

serve on the said Joint Committee, namely—

- 1 Rajkumari Amrit Kaur
- 2 Shri Jairamdas Daulatram
- 3 Shri A C Gilbert
4. Shrimati Jahanara Jaipal Singh
- 5 Shri Dayaldas Kurre
6. Shri Bansi Lal
7. Shri A. D. Mani
8. Shrimati Uma Nehru
9. Shri Mulka Govinda Reddy
10. Shri M. H. Samuel
11. Shri M. C. Shah
- 12 Shri Awadeshwar Prasad Sinha
13. Shri P A. Solomon
- 14 Shri Thomas Srinivasan
15. Shri A. M. Tariq."

The motion was adopted.

THE ADVOCATES (THIRD AMENDMENT) BILL, 1962

THE DEPUTY MINISTER IN THE MINISTRY OF LAW (SHRI BIBU DHENDRA MISRA). Sir, on behalf of Shri A K Sen, I beg to move

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

Sir, the amending Bill is very simple in nature, and I am sure it will receive the approbation of all sections of the House. I will only narrate the background. Under the Advocates Act what has been provided is that any graduate who has passed the Law examination has to take an examination prescribed by the Bar Council concerned and has to pass that examination before he could be enrolled as an advocate. And there was an exception to it that this would not apply to all those people who had passed before February, 1962, because it was thought that the Bar Councils would not have come

into existence and would not have framed the rules by then, and, therefore, they were all exempted. But after that law was passed, it was found that though the Bar Councils had been formed the rules had not been framed, as a result of which the graduates who passed after February, 1962, could neither come under the excluded category, nor were there any rules which entitled them to appear for any examination or to undergo any training. Therefore, great hardship was experienced by all the students. We thought that the Bar Councils would frame the rules in time. But that was not done for some reason or other, and again, though some Bar Councils framed the rules, they had to get the concurrence of the Bar Council of India, which met only on July 16 and July 18. Now, there were a good many representations; in fact many Members of Parliament were interested and they discussed and they said that the date should be extended. Mr Sheel Bhadra Yajee, a Member of this House, and some Communist friends of the other House, Mr. S. M. Banerjee and others came and said that this date should be extended. Therefore, in order to meet the situation, so that the student mass may not be in trouble, the Government decided that the extension should be granted—the extension at present is granted only up to February, 1962—up to February, 1963 so that, in the meantime, the Bar Councils may frame rules, and those rules will be applicable only to graduates who pass the Law examination after 1963. This is the main purpose of this amendment. From our experience also it has been seen that the Bar Councils in some cases have not framed rules in proper time. It was thought necessary that the rule making power should not be taken away and that the Government should be entitled to frame rules in consultation with the All India Bar Council in case State Bar Councils do not frame rules. In regard to the new insertion here, seeking to give Government that power, it has been categorically stated that they will operate only so long as the State Bar Councils

[Shri Bibudhendra Misra]
have not framed rules and the moment State Bar Councils frame rules, the rules framed by the Government would go automatically by means of a notification of the Government. These are the two main amendments that have been sought to be incorporated.

There is another minor amendment to section 58 of the principal Act. There were some lawyers in Manipur and Tripura who were practising by virtue of a Sanad, but they were not covered by the Legal Practitioners Act. It has, therefore, been said that all those people who were entitled to practise under any other law in any court should be allowed to continue their practice. That minor amendment has been made to section 58.

It may appear strange that within the course of two sessions Government has come with two amendments. We came with the second amendment during the last session and we have come with the third amendment now, but this has been done with the sole object of seeing that injustice is not done to the student community because for some reason or the other the Bar Councils were not able to frame the rules.

The question was proposed.

श्री गीलभद्र यात्री (बिहार) : माननीय बाइस चैयरमैन महोदय, मैं इस बिल का स्वागत करता हूँ तथा अभ्यर्थन करता हूँ। गत बार जब ऐडवोकेट्स अमेंडमेंट बिल आया था तो उसी समय मैंने ला मिनिस्टर से कहा था कि इस तरह का अमेंडमेंट लाया जाय जिससे पंजाब और दिल्ली युनिवर्सिटीज के जो लाॅ ग्रेज्युएट्स हैं और जिन्होंने २८ फरवरी, १९६२, के बाद पास किया है, उनका उसमें शुमार हो जाय। उस पर लाॅ मिनिस्टर में यह फरमाया था कि स्टेट बार कौंसिल जल्दी से जल्दी रूल बनायेगी और उसके बाद जो बार कौंसिल आफ इंडिया है उसकी स्वाकृति लेकर जल्दी से जल्दी जो लाॅ ग्रेज्युएट्स हैं वे उसमें ले लिये जायेंगे

बड़े खेद की बात है कि कि अब तक स्टेट बार कौंसिल ने रूल भी नहीं बनाया और जिस तरह की मनोवृत्ति कहीं कहीं बार कौंसिल की है उससे आइन्दा भी हमको अपेक्षा होता है कि यह काम जल्दी हो सकेगा। यह ठीक है कि गवर्नमेंट ने रूल बनाने की पावर इस सदन से और उस सदन से ले ली है और अब वह दिक्कत और कठिनाई नहीं आयेगी। हमारे डिप्टी लाॅ मिनिस्टर ने भी कहा कि बहुत देरी हो गई थी, इसलिए मजबूरी थी और इस तरह का अमेंडमेंट लाने की इतनी जल्दी जरूरत पड़ी। तो अब २८ फरवरी, १९६३ तक सिर्फ पंजाब और दिल्ली के लाॅ ग्रेज्युएट्स को ही नहीं बल्कि इस दौरान में सारे हिन्दुस्तान में जो लाॅ ग्रेज्युएट्स होंगे उनका भी सुधार किया जायेगा। इसके साथ साथ अविपक्ष में भी जो हमारे लाॅ ग्रेज्युएट्स होंगे उनकी सुविधा के लिए भी जो इस तरह का संशोधन इस बिल के द्वारा किया गया है उसके अनुसार यदि स्टेट बार कौंसिल का उस तरह का रूल नहीं बनाती है तो सरकार ने, लाॅ मिनिस्टर ने इस तरह का अधिकार ले लिया है कि आवश्यक रूल बना कर जो हमारे लाॅ ग्रेज्युएट्स हो जायेंगे उनको इसमें शुमार किया जायगा

मैं लाॅ मिनिस्टर से एक बात पूछना चाहता हूँ कि सब जगह—चाहे कोई इजीनियर हो, चाहे कोई डाक्टर हो—जो जिसका ग्रेज्युएट हो जाता है वह उसी वक्त इजीनियर भी हो जाता है और डाक्टर भी हो जाता है, लेकिन लाॅ ग्रेज्युएट्स के लिये यह ट्रेनिंग की व्यवस्था क्यों रखी गई है? वैसे तो उनकी ट्रेनिंग होती ही है। यदि कोई जूनियर वकील होता है तो सीनियर वकील के यहाँ बैठ करके उसकी ट्रेनिंग होती है। लेकिन विचार करने की यह बात है कि रूल बनाने की पावर आपने ले ली है, किन्तु उसके बरतने में जो बार कौंसिल के लोग हैं वे लाॅ ग्रेज्युएट्स के साथ कैसा व्यवहार करते हैं और जो लाॅ ग्रेज्युएट्स उनके पास आते हैं उनको वे किस

तरह से दुतकारते हैं। हो सकता है कि बहुत से जो लॉ ग्रेजुएट हो जायेंगे, उन लॉ ग्रेजुएट्स को जिस तरह से ट्रेनिंग दे करके पास किया जायेगा और वे वर्कल बन पायेंगे, उसमें दिक्कत हो। इसलिये सरकार ने ठीक ही किया है कि उसने अपने हाथ में रूल बनाने का अधिकार ले लिया है। लेकिन जिस तरह से इंजीनियरी पास करने के बाद एक व्यक्ति इंजीनियर हो जाता है या डाक्टरों को पास करने के बाद एक व्यक्ति डाक्टर हो जाता है, उस तरह की सुविधा एक लॉ ग्रेजुएट को क्यों नहीं प्राप्त है? यह ठीक है कि लॉ कमीशन की सिफारिश हुई थी और उसके मुताबिक इस तरह का अमेंडमेंट लाया गया है, लेकिन यह ठीक जंचता नहीं है कि इतने दिन वकालत पढ़ने के बाद यदि कोई लॉ ग्रेजुएट हो जाता है, तो फिर भी उसको ट्रेनिंग लेनी चाहिये। तो लॉ कमीशन की बात मान करके आपने यह संशोधन किया है, लेकिन मैं समझता हूँ कि सरकार को फिर अमेंडमेंट लाना पड़ेगा। अब तक तीन अमेंडमेंट बिल आ चुके हैं और मैं समझता हूँ कि निकट भविष्य में जब सरकार को यह मालूम पड़ेगा कि यह जो ट्रेनिंग की व्यवस्था की गई है, यह फ्रजूल है, और इससे कोई फायदा होने वाला नहीं है, तो फिर उसे ऐसा ही अमेंडमेंट बिल लाना पड़ेगा। जब इंजीनियरी पास करने के बाद एक व्यक्ति इंजीनियर हो जाता है और डाक्टरों को पास करने के बाद एक व्यक्ति डाक्टर हो जाता है, तो फिर एक लॉ ग्रेजुएट को स्टेट बार कौंसिल या ऑल इंडिया बार कौंसिल की मर्सी पर छोड़ देना उचित नहीं मालूम पड़ता है। इसलिये वैसे तो मैं सरकार को और लॉ मिनिस्ट्री को इसके लिये मुबारकबाद देता हूँ और पंजाब और दिल्ली के लॉ ग्रेजुएट्स की सुनवाई हुई और श्री एस० एन० बनर्जी को और मेरी भी सुनवाई हुई और पंजाब के जितने एम० पीज थे उनकी इस सिलसिले में जो मीटिंग हुई और पंजाब और दिल्ली की सरकार इत्यादि के जो रेप्रेजेंटेशन

आये, इन सब की वजह से उन्होंने सुना। लेकिन मैं यह भविष्यवाणी करता हूँ कि लॉ कमीशन की सिफारिश पर यह जो ट्रेनिंग की व्यवस्था की गई है, इसको भी समय आने पर हटाना पड़ेगा। मैं समझता हूँ कि जब दूसरे ग्रेजुएट्स को यह छूट दी गई है कि पास करने के बाद वे उसके ग्रेजुएट हो जाते हैं, तो लॉ ग्रेजुएट्स को यह सुविधा देना न उचित नहीं है। वैसे ट्रेनिंग तो वे स्वयं ही ले लेंगे, क्योंकि यदि वे किसी सीनियर ऐड-वोकेट से ट्रेनिंग नहीं लेंगे, तो अच्छी तरह से वकालत नहीं कर सकेंगे। लेकिन यह उनकी मर्जी पर होना चाहिये। तो इस तरह की दिक्कत सरकार के सामने आयेंगी और फिर इसके लिये अमेंडमेंट लाना आवश्यक होगा।

इन शब्दों के साथ मैं लॉ मिनिस्ट्री को धन्यवाद भी देता हूँ और इस बिल का तद्दिल से समर्थन भी करता हूँ।

SHRI R. S. KHANDEKAR (Madhya Pradesh): Mr. Vice-Chairman, I welcome the Bill that has been brought before the House to remove one of the greatest difficulties experienced by graduates. It is really a sad commentary that though the Advocates Act was passed only in the year 1961, Government have had to bring in as many as three amendments within such a short period and my fear, as my hon. friend, Shri Yajee, said is that Government will have to bring in more amendments if they want this Act to work well. I will presently point out the difficulties which will be experienced in the working of this Act. We are now discussing the third amendment. At the time when the second amendment was being discussed in this House—of course, I did not get an opportunity or rather I could not speak—my feeling was that the Government

[Shri R. S. Khandelkar.]

would have to bring some amendments very soon and my fears, like those of other hon. Members, have come true.

I am afraid the Government will have to bring another amendment very soon. My submission is that the Government ought to have brought a more comprehensive amendment to the old Advocates Act. I have no objection with regard to the change in the date. Of course, that was most necessary but with regard to the rule-making power of the Government, certainly I feel that it is a retrograde step. As a member of the Bar Council, I know that our Bar Councils are not working well. I do not know the conditions of other Bar Councils but as far as my State is concerned, the Bar Council is not at all working well. When the Advocates Act was enforced and the new Bar Council was created in Madhya Pradesh and when we first met, the Advocate-General rightly said that it was a great day for the advocates, that the advocates were their own masters, that they were makers of their own destinies, that henceforth neither the High Court nor the Government would interfere in the affairs of advocates, but the experience is that our Bar Council is ridden with factions, regionalism, groupings and all that.

SHRI BHUPESH GUPTA (West Bengal): Like the Madhya Pradesh Government.

SHRI R. S. KHANDEKRA: I do not know. For a long time we had not met. So we could not form Committees. Of course, we have formed committees recently. That also has taken a long time but no rules have been framed so far, as I know. Neither they have sent any rules to the Central Government for approval nor to the Bar Council. The whole thing is in a mess and the advocates of that State are really in great doubt.

As far as the difficulties in the present Act are concerned, I would point out that there is provision for training. Now the Government is taking power for making rules. They should make it clear what training they are going to give. As far as we are concerned, it is difficult to give training to the new graduates. Although the necessity for training is felt, I am sure the experience is that there cannot be any schools, there are no seniors who could give the training free. There is no provision for remuneration to the seniors and if that provision is made, that will be an additional burden on the new graduates and the new recruits. Training may be possible so far as the metropolitan cities are concerned but as far as the districts are concerned, I do not think there will be any provision for training, because there will hardly be any seniors in the districts who can impart training because they themselves are not so conversant with the present laws or decisions. How can they give training to the new recruits? Regarding training grave doubts are expressed and the new law graduates are really under dilemma as to what training they will have in the future.

There is provision for a Disciplinary Committee. As far as Madhya Pradesh is concerned, the Bar Council has formed a Committee of five advocates. I am also one of them but the difficulty is that the five advocates belong to distant places and they cannot meet. The provision is that all the five must come together and decide the thing, otherwise even if one is absent, the whole proceedings will be nullified. Under the circumstances, the Disciplinary Committee has not met so far and I am sure it will not meet any time in the future also. There are so many complaints against the advocates. According to the Advocates Act, neither the High Court nor the Government can go into those complaints. It is for the Bar Council or the Disciplinary Committee. But the Bar Council finds this

difficulty. The members cannot assemble and they are busy lawyers too. They will not find time to go into the complaints. Those complaints are lying and they are being filed in the High Court's office. There is another difficulty that there are some complaints which are old, namely, those that came before the Act came into being. Neither the High Court can entertain those complaints nor the present Bar Councils can, because according to the definition in the Act, an advocate means an advocate enrolled according to the Advocates Act. So this Council cannot take into consideration any complaints filed previous to the Act. So this is another difficulty. My submission is that the amendment which the Government is bringing now is only a half-hearted measure. I would request the Government to go through the whole matter, taking the views of the Bar Councils and also taking the views of leading lawyers and then formulate new amendments or at least bring a comprehensive law so that the Advocates Act will be worked well; otherwise it will be useless because although we were told that we were the masters, now we find ourselves helpless. Of course, the fault may lie with the advocates also or the Bar Councils but the Government also must come forward and help the advocates and remove the anomalies which are pointed out. There are other anomalies also but this is not the time nor the occasion. So I am not dealing with them now. As far as these amendments are concerned, I welcome them. They were long overdue and when the second amendment was being discussed, there was a suggestion that further time ought to have been given but the Government was so ridden with red-tapism that it acted on the advice of the officers and so thought that the Bar Councils would be very efficient and the rules would be made but as far as I know the Bar Councils are not doing anything, they will not do anything under the present circumstances and the Government will have to bring a more comprehensive amendment or they will have to scrap this Advocates Act.

SHRI BHUPESH GUPTA: The first point that I wish to make is what Shri Yajee touched, namely, whether there is at all any need for such training. Now, of course, nobody will be required to undergo training if he had passed his examination before the appointed date which would be now, under the Bill, 28th February, 1963. So far so good but the point is, is it necessary to have such a provision for training? As far as I can see, it only involves some loss of money on the part of the parents of the students in order to get the requisite training for the students. What could be got in training may well be got also while practising and nobody will put up a new one in a case which is complicated and which would require experience. Training could go concurrently in such matters. It is very long back when we were called to the Bar in England, but in our times it was not necessary to have the training after qualifying in the examination, that is to say, after passing the final Bar examination we did not have to wait for so long. The students could take to training while they were still studying. I did it myself. I do not know what training I got. Absolutely I got nothing, if you ask me. Only I parted with some money. That is all. It was the English Bar and the arrangement was that the training could be got while one was taking his course, before passing the final examination. Many students joined and got the training. Some went through it very seriously, others did not do so. But in all cases it involved a lot of money and the normal charge was £100 or Rs 1,300 or nearly Rs 1,400. I do not know what the charges here in this country would be. It must be less because we are not so high up in the financial stature that way. But why should that money be spent? Is it absolutely essential? Why can't that training be completed along with the course itself? Some time can be set apart for the students to go to the law courts along with the lawyers to whom they may be attached, to see things. That was done in England in

[Shri Bhupesh Gupta.]

some cases. I might add that English lawyers were also interested in grabbing money. There is a belief in this country, especially among barristers, that English lawyers are a very fine lot and that the trouble is only with our own lawyers. Nothing of the kind. I may tell you that they were also indulging in graft as anybody else. I know of many English lawyers there who used to take money from Indian students and give certificates at the expiry of one year or so, without even seeing the face of the student in between, during that period of apprenticeship or whatever it is. However, it was done during the course itself. Here we find that after 1963 February, the student will have to undergo some kind of training for six months. Why? What is the guarantee that proper training of the kind that the Government may have theoretically in mind, will be given? As has been pointed out by the previous speaker, in the district court, no one may be available. Why take the case of a district court? Suppose one wants to practise in a sub-divisional court, where does he get his training from? And suppose one lives in a district and at the district headquarters he does not have a proper lawyer to get his training from. Then he has got to live for six months in another place and he has got to find the resources for that. Why should he be put to all such hardship and to all this financial loss? In return for all this loss, what is it that he is going to get? I do not think he is going to get much. Therefore, the whole thing seems to be somewhat redundant. The matter should not be considered only from the point of view of fastidious lawyers. It should be considered from the point of view of the economic and social conditions of the country, and from the point of view of the law students. Let them go to the court and there learn things. While they practise they can also learn. Assuming now that I become an apprentice for six months, what is the guarantee that I am doing the job? I may be attached to a lawyer and somehow or the other, I can fulfil

certain very minor obligations and get a certificate. Does it make me better than, shall we say, a law student who has passed his law examination in the first class and at the same time has not gone through this training? There is no such indication and no one can say that it is necessarily so. Therefore, the whole question, I think, should be reviewed by the Government again. Here I would not consult only the top lawyers. I will consult the middle lawyers and others. Hon. Members will understand why I say this. I say so because the top lawyers may not be in a position to appreciate the difficulties of those people who are not so well up in such matters. Anyhow, I do not know how many law students will be requiring this training every year. I tried to calculate the loss of money on account of this. Suppose there are 2,000 lawyers seeking training and each one has to spend Rs. 200. I multiply 2,000 by 200 and that is the figure that goes as fees to the senior lawyers. It will be much more, I know, but I am giving only an illustration to stress my point. Therefore, it does not seem to be any good. This matter has to be reviewed.

I also receive letters from a number of lawyers from Punjab and many of them write to me to ask why should some people, passing the law examination later, be put to certain difficulties compared to others who had passed it earlier. They cannot simply understand it. What difference does it make? If one set can go without training, why not the other set as well, especially when the course is the same, the syllabus is the same and the legal education remains, more or less, the same? This is a valid point that is made out and certainly this Bill does not meet that point, except that it extends the time limit, thereby helping some people. But in principle that point is not met.

Moreover, the Government here is wasting its energies in such matters, if I may say so. What really troubles our legal profession is that the younger

and junior lawyers do not have ample opportunities. They are not in a position to rise. They do not get ample scope and some of them live on starvation level. Now the Government should frame rules and the Government should engage itself in finding ways and means of removing this long-standing grievance of the junior lawyers—those who are new entrants in this field.

May I add here that I am not very keen that too many students should go in for legal education? That does not show that all is well with our country. I think there are too many lawyers in the legal profession and that shows that something is wrong in our social life. There should be some lawyers, but the number should be restricted. We want more and more young people to go in for engineering, technology, science, medicine and so on. We want less lawyers like myself and the hon. Deputy Minister there. The less of them the better for the country. But then we cannot change. It depends on the entire social system, on the cases in the court, your civil system and your criminal system and generally your social set-up. Nonetheless, we should be interested in discouraging this kind of legal education. You will be surprised to hear that the Government still gives permission for students to go to England to study and qualify themselves at the English Bar. I don't know what they learn there in the changed situation. But money is spent. Although they say that nobody is allowed to go there unless he takes a degree course there in England; what is done is this. When they apply they say they are going to study law and at the same time take up some external degree course. But when they go there, they give it up. It is not very difficult to fail in an examination. Any one can go there and have his name enrolled as an external student and then successfully fail in that examination and thus cheat the Ministry of Finance and get the requisite foreign exchange exclusively for his legal education there. Although technically he should

not get it exclusively for such purposes that is being done.

THE VICE-CHAIRMAN (SHRI M. GOVINDA REDDY). What has that to do with the discussion here?

SHRI BHUPESH GUPTA: It has to do for they should frame such rules as will meet the situation. Unless I make it clear it will not be clear to them. Did he know that such things were happening? Why can't we prevent it? Why don't we tell such people that we do not recognise them any more? Why don't we say that we do not encourage such people going in for foreign education because the times have changed and it is not necessary at all from our point of view?

Now, Mr. Vice-Chairman, the rules will be framed. I do not know how the rules will be framed. Will the lawyers be consulted? Will the junior lawyers be consulted in framing the rules? Will the representatives of the law students in the university unions and so on, be consulted before framing these rules? Who will frame them? I take it that the rules will be framed by the Law Ministry. Well, they may not be well advised in the matter. Anyway, they will not have a comprehensive idea of what is required. I will give one example here. Now the Bar Councils have come and it is all very good. But we have just heard how these Councils are functioning. Anyway, we would like to know more about them. Even today distinction between the members of the English Bar and the members of the Indian Bar remains, at least in my part of the country, in the Calcutta High Court. Much of it is gone, but still much remains. They have not been able to compel the Calcutta High Court to have one single bar library for the advocates there, irrespective of whether they had been called to the English Bar or had been educated in this country and called to the Indian Bar. They have not been able to do that. Why have they not been able

[Shri Bhupesh Gupta]
to do it? That is because vested interests have grown and they do not do it. I know that As far as barristers are concerned, I am not speaking on a very popular subject, I know Some Calcutta barristers always ask me, "Why do you say such things in Parliament, yourself being a member of the English Bar?" I reply that that is precisely why I say all this Every time I get a chance I would point out to Parliament and to the country the hideous distinction that is maintained between the members of the English Bar in certain respects, and those who are not members of the English Bar, even in the Calcutta High Court That should go It should go The Bar Council rules should be framed by the Government here which should prevent this distinction as far as the Calcutta High Court is concerned, in any form, in all its manifestations There should be a single Bar library, single Bar Association, whatever you call it; it should not be divided into two, one for those gentlemen who had been educated in England and another for those who had not been educated there This should go I protested against these things Many times on the floor of this House I have spoken on this subject and I speak with indignation because I consider it to be an insult to our genius, to our patriotism, to our traditions that even after 14 years of independence we should allow this pernicious distinction to operate itself in the portals of the High Courts themselves Why should it be so?

Mr Vice-Chairman I know that I am slightly digressing The rule-making power is there But I have my doubts as to what kind of rules will be framed They will listen to vested interests They will go by what the big lawyers at the top say They would not listen to the interests or pay attention to the interests of the working students who want to come up or to the interests of the parents of those students who are not in a position to find resources for another

six months after having spent so much money for legal education of their children, of their sons, of their daughters, as the case may be. This is my fear

THE VICE-CHAIRMAN (SHRI M. GOVINDA REDDY) You have to conclude There are two more speakers

SHRI BHUPESH GUPTA, Well, I do not have to conclude Under no rules I am to conclude

THE VICE-CHAIRMAN (SHRI M. GOVINDA REDDY) The time allotted for this Bill is half an hour

SHRI BHUPESH GUPTA: I did not know that Who allotted it?

THE VICE-CHAIRMAN (SHRI M. GOVINDA REDDY). The Chairman, the Advisory Committee on which you are represented

SHRI BHUPESH GUPTA I am sorry, Mr Vice-Chairman, I did not know that But these points are to be considered All I say is that the real thing to consider is whether we at all need this kind of training or can we do away with it and allow the training period to continue side by side? The rule-making power is there The rules should be comprehensively framed The point that I have raised with regard to the distinction between the English Bar and the other Bar, which exist in some parts of the country, whatever you call it—Barristers' Bar or somebody else's Bar—that should be abolished The Government should certainly frame rules and our boys need not go to the Calcutta High Court to see that they are somewhat inferior in any way to some people who had the privilege of education abroad which the British for various reasons had it Two libraries, two clubs, these are most insulting A lawyer, an Indian advocate, however senior in the Calcutta Bar, would not be allowed to enter the Barristers' library even during the lunch hour when the gentlemen members of the English Bar would be having their

lunch. Can you imagine such a thing? I do not know what is the position today. But I was simply horrified and shocked that eminent Indian lawyers would not be allowed to enter there, to enter the Bar Library, the Bar Club in Calcutta in the same building when the barristers would be having their lunch. Now, as a patriot, as an honourable Indian, as the Vice-Chairman of this House, you will agree that this distinction has to be done away with and immediately, if necessary by a decree of the Central Government embodying the will of Parliament.

THE VICE-CHAIRMAN (SHRI M. GOVINDA REDDY): Mr. Mohanty, five minutes.

SHRI DHANANJOY MOHANTY (Orissa): Mr. Vice-Chairman, Sir, since my time is limited, I will be very brief in my speech. Regarding training I feel that training along with the degree course would do well because after obtaining their degrees when they move here and there in the court premises for advice, the juniors, the youngsters, are looked down upon. They make a very poor impression on the clients and also do not serve their clients' interests. So here not only the fate of the junior lawyers is concerned but also the fate of the public who approach them for legal assistance is much more concerned.

The juniors have certain other difficulties. As has been said, they have to approach senior lawyers who at their option allot them time. Then in the courts, particularly in the mofussil courts, there are no good libraries. Law Reports are not available. There can be no associations strong enough to purchase those books. Therefore, certain provision ought to be made in that regard also.

There is another difficulty which was rather absent in the past but it is now seen here and there, viz. there may be hardly a dozen of lawyers but there are more than one Association. This is a most regrettable part of it. Then it is a degeneration

of the profession when we find that even lawyers divide themselves according to their political views.

Sir, the spirit of this law was to have a unified Bar and to have lawyers of standard qualification. In fact, it is not being so. We have *mukhtars* and we have pleaders, that is, law graduates and also those who are not law graduates but were made to pass certain examinations conducted under the auspices of High Courts. There is no distinction because they are also called pleaders and the other set are also called pleaders. Then, the new entrants who are law graduates, and who can afford to pay the fees become advocates and the litigant public are deceived. They are put in difficulty. They start making distinctions amongst the lawyers. The public have to choose but they might go by the name "Advocate" which is supposed to be a better title. Therefore, these things are also to be looked into.

As regards the quality of the Bar and distinction between the two sets of pleaders, it has been remarked by some hon. Judges of High Courts and the Supreme Court also that the quality of the Bar has to be maintained. But when all of them are allowed to practise, and a lawyer of the lowest rank can meet his opponent, who might even be a Bar-at-Law, in proceedings before a court of law, I do not understand how the so-called quality can be protected. There were some advocates introduced in the Bombay High Court. They were matriculates. They were called advocates. But there are instances where some of them were not admitted as advocates in certain other High Courts. They are continuing and now they are not allowed to call themselves advocates. They go as lawyers or pleaders. Their fate is also to be considered. Now, Sir, the point is whatever be his qualification, whether he is a law graduate or not, if he has completed thirty years or twenty-five years of practice, I think he would not be inferior in quality, as far as his prac-

[Shri Dhananjay Mohanty.]

tice and experience are concerned, compared to a fresh entrant. Therefore, the rules should cover all these things. In conclusion, I would submit that these difficulties should be kept in view while making rules, and provision should be made for their removal.

SHRI B. K. P. SINHA (Bihar) Sir, this Bill is a very sad commentary on the efficiency and capacity for organised work of a profession which has almost constituted itself into a body of self-appointed critics of all that is there under the sun. It is right that after two extensions of exemption Government have taken on the rule-making powers, but then extension of exemption has been sought only up to February, 1963. It is necessary that Government should frame the rules with as much promptness as possible. Within two months the rules should be promulgated otherwise they will have to again come up for extension because the law graduates who would be coming out of the colleges hereafter will also be affected. So Government should be very prompt about this.

Now the question of training has been raised by previous speakers and with very great vehemence by my friend sitting there, the hon. Member of the English Bar. Now, what is it that the boys learn in the Law Colleges? They learn almost the ABC of law. They learn not even the whole of the theory, but only very little of the theory of law. But practice is something different from theory. When these law graduates enter the courts they must be proficient in the practice of law also. That is why it has been thought necessary to prescribe a period of practical training under a senior and in courts. The juniors are expected to go with the seniors to the courts, see how the cross examination is conducted, how the examination in chief is conducted and how the proceedings as a whole are conducted. My hon. friend said

that an engineer, as soon as he gets a Degree, is entitled to practise engineering, as also a doctor, but he does not realise that they have to undergo training for a period of five years. But one can become a Bachelor of Law in two years and that makes all the difference. That is why an additional period of training of one year has been prescribed and rightly so because it has been increasingly felt in legal circles that the lawyers must be subjected to more intensive training. In the last annual session of the Indian Law Institute the Chief Justice of India who has been touring various countries—he has gone to the Western countries and he has also gone to the Soviet Bloc countries and studied the training of lawyers there and the law system there—gave in the opening remarks his considered opinion that here the training of lawyers should be more intensive because as society advances, as we have more and more of these complex company laws and other commercial laws, greater training is needed for the lawyers. Therefore, I see no ground for doing away with the provision for training. Training is essential and training should be there; rather there should be more intensive training.

Now, Mr. Khandekar—I am glad to know that he is a Member of the Bar Council—raised certain points about disciplinary matters, I can tell you that when this Bill was originally passed I was a member of the Select Committee on the original Bill. Then there was unanimous demand from all Lawyers' Associations that since lawyers in other countries were tried by their own colleagues, there was no reason why the procedure in this country should be different. In view of that unanimous demand the Select Committee agreed that it is the Bar Councils, the lawyers themselves, who should have jurisdiction in disciplinary matters. It was with very great difficulty that some of us could persuade the Select Committee to accept a panel of Supreme Court

Judges as a final appellate body in matters of discipline. Therefore, what was done was done because of the unanimous demand of the various bodies of lawyers. Now difficulties are being experienced. I am sure that the lawyers will realise their responsibilities that there shall be no occasion in future for such complaints but if the lawyers with their organised bodies do not realise their responsibilities, then I am sure one day the law will have to be amended. But that stage in my opinion has not been reached so far.

SHRI BIBUDHENDRA MISRA: Sir, as I said earlier, this Bill has a limited scope. The question of training has been discussed from various angles. May I tell the House that this amending Bill does not seek to introduce training anywhere? The whole scheme of the Act, as it was passed, was that on the appointed day generally all those who can be enrolled as advocates should undergo a course of training and pass an examination conducted by the Bar Council and then certain exception was made to it, because it was thought that the Bar Councils would take some time to be formed and that they would also take some time to frame rules. The question was, what would happen to the graduates who passed their examinations before the Bar Councils were formed? It was then anticipated that the Bar Councils would be formed and they would frame rules by December, 1960. Then it was found that in some cases the Bar Councils had not been formed and, therefore, this exception had to be extended till 28th February, 1962 by the second amendment. Even then it was unfortunately found that the Bar Councils had not framed rules everywhere. It was an unfortunate thing that the Bar Councils did not realise their responsibilities and frame rules even though they had clamoured for autonomous position. They had not framed rules and the All India Bar Council met for the first time. I think, on July 17 or 18—I do not remember

the date. The difficulty is about the students who pass after February, 1962, because they could neither be covered by the exception nor by any rule framed by the Bar Councils. Therefore, this date has been extended till 1963 with the hope that by that time rules will be framed prescribing the course of study and the examination. Until then all those students who pass their examination would not be required for the purpose of being enrolled as advocates to appear in any examination.

So far as the question of training is concerned, even under the present system there is some sort of training. It may be scrappy as Mr. Bhupesh Gupta has said. A pleader has to wait for three years and practise before he can become an advocate and an advocate has to be a junior to a senior for a year in some High Court, so that he gets training before he is enrolled.

SHRI BHUPESH GUPTA: He can plead.

SHRI BIBUDHENDRA MISRA: He can be a pleader. He cannot be an advocate. This matter was considered at length by the Select Committee only a year back and then there was a feeling that lawyers should have some training, that merely by passing an examination without practical training they would not be qualified enough to practise as advocates in High Courts. But as I said this amending Bill has nothing to do with the question of training. Only the exemption that has been granted under the Act itself is sought to be extended by this Bill.

Then Mr. Bhupesh Gupta asked who would frame the rules. When it was found that the Government had no power to frame rules, the power to frame rules having been vested in the State Bar Councils and the All India Bar Council and when it was found that the State Bar Councils and the All India Bar Council have

[Shri Bibudhendra Misra.]
 not framed rules, is the Government to remain silent spectators to a situation where no rules have been framed and students run from door to door? It was a sorry state of affairs and some arrangement has to be made. From the Bill you will find that the Government do not want to usurp their powers because they do not want to offend the conception of the All India autonomous Bar. What they say is, if the State Council under the provisions of the Act has not framed rules, till then the Central Government, in consultation with the Bar Council of India, would frame the rules. That is the first thing. And then the moment the State Bar Councils frame the rules, the rules already framed by the Government of India will go, that is, by a notification they will be treated as cancelled. Therefore, the whole intention is that it will make the Bar Councils to realise their responsibilities and to go ahead with their work in framing the rules. I think that the Bar Councils have now realised it. I hope the situation will not arise when the Government will have to exercise its power. Let us hope that the All India Bar Council remains an autonomous body and that this provision, this rule-making power which is being absorbed by the Government, will not be used. It will remain a dead letter, if only the Bar Councils realise the responsibilities with which they are charged.

THE VICE-CHAIRMAN (SHRI M. GOVINDA REDDY): The question is:

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

The motion was adopted.

THE VICE-CHAIRMAN (SHRI M. GOVINDA REDDY): We shall now take up the clause by clause consideration of the Bill. There are no amendments.

Clauses 2 to 4 were added to the Bill Clause 1, the Enacting Formula and the Title were added to the Bill. . .

SHRI BIBUDHENDRA MISRA: Sir, I move:

"That the Bill be passed."

The question was put and the motion was adopted.

MESSAGES FROM THE LOK SABHA

- I. THE RESERVE BANK OF INDIA (AMENDMENT) BILL, 1962
- II. THE BANKING COMPANIES (AMENDMENT) BILL, 1962

SECRETARY: Sir, I have to report to the House the following messages received from the Lok Sabha, signed by the Secretary of the Lok Sabha:—

(I)

"In accordance with the provisions of Rule 96 of the Rules of Procedure and Conduct of Business in Lok Sabha, I am directed to enclose herewith a copy of the Reserve Bank of India (Amendment) Bill, 1962, as passed by Lok Sabha at its sitting held on the 3rd September, 1962."

(II)

"In accordance with the provisions of Rule 96 of the Rules of Procedure and Conduct of Business in Lok Sabha, I am directed to enclose herewith a copy of the Banking Companies (Amendment) Bill, 1962, as passed by Lok Sabha at its sitting held on the 3rd September, 1962."

Sir, I beg to lay a copy of each of the Bills on the Table.

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

The House then adjourned at two minutes past five of the clock till eleven of the clock on Wednesday, the 5th September 1962.