

THE DEPUTY CHAIRMAN: The question is:

"That the Bill be returned."

The motion was adopted.

THE ADVOCATES (SECOND AMENDMENT) BILL, 1962

THE DEPUTY MINISTER IN THE MINISTRY OF LAW (SHRI BIBU-DHENDRA MISRA): Madam Deputy Chairman, I beg to move:

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

The amending Bill is a simple and also a non-controversial Bill. All that it seeks to do is to substitute so far as section 24 of the Advocates Act is concerned, "28th day of February, 1962" in place of the words "appointed day".

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

Sir, the words "appointed day" occur in section 24 of the Advocates Act. So far as the admission and enrolment of the advocates are concerned it makes a distinction. According to the section what has been enacted is that any person who wants to enrol himself as an advocate in a State roll has, besides obtaining a degree in law, to undergo a course of studies prescribed by the Bar Council and has also to appear in an examination. But the proviso to section 24 lays down that so far as the students who had passed the law examination before the appointed day are concerned—let me say here, Sir, that it came into force on the 1st December, 1961, and as far as those students who had passed the law examination be-

fore the appointed day, that is the 1st December, 1961, are concerned—they need not undergo the course of training prescribed by the Bar Council and are not required to appear in an examination. The whole idea underlying this was this. It was thought then that the Bar Councils in India, both the State Bar Councils and the All-India Bar Council, would come into existence on the 1st December, 1961 and that rules would probably be framed by that time, and it was intended that all those students who had appeared in the law examination in the year, 1961 and had not really got an idea as to what the Advocates Act was going to enact—because it was passed in May, 1961—would get this benefit, the benefit being that they would be enrolled straightway after becoming law graduates without further undergoing the training prescribed by the Bar Council or appearing in an examination as required by the Bar Council. But it was found that there was some delay in the constitution of the Bar Councils, and it was also found that in the three universities in the State of Maharashtra which held the examinations simultaneously in September, 1961, that is the universities of Bombay, Marathwada and Poona, two universities published their results before the 1st December, 1961, whereas the results of the Bombay University were published on or about the 12th December 1961. So, Sir, there was a representation not only from the 456 or 496 students—I do not remember the exact number—of the University of Bombay but the Maharashtra Government as well as the State Bar Council also represented to the Government of India that they thought that it would amount to a discrimination if students of different universities were treated differently, simply on the basis that their examination results were published some time later than the 1st December, 1961. That is why it was thought necessary that this amendment should be brought and

that all the students who appeared in the Law Examination in 1961 should be treated on the same level. That means that they would be given the benefit of the proviso to section 24 of the Advocates Act. Later on, Sir, there was also a representation from the students of the Kerala University, and now it will be interesting to note that by giving this benefit not only the students of the Bombay University but the students of many universities are covered, because it is now found that the results of different universities were published in different months—some universities published in December, some published in January, and some published even in February. And even some Universities published the results in the month of February. The Universities of Bombay, Kerala, Nagpur and Patna published their results in the month of December, 1961, and it was the Madras University that published its results on the 1st of December itself. The University of Gauhati published its results on the 17th January, 1962 and the Utkal University on the 16th February, 1962.

Therefore, Sir, as I have already said, in order to give the benefit of the proviso to section 24 of the Advocates Act to all the students who passed in the law examinations in the year 1961 this amending Bill has been introduced. Of course, now the State Bar Councils as well as the All India Bar Council have been fully constituted. There will not be any other cases, so far as 1962 is concerned, that would be governed by the proviso. If this proviso is extended to all these cases—that means if instead of the words 'appointed day', the words '28th day of February, 1962' are substituted—all the students of the Indian universities would get the benefit of the proviso to section 24.

With these words, I commend this Bill to the House.

The question was proposed.

SHRI AKBAR ALI KHAN (Andhra Pradesh): It is only a consequential Bill. I think it should be approved.

SHRI K. V. RAGHUNATHA REDDY (Andhra Pradesh): Mr. Vice-Chairman, Sir, let me make it very clear at the very outset that I am not opposing this amendment. But what I am not able to understand is this. It is stated that in order to avoid the hardships which the students have to suffer during the period of interregnum by not having had the benefit of the legislation this Bill has been brought forward. I do not for a moment stand in the way of students who have passed their examinations and whose results have been published later on being provided with this opportunity of getting enrolled as advocates. But this raises one question: Are we seriously believing in the course of apprenticeship or not? If by some misfortune or otherwise, the results have not been published, then in that one year period, if the graduates who have either taken their degrees earlier or the graduates who have to take their degrees later are prevented from being enrolled as advocates, the question that would arise is not the principle of getting enrolled but whether this apprenticeship examination is a necessary concomitant of a legal curriculum for being enrolled as an advocate. Having been myself an advocate, having delivered lectures many times at the Bar Councils and having been an examiner for the Bar Council examinations, I can tell the hon. Minister that the Bar Council examination is a big farce.

THE MINISTER OF LAW (SHRI A. K. SEN): My experience of the Bar Council examination is that it used to be very, very real.

SHRI K. V. RAGHUNATHA REDDY: Probably, those were the days when the law examinations used to be taken very seriously.

[Shri K. V. Raghunatha Reddy.]

In order to avoid this, I would like him to consider the one suggestion which I would make. As soon as a student takes his degree, let him be enrolled as an advocate but let him not be allowed to practise as an independent advocate for one year. Let him work under a senior advocate so that he can have the benefit of appearing in courts and also of opening his mouth. And if incidentally he gets an engagement, he can also get the benefit of receiving some fees from the senior advocate. The law provides for this interregnum of one year during which period he neither reads nor attends courts. He does not study the Criminal Procedure Code or the Civil Procedure Code. I may point out that no student of law would be able to learn the Criminal Procedure Code or the Civil Procedure Code by merely passing an examination in the subjects. Knowledge of the Criminal Procedure Code or the Civil Procedure Code can be attained only through practice. I doubt whether any lawyer worth his name would have acquired all the knowledge through the one-year period of apprenticeship and by passing examinations in the Codes. Therefore, in order to obviate this difficulty, I would like you to consider this suggestion. It may not be possible immediately. A student who takes his degree from the university should be permitted to be enrolled as an advocate immediately with only one restriction that he should not be allowed to appear alone without a senior for one year because graduates who are allowed to be enrolled as advocates now under the benefit of this proviso can immediately appear as advocates without any help and there is no bar. But how they manage is a different matter. But legally there is no bar for them even to spoil a case. So, I request the hon. Minister to take these facts into consideration and see whether such a provision cannot be made.

As far as the Bar Councils are concerned, I am afraid they will not agree to relax the regulations be-

cause it is not merely a question of the Bar Councils enjoying certain privileges but certain financial provisions are also there. They would not like to lose what they are likely to get.

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA): Mr. Reddy, please confine yourself to the provisions of the Bill. What you are saying is not covered by the Bill.

SHRI K. V. RAGHUNATHA REDDY: The entire legislation will be open to criticism. Though we do not oppose it, at least we can make suggestions so that the hon. Minister may bear them in mind while bringing forward such a type of legislation in order to obviate the difficulties which the graduates of law at present face immediately after passing the examination. Thank you.

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA): Mr. Sheel Bhadra Yajee.

SHRI K. SANTHANAM (Madras): Sir, one minute

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA): I have called Mr. Sheel Bhadra Yajee.

श्री शीलभद्र याजी (बिहार) : माननीय वाइस चेयरमैन महोदया, जहाँ तक इस बिल का ताल्लुक है, मैं इसका समर्थन करता हूँ क्योंकि जैसा कि हमारे पूर्ववक्ता ने बताया कि पास किये हुए वकीलों की ट्रेनिंग होती चाहिये और इस की उपयोगिता है, लेकिन इसमें एक बात की कमी रह गई है। हमारे डिप्टी लॉ मिनिस्टर ने बताया कि कुछ महाराष्ट्र सरकार का रिप्रेजेंटेशन हुआ, कुछ यूनिवर्सिटीज का हुआ और कुछ हमारे छात्रों ने दिया और इसलिये ऐसा हुआ। दिल्ली यूनिवर्सिटी और पंजाब यूनिवर्सिटी का अभी रिजल्ट निकला है और अभी तक हाई कोर्ट की बार कौंसिलों में न रूल्स बने हैं और न रेगुलेशंस बने हैं। तो मैं जानना चाहता हूँ कि जितने लोग, जितने स्टूडेंट ला पास करेंगे, वे मक्खी मारेंगे

या क्या करेंगे, क्योंकि बार कौंसिल उन को अभी नहीं लेगे। इसलिये हमारा ला मिनिस्टर साहब को सजेशन है कि जो कानून हम बना रहे हैं उस का जब तक इंफोर्समेंट नहीं हो तब तक जितने स्टुडेंट्स ला पास कर गये हैं उनको इसी तरह की सुविधा होनी चाहिये। चूँकि अभी इस में अमेन्डमेंट नहीं हो सकता है क्योंकि लोक सभा ने इसको पास कर दिया है और वह अब बैठी हुई नहीं है, वह बन्द है, इसलिये कोई ऑर्डिनेन्स निकाल कर के इस को किया जाये। मैं पंजाब और दिल्ली यूनिवर्सिटी की ही बात नहीं कर रहा हूँ, अभी और भी बहुत सी यूनिवर्सिटियों का रिजल्ट बाकी है। तो जब तक यह कानून लागू नहीं होता है तब तक उन पर रहम किया जाय, उन पर कृपा की जाय और उनके साथ न्याय किया जाय। इन शब्दों के साथ मैं इस बिल का समर्थन करता हूँ।

SHRI K. SANTHANAM: I just want to raise a purely legal and technical point to which I would like the Law Minister to pay some attention. I have no objection to the Bill. It tries to remove a mistake which was committed by declaring the appointed day to be the 1st December, 1961 without knowing that the law examination results would be announced later. But my point is that as soon as the appointed day was notified, that appointed day became part of the original Act and certain consequences followed. Now, if one law is implemented and certain consequences follow, then a later law has to say explicitly that those consequences have been nullified. Otherwise, they stand. What this Bill simply says is that the appointed day shall be the 28th February, 1962. But whether this declaration nullifies the consequences of the declaration of the appointed day under the previous law, I think, is more than doubtful. And if it is doubtful, the purpose is not achieved. Some provision should have been inserted saying—

"Notwithstanding the declaration of the appointed day by the Government of India to be the 1st December, 1961, the appointed day shall be deemed to have been the 28th February, 1962."

But in default of such specific nullification, the consequences of the old Act will continue. I wonder whether the present law is adequate. I think the Law Minister may consider that technical point.

श्री विमलकुमार मन्नालालजी चौरड़िया

(मध्यप्रदेश) : माननीय उपसभाध्यक्ष महोदय, जो बिल प्रस्तुत किया गया है उसमें मैं थोड़ा सा सुझाव देना चाहता हूँ। बिल में और सब कुछ तो बिल्कुल ठीक है, पर मेरा यह निवेदन है कि अगर कानून मंत्री थोड़ा और ध्यान देकर विचार करते, तो उन को लगता कि इसमें भी एक संशोधन की आवश्यकता थी, वह यह कि सन् १९६१ की अपेक्षा दिसम्बर, १९६२ करना चाहिये था। इस का कारण स्पष्ट है, क्योंकि जो हमने बार कौन्सिल बनाई हैं, और बार कौन्सिल के तहत यह व्यवस्था रखी है कि जिस अधिवक्ता को उस में एनलिस्ट किया जायेगा उस को परीक्षा देनी पड़ेगी, ट्रेनिंग लेनी पड़ेगी और भी सारी बातें रखी हैं। जो बार कौन्सिल हमने बनाई है उन्होंने अभी तक ट्रेनिंग के बारे में, परीक्षा के बारे में, नियम बनाये नहीं और यह जो अभी अप्रैल की परीक्षा का रिजल्ट निकलने वाला है, उसमें जो विद्यार्थी निकलेंगे उनके सामने यह प्रश्न आ गया है कि हम वकालत नहीं कर सकते, हमको सनद नहीं मिल सकती, हम अपना समय कहां नष्ट करेंगे, तो इसके समाधान के लिये कोई व्यवस्था नहीं है। इसलिये यह जो प्रॉब्लम आने वाला है, उसको सोच करके इस में संशोधन किया जाता तो ज्यादा अच्छा होता। बार कौन्सिल की स्थिति कहीं अच्छी हो सकती है। कहीं खराब हो सकती है। मैं सब जगहों की बात नहीं कहता मगर अपने यहां की जो जानकारी मुझे

[श्री विमल कुमार मन्नालालजी चौरड़िया]
 है, उसके आधार पर कह सकता हूँ कि अपने विधान के तहत एनरोलमेंट लिस्ट बनाने की, इनरोल करने की, एप्लीकेशन डिसाइड करने की और कदाचरण के जितने केसेज हैं, उनको जल्दी डिसाइड करने की भी अभी तक पूरी व्यवस्था नहीं हो पायी है। और यह ट्रेनिंग का उनके ऊपर जिम्मा है, परीक्षा लेने का उन के ऊपर जिम्मा है और उसके बाद उनको सनद देने का जिम्मा है। जब तक इन तमाम चीजों की व्यवस्था नहीं करते और दूसरी तरफ प्रतिबन्ध लगाते हैं कि आपको सनद वहीं मिलेगी तो आप हमारे उन हजारों विद्यार्थियों के ऊपर जो ला पास करके निकलने वाले हैं, बहुत बड़ा अत्याचार कर रहे हैं। हमारी इच्छा जो भी हो कि सारे लोग ट्रेन्ड होकर, ट्रेनिंग के पश्चात् अधिवक्ता बनें, यह बहुत अच्छी बात है। चाहे कोई डाक्टर बनने के लिये एम. बी. बी. एस. की डिग्री ले ले और उस के लिये कोई ट्रेनिंग की व्यवस्था न हो और वह किसी आदमी को इन्जैक्शन लगा कर मार डाले, मगर कानून के मामले में यह सोचा गया कि अगर हम किसी प्रकार की ट्रेनिंग नहीं देंगे तो हमारे कानून में फला रह जायेगा और काम ठीक से नहीं होने पायेगा। जो कुछ भी सोचा गया हो, उसके बारे में मैं आलोचना नहीं करना चाहता परन्तु यह जो आगे आने वाली तकलीफ है उस के लिये हमारा शासन अभी से विचार करे और मैं प्रार्थना करूँगा चाहे मैंने इस संबंध में संशोधन न रख करके गलती की है, कि आप इस बात पर विचार करें और १९६१ की जगह दिसम्बर, १९६२ का वर्ष लगा दें। इतने समय के अन्तर्गत इन सब बार कौन्सिल्स को इस बात का आदेश दे कि वे सारे नियम बना लें और सारी व्यवस्था कर लें, उन की ट्रेनिंग की और एकजामिनेशन की व्यवस्था कर लें, नहीं तो आज से एक दो महीने बाद ही विद्यार्थियों के रिप्रेजेन्टेशन आयेंगे, बड़ा ब्रो-हुल्लड़ मचने वाला है और परिणाम यह

होगा कि हमें मजबूर होकर एक बार फिर अमेन्डमेंट लाना होगा। इतना आप कर लें, तो बहुत अच्छा हो।

एक और निवेदन, है बार कौन्सिल्स और एडवोकेट्स के बारे में। हमारे गृह मंत्री, दातार साहब ने, जब राष्ट्रपति के पेन्शन का बिल प्रस्तुत किया, तो उसमें अमरीका का सवाल बताया, जैसे कि यहां के लोग अमरीका का ज्ञान प्राप्त करने के बाद उस में संशोधन स्वीकार करेंगे, वरना नहीं करेंगे। ऐसा करके उन्होंने हमारे नागरिकों को अन्डर-एस्टीमेट किया। खास कर आज के जमाने में हमें विदेशों की तरफ देख कर अपना काम नहीं चलाना है। मैं उनसे पूछता हूँ कि क्यों नहीं हाई कोर्ट के जजेज और सुप्रीम कोर्ट के जजेज का रिप्रेजेन्टेशन रखते। जहां तक मुझे जानकारी मिली है, वे रिलक्टेन्ट हैं कि हम बार कौन्सिल के सदस्य बनें। पर यह बात ठीक नहीं जंचती। अगर बाहर का उदाहर लेना है तो हमारे यहां इंगलैंड की परिपाटी है, उससे कोऑर्डिनेशन होता है, जो आपस की दिक्कतें होती हैं, उनको हल करने की व्यवस्था होती है और इसी लिहाज से उस पर विचार करें। मेरा जो मूल प्रश्न है वह यह है कि १९६१ के बजाय अगर दिसम्बर, १९६२ कर देंगे तो विद्यार्थियों को काफी राहत मिलेगी और एक प्रॉब्लम क्रिएट कर के उस को साल्व करने की जैसी आज तककी आपकी नीति है, वैसा नहीं करना पड़ेगा। विद्यार्थियों को उससे बड़ा लाभ होगा, यह मेरा निवेदन है।

SHRI A. K. SEN: Mr. Vice-Chairman, Sir, I think no reply is called for excepting on two points, the first one raised by Mr. Santhanam, and the second point—if it can be called a point at all—by Mr. Chordia. So far as the technical point raised by Mr. Santhanam is concerned, I may assure him that his apprehensions are not substantial. The matter is completely covered by the

General Clauses Act and judicial decisions. Whatever might have been done on the basis of the "appointed day" being fixed on the 1st of December, 1961, as under the Act, would be valid notwithstanding the newly appointed day because, in between, what has been done, has been under an existing valid law, and unless we nullify it by specific language, it would not stand nullified. That is the position. The onus is on the side of those who support a nullified day to prove that the Act has nullified and express provision necessary for that purpose. So I do not think we need elaborate on that point further.

So far as the point raised by Mr. Chordia is concerned, I would frankly submit, Sir, that I have not been able to follow him properly. He says, instead of "1961" in clause 2, we should put "1962". We have put 1962.

SHRI V. M. CHORDIA: "December, 1962", I mean.

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA): Instead of February he wants December, 1962.

SHRI V. M. CHORDIA: I have got the Bill which was introduced in the Lok Sabha.

श्री ए० के० सेन : दिसम्बर की बात आपने अभी उठाई ।

श्री बिमल कुमार मन्नालालजी चौरडिया : मैंने नहीं कहा, मैं स्वीकार करता हूँ। पर मेरा आशय यह है कि जो अप्रैल में परीक्षा पास करके निकलने वाले हैं, उनको भी उससे राहत मिले ।

श्री ए० के० सेन : अभी ठीक समझ लिया ।

Well, Sir, then we shall never stop. The whole purpose was that we shall not prescribe the obligation of taking an examination, or observing other

formalities pending the formulation of the necessary rules by the Bar Councils, because at that time the Bar Councils were yet to be formed, and the All-India Bar Council was not formed and it had to give the ultimate sanction. That is why we made the exception under section 24, and in making the exception we found that the Bar Councils in certain States had forgotten that in their own States the universities had not declared the results before the 1st of December, 1961, as a result of which, within the same State there was a discrimination made in favour of some, who just had the advantage of belonging to a university which acted promptly in declaring the results, whereas others suffered where the universities were not so prompt in declaring their results. In order to remedy that rather awkward situation, we had proposed the amendment. But by now the Bar Councils have been formed; the All-India Bar Council has also been formed, and, therefore, there was no point in shifting the day from "28th day of February, 1962" to December, 1962. All the examinations which had been held pending the formation of the Bar Councils are now covered. The examinations held after February are those held in April last.

श्री शीलभद्र याजी : क्लस कब बनेंगे ?

श्री ए० के० सेन : क्लस बन गये । अभी आल इंडिया बार कौंसिल की सिफारिश बाकी है। वह सिफारिश भी हो जायेगी । That is why I do not think there would be any substantial difficulty in having these provisions worked out now, and no hardship would be caused.

With these words, Sir, I move.

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

...C.M.P.

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

Clause 2 was added to the Bill.

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

SHRI A. K. SEN: Sir, I move:

"That the Bill be passed."

The question was put and the motion was adopted.

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

The House then adjourned at five of the clock till eleven of the clock on Tuesday, the 26th June 1962.