

THE ADVOCATES (AMENDMENT) BILL, 1965.

THE DEPUTY MINISTER IN THE MINISTRY OF LAW (SHRI JAGANNATH RAO): Sir, I beg to move:

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

Sir, the Advocates Act, which was enacted in May, 1951, provides for a unified All-India Bar with one class of legal practitioners, namely advocates who would be entitled to practise in all the courts in India including the Supreme Court. This Act at present extends to the whole of India except the State of Jammu and Kashmir, the Union territory of Goa, Daman and Diu and the Union territory of Pondicherry. The object underlying the Act cannot be fully achieved unless it extends to the whole of India. It is now proposed to extend the Act to the whole of India including the aforesaid areas.

The Government of Jammu and Kashmir have agreed to the extension of the Advocates Act to that State. The State would have a separate Bar Council consisting of 15 members. All advocates of the State of Jammu and Kashmir would be treated as advocates under the Act. So far as other legal practitioners of the State are concerned, they have also been given a right to get themselves enrolled as advocates. If any legal practitioner does not want to get himself enrolled as an advocate, his existing rights would be safeguarded. Necessary provisions in regard to these matters have been made in clauses 2, 3 and the proposed section 58AC inserted by clause 10.

The Administration of Goa have agreed to the extension of the Act to that Union territory. They have also agreed that there should not be a separate Bar Council for Goa and the Maharashtra Bar Council would exercise its jurisdiction in respect of Goa.

The Maharashtra Bar Council was consulted in regard to this matter and they have agreed to the proposal of the Goa Administration. There are different kinds of legal practitioners in Goa and they have been given the option to get themselves enrolled as advocates, provided they are citizens of India. The existing rights of all persons including those who would retain their Portuguese nationality have, however, been preserved.

The principles which are applicable to Goa are also applicable to Pondicherry. The Madras Bar Council would have jurisdiction over Pondicherry and the Madras Bar Council was consulted in regard to this matter and they have agreed.

Then the working of the Act has disclosed some defects, and these defects are now sought to be remedied. Consultations were made with the Bar Council of India and the State Bar Councils, and some amendments are proposed by this amending Bill. One is about the election of members of the State Bar Council and their term. Under section 8 of the Advocates Act, the term of office of elected members of a State Bar Council is six years with one-third of them retiring every second year. Some of the State Bar Councils and also the Bar Council of India have represented that holding of elections involves a huge expenditure and they are anxious to avoid election every second year. It is therefore proposed that election might be held every third year, one-half of the members retiring. Under clause 4 of the Bill section 8 is proposed to be suitably modified to achieve this purpose.

Under the existing Act, election is held in accordance with the system of proportional representation by means of a single transferable vote. It has been represented that this system is not very convenient and the senior members of the Bar Council do not very often get elected because of this system. It is therefore proposed that

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the system of direct election by a simple majority vote should be adopted as was the case under section 5 of the Bar Councils Act, 1926. It is proposed to amend section 3 of the principal Act suitably for this purpose.

Then the other amendment which this Bill seeks to introduce is to allow mukhtears, pleaders and vakils who have put in three years of practice before 31st March, 1964, as eligible to get themselves enrolled as advocates. As the examination for mukhtears and pleaders was abolished before December, 1961, it was expected that those who have passed the examinations will automatically be entitled to get themselves enrolled. Representations have been received from mukhtears of West Bengal and Orissa that some of them could not get themselves enrolled in time and are not therefore eligible for enrolment as advocates. This is a very small category of persons and the Bar Council of India has agreed that these persons should also be made eligible to get themselves enrolled as advocates.

About persons who have come to India from East Pakistan due to disturbances, legal practitioners who have come to India from East Pakistan are of two categories. There are some law graduates who were enrolled as pleaders or advocates in East Pakistan. Law degrees of the universities of East Pakistan have already been recognised by the Bar Council of India and they have also passed a resolution to the effect that the law graduates coming from Pakistan need not undergo any training for the purpose of getting themselves enrolled as advocates in India. There is therefore no difficulty about this category of persons.

There is another category of legal practitioners, namely, mukhtears who on migration are unable to practise their profession of law in India. The matter was discussed with the Bar Council of India and they have agreed

that this category of persons also should be entitled to carry on their profession even in India. It is therefore proposed to amend the Act by inserting a new provision, section 58AA, for the purpose.

Under section 9 of the existing Act, the disciplinary committee of a Bar Council consists of three members, two of whom are elected by the Council from amongst its own members and the third member is co-opted by the Bar Council from amongst the advocates who are not members of the Council. It has been represented that it is not often possible for all the members to be present when disciplinary proceedings are held. It is therefore proposed to make a suitable provision to the effect that the disciplinary proceedings may be continued even in the absence of any member of the disciplinary committee. Section 42 of the Act is proposed to be amended for the purpose.

Under section 46 of the Act, every State Bar Council has to contribute 40 per cent of the total enrolment fee realised by it to the Bar Council of India. The Bar Council of Maharashtra has suggested that this percentage is very much on the high side and should be reduced. Other State Bar Councils are also experiencing financial difficulties in the matter of carrying on their functions under the Act. The Bar Council of India was consulted and it has been suggested by them that a suitable provision should be made in the Act to enable the Bar Council of India to give financial assistance to any State Bar Council by way of grant or otherwise. Therefore, it is proposed to amend the Act suitably for this purpose.

There are some other minor and consequential amendments which this Bill seeks to incorporate in the principal Act.

Sir, I move.

*The question was proposed.*

SHRI R. S. KHANDEKAR (Madhya Pradesh): Mr. Chairman, when the first amendment to the Advocates Act came up before this House some time before, I had expressed my doubts about it and said that that Bill did not satisfy the cherished desire of the advocates and that very soon the Government would be compelled to bring forward an amendment.

[THE DEPUTY CHAIRMAN in the Chair]

The course of events have proved my statement to be true. The Advocates Act was framed in order to have an integrated and unified Bar for the whole country and it was welcomed by all sections, particularly by the advocates of the country. But it was felt that there were many defects in it and I had occasion to point out those defects at that time. Now Government have brought forward a few amendments by means of this Bill. But these amendments do not satisfy entirely the advocates' world.

I should welcome some of the amendments though I am very much critical of some other amendments which seek to eliminate certain procedures.

I particularly welcome that this Act is being extended to the State of Jammu and Kashmir and the Union territory of Goa, Daman and Diu and the Union territory of Pondicherry. I also welcome that the Bar Councils of the Union territories of Pondicherry and of Goa, Daman and Diu are being amalgamated with the Bar Councils of Madras and Maharashtra respectively. I also welcome that there is to be a Bar Council for the State of Jammu and Kashmir. Much water has flown under the bridge since the time when we used to treat Jammu and Kashmir as a separate part so far as some of our Acts were concerned. But now Government are determined to apply all the Central Acts to the State of Jammu and Kashmir. Therefore, I need not go over this matter.

I also welcome the fact that the process of election is being reversed. But I am very much opposed to the system of applying this election method. I am opposed to the introduction of the system of direct election by simple majority in these things. The system of proportional representation in elections was adopted in the original Act. It was obviously to protect certain interests among the advocates also. Government say that the very senior advocates do not get themselves elected and therefore they have come out with this proposal. But I am very much surprised to hear the statement. If the senior advocates are not popular among the advocates, why should they be on the Bar Council? They may be senior by age or by experience but that does not mean that they should automatically go to the Bar Council. They must also be popular among the advocates. There is a large section of people who are juniors and they are coming up. By this way Government are trying to bar their entry.

Madam, I have also been a member of the Bar Council for some time in my own State. I wonder whether I would have been elected at all if the system of proportional representation had not been there; it is a critical question. Therefore, this system which the Government are adopting is most derogatory and most conservative and I would say that the Government should scrap it and substitute the original provision for election by means of proportional representation. I admit that there should not be election every now and then, and as far as the policy or principle of half of the members retiring is concerned that is a very welcome procedure. But that should be by the single transferable vote.

The question of new advocates is engaging the attention of many people. Government must also have received many representations from graduates who have passed in law. Last time

[Shri R. S. Khandekar.]

Government extended the date and they brought it, if I am not mistaken, up to 1960. But those graduates who have passed their law examination after 1964 are even now not enrolled as advocates. The reason is that the Advocates Act contemplates that the Bar Councils would hold examinations, that they would have training centres and that they would organise lectures. But in many States, particularly in my own State, the Bar Council has done nothing in this respect. It has not arranged lectures. Only recently it has framed certain rules. But by framing rules everything is not solved. It is envisaged that there should be training given for one year for the new graduates but there is no arrangement for giving training to them in any part of my State.

When there are no such arrangements, the new graduates cannot apply for their *sanads* and the *sanads* cannot be issued to them unless they pass the examination of the Bar Council. In the circumstances, they are very much hardpressed. For the last one and a half years they have been roaming about here and there. Formerly, they used to get at least their *sanads*. But now, after the introduction of this Act, there is only one class of pleaders, that is advocates, and they do not get their *sanads*. They cannot do any other thing except wasting their time in the bar rooms. So, I request that just as last time Government should even now extend the date so long as the different Bar Councils have not had fool-proof arrangements regarding training, examination and all that. I understand, there is some meaning in conducting this one year training. Of course, many people object to this method also. They argue that when the students pass their examinations after studying for two years, there is no necessity again for an examination. There are certain difficulties in regard to new graduates. They do not have experience and therefore, that one year's experience

is necessary. So I would suggest that before a new graduate gets his degree, there should be one year's training given. But instead of the Bar Council holding the examination and his passing it, the degree and the *sanad* should be simultaneously given so that he may not waste his one year. The medical graduates have got to do certain work in the hospitals for six months or one year and then they get their degrees. Similarly, the new graduates passing in law should be compelled to practise or to go to courts for one year and then they should be awarded their degrees along with their *sanads*. If Government find this suggestion suitable, they should implement it.

This training system has got so many defects. As I said last time, there are no senior lawyers in the mofussil courts particularly. In the districts you may find some senior lawyers under whom one can get training but in the mofussil towns, there is no arrangement for training. Where there are senior lawyers, they exploit the situation. They demand higher fees from the juniors. In this way there is much scope there for malpractices. I also know that in some cases if one pays a substantial amount to a senior lawyer, he will certify that that particular individual has got training and has learnt from him. So this system is not very sound.

Then, as I said, the Advocates Act was a very good measure but the working of it has brought forth so many difficulties. So I would suggest that Government should have a comprehensive arrangement under this Act. For this the Government should try to appoint a committee of lawyers, both senior and junior advocates as also some of the Judges. They should thoroughly discuss the difficulties that come in the proper working of this Act. The Judges also complain that when the juniors are very raw they do not get so much assistance as they should get or is expected of the lawyers.

Then there is a complaint by the junior advocates also, namely, that they are not properly treated. The senior advocates have also certain difficulties. In order to remedy all these defects the Government should appoint a committee including some of the Judges, representatives of the junior Bar, senior advocates and litigant public also to evolve a system for the working of the Advocates Act. The Government should try to find out how it could be made fool-proof. Of course, there cannot be any fool-proof arrangement, but there should be an attempt to bring forward an ideal or practical legislation so that the cherished desire of the advocates, who welcomed the Bill when it was introduced, is fulfilled. I think this Advocates Act is bringing about so many problems and many of its sections are not being implemented. Even now in many States—I do not know about other States, but in my State—the implementation of the Advocates Act is far from satisfactory.

As far as the Disciplinary Committee is concerned, I had expressed my doubts at that time also because I was also a member of that Committee. The House will be surprised that during the whole period of my term the Disciplinary Committee did not meet even once. Not that they did not want but there were so many procedural difficulties that they could not meet. Now the Government is trying to remedy this defect. But I wonder whether it will be successful even now.

Similarly as far as elections are concerned, there is a lot of politics in it. In the elections even Judges are very much interested. Now when the Government is bringing forward an amendment with regard to that, I do not know how the elections will be there and how they will be successful. With these words I request the Government to think over this suggestion and bring forward some comprehensive Act after these amendments.

SHRI NAFISUL HASAN (Uttar Pradesh): Madam Deputy Chairman, I rise to give my general support to the motion which has been moved by the hon. Deputy Minister. The main object of this Bill is to extend the application of the Act to the State of Jammu and Kashmir and to the Union Territories of Pondicherry, Goa, Daman and Diu. After this Bill is passed into Act, the State of Jammu and Kashmir will have a State Bar Council of its own and will be entitled to send one of its representatives to the All-India Bar Council. Goa, Daman and Diu are being attached to the Maharashtra Bar Council and Pondicherry to the Madras Bar Council. This being the main objective, I think the occasion is being utilised to make certain further amendments to the original Act.

Madam, in a progressive society, a society which is not stagnant, there are to be more and more of laws. The laws will have to be amended to meet the requirements of the society. I am not one of those who think that frequent changes in law should not be resorted to. But I do feel that amendment to an Act which was passed in 1961—during this short period this is the fourth amending Bill—should not be so quick and so many. The first two amendments were brought forward in 1962 and were passed into law as acts 14 and 32 of that year. They were necessitated because at the time of the original Bill it was thought that the provisions will be given effect to within the period contemplated in the original Bill. That was a miscalculation and I think proper attention should have been given at the time of the original Bill itself. So there were two amendments in 1962. The year 1963, I think, was unlucky for this Act; we had no amendment. In 1964 again here was a minor amendment by which a dead-line, 31st March, 1964, was fixed for those Mukhtears, Vakils and Pleaders who had put in three years of practice to apply for enrolment. It has now been found that even that was a mistake to

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fix that dead-line. And there is a provision to amend that also and we are not placing any dead-line now.

SHRI ARJUN ARORA (Uttar Pradesh): Why not?

SHRI NAFISUL HASAN: Any person who has put in three years of practice as such will be eligible because there are not going to be further examinations for pleadership, vakilship and all that. Therefore, no question will arise. Only if one does not want to be enrolled today, it will be open to him to be enrolled at any time in future.

Madam, I will deal with some of the amendments. Part (ii) of sub-clause 3(b) seeks to omit the provision of election according to the system of proportional representation. I personally am not convinced of the propriety of this amendment. Under the Bar Councils Act of 1926 the system of election was that of a simple majority. All elections under the old Bar Councils Act to the Bar Council were held on a simple majority basis. From 1926 to 1961, that is a period of 35 years, we had had the experience of this simple majority system. After having had that experience, in 1961 after due consideration we rejected that system and substituted in its place the system of proportional representation by means of the single transferable vote. We considered all the relevant reasons and I may repeat some of these reasons because I am convinced that the decision which we took in 1961 was the correct one. First of all this system of proportional representation gave regional representation to the advocates practising in the various parts of the State. Then in the elections under that system one had not to incur the heavy expenses which an election under the majority vote system requires because one need not approach the whole large electorate spread over the vast area of the whole State. My State is a very big one and I can very well understand

how much money had to be spent by a candidate in approaching this vast electorate. I can quite see the objection of some of the senior lawyers who are making good money and their anxiety because they find that even those who cannot afford to spend sufficient money are being elected under this system of proportional representation. Therefore my submission is that it is a step in the wrong direction. We had tried that system for 35 years and after full consideration have rejected it. How long have we tried this system? Probably only one election has taken place or there might have been two in some places, but because some senior lawyers who can spend money find that others who are unable to spend that amount are also being elected, feel and object to this system, I think we should not agree with them. It is an election to the Bar Council but even if it had been an election to any other body, what happens is this. There is a delimitation of constituencies. A person is required to approach voters in a specified area but were the whole State is the constituency. There is no delimitation and therefore the system of majority vote can be applied successfully to a specified area and not to such vast areas like the whole of a State. It is only the system of proportional representation that can work where such a huge area is the constituency.

SHRI AKBAR ALI KHAN (Andhra Pradesh): You have to decide the regions.

SHRI NAFISUL HASAN: Yes, that is also possible. It may be divided into regions and each region may be allotted a number of seats. There also the system of proportional representation may be applied in that way.

Again we are amending section 8 by clause 4 so that instead of having elections every two years for one-third of the number of members, we may have elections every third year for

half the number of members and for what reason? The reason given is that elections involve considerable expenditure. At one place you think that considerable expenditure should be avoided as much as possible but as far as the other provision to which I have referred is concerned, you do not think that there should be saving of expenditure as far as possible.

SHRI M. RUTHNASWAMY (Madras): May I know what were the chief items of expenditure in these elections to the Bar Councils?

SHRI NAFISUL HASAN: Persons have to go travelling from place to place and approach some persons . . .

SHRI M. RUTHNASWAMY: That is T.A.

SHRI NAFISUL HASAN: Mostly, I have never been a candidate to the Bar Council but sometimes I think they have to send agents . . .

SHRI P. N. SAPRU (Uttar Pradesh): All this will encourage the system of touting.

SHRI NAFISUL HASAN: I would like to have the reasons for this quick reversion to the old system after we had rejected that system after due consideration.

As far as clause 6 is concerned, namely, omitting the words "before the 31st day of March, 1964" for enrolment of vakils and pleaders, etc. who have put in three years of practice, I support this amendment but as I have already submitted, it does us no credit to have put in that date on the earlier occasion.

There is one other provision under clause 7 which provides for the continuance of the proceedings of the disciplinary committee in the absence of the Chairman or a member. It has been said in the explanation to clauses that there have been occasions when work in these committees has

not proceeded because of the absence of Chairman or one of the members. I have just learnt from the speech of the Deputy Minister that the disciplinary committee consists of three members, one of whom is the Chairman. I will refer to section 49(f) of the 1961 Act itself where it says:

"The Bar Council of India may make rules for discharging the functions under this Act and in particular such rules may prescribe—

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(f) the procedure to be followed by the disciplinary committee of a State Bar Council and by its own disciplinary committee."

In view of this provision, this provision of clause 7 is unnecessary because we had cast the duty of framing these rules on the Indian Bar Council and they have failed in their duty in framing those rules. They could form rules of procedure, they could provide how many members would form the quorum, who will preside in the absence of the Chairman, etc. All these are questions which relates to the procedure in that Committee. Why are we today being accused of not having made a provision for the proper conduct of the business of the Committee? It is the fault of the Indian Bar Council not to have made these rules, and if they had made these rules, there was no question of any delay occurring in the proceedings of the Disciplinary Committee; we have given them clear powers and if they had not prescribed these rules, the fault cannot be attributed to us. I feel, Madam, for all the delay in the Disciplinary Committee, wherever it has occurred, all the responsibility should be borne by the Indian Bar Council who have failed to make rules in that direction. Now, even after we pass this, if they do not frame any rules, the conduct of business will be delayed, the business of that committee consisting of three members, an important committee which has to

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decide the fate of a number of advocates cannot be proceeded with. Now, if we let it go with what we are providing here, it seems as though, in the absence of the Chairman, or in the absence of the Chairman and a member—the committee consists of three members—the remaining one member, by himself, can dispose of the issue before the committee. So they must decide it under the rules, make proper rules as to how many of these three shall form a quorum. I think with less than two the committee should not work; it should not work unless at least two of them are present. Now there is no provision to that effect and they have got to make rules for the procedure and conduct of the business of the Disciplinary Committee.

There are some other amendments with all of which I agree and give my support. With these words, Madam, I support the motion.

SHRI P. N. SAPRU: Madam Deputy Chairman, I would like to say that, while I am prepared to give my general support to this Bill, I am not happy with the constitution of the Bar Councils as they are at present. I was a Member of the Select Committee which had to deal with the Act of 1961 and on many points I had differences with my colleagues; I had hoped to speak on the Bill when it came before the House. Now I had to be unavoidably absent on the day the Bill was taken up in the Select Committee for finalisation. In fact I was given to understand that it would not be taken up on that day. On that assurance I went to Allahabad and so in my absence the Bill was given final shape in this House.

Now, Madam, the Bar Council Act has achieved something unique in the legal system of the world. We have today a unified bar for the whole sub-continent. We have achieved something which Britain has not been able to achieve, because there is the English Bar and there is the Scottish Bar and there is the Bar, I think, for

Northern Ireland; they have got separate Bars. Apart from that they have got there a dual system; there are the solicitors and there are the advocates. There is no Canadian Bar; there are the Bars attached to the different High Courts of Canada. There is no Australian Bar but there are the Bars attached to the Supreme Court of the Australian State. Now we have done therefore something which those countries with much larger experience than we have of the legal profession, have not been able to achieve.

But I must say that I was rather unhappy at the fact that the High Courts had been practically eliminated so far as the Bar Council is concerned. The High Courts used to exercise the power of nomination; under the old system the High Courts used to nominate the chairman of the bar tribunal. Now all that has disappeared and the Bars have been given the autonomy within their respective jurisdictions, and it covers the whole country. Remember that the Bars in this country perform dual functions. They perform the function of solicitors and they perform the function of advocates, and the Bar Council Act gives them much larger autonomy than, for example, the Incorporated Law Society of Solicitors has, and it gives them an autonomy which even the Bar in England might envy. The Bar Council performs the functions which Benches perform, and it performs the functions which a Bar Council itself performs. Now these, in my opinion, were the defects in our concept of the Bar Council, and we have done nothing so far as this Bill is concerned to remove those defects. What I want to know is: How has the Bar Council acted during the last four years? The Act came into force in 1961 and we are now in 1965. Has the Bar Council improved the tone of the profession? Has it developed a code of ethics for the profession?

SHRI P. K. KUMARAN (Andhra Pradesh): No.



SHRI P. N. SAPRU: Has it applied its mind to the elimination of those practices which make the legal profession . . . .

SHRI FARIDUL HAQ ANSARI (Uttar Pradesh): A disgrace.

SHRI AKBAR ALI KHAN: Humiliating.

SHRI P. N. SAPRU: Well, I won't call it that way, they are such which make one disgusted with the legal profession. Now we have not been given any light on those matters. Probably the answer of the hon. Minister will be that he is not concerned with giving us an account of how the Bar Councils have functioned during those four years; he has got a very simple measure and he wants us to concentrate on the amendments that he has moved. I would like to know what the Bar Councils have done for the advancement of legal education. They were supposed to provide facilities for the training of advocates. I do not know whether any system of what we may call reading in chambers, has been evolved by the Bar Councils and, if so, what the results of that system have been. I think it is desirable that before a young man enters the profession, he should have some experience in the chambers of an experienced lawyer, as to how to conduct himself as a lawyer. I do not think that the Bar Council have yet developed a system of proper training for the members of the legal profession.

A question was raised by my hon. friend, Shri Nafisul Hasan, about proportional representation. I can see the force of his objection to the amendment suggested by the Law Ministry. I think, on the whole, a system of proportional representation is likely to provide a better representation to the legal profession as it is in a number of States. I do not want a monopoly to be created in favour of lawyers practising in the High Courts. I find that we are confining our selection of our Judges to the members of the

profession practising in the High Courts. I have said it on the floor of this House and I say so here again, that instead of appointing young men of 35 or 40, if you look round and acquaint yourself with the conditions of the profession in the various districts of the High Court, you will find district lawyers who will be able to adorn the benches of our High Court. I can tell you that I can give names of people in the district courts who are as good as any of those practising in the High Courts, but we have not applied our mind to a solution of the problem of finding suitable men for the benches, along those lines.

Next, I would like to know what the Bar Councils have done to make our young men understand the elementary ethics of the profession. I would like to know whether any cases of misconduct have occurred and, if so, how many and also I would like to know what the nature of those cases of misconduct was. My experience is that many cases of misconduct on the part of members of the bar are due to a defective knowledge of what the ethics of the profession is. There are certain technical rules and they do not know them and nothing has been done so far to educate them along these lines. For these reasons I feel it would have been better if the Government had brought forward a consolidated measure, with a view to improving the Advocates Act of 1961.

So far as the admission of advocates of the States mentioned in this Bill is concerned, I have no objection to your admitting them to the privileges of advocates. We have a unified bar now. We are opposed to any class distinction in the bar and in our anxiety not to have any class distinctions, we did away with pleaders and we did away with the Mukhtars, and we have done away with them in the big States like Uttar Pradesh, Bengal and Madhya Pradesh. I do not see any reason why a system which we

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have adopted there should not apply to the smaller States which have been mentioned in the Bill. Of course, I do not know exactly what the conditions of the bar in Goa are, for they had a different legal system from ours. I do not know what the conditions of the bar in Pondicherry are, for they also had a different legal system from ours. But I am not disposed to raise any question attacking the facilities which are being given to the members of the legal profession of becoming advocates under this Act. With these words, Madam, I give this Bill my general support.

**SHRI P. K. KUMARAN:** Madam Deputy Chairman, I generally support this amending Bill, except one or two clauses of it. First of all let me say that it is a good thing that for the first time here we find that this measure is applicable to the whole of India and the phrase "except the State of Jammu and Kashmir" is missing here. That is a good sign and I feel that the Government has come to this decision rather late, and only after creating considerable confusion in the minds of our people and also in the minds of the countries of the world. From letters to the editor written by citizens of the United Kingdom, of the U.S.A. and other countries, we find that the status of Kashmir is being questioned. There is real doubt as to what is the status of Kashmir. Every day we find statements issued by Shri E. M. S. Namboodiripad, and a series of statements he has issued. The whole thing is based on the special status of Kashmir. There is something there and that position should be clarified. Even in the courts of Kashmir, when pleaders argue, they mention the Constitution of Kashmir. So this distinction and what is the special status and how is it different from India, has got to be clarified, and I think it is high time that the Government gives a decision, to see that this distinction is removed. The confusion and the

whole game of the U.N. are also based on that. The question of plebiscite is also based on this special position.

The hon. Member, Shri Sapru, referred to the question of the Bar Councils. I would also like to know from the hon. Minister what these Bar Councils have done in the last three or four years, during which they have been functioning. Except meeting now and then for a day, spending T.A. for plane travel or for dinners, I do not know if they have done any constructive job in this country. One thing they did. Regarding the Defence of India Rules, a number of jurists had given their opinions, they had expressed their opinions and the Bar Association of India published it. But the Bar Council has condemned it. Evidently this was done because of the influence of the three *ex-officio* members, i.e. the Solicitor General of India, the Attorney General of India and the Additional Solicitor General of India, who are *ex-officio* members of the Bar Council of India. I think these three persons influenced the Bar Council to issue a statement and instead of objectively considering the position of the D.I.R. they simply went out of their way to condemn the publication of the statements of the eminent lawyers and jurists, pointing out how the D.I.R. came in conflict with the Fundamental Rights.

**THE DEPUTY CHAIRMAN:** I think you may continue later. The House now stands adjourned till 2-30 P.M.

The House adjourned for lunch at one of the clock.

The House reassembled after lunch at half past two of the clock, THE DEPUTY CHAIRMAN in the Chair.

**THE DEPUTY CHAIRMAN:** The Minister came in time.

**SHRI JAGANATH RAO:** Madam, I came before time. I was outside.

THE DEPUTY CHAIRMAN: Fifteen seconds late. You are condoned this time.

SHRI P. K. KUMARAN: Madam, I was talking about the Bar Council. As the hon. Mr. Nafisul Hasan said, they have not framed rules even for their own functioning, although the Bar Council has been functioning for the last three and a half or four years. Until now they could not find time to formulate rules for their own functioning. That is the position of the Bar Council. On the other hand they find it convenient to function as a lever whenever the Executive wants to intervene in the natural dispensation of justice. I have got in mind one case. Some time recently a M.L.C. from the U.P. was arrested and detained under the Defence of India Rules. Home Minister Nanda stated in parliament . . .

THE DEPUTY CHAIRMAN: How does it relate to this Bill?

SHRI P. K. KUMARAN: I will show that, Madam . . . and also broadcast to the nation that he was personally satisfied and he was personally responsible for putting in jail a large number of the citizens of India. So this M.L.C. naturally wanted to find out how the Home Minister was satisfied and what was the bases on which he was satisfied that this M.L.C. is a security risk. So he wanted him to be a party or at least as a witness. Now, what does the Executive do? The Attorney General goes from Delhi to U.P. but he does not appear before the court there; he does not file any affidavit or even a reply. They go and appoint the Advocate General of U.P. to appear in the case. The case of the State is different. The State has ordered to arrest certain people. Although the Home Minister said he was satisfied, the Magistrates had issued orders saying that they were satisfied. So it was not clear and it had to be gone into. By appointing the Advocate General of U.P. to argue the case, he was put in a

very difficult position. The State authorities were also put in a very difficult position. Of course the hon. Minister has every right to appoint anybody as his legal adviser. It is a perfectly legal right but this is a trick by which the State was involved in this indirectly. There was a lacuna which the State had to overcome by withdrawing all the detentions on 31-7-1965 and issuing a fresh order on 1-8-1965. It is the duty of the Bar Council to examine such things and say that such practices should not be resorted to. The Bar Council is not in a position to look into all these aspects. They are only interested in coming, meeting for a day and going back. That is why I say the Attorney-General, the Solicitor-General and the Additional Solicitor-General who are *ex-officio* members of the Bar Council should not be there. The Bar Council should be an independent body and they should be in a position to exercise independent judgment.

Coming to the question regarding elections, I oppose the amendment regarding elections. Now, the election, although it may be a cumbersome procedure, provides for proportional representation. There may be people belonging to Scheduled Castes, there may be Muslims or lawyers who are Communist sympathisers and they may be wanting representation in the Bar Council. How can they have it unless proportional representation is there? Minority opinion—I am not talking about caste and other things—gets a chance of getting representation. But one of the amendment's proposed seeks to do away with this. From a democratic procedure they are going back to the old procedure. This I think is a retrograde step and I do not know whether the Minister will . . .

SHRI ARJUN ARORA: He will not.

SHRI P. K. KUMARAN: There is one point which Mr. Khandekar also mentioned. A new law graduate must undergo training for one year under

[Shri P. K. Kumaran.]

a senior lawyer. He cannot appear in the court along with his senior lawyer. While studying law he is in a position to do some part-time job and earn some money but while undergoing training he cannot get a single pie; on the other hand senior lawyers are demanding money from him. That is the position for one year and then the examination by the Bar Council is there which will take another six months. So for one and a half years this man has to bring money from his own house and if there is no money he cannot do anything. The clerk of a senior lawyer is in a position to appear in a lower court and file a paper but this junior lawyer has no right to do it. Therefore the Act should be amended so that the junior lawyers who are undergoing training should be in a position to appear at least in the lower courts along with the senior lawyers. That position is not there now.

There is another thing. Supposing you go to the Supreme Court. There are lawyers like Setalvad or A. S. R. Chari who charge Rs. 1,600 for one day's appearance.

SHRI ARJUN ARORA: A. S. R. Chari, you can influence.

SHRI P. K. KUMARAN: Influence is another thing.

SHRI ARJUN ARORA: You can ask him to bring down his fees.

SHRI P. K. KUMARAN: Suppose the case starts after four o'clock; he argues till 4.30 and the day is over and he has to be paid Rs. 1,600 for his appearance. Then there are instances when they say, 'I have argued for you today, but I am engaged for tomorrow; you go to some other lawyer.' So this Supreme Court where the citizen of India is expected to get the maximum justice has become a very costly affair. Even second rate lawyers are eligible to charge Rs. 1,000 or so. How many citizens of India can go to the Supreme Court to get justice in these circumstances unless some

provision is made or some arrangements are made to help them? The Bar Council can appoint some sort of a Legal Committee, Poor Litigants Committee or some such thing and funds can be kept at its disposal or the Government should take it upon themselves to provide financial assistance or free legal assistance to such citizens who want to take their case to the Supreme Court. As long as this facility is not available in spite of the fundamental rights being written in the book they will remain only in the book. As it is many of the citizens are not even able to go to the Supreme Court; they are under the mercy of the Executives at the lower level. So this is also a thing about which the Government should do something.

Apart from these defects on the whole I think this Bill is some improvement on the present position but this amendment of elections is a retrograde thing. The other matters also need to be taken into consideration and I hope the Minister will come up with another amendment or he himself can move amendments to this Bill in this session because this has been introduced here and this has yet to go to the Lok Sabha. He can very gracefully come forward and introduce some amendments today or tomorrow and see that some of these defects are removed.

Thank you.

SHRI M. C. SHAH (Gujarat): Madam Deputy Chairman, I welcome this Bill in a general way because the Bill is intended to make the original Act of 1961 applicable to the State of Jammu and Kashmir also. We have claimed that Jammu and Kashmir is a part of our country as the other States are but still somehow in all the legislations that we passed Jammu and Kashmir was treated as a separate entity. This is the first time, if I am not mistaken, that a Bill is intended to apply to the State of Jammu and Kashmir also, that is, to the whole of India. Jammu

and Kashmir will get a Bar Council and due representation also is provided in this Bill. It is also provided that the Union territory of Pondicherry will have a common Bar Council with the State of Madras. The Union territory of Goa, Daman and Diu will have a common Bar Council with Maharashtra. When Pondicherry was put under jurisdiction of Madras High Court and Goa, Daman and Diu were put under the jurisdiction of Maharashtra High Court, an objection was raised, and I remember that the late Prime Minister was emphatic and he assured us on the floor of this House that this would not come in the way of the ultimate merger of these territories with their natural States. Now, from all points of consideration Daman and Diu must go to Gujarat. There is no other claim. Instead of remedying the action that was taken of joining this area with the Maharashtra High Court, a second step has been taken, namely, these areas will have a common Bar Council with Maharashtra. I would urge upon the Government to consider how far this unnatural state of affairs is going to continue. In respect of Pondicherry, there is a dispute, but in respect of Daman and Diu there is no dispute. I would, therefore, request the Government to settle this issue once and for all according to justice and see that this area of Daman and Diu goes to Gujarat as a natural part of it. I would, therefore, request that some active steps are necessary from the Government to put these areas under the jurisdiction of the Gujarat High Court and also have the Bar Council attached to the Bar Council of the Gujarat High Court.

Thank you.

**श्री विमलकुमार मन्नालालजी चौड़िया**  
(मध्य प्रदेश) : उपसभापति महोदया, यह एडवोकेट्स के लिये जो संशोधन विधेयक प्रस्तुत किया जा रहा है, बहुत दुःख के साथ कहना पड़ता है कि ऐसे विद्वान् लोगों के लिये बनाये जाने वाले कानून में इतनी जल्दी

जल्दी और बार बार संशोधन करने पड़ते हैं। जहाँ तक जम्मू काश्मीर में इसको लागू करने का प्रश्न है या गोवा, दमन, दीव में लागू करने का प्रश्न है, उसके लिये संशोधन लाना अत्यन्त आवश्यक था और उसके लिये ही अगर संशोधन आता तो मुझे कोई आपत्ति नहीं होती। किन्तु उसके साथ साथ और भी संशोधन लाये गये हैं और वे भी उलटी दिशा में। जब कि हम प्रगति करते जा रहे हैं प्रजातंत्र के सिद्धांतों को विकसित करने की दृष्टि से, तो उसके विपरीत दिशा में हम संशोधन लाये, यह कुछ आश्चर्य और खेद की बात लगती है।

हमने सन् 1961 में जो कानून बनाया, वह इस आशय से बनाया कि हमारे यहाँ पर पहले कोई ठीक व्यवस्था नहीं थी। लोग प्लीडर, मुस्तार, एडवोकेट आदि नाम लगा कर वकालत करते थे। इसके अलावा उनकी ट्रेनिंग की कोई व्यवस्था नहीं थी और उनका अनुभव ठीक नहीं होता था। इसलिये हमारी यह मान्यता थी कि उन पर नियंत्रण करने के लिये एक बार कौंसिल बने और उसकी सारी व्यवस्था हो। यही सब सोच कर हमने सन् 1961 में एक कानून बनाया। उस कानून के बन जाने के बाद किन को हम एडवोकेट्स की सनद दें, उसके बारे में एक तिथि मुकर्रर की गई थी कि इस परीक्षा के बाद जो पास कर लेंगे उनके ऊपर यह लागू होगा, मगर उसमें आप बार बार परिवर्तन करते रहे इस आशय से कि हम जिन लोगों को परीक्षाओं में उत्तीर्ण हो जाने के बाद एडवोकेट बनाना चाहते हैं, उनके लिये एडवोकेट बनाने की व्यवस्था हमारे पास नहीं है। आज हमने यह कानून बना दिया कि यह सब जगह लगाया जाये। मैं अपने मध्य प्रदेश के अनुभव के आधार पर कहता हूँ कि जिन लोगों ने इस मार्च में नहीं, इसके पहले के मार्च में परीक्षाएं दीं और एल० एल० बी० का सर्टिफिकेट ले आये। उनके लिये बार कौंसिल द्वारा क्या क्या परीक्षाएं होंगी, क्या क्या सबजेक्ट होंगे, क्या नहीं होंगे, कुछ

[श्री विमलकुमार मन्नालालजी चौड़िया]  
 भी तय नहीं किया गया। वकीलों के सामने जाने की कठिनाई तो पहले से ही थी। कालेजों से एक दम निकले विद्यार्थी अपने अनुभव के लिये दस साल के अनुभवी वकीलों को ढूँढ़ने लगे और उसमें जैसी कि कुछ भाइयों द्वारा शंका व्यक्त की गई कि कुछ वकीलों को भेंट पूजा करने की आवश्यकता पड़ी। उनमें कुछ बेचारे तो ग्रामीण क्षेत्रों के थे जहाँ पर फर्स्ट क्लास मैजिस्ट्रेट और सेकेन्ड क्लास सिविल जज होते हैं और वहाँ पर दस साल के अनुभवी एडवोकेट नहीं होते हैं। इसलिये उनको शहरों में रहना पड़ा और ट्रेनिंग पीरियड में उनको कुछ मिला भी नहीं। उनके पिता और पालक यह समझते हैं कि हमारा लड़का एल० एल० बी० हो गया, अब वकील साहब बन जायेगा और कुछ कमाने लग जायेगा और उस पर जो कालेज का खर्चा होता था, वह बन्द हो जायेगा। लेकिन वकील की हैसियत से उस पर खर्चा बढ़ जाता है और वह आमदनी कुछ लाता नहीं है। इस से बड़ी भयंकर कठिनाइयाँ हो रही हैं। इससे तो अच्छा यह है कि हमारा शासन इस बात पर विचार करे कि जो दो साल का एल० एल० बी० का कोर्स होता है, उसकी जगह तीन साल का कोर्स कर दिया जाये। जैसे हमारे डाक्टरों को एक साल तक हाउस सर्जन का काम करना पड़ता है और हाउस सर्जन को दवाखानों में ड्यूटी देनी पड़ती है, वैसे ही इनके लिये भी एक साल का कोर्स निर्धारित कर दिया जाये और उन से यह कह दिया जाये कि तुम को यह लेक्चर अटेंड करना पड़ेगा और अनुभव के लिये अमुक अमुक कोर्ट में जाना पड़ेगा, ताकि वकालत करने के समय उनके सामने प्रोसीजरल डिफिकल्टीज न आये। इसके लिये आप चाहें तो छः महीने का पीरियड रख दें और उसमें आप उनको यह अनुभव करवा दें कि आर्डर 21, रूल फ्लां में क्या करना होगा, सिविल प्रोसीजर कोड की धारा 80 के अन्तर्गत क्या करना होगा और कहां पर किस तरह का और कितना स्टाम्प लगाना पड़ेगा। यह सब

डाइरेक्ट अनुभव करने के अभाव में जो उनको कठिनाई पड़ती है, उसको दूर करने के लिये ज्यादा अच्छा यह होगा कि छः महीने या 12 महीने का समय आप निर्धारित कर दीजिये और यह कह दीजिये कि उसमें उनको अनुभव प्राप्त करना पड़ेगा। परन्तु वकीलों के पास अनुभव प्राप्त करने के लिये भेजने में बड़ी कठिनाई होती है। बड़े बड़े वकील तो वैसे ही बहुत व्यस्त रहते हैं। जब किसी का दुर्भाग्य होता है, तभी उसको किसी कोर्ट में या अस्पताल में जाना पड़ता है। उसमें भी होता यह है कि अगर कोई मुकदमा जीत गया तो यह कह दिया जाता है कि हमारी मेहनत से जीत गये और अगर हार गया तो कह दिया जाता है कि तुम्हारी एविडेन्स खराब थी। तो इस तरह की जो सारी बातें होती हैं उन सब से मुक्त करने के लिये, उन कालेजों से निकले हुये विद्यार्थियों को आप जो अनुभव देना चाहते हैं और उनको एडवोकेट बनाने के लिए प्रयत्नशील है, तो उसके लिये तीन महीने, छः महीने या बारह महीने का यदि आप कोर्स निर्धारित कर सकें और उसमें उनको अनुभव दिला सकें तो ज्यादा अच्छा होगा, बजाय इसके कि उनको आप किसी दस साल के अनुभवी वकील के पास भेजें और वहां वे उसके आगे पीछे उसका दफ्तर उठाते फिर और उसका दफ्तर उठाने की ट्रेनिंग से शुरू करे। यह न्याय-संगत नहीं प्रतीत होता है।

एक मुझे और आपत्ति है। पहले जब कोई विद्यार्थी एल० एल० बी० पास करता था तब उसको तीन साल तक डिस्ट्रिक्ट कोर्ट में वकालत करने की सनद मिलती थी और वह एक अच्छी परम्परा थी। वह तीन साल तक डिस्ट्रिक्ट कोर्ट्स में सेकेन्ड क्लास मैजिस्ट्रेट या फर्स्ट क्लास मैजिस्ट्रेट या सेकेन्ड क्लास सिविल जज के न्यायालय तक जा कर के मुकदमा लड़ने की सारी व्यवस्था सीख लेता था। मैं अपने बारे में ही बताऊं कि जब मैंने एल० एल० बी० पास किया और उसके बाद तीन साल तक डिस्ट्रिक्ट कोर्ट में वकालत करने की सनद मिली, तो मैं वहां काम करने लगा। अब ऐसा तो नहीं है कि कोई जाते ही मुकदमा

दे देगा । इसलिये मैंने किसी के साथ थोड़े दिन तक काम भी शुरू किया और उसका अनुभव लिया । फिर मैंने छोटे छोटे केस लेना शुरू किया । कोई सौ रुपये का लेनदेन का मुकदमा हुआ, तो उसको ले लिया । इसी तरह से लोगों को धीरे धीरे अनुभव होता जाता है । उस समय तो न बार कौंसिल ऐक्ट था और न यह सन् 1961 का नया कानून था । अगर किसी के पास एल० एल० बी० की सनद हो जाये तो उसके पास मुकदमे आने लगेंगे, अगर यह धारणा है बार कौंसिल की, शासन की या किसी की, तो यह बड़ी गलत धारणा है । पहले उनको अनुभव इसी तरह होता था कि वे पहले डिस्ट्रिक्ट कोर्ट में जाते थे और वहां वे अर्न भी करते थे और लर्न भी करते थे और ये दोनों बातें साथ चलती थीं । अब आपने कर दिया केवल लर्न कीजिए, अर्न मत कीजिए । ऐसी व्यवस्था से उन लोगों को जो कालेज से निकलते हैं बहुत कठिनाई पैदा हो जाती है । इसलिए मैं प्रार्थना करूंगा कि हमारा शासन अच्छा होना चाहिए तो अच्छा रहता है । छोटे वकीलों को कठिनाई होती है । उन लोगों की कठिनाई को ध्यान में रखते हुए, हम चाहते हैं कि बार में आने वाले लोग विद्वान हों, उनका ज्ञान बढ़े । इस दृष्टि से दोनों चीजों का समन्वय करते हुए कुछ ऐसी चीजें निकालनी चाहिए जिससे वे कमाते भी रह सकें, सीख भी सकें और किसी का नुकसान भी न हो और काम सीधा चल सके । कई लोग मैंने देखे हैं जिनके पास डाक्टरी की बड़ी बड़ी सनदें होती हैं, बड़ी बड़ी डिग्रियां होती हैं, लेकिन उनकी प्रैक्टिस नहीं चलती । सिर्फ डिग्री मिलने से काम हो जाता हो, ऐसा मैं मानता नहीं । कई ऐसे देखे जिनके पास कोई सर्टिफिकेट नहीं, डिग्री नहीं, लेकिन उनके पास मरीजों का तांता लगा रहता है । कारण क्या है? कारण यह है कि जिसका जैसा अनुभव होता है और अपना काम करने का तरीका होता है, उसी आधार पर वह चल सकता है और इस दृष्टि से मैं प्रार्थना करूंगा कि जो

नए एल० एल० बी० पास करके कालेजों से निकलते हैं उनके लिए इस व्यवस्था में कुछ परिवर्तन किया जाये । अगर कोई विद्यार्थी एल० एल० बी० करता है और पब्लिक सर्विस कमिशन की ओर से डिमांड निकली जूडीशियल आफीसर की तो एल० एल० बी० पास करके जूडीशियल आफीसर की सर्विस के लिए वह जा सकता है । एल० एल० बी० के तुरन्त बाद, अगर उसका भाग्य अच्छा हो तो जूडीशियल आफीसर के लिए एप्लाइ कर सकता है, लेकिन हमारे यहां पर किसी को वकालत करनी हो तो पहले किसी के पास ट्रेनिंग लेनी होगी और उसके बाद जाकर कहीं वकालत कर सकता है ।

अभी की व्यवस्था के अन्तर्गत डिस्ट्रिक्ट कोर्ट में तीन साल वकालत कर लेने के बाद एडवोकेट बन सकता है । 10 साल बाद वह सुप्रीम कोर्ट में एपीयर हो सकता है । ऐसी परम्पराएं थीं जिनके आधार पर अनुभव भी करते जाते थे और पैसा भी कमाते थे और सारा काम चलता था । पर जो नई परम्परा है इस से जो नए एल०एल०बी० पास कर के आ रहे हैं उन्हें बहुत कठिनाई हो रही है । मध्य प्रदेश में परीक्षाओं की कोई व्यवस्था नहीं की गई । इसलिए विद्यार्थियों के लिए अमेंडमेंट कीजिए कि 1965 तक जिन्होंने परीक्षा पास कर ली है उनको एडवोकेट बनाने की व्यवस्था है । जैसी कि पूर्व में व्यवस्था थी, वैसा किया जाये । प्रान्तों में रूल्स नहीं बनाए, लेक्चर्स देने की व्यवस्था नहीं की गई और आपने बन्धन लगा दिए । पुरानी व्यवस्था से जब आपकी सारी व्यवस्था जम जाये, उसके बाद आप नया कानून लगाइए तों उसमें उतनी कठिनाई नहीं हो सकती जितनी कि वर्तमान में हो रही है । हजारों विद्यार्थी जो एल०एल० बी० पास करके निकले हैं वे कुछ नहीं कर पा रहे हैं । इसकी वजह से सारी जिम्मेदारी पालियामेंट के द्वारा बनाए गए, सोचे या बिना सोचे हुए कानून के ऊपर आ रही है । उनका जीवन दुभर हो रहा है, जिन्होंने कि एल०एल०बी०

[श्री विमलकुमार मन्नालालजी चौरड़िया]  
पास की। यह बहुत गम्भीरता से सोचने की आवश्यकता है कि उन लोगों को, जो नई कोपल है, नए अकुर पैदा हुए हैं, उनको शुरू से ही इतना न दबा दिया जाये जिससे कि उनका उठना ही मुश्किल हो जाये। इसलिए यह अत्यन्त आवश्यक है कि हम यहां इसके बारे में गम्भीरता से सोचें और जिन प्रान्तों में परीक्षा की व्यवस्था, सनद का व्यवस्था, ठीक तरह से नहीं की, उसकी ठीक तरह से व्यवस्था करें, नहीं तो पुरानी परम्परा को ही चलने दें।

अब इस संशोधन में एक नई बात चाहि गई है कि चुनाव का तरीका बदलना चाहिए। यहां जितने भी भाषण हुए उन सब में हमारे मंत्री जी ने जो संशोधन किया है उसका विरोध किया गया है। कोई यह नहीं कहता कि उस परम्परा को बदल दें। मैं अपने मध्य प्रदेश का उदाहरण दे दू। मध्य प्रदेश साढ़े चार यूनिट का बना हुआ है। साढ़े चार इस दृष्टि से कि पुराना मध्य भारत आधा ग्वालियर और आधा इन्दौर था, इसलिए उसको डेढ़ मान कर चलता हूँ और विन्ध्य प्रदेश, भोपाल और महाकौशल। इस दृष्टि से यह जो चार बड़ी यूनिटें हैं इनका बना हुआ मध्य प्रदेश है। जिस रोज आपका यह कानून बन जायेगा, उस रोज जो डोमिनेटिंग जगहों के वकील ज्यादा होंगे, वही के लोग बार कौंसिल में आ सकते हैं, दूसरे नहीं आ सकते। चाहें माना जाये या नहीं, ग्वालियर वाले समझते हैं कि हम बहुत अच्छे हैं, इन्दौर वाले समझते हैं कि हम बहुत अच्छे हैं, महाकौशल के बन्धु समझते हैं कि हमारे वकील साहब ही बहुत अच्छे हैं और भोपाल वाले समझते हैं कि हमारे तो अमुक वकील साहब तो बिल्कुल बार कौंसिल में जाने के काबिल हैं और उस झगड़े में यह होगा कि जिस क्षेत्र के अधिक वकील होंगे, वे ही आ सकेंगे। इससे बहुत कठिनाई होगी। हमारे मंत्री जी ने ऐसा संशोधन देकर और इस प्रकार की परम्परा की व्यवस्था करके सिर्फ अननसेसरीली

झगड़े पैदा किए हैं मेरे पूर्व वक्ता ने राजनीतिक कारण भी बताए। ऐसी स्थिति में प्रार्थना करूंगा कि अभी मंत्री जी को समय है। मैंने अपना संशोधन समय पर पेश कर दिया था और वह सर्कुलेट हो चुका है। मेरी प्रार्थना है कि मंत्री जी स्वयं उसको स्वीकार कर लें, जिससे उनको इस सारे विरोध का सामना न करना पड़े और अगर मंत्री जी स्वीकार न करें तो मैं सदन में प्रार्थना करूंगा, खास तौर से नफीसुल हसन साहब से प्रार्थना करूंगा, क्योंकि वह इस मत के हैं कि हम यह नई परम्परा जो मंत्री जी डालना चाहते हैं उसको काम में न लाने दें और पुरानी जो सिगिल ट्रांसफरिबिल बोट के आधार पर चुनावों की प्रथा थी उसको जारी रखा जाये। हमारे मंत्री जी ने कहा कि इसमें खर्चा ज्यादा होता है। खर्चा कौन सा ज्यादा होता है? खर्चा तो उसमें ज्यादा होता है, पब्लिक एक्सपेंडीचर . . .

THE DEPUTY CHAIRMAN: Mr. Chordia, you have taken nearly twenty minutes

श्री विमलकुमार मन्नालालजी चौरड़िया :

इसका कुछ बन्धन है।

THE DEPUTY CHAIRMAN: You can carry on, but be very relevant. There are a number of other speakers.

श्री विमलकुमार मन्नालालजी चौरड़िया :

अच्छा। तो यह खर्च की जो दलील दी गई वह बेतुकी सी लगती है। यह ठीक बैठती नहीं।

श्री नफीसुल हसन : इसमें खर्च की दलील नहीं दी गई, खर्च की वजह से यह कहा गया कि दो बरस का चुनाव तीन वर्ष का कर दिया जाये। सीधे चुनाव में खर्चा तो और बढ़ेगा।

श्री विमलकुमार मन्नालालजी चौरड़िया : मैं माननीय नफीसुल साहब से प्रार्थना करूंगा कि मैंने माननीय मंत्री जी का भाषण अच्छी तरह से सुना और उस भाषण में इस बात का जिक्र आया कि खर्चा इस में ज्यादा होता है और इस दृष्टि से हम यह चाहते हैं कि प्रपो-



शनल बोटिंग हो और इसलिए हम लाना चाहते हैं। तो यह जो तीन साल का सवाल है, उसके लिए दो मत नहीं हैं। उसका तो प्रश्न ही नहीं है। तीन साल के बजाय चार साल का कर दीजिए, परन्तु परम्परा ऐसी गलत न डालिए जिसके आधार पर एक ही संगठन के, एक ही तरफ के लोगों का बाहुल्य हो सके और दूसरी तरफ के लोगों का प्रतिनिधित्व न हो सके। आज इस परम्परा के आधार पर छोटे छोटे क्षेत्रों के, डिस्ट्रिक्ट कोर्ट के प्लीडर भी बार कौंसिल के सदस्य बन सके। क्यों बन सके ? क्योंकि सिंगिल ट्रांसफररेबिल वोट की व्यवस्था थी। अगर बहुमत के आधार पर हुआ तो न तो डिस्ट्रिक्ट कोर्ट से लोग आ सकते हैं और न ही ऐसे लोग आ सकते हैं जिन्हें आना चाहिए। इसलिए यह जो परम्पराएं माननीय मंत्री जी द्वारा डाली जा रही हैं, इनका मैं बिल्कुल विरोध करता हूं और माननीय सदस्यों से मैं प्रार्थना करूंगा कि इस पर मत देने के पहले गम्भीरता से विचार करें कि जो परम्परा हमारे मंत्री जी डाल रहे हैं वह हमको कितने वर्षों पीछे ले जा रही है और जो परम्परा अभी है वह हमें कितना आगे ले जा सकती है। इस दृष्टि से मंत्री महोदय विचार करेंगे तो ज्यादा अच्छा होगा। मेरी उनसे प्रार्थना है कि जो संशोधन मैंने प्रस्तुत किए हैं उन्हें वे स्वयं स्वीकार कर लें। अगर उनमें कोई शाब्दिक संशोधन करना हो या इस बात का भी प्रश्न हो कि मैंने उन्हें प्रस्तुत किया है, इसलिए स्वीकार नहीं कर सकते तो नया संशोधन प्रस्तुत कर दें और यह परम्परा ठीक कर दें, तो ज्यादा अच्छा होगा।

3 P.M.

SHRI AKBAR ALI KHAN: Madam Deputy Chairman, so far as this Amendment Bill is concerned, except on the point on which my esteemed friend and other friends emphasised regarding the change of the system of voting, there is not much which should be said. But I do feel that some doubt has been raised by my esteemed friend, Dr. P. N. Saprū, and regarding the implementation of

the provisions very serious difficulties have been mentioned by my friend, Mr. Kumaran, and my friend, Mr. Chordia.

[THE VICE-CHAIRMAN (SHRIMATI TARA RAMCHANDRA SATHE in the Chair)]

So far as the application of this Bill to the State of Jammu and Kashmir is concerned—which is for the benefit of the people and the advocates of Jammu and Kashmir—we are all agreed. So far as the question of Goa and Pondicherry is concerned, my friend, Shri Shah, has raised a certain point and I think it is a matter which deserves consideration. I do expect that Pondicherry, Goa, Diu and Daman should also have the benefit of this measure and they should have their Bar Councils. But in the context of the difficulties that we have—for instance, regarding Goa there is a difference of opinion between Maharashtra and Mysore, regarding Daman and Diu there is a difference of opinion . . .

SHRI M. C. SHAH: There is no difference of opinion.

SHRI AKBAR ALI KHAN: If there is no difference of opinion, I do not see any reason why they should be tacked on to the Maharashtra Bar Council, why they should not be tacked on to the Gujarat Bar Council. So I think it is necessary that the Government should look into these things. We do not want to create difficulties. We do not want to revive this problem which in view of this emergency and the situation of war has receded. So, I would say that Government while implementing the Bar Councils Act or this Act should not take up matters which would unnecessarily create difficulties, which would create problems, which at present we do not want to have, except to see that our security measures are tightened up, that our defence activity is strengthened and that on our food front all measures are adopted to make it a success. These are really the problems with

[Shri Akbar Ali Khan.]

which the House and Parliament will have to deal during this session.

The other thing that I would like to say is what I felt when my esteemed friend, Dr. Sapru, spoke and when my friend, Shri Kumaran, spoke. And there is an extreme divergence of views on these two sides. The two great advantages of bringing forward such a Bill was to have one cadre, to do away with *mukhtars*, *vakils*, etc. and that was a great reform. The other benefit was to have an Indian Bar Council. When we have got so many fissiparous tendencies, tendencies to disorganise, there should be measurements, enactments, to foster strength, to foster unity, to foster solidarity. So the credit goes to the Law Ministry, to Shri Ashok Sen and to the Select Committee and to a great extent to my friend, Dr. Sapru, who was a member of the Select Committee and who contributed considerably to the deliberations of the Select Committee.

Now, the idea is that the High Court has brought its control and it is true to a great extent—it has—but the association or membership of the Attorney-General, the Solicitor-General, and in the States the Advocate-General, does give it strength which would be something between the Bar and the Bench. My friend, Shri Kumaran, wants that there should not be an *ex-officio* member. I think we are in the process of growth, we are in the process of development. The complaints that he and my friend, Shri Chordia, made are genuine. Our Bar Councils—or for that matter, even the All-India Bar Council—have not been able to deal with those problems effectively and I fully appreciate that the difficulties of the young lawyers are increased instead of being reduced. I know. Those who have had the privilege of working with Sir Tej Bahadur Sapru or Sir Alladi Krishnaswamy or even with Shri S. Srinivasa Iyengar know what a liberal

and generous treatment the juniors used to receive from them from the educational point of view, from the financial point of view and from the point of view of really giving them a chance to come up. But at present the difficulties have increased. Neither is there such a largeness of heart nor a generous mind. So I would suggest to the Law Ministry to really think over this problem and see that there is in every State Council an arrangement for immediate examination, for their training and for putting them under able seniors. The seniors, even if they do not give, at least should not charge anything from the juniors. I mean, it has come to the knowledge of some of us; that is a very unfortunate position. It may be that there are people who can afford it and do it but normally speaking, 90 per cent of our young lawyers who come out after passing their LL.B. examinations are not in a position to do so. You want that the standard of the Bar should be improved, you want the educational standards to be improved and you want that they should exercise influence in the country. The stalwarts of the freedom movement from the Father of the Nation to Jawaharlal Nehru had all been lawyers. There had been other people also. But you will mostly see lawyers. In the Non-Co-operation Movement days, Motilal Nehru from Allahabad, Srinivasa Iyengar from Madras, C. R. Das from Bengal, such stalwarts had been there, they came out and joined the movement. That was why the liberation struggle, that movement, got a great impetus. So, what I say is this. It is true that this amending Bill has a limited purpose. But when the Bill is before us and when difficulties, apprehensions and honest suspicions come up, I would request the Ministry to send the debate to the different Governments and the Bar Councils including the All-India Bar Council and tell them that these matters have to be attended to, that immediate attention should be given to these matters. Otherwise, I would

like the Government to bring forward an effective and comprehensive measure, a measure which would really deal with all these difficulties and achieve the object which is dear and sacred to all of us—to raise the status of the Bar and to make the profession a useful instrument in the machinery of the new independent India.

Now, so far as the change in the system of voting is concerned, I am very anxious to know what are the reasons for changing this. In so far as they have tried to compensate it—instead of two years they have made it three years—it is right, agreed, so that the rotation instead of 33 per cent it will be 50 per cent; but so far as the single transferable vote is concerned, it is a complicated affair. I know. But as Shri Kumaran and Shri Chordia also said, it gives opportunities to different people, to different views, to different regions, to get represented. Otherwise, these stalwarts who practise in the High Courts, those who have got a very good income, obviously they come into the Council. As very rightly pointed out by Dr. Sapru, even in the districts you will find people of a really very good calibre. Simply because they do not go frequently to the High Court they are ignored. If you give this simple majority, I am sure, then in the Bar Council they will not have any representation. If you adopt a system rejected only four years ago, I think it is something which the Government should very seriously think over before trying to modify it. This is not a political measure, Madam, and it has originated in this House. With your permission, Madam, I would appeal to the hon. Minister to consider and try to plug those sources which are really, instead of improving the situation, deteriorating it.

As regards your wanting to extend time to give further opportunity to those who have come from Pakistan, I know that you are extending the time because the Bar Councils are not

effectively functioning and that is why you are forced to extend it time after time. I agree with all the minor amendments also, but I think these fundamental matters also need to be looked into very seriously. With these words I generally support the Bill.

**SHRI MULKA GOVINDA REDDY** (Mysore): Madam, Vice-Chairman, I want to make some observations on the Advocates (Amendment) Bill, 1965. Some of the provisions are welcome provisions. But some are retrograde which I should oppose very vehemently.

Madam, I am glad that this Advocates (Amendment) Bill, 1965 has been made applicable to the State of Jammu and Kashmir. By making these laws applicable to Jammu and Kashmir, the special status that has been given to Jammu and Kashmir in our Constitution continues to remain so. I would plead with the Minister that he should come forward with a Constitution (Amendment) Bill abolishing article 370 of the Constitution so that Jammu and Kashmir may be treated as any other State in the Union. If necessary, special facilities may be given to Jammu and Kashmir for purposes of development and other advancements.

Madam Vice-Chairman, many Members have already spoken with regard to the system of election that is sought to be changed. The suggestion made by the amendment proposed by the Minister is obnoxious in view of the fact that the first Bar Council of India or the State Bar Councils were constituted on the basis of proportional representation by means of the single transferable vote. The Rajya Sabha is also constituted on that basis. When the first constitution is on the basis of proportional representation, I wonder whether it is proper and legal for the Minister to come forward to change that system and adopt the simple majority system. Though we may appreciate that instead of having elections once in two years, the elec-

[Shri Mulka Govinda Reddy.]

tions may be held once in three years, one-half of the members retiring every third year, I do not understand just because some of the senior advocates failed to get into these Councils why this amendment is proposed. As has been pointed out by some of my predecessors, by denying this proportional representations system you will be denying the right for some of the mofussil lawyers or some of the minority opinion holders to get into these Bar Councils.

Madam Vice-Chairman, I would also like to bring another obnoxious thing that has been done by the Bar Council of India to your notice. In Mysore nearly 400 advocates were enrolled as pleaders on the administrative side by the High Court of Mysore, and later on they were enrolled as advocates by the Mysore State Bar Council. It is true that this practice was in vogue in Mysore while in some other States it was not so with the result that some members of the Bar from other parts of India went to Mysore and got themselves enrolled as pleaders first with the High Court on the administrative side and later on they were enrolled as advocates by the Bar Council of Mysore. It is true that the Bar Council of Mysore got some money out of it, the Bar Council of India accepted the percentage of fees that was collected from the advocates who were enrolled there. Without raising any voice of protest they acquiesced in the process of enrolling these members as advocates and later on just because some of the representatives of some of the Bar Councils of other States complained and just because the Secretary of the Bar Council of India was insistent, they passed an illegal Act disenrolling all the 400 members who were enrolled as advocates by the Mysore Bar Council so much so that they lost 2 to 3 years of practice they already put in as advocates, and 50 per cent. of the fees that was paid as court fee or stamp duty to the Government of Mysore is not likely to be recovered.

The Mysore Government may not refund that amount which they collected as stamp duty. These 400 odd persons are put to so much of inconvenience. They have to incur double expenses for no fault of theirs. It is true that the Mysore High Court in a writ petition said that the Mysore High Court had no power to enrol them as pleaders but the very High Court had enrolled them as pleaders on the administrative side. I could have understood if the Bar Council of India had disenrolled such members who were enrolled as pleaders after the pronouncement of this judgment of the Mysore High Court, but to disenrol all those members that were enrolled as pleaders and then enrolled as advocates by the Bar Council of Mysore is doing a great injustice by them. Today they are allowing the same persons without the qualification that those who have put in this one year term of apprenticeship and who have passed their law degree examination before March 1964 can enrol themselves as advocates. I fail to see the reason why just because they were enrolled as pleaders and later on as advocates by the Bar Council of Mysore they should be disenrolled, and if they are not qualified to enrol themselves as advocate how they can be enrolled as advocates. Today can the Bar Council of Mysore enrol them as advocates if they were disqualified to get themselves enrolled as such? This is a clear injustice and a prejudicial act of the Bar Council of India. If only the matter is referred to the Supreme Court, I am sure the Supreme Court would set aside this dictatorial and prejudicial act or decision of the Bar Council of India. I thought that the Minister while moving this amendment Bill would move another clause by which the Government would enable those members who have been disqualified to continue as advocates and practise in the High Court of Mysore. This is a great injustice. Nearly four hundred members are put to hardship. Human consideration and legal and moral

considerations do require that some justice is done to these unfortunate members. I would like to bring it to the notice of the Minister that there are thousands of cases pending in the High Court and the Supreme Court—particularly writ petitions. Some effective steps should be taken to see that they are disposed of; otherwise the very purpose of the writ petitions would be defeated if for months together these petitions are not disposed of.

Lastly some of the election petitions are still to be disposed of. We are nearing the third general elections. The purpose of filing an election petition will be defeated if the member is allowed to continue, even though he was not qualified to have been elected, as a Member of the Lok Sabha or the State Legislature. We have seen very recently that one of the Deputy Ministers of the Central Government was unseated about a year back by the election tribunal and that has been upheld by the High Court of Andhra Pradesh. It is still open for him to go to the Supreme Court even though leave has been refused by the High Court of Andhra Pradesh. He may seek leave from the Supreme Court and this endless business will go on. There should be some time-limit by which all these election petitions are disposed of in a very expeditious manner. In the Statement of Objects and Reasons the Minister has stated that such of those advocates who do not want to become members of the Bar Council of Maharashtra or Madras, for them, the *status quo* will continue to remain, and the position will not be disturbed. I want some clarification. When we have made this law applicable to all advocates and to all States, why a special treatment is sought to be given to such of those who do not want to become members of the Bar Councils to which they are being proposed to be attached and till recently they were not members of this or any other Bar Council.

SHRI S. SUPAKAR (Orissa): Madam Vice-Chairman, the Advocates Act was passed in 1961 and after that this is perhaps the third amendment that has been brought before the Parliament. In the previous amendment one of the most important clauses was to allow the fresh graduates to enrol themselves without the necessity of becoming apprentices under certain senior advocates. I expected that a similar clause would have found place in this amendment also because we find that although the original intention of asking the fresh graduates of universities who had passed law to become apprentices for one year under some senior advocates was done from the best of intentions, still the nebulousness of such a requirement was much more rigorous than its rigorousness because although it required the graduates to take training for one year, it is still uncertain till now as to what the fresh graduates are required to learn during the one-year period of training. At least several High Courts including our own High Court of Orissa probably have not been able to make up their mind as to what are the subjects in which the young graduates are to be trained, who are to train them and how to ensure the effectiveness of the apprenticeship for a period of one year under certain senior advocates, etc. It is high time that either the Government or the Bar Council of the Supreme Court gave a direct indication as to the subjects to be taught, the manner in which the training is to be imparted and the persons who are to give the training. In the mofussil courts usually persons with ten years' practice are rather too busy, most of them, to devote any time for the fresh graduates to give them any serious training worth the name. Therefore it is high time for the Government to think over this matter again to see if this requirement of apprenticeship should not be postponed for a little indefinite period till the Government of India and the Bar Council of the Supreme Court put their heads toge-

[Shri. S. Supakar.]

ther and solve the problems which have made it rather difficult or impossible to have a hard and fast rule to give a concrete shape to the training that is required of the graduates who are to become the apprentices. It is rather a little incongruous that persons who had absolutely no legal training worth the name, the Mukhtars for example, who had no civil court practice, who had only criminal practice and some of them not very adequate practice at that and fresh young men without much education are enrolled without any requirements of previous apprenticeship whereas students who have undergone lectures for a period of 2 or 3 years, who have passed examinations after rigorous tests are required to undergo a period of apprenticeship for one year. I think this looks a little anomalous and I believe that either provision may be made in this Bill or a fresh amendment may be brought before the Houses before long. The Minister should give thought to the desirability and the necessity of making suitable amendments, not to insist on the apprenticeship till a definite and concrete shape is given to the requirements of apprenticeship by the fresh graduates.

SHRI D. L. SEN GUPTA (West Bengal): This is a very short Bill but brought in quick succession. The last one was brought in 1964. Nothing has happened since 1964 to bring an amending Bill excepting the fact that in 1964 or in 1961 the Minister piloting the Bill, or the Government as such, was not conscious of the situation that might develop. In other words they did not pay any heed to what we said on those occasions. I congratulate the hon. Minister even for the belated wisdom in extending the Advocates Act to Jammu and Kashmir, to Goa, Daman and Diu, and to Pondicherry. This is all the more reasonable and appreciated in the context of the recent Indo-Pakistan conflict, which makes India all the more united, and when

the integrity of India should all the more be demonstrated. But are not these places parts of India? Can India be thought of without these places? That is the question which I pose before this House for the hon. Minister to reply. What was the position in 1964 or 1961 when they kept these places outside the purview of the Advocates Act? They were as much of India as, say, Bombay, Madras or Calcutta. So there was no sense in making special provisions for or excluding those places from the purview of the Advocates Act. Since belated justice is going to be done now, I congratulate them even for their belated wisdom.

Coming to the other part of it, namely, going back to direct elections abandoning election by proportional representation, why they accepted proportional representation in place of direct election by simple majority, which was provided in section 5 of the Indian Bar Councils Act, 1926 was because they thought, at that time, that this proportional representation was possibly a more scientific process and that all interests should be given representation—not by majority. At that time I remember that I was very critical of the provision and said that there should be no such reservation arrangements for the senior advocates, because senior advocates have been in the profession for longer years, and if by their wisdom, by their experience and by their number or popularity they cannot get the votes, they have no business to be in the Bar Councils. But that was not heeded. Now, because they are not getting their rightful place, the purpose of the Bill was not served. So they are going back again to the old system of election by a majority, as was the case under section 5 of the Bar Councils Act, 1926. So here also the Government have admitted that they were wrong, that what they wanted to do at that time was not the correct thing and that our criticism was very correct; it is an admission of that indirectly.

Now coming to the question of the Pakistan lawyers coming to India because of certain unhappy circumstances there, because of the communal riots in 1964 and all that, provision is going to be made so that they may also be enrolled as advocates under the Advocates Act and can practise here. That is a very good and a very commendable provision and there cannot be any difference of opinion on that.

A question has been raised, and very rightly, whether there is anything to be improved upon what has been placed in the Bill now before us, and on that the speaker just preceding me has referred to the state of things arising out of articleship of a new-comer into the profession. I am a lawyer myself and I know that I learnt nothing when I was an article, and that is also the opinion of many of my friends in the profession, people who have also become very successful in the profession, that nothing can be learnt and that nothing is being learnt while one is an article. What happens? To be very frank, an article is supposed to stay from 10 A.M. to 5 P.M. in the court room. He does not do that. He simply goes and signs; sometimes he signs three days after. About his senior, where is the time for the senior—if he is really a worthy senior—to devote any time for the article? So, if any man has to learn, he has got to learn when he joins the Bar, and there is nothing to learn just by reading the case law, and a case law can be well appreciated when a case is in the hands of a lawyer. Now a lawyer joining the Bar at 23 or 24 is quite a mature man, and at that age a Sub-divisional Officer will control a Sub-division; at that particular young age, under British days a man became a District Magistrate holding charge of a district. Why not here at 23 or 24 a man should be supposed to be sufficiently mature as to understand his responsibility to his client and himself and take the help of his senior, engage a senior if he is not

sufficiently competent to help his client. What useful purpose is being served by keeping this one year's time or two years' time, as the case might be, for articleship, when there is no system, there is no machinery and no apparatus for imparting any practical training in law. So far as the Calcutta University is concerned, it has a three year course for L.L.B.; in Bhagalpur it is a two-year course and in Ranchi also it is a two-years course; I understand, even a private student can pass the law examinations of Bhagalpur and Ranchi. But so far as Calcutta University is concerned, or perhaps some other universities are concerned, moot courts are held and thereby, practical training is actually given to the students from the very beginning, and in all the stages, Preliminary, Intermediate and Final Classes. But during this period of articleship, I say the time is really wasted. Of course the purpose was a laudable one, was a good purpose; it was intended that during this period they will learn practically. But that is not being done, and when that is not being done, I wonder why it should continue,—whether any useful purpose will be served by keeping it there even now.

Another question is there for me to touch. I see that the lawyers, be they mukhtars or revenue agents or pleaders, if they do not opt for being enrolled as advocates under the Advocates Act their old rights are preserved; nobody is being compelled to be enrolled as advocates; that is very good, but if that man is enrolled as an advocate why his old rights cannot be preserved, I do not see any point there. So I am making my submissions with reference to the mukhtars. Now the mukhtars stand sureties. We all know that after passing the School Final or the Matriculation or the Entrance Examination and after undergoing a short course in criminal law and passing the mukhtarship examination, people became mukhtars. They argue a case; they take evidence, cross-examine

[Shri D. L. Sen Gupta.]

witnesses, and at the same time they stand sureties for the clients. Now, when the man is enrolled as an advocate, under this Act, he cannot be allowed to stand surety for his client, and that is a grievance of the Mukhtars. There is now scope for being enrolled as advocate, but if he avails of this scope, then he loses this right shall I say, to stand surety for his client. It is a matter to be considered if the difficulties of the Mukhtars who cannot take this risk of becoming advocates for not being permitted to stand surety for their clients, should be removed, in the interest of shaping and all-India Bar.

There is Madam, a serious matter which I feel I should bring before this House before I sit, and to which I should also draw the special attention of the hon. Minister, and that is with reference to the provision in the Rules of the Indian Bar Council where they have made a provision that no lawyer shall appear on behalf of a union or an organisation of which he is an office-bearer. Now, a lawyer has to function. If this provision means that the lawyer shall appear as a lawyer, I can understand that position. But I cannot understand the position that because he is a lawyer, therefore, he cannot appear when the individual is a member of that union or organisation. This is inherently a right of every man to appear in person in connection with his case. When it is an individual, then the individual defends his case or argues his case in person. Similarly when the individual is a member of a committee or body or organisation, then as a member of that body or organisation, he can appear. But now the Bar Council of India has made a provision that a member of the legal profession, and advocate, shall not appear in or on behalf of a union or organisation of which he is an office-bearer. That was never the case before and that is too hard a provision. It will make it impossible for the lawyers to participate in

social and political organisations as members of committees or organisations. They will have to become for all purposes, lawyers and lawyers alone, and they cannot be chairmen or secretaries of trade unions. They cannot become Presidents or other office-bearers of any other organisations, say, of cooperatives and so on. If they are such office-bearers, then they are debarred from appearing before any court. I think this was never the object of the Advocates Act and the Bar Council of India is exceeding their limit and they are not conscious of the difficulties that are going to be created. So I request the hon. Minister to take note of this, and considering that the Bar Council of India has pointed out difficulties and considers it necessary to have amendments, I hope they will consider this also which, according to this House, is irrational, which according to this House is harsh and inconsistent and not contemplated in the Advocates Act.

Therefore, Madam, I support this Bill and request the hon. Minister to take note of the difficulties that I have indicated and to bring a fresh amendment hereafter.

श्री के० सी० बघेल (मध्य प्रदेश):

माननीय उपाध्यक्ष महोदय, इस एडवोकेट बिल के सम्बन्ध में मैं थोड़े से अपने विचार रखना चाहूंगा। मैं मध्य प्रदेश से आ रहा हूँ और वहाँ वकीलों की जमात में मुझको जाने का मौका मिला। कुछ जूनियर वकील मेरे पास आए और राज्य सभा के एक सदस्य के नाते उन्होंने अपनी डिफिकल्टीज़ मुझको बताई। मुझे कुछ ऐसा मालूम हुआ कि उन के ऊपर एक मामले में अन्याय हो रहा है। जहाँ तक इस बिल का एम्स एंड आब्जेक्ट्स का सवाल है, मैं पूरी तरह से उन से सहमत हूँ और उनकी मैं तारीफ़ करता हूँ। जम्मू और काश्मीर में, दमन, दीव, गोआ पांडिचेरी इन सब जगहों में एक साथ नियम लागू किए जाये तो यह बड़ी खुशी की बात है और इसके लिए



मिनिस्ट्री धन्यवाद की पात्र है, यद्यपि यह चीज अभी आ रही है। लेकिन जो चीज विचार करने लायक है, हमारे विधि मंत्री महोदय ध्यान देंगे, वह यह है कि नए वकीलों पर जो परीक्षा की बात लादी गई है, वह ठीक ढंग से नहीं रखी गई है। या तो वकीलों के लिए जो बी० ए० एल०एल०बी, होते हैं, बी० एल०एल०बी० की परीक्षा में ही यह परीक्षा जोड़ दी जाय और परीक्षा पास करने के बाद वकील हो जाने के बाद उनके ऊपर जो यह लादी जाती है कि थ्योरी के रूप में वे जा करके कही लेक्चर्स ग्रहण करें और जो दस साल के वकील हों उनके पीछे लगें। यह ठीक नहीं है। इसमें एक चीज और सामने आ रही है। यह कहा गया है कि मध्य प्रदेश में यह परीक्षा अक्टूबर में होगी जब कि गुजरात में जनवरी में होगी। इस तरह से फर्क पड़ जाता है। कहीं एक साल के बाद बवालीफार्ड करेगा, कहीं डेढ़ साल के बाद करेगा। ये दोनों चीजें ठीक नहीं बैठतीं। फिर यह भी देखा जाता है, कि जैसा कि हमारे भाई चौरडिया जी ने पहले कहा, कि वकील हो जाने के बाद यह आशा की जाती है कि लड़का कमाएगा। जहां तक अमीर लड़कों का हाल है, उन के लिए कोई दिक्कत नहीं है, लेकिन जो गरीब लोग वकालत पास करेंगे उन को तो वहां कोई रेमूनरेशन मिलने वाला नहीं है। जो मुंशी को मिलता है, वह भी नहीं मिलने वाला है। ऐसे हाल में उनकी हालत बहुत गम्भीर हो जाती है। यह चीज ठीक नहीं है।

यहां यह कहा गया है कि उनको लेक्चर्स के लिए जबलपुर जाना पड़ेगा। आजकल महंगाई के दिन हैं और महंगाई के दिनों में उन को एक जगह से दूसरी जगह जाना पड़े तो यह बहुत दिक्कत की बात होगी। आजकल हमारे यहां खासकर मध्य प्रदेश में अकाल का वक्त है। वकीलों को इस बात की बड़ी शिकायत है कि वे जा नहीं सकेंगे और उनको तकलीफ होगी। अभी मैं सुन रहा था अपने वकील दोस्तों के अनुभव और उनका यह कहना ठीक

है कि सीनियर वकीलों के पास जूनियर वकील कुछ ज्यादा सीखते नहीं। अगर सीनियर वकील सचमुच में अपने काम में दक्षचित्त हो तो उनको फुरसत नहीं मिलती सिखाने की। अगर सिखाने बैठें तो फिर अपना काम क्या कर सकेंगे। इसलिए जो कुछ भी सीखन होता है वह प्रशिक्षण और ट्रेनिंग में ही होता है और सीनियर वकील के पीछे उनको लगा २० में कुछ बहुत ज्यादा परपज सर्व होता है ऐतः मुझे नहीं मालूम होता।

एक बात यह देखने में आती है कि एल०एल०बी० पास कर लेने के बाद वह सब जज तो हो सकता है, लेकिन वह प्रैक्टिस नहीं कर सकता है। ऐसी स्थिति अब आने वाली है। इस एनोमेली को जल्दी से जल्दी दूर करने की कोशिश की जानी चाहिए। किसी भी आदमी को शिक्षा पा लेने के बाद अपना व्यवसाय चुनने का, कोई भी पेशा चुनने का अधिकार है। यह उसका फंडामेंटल राइट है, अधिकार है। आप उसको शिक्षा पा लेने दीजिए। उसके बाद छेड़छाड़ मत करिए। अगर ऐसा होता है तो यह उनके हक पर कुठाराघात होता है, उनके हक का हनन होता है। तो इन तमाम बातों को देखते हुए मेरा एक सुझाव है कि जब तक सारे भारतवर्ष के प्रान्तों में एक समान कानून लागू न हो जाय, जब तक प्रशिक्षण की, ट्रेनिंग की जो व्यवस्था है वह तमाम जगह लागू न हो जाय तब तक इसे न किया जाय और आगे आने वाले एक या दो साल के बाद यह लागू किया जाय। अभी सब जगह एक समान नहीं है। जब तक वह एक समान नहीं हो तब तक यह नहीं होना चाहिये। आशा है कि हमारी सरकार मेरे सजेशन पर ध्यान देगी।

شری عبدالغنی (پنجاب) : مہدم -

میں اس بل کا سواکت کرتا ہوں کہوں کہ اس میں کچھ خوبیاں ہیں۔ میں کہنا چاہتا ہوں کہ آج سے اٹھارہ

[شری عبدالغنی]

ہمس پہلے جو قدم اٹھایا جانا چاہئے تھا یا جب ہم نے ودھان بٹایا تھا کم سے کم اس وقت جو قدم اٹھایا جانا چاہئے تھا وہ اب اس گورنمنٹ کو سوجھ رہا ہے۔ ہم کانگریس سرکار کو اس کے لئے ہوشی قرار دیتا ہوں کہ کشمیر کے مسئلہ میں اس نے غلطی کی جو ہمارا تھا اور جس میں لٹھڑے آئے تھے اور اس کے متعلق ہم نے بڑی آواز اٹھائی لیکن اس کانگریس سرکار کے کان پر چون تک نہ رینگئی اور آخر وہ دن آیا جب کہ ہمارے بہادر جوانوں نے اپنی طاقت سے دیہی کے نام کو روشن کیا اور اس سرکار کو سوجھا کہ اب جو قانون ہیں وہ کشمیر پر بھی اسی طرح سے لاگو کرے جس طرح سے باقی دیہی پر ہیں۔ پھر بھی یہ مبارک ہے کہوں کہ اگر صبح کا بھولا شام کو گھر آتا ہے تو اس کو بھولا نہیں کہتا چاہئے یہی کہتا چاہئے کہ کہیں تھوڑی اس میں سستی آگئی۔ میں چہرآن ہوتا ہوں کہ آج ایڈروکھٹس کے ہمارے میں ہماری سرکار بہت کچھ کرنا چاہتی ہے۔ یہ سچ ہے کہ جنگ آزادی میں ایڈروکھٹس سب سے پیش پیش رہے اور جتنے ہمارے نہتے تھے وہ کوئی منشی تھے کوئی پلہڈر تھے کوئی بڑھستہ تھے کوئی ایڈروکھٹ تھے۔ زیادہ ان کا چرچا تھا لیکن اگر ہمارے الیہیل ڈپٹی منسٹر یہاں شہرہ ف لے جائیں یہ تو ہماری کھچھٹل ہے۔ ہمارے دیہی کی

کھچھٹل ہے اور ڈسٹرکٹ کورٹس میں جا کر ایڈروکھٹس کی حالت دیکھیں تو وہ پائوں کے کہ کس بڑی حالت میں وہ بیٹھے ہیں۔ کچھ چھپروں کے نیچے ہیں اور کچھ اس طرح ہیں جیسے کہ کوئی غریب سے غریب بیوی ایسی رڈی پوزیشن میں نہیں رہنا چاہتا اور اگر کہیں بارہی میں مسٹر راو چلے جائیں اور کسی وکیل یا ایڈروکھٹ تک پہنچنا چاہیں تو وہ دیکھیں گے کہ ایڈروکھٹ بھی بھٹکا ہوا ہے اس کا موکل بھی بھٹکا ہوا ہے اور بہت بڑی حالت ہے۔ اگر اپنی کھچھٹل میں ایڈروکھٹس کے ساتھ یہ برتاو ہے اور ان کے لئے سرکار نے ایسا انتظام کیا ہے تو میں نہیں جانتا کہ باقی وہ کیا اپنا انتظام کریں گے۔

ایڈروکھٹس کے چٹاؤ کی بات آئی۔ میں چہرآن ہوتا ہوں کہ جب پرائم منسٹر سے لے کر تمام منسٹروں تک نے سب نام زندگیاں اٹھ ہاتھ میں لے رکھی ہیں تو مسٹر۔ کہتے کہ کوئی چٹاؤ کی ضرورت نہیں ہے۔ ہم یہیں سے بیٹھے بیٹھے نام زد کر دو گے۔ ہم اچھے آدمیوں کو جانتے ہیں اور جن کو چاہیں گے کہ دیہی گے۔ وہ زیادہ اچھا ہوتا ہے مقابلہ اس کے کہ ایسا چٹاؤ ہو جو کہ آپ اس میں لائے ہیں۔ جنرل الیکشن کے چٹاؤ کی الجھن اتنی تھی تو

پھر اس میں کہوں انھیں پھدا کی جاتی ہے کہ ایک اسٹیمپ بھر کی کانسٹی ٹیوٹنسی بنالوے اور یہ توقع کرنے کے وہ بیچارے رکلا چاہے کتنے ہی لائق کہوں نہ ہوں بار کونسل میں آسکیں - آل انڈیا بار کونسل میں آسکیں یا اسٹیمپ بار کونسل میں آسکیں - مجھے تو یہ بہت مشکل دکھائی دیتا ہے - اس میں کافی اڑچلیں انہیں کی اور اس پر پھر سے انہیں غور کرنا چاہئے -

اب میں بھی یہ کہتا ہوں کہ ماں باپ بڑی مشکل سے اپنے بچوں کو بی - اے - ایل ایل بی - تک پہنچاتے ہیں اور اس کو اس تک پہنچانے کے بعد پھر ان سے یہ توقع کی جائے کہ وہ ماں باپ ان کا بوجھا اور برداشت کریں اور وہ پھر ٹریننگ لیں تو یہ بہت غلط ہے - جیسے ہم نے ایگریکچر میں انجینئری میں سائنس یا دوسرے اور سبجکٹس میں کہا ہے کہ ان کو پورا پورا تجربہ ہونا چاہئے ان کو سبجکٹس کی پوری دیکھ بھال کرنی چاہئے اسی طرح سے یہ جو بی - اے - ایل ایل بی ہیں ان کے لئے ہدایت کریں کہ وہ ساتھ ہی ساتھ پریکٹیکل تجربہ بھی حاصل کریں - ان کو آپ سرکاری وکیلوں کے ساتھ لگانے ان کو موقع دینے کے جو گورنمنٹ کی طرف سے پبلک پروزیکیوٹر ہیں ان کے یہاں وہ

انہیں کہونکہ ان کو تو کوئی فکر ہو گی نہیں - ان کو کوئی فیس لینی نہیں - عدالت میں سرکار سے تعلق رکھنے والے کر جاتا ہے اور انہیں کچھ نہ کچھ تجربہ ہو جائے گا - ان کے اوپر ایک سال کی پابندی اور نہ لگانے - اگر آپ چاہتے ہیں کہ ہمارے ججز کو چاہے وہ سہریم کورٹ کے ججز ہوں چاہے وہ ہائی کورٹ کے ججز ہوں چاہے وہ ڈسٹرکٹ کورٹس کے ججز ہوں یا تحصیلوں اور سب قریبوں کے ججز ہوں ان کو ہمارے "وکیلوں سے مدد ملے تو پھر ضروری بات ہے کہ وہ ایڈووکیٹس کے وقار کو بڑھائیں اور ایڈووکیٹس کو زیادہ سے زیادہ انفریج کریں اور وہاں سے ہی کچھ ایسی مدد دیں جس سے کہ وہ نکلتے ہی زیادہ سے زیادہ خدمت گزار ثابت ہو سکیں - اپنے دیس میں عصب حالات ہے - ہم چاہتے ہیں کہ ایک ہی وقت میں آل راونڈ سب باتیں آجائیں - سوشلزم بھی ایک وقت میں آجائے - لیڈ ریفرم بھی آجائے - ہر طرح کے سدھانت جو ہیں ان کو ہم بڑے بھاری دواں بن کر یہاں بٹھکر ایک وقت میں لانا چاہتے ہیں - آپ دیکھتے ہیں کہ ڈاکٹر ہیں بیس بیس سال تک تجربہ کرتے ہیں اور ایڈووکیٹ ہیں لیکن انہی دور تک نہیں پہنچ سکتے جتنا کہ جو آئی - اے - ایس کا

[شری عبدالغنی]

استودنٹ ہے وہ پہنچ سکتا ہے۔ ایک ہی چھلانگ میں وہ اتنی تلخوۃ لیتے ہیں جتنی کہ زندگی بھر ڈاکٹری میں گزارنے پر بھی کوئی ڈاکٹر نہیں لے سکتا۔ اس کی برابری میں نہیں آ سکتا تو اگر مسٹر راؤ چاہتے ہیں کہ ججز کے لئے وہ اور آسانی پیدا کریں اور وہ زیادہ سے زیادہ انصاف کر سکیں اور اپنے ایڈووکیٹس کی قابلیت بڑھائیں جن کی کہ وہ وکالت کرتے ہیں تو میں عرض کروں گا کہ تھوڑا اس امپلیمینٹ کو وہ بدلہ لیں۔ ایک سال کے لئے پہلے ہی ان کو تجربہ حاصل کرنا ضروری ہو اور تجربہ حاصل کرنے کے لئے جب کچھ کرنا ہو تو سرکار ان کو مدد دے۔ سرکار ان کو کچھ وظیفہ دے تاکہ وہ سرکاری وکیل کے ساتھ پورے طور پر جگہ جگہ پر پبلک پروٹیکوٹر [ہوں ان کے اسٹنڈٹ ہوں۔ ان کے ساتھ مل کر کچھ مہینوں کے لئے سہکتے رہیں اور ان کے مقدسے بلانیں تو میں سمجھتا ہوں کہ اس سے کچھ فائدہ ہونے والا ہے۔ ورنہ یہاں سرکاری پارٹی کی تعداد زیادہ ہے وہاں ہو جائے گا اور یہ پاس ہو جائے گا۔ باوجود اس کے کہ سبھی نے اپنے وچار جڑ میں وہ پورکت کئے ہیں۔ ان دونوں وشیوں میں بعضی یہ الیکشن کا جو معاملہ ہے اور یہ ٹریڈنگ کا جو معاملہ ہے کم سے کم ان میں تو سبھی متفق ہیں۔ اگر مسٹر

اگر ی متفق ہو جائیں تو مسئلہ آسان ہو جائے گا ورنہ یہاں سے تو پاس ہو ہی جائے گا چاہے اپوزیشن چلایا کرے کوئی چلایا کرے۔ میرا تجربہ یہ ہے کہ تین برس سے میں چلتا رہا یہاں راجیہ سبھا کے دو دیوار بھی شہادت دیں گے یہاں کے ٹرنیبل۔ دسیہ بھی اس کی شہادت دیں گے یہاں کا ریکارڈ بھی میری تصدیق کرے گا کہ میں نے بار بار کہا کہ اس سرکار کی کانگریس سرکار کی عقل کو کیا ہو گیا ہے کہوں اس پر تالا لگ گیا ہے کہ یہ جو قانون لاتی ہے اس میں کشمیر کو الگ دکھاتی ہے۔ کہا گیا کہ ودھان میں کچھ ایسا تھا تو اب شکر ہے کہ وہ ودھان نے بھی اپنے راستہ کو چھوڑ دیا ان کے دل نے بھی راستہ دیکھ لیا ورنہ میڈم! یہ ناممکن تھا کہ پاکستان کبھی ہی جرات کر سکتا اگر شروع ہی میں جب ہماری فوجیں بڑھ رہی تھیں اس وقت ہی ہماری سرکار نے اگر سہز فائر نہ مانا ہوتا تو آج شاید پاکستان کو یہ جرات نہ ہوتی اور نہ ہمارے بہادر جوان اپنے خون سے ہولی کھیلتے۔ وہ فسطی یہ ہوئی کہ شروع سے جو بات ہمیں کہنی چاہئے تھی کہ گجرات اور کشمیر میں کوئی فرق نہیں ہے کیرل اور کشمیر میں کوئی فرق نہیں ہے وہ ہم نے نہیں کہا

تھا ہم خود دیکھا مہن تھے۔ آج  
خدا کا شکر ہے کہ ہمارا دماغ صاف  
ہے اور خدا کرے یہ صاف رہے۔  
کشمیر کے بارے میں اگر اب بھی  
کوئی کمیاں رہ گئی ہیں اور اب  
بھی وہاں جو قانون لاگو نہیں ہیں  
ان کو اس شاستری سرکار کو فوراً  
ہی تمام کے تمام لاگو کر دینا چاہئے اور  
جہاں جہاں دشمن نے ہماری زمین  
پر قبضہ کیا ہوا ہے وہاں وہاں بغیر  
کسی لحاظ کے جب بھی ہمیں  
موقعہ ملے کارروائی کرنی چاہئے اور  
ہمیں وہ زمین واپس چھیننی چاہئے  
ہمیں وہ ہمت کے ساتھ چھیننی ہے  
ایسے موقعہ پر اگر کانگریس آئندہ آنے  
والے الیکشن کے لئے بالکل اپنی کریڈٹ  
بلانا چاہتی ہے تو یہ سبقت نہیں ہے۔  
4 P.M. سارے دیش میں چاہے  
ایوزیشن کی کوئی پارٹیاں ہوں سب  
یہ مل کر یہ جنگ لڑی۔ جوانوں  
کے پیچھے جیسے کانگریس کا ایک  
ایک سپاہی کھڑا ہوا ویسے ہی ہو  
فرد نے ان کا ساتھ دیا۔ سرکار کا  
ساتھ دیا۔ دیش کا ساتھ دیا اس  
لئے کوشش یہ کی جائے کہ اب اس  
سارے ایکٹ کو کشمیر کے مسئلہ  
میں؟ جیسے مسٹر راؤ نے اپنی  
بڑی مہربانی سے کشمیر کو شامل  
کیا اور وہاں اس کو لاگو کر دے  
ہیں کہ وہاں کے ایڈووکیٹشن بھی  
یہاں آ سکیں۔ تو چاہے جو بھی

کمیاں ہوں وہ سب کی سب دور  
کی جائیں وہ ایک ساہی دیش  
ہو ایک سی ہی بات ہو۔ یہ بھی  
کوئی بات ہے مہدم کہ کشمیر  
میں کوئی ایک فرلانگ زمین نہیں  
خرید سکتا ایک مولا زمین خرید  
نہیں سکتا۔ ایک بیگم زمین خرید  
نہیں سکتا۔ یہ کوئی دیش ہے۔  
دیش تو ایک ہے اور دیش جب  
ایک ہے تو پھر اس سرکار کی بودھی  
درست ہونی چاہئے۔ میں پھر مسٹر  
راؤ کو مبارکباد دیتا ہوں کہ انہوں  
نے یہ مصیبت قدم اٹھایا ہے اور امید  
کرنا ہوں کہ وہ جتنی جو کمیاں  
ہیں اس امینڈنگ بل میں ان  
پر تھنڈے دل سے چار کریں گے۔  
تھینک یو۔

†[श्री अब्दुल गनी (पंजाब): मैडम, मैं इस बिल का स्वागत करता हूँ क्योंकि इस में कुछ खूबियाँ हैं। मैं कहना चाहता हूँ कि आज से अठारह वर्ष पहले जो कदम उठाया जाना चाहिए था जब हमने विधान बनाया था कम से कम उस वक्त जो कदम उठाया जाना चाहिए था वह अब इस गवर्नमेंट को सूझ रहा है। मैं कांग्रेस सरकार को इसके लिए दोषी करार देता हूँ कि कश्मीर के मामले में उसने गलती की जो हमारा था और जिस में लुटेरे आए थे और उस के मुतल्लिक हम ने बड़ी आवाज उठाई लेकिन इस कांग्रेस सरकार के कान पर जूँ तक न रेरी और आखिर वह दिन आया जब कि हमारे बहादुर जवानों ने अपनी ताकत से देश के नाम को रोशन किया और इस सरकार को सूझा कि अब जो कानून हैं वह कश्मीर पर भी उसी तरह से लागू करे जिस तरह से बाकी देश पर हैं। फिर भी यह मुबारक

[श्री अब्दुल ग़नी]

है क्योंकि अगर सुबह का भूला शाम को घर आता है तो उसको भूला नहीं कहना चाहिये यही कहना चाहिए कि कहीं थोड़ी उस में सुस्ती आ गई। मैं हैरान होता हूँ कि आज एडवोकेट्स के बारे में हमारी सरकार बहुत कुछ करना चाहती है। यह सच है कि जंगे-आजादी में एडवोकेट्स सब से पेश पेश रहे और जितने हमारे नेता हैं वे कोई मुंशी थे, कोई प्लीडर थे, कोई बैरिस्टर थे, कोई एडवोकेट थे। ज्यादा उनका चर्चा था लेकिन अगर हमारे आनरेबल डिप्टी मिनिस्टर यहां तशरीफ ले जाएं यह तो हमारी केपिटल है। हमारे देश की केपिटल है और डिस्ट्रिक्ट कोर्ट्स में जाकर एडवोकेट्स की हालत देखे तो वे पाएंगे कि किस बुरी हालत में वे बैठे हैं। कुछ छप्परो के नोचे हैं और कुछ इस तरह से ये हैं जैसे कि कोई गरीब से गरीब भी ऐसी रद्दी पोजीशन में नहीं रहना चाहता और अगर कहीं बारिश में मिस्टर राव चले जाएं और किसी वकील या एडवोकेट तक पहुंचना चाहें तो वह देखेंगे कि एडवोकेट भी भीगा हुआ है, उसका माकल भी भीगा हुआ है और बहुत बुरी हालत है। अगर अपनी केपिटल में एडवोकेट्स के साथ यह वर्ताव है और उनके लिए सरकार ने ऐसा इंतजाम किया है तो मैं नहीं जानता कि बाकी जगह वह क्या अपना इंतजाम करेंगे।

एडवोकेट्स के चुनाव की बात आई। मैं हैरान होता हूँ कि जब प्राइम मिनिस्टर से लेकर तमाम मिनिस्ट्रो तक ने सब नाम जदगिया अपने हाथ में ले रखी है तो मिस्टर राव क्यों पीछ रहे। वह कहते कि कोई चुनाव की जरूरत नहीं है। हम यही से बैठ बैठे नामजद कर देंगे। हम अच्छे आदमियों को जानते हैं और जिनको चाहेंगे कर देंगे। वह ज्यादा अच्छा होता बमुकाबले उस के कि ऐसा चुनाव हो जो कि आप इस में लाए हैं। जनरल एलेक्शन के चुनाव की उलझन इतनी थी तो फिर इस में क्यों उलझन पैदा की जाती है कि एक स्टेट भर की कास्टिट्यूएन्सी बनाइये और यह तबक्को करिए कि वे बेचारे बुकला

चाहे कितने ही लायक क्यों न हों बार कौन्सिल में आ सकें। आल इन्डिया बार कौंसिल में आ सकें या स्टेट बार कौंसिल में आ सकें। मुझे तो यह बहुत मुश्किल दिखाई देता है। इसमें काफ़ी अड़चनें आएंगी और इसपर फिर से उन्हें गौर करना चाहिये।

अब मैं भी यह कहता हूँ कि मां बाप बड़ी मुश्किल से अपने बच्चों को बी० ए० एल० एल० बी० तक पहुंचाते हैं और उस को उस तक पहुंचाने के बाद फिर उन से यह तबक्को की जाए कि वे मां बाप उन का बोझा और वरदास्त करें और फिर ट्रेनिंग लें तो यह बहुत शलत है। जैसे हम ने एग्जिकल चर में, इंजीनियरी में, साइंस में, या दूसरे और सब्जेक्ट्स में कहा है कि उनको पूरा पूरा तजुर्बा होना चाहिए उन को सब्जेक्ट्स की पूरी देख भाल करनी चाहिए। उसी तरह से यह जो बी० ए० एल० बी है उन के लिए हिदायत करें कि वह साथ ही साथ प्रेक्टिकल तजुर्बा भी हासिल करें। उनको आप सरकारी वकीलो के साथ लगाइये उनको मौका दीजिए कि जो गवर्नमेंट की तरफ से पब्लिक प्रोसिक्यूटर्स हैं उनके यहां वे आएँ क्योंकि उनको तो कोई फिकर होगी नहीं उनको कोई फीस लेनी नहीं। अदालत में सरकार से तन्ख्वाह लेकर जाना है और उन्हें कुछ न कुछ तजुर्बा हो जाएगा। उनके ऊपर एक साल की पाबन्दी और न लगाइये। अगर आप चाहते हैं कि हमारे जजेज को चाहे वे सुप्रीम कोर्ट के जजेज हों, चाहे वे हाई कोर्ट के जजेज हो चाहे वे डिस्ट्रिक्ट कोर्ट्स के जजेज हों या तहसीलो और सब-डिविज़नों के जजेज हों उन को हमारे वकीलो से मदद मिले तो फिर जरूरी बात है कि वह एडवोकेट्स के वकार को बढ़ाएं, एडवोकेट्स को ज्यादा से ज्यादा एनकरेज करे और वहा से ही कुछ ऐसी मदद दें जिस से कि वे निकलते ही ज्यादा से ज्यादा खिदमतगुजार साबित हो सकें। अपने देश में अजीब हालत है। हम चाहते हैं कि एक ही वक्त में आल राउंड सब बातें आ जाएं। सोशलिज्म भी एक ही वक्त में आ

जाए लैण्ड रिफार्म भी आजाए । हर तरह की सिद्धांत जो हैं उनको हम बड़े भारी विद्वान बन कर यहां बैठकर एक वक्त में लाना चाहते हैं । आप देखते हैं कि डाक्टर हैबीस-बीस साल तक तजुर्बा करते हैं और एडवोकेट हैं लेकिन इतनी दूर तक नहीं पहुंच सकते जितना कि जो आई. ए० एस० का स्टूडेंट है वह पहुंच सकता है । एक ही छलांग में वह इतनी तन्ख्वाह लेते हैं जितनी कि जिन्दगी भर डाक्टरी में गुज़ारने पर भी कोई डाक्टर नहीं ले सकता । उसकी बराबरी में नहीं आ सकता । तो अगर मिस्टर राव चाहते हैं कि जब के लिए वह और आसान पैदा करें और वे ज्यादा से ज्यादा इन्साफ कर सकें और अपने एडवोकेट्स की काबलियत बढ़ाएं जिनकी कि वे कालात करते हैं तो मैं अर्ज करूंगा कि थोड़ा इस अमेन्डमेंट को वह बदलें । एक साल के लिए पहले ही उनको तजुर्बा हासिल करना जरूरी हो और तजुर्बा हासिल करने के लिए जब कुछ करना हो तो सरकार उनको मदद दे । सरकार उनको कुछ वजीफा दे ताकि वे सरकारी वकील के साथ पूरे तौर पर जगह जगह पर पब्लिक-प्रोसिक््यूटर्स हों, उन के असिस्टेंट हों । उन के साथ मिल कर कुछ महीनों के लिए सीखते रहें और उनके मुकदमे बनाएं तो मैं समझता हूं कि इससे कुछ फायदा होने वाला है । वरना यहां सरकारी पार्टी की तादाद ज्यादा है बिप हो जाएगा और यह पास हो जाएगा । बावजूद इसके कि सभी ने अपने विचार जो हैं वह प्रकट किए हैं । इन दोनों विषयों में यानी यह एलेक्शन का जो मामला है और यह ट्रेनिंग का जो मामला है कम से कम उन में तो सभी मुत्तफिक हैं । अगर मिस्टर राव भी मुत्तफिक हो जाएं तो मसला आसान हो जाएगा, वरना यहां से तो पास हो ही जाएगा चाहे अपोजीशन चिल्लाया करे कोई चिल्लाया करे । मेरा तजुर्बा यह है कि तीन बरस से मैं चिल्लाता रहा यहां राज्य सभा के दरोबीवार भी शहादत देंगे, यहां के आन-रेबल सदस्य भी इस की शहादत देंगे, यहां का रकार्ड भी मेरी तसदीक करेगा कि मैंने

बार बार कहा कि इस सरकार की, कांग्रेस सरकार की अक्ल को क्या हो गया है, क्यों उस पर ताला लग गया है कि यह जो कानून लाती है उस में कश्मीर को अलग दिखलाती है । कहा गया है कि विधान में कुछ ऐसा था तो अब शुफ है कि वह विधान ने भी अपने रास्ते को छोड़ दिया, उनके लिए रास्ता खोल दिया और उनके दिल ने भी रास्ता देख लिया वरना मैडम, यह नामुमकिन था कि पाकिस्तान व भी भी जुरंत कर सकता अगर शुरू ही में जब हमारी फौजें बढ़ रही थी उस वक्त ही हमारी सरकार ने और सीज फायर न माना होता तो आज शायद पाकिस्तान को यह जुरंत न होती और न हमारे बहादुर जवान अपने खून से होली खेलने । वह गलती यह हुई कि शुरू से जो बात हमें कलनी चाहिए थी कि गुजरात और कश्मीर में कोई फर्क नहीं है, केरल और कश्मीर में कोई फर्क नहीं है वह हमने नहीं कहा था । हम खुद दुविधा में थे । आज खुदा का शुफ है कि हमारा दिमाग साफ है और खुदा करे यह साफ रहे । कश्मीर के बारे में अगर अब भी कोई कमिया रह गई हैं और अब भी वहां जो कानून लागू नहीं है उनको शास्त्री सरकार को फौरन ही तमाम तमाम लागू कर देना चाहिए और जहां जहां दुश्मन ने हमारी जमीन पर कब्जा किया हुआ है वहां वहां बगैर किसी लिहाज के जब भी हमें मौका मिले कार्यवाही करनी चाहिए और हमें वह जमीन वापिस छीननी चाहिए, हमें वह हिम्मत के साथ छीननी है । ऐसे मौके पर अगर कांग्रेस आइन्दा आने वाले इलेक्शन के लिए बिल्कुल अपनी क्रेडिट बनाना चाहती है तो यह सजता नहीं है । सारे 4 P. M. देश में चहे अपोजीशन की कोई पार्टियां हों, सब ने मिल कर यह जंग लड़ी । जवानों के पीछे जैसे कांग्रेस का एक एक मिपाही खड़ा हुआ, वैसे ही हर फर्द ने उनका साथ दिया । सरकार का साथ दिया । देश का साथ दिया इसलिए कोशिश यह की जाए कि अब इस सारे एक्ट को कश्मीर के मसले में, जैसे मिस्टर राव ने अपनी बड़ी मेहरबानी से कश्मीर को शामिल किया और

[श्री अब्दुल गनी]

वहां वह उसका लागू कर रहे हैं कि वहां के एडवोकेट्स भी यहां आ सकें। तो चाहे जो भी कमियां हों, वह सब की सब दूर की जाए। वह एक सा हो देश हो, एक सा हा बात हो। यह भी कोई बात है, मंडम, कि काश्मीर में कोई एक फर्लांग जमीन नहीं खरीद सकता, एक भरला जमीन खरीद नहीं सकता, एक बोघा जमीन नहीं खरीद सकता। यह कोई देश है? देश तो एक है और जब एक है तो फिर इस सरकार की बुद्धि दुरुस्त होनी चाहिये। मैं फिर मिस्टर राव को मुबारकबाद देता हूं कि उन्होंने यह सही कदम उठाया है और उम्मीद करता हूँ कि वह जितनी कमियां हैं इस अमेन्डिंग बिल में उन पर ठंडे दिल से विचार करेंगे। थैंक यू।]

SHRI T. CHENGALVAROYAN (Madras): Madam Vice-Chairman, I cannot resist the temptation of participating in the discussion on the Advocates (Amendment) Bill. I should certainly have expected the hon. Law Minister, after having worked the Advocates Act of 1961, to have come across with certain necessities for amending the provisions in the light of experience gathered after 1961. I have very great pleasure to offer my respectful felicitations to the Law Ministry for having extended the provisions and the scope of the Advocates Act to the State of Jammu and Kashmir. Apart from the inherent goodness of such a provision, I attach considerable political significance to such an extension of the provisions of the Advocates Act. In other words it comes very naturally and it is necessary in the sequence of our declaration that Jammu and Kashmir is a part and parcel of our great Bharat, Indian Union. I, therefore, very wholeheartedly lend my full support to the provision extending the Advocates Act to Jammu and Kashmir.

In the second place, there has been some criticism with regard to the question of the change of the electoral pattern in respect of Bar Councils.

We realise that in the 1961 Act the constitution of the Bar Council was based upon the well-known principle and policy that is always underlying a single transferable vote for the purpose of election, but have we realised, and I beg of this House to realise, that the practice of law is not an exercise of trade? In the practice of law, there are no other considerations, either minority considerations or political considerations, or even any other sectional consideration that should necessarily find itself safeguarding the method of single transferable vote. We know sufficiently in our political experience that the single transferable vote is a device, is a method, is a safeguard and is a necessary weapon, if I may use that word, in the hands of minority representatives. In other words, in some predominating context by certain constitutional provisions the weaker sections—weaker because of their economic status, weaker because of their number, weaker because of their ideology—may struggle to get representation and it is a salutary principle to provide for the single transferable vote. But it has to be realised that later on when the Indian Bar Council as well as the Bar Councils in the respective States, have to fare, I feel there is no place for any such insistence on the single transferable vote.

I may just bring to the notice of this great House that the danger, if not the defect, of the single transferable vote is that the doyens of the legal profession in a particular area could not get into the election contest, because various considerations crept into the election contest to the Bar Council. I speak from personal knowledge that in the Madras Bar Council election—I am ashamed to own before this great House—the communal cancer has crept in, District loyalties pay a great part and I may go to the extent of saying that even political affiliation has begun to colour the elections to the Bar Council. I consider that it will be a fateful day for the Bar Council and the



future of the legal profession in our country if the Bar Council is to be coloured, is to be constituted, is to be composed, is to be conducted by such extraneous, irrelevant and, if I may say so, very diabolical factions. I, therefore, submit for the consideration of this House that this provision for dispensing with the single transferable vote and providing for a majority vote is very important in the sense that if a person who desires to be elected to the Bar Council could not command the majority support of his co-members in the profession, I think, he must revise his notion of contesting such an election. I, therefore, feel that this provision of a majority vote is very salutary indeed, trying to avoid any abuse or misuse of the otherwise good provision of the single transferable vote.

My support is also with regard to the rotational election to the Bar Councils. Instead of having them every two years, we are now going to have it in the third year and that is important in the context of the continuity of the work of the Bar Council. But may I draw the very kind attention of my esteemed friend, the Deputy Law Minister, to the fact that there is a lacuna in this provision? By changing the rotational period from two years to three years, elections which should be held in the month of November could not be held because of this provision in the Advocates (Amendment) Bill. In fact, in the Madras Bar Council elections, by virtue of this, rotational election as existing under the 1961 Act should have been notified in the first week of October and the election should have been over by October end. But because of the pendency of this Advocates (Amendment) Bill the Bar Council in Madras took counsel amongst themselves and wanted to postpone the election, and, in fact, they have postponed the election. What is the consequence? A writ has been filed, for a writ of prohibition prohibiting the Bar Council from holding the election even in November or so. Now, I request the hon. Law Minister to examine the transitory

nature of this provision of introducing a different rotational period in the election to the Bar Council and, if need be, to come forward with a suitable modification so that any interregnum that may be caused on account of this new provision may be avoided.

I may also say something with regard to certain criticism that has been levelled in the course of discussion on this Bill. My esteemed friend, Mr. Chordia, complained of the inadequacy of legal education. I think he conveniently forgets that legal education is decided between two authorities, one by the Universities of the respective States and the other, the post-collegiate instruction in Law, has to be decided by the Bar Council. Therefore, within the scope and ambit of the Advocates Bill I am not very much sure whether we can import such considerations as to what should be the design and pattern of legal education. However, we are sure that the Bar Councils and the Universities in the States will take note of the views that have been expressed in this House, namely, that much desires to be reformed in the pattern of legal education. I am sure that the Universities of different States will take note of this fact.

My esteemed comrade, Mr. Kumaran, complained of the enormously high cost that the legal profession demands. I am rather very embarrassed to answer that criticism because I may have been found guilty of the same charge. But may I respectfully point out to him that the cost that is now incurred in engaging a legal practitioner is not comparable at all to the enormous interest or stake that is involved and, therefore, any consideration of the enormity of the legal cost may not at all deteriorate the standard of legal assistance?

[THE DEPUTY-CHAIRMAN in the Chair]

My friend, Mr. Kumaran, also complained of the delay in disposals. It is true, Madam Deputy Chairman,

[Shri T. Chengalvaroyan.]

that there is some delay in disposals by the very nature of the legal proceedings, the elaborate procedure that the Procedure Code prescribes, and to a certain extent the parties are themselves in *pari delicto* in regard to this delay. We ask for adjournments; we ask for passover; we ask for time; and all these are done not because the Courts want to delay, not because the Judges want to delay, but the parties themselves desire that there must be a certain amount of time-lag between their institution and getting their decision. In one word, Madam, if a party obtains stay, then he goes to sleep and a long sleep indeed, and he does not bother to see the lawyer even to get the case ready. All that he wanted was stay and he got it. If there could be any provision by which the duration of the stay could be limited, for example, for a period of one month or for a period of two or three months, then I am sure the complaint with regard to laws' delays particularly in disposal of writs and election petitions would be completely removed.

There is one criticism, Madam Deputy Chairman, which was levelled against, and that is the requirement of apprenticeship before enrolment as an advocate. I am rather very conservative at least in this respect when I say, that apprenticeship is very necessary. I am told, Madam Deputy Chairman, that there is only one field of human activity where apprenticeship need not be necessary and is not necessary and is not considered necessary, and that is in politics. But in all other cases, Madam, I may be excused if I say that there is requirement of an apprenticeship period. My friend was complaining what is it that you learn during the apprenticeship period. It is good to be an apprentice. If I have learnt anything of law, Madam, I learned, it only during the period of nine months when I sat under my master the senior advocate. If I am today successful at the Bar, it is because of the

training, almost grinding effect of the training that the senior advocate gave to us. But, Madam, I may be excused if I am a little autobiographic. I have got ten learned juniors with me and I must confess that because they do not have that apprenticeship, I have no use for them, nor am I useful to them. Therefore, I feel that this House will wholeheartedly support this provision which requires a period of apprenticeship. If I can have my own way, I am sure I may not drag the Law Minister in that way, the period of apprenticeship should be not one year; if necessary, it must be two years. Otherwise the quality of the legal training and the sublimity of the legal profession will be very much lowered. I have great pleasure, therefore, in giving wholehearted support to the provisions of this Bill particularly with regard to its extension to Jammu and Kashmir and with regard to the rotational period being fixed at three years and also with regard to the majority vote being the decisive factor. Lastly, with reference to the question of apprenticeship, this will have a very good, salutary effect indeed.

With these words, I have great pleasure in supporting the Bill.

SHRI JAGANATH RAO: Madam Deputy Chairman, I am grateful to the hon. Members who have taken part in the debate and who by and large have supported the measure. Several objections have been raised to some of the provisions, *viz.*, one regarding the need for training which Mr. Chordia has raised, and the last speaker, Mr. Chengalvaroyan, has mentioned the necessity for training for law graduates. Even though the course of a law degree is made three years by universities, still practical training would be necessary because a law graduate after coming out of the portals of the university has to know the procedure in the courts, watch how cases are being conducted by senior lawyers who have grown old in the profession by experience, so that he could learn by observation.

which will give him good experience when he himself stands on his own legs. Madam, it has also been expressed by many of the hon. Members that the various State Bar Councils have not made arrangements for training of these law graduates though they have passed from the universities three years ago. It is true that there has been some delay; why some delay, there has been great delay on the part of the State Bar Councils in not making adequate arrangements for training and conducting apprenticeship examination. But I may inform the House that all the State Bar Councils have now made arrangements for imparting necessary lectures and training and the holding of the apprenticeship examination. The examination by and large is going to be in 1966 except perhaps in the case of Orissa where it is going to be in the last week of November 1965. Several representations have been received by the Law Ministry from these law graduates from the various States and also some Ministers have written that these law graduates may be exempted from sitting at the examination and undergoing training. The matter has been referred to the Bar Council of India which is likely to meet in the first week of this month and I hope exemption would be given to such hard cases.

Madam, serious objection has been levelled by almost all Members, except the last speaker, about dropping the existing system of election by proportional representation by single transferable vote and having recourse to election by simple majority vote. But the arguments advanced by them do not stand to reason. Mr. Govinda Reddy compares the election to the Bar Council with the election to the Rajya Sabha. But he forgets the fact that the Rajya Sabha is the Council of States, and every State in the Union of India has to be represented in the Council. Unless proportional representation is resorted to, small States may not have representation at all. Therefore, the States' interests

have to be safeguarded. That is why this principle of election has to be adopted. Then some Members referred to representation of minorities and some groups or areas or districts. Election to the Bar Council is not done on that basis. The entire number of advocates form the electorate. These advocates elect twenty or fifteen members to the Bar Council, as the case may be. There are no territorial constituencies fixed for the Bar Council, nor any special provision for vested interests such as communal representation or linguistic representation or political representation. That is not the basis of election to the Bar Council. Therefore, the arguments advanced do not appeal to me.

The argument which weighed with the Government in bringing forward this amendment is that senior advocates are not getting elected. Where a group of advocates, when this system is in existence, vote for a single man and omit to vote for the other nineteen seats, it becomes difficult for an advocate who does not do that canvassing or lobbying here and there to get elected. Therefore, senior advocates are not getting elected. The Bar Council should consist of members who have grown old in the profession and their immense knowledge and experience would be available to the profession at large. That was the object with which this amending Bill has been introduced. There are points in favour of election by proportional representation and also points in favour of direct election. We thought that the balance of convenience would lie in taking resort to direct election. But I find that almost all Members who have taken part in the debate want that the existing system should be continued. I may agree on this point that we may give further trial to the existing system of representation for some more years. I can understand if it is said that only two elections have taken place after the passing of the Act in 1961, one in 1961 and the other in 1963, and therefore let us have some more elections on the

[Shri Jaganath Rao.] existing basis and see how it works. If the difficulties are perpetuated, then we may come forward with an amending Bill. That argument would appeal to me. On that basis, I may inform the House that I am responsive and I am inclined to accept the amendment moved by Shri Chordia.

Then another objection has been taken in regard to clause 7 which seeks to introduce an enabling provision in respect of a disciplinary committee which consists of three members, two elected from among the members of the All-India Bar Council and one taken from outside. It so happens that these three members never meet, the result being that the disciplinary proceedings are delayed indefinitely. We thought that an enabling provision should be introduced so that if any one of them was present, he could continue the proceedings, so that . .

SHRI NAFISUL HASAN: Even one?

SHRI JAGANATH RAO: He can continue the proceedings because these proceedings are of a quasi-judicial nature and the fate of the advocate is involved. Power is given to the Bar Council to make rules under Section 49F. It is open to them to say that unless at least two persons are present, the disciplinary proceedings should not be proceeded with. Therefore . . .

SHRI AKBAR ALI KHAN: This amendment was not necessary it should have been done by the rules.

SHRI JAGANATH RAO: It is necessary because a doubt was felt whether such a quasi-judicial power could be left to the rule-making power of the Indian Bar Councils. Therefore, we thought that an enabling provision might be introduced in the Act itself, leaving it to the respective Bar Councils to make the rules under Section 49F. The inten-

tion was never to say that only one member should sit on the committee. It may be that only one member may be present, the others may not be present at all stages of an enquiry, viz., filing statements or recording evidence. That could be done. Where the final decision is taken, in fairness to the party and in the interests of natural justice, all the three members who constitute the committee should be present. Therefore, Madam, under Section 49F power is given to the State Bar Council to frame the necessary rules. It is only an enabling provision. Government are not prepared to say that even one member out of three could take a final decision.

The other objections . . .

SHRI NAFISUL HASAN: What will be the position till the rules are framed by the Indian Bar Council?

SHRI JAGANATH RAO: They will have to make, otherwise the committee cannot be constituted. A disciplinary committee is constituted by the Bar Council.

SHRI NAFISUL HASAN: We are passing the Bill. Suppose by the time that it is brought into force, the Indian Bar Council does not make the rules required under Section 49F, what will be the position ?

SHRI JAGANATH RAO: The disciplinary committees are appointed under the rules made under Section 49F. If the rules are not made, no disciplinary committee can be constituted. This clause only seeks to say that the proceedings are not vitiated or invalidated by reason of the fact that only one member was present on a particular occasion. That is all it says because we recognise the principle; these are proceedings of a quasi-judicial nature. Therefore, a statutory provision has to be made enabling the Indian Bar Councils to make the necessary rules and I am sure that Indian Bar Councils would not say

that one member could decide the issue, one out of three.

SHRI NAFISUL HASAN: The Indian Bar Council will make them on this subject.

SHRI JAGANATH RAO: That is right; on this subject the Bar Council of India would frame the rules. It was felt that these proceedings being of a quasi-judicial nature, unless a provision in the Act was itself made, even the rule-making power or authority cannot take the place of law. That was the reason.

Madam, there are other points which have been raised, which are not really relevant or germane to the amending Bill before the House. And by and large, I think I have answered the main and major objections raised by hon. Members.

SHRI MULKA GOVINDA REDDY: What about my point?

SHRI JAGANATH RAO: It is outside the scope of the Bill.

SHRI AKBAR ALI KHAN: We are thankful to the Minister and the Ministry for accepting the more or less unanimous opinion of the House that the system of proportional representation should be continued.

THE DEPUTY CHAIRMAN: The question is:

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

*The motion was adopted.*

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

*Clause 2 was added to the Bill.*

*Clause 3—Amendment of section 3*

SHRI V. M. CHORDIA: Madam, I move:

1. "That at page 2, lines 30 to 32, be deleted."

*The question was proposed.*

श्री विमलकुमार मन्नालालजी चौरडिया :  
उपसभापति महोदया, इसके बारे में विशेष . . .

SHRI JAGANATH RAO: It is accepted.

THE DEPUTY CHAIRMAN: That is all right. The Minister has already accepted it.

श्री विमलकुमार मन्नालालजी चौरडिया :  
वही तो कह रहा हूँ कि इसके लिये मैं मंत्री महोदय को धन्यवाद दे दूँ कि उन्होंने बड़ी इनायत की कि कम से कम इतना तो उन्होंने मान लिया, नहीं तो अगर वे फालतू की ज़िद करते तो इससे बड़ी कठिनाई होती ।

THE DEPUTY CHAIRMAN: The question is:

1. "That at page 2, lines 30 to 32, be deleted."

*The motion was adopted.*

THE DEPUTY CHAIRMAN: 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.*

*Clauses 4 to 6 were added to the Bill.*

*Clause 7—Amendment of section 42.*

SHRI V. M. CHORDIA: Madam, I move:

2. "That at page 3, after line 61, the following proviso be inserted, namely:—

[Shri V. M. Chordia.]

'Provided that in the absence of the Chairman, the members present elect from amongst themselves a Chairman to conduct the business of the day'."

उपसमापति महोदया, यह समस्या ऐसी हो सकती है कि जब एक ही आदमी वहां पर हो, तो कौन चेयरमैन हो, कौन किस को चुने? हम जब इस में इनको नमाई ला रहे हैं, इलास्टिसिटी ला रहे हैं कि अगर एक आदमी हो, वह कांडकट कर सके सारी प्रोसीडिंग्स, तो मैं चाहूंगा कि हम वहां पर सदस्यों की संख्या बढ़ा दें प्रौर कम से कम दो आदमी वहां पर उपस्थित हों और दो आदमियों की उपस्थिति में यह काम चले और उन दो आदमियों में से एक चेयरमैन बन कर वह सारा काम करे। केवल एक आदमी के भरोसे सारा काम छोड़ देना उचित नहीं है। यदि हम उस डिसिप्लिनरी कमेटी को वन मैम्बर कमेटी मान कर सब बातों से छुट्टी कर लें, तो बात दूसरी है, अन्यथा यह अत्यन्त आवश्यक है कि हम सदस्यों की संख्या कुछ बढ़ा कर यह बन्धन जरूर लगायें कि कम से कम दो आदमी वहां पर उपस्थित रहें और उन में से एक आदमी चेयरमैन बन कर सारा काम करे। जब हम एक डिसिप्लिनरी कमेटी बना रहे हैं और उस के सामने जब इम्पाटेंट प्रश्न आयें या अगर किसी ने प्रोटेक्शनल, मिसकांडकट किया हो, उसका मामला अये तो वह ठीक तरह से उस पर विचार तो कर सके। अभी शिकायत यह होती है कि जिन की जिन लोगों में दिलचस्पी होती है, वही उनके मामले में भाग लेना चाहते हैं या कुछ को रिक्वेस्ट कर के या किसी और तरह से भाग लेने के लिए प्रेरित किया जाता है और फिर वही लोग जाकर के उनका निर्णय करते हैं। ऐसी स्थिति में इस विचार से कि ठीक तरह से न्याय हो सके, यह आवश्यक है कि सदस्यों की संख्या बढ़ाई जाये और कम से कम दो आदमियों की प्रिजेंस वहां पर रहे और वे निर्णय करें। इसी दृष्टि से मह

संशोधन लाया गया है और आशा है कि मंत्री जी इसे स्वीकार करेंगे।

*The question was proposed.*

SHRI JAGANATH RAO: Madam, I oppose the amendment. As I have already stated in my reply to the main debate, this provision is only an enabling one which says—

"Notwithstanding the absence of the Chairman or any member of a disciplinary committee on a date fixed for the hearing of a case before it, the disciplinary committee may, if it so thinks fit, hold or continue the proceedings on the date so fixed and no order made by the disciplinary committee in any such proceeding shall be invalid merely by reason of the absence of the Chairman or member thereof on any such date".

It is only an enabling provision so that the proceedings are not vitiated. Under Section 49F of the Advocates Act, as I have already stated, the Bar Council of India is empowered to make rules regulating the procedure to be followed by the disciplinary committee of a State Bar Council. It is also open to the Bar Council to say that unless two members are there, no proceedings could be initiated or a final decision taken. Therefore, the rule-making power is given to it it is only as enabling provision. As I said earlier, a doubt had been felt that the disciplinary proceedings being of a quasi-judicial nature, there should be a provision made in the Statute itself, which would enable the committee to function in some cases or instances where the Chairman is absent, and the rule-making power is given to the Bar Council under Section 49F. Therefore no amendment, according to me, is necessary.

THE DEPUTY CHAIRMAN: The question is:

2. "That at page 3, after line 31, the following proviso be inserted, namely:—

'Provided that in the absence of the Chairman, the members

present elect from amongst themselves, a Chairman to conduct the business of the day."

*The motion was negatived.*

THE DEPUTY CHAIRMAN: The question is:

"That clause 7 stand part of the Bill."

*The motion was adopted.*

*Clause 7 was added to the Bill.*

*Clauses 8 to 10 were added to the Bill.*

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

SHRI JAGANATH RAO: Madam, I move:

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

*The question was put and the motion was adopted.*

#### THE BANARAS HINDU UNIVERSITY (AMENDMENT) BILL, 1964

THE MINISTER OF EDUCATION (SHRI M. C. CHAGLA): Madam Deputy Chairman, I move:

"That the Bill further to amend the Banaras Hindu University Act, 1915, as reported by the Joint Committee of the Houses, be taken into consideration."

Madam, the Bill has emerged from the Select Committee with some very important and radical changes and, I think, altogether in a better shape than it was when it was introduced. I should briefly point out the main changes that the Select Committee has effected in this Bill.

The first change is that the offices of Pro-Chancellor, and Pro-Vice-Chancellor have been abolished and the

office of Rector, who was the Governor of Uttar Pradesh and was designated as Rector, is also abolished. The second is that the designation of the Treasurer has been changed to Finance Officer. The third is that in place of the post of Pro-Vice-Chancellor, a new post of Rector has been created, which shall be whole-time and salaried. The fourth change is that the composition of the Committee constituted for selection of Vice-Chancellor has been changed. In the draft Bill, the proposal was that it should comprise of two representatives of the Executive Council and a nominee of the Visitor. Now it will consist of two nominees of the Court and a nominee of the Visitor who shall also be the Chairman. The Vice-Chancellor will now not be eligible for appointment to a second term of five years. The two important changes are that the two nominees will not be appointed by the Executive Council but by the Court, and that the office of the Vice-Chancellor will be for five years and he will not be eligible for reappointment.

The next change is that the Standing Committee of the Academic Council has been restored. The Standing Committee was abolished according to the Bill which, was introduced.

The provision that the Court shall not interfere with the Executive Council in the day to day administration of the University has been deleted. The Committee has left it to be regulated by convention. The Committee felt that there should not be a statutory provision to this effect. But, except in special circumstances, the Court will not interfere with the day to day administration of the Executive Council, particularly so as the Court will not meet very often.

Then, the University has been given the power to affiliate colleges and institutions within a radius of 15 miles. Madam, this is a very controversial provision. When the Bill was brought in, the intention was to maintain the residential character of the Banaras