

Clauses 2 to 5 were added to the Bill.

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

SARDAR SWARAN SINGH: Sir, I move:

"That the Bill be passed."

The question was put and the motion was adopted.

THE ADVOCATES BILL, 1961

THE MINISTER OF LAW (SHRI A. K. SEN)
: Sir, I beg to move:

"That the Bill to amend and consolidate the law relating to legal practitioners and to provide for the constitution of Bar Councils and an AU-India Bar, as passed by the Lok Sabha, be taken into consideration."

PANDIT S. S. N. TANKHA (Uttar Pradesh): Sir, before the hon. Minister takes up this Bill, may I inform you that notice in respect of the passing of this Bill by the Lok Sabha was provided to us only yesterday in the afternoon? Therefore according to our rules, this Bill cannot be taken up today. But if the hon. Minister gives us an assurance, that this practice of giving short notice will not be followed as a precedent in respect of the taking up of other Bills, I think the House should have no objection to taking up this Bill.

SHRI AKBAR ALI KHAN (Andhra Pradesh): May I also point out, Sir, that some of the Members who were not present yesterday afternoon got this Bill this morning?

SHRI BHUPESH GUPTA (West Bengal): Sir, I have a submission to make. I know that the rules are there, and I also know that in many cases the rules have been waived, that is to say, we have passed even more controversial Bills and unwelcome Bills

waiving this particular rule of two days' notice. In this case we have discussed it, it has gone to the Select Committee, and by and large, as far as I can see, the principle and even the contents of the Bill to a great extent are non-controversial. Therefore, I think that this technical objection should not come in the way of our not taking it into consideration. Sir, we should pass this Bill this very day, and I think that one of the cherished objectives of the lawyers of the country should be given effect to by the enactment of this legislation. Let it not be said that on technical grounds which we always avoid whenever there is need, we have delayed the enactment of such a measure which is being welcomed on the whole throughout the country. Therefore, I would appeal to the hon. Members not to insist on their objection and I would also appeal to you, Sir, so that we can consider it, and not only consider it but pass it this very afternoon.

DR. R. B. GOUR (Andhra Pradesh): Sir, I have to make a little observation on this point. I have no objection in fact I would welcome it if the Bill be passed because we know that it has passed through the Joint Select Committee, and for quite a long time now it is before the two Houses. But, Sir, it is up to you to protect this House and the business in this House and to protect us also from the ways of the Ministry of Parliamentary Affairs.

Mr. Vice-Chairman, the Bill was introduced in this House on 19th November 1959. The motion for reference to a Joint Select Committee was moved in this House on 3rd December 1959. The motion was concurred in by our House on 9th December 1959. The Report of the Joint Select Committee was placed on the Table of the House on 6th April 1960, more than a year ago. The Bill was passed by the Lok Sabha on 27th April 1961. Even after the Bill was passed in the Lok Sabha on 27th April the Message could not have*

[Dr. R. B. Gour] been sent in time and we would not have been faced with this particular predicament as we are faced today. The Message was received by this House on the 2nd May 1961. Sir, imagine the time-lag between 27th April and 2nd May, and that too the Message was received after the House adjourned on the 2nd May, and therefore the Message was placed on the Table of the House yesterday, and printed copies of the Bill we got yesterday afternoon at 3.30 P.M. Otherwise ample copies could have been distributed in time.

Mr. Vice-Chairman, this is an important Bill. The whole country wants this Bill, the entire legal profession wants this Bill. Even in the Joint Select Committee we knew that it was a very important Bill, and this is what the Ministry of Parliamentary Affairs has done with this Bill. I want you, therefore, to protect this House, to protect such Bills and important pieces of legislation and to see that something is done to mend the ways of the Ministry of Parliamentary Affairs.

SHRI A. K. SEN: Sir, before Shri Tankha made his submission, I personally was going to express my regret for the shortage in the requisite notice to which this House is entitled, and I was going to crave the indulgence of the House myself in this particular instance for the purpose of waiving the requirement of this rule with the assurance, so far as I am concerned, that we shall try our utmost not to repeat this, not to strain this indulgence too much. In fact, Sir, I think this is the first time during my life as a Minister that I had come up before the House seeking this indulgence. I must say this that what Dr. Gour has said is right in substance. The discussion of the Bill was completed by the Select Committee in 1959 and the Report of the Select Committee was submitted in the beginning of 1960. And yet, though I had tried repeatedly to have this Bill brought up before the House,

other Bills were given priority because they were more important from other points of view, and it was not found possible to have it passed though it was before the Business Advisory Committee every session. This time I made it absolutely a matter of rather prestige so far as I am concerned, and said that either we pass it this session or we shall forget about setting up an All-India Bar before this year was out, because it will be appreciated that the elections will have to be held and if we cannot pass it this session, I am told that it will not be possible for us to have an All-India Bar before the next elections. I would therefore appeal to the hon. Members to excuse this omission in the matter of giving the requisite notice to the hon. Members of this House. All that I can say is that we tried our utmost to see that the matter was rushed through. The Bill was passed by the Lok Sabha on the 27th April. There were several amendments made and the Lok Sabha found it difficult to print the Bill with the amendments and then transmit it to this House before yesterday.

DR. R. B. GOUR: The Appropriation Bill was transmitted within a question of minutes.

SHRI A. K. SEN: There were no amendments. The difficulty is if you could print the Bill as it is, possibly it would have been possible. But there were several amendments.

DR. R. B. GOUR: There is only an amendment about Gujarat and Maharashtra.

SHRI A. K. SEN: No, no. There is amendment of clause 25.

DR. R. B. GOUR: That is right, but amendment slips could have come.

4 P.M.

SHRI A. K. SEN: Anyway, Sir, as I said, this House is entitled to this notice of two days. It is necessary

in normal cases but, as Mr. Bhupesh ; Gupta has rightly said.

SHRI AKBAR ALI KHAN: This is a measure which . . .

SHRI A. K. SEN: . . . this is a matter over which there is very little controversy. It is a measure which is welcome to the Bar in the entire country and it is a measure long overdue. And it is our cherished desire, as Mr. Bhupesh Gupta said, to have an All-India Bar before we break up, I "mean . . .

THE VICE-CHAIRMAN (SHRI ROHIT M. DAVE) : In view of what the hon. Minister has said, I think we may bring this particular Bill .
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SHRI BHUPESH GUPTA: You are not the Minister, why are you. . .

PANDIT S. S. N. TANKHA: I wish to make the position clear. My submission was that according to the rules, this Bill could not be taken up today. But if the Law Minister gives us an assurance that in future it will not become a precedent, then the Bill may be taken up.

SHRI BHUPESH GUPTA: Other Ministers . . .

SHRI AKBAR ALI KHAN: My point is this. Even if it is taken up, is it necessary that we should finish it today? We can finish it in August when we meet because there are certain important points which we would like to consider. I am as anxious as the hon. Minister or my friend, Mr. Bhupesh Gupta, to expedite the matter. We want an All-India Bar Council.

SHRI A. K. SEN: I have to tell hon. Members that if we pass the Bill even, it will not be possible to have an All-India Bar Council functioning from the 1st of January next year

SHRI BHUPESH GUPTA: Do away with this invidious distinction between Ministers and others. Let us have this Bill passed.

SHRI B. D. KHOBARAGADE (Maharashtra): We can discuss this Bill tomorrow also for some time and sit through lunch hour. One and a half hours can be utilised for Government business and the rest can be utilised for non-official business.

THE VICE-CHAIRMAN (SHRI ROHIT M. DAVE) : Tomorrow is Private Members' day and we do not wish to encroach upon that. Therefore, I think

SHRI BHUPESH GUPTA: You can do away with that, I tell you. We have done that. For example, there have been occasions when we have sat at 10 o'clock and before the other business we can finish this Bill. If one hour extra is needed, we can sit tomorrow at ten and by the time the Private Members' Resolutions come up, we will have finished this Bill. But I do not think it will be necessary. Let us proceed with the Bill and see how it is . . .

SHRI B. D. KHOBARAGADE: Some hon. Members may want time to study the Bill. We can meet tomorrow at ten, sit through lunch hour and finish the Bill before the session is over

THE VICE-CHAIRMAN (SHRI ROHIT M. DAVE): Let us at least start, with the Bill.

SHRI BHUPESH GUPTA: Let us start with the Bill. We can sit till mid-night. Dinner may be arranged here by the Ministry of Law by way of amends. It has been done ...

SHRI A. K. SEN: I am agreeable to that.

SHRI BHUPESH GUPTA: He is agreeable by all means. You are also agreeable. Let us sit here and pass the Bill.

SHRI B. D. KHOBARAGADE. If we accept the suggestion made by Mr. Bhupesh Gupta, we can get more time and more speakers will have the

[Shri B. D. Khobaragade.] opportunity of expressing their views on this important matter. We can meet tomorrow at ten and we can sit through lunch hour.

SHRI A. K. SEN: The hon. Member himself was a member of the Select Committee and so it is not that it is something with which he is not familiar.

THE VICE-CHAIRMAN (SHRI ROHIT M. DAVE): Let us start with the Bill. There is general agreement on that.

SHRI A. K. SEN: Let us make a start.

Sir, this measure is not only well-known to all the Members of this House but it is a welcome measure. Everyone connected with the legal profession has welcomed it. In fact, I had occasion to say in the other House that it had been an anachronism so long that notwithstanding our having one legal system in the country and one Constitution, yet for twelve years since our independence, we had not thought it necessary to have an All-India Bar. The Bar has been fragmented into divisions and sub-divisions, castes and sub-castes, without having that unity which alone can give the Bar not only responsibility but also effectiveness in assisting the courts of law of our country.

The main features of this Bill are firstly that there will be an All-India Bar under which will be the State Bar Councils which will have the duty to record on its rolls the advocates of each State—the senior advocates and others—and those who have the requisite university degree recognised by the Bar Councils will be enrolled on payment of the requisite fee. The Bar Councils will be charged with the responsibility of maintaining discipline, code of conduct and also promoting the interests of the Bar. So far as the Central Bar Council is concerned, it is responsible for laying down standards, of professional conduct and etic-

quette and disciplinary action. In other words, it shall be an autonomous body charged with the duty of creating, maintaining and also promoting the objectives and duties of a unified Bar for the whole country.

Sir, I commend this measure for the acceptance of the House.

The question was proposed.

SHRI BHUPESH GUPTA: Mr. Vice-Chairman, Sir, I hope we shall be passing this Bill today. Therefore, I have to be very brief.

SHRI AKBAR ALI KHAN: That is where you are agreeing with the Law Minister.

SHRI BHUPESH GUPTA: Mr. Akbar Ali Khan is a barrister. He wants to hang on to his vested interests for a while.

Why do I welcome the Bill? I have not made a detailed study of it. I have just glanced through it and I read the Bill as it was introduced. Now, I am not concerned with the details of it. We may discuss them later on by way of amendments after the Bill is passed and the Law Minister may himself introduce amendments later on. But why do I support it? I just tell you that these are the main considerations and I think there is not much disagreement over them. An All-India Bar Council is a good thing and I like it. And the one reason amongst others is that these distinctions between what he said castes and sub-castes should go. I say that something more than that has cropped up in the legal profession, touchables and untouchables. That also should go. The barristers thought that they were something much superior to the lawyers in our country. I never accepted that position. Although I myself was called to the English Bar, I thought always that it was an insult to the intelligence and wisdom of our country, to the qualities of our men, to the traditions of our men, because even before people thought of going to England

for legal education, we had produced excellent legal minds in our country. Such a country should not have been so dependent on, or subservient to, the English Bar. These distinctions are still lingering in certain parts of the country, especially in West Bengal in the Calcutta High Court. At one or two places it is going. I welcome this thing. I am happy that today it goes. I am not a legal practitioner, I am not a practising lawyer. But- I have always felt that this should go. I have seen how our lawyers educated in India had been looked down upon by the barristers who were qualified in England. Sir, I make no reflections on the barristers but I do maintain that this was a very bad thing that had developed and I hope that the provision will be properly implemented. The States should not be left to do whatever they like. The Central Government should use the authority of law and otherwise to bring about a uniformity in this matter and abolish all this business of castes and sub-castes, touchables and untouchables. Even today in Calcutta if you go to the High Court, you can see two Bar Libraries. One is called the Association of those lawyers who are educated in our country and the other is called the Bar Library Club meant for those gentlemen who had been called to the English Bar. It is a standing disgrace, I say, and it is a surprise that lawyers did not themselves change it. If I had had my way, I would have abolished that barrier immediately and I would have seen that these barristers sat together with the other lawyers and behaved as decent, honourable citizens of the country equally with others. Today it remains. Now I find in the Bill that it is left to the States. I think, if the States do not do so, if they do not abolish the exclusive preserve of those people who call themselves barristers, we should tell them here and now that in the next Session of Parliament or thereafter we shall pass a legislation to do away with this distinction. Let the mind of Parliament be know. Otherwise, I know, Sir,—

certain vested interests have developed

there—there will be resistance from them. We may be free; thirteen years of freedom may have come to us, but there are some people who think in terms of the British King and the Queen who had been ruling this country, and think in terms of the lawyers of those British days. They still think in terms of the British justices and judges and barristers and so on. I do not like it. That ideological servitude we must get rid of.

DR. R. B. GOUR: But that goes with lack of adult franchise in municipal elections.

SHRI BHUPESH GUPTA: It is true. I have known the intelligence and qualities of lawyers who are qualified here, and those who are there. This is an important thing.

Then I say that the enrolment fees should be reduced. The stamp fee business I do not like. Why should the lawyers pay so much money to get themselves enrolled? Why must you make them pay so much? Today the lawyers are coming from the middle classes, and they are not in a position to bear such heavy expenditure on stamp fees and enrolment fees." As it is, I think they are very high. They should have been reduced drastically by those who prepared this Bill. I think something should be done about it, because I have in mind lawyers coming from all categories, from all walks of life. Now, therefore, the fees should be reduced.

Then, Sir, this dual system should be completely abolished, the solicitors on the one hand and the advocates and barristers on the other. This should go. Why should this remain here? And now, as far as I know, it is prevalent in Bombay and also in Calcutta and this dual system has resulted in the sharing of earnings between the solicitors and advocates and the subordination of the bar to a caste or clique of solicitors. There are good solicitors; there are good lawyers; all these things are there. But some vested interests develop in the legal profession, among solicitors, and they

[Shri Bhupesh Gupta.] develop in such a way that the entire Bar, the entire legal profession becomes sub-servient to them. Let me give you an example of my own case. When I went to join the Middle Temple—well, as we were having our dinner in the Middle Inn's High Court—somebody—I would not name that person—asked me, "Have you come from East Bengal?" I said, "Yes, I come from East Bengal." Then he asked me, "Do you have any relatives among the solicitors?" and so on. I had just come from the jail after spending four years there. That gentleman perhaps did not know that. Therefore I said, "No, I do not know anybody." "Do you know anybody in Calcutta?" he asked, because I was coming from there. I said, "yes, I know one person in Calcutta and that is the ticket collector at the Sealdah railway station", because I thought that a ridiculous question, and should be answered in a ridiculous manner. Then he told me that until and unless I had some people among the solicitors' relatives—fathers-in-law or mothers-in-law or what he meant I did not know; perhaps he meant some such thing. I had no chance in the legal profession. Now, when I came back to Calcutta I found it was so, that unless you were a flatterer or a sycophant of the members of the Bar or the solicitors at the top you would starve. Anyway I did not go in for that Bar, but I had seen how the people suffered. It happens at every place. Now this is the position. Not, all solicitors are bad: good among them [there are. Some of them are multimillionaires, the few at the top. How they- became multimillionaires? It is not gold mine that way. All kinds of things go on. In the name of preparing drafts and so on all kinds of things go on and they make money. The widows lose their properties and, as you know, once you go through a solicitor, you lose everything by the time you emerge from the court finishing a case, and you see you have to go before the employment exchange or some such thing. Such is the position, and such are the gentlemen. I

do not blame any of them. This is the position and therefore this system should go, and it is a good thing.

Here a formula has been found for the Supreme Court that an advocate on record can practise in the Supreme Court. This should be done—I do not want to go into technical matters in this respect.

"THE VICE-CHAIRMAN (SHRI ROHIT M. DAVE): You had promised to be brief.

SHRI BHUPESH GUPTA: Yes, Sir, I am nearly finishing; I shall be very brief.

Then, Sir, another thing is this. Time permitting I could have said many other things. Now, Sir, another thing is this. The legal profession is a very exorbitant proposition. At the top level there are advocates like our Law Minister. The Law Minister was sitting here. He has gone away, I find. He is a contemporary of ours. I do not know how much money he was earning. Now, this is the position—exorbitant fees are charged by them, and this is something which should not be tolerated. The English Bar has it. A certain other Bar has it. But there are Bars also which put a curb on the maximum earnings of a lawyer. In the Calcutta High Court and the Bombay High Court I am told there are lawyers who are earning Rs. 25,000, *Us.* 30,000 and even Rs. 40,000 per month. Now, what does it mean? It has also social implications that the best legal talents, those who can handle the law books and digest them—or, well, ill-digest them—whatever it is—can get on thriving in that manner in the courts of law. They are available, not for the poor man but always for the rich. That we have seen in the big trade union cases. Dr. Raj Bahadur Gour would be acting as the lawyer for the trade union with a law book in his hand—probably he has not read law; he is a doctor of medicine—and on the other side will be perhaps the top-most lawyer getting Rs. 2,000 per day.

DR. R. B. GOUR: The Attorney-General himself.

SHRI BHUPESH GUPTA: Yes, the Attorney-General himself. Now, in, a society where we aim at certain values, where we want to have certain other directions of development, can we allow this thing to be handled in this manner? Can we expect this thing that these lawyers with their prestige, with their learning and other things would always be placed in an objective situation when they serve the vested interests? No. We cannot allow this thing. Therefore, Sir, some restriction should be there. Here, I come to the Advocates-General and the Attorney-General.

SHRI AKBAR ALI KHAN: What has it got to do with the Bill? Is there any limitation on their fees so far as the lawyers or advocates are concerned?

SHRI BHUPESH GUPTA: I want to put in limitation.

SHRI AKBAR ALI KHAN: Have you brought in an amendment?

SHRI BHUPESH GUPTA: Well, I have not got an amendment; as you know, there was no time for tabling amendments, but I can certainly say that I want to put a limit. I do not want to allow the Attorney-General of India to appear for the vested interests, for the employers in industrial disputes—I make that clear. I do not like the Advocate-General of West Bengal or Bombay to appear on the side of the vested interests when it is a trade dispute, or when a case comes up involving certain Fundamental Rights and the party on the one hand is the people whose Fundamental Rights are affected and the party on the other is the big money. Now, Mr. Akbar Ali Khan is upset by it, but I can certainly make this suggestion. Therefore, Sir, I think the Advocate-General and the Attorney-General and the Solicitor-General should be debarred by law, by regulation. If necessary let us adjourn the House

and we can sponsor amendments debarring them from appearing on the side of the vested interests in such cases. It is possible to do so. We tried to get the facts. We tabled a question to get the facts as to in how many cases the Attorney-General of India appeared on behalf of the employers, and—do you know—the question was not admitted, and could not be answered' because the Attorney-General, we are told, refused to supply the necessary materials and information saying that he was not under an obligation to furnish the information for a reply to such a question. We do not even know the facts. Therefore, when we have got the chance we should certainly make our voice felt, even if we today cannot give notice of an amendment. That should be done, adopt an amendment putting a restriction on the highest earnings and thus we must strictly regulate their functions. I know the Advocates-General—some of them personally—and I know they are good men, very able men. But we must regulate their incomes and their functions, especially when they are associated with the State in this manner, being Advocates-General or Attorney-General or Solicitor-General and so on. Then, Sir, I would suggest a collegium to be started of the lawyers at every level, at the Supreme Court level, at the High Court level, at the district court level. It should be in the form of co-operatives. When I went to the Soviet Union I asked them as to what these lawyers in the Soviet Union did. If they had earned too much money, they would not have been able to produce such big men. But the point is that there everybody earns and, they said that they had a collegium. In some other countries also, in capitalist countries also they have collegiums. That is to say, middling lawyers and juniors form into a kind of co-operative where they share the cases. The earning is shared. Here, on the one hand you have some top men earning thousands of rupees and on the other you have some poor men going about in trams and earning particularly nothing. Such

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should not be the position. Therefore, in the legal profession itself, these disparities should be narrowed down, and what is more, by that system we make it possible for the middling and junior lawyers to combine together into a co-operative and function in a manner where there is co-operation and distribution of jobs so that that way they earn their livelihood. None of them will be very rich. That should be done. Therefore, the idea of a collegium is something which should be very much in our minds and we should take steps to do so. This is also in the interest of the public, because if a poor man goes to a collegium rather than to an individual with a case, which on merits should be taken up, the collegium will decide as to which member amongst them should take up this case and then at a very cheap cost we can get the case handled. Sir, this collegium idea is a very important idea and should be considered by the Government. You may give it any other name, I have no objection, but this system should be developed.

Then, Sir, our legal profession today has to be reoriented. This is very, very important. There we must see, when we are having a Constitution functioning in a new set-up, that even cases will come up where social values will come into conflict in the courts of law, as we see that vested interests challenge certain acts of the Government in the name of Fundamental Rights. As we see, employers go to the courts of law to deny bonus or legitimate demands of the working people and so on. Therefore, you see the landlords and various other interests coming. Now, in a democratic set-up which is just fashioning itself, which is just opening itself, which is in the formative period, it is essential that we reorientate our legal profession. It cannot be without a purpose. It cannot be without an objective. It cannot be without an outlook. It cannot be without a social approach. This is what we say. Therefore, it is essential that reorientation is given to it.

We should see that those people who take broad, dynamic, democratic views as lawyers, are placed in important positions. We should see that these Bar Councils that are going to be formed in the States, and the Central Council take up more and more of such cases and defend the rights and interests of the masses and the people and they fight the vested interests and so on. That is very, very essential because law courts are an institution where the society is sought to be held to ransom by the moneyed. They can drag the matter to a court of law against the working class, against the peasantry. They know they would be in a position to spend money and delay the processes of law, take advantage of it, influence the processes of law by the sheer weight of their gold and frustrate dynamism in social life, frustrate social justice. They should remember this/ while they make rules for the conduct of Bar Councils and so on.

I need not say very much on this point. These are some of the points that I want to make here. One point perhaps I should say here. This is for the Government to consider. Well, Sir, I think more people should be recruited from the Bar to the Bench on merit, younger people with great social outlook, progressive outlook and good commonsense with minimum necessary knowledge and so on. That should be done. Our Benches should not be fossilised; not in the physical sense, but in some other sense it should not be fossilised. We should not live in the past. We should recruit more and more people who give an account of themselves at the Bar to the Bench. That sort of promotion should go on. Of course, promotion departmental or otherwise from within the services should also go on. Today we have very few from the Bar. We must have more people, even at the district level, judges and so on recruited from the Bar. That is important.

Now, recruitment should be made on the basis of proper knowledge of the right type of people and other factors.

Then, about reciprocity. I understand that others can come here and get enrolled, but it should be on a reciprocal basis. No country should have an advantage over us. If a particular country recognises our lawyers, the same measure of recognition should be given to their lawyers. Nothing beyond that.

Then, Sir, I am opposed to our young boys being sent to England any more for legal education, i.e., for joining the Inns of Court and studying law and coming back as barristers. I think we should declare that those days are gone. Mr. Akbar Ali Khan should be satisfied with his son being qualified at the Bar here and be able to practise. He should not send him to England. Now, the position is that they send their children to England.

DR. W. S. BARLINGAY (Maharashtra): Why have you picked up Mr. Akbar Ali Khan of all?

SHRI BHUPESH GUPTA: He is a barrister, as you know. I sometimes forget that you are a barrister and I am also one. I am happy that I forget.

Now, foreign exchange is sanctioned for that purpose. When I made enquiries about that, it was said that they did not allow foreign exchange for anyone who goes there to study only law. If he takes up a degree in addition, then foreign exchange is sanctioned. You know, what happens? When they make application they say they are going to study in some university. After going there, some of them after drawing foreign exchange, go there and become worthless barristers, come here and join at the cost of the exchequer. Now, that the foreign exchange is controlled, our law should be such that no one who goes there to study law should be given foreign exchange. That is to say, the application to study law in England should be a disqualification for receiving any foreign exchange. When I was in England in 1956 I also went to the Inns of Court just to have

a look at it, otherwise I do not have any regard for it.

SHRI AKBAR ALI KHAN: You must have regard for it.

SHRI BHUPESH GUPTA: No. I have not the slightest regard for the imperialist Inns of Court, let it be known here. You may love it, I do not.

SHRI AKBAR ALI KHAN: You have learned there and you have learned your modern education there. You may deprecate them but you must respect them.

DR. W. S. BARLINGAY: There is no question of imperialism here at all.

THE DEPUTY MINISTER OF LAW (SHRI R. M. HAJARNAVIS): This Bill does not deal with the question whether barristers ought or ought not to have, respect for the Inns of Court,

SHRI BHUPESH GUPTA: Yes, you have understood it. That is the mentality of barristers. He is not a barrister, but you see, Sir, how he has been infected. He gets up in defence of barristers.

DR. W. S. BARLINGAY: He is not a barrister.

SHRI BHUPESH GUPTA: But he gets up in defence of barristers. That is the tragedy of it.

SHRI AKBAR ALI KHAN: For the sake of decency and courtesy we should not give up respect and regard for the Inns of Court.

SHRI BHUPESH GUPTA: Well, Sir, with all respect to Mr. Akbar Ali Khan I have not the slightest regard for the education that is imparted in the Inns of Court. I picked up not only my Barrister-at-law degree there; I passed my LL.B. like him from the London University, picked up two legal degrees. At least in the London University I learnt something. It was a university but at the Bar one need not attend lectures. People go and have drinks—I never drank of course

[Shri Bhupesh Gupta.]
—and, have dinner and then they are |
called to the Bar.

SHRI AKBAR ALI KHAN: Bar lectures
are the best lectures, you know, better than
university lectures. Of ttrurse it is optional.

THF. VICE-CHAIRMAN (SHRI ROHIT
M. DAVE): We need not go into that.

SHBI BHUPESH GUPTA: I do not know
if Romeo was in greater love with Juliet
than Mr. Akbar Ali Khan is with the
English Bar. I do not know that. Now Sir, I
have attended their lectures. I have gone
there, I have done everything there,
whatever you did there and I have found it
absolutely useless, as you may call it but
that was the situation at that time. People
went there, were called to the Bar and then
lorded it over the legal profession. You
show your power and your privilege, show
your position, tell the world that you have
passed the Bar and if you are an unmarried
young man, get a good bride and get away
with it. Therefore, this should be stopped.
We should send our children for technical
education by all means. We should sent)
them for higher medical education by all
means but for Bar it is a wastage of money
and we would not like this demonstration.
Mr. Sen is a lawyer and he is coming. We
would not like so many to become bar-
rister's, to be sent there. I would not like
tbat. Somehow or other, it goes against my
grain. Today how many Engbsh students
come here to study law in our'institutions?
Don't we have lawyers in our country?
Nobody comes to India to study law but we
send our boys till now to England because
some people some day were in the Inns of
Court and they like to advertise it. Why do
it? It creates a very wrong mentality. There,
education is absolutely useless today.
"Today we have an independent India, we
are having our own laws, the kind of which
in many respects, does not exist in
England. We have our

1 own written laws, our own system of laws
based on our own ideas and we must make
law that way. Today we need not go there.
Therefore, from every point of view, this
should be stopped.

I need not say anything more. If I have hurt.
Mr. Akbar Ali Khan's pride, I am very sorry
for it but I am very happy today that we are
putting the lawyers of our own country on an
equal footing with those people who have
been educated in England that way and called
to the Bar there. What I want is to pull them
down a little and make them realise that in the
Bar Council merit alone, devotion alone,
democratic ideas alone, quality alone will
count, not where you have been trained and so
on. I do not know about it but on the original
side, practice should be open to all. I hope the
Bill will be supported by all. Many
amendments I would have given to this Bill
but today I would not bother for that for the
simple reason that the one or two things that
are there should be immediately implemented
and I hope the lawyers and the Leaders of the
Bar who will be there at the State level and at
the all-India level, should see to it that we
develop a Bar,a legal institution in the country,
worthy of the great name of the country and
the traditions as well as the objectives that we
have in mind.

SHRI A. D. MANI (Madhya Pradesh): Mr.
Vice-Chairman, Sir, I rise to support the Bill
which has received the enthusiastic support of
all sections of the House here as well as the
other House. I would like to raise certain
fundamental questions to which I hope my
hon. friend, Mr. Sen, would reply. We are
trying to create an All-India Bar at this time
and it is perhaps a matter of congratulation to
him that this All-India Bar should come into
existence during his term of office as the Law
Minister of the Government. At the same time
when you are creating an All-India Bar, we
are already seeing

the forces of disruption of the All-^N India Bar at work. The hon. Minister would be aware that in the State of Madras Tamil is being used at almost district level. I am not saying anything at all about the advisability of the use of Tamil in the law courts. The other day the Allahabad High Court decided that in the matter of argument Hindi can be used. It is going to happen in every State that the regional language is going to be used. If you are going to have regional languages used in all these various High Courts, how is it possible to have interchangeability of advocates from one State to another? This is one of the fundamental questions which are going to arise in the immediate future and I would like the Government to state its policy in respect of this matter. I think Mr. Sen would agree that for maintaining a unified Bar we must have a common language of legal administration, whether it is Hindi or English but we cannot have a large number of regional languages competing.

AN HON. MEMBER: Why?

SHRI A. D. MANI: Because you cannot have an All-India Bar. You can have a State Bar and you cannot have interchangeability of advocates from one part of the country to the other, if we allow the present language policies of the various States to continue and I do hope that my hon. friend Mr. Sen would see that whatever might happen to the larger question of the national language of this country, there should be one language of administration for the law courts of India, because that is most necessary for the functioning of an All-India Bar.

The second point that I would refer to is the absence of judges from the Bar Councils. I know that the Government made an effort to get the judges associated with the Bar Councils and that they received a reply from the Supreme Court that the judges would not like to be associated with the Bar Councils. The judges might have reasons of their

own but I would like Mr. Sen to pursue the matter a little further. I quite see the embarrassment which might be caused to the judges if they so associate themselves with the various functions which have been listed and which come within the purview of the Bar Council. It is not within their jurisdiction to advise on a variety of matters but in one respect, I think the judges' association is called for and at least for this limited purpose, if Government were to pursue negotiations with the Chief Justice of India and get the association of the judges in the matter, I think the Bar Councils would be strengthened, and that is in respect of disciplinary offences. I do not want to say anything about the Bar Associations of this country but recently, tendencies have been visible in various Bar Associations of factional wrangles. I would mention here that the other day the Government of Madhya Pradesh asked a lawyer from Nagpur to prepare the case file in respect of Jabalpur riots, and immediately there was a protest » from Jabalpur, from the lawyers, that an outsider was being imported into Jabalpur. These wrangles are continuing at the State levels. There is no use looking upon the Bar as consisting of the Attorney-General or Solicitor-General or men of the stature of the Law Minister or the Deputy Law Minister. At the State levels competition is very keen and if you allow disciplinary offences to be judged by Bar Councils, it must cause a lot of embarrassment to the Bar Councils. It is in respect of disciplinary offences, I think, that the judges can play a useful part. They should function as inquiring judges and the matter should go to the High Court and not to the State Bar Council and later on to the All-India Bar Council in appeal. I know that a provision has been made for appeal to the Supreme Court and you will find it extremely difficult to get lawyers to sit in judgment of their colleagues. Human considerations come into play. Nobody likes to hit the other man on the stomach and I

[Shri A. D. Mani.] know that when I wanted to file a contempt of court application against an advocate, I found it extremely difficult to get an advocate to take up the brief. So the question of professional camaraderie is there and in order that disciplinary offences may be properly judged in a dispassionate manner, the judges should be associated with it. I hope the Law Minister, whatever might have happened in respect of this Bill, would reopen the matter with the Chief Justice of India and his colleagues.

I would like to make one reference to a provision in this Bill relating to clause 31 and to the special provision for attorneys. The Law Commission and the All-India Bar Committee have disapproved of the attorney system which is now prevalent in Bombay and Calcutta.

SHRI A. K. SEN: No, no. It is the other way about. They have recommended the retention of this system.

SHRI A. D. MANI: But when this question was discussed in Nagpur at the time of the States' reorganization, and there was a proposal that the Nagpur High Court should be incorporated with the Bombay High Court, the Bar and the litigants felt that the attorney system which was prevalent in Bombay imposed a very prohibitive burden on the litigants. And I know personally of a case on which I went for consultation for about half-an-hour and we were charged Rs. 750 for half-an-hour, and I could have given that opinion myself without reading law books. This attorney system made litigation very costly and in order to give junior advocates of the Bar a chance to practise, the attorney system might be abolished so that the junior advocates might take up chamber work. At least a provision could have been made in clause 31 under which it could have been stated that after an appointed date, say, after the 1st April, 1965, no more attorneys would be engaged. If that provision had I

been made, we could have put an end to the attorney system.

I would like to make one further observation about the functions of the State Bar Councils. One of the clauses says that the State Bar Council might constitute a fund for the purpose of giving financial assistance to indigent and disabled advocates. This is likely to be a pious provision. If the State Bar Councils have to discharge their functions in respect of this matter, it might become necessary for the Central Government and for the State Governments to make appropriate grants every year, as part of the State Budget, to the State Bar Council so that money may be available for giving aid to the disabled or indigent advocates. I trust that this provision would not remain a dead letter in the law, because in all professional organisations, we make provision for such a purpose, but seldom have we been able to give aid to the indigent and disabled people.

With these observations, Sir, I would conclude and say that this Bill deserves the warm support of every section of the House and we trust that a uniform Bar Council will come into existence on a common basis and with a common language in all law courts in India.

DR. W. S. BARLINGAY: Mr. Vice-Chairman, since there is not much time, I shall be extremely brief. There is no doubt at all that this is an event of very great significance so far as the legal profession in this country is concerned and that is especially the case when you find that at this time there are a lot of disruptive tendencies in the country to which my hon. friend Mr. Mani made a reference just now. There are, of course, a lot of difficulties, difficulties of languages and so on and so forth. I wanted to speak a great deal on these matters, but since there is no time and since I know the hon. the Law Minister is himself

perfectly aware of all these difficulties, I do not want to dilate upon those difficulties today, at any rate.

There is, however, just one little thing which I wish to say. I wish to draw the pointed attention of the hon. Minister to the note which I have written as a Member of the Select Committee. It seems to me that when you are talking of strengthening the Bar of this country and of unifying it, it is no use talking merely in the abstract. We should not be content with merely laying down certain abstract principles and abstract standards. The whole point is that when we are talking of the Bar as the guardian of the rights and liberties of the people in this country, we should take positive steps to see that the Bar is strengthened to that extent. Merely laying down standards and saying that members of the Bar in this country should attain these standards both in the matter of professional efficiency and in the matter of professional morals, will not do. We have to adopt a positive attitude to these matters and in this note that I have referred to, I have suggested certain measures which might be considered by the hon. Minister at the time suitable to him. If I may draw the pointed attention of the hon. Minister, I would invite his attention to para 5 on page TX of the note appended to the Report of the Select Committee. There I have stated:

"I do not at present, wish to go so far as to say that all legal service should be either socialized or nationalised. Nor do I minimise the difficulties in suggesting actual amendments to the present Bill to secure the aforesaid objects. But I suggest as a first step that clauses 6 and 7 of the Bill should be suitably amended and the State and Central Bar Councils should be given necessary powers to regulate and control the admission to the bar and to regulate relations, where necessary, between the client and the counsel also. It should, in fact,

be a part of the functions of the Bar Councils created by this Bill that they should take active steps to see (i) that legal work is distributed amongst its members as equitably as possible and (ii) that every member of the profession is assured a decent standard of living."

I know that the hon. Minister is in agreement, at any rate in spirit, so far as these suggestions are concerned. Of course, I know the difficulties in the way, because we are all concerned here with the liberty of the people and it is extremely difficult to regulate the relationship between the client and the counsel, especially. I know all these difficulties. I do not want to dilate on these points. I know the Law Minister is very very sympathetic to the point of view that I have indicated in this note. But I would say this much. Although at this juncture it is not now possible to give any additional powers to the Bar Council, none-the-less, the attention of the various Bar Associations in this country and especially of the Supreme Court Bar association might be drawn to the fact that a mere negative attitude towards the profession will not do and that they should take active steps voluntarily to see that the lot of the members of the Bar in this country is ameliorated both from the point of view of the professional ethics and also from the point of view of professional efficiency. That is all I have got to say on this matter today. I thank you very much for the time that you have given me.

SHRI B. D. KHOBARAGADE: Mr. Vice-Chairman, I support this Bill. For the first time in this country, we are having an opportunity to set up an autonomous Bar and I think the legal profession will have an opportunity of controlling its own business as it likes, without any interference from the High Court or the Supreme Court. Sir, as the time at my disposal is very short, I will only make a few observations.

[Shri B. D. Khobaragade.] There are only two or three controversial issues on which I would like to express my views. The first one is about the dual system. I think my hon. friend, Mr. Mani, also expressed his views on this subject. It is very essential that the dual system of having advocates and solicitors must be abolished immediately and for that purpose, provision should be made in this Bill itself. It is not desirable that we should leave this issue to be decided by the respective High Courts. There are three reasons. The first is that by making provision for solicitors and advocates, we divide the legal profession into two water-tight compartments of solicitors and advocates. The solicitors can act only and the advocates can only plead. The advocates cannot act and the solicitors cannot plead. So, we are making this water-tight compartment. Moreover, when we have brought this measure in this House with the sole purpose of creating one class of legal practitioners, there is no purpose in creating two classes, one of solicitors and the other of advocates. The second reason is that it violates the principle of equality of status and opportunity. Because, Sir, in certain High Courts you would be allowing advocates to act as well as plead whereas advocates practising in the Bombay and Calcutta High Courts will be debarred from acting; they are only entitled to plead. There will be discrimination in that in certain High Courts they can act as well as plead whereas in the Bombay and Calcutta High Courts they will not be allowed to do both. The third reason is that this system is very expensive. Why should a litigant be asked to engage two lawyers, one to plead and one to act? Already, in this country, justice is supposed to be very expensive and it is not possible for the poor litigants to secure justice, however just and proper their case may be because of lack of financial help. Many times they have to give up their claims. That is the case even when there is no dual system. In the Bombay and Calcutta

High Courts where the dual system is prevalent, it becomes more difficult for the litigants to prosecute their claims in the courts of law. It is said that for conducting cases efficiently it is necessary to have solicitors as well as advocates. Sir, I fail to understand this argument because today we have got this system only in two High Courts, that of Bombay and Calcutta, and in others there are no solicitors. Are we to understand that the cases are not conducted efficiently in other High Courts? If it is done efficiently, there should be no objection to abolishing this dual system in the Bombay and Calcutta High Courts.

The second point I would like to touch upon is in regard to the stamp duty. I think the legal profession is the only profession in my view where an individual who wants to join that profession has to pay stamp duty to Government. Today, if any person wants to enrol himself as an advocate, he will have to pay Rs. 250 to the Bar Council as enrolment fee. Even this amount of Rs. 250 is exorbitant and this should be reduced to Rs. 100. So far as the stamp duty is concerned, it should be completely abolished because no fresh lawyer can be enrolled until and unless he pays this stamp duty. Sir, this would defeat the very object of this Bill." There are 40,000 pleaders now who are entitled to enrol themselves as advocates but because they have not got sufficient funds, they do not enrol themselves as advocates. There are 40,000 pleaders, and if we do not abolish the stamp duty, then these 40,000 pleaders will not enrol themselves as advocates; they will continue as pleaders, because we have made provision in this Bill whereby pleaders can continue to practise without enrolling as advocates. We will not have a single set of legal practitioners. We will have pleaders, vakils and advocates. If we want to abolish this distinction, it is very essential that the stamp duty must be abolished, and the vakils and pleaders should be allowed to enrol themselves

as advocates without paying any stamp duty. Formerly, any person who was qualified to enrol himself as an advocate or a pleader could enrol himself as an advocate or a pleader; to get himself enrolled as a pleader he need pay only Rs. 25 or Rs. 50. Today, if a person wants to join the profession after passing the law examination or even the Bar Council Examination, he will not be allowed to join it by paying Rs. 25 or Rs. 50 for enrolling himself as a pleader. If he wants to join the profession, he must enrol himself as an advocate, not as a pleader. Would the hon. Law Minister enlighten me as to how many people there are in this country who are in a position to pay Rs. 1,000 at the beginning of the career and get themselves enrolled as advocates? This will also be more detrimental to the interests of backward communities and the poorer people because they are not in a position to pay Rs. 1,000. Naturally, this would mean that people from backward communities or poor classes will not be enrolled as Advocates. There will be another effect in that they will not be allowed to join Government service also where experience of legal practice is prescribed as the minimum qualification. They cannot enrol themselves as advocates, they cannot practise in the courts of law and, therefore, they will not be taken in Government service also. Nowadays, one finds, even for a naib tehsildar's post, persons with legal experience, persons who have practised for a number of years before a court of law, applying. Naturally, when there are better candidates, they will be selected thus closing the door so far as the candidates from poorer classes are concerned because they will not have experience of legal practice due to exorbitant stamp duty. So, by not abolishing the stamp duty, you are closing the door of Government service so far as the poorer sections are concerned, because they cannot get themselves enrolled as advocates due to lack of funds to the extent of Rs. 1,000. Of course, I do agree that

there should be one class of legal practitioners. But when we are closing the door by not allowing these people to enrol themselves as pleaders, then it is the responsibility of Government to see that the other door is kept open for them; it is the responsibility of Government to see that these people are enabled to join the legal profession without any difficulty, without having to pay any substantial amount as stamp duty. Having closed one door, let us open the other door. The hon. Minister stated in the other House that the Union Government was not in a position to abolish the stamp duty because it happened to be a State subject. In this respect, Sir, I would only quote from the Report of the Joint Select Committee. It has been mentioned, "Any provision in the Bill in that behalf may be of doubtful validity in view of the distribution in the Constitution of legislative powers." The Joint Select Committee says that it is of doubtful validity; they do not categorically reject it or say that it is not within the power of the Union Government. They only say that it is of doubtful validity. Three Members, Mr. Sadhan Gupta, Mr. Santosh Kumar Basu and Mr. Hem Raj, have appended their Minutes of Dissent. They are of the opinion that it is within the jurisdiction and power of the Central Government to abolish stamp duty. That is the opinion of three Members of the Joint Select Committee; the opinion of the Joint Select Committee and the Law Ministry also is, whether we can abolish stamp duty or not is a matter of doubtful validity. If it is a matter of doubtful validity, why should we not abolish stamp duty here and now and let the aggrieved party take this matter up to the High Court where we can get a decision? The Law Minister has not categorically stated that the Union Government is not competent to do so, he has only said that it is a matter of doubtful validity; this may be correct or this may be wrong. If it is of doubtful validity, let us abolish stamp duty here and now, and

[Shri B. D. Khobaragade.] if any aggrieved party wants to take up this matter to a court of law, he is entitled to do so and we will get a decision of the High Court afterwards.

5 P.M.

Sir, the third point that I would like to make is about the persons who will be allowed to join the Bar Council or the educational qualification that is prescribed in this Bill for joining the legal course. It has been mentioned in this Bill that any student can take up law course after passing the Intermediate examination. It is said in the Bill that he need not have a degree in arts, science or commerce. Already we have got a large number of legal practitioners in this country and there is cut-throat competition and now if we reduce this educational qualification and if we allow all the students who have passed only the Intermediate examination to take up law course, they will be swelling the ranks of the legal practitioners and it will affect the entire profession. Dr. Barlingay has already referred to the cut-throat competition and to the nefarious practices adopted by certain persons in the profession. If we want to avoid such things then in my opinion we should see that persons who want to join the law course should have first obtained a degree in arts, science or commerce and then only they should be allowed to take up law course after passing. Which they may be allowed to join the Bar Council.

SHRI TAJAMUL HUSAIN (Bihar): Mr. Vice-Chairman, Sir, we all welcome this Bill. After hearing the hon. Law Minister that the Bill must be passed today I decided that I would not speak but after hearing my hon. friend, Mr. Bhupesh Gupta, after hearing the irrelevant, meaningless and disparaging remarks that he made against this institution which taught him law and against the members of the English Bar . . .

SHRI BHUPESH GUPTA: I did not make any such remark.

SHRI TAJAMUL HUSAIN: Sir, I am in possession of the House. Let Mr. Bhupesh Gupta sit down.

SHRI BHUPESH GUPTA: Is he a member of the English Bar?

SHRI TAJAMUL HUSAIN: I am a member of the English Bar and I am proud of it. We Indians are taught that we must respect our teachers, we must respect our *guru*, we must respect the institution which imparts education to us. We are not Communists who have got no sense at all after they become Communists. His name should be struck off the rolls. He has no respect for anything; today he speaks against his own mother country; he speaks against India. Is that correct? His name should have been struck off. Those words should be deleted, expunged.

SHRI BHUPESH GUPTA: Here is a product of the English Bar.

SHRI TAJAMUL HUSAIN: I am a product of the English Bar and I am proud of it. I repeat it again. But I am ashamed of that man because he has become Communist and he has lost all sense of proportion.

DR. R. B. GOUR: Is the hon. Member in order when he says, 'I am ashamed of that man'. He used the words "that man."

SHRI TAJAMUL HUSAIN: He asked me whether I was a member of the Bar and I had to tell him . . .

DR. R. B. GOUR: Sir, I want your ruling whether he can say 'that man' with inference to another Member of the House.

SHRI TAJAMUL HUSAIN: If I had said that, I withdraw that word. I would say the hon. Communist member.

SHRI BHUPESH GUPTA: I would like the Law Minister to make provision for a lunatic asylum attached to the Bar Council.

SHRI TAJAMUL HUSAIN: If I used the word 'man' that was a slip; I withdraw it, and I say the hon. Communist member. Is Dr. Gour satisfied now?

Now, he has been talking against the members of the English Bar. And members of the English Bar in India have been very great men. One of the greatest, Mahatma Gandhi, was a product of the English Bar. Don't forget that. But probably he does not care. Our own leader, Jawaharlal Nehru, is a product of the English Bar. I can give many more names. In his own State Lord Sinha was there. How many more names does he want me to mention? Our Law Minister here is a product of the English Bar.

THE VICE-CHAIRMAN (SHRI ROHIT M. DAVE) : You have made that point. Now, proceed.

SHRI TAJAMUL HUSAIN: The hon. Member said that they become multi-millionaires by charging exorbitant fees. Of course, they do because they are brilliant people but he could not charge even two pies. So much as regards my hon. friend.

There was a Commission called the Setalvad Commission which recommended *inter-alia* that there should be a unification of the Bar and hence this Bill has been brought forward. At present there is no equalisation so far as the Bar is concerned. There are advocates, vakils, pleaders, mukhtars, attorneys and solicitors. They are all members of the Bar; they are all members of the legal profession. I submit to the hon. Law Minister that all should be made equal. In future do not have the examination for pleaders; you have examination only of the law course which is called the LL.B. or B.L. or something like that. Whoever is now practising, let all of them be enrolled as advocates, the whole lot of them. It won't do any harm. Everybody will be happy. Enrol the whole lot of them as advocates of the High Court. They should be called advocates and they should

be allowed to plead before the High Courts. That is my submission.

As regards the fee for enrolment, when I was called to the Bar more than 40 years ago in England I was enrolled as advocate. Barristers are enrolled as advocates of the English High Court, that is, the King's Bench Division. At that time I was required to pay only half a crown which is less than Rs. 2/-. I was very happy because in England we did not have much money but when I came back I went to the High Court at Patna and I thought they would not charge me anything because I was already an advocate. But no; I was called upon to pay Rs. 500/-. And my son recently, about three years ago, had to pay still more. In this country the fee is very high. Why can't the Law Minister do something about it? By this you discourage poor people—now I am speaking on behalf of the Communists—from becoming lawyers. Even if they become lawyers, you prevent them from becoming advocates. Therefore, my submission is that something should be done to reduce the fee considerably. An hon. Member has suggested Rs. 100. I think it should be even less. There are many young lawyers who cannot afford to pay even Rs. 100.

Then, nothirtg, I think, is there in the Bill to reduce the cost of litigation. That means the poor people have no redress. I am now fighting for the poor but not as a Communist. Sir, I do not like Communism; they are very bad people.

DR. R. B. GOUR: As a crypto Communist.

SHRI TAJAMUL HUSAIN: I am a congressman pure and simple. It is far above all other parties.

THE VICE-CHAIRMAN (SHRI ROHIT M. DAVE) : Let us go on.

SHRI TAJAMUL HUSAIN: Only one or two replies to Mr. Bhupesh Gupta; nothing else, Sir.

[Shri Tajamul Husain.]

What I was saying was, the poor have no redress. Poor and rich should be equal before the law.

In conclusion, I would- say that here you have advocates and senior advocates. I am an advocate of the Supreme Court also. In England some senior advocates become King's Counsel or Queen's Counsel. If there is a King, he is King's Counsel and if there is a Queen, he is Queen's Counsel. Now, they have got a Queen and he is called Queen's Counsel. So, I suggest that the same method should be adopted here. We have got our President here. Why not have the President's Counsel? This is my suggestion.

SHRI M. S. GURUPADA SWAMY (Mysore): Mr. Vice-Chairman, I will be brief in my remarks, as many points have already been covered by my hon. friends who spoke just before me. It is very seldom that Parliament gets an opportunity- to legislate for the legal profession. Perhaps the House is aware that nearly 35 years ago, in 1926, the Legislature at that time passed the Bar Councils Act. Even after fifteen years of independence we were not able to pass any legislation for consolidating the law relating to legal practitioners. So, we are really happy that this Bill has been brought forward, even though it has been brought forward so late.

There are many interesting and progressive features in the Bill which I do not want to dilate upon, because it takes a lot of time. I want to draw the attention of the House to two or three points which have been touched upon partly by my hon. friends who spoke before me. This Bill provides for an All-India Bar and it also contemplates a Bar Council for each State. The Select Committee has improved upon the original Bill. For instance, it has assured the autonomy of the Bar Councils by avoiding the presence of judges. My hon. friend, Mr. Mani, was saying that the judges should be present in the Bar Councils.

I think that if they are present in the Bar Councils it will be embarrassing both to the members of the Bar Councils, i.e., the advocates and to the judges who happen to be there. And to that extent I think the autonomy of the Bar Councils will be violated. I think it is a welcome provision that judges should not be members of the Bar Councils.

There are one or two other important provisions in the Bill. One is the giving of training to young lawyer* who want to practise in courts of law. It is a very important provision. And the Bill seeks to do away with various other degrees necessary to become lawyers. For instance, according to the Bill it is not necessary for a person, who wants to become an advocate, to take a degree in commerce or science or arts. It is enough if he takes a law degree. As soon as he takes a degree in law he is entitled to become a lawyer, after undergoing some compulsory training. This is a welcome feature.

Then, the Bill amplifies the various matters that the Bar Councils deal with. It will be one of their functions to safeguard the rights and privileges of advocates. Secondly, the Bar Council has to deal with the reform of law in the country. Thirdly, it has to create a fund for the indigent and disabled advocates. All these activities and functions provided are sufficiently broad and I think the Bar Councils will have a clear perspective of their duties and responsibilities.

The whole Bill would have been very progressive but for the fact that the old legacy of imperial rule has been kept. The legacy of imperial rule has been continued, that is, the dual system. Reference has already been made to this matter. But I want to say that this system was brought into being in the year 1776 by the East India Company and they brought it into being with a view to creating exclusiveness and affording certain superior rights, separate rights, to the persons from England who practised here. It has got a sort of relation

to the policy of racial segregation and exclusiveness. This system is being continued in the Bill and no attempt has been made either by the Select Committee or by the Lok Sabha to remove this blot on this progressive legislation. Since the time is very short, perhaps there is no time to bring forward an amendment to this effect. But I may say that the Government may take its own time to bring forward an amendment in this regard. I think that this exclusive privilege given to a certain section in the profession is not good. It is even repugnant to the fundamental object and the *raison d'être* of the Bill, because the Bill contemplates an All-India Bar, a unified Bar, whereby anybody can practise anywhere in India. There will be one single roll in which anybody can register himself as an advocate. These are the progressive features in the Bill. But all these progressive characteristics of the Bill suffer because of this dual system, which is being continued. No attempt has been made to remove this.

Regarding the enrolment fee I feel that even Rs. 250/- is a big sum. It is a large amount. I feel the amount should have been smaller. It will be difficult for a new entrant to pay even Rs. 250 in a mofussil place. I think it should be scaled down.

Regarding the stamp duty I join with my other friends and say that this should be done away with. I think the Government of India should take steps to advise the State Governments to do away with stamp duty, because it will be a sort of double tax.

I welcome the provision in the Bill relating to appeal to the Supreme Court in regard to disciplinary matters. The Select Committee has done well in providing for appeals and in giving appellate jurisdiction to the Supreme Court in regard to these matters.

Then, I want to make another suggestion. I think no Member has made

it. That is about extending the jurisdiction of the Bill to Jammu and Kashmir. With regard to other Bills, I can understand that it is not advisable, unless they are adopted by the Government of Jammu and Kashmir, so as to extend the jurisdiction of those measures to that area. But in regard to this Bill I do not see any difficulty, any reason which prevents the Government from extending it to Jammu and Kashmir. The House is aware that the Supreme Court has jurisdiction in Jammu and Kashmir. I do not know why the jurisdiction of this Bill should not be extended to that State also. I think the Government should consider this matter and bring forward an amendment in this regard.

This is a unique occasion which certainly brings to reality the fond hopes, dreams and anticipations of the Bar. They will have a unified Bar and there will be one roll for all the advocates. I think nearly eighty thousand people are going to be benefited as a result of this legislation, and we certainly welcome this measure, and I join with my other friends here to support the various provisions of the Bill except those reservations on which I made comments.

SHRI A. K. SEN: Mr. Vice-Chairman, I am extremely obliged to the entire House for the indulgence they have extended to me and also for the support which has come from all sections of the House, notably Mr. Bhupesh Gupta. I shall remember throughout my life this incident in which Mr. Bhupesh Gupta who is always a champion of the opposition and who rarely supports the Government . . .

SHRI BHUPESH GUPTA: Whenever there is a good thing, I always support it.

SHRI A. K. SEN: . . . has come forward with his whole-hearted support for this Bill. I think there is good reason for it, and that is the

[Shri A. K. Sen.]

great desire of the entire country and the legal profession particularly that the Bar shall be one Bar as the legal system is *one* legal system. There have been a few comments made and it is necessary to deal with them very briefly.

The first is with reference to the retention of the dual system in the High Courts of Bombay and Calcutta on their Original Side. I think there is a slight confusion of thought in this matter. There is no question of our retaining it. It has been created by rules made by those two High Courts for convenience of their work, and it is for those High Courts to discontinue those rules at any time they like. So we have neither created this system of attorneys nor are we retaining it. The whole question is whether, while dealing with the All India Bar, we should have completely abolished a particular class or profession of people who are not advocates in the true sense of the term, because attorneys are never regarded as advocates. Those who are familiar with the system of attorneys know very well that most of the work of the attorneys relates to work outside the courts. In fact more than 95 per cent, of their work is concerned with out-of court matters, and their work in court is very very insignificant compared to their entire work. Their work in these two commercial cities relates mainly to advice and drafting and various other matters connected with mercantile transactions which are very very important in these two cities, and the work in courts is such that it is impossible for the man who argues a case in a court of law to also prepare the case, to get the witnesses, to serve the processes and various other things. Even if we abolish this system in law by law, the system will continue in practice, as they do in every High Court by a system of junior practitioners doing the drafting part of it and the senior practitioners actually confined to the pleading part of it. In the Supreme Court we have

legally the system of advocates on record, but these advocates on record actually do the work which attorneys in other courts would do though it is an appellate Court here, and it is all the more necessary for dealing with original cases. Therefore, the two Expert Committees set up by the Government, namely, the All-India Bar Committee as also the Law Commission, both recommended that for the good work and convenience of the litigant public, there was not a case yet made out for compulsory abolishing this system. But if the High Courts at any time thought that its discontinuance would be good for them, they will do so, so that the matter need not come to Parliament at all. For instance, take the mukhtars. It is nobody's case that it is an imperialistic relic as one of the hon. Members had characterised attorneys to be. I think it is rather unfair because we had many patriots in the profession of attorneys, and it is difficult to dub an entire profession as a relic of the imperialists. We might as well dub the advocates as a relic of the imperialists because both had been set up as a result of the same legal system introduced by the British, a system which certainly cannot be condemned and which in fact had many merits and still has many merits. Mukhtars, for instance, perform a very useful function. For the small man who is either a complainant or an accused in a minor criminal court the mukhtar is the only cheap legal help available to the ordinary man. It is difficult for him to get an advocate either from the district court or from the High Court. The mukhtar performs a very useful function, let there be no doubt about it, and therefore we have not abolished the mukhtars, though it may be said that the retention of the mukhtars would be contrary to the objective of an All-India Bar. From the wider point of view possibly it may be, and yet from the point of view of serving the litigant public it is not, for we are creating an All-India Bar for the advocates, but for the functions of those who need not reach the high train-

ing and qualification of an advocate and who may very well deal with cases which come up before minor criminal courts, petty cases of a minor type arising out of the application of our criminal laws, these mukhtars have been found good enough and capable enough for handling such cases and they render their services at a very cheap price. To remove them would be to take away a very important element from our legal system specially in the criminal courts of our country. That is why we have not abolished the mukhtars, as we have not abolished the solicitors. And yet it will be open to the respective High Courts, if they so choose, to abolish both mukhtars and attorneys. That is a different matter.

With regard to stamp duties, it is true that it is hard on the poor lawyer to find the money. In fact, many of us had felt the difficulty when we got ourselves enrolled, and we had to pay a very large amount to get ourselves enrolled. In fact money was dearer in those days than it is now. To pay Rs. 1000 when I joined the Bar was quite different from paying Rs. 1000 now, because Rs. 1000 means very much less today than it meant twenty years ago, and it has always been difficult. At the same time it must be said that though it is unfortunate, yet it serves as a healthy check against too many entrants into the profession.

SHRI BHUPESH GUPTA: Check on what? Check on quality.

SHRI A. K. SEN: One of the checks. I do not say that it is a very desirable check, because a check to be effective and good must be on other lines and not merely on the line of who can pay and who cannot pay.

SHRI BHUPESH GUPTA: You know very well that the sons of landlords in West Bengal, some of them useless people, got enrolled because they had the money.

SHRI A. K. SEN: That was not so. It was the poor man who got enrolled

with his hard-earned money in our days. Very few sons of rich men ever prospered in the Bar.

SHRI BHUPESH GUPTA: But they got enrolled.

SHRI A. K. SEN: I agree with Mr. Bhupesh Gupta that a proper check is a check initially. In the admission to the universities I have seen, Sir, in Russia, in Poland and in other countries, where education is more planned, that entrance to the learned professions is always planned so that only that number is taken into the universities—either for doctors or for lawyers or even for engineers—as would be ultimately required at the end of the period of their training to enter the professions. They calculate every year how many new entrants they would require for, let us say, practitioners, for non-practitioners, for professors, for research scholars and so on. So by the time they cover their course, they will all be absorbed and there will be no unemployed person. Though it is difficult, as one of the hon. Members has pointed, in a country where we are guaranteed complete freedom to pursue our own occupation or profession, some sort of planning at the university level seems to be desirable rather than trying to check the flow of entrants by the system of raising the fee one has to pay to get into the profession. And yet there is another aspect. The States do not want to give up their right to realise some revenue. As per the assurance I gave to the Select Committee, I did raise the matter at the last Law Ministers' Conference. The States were not prepared to give up the stamp duties altogether. But what was achieved was this that it was agreed that with the levy of Rs. 250 for the Bar Council, the other levies should not exceed an amount which would be more than Rs. 500 in all, so that the limit—it has been agreed—should always be kept within Rs. 500 and the stamp duty should never exceed Rs. 250 because in some cases—it was told at the Select Committee

[Shri A. K. Sen.] stage—the stamp duty even exceeded this; Rs. 300, Rs. 400 or Rs. 500 were levied. In fact, in Bengal, in undivided Bengal, when I got myself enrolled, I had to pay Rs. 800 and Rs. 800 in those days was a good money, certainly a good money. Anyway, I agree that it is bound to cause hardship but at the same time the field must be left to the States concerned.

So far as the Bar Council is concerned, a fee of Rs. 250 is not very unreasonable especially having regard to the fact that when we are setting up an autonomous body, We must give it enough funds to make it effective and useful. If it is to discharge all the functions given to it under this statute, then it requires funds and therefore Rs. 250 per entrant is not too much of a fee to pay when the Bar Council is going to function in so many different ways.

Sir, these are my submissions. I am happy to say that . . .

SHRI M. S. GURUPADA SWAMY: What about Jammu and Kashmir?

SHRI A. K. SEN: I am sorry. That is a general question. It was a mistake which every lawyer makes. Sir, under the Constitution we cannot extend an Act of Parliament automatically to Jammu and Kashmir. It can only be extended after the State Assembly passes a Resolution for the extension of the law to that State and it is only after that that the law can be extended to it. The Constitution itself provides a procedure and whenever we have to extend any law to Jammu and Kashmir, this is the procedure we have to follow. Only when the Jammu and Kashmir State Assembly wants it to be extended, we can do so. It is a matter for them and if they want it, we have no doubt the President will extend the law to it. These are my submissions.

I am extremely glad personally and I am absolutely sure that the entire House shares with me our happiness

in the fact that during our time the All-India Bar has become a reality. And it is a matter of personal gratification for me that during my time this has happened. As a lawyer who has lived all along within the atmosphere of the Bar, as a man who owes everything to the Bar, as a man who has seen the best of the Bar always and as a man who deeply believes in the traditions of the Bar, in its mission and in its duties to the public and to the State, I feel that this measure will not only be hailed by the country but will lay the foundations of a very bright future for the legal profession and in the process will also lay down a good tradition for service to the community at large which alone sustains the legal profession. If we do not serve the people and the litigant public, we do not justify our existence.

With these words, I commend the motion for the acceptance of the House.

THE VICE-CHAIRMAN (SHRI ROHIT M. DAVE): The question is:

"That the Bill to amend and consolidate the law relating to legal practitioners and to provide for the constitution of Bar Councils and an All-India Bar, as passed by the Lok Sabha, be taken into consideration."

The motion was adopted.

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

Clauses 2 to 23 were added to the Bill.

Clause 24—Persons who may be admitted as advocates on a State roll

SHRI AKBAR ALI KHAN: Sir, I move:

"That at page 11, after line 36, the following be inserted, namely:—

'(ce) has passed any law examination held in any Indian State

prior to its merger or reorganisation and has been enrolled in any High Court in India as a pleader; "

The question was proposed.

SHRI AKBAR ALI KHAN: Sir, I may mention that I would not insist upon this amendment. I will be very brief

SHRI A. K. SEN: I may tell the hon. Member that it is covered by "the existing provision.

SHRI AKBAR ALI KHAN: If it is not covered, then will you see to it that some measure is there? That is the point.

SHRI A. K. SEN: He can take my word that it is completely covered by the existing provision.

SHRI AKBAR ALI KHAN: When this assurance has been given, I do not want to press my amendment and, therefore, I beg leave to withdraw my amendment.

The amendment was, by leave, withdrawn.

THE VICE-CHAIRMAN (SHRI ROHIT M. DAVE): The question is:

"That clause 24 stand part of the Bill."

The motion was adopted.

Clause 24 100s added to the Bill.

Clauses 25 to 57 and the Schedule were 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 proposed.

SHRI AKBAR ALI KHAN: Sir, I would like to say one or two words*. Through you I want to assure the hon. Law Minister and the Leader of the Opposition, Mr. Bhupesh Gupta, that when I raised the question of the insufficiency of time, it was not to post-

pone this measure but it was because I felt that more thought could be given to some of the provisions and if we had more time we might have improved the present Bill. But I do feel that it is really one of the measures for which the Law Ministry could be rightly congratulated. I am very glad that this measure has been approved of. It will be a measure which in course of time will be improved. Particularly in one direction I would appeal through you to the Law Minister and that is, to give some thought when making the rules. Sir, at present, as Mr. Bhupesh Gupta explained, there is a big disparity between the top lawyer and the young lawyer. As it is, in England and in some other countries no senior can be recognised as such unless he has got a certain number of juniors and he has to pay a certain amount of fee. I think the young lawyers should be given as much latitude as possible so that people who are honest, hardworking and intelligent do get a due chance and a proper chance to share the benefits of the profession to which they belong. About the people who do not have the degree, an assurance has been given. I am fully with the House and I support the measure.

SHRI BHUPESH GUPTA: Sir, I want to say only a few words. I also congratulate the Law Ministry and those gentlemen who have prepared this measure. I think that but for their initiative in the Law Ministry this would not have come here even now I know that such things are not easily done. There are all types of resistance. The initiative that has been taken by the Ministry of Law of the Union Government should not be given up in this matter. But it should be continued in other fields also and in the matter of the administration of this particular measure that we have just passed or passing and in, the matter of follow-up also. I may again say that it is very very important that the Government of India and the Law Ministry in particular take the initiative. Why I say this is because many of the things have got to be

[Shri Bhupesh Gupta.] done. As far as the lawyers are concerned, as far as the Bar Councils and judges are concerned, Through persuasion, by persuading them you have got to get things done. Therefore, Sir, I think it is the job of the Law Minister now to take up this thing through informal and formal discussions with the Ministers in charge of the Legal Departments in the States, and also, whenever the opportunity arises, with the Judges of the High Courts and those people who will come to form the executives of the 'Bar Councils—the presidents and other members of the Bar Councils—at the Centre and in the States. And the Law Minister should be guided by one or two cardinal considerations. First of all, as Mr. Akbar Ali Khan rightly pointed out, every effort should be made to so formulate the rules and to so conduct the affairs of the Bar Councils that the discrepancy between the few at the top and the many at the bottom in matters of earnings narrows down at least. That should be done. How to do so is something which cannot be laid down in law here at the moment, but is something certainly which can be handled through discussions and negotiations in the matter of the actual conduct of the work. Given the goodwill and the right spirit, it should be possible to see that the junior people are not made to stand on the sidelines of the legal profession. They also should be lifted, up by the people who are senior, who have had experience, who have had positions of authority at the Bar and otherwise in the legal profession. Therefore the Law Ministry, I think, should take that initiative.

Then, Sir, another thing they should do about the thing. Now, the point was made by Mr. Mani. I think the regional languages should be encouraged in the States. At the Central level—well—there should be one language—I understand it—but in the regions the regional languages should be promoted by the Bar Councils, and these Councils in the States should take the initiative. We should now look forward to the transition from

English to the regional languages, for example, in Bengal from English to Bengali, in Andhra from English to Telugu—like that. Now, that is a very hard task. In this matter also the Bar Councils should take the initiative. I know there is conservatism. I know there is resistance and there are practical difficulties as well. But once the Government renders the necessary financial aid and gives other forms of encouragement, it should not be difficult to solve this problem, because the legal profession, in order to be brought near to the people, must speak the language of the people, and the judges, lawyers and others should have a common language with the people. That is very very important.

Then, Sir, about the legal aid to the poor man. Here the provisions are not satisfactory. Now, assistance to the poor man has a moral consideration, and especially the consideration should be shown when he is hauled up wrongly in a court of law, or is fighting for his just rights. That is a feature in any good legal system. Today, in a poor country like ours, when specially the majority of the toiling masses and workers are accused wrongly by others, they are not in a position to pursue matters in the courts of law just 'because of their poverty, and I think here is a matter for the Bar Councils to pay attention to at the State level and at the Central level, and as in other fields, so in this field the Central Government and the Minister in-charge should take the initiative. How it should be done, I cannot say at the moment. But certainly one thing they can do. They can impress upon the Bar Councils, that would be coming into existence in the States and here at the Centre, to make necessary arrangements to give the poor man legal assistance, that is to say, make legal assistance free in certain deserving cases—what cases should be given and in which manner it should be given are matters of detail. But it should be done. 'Everybody is equal in the eye of law' becomes a fiction the moment you see that on the one hand the rich people*

can mobilise the legal talents and on the other poor people cannot step into the courts of law, and even when we see him stranded in the courts of law he is not in a position to look up to justice in his case. Therefore, I think that in this matter the Central Government should take the initiative. One of the ways they can do so is to make certain funds available. Of course, when an autonomous body is being started, it shall raise money from the fees that it will be receiving from the lawyers. Maybe certain other funds will also be coming that way. But why should it not be possible for a Government like the Government of India, with the resources such as they have, to make available some funds to the Bar Councils in the States and at the Centre which will form the basis for rendering **free** legal aid to deserving cases? I think the money will have been well spent. If we do not do so, then let us not talk of, "Everybody is equal in the eye of law." We should make it clear to the poor man, when he comes to the court, or is brought before a court of law, that he would not suffer because he is a poor man, because he is poverty-stricken or because of his class situation. Therefore, Sir, I think Government can provide adequate funds to this thing and they can say, "All right, we make these funds available to the various Bar Councils, and the Bar Councils also should raise these funds", so that we have certain funds with every Bar Council to render the necessary legal assistance to the poor man free. That is very very important. I know Mr. Sen has mentioned about it in some of his speeches. I have read it, but the point is not one Minister mentioning it. It should be a major Government policy. It is a matter for the Finance Minister also to consider. And why should we not make some funds available to the autonomous institutions that we are creating when we have made similar funds available in other cases—not exactly comparable cases but other cases—or rather, when Government has given funds gratis in other cases? That should be done, and

I think it is very very important. The merit and lustre of our legal system should be ensured by making justice available, when it is merited by the poor man, to him and seeing that no financial or economic hurdle is placed in his way which he would not be in a position to cross, and by opening the door of justice to him in the same way, more or less, as it is open to a man with a purse, to a man with money. Unless we do so he will suffer. That is very very important.

Another thing I would ask him to look into. Government gives many briefs to lawyers and there, unless it is a very very complicated case requiring very high technical or very high legal acumen and knowledge, they should patronise the middle and junior lawyers. Why should it not be possible for the Government of India to set an example? Why should it not be possible for them to inspire the State Governments to patronise, in matters of Government briefs or cases, the small or the needy junior lawyers and middle lawyers? The tendency today is to send these things always to the big men. I do not deny that there may be very complicated and serious cases which should go to the big man, but there are many small matters which should go not to a select standing counsel or the Advocate-General and so on—to Government pleaders—but to other lawyers who should be given them; the State should be the source of their living that way. If they get acquainted with the system of State affairs on the legal side, if these people become lawyers there, they get more and more closely tied up with the legal affairs of the State; become a part of the system and they derive benefit from them. That is how we ensure their living and help them to come up in the legal provision. That also is very important in my view—patronage, help and backing by the State to the small and middle lawyers.

Then, Sir, a minor matter, and it is about their dress. I am talking of minor things but important things,

[Shri Bhupesh Gupta.]

DR. W. S. BARLINGAY: And the mode of address also—Your Lordships and so on.

SHRI BHUPESH GUPTA: I am coming to that. Now, we have got our own bar, the All-India Bar; no longer it is an English bar, and the members of the All-India Bar should wear the national dress. Of course, it may vary from State to State depending on the local customs and conditions or regional conditions. Certainly, Sir, this kind of band should *go*.

DR. W. S. BARLINGAY: Call it *ajagalastana*.

SHRI BHUPESH GUPTA: I think they should go now. I know it is not there under the rules. The Government of India should discuss this matter with States and work out as to what should be a dignified, national, honourable dress for our lawyers. We want to stand in our courts of law, whether here in the Supreme Court or in a High Court in our national dress.

SHRI AKBAR ALI KHAN: But it should be uniform for the whole of India.

SHRI BHUPESH GUPTA: Do it. Make it for all India. I have no objection to it but give up this Anglo-Saxon dress. The sooner you do it the better. Now, we are not living in the days when we had a British Law Minister sitting with that kind of show. See, our Law Minister is sitting in a bush jacket. You, Sir, are sitting in your *kurta*. In the old days, as you see the pictures in the corridors, in the lobby, what kind of thing they used? We have to give it up. Why should we continue such things? There should be dignity and a sense of pride,

the sense of the country in our very behaviour of life, in the exterior and in the interior of one's existence. That is very important to ensure.

Here, what Dr. Barlingay says is very important—my Lord. We are a Republic, apart from any other considerations. We are not living in a system of monarchy. But when you have to go to the High Court, you have to address as 'My Lord'. Well, Sir, if I had my way, I would have passed one-man legislation to ban it straightway. This 'My Lord' business should go. We can find other ways of addressing.

SHRI TAJAMUL HUSAIN: When we are not allowed to address an hon. Member as "that man", we should not mind calling the judge as 'My Lord'.

SHRI BHUPESH GUPTA: You see, Sir. We have a very interesting exhibition of the product of English Bar and we have been entertained by it. I am very grateful to the English Bar for it has produced such honourable people, interesting, entertaining and lovable that way also.

This 'My Lord' business should go. It is a very important thing. Let there be certain other forms or modes of behaviour. It is not that everything imperialist is bad. It is the legacy of the old, of the colonial past, of an imposed system, of an arbitrary system, of a pretended superior system that is bad. Therefore, these things should go.

DR. W. S. BARLINGAY: What about the prayer clause? We do not pray. We fight for our rights.

SHRI BHUPESH GUPTA: I know that Dr. Barlingay should be consulted. Why should we pray? As you know, we can write a letter to the President of India addressing him as Mr. President or Shri Rajendra Prasad. It does not come in the way. But in a court of law we say "My Lord, I pray". What is this? It is

anomalous. It is a caricature of public affairs. It is really a funny thing.

DK. W. S. BARLINGAY: It is contrary to human dignity.

SHRI BHUPESH GUPTA: I am very grateful to Dr. Barlingay. He is always adding to my knowledge and information. I entirely agree that it is contrary to human dignity, and it is an affront to one's intelligence and character. Well, Sir, these may be minor things, not important in themselves, but if you tread them, they become a system of behaviour, a way of life in a court of law which we want to live down. This is a relic of the past which we must forget.

Sir, these are some of the suggestions that I have made. These matters can be taken up by the Law Minister when he meets people in the States, Chief Ministers, local Ministers there and lawyers, eminent members of the Bar, counsels and barristers. **Now**, my barrister friend is getting a little upset. I can tell them that they are now living in the twentieth century and now we are 13½ years free. Therefore, Sir, they need not be upset. I am very sorry that my friends are getting a little upset. There is no reason for them to get upset. I have no quarrel with their system and education. I was misunderstood. Let them have their system and education and so on. I have no quarrel with them. It is for the English people to decide their own system and we have to decide our own. If you have got some of their good things, by all means keep them. I do not think if I got any good things from them. It is a matter of opinion. These are some of the suggestions that I made. The Law Ministry should be dynamic. The country's legal system should be overhauled, reoriented under the leadership of the Central Law Ministry. In this matter, the Government in general, and the Central Government and the Law Minister in particular would have important functions to discharge. I wish this Bill every

success in its operation and implementation. Thank you.

DR. SHRIMATI SEETA PARMANAND (Madhya Pradesh): Mr. Vice-Chairman, Sir, I would like to make one or two observations. One suggestion has been already made by my predecessor speaker, that is, with regard to free legal aid. That is a very urgent measure particularly as such help is required by economically backward classes and women who have now come to courts for their matrimonial cases and other things.

Secondly, the hon. Law Minister should see that a Bill is brought forward for setting up matrimonial courts because otherwise in the ordinary courts these cases will be very much delayed and the result is justice delayed, and justice delayed is justice denied. I would not detain the House very much longer. Because I have said these things in a few sentences, I hope their importance will not be less with the Law Minister, and he will take up these things urgently, and before the end of the year we will see these measure on the floor of the House.

Thank you.

SHRI A. K. SEN: Mr. Vice-Chairman, Sir, I am deeply obliged for the many suggestions which have fallen from Mr. Gupta and also from Dr. Seeta Parmanand. This shows that Mr. Gupta is not always destructive but he is capable of offering many concrete suggestions. In fact, when I was listening to him, I was really wondering whether I was not hearing my own voice because many of the things that he said I have been trying to repeat them everywhere I went during the last four years or whenever I had the opportunity to speak on the subject on the floor of this House or of the other House.

I agree with him whole heartedly, Sir, that the Bar must take an important part in the administration of a proper scheme for free legal aid to the poor. In fact, the Bar is taking a very important part in England

[Shri A. K. Sen.] today in that respect, and while doing so" it is also helping very much to maintain a good junior Bar. It is not an exaggeration to say that in England today the free-legal-aid-to-the-poor-scheme is the main sustenance for the junior Bar. Of course, the State takes a very important responsibility and also shares the burden in financing that scheme. In our country, I have been trying myself to see that the State Governments as also the Central Government accept responsibility in the matter of financing a proper scheme for legal aid to the poor.

Sir, much of the criticism that is levelled against our system of justice arises out of the fact that the common man has not the means to purchase the assistance that is necessary in a court of law for him to get justice as also to feel he has got justice. It is, therefore, in every country today that the system of administration of justice is always carried on along with a proper scheme for legal aid to the poor, and no system of administration of justice is regarded as perfect or even good if it does not comprehend within it a proper scheme of legal aid to the poor. But, Sir, as is the case with so many other schemes for us, there is so much demand on our finances, priorities are of such a nature that in our scale of priorities, legal aid to the poor does not find that place which, according to me, it should find because in our eagerness to develop the country in six P.M. trially and materially, we forget some of the basic things of life which make a democratic government endear itself to the people. The people feel that the Government and the system of justice is 'ours' if certain things are given to the ordinary citizens and if it is not so given, the ordinary man does not feel that he is at one with the administration or with the system under which he lives. Therefore, it will be my endeavour always to see that not only the Bar but also the

Government takes a proper part in devising and also financing a proper scheme for legal aid to the poor. It is well known that the Law Ministry had formulated a model scheme for legal aid to the poor in which the Bar was also given an important function. Unfortunately, the States are insistent upon a 50 per cent, contribution from the Centre in the matter of legal aid for the Scheduled Castes and Scheduled Tribes and the Central Finance Ministry finds it impossible to accede to that request though I have personally been pleading the cause for a proper contribution by the Centre.

DR. SHRIMATI SEETA PARMANAND: Why not for all economically backward people?

SHRI A. K. SEN: Poor does not know of any classification, A poor man is a poor man, whether he is a *brahmin* or . . .

DR. SHRIMATI SEETA PARMANAND: He referred to Scheduled Castes and Scheduled Tribes.

SHRI A. K. SEN: They are already given under certain priorities that we have accepted for ourselves. Having kept these classes and castes in subjugation for a long time, we have thought it our duty to help them in every way including giving them legal assistance. That scheme is already in operation and the Centre gives 50 per cent, of the expenses to the States in their effort to help poor litigants belonging to the Scheduled Castes and Scheduled Tribes but the other important thing is to help the ordinary poor man, whether he belongs to the Scheduled Castes or not, whether he is a man or woman, it does not matter. So long as he is a poor deserving man, who is in need of justice and who is incapable of paying the expenses necessary for getting justice, he deserves the help of the State and the State, in my submission, must discharge its duty of carrying out and executing a proper scheme of legal aid to the poor without which no system of justice

can ultimately subsist. That is a wider question.

DR. SHRIMATI SEETA PARMANAND: It is too big a responsibility but under Article 15 you can give first preference to women and the economically backward people. They are put in the same class as -Scheduled Castes under Article 15.

SHRI A. K. SEN: Article 15 is a right and at the most it is an enabling provision. That does not help in the actual execution of a duty, if at all it is a duty. The two things are quite different. One is the power and the other is the means to carry out the power. Let us not confuse the two. Regarding power, there is ample power both with the States and with us to do it. It is not lack of power which is in the way but it is the lack of finance which is in the way of carrying out and executing the proper scheme. Shri Gupta is very right in stressing the necessity of such a thing. I have been myself trying to advocate this all the time I have been in charge of this Ministry.

With regard to other points, the question of language and so on, I would rather not express any view on them. It is a very delicate question and it is difficult to speak on this matter without trying to involve the Government into any particular line of action but I can only say this that though, personally speaking, having been brought up under a system which gave India one language for its Courts of Law and having seen the benefits of that system we are always in favour of having one language for the whole country and perhaps it may be desirable to have one language at least for the higher courts, but I agree with Shri Gupta that for the inferior courts to insist on one language might mean a disadvantage to the man who comes either as a plaintiff or a defendant, either as a complainant or as an accused, might be completely wondering what is going on without understanding all about

it. The language that he speaks might be quite different from the language which is the language of the court if we insist on one language for all the courts of the land. I have seen the operation of courts . . .

SHRI AKBAR ALI KHAN: For the High Courts and the Supreme Courts . . .

SHRI A. K. SEN: Without saying anything, I said it might be that we may retain one language for the higher courts without . . .

SHRI BHUPESH GUPTA: How can you? We are committed to a policy of having the English language replaced in the States by the language of the region, that is to say, in Bengal by Bengali. When we shall do it is a matter of detail. That is the position. In some States, the official language has been adopted. So the Government's settled policy is there. How long it will take I do not know. As for the all India purpose is concerned, we have Hindi. I do not ask you to get involved, in a controversial discussion but as you know, we have accepted a certain position with regard to the language in the Commission's report and also the Government decisions are there.

SHRI A. K. SEN: As I said there are so many things to think about it and without coming to or trying to come to a definite conclusion on such a difficult matter, I can only express what important ideas we may all be sharing. As I say, it is difficult to dismiss off hand the necessity of an all-India language for the higher courts so that this great unity of language binds our legal system as it had in the past.

SHRI BHUPESH GUPTA: It cannot be because our Constitution gives the position with regard to the English language. We have adopted certain resolutions and the English language is not a language which is going to remain in the present position for all time to come even in respect of the courts of law. Some day we envisage

[Shri Bhupesh Gupta.] when we will have Hindi at the all-India level. That is the position. This emanates from the Constitution, this emanates from the various other pronouncements of the Government. Therefore, you cannot envisage anything except Hindi as an all-India language for the Supreme Court. There is no other if you have perspective in mind . . .

SHRI A. K. SEN: As I said, I am not going into the question. It is not as difficult to have one language for the courts as is thought by Mr. Gupta. I have myself devoted a good deal of thought. As I said I agree with him that so far as the inferior courts are concerned, there is a very strong case for bringing the regional languages in the inferior courts so that the man in the street feels that the language of the court is his own language. So far as the higher courts are concerned, in fact, for all practical purposes, even during the British days the interior courts did transact their business in their regional languages as I have seen myself, without any conversion of language by any official order but for the higher courts, it will be an unfortunate day if we find that we shall not be able to cite decisions of the Bombay High Court in the Allahabad High Court or a decision of the Allahabad High Court in the Madras High Court or a decision of the Madras High Court in the Calcutta High Court, as we have been used to do for so long. Mr. Gupta, unfortunately, though a lawyer, has not participated in the practical side of the legal profession and the administration of justice. If he had, he would have agreed with me that we would be giving away a good deal, we would be depriving ourselves of the accumulated benefits of over a century . . .

SHRI BHUPESH GUPTA: I wish to draw your attention. In part XVII Chapter I, the first article, article 343 says:

"The official language of the Union shall be Hindi in Devanagari script."

We have not amended that. We have discussed how we shall arrive at that stage. The Supreme Court, for example, will be under the Indian Union.

THE VICE-CHAIRMAN (SHRI ROHXT M. DAVE): Please do not interrupt.

SHRI BHUPESH GUPTA: Later on also . . .

(Interruptions.)

SHRI A. K. SEN: I do not want to, for very good reasons, enter into the legal position now because as I have said, I have studied this subject myself and Mr. Gupta can rest assured that I have done so and I have also been in a position to give a discourse on this but I deliberately do not propose to do so because of the delicateness of the position. If I say today, for instance, that it is possible to retain Hindi as the language of the Madras High Court, I might be causing a good deal of consternation and difference which I need not at the present moment.

As I said, it is difficult to enter into the legal position now, for while doing so, I might be giving an impression that I am taking either one line or the other, whereas I do not do so. I am only explaining what the different aspects of this problem are which we must weigh before coming to a decision. As I said, in the inferior courts, if the regional language is used, there is no difficulty. But if in the higher courts the language used is the regional language, then we shall be faced with a situation when each court will become a closed wing by itself, without offering anything to the outside States or itself enjoying anything, any sustenance, from the other States.

DR. R. B. GOUR: If you have a language in the High Court which is not the language of the lower courts under that very High Court, how can you cite a judgment of the High Court in the lower court?

SHRI A. K. SEN: I can tell you how, In the Supreme Court of the Soviet Union, you will find that the language there is Russian, whereas in the lower people's courts the language is the regional language. It does not really matter.

SHRI BHUPESH GUPTA: Will you have the same system here?

SHRI A. K. SEN: Let us not come to any conclusion now. We are now weighing the different aspects of this difficult matter. It is not such an easy thing that you can come to a conclusion immediately. And the worst thing is, if it is bound up with so much passion, so much sentiment and . . .

SHRI BHUPESH GUPTA: Just *one* point. What the hon. Minister is saying might lead to complications for . . .

DR. R. B. GOUR: He is not saying anything.

SHRI BHUPESH GUPTA: No, he is saying. He is a clever person and without appearing to do it, he is saying it in his own way.

SHRI A. K. SEN: Let it be quite clear that I am not suggesting anything. I actually started by saying that we cannot come to any definite conclusion.

SHRI BHUPESH GUPTA: I say we do come to the conclusion here and, if possible, formulate that in the State we must have, in the nearest possible time, the language of the State, Bengali, Telegu, Tamil and so on replacing English at the State level not only in the Assembly, but also in the courts of law. That should be done.

SHRI AKBAR ALI KHAN: There are difficulties, Mr. Gupta, for some of us really think that in the High Court Hindi should take the place of English.

THE VICE-CHAIRMAN (SHRI ROHIT M. DAVE): We cannot take any decision now.

SHRI A. K. SEN: All this only exemplifies what I have been saying, that it is not easy to come to a conclusion now. Sir, these are my submissions and I am sure these will be

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borne in mind. With these words, Sir, I again commend the Bill to the House.

THE VICE-CHAIRMAN (SHRI ROHIT M. DAVE): The question is:

"That the Bill be passed."

The Motion was adopted.

MESSAGE FROM THE LOK SABHA

THE SALAR JUNG MUSEUM BILL, 1960.

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

"I am directed to inform Rajya Sabha that the Salar Jung Museum Bill, 1960, which was passed by Rajya Sabha at its sitting held on the 15 th December, 1960, has been passed by Lok Sabha at its sitting held on the 4th May, 1961, with the following amendments:—

Enacting Formula

(1) Page 1, line 1, for "Eleven th Year" substitute "Twelfth Year".

Clause 1

(2) Page 1, line 5, for "1960" substitute "1961".

2. I am, therefore, to return herewith the said Bill in accordance with the provisions of rule 121 of the Rules of Procedure and Conduct of Business in Lok Sabha with the request that the concurrence of Rajya Sabha to the said amendment be communicated to Lok Sabha."

Sir, I lay the Bill on the Table.

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

The House then adjourns at fifteen minutes past six of the clock till eleven of the clock on Friday, the 5th Ma 1961.