has said, practice on the Original Side mainly used to go to them, and the solicitors are there—the dual system is there—who engaged them, and so on. That was again insulting. Now when we came during the War, we found that Bengalis or other Indians—at that time members of the British Bar mostly were Indians; there were some Englishmen—could not go to the Bar Library Club, well, in their own national dress. For example, in my case I was not expected to go there in my *dhoti* and *kurti*. But then we decided to go there in *dhoti* and *kurti*. We asserted ourselves; they had to accept it. I was not practising but I only went to do such things.

SHRI AKBAR ALI KHAN : That we understand.

SHRI BHUPESH GUPTA : I only went; I never appeared before the High Court of Calcutta. My name is there. I do not know whether they remember me or not, but I believe in the list my name is there. But we went there to assert ourselves. Now imagine; a Bengali or a non-Bengali Indian barrister would not be in a position to go to the Bar Library Club in those days except in English dress. That was again insulting. Anyhow I know that this has also disappeared later on because of the opposition by some sections of the members of the Bar Library Club.

Now why should it at all exist twenty-one years after independence, Mr. Vice-Chairman? I think you will consider it bad enough if my friend appears here in black coat, black trousers and all the rest of it. Why that dress also should be there? We should have our own dress. Why should we borrow

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that dress which the barristers brought from England? And now the barristers wear such a dress, and also our advocates in the country, who had not been barristers, they have also adopted this kind of dress. And what is that dress? Black coat, black trousers, and then a kind of band. I do not know why it is there. Why should they appear like that? And then a kind of gown—which is a waste of cloth—a black gown, they have to wear, a funny thing which England started using in the seventeenth or eighteenth century. And in the mid-twentieth century we are still using the same thing.

SHRI AKBAR ALI KHAN : The whole world.

SHRI BHUPESH GUPTA : I do not know about the whole world; well, the whole world does not. I have been to many countries; the whole world does not. Again the barrister's gown is different. If my friend will tell you, the barristers have a funnier gown than the advocates'. It has got all kinds of frills in it, I do not know; you see the frills in it I do not know; you see the frill's alone. Now this thing; why? Not only that, we address the Judges "My Lords." Why? "My Lords" concept, that also the barristers brought, the English system brought. There you have got, Mr. Vice-Chairman, the King and Queen. Therefore the idea came that Judges being representatives of the King or the Sovereign in a monarchical system, they used to address them as "My Lords". Here I can understand if you address a judge as "My Fair Lady"; I can understand it having regard to the fact that we have a lady Prime Minister. I can understand that; you see. But why, why this "My Lord" business again? Why the 'Lord'? I cannot understand. The whole thing is wrong. It is alien to our culture and we should assert independence in such matters.

Now take for example, Mr. Vice-Chairman, this. In the old days you would not have been sitting in the Chair in this your usual address. You would have been wearing a wig, some other gown, which will make the whole thing absurd and make the Chair look ugly. And now today we have given it up in Parliament. Nobody can prevent you from coming to the Chair in half pants also, and bush jackets. Nothing; you will be a good chairman, an acceptable chairman. Even if you come in half pants we do not

bother about it. Only I would like the lady not to wear mini skirt, when she comes to the chair, that is all. This is a matter where we should have our own conventions and this is the position here. But at the Bar you find the same old dress. Now Judges have given up the wig business but the barristers and other lawyers have not changed their dress. I think this is very very wrong and the Government should consider bringing about a change and thus give a lead to the country.

I tell you; after independence one of my comrades, Shri Nikhil Chakravarti, was arrested for writing something against the British in our party journal. I went to the court in September, 1947. It was not the High Court (because he was arrested under the Official Secrets Act. I tried it out; I took a chance; I put on *dhoti* and *kurta* and I went to the court and started speaking in Bengali. There was commotion, but I thought that we had become free, "this is my language; this is my dress and I can speak like that". Ultimately, the magistrate who heard the case, he accepted me in *dhoti* and *kurta*, and also my language. Only thing, when I started cross-examining the police inspector and others in Bengali, they found it difficult, because they had never been cross-examined in such matters in our own language.

Now I do not see as to why we should not do such abolition of these wrong institutions. Now in other countries it is happening, but here, conservatism. I do not see any reason for barristers to be given favoured treatment, and our advocates, they rightly protest against the barristers enjoying privileges. But I would like to tell my friend, Shri D. L. Sen Gupta, that he looks fairer, much more handsome in a closed-neck coat, jacket and trousers. But when he comes in that blessed dress, black coat and the band and all that, well, I do not know how he feels, but I feel bad. Anyhow, I have given this amendment. In Madras I am told there is no such thing now, this special cloak for the barristers and in Bombay I think it has been abolished. In other High Courts it does not exist but why on earth it should exist in Calcutta I cannot understand. I would expect the members of the English Bar, members of the Bar Library Club themselves to liquidate this thing and sit with their brother lawyers in one single Association, the Bar Association; call it whatever you like. But still this is maintained. I think

this is very very wrong and the Government should take interest in this matter. I hear so much about national integration; I hear so many lectures about patriotism, national self-respect and so on and yet I see this Bar Library Club existing exclusively for the barristers, Judges being addressed as My Lord and people appearing in courts of law wearing 17th or 16th century English dress rather than the Indian national dress. Why can't we make it a simple thing? Make it a closed jacket and trousers if you like. Whatever formal dress we have here, let us have it there; but why this funny dress I cannot understand. Therefore I have moved this amendment. I am surprised my friend, the Deputy Law Minister, immediately says he cannot accept it. I say, discuss this matter; think about this thing. At least you should get up and say this is a good amendment but it will take time to think over it. He says nothing of the kind. I would appeal to the Congress Members here—it is not a party issue—to support this amendment. Let it be registered that we in Parliament are more conscious about the dignity of our country. We want our Bar Councils and legal institutions of that type not to be tainted by the past, the taint of the colonial rule, the colonial traditions, the colonial etiquette, the colonial habit and also in some matters the colonial mentality or the mentality of the colonial rulers. Therefore this is a very simple amendment. I demand the dissolution of the Bar Library Club. I did not become a member of the Bar Library Club. I may tell you I am a member of the Calcutta Bar; I paid the money but I did not become a member of the Bar Library Club when I came back to this country. First of all I was not going to practise and secondly even for formality's sake I did not become a member of the club.

SHRI OM MEHTA (Jammu and Kashmir) : But there is no mention about dress in your amendment.

SHRI BHUPESH GUPTA : It is here.

AN HON. MEMBER : Will you read it?

SHRI BHUPESH GUPTA : I am giving a proviso here as to who can be a member of the Bar because I have to fit it in this Bill. As you know, my amendment has been listed and admitted.

I say here in a proviso: Provided that no person whose name is entered in the roll shall be a member of any Bar Library Club or similar other association which was formed exclusively for barristers. Barristers had this thing following the English principles or English rule. We are now by law constituting—we have constituted already in fact—maintaining the Bar Council and here I can create certain disqualifications, and everybody would like to be a member of the Bar Council; otherwise they would have no status and if they want to be here they will have to give up their membership of the Bar Library Club. If anybody wants to remain a member of the Bar Library Club let him go to England or somewhere else where it obtains. In India when you are a member of the Bar Council it stands to reason that you do not belong to this exclusive body. These people are the *brahmins* of the legal profession and the rest are all *shudras*. That is their idea and that mentality should go. Sir, I am speaking with great feeling about this thing because the whole concept militated against our sense of dignity, even when the British were there. Why should we divide ourselves, as the British wanted, in such matter? In other professions it does not exist. We should not give any recognition to this Bar Library Club or any exclusive Association of that kind. I hope my friends in the legal profession, the barristers of Calcutta, would, themselves come forward to demand the abolition of this exclusive institution. They will thus be doing a great service to themselves and to the legal profession as a whole. I would not like this artificial difference to continue. Now much of it has gone in a way because other things have developed but still the hangover of the past remains; the physical existence of the past remains in the form of the Bar Library Club in the same building where other lawyers, not barristers, have their own Association, have their own room, have their own Club, and so on. I would ask Member here—I see he is very keen to get up—to support this amendment. I suggested this thing earlier also when Mr. Ashok Sen was there but he belonged to this Bar Library Club and he is fond of it. He not only belongs to it but he is fond of it and therefore nothing came out of it. When Mr. Charu Biswas was the Law Minister many years ago I had occasion to put this suggestion to him. Not being a member of the English Bar he was a somewhat sympathetic to it but he could

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not do anything. Later on some other Law Ministers came and most of them were barristers. I believe now we have got a Law Minister who, whatever may be his other faults—and he has got plenty of faults—has definitely one qualification that he belongs to the Indian Bar he is not a member of the English Bar. He just goes all over the world talking about everybody else but why can't he accept this thing? Mr. Panampalli Govinda, Menon, I believe, is an Advocate and not being a member of the English Bar—I am a member of the English Bar while he is not and he is great that way—he is an indigenous product. I am not so indigenous as he is in this matter. So I would suggest that he should take initiative in this thing.

THE VICE-CHAIRMAN (SHRI M.P. BHARGAVA) : Yes ; it is time to wind up.

SHRI BHUPESH GUPTA : But he is busy with so many other things and he has no time to reflect on this. The Law Minister is busy making statements about the Kerala Government. In the morning he will make one statement; in the afternoon another, in the evening another and before he goes to bed another and if possible through the All India Radio still another.

AN HON. MEMBER : Much less than you.

SHRI BHUPESH GUPTA : He is inciting people all over the country against the Kerala Government wandering everywhere as well as going abroad. Therefore he has not got time to reflect over such matters. I am glad today the Prime Minister has expressed her disapproval in polite language of what he said in Washington. I am very glad about that but it should be a forthright denunciation. Therefore I say he should accept this but can I expect he would accept this? This House should accept this and I will be putting all your patriotism, all your protestations about national pride and honour to test today by asking for a division on this motion of mine.

THE VICE-CHAIRMAN (SHRI M.P. BHARGAVA) : I want to bring to the notice of hon. Members that the time allotted to this Bill was two hours. We have already taken 2 hours and 50 minutes.

Therefore I seek the co-operation of all hon. Members by being brief in their remarks so that we can expedite the business.

SHRI D. L. SEN GUPTA : Sir, I stand in support of the amendment of Shri Bhupesh Gupta. There are two provisos. If the second proviso is accepted, the first one is not necessary. The second proviso reads :—

“Provided further that all clubs or associations meant exclusively for barristers shall stand dissolved with effect from the first day of January, 1969”

The question of there being any institution exclusively for the barristers does not come in, unless a new one is allowed to be started. To save that contingency it can be further said and we have to add to it : “Any such Bar Library Club shall be open to all advocates” That can be done.

So far as his first proviso is concerned, in my submission, this is a bit redundant. It has been brought forward to impress upon the House. It says:—

“Provided that no person whose name is entered in the roll shall be a member of any Bar Library Club or similar other association which was formed exclusively for barristers”

It was a condition imposed for functioning as an advocate. The point is not that. I believe the hon. Law Minister, who is present here, and the Leader of the House also agree that we have been trying to eliminate all elements of discrimination, particularly individual discrimination, wherever it exists. The position that at present exists is there is an institution or a club exclusively for the barristers. If it is there, will it be to our taste, as in some African countries where merely because of one's complexion, entry into hotels and restaurants is barred? Here, both barristers and advocates are appearing before the same Judge, but when they come out of the court, one institution is exclusively meant for the barristers, whereas the advocates will have to go to another place. I am only saying that not accepting the amendment of Shri Bhupesh Gupta, when so many amendments are being accepted, will show that you indirectly allow this type of discrimination to continue. If you do not allow it to continue, why not say so? At least, if you do not accept this amendment, say in so many words, that this is a pernicious practice.

which must go. Let the Minister make a statement and then leave it to the good sense of the barristers, who are a decadent force in this country. Time is ripe enough when such bar library clubs should be opened to all. In this connection, to correct Mr. Bhupesh Gupta, I wish to say that so far as the Barristers Association is concerned, by a resolution it is now open to advocates also. Because of the limited space, in spite of that decision, no advocate is being allowed entry into it. There was a time when, by remaining in London for three months and by giving some dinners, one could become a barrister. Even these barristers are not allowed entry into the Barristers Association. The barristers are so enthusiastic about their rights, privileges and honour that they consider that by staying in London for two years they have become better qualified, because they have had enough money to spend for two, three or four years. So, they think they must get a better status and the same status should not be given even to these barristers who were in London for three months to qualify themselves as barristers.

Now, the position is this. There are three classes of advocates. One is the barristers, the second is the short-term barrister and the third is the advocate. So far as the Supreme Court Bar is concerned, there is no distinction. Everybody is known as an advocate, whether he is a barrister or an advocate. Nobody is known as a barrister. But in High Courts and District Courts there is this artificial discrimination of barristers and others. They have a separate bar library club and a separate association. This must go. I support the amendment of Shri Bhupesh Gupta.

श्री सुन्दर सिंह भंडारी : उपसभाध्यक्ष जी, मैं भूपेश गुप्त जी के संशोधन का समर्थन करने के लिये खड़ा हुआ हूँ। बार लाइब्रेरी क्लब, कलकत्ता के बारे में पहले भी सदन में कई बार चर्चा हुई है और बार बार सभी दलों के सदस्यों द्वारा यह मांग की जाती रही है कि किसी तरह का भेद भाव वर्तने वाला जो यह संगठन है उस को प्रोत्साहन नहीं मिलना चाहिये। स्वाभाविक है कि आज भी इस में बैरिस्टर्स के लिये जगह है, लेकिन जो बैरिस्टर नहीं हैं वे इस में जा नहीं सकते,

इस का उपयोग नहीं कर सकते। वैसे तो एडवोकेट्स की श्रेणी में विभिन्न डिग्रियाँ रखने वाले लोग हैं, उन के अनुभवों में अंतर होता है, बी० ए० एलएल० बी० हैं, एम० ए० एलएल० बी० हैं, एल० एल० एम० हैं, भिन्न भिन्न प्रकार की डिग्रियाँ हैं और उन डिग्रियों के आधार पर ही उन के अनुभवों में भी अंतर रहता है। परन्तु केवल मात्र कुछ डिग्रियाँ भिन्न होने से उन में कोई श्रेणी निर्माण नहीं होता। सब को समान रूप से अधिकार है अपने आप को एडवोकेट बना पाने का और हाईकोर्ट तथा सुप्रीम कोर्ट में एपीयर होने का। अगर कुछ अंतर है तो वह समय की सीमा-रेखा है कि कितने वर्षों का अनुभव उन्होंने प्राप्त कर लिया है। डिग्री के आधार पर कोई अंतर नहीं रहता और मैं समझता हूँ कि यह अच्छी चीज है कि हम ने इस प्रकार का अंतर रखने की बात को कोई महत्व नहीं दिया।

यह हो सकता है कि यहाँ पर यह सवाल खड़ा हो जाय कि इस बात को इस कानून के अंदर किन शब्दों में प्रकट किया जाय। सरकार इस प्रकार बने हुए संगठन को अपने किसी कानून से निषेध कर सकती है या नहीं? ऐसा कुछ विचार उपस्थित हो सकता है। मेरा इस में एक निवेदन है कि अगर सरकार वास्तव में सच्चे दिल से इस प्रकार के भेदभाव को कायम नहीं रखना चाहती तो फिर कम से कम जिन हाईकोर्ट्स की बिल्डिंग में या हाईकोर्ट्स के संस्थानों में इस प्रकार के इंस्टीट्यूशन के लिये जगह दी गयी है, उन को विशेषज्ञ स्थान प्राप्त है, उन को विशेष सुविधायें प्राप्त हैं, वह सब की सब उनके लिये निषेध कर दी जानी चाहिये। उन को सरकारी बिल्डिंग में, हायकोर्ट के प्रिमिसेज में इस तरह का कोई भी क्लब, जिस की सदस्यता एक विशेष प्रकार की डिग्री धारण करने वालों तक ही सीमित हो, नहीं रखना चाहिये। सब प्रकार की डिग्रियों के अंतर को छोड़ कर, समकक्षी जितने लोग हैं, सब

[श्री सुन्दर सिंह भंडारी]

एडवोकेट्स, उन सब के लिये जब तक उस में गुजायश नहीं की जायगी तब तक हाईकोर्ट के प्रमिसेज में उन को स्थान नहीं दिया जायगा, उन के लिये कोई विशेष सुविधा प्राप्त नहीं होंगी। तो कम से कम सरकार की तरफ से एक ऐसी निश्चित सूचना कानून के माध्यम से, चाहे नोटिफिकेशन के माध्यम से, चाहे हाईकोर्ट की नियमावली के द्वारा होनी चाहिये, कोई न कोई चीज आनी चाहिये।

यह नितांत आवश्यक है क्योंकि इस में कोई एक इंस्टीट्यूशन या क्लब का सवाल नहीं है। श्री भूपेश गुप्त ने जिस मनोवृत्ति की ओर संकेत किया उस का भी समाधान हो जायगा। उस मनोवृत्ति को समाप्त कर दिया जाना नितांत आवश्यक है। हम बाहर से शिक्षा प्राप्त कर के आये यह शर्म की बात नहीं है। बाहर का विज्ञान भारत के अंदर आये वह प्रगति और उन्नति का साधन ही होगा। सरस्वति का मंदिर विश्वव्यापी है, कहीं के भी व्यक्ति आये, काली चमड़ी के या गोरी चमड़ी के, उन्नत से उन्नत शिक्षा प्राप्त करने के लिये विश्व भर में उन के लिये दरवाजा खुला रहना चाहिये। परंतु वहां कोई शिक्षा प्राप्त करे इसका मतलब यह नहीं हो जाता कि किसी प्रकार से उसको कोई विशिष्ट स्थान प्राप्त हो गया या कोई ऐसी जगह उसकी हो गई जिस के आधार पर दूसरे लोगों को उसमें ऊंच नीच का भाव प्रगट करने का या एक जगह किसी के लिये प्रवेश पाने का और किसी के लिये निषिद्ध होने का उसमें अवसर प्राप्त हो गया। वह तो एक भेद नीति को प्रश्रय देना होगा और वह हम किसी भी प्रकार से अपने देश में चालू नहीं कर सकते।

हम बाहर से ज्ञान प्राप्त करें और उस ज्ञान के आधार पर अपने देश को गौरवान्वित करें और सब लोगों को साथ ले कर अपनी योग्यता के आधार पर प्रतिष्ठा प्राप्त करें, नो उसमें कोई अपत्ति हो नहीं सकती।

लेकिन हम इन असली चीजों पर जाने के बजाय केवल कुछ भौतिक डिग्रियों के आधार पर, वेशभूषा के आधार पर या किसी विशेष भाषा की श्रेष्ठता को अपना कर जो कि मुख्य रूप से विदेशी है, इस तरह की संस्थाओं को मान्यता प्राप्त करायें तो यह उचित नहीं होगा। मुझे तो आश्चर्य है कि जब सरकार ने भिन्न भिन्न संशोधनों पर विचार किया तो इसके सम्बन्ध में क्यों नहीं विचार किया। इसमें इसका समावेश नहीं हो सकता है, इस तरह का वे अगर कोई एक्स्पूज देना चाहें तो यह बात मेरी समझ में नहीं आ सकती है। अगर वे इसके लिये कोई और मार्ग ढूँढ़ेंगे इस व्यवस्था को समाप्त करने के लिये तो बात समझ में आ सकती है। इस तरह का कोई भी एक्स्प-लेनेशन दिये बिना इस संशोधन के सम्बन्ध में नकारात्मक विचार प्रगट करना, अर्थात् यह जो आक्षेप लगाया गया है कि क्या इस प्रकार की पृथक्ता कि एक कोई बैरिस्टर बन गया है या बैरिस्टरों की श्रेणी में आ गया है इसी लिये उसका कोई विशिष्ट स्थान है या विशिष्ट पद या विशिष्ट श्रेणी उसकी बन गई है, ठीक नहीं लगता। या तो सरकार इस चीज को प्रश्रय देना चाहती है या फिर इस संशोधन को किन शब्दों में या किस पद्धति से स्वीकार करने के लिये वह तैयार है इसके बारे में उसे कुछ स्पष्टीकरण देना चाहिये।

SHRI AKBAR ALI KHAN : Sir, so far as the sentiment of my hon. friend Mr. Bhupesh Gupta, as supported by Mr. Sen Gupta and Mr. Bhandari, is concerned, I do not think there are two opinions. We share their feeling. But the whole question is whether a question that has to be dealt with only locally for Calcutta should be brought into an all-India legislation. It was in every State. In my State—and I suppose in other States also—there was this Barristers Library, and Mr. Bhupesh Gupta will be glad to know that in 1926 when I came back from England I revolted against it and became a member of the Advocates Association. It has its history. But my point is, so far as those things are concerned they should not exist and

according to the Constitution they are not all desirable. They have been abolished in Madras and in Andhra Pradesh and I think in many other State. Only West Bengal is lagging behind. I do not know why my friend could not appeal to his friends in West Bengal that they should give it up or they should abolish it. The only question is whether in this all-India legislation which should be of a general all-pervading character we should bring in a thing which is definitely an anomaly and an undesirable anomaly in Calcutta in order to satisfy my friend. That I do not think we are prepared to do. Then he has mixed up, I should say, very minor things about dress and all that. The national sentiment we share, but when you go to the court you must have some dress. It is not in the amendment also.

SHRI BHUPESH GUPTA : That kind of long gown is meaningless. Sixteenth century.

SHRI AKBAR ALI KHAN : These are things on which let us not waste time. You have not put in an amendment on this.

SHRI BHUPESH GUPTA : Barristers have brought all these things.

SHRI AKBAR ALI KHAN : So far as these special privileges of barristers are concerned, they should go, I am with you. This should be tackled at the State level. So far as the all-India legislation is concerned, this amendment in my humble opinion does not fit in here and you will be very rightly advised to withdraw it.

THE MINISTER OF LAW AND SOCIAL WELFARE (SHRI P. GOVINDA MENON) : I want to clear some misunderstanding about the whole matter. I am entirely one with Mr. Bhupesh Gupta and the others who spoke that there should be no superiority afforded to those who come with a Barrister's training in London. As a matter of fact on in this Bill we are introducing an amendment, we are accepting an amendment to be moved by Mr. Syed Ahmad, but I myself wanted to move it, under which a barrister becomes disentitled to become an advocate solely because he is a barrister. All along the rule in India is that a person who is a barrister is entitled to be enrolled as an advocate for anything more. I feel, Sir, that

in free India, when there is no reciprocity between England and India in this matter, we should not allow a barrister from London to get enrolled solely because he is a barrister. He must pass the test required in India to become an advocate. That will indicate what Government's position in this regard is.

SHRI BHUPESH GUPTA : In future?

SHRI P. GOVINDA MENON : In future therefore a barrister will not become an advocate. There are many barristers who have become advocates; not only barristers but those who have got other kinds of degrees also have become advocates. We do not want to interfere with what has been done.

Regarding the Bar Library Club business, the position is this exists only in Calcutta.

SHRI AKBAR ALI KHAN : That is what I said.

SHRI P. GOVINDA MENON : Everywhere in India there is no distinction between barristers and advocates. Barristers also are enrolled as advocates and they are known as advocates.

PANDIT S S N TANKHA (Uttar Pradesh) : May I correct the Law Minister? In the U P in the Allahabad High Court also there are two associations—Barristers Association and Advocates Association. There are separate Libraries. I am not quite sure whether the members of the Advocates Association are allowed to go into the Barristers' Association also or not. Anyway it is a fact that the two exist.

श्री जगदम्बी प्रसाद यादव (बिहार) : पटना में भी ऐसा ही है। वहाँ एक बैरिस्टर असोसिएशन है और बार असोसिएशन अलग है।

SHRI P. GOVINDA MENON : I am speaking of the Bar Library Club. For some reason there has been some craze in Bengal for people in large numbers to go to London and get qualified as barristers. Even Mr. Bhupesh Gupta, a very strong nationalist, thought that he would go to England to qualify himself as a barrister. Therefore, there are large number of barristers in Calcutta. The question whether they could form an association for themselves is a matter which is not germane to the Bill which is

[Shri P. Govinda Menon]

under consideration. This is an Act to amend and consolidate the law relating to legal practitioners and to provide for the constitution of Bar Councils and an All-India Bar. The question of the Bar Library Club went to the Supreme Court in 1964 in "Pavitra Kumar Banerjee vs. the States of West Bengal" wherein an assurance was given by the Club that it would amend its rules so as to make membership open to all legal practitioners who only plead and do not act. The real difficulty is on account of the rules of the original side of the Calcutta High Court. Therein comes the difficulty. There have been representations made to me that something should be done to amend the rules obtaining there. That is quite a different matter. The co-operation of the State Government of West Bengal also is necessary in this matter. When the United Front Government in West Bengal was there...

SHRI D. L. SEN GUPTA : Again politics ?

SHRI P. GOVINDA MENON : It is not politics. It is a statement of fact. Please bear with me.

The Law Minister of that Government came to me with a request that the original side of the Calcutta High Court should be abolished. And I said that if he would persuade his Chief Minister to send a letter to me or to the Home Minister or to the Prime Minister that this should be done, action would be taken in this regard.

SHRI BHUPESH GUPTA : When did he say ?

SHRI P. GOVINDA MENON : He came and saw me.

SHRI BHUPESH GUPTA : Where ? Who ? When ?

SHRI P. GOVINDA MENON : When he was the Law Minister.

SHRI BHUPESH GUPTA : Which month ?

SHRI P. GOVINDA MENON : I do not remember the date and the month. I agreed with him. And I am in sympathy with him. There are the original sides to the High Courts in Bombay and in Madras also. But there in the City Civil Courts the jurisdiction has been so enhanced that the monopoly of the barristers

who are fed by the solicitors under the dual system which still obtains in Calcutta, that monopoly is not there. Therefore, the difficulty is elsewhere. So far as the national sentiments are concerned, I said—I repeat—that the Government are one with the hon. Members that no...

SHRI D. L. SEN GUPTA : On a point of order.

SHRI P. GOVINDA MENON : ... barristers should be given any preference.

AN HON. MEMBER : There is no basis for that.

SHRI D. L. SEN GUPTA : The hon. Minister has said...

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA) : Mr. Sen Gupta, there is no point of order involved. If you want to ask any clarifications, say 'on a point of clarification'. There is no point of order.

SHRI D. L. SEN GUPTA : Whatever you may say, point of order or asking clarification, the Union Law Minister said that the State Law Minister met him and requested him to abolish the original side of the Calcutta High Court. Therefore, it means that he knows something about the grievances about the original side of Calcutta High Court ..

SHRI P. GOVINDA MENON : I do know.

SHRI D. L. SEN GUPTA : You know. But what is the answer ? On the 29th November, in reply to Starred Question No. 271, my question, whether the Government are aware of the grievances of the advocates of the Calcutta High Court in regard to the preference of the barristers on the original side, your answer was that the Government of India has no information. It is incorrect.

SHRI P. GOVINDA MENON : The question was with respect to the recruitment of more barristers than of advocates to the High Court. That is another grievance. There on that, some official information is there. But representation was made to me officially. I am speaking of the original side.

Then, Mr. Bhupesh Gupta threw out some very good suggestion about dress, etc. It does not come

He can send some suggestions. There also, speaking entirely for myself, I am one with him in saying that we should have a sort of national dress for our advocates, and after this Bill is passed, I would try to get in' contact with the Bar Council of India who can frame rules in this respect and I do not think for a moment that Government stands in the way of all these things.

AN HON. MEMBER : Parliament is there.

SHRI P. GOVINDA MENON : Now, the amendmen^t suggested by Mr. Bhupesh Gupta is beyond the scope of this Bill. I do not accept that.

श्री जगदम्बी प्रसाद यादव : उपसभाध्यक्ष महोदय, मैं एक क्लेरीफिकेशन चाहता हूँ। ये चाहते हैं कि राष्ट्रीय ड्रेस हो, तो जब आप यह संशोधन या बिल पेश करते हैं तो आपको यह राष्ट्रीय ड्रेस को लाने में क्या बाधा है? आप तो स्वयं सक्षम हैं।

श्री महेश्वर नाथ कौल (नाम-निर्देशित) : हमारा इंडीवीजुअलिज्म, और कुछ नहीं।

SHRI BHUPESH GUPTA : Mr. Vice-Chairman, because you now want to put this to vote, I want to say something. I listened to his speech very carefully. In some respects he has shared our sentiment. That is not my sentiment. It is a general, national sentiment voiced by all of us. I would consider not leaving it to vote on one condition. If the hon. Minister on behalf of the Government or even in his individual capacity—I take him as the Law Minister now—gives an assurance to the House that he will move in this matter in order to have these exclusive Bar Libraries, Clubs or Associations for all barristers abolished and have these kinds of prerogatives done away with, and if he would take practical steps and work for their elimination, if he gets up and says that from tomorrow he will move in this matter in order to bring about the abolition of these Associations, etc., well, I might, in deference to this gesture, not press the amendment. If he does not, however, give this clear assurance condemning this thing, then I think it is my public duty to register a particular view-point on this matter of principle by asking not only for a vote on it but also a division on it.

SHRI P. GOVINDA MENON : I certainly will be willing to take up this matter, and I would request my friend to give me suggestions as to what should be done in this respect, concrete steps.

SHRI BHUPESH GUPTA : I have given you the suggestions. So, I take it that he would accept this spirit and the suggestions...

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA) : That he has said,

SHRI BHUPESH GUPTA : ...and work for its abolition. Is it so ?

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA) : That is what he is saying.

SHRI BHUPESH GUPTA : Then, I would suggest that you can ask lawyers and others. I would not say because there is a controversy here over the spirit. But I take it that the opinion of the House is that the spirit in the approach—forget the word—is good and that it is acceptable to the Minister and that he will work for bringing about the abolition of the privileged arrangement for the barristers. Do I understand him correctly? You think he has said it, Mr. Vice-Chairman ?

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA) : The Chair does not come in. You understand what you like.

SHRI M. N. KAUL : He is himself taking the sense of the House.

SHRI BHUPESH GUPTA : I think hon. Members will bear it in mind.

Therefore, for the present I will not press it.

*Amendment No. 6 was, by leave, withdrawn.

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA) : The question is

“That clause 13 stand part of the Bill.”

The motion was adopted.

Clause 13 was added to the Bill.

*For text of the amendment, vide cols. 3880-81 *supra*.

Clause 14—Amendment of section 21

SHRI SYED AHMAD : Mr. Vice-Chairman, Sir, I move :

7. "That at page 5, lines 21—22, the words 'and the decision of the State Bar Council in respect of such dispute shall be final' be deleted."

The question was proposed.

SHRI MOHAMMAD YUNUS SAL-EEM : Sir, I accept it.

श्री सुन्दर सिंह मंडारी : उपसभाध्यक्ष जी, मुझे खुशी होती अगर बार कौंसिल का गठन करते समय बार कौंसिल के चेयरमैन के बारे में दिए गए संशोधन को सरकार ने स्वीकार किया होता। तब तो उसमें एक भावना निकलती कि बार कौंसिल ठीक ढंग से काम करेगी, बार कौंसिल के ऊपर कोई चीज थोपी नहीं जायेगी और फिर बार कौंसिल के निर्णय को अन्तिम स्वीकृति देना इसमें से समझ में आ सकता था। लेकिन अब मुझे इस बात से आश्चर्य है कि सरकार कह रही है कि इनके फाइनल नहीं होने चाहिए। इनको भावना के साथ भी जोड़े तब जाकर यह पूर्ण होगा। अगर इन बार कौंसिलों के गठन के बारे में वह अपना दुराग्रह समाप्त करने का प्रयत्न करे। क्योंकि दोनों चीजों का मेल तभी बैठ पाएगा और तभी पूर्ण रूप से प्रजातंत्र सही रूप में आ सकेगा।

SHRI D. L. SEN GUPTA : Mr Vice Chairman, Sir, this amendment was also mine and it is being accepted. But I think a portion should be added that the matter may lie in appeal before the All-India Bar Council. Otherwise, if it is not final, that lacuna will remain why am I deleting this portion? Mr Vice-Chairman, you know that there is one Bar Council of India and there is the Bar Council of the State.

Clause 14 says :

"Subject as aforesaid, if any dispute arises with respect to the seniority of any person, it shall be referred to the State Bar Council concerned and the decision of the State Bar Council in respect of such dispute shall be final."

My amendment seeks to delete the portion—

"and the decision of the State Bar Council in respect of such dispute shall be final."

There should be some indication to refer it to the Bar Council of India

SHRI MOHAMMAD YUNUS SAL-EEM : I have already accepted it.

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA) : The question is :

7. "That at page 5, lines 21-22, the words 'and the decision of the State Bar Council in respect of such dispute shall be final' be deleted."

The motion was adopted.

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA) : The question is :

"That clause 14, as amended, stand part of the Bill."

The motion was adopted.

Clause 14, as amended, was added to the Bill.

Clauses 15 and 16 were added to the Bill.

Clause 17—Amendment of section 24

SHRI P. GOVINDA MENON : Sir, I move :

8. "That at page 5, for lines 34 and 35, the following be substituted, namely :

'17. In section 24 of the principal Act, in sub-section (1),—

- (1) in sub-clause (iii) of clause (c), for the words "if the degree is recognised for the purposes of this Act", the words "which is recognised" shall be substituted ;
(2) in the proviso to clause (d)."

SHRI D. L. SEN GUPTA : Sir, I move :

9. "That at page 5, for lines 34 and 35, the following be substituted, namely

17. 'Amendment of section 24.—

In section 24 of the principal Act,—

(1) in sub-section (1),—

(i) in clause (c),—

(a) in sub-clause (iii), for the words "if the degree is

recognised for the purposes of this Act", the words "which is recognised" shall be substituted ;

(b) in sub-clause (iv), the word "or" shall be omitted ; and

(c) the words "he is a barrister" shall be omitted ;

(ii) in the proviso to clause (d),—"

(The amendment also stood in the names of Shri Arjun Arora and Shri Syed Ahmad.)

SHRI SYED AHMAD : Sir, I move :

f0. "That at page 6, after line 9, the following be inserted, namely :

'(2) In sub-section (3), clause (b) shall be omitted'."

(The amendment also stood in the names of Shri Arjun Arora and Shri D. L. Sen Gupta.)

The question were proposed.

SHRI D. L. SEN GUPTA : Sir, on a point of order. You will find that amendment No. 8 moved by Shri Govinda Menon is already included in amendment No. 9 which is acceptable to him.

Therefore, It is purely a duplication.

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA) : So, Mr. Menon, you withdraw your amendment.

SHRI P. GOVINDA MENON : Sir, I beg leave to withdraw my amendment No. 8.

*Amendment No. 8 was, by leave, withdrawn.

SHRI D. L. SEN GUPTA : Sir, on my amendment No. 9 I would like to repeat but not in the same language as I did in the first reading. There are three parts of this amendment. The essential point is that the barristers should not be allowed to be Advocates in India because they are barristers and practitioners of the English Bar. I have raised this point for two considerations. Firstly, there is no reciprocal arrangement between the Advocates of the Indian Bar and the Advocates of the British Bar. That is why the barristers should not be allowed here unless and until advocates here have the same privilege of practising in any other Commonwealth countries, particularly London.

*For text of the amendment, vide col. 3900 *supra*.

The second part is why should people from India go to London for becoming barristers ? It involves foreign exchange. Legal talent must be in the man himself. It does not depend on his going to London spending a few thousand pounds. So my point is this that there should be positive discouragement to people going abroad for becoming barristers, and that purpose will be served if my amendment is accepted.

SHRI BHUPESH GUPTA : Sir, this question is a question of principle and I think we should be very clear in our mind as to what we are now driving at. There should be reciprocal arrangement and it should be on an equal footing. There should be give and take in this respect. If the English Bar recognises members of our Bar Council, then we will recognise them ; otherwise we will not. Now the position is this. A member of the English Bar can now come and appear before our courts whereas advocates or members of our Bar Council, not the barristers, cannot appear in any Commonwealth court or the courts in England. That is the position. I think that anomaly should go absolutely. Therefore, it is supportable.

The anomaly arises when barristers can go and appear there and also appear here. It is a good thing so far as Indians are concerned. But then the matter should be stated in such a manner that the whole thing is brought on an equal footing.

Then I should like to say something about this question of barristers. I think we should not allow any foreign exchange whatsoever for students to go and study law. I was enquiring about it once and I found out—it is not normally sanctioned—that some people who want to study certain other degree they are given foreign exchange, and then on the basis of that they go and have their names registered in some college and then start studying law, and they get called to the Bar. There is a tendency in our country even now after so many years of independence to send students from here in some guise and who actually study at the English Inns of Court and get called to the Bar. I think we should be very strict about it. In fact the law should be that any one who has been sanctioned foreign exchange for studying other lines should forfeit the sanction of foreign exchange if he or she starts studying at the Inns of Courts. That is how the rule should be framed rather

[Shri Bhupesh Gupta]

than the present rule which says that foreign exchange will be granted provided the student studies something else also other than at the Inns of Court

SHRI MOHAMMAD YUNUS SALEEM May I submit that my information is that the present rule is that for barrister's training foreign exchange is not released

SHRI BHUPESH GUPTA : You are wrong because you do not know things. It is true that for barristers you do not give foreign exchange I know that. But how many Indians are there still studying at the Inns of Court I should like to know from him. I had been to England last year, in 1967, and I found that some were studying at the Inns of Court. How do they manage it if the foreign exchange is not sanctioned? Foreign exchange is sanctioned because they have somehow or the other impressed upon the Government that they are studying in some University or some other thing. Actually some of them are not studying at all because when you sanction foreign exchange you do not take away the right of that particular student to fail in the examination, and everybody can successfully fail in the examinations. You need not study at all.

SHRI SYED AHMAD : They might be earning their livelihood and also studying

SHRI BHUPESH GUPTA : It is not so. Who are sending these students? Is it the poor classes here who are sending their boys abroad to study? I do not wish to name them. Some in the Congress Party even now send their children abroad to study. That is to be put a stop to. You have accepted in principle that foreign exchange should not be sanctioned for study at the Inns of Court. The question is how to make it effective and operative. At present it is not so. This is what I am suggesting here, and I think it should be settled that way. Well, you know very well. I can name them but I do not wish to say anything on the subject. You can yourself find out their names. I would like the Law Minister to tell us how many Indian students, boys and girls, are at present studying at the Inns of Courts. Right at this moment he should have some information. Enquiry should be made as to how they are meeting their foreign exchange requirements. I think this matter should also be a little gone into

My submission, before I set down, is that anyone going to study in the Inns of Court should not be entitled to any foreign exchange sanction. Well, let them earn money and study, but they should not get foreign exchange. Then let us see how many can manage to study there. So this is my suggestion.

SHRI P. GOVINDA MENON : Mr. Vice-Chairman, may I take your leave and go to another place where I am called? My colleague will look after.

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA) Yes.

SHRI MOHAMMAD YUNUS SALEEM I have accepted the amendment of Mr. Syed Ahmad. Now so far as the observation made by the hon. Member, Shri Bhupesh Gupta, is concerned—regarding persons enjoying the luxury of getting the training of barristers—we are going to introduce an amendment that hereafter barristers will not be entitled to get themselves enrolled as advocates. Therefore, if one goes and gets training, let him do it. It is not going to affect the amendment of this Act.

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA) The question is :

9 "That at page 5, for lines 34 and 35, the following be substituted, namely :—

17 "Amendment of section 24.—
In section 24 of the principal Act,—

(1) in sub-section (1),—

(i) in clause (c),—

(a) in sub-clause (iii), for the words "if the degree is recognised for the purposes of this Act", the words "which is recognised" shall be substituted,

(b) in sub-clause (iv), the word "or" shall be omitted, and

(c) the words "he is a barrister" shall be omitted ;

(ii) in the proviso to clause (d),—"

The motion was adopted.

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA) The question is :

10 "That at page 6, after line 9, the following be inserted namely :—

"(2) In sub-section (3), clause (b) shall be omitted."

The motion was adopted.

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA) : The question is :

"That clause 17, as amended, stand part of the Bill."

The motion was adopted.

Clause 17, as amended was added to the Bill.

Clauses 18 to 28 were added to the Bill.

Clause 29—Amendment of Section 42

THE VICE CHAIRMAN (SHRI M. P. BHARGAVA) : There is one amendment by Shri Syed Ahmad.

SHRI SYED AHMAD : Sir, I move :
11. "That at page 9, after line 6, the the following proviso be inserted, namely :—

'Provided that no final orders of the nature referred to in sub-section (3) of section 35 shall be made in any proceeding unless the Chairman and other members of the disciplinary committee are present.'"

The question was put and the motion was adopted.

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA) : The question is :

"That clause 29, as amended, stand part of the Bill."

The motion was adopted.

Clause 29, as amended, was added to the Bill.

Clauses 30 to 33 were added to the Bill.

New Clause 33A

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA) : There is one amendment by Mr. Govinda Menon—new clause 33A.

SHRI MOHAMMAD YUNUS SALEEM : Sir, on behalf of Mr. Govinda Menon, I move this amendment . . .

SHRI BHUPESH GUPTA : On a point of order. Has Mr. Govinda Menon authorised him to move it ? No. You kindly see the file. The amendment is in the name of Mr. Govinda Menon. If somebody else wants to move it, he can do so but he must have the written authority. I would like to know whether before Mr. Govinda Menon went he had his written sanction.

SHRI MOHAMMAD YUNUS SALEEM : Just now he has gone ; he asked me to move.

SHRI BHUPESH GUPTA : This is a point of procedure.

SHRI M. N. KAUL : No authority is valid under the rules . . .

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA) : The position is Mr. Menon, before leaving, has taken permission. He asked me to give him permission to allow . . .

SHRI BHUPESH GUPTA : He asked ?

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA) : Yes, to allow the Deputy Law Minister to proceed with the Bill.

SHRI M. N. KAUL : Sir, may I make a submission ? Our rules are clear, and they are established for the last so many years, that a person in whose name the amendment stands must move it. So far as this House is concerned, or all Houses of Parliament are concerned, Government members and other members sit and on equality. There is no different procedure for Government members. In order to meet the present difficulty, what can be done is that if the hon. Minister gives a manuscript amendment in identical terms, then you may waive the period of notice. But there is no delegation of authority. He cannot move it on behalf of another person.

SHRI BHUPESH GUPTA : I think Mr. Vice-Chairman, it is quite clear. That is why I got up. It is not a question of saying something and going away. This is not how it is done. It must be done in the proper way. In this case, Mr. Kaul is quite right. If an amendment is given in the name of an individual that individual must move it. Suppose I am not in the House can my comrade Mr. Balachandra Menon get up and say "I have been authorised to move it ?" No. I am interested in that amendment; please understand. But I think that we can wait. Mr. Govinda Menon should be brought here.

SHRI M. N. KAUL : The Deputy Minister can give a manuscript amendment,

SHRI BHUPESH GUPTA : You cannot just treat the rules like that. Why did Mr. Govinda Menon go away ? ...

SHRI MOHAMMAD YUNUS SALEEM : He sought the permission of the Chair and then left the House.

SHRI BHUPESH GUPTA : The Law Minister of the country does not know even the procedure. He should know that an amendment standing in his name would be coming immediately and notwithstanding that, he told something and left the House. What he has told you is not very material. Therefore, what my esteemed friend,

Mr. Kaul, has said is absolutely right. We are interested in this amendment. I think you can pass on to the other thing and let him come and move this amendment. Let the authority of the House prevail. Let us settle the rules.

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA) : The House stands adjourned till 11 A.M. tomorrow.

The House then adjourned at seven minutes past five of the clock till eleven of the clock on Friday, the 13th December, 1968.