

from the membership of the Rajya Sabha on the 2nd April 1956."

MR. CHAIRMAN: The question is:

"That in pursuance of the provisions contained in paragraph 3 of the Ministry of Education Resolution No. F. 16-10/44-E. III, dated the 30th November 1945, as subsequently amended, this House do proceed to elect, in such manner as the Chairman may direct, one member from among themselves to be a member of the All India Council for Technical Education *vice* Dr. W. S. Bar-lingay who ceased to be a member of the said Council on his retirement from the membership of the Rajya Sabha on the 2nd April 1956."

The motion was adopted.

THE DEPUTY MINISTER FOR EDUCATION (DR. K. L. SHRIMALI) : Sir, I move:

"That in pursuance of sub-clause (xviii) of clause (1) of the Statute 8 of the Statutes of the Aligarh Muslim University, this House do proceed to elect, in such manner as the Chairman may direct, one member from among themselves to be a member of the Court of the Aligarh Muslim University."

MR. CHAIRMAN: The question is:

"That in pursuance of sub-clause (xviii) of clause (1) of the Statute 8 of the Statutes of the Aligarh Muslim University, this House do proceed to elect, in such manner as the Chairman may direct, one member from among themselves to be a member of the Court of the Aligarh Muslim University."

The motion was adopted.

MR. CHAIRMAN: I have to inform Members that the following dates have been fixed for receiving nominations and for holding elections, if necessary, to the All-India Council for Technical Education and the Court of the Aligarh Muslim University:

Last date for nomination 6th August 1956

(up to 3 p. M.)

Date of elections. 9th August 1956
(between 3 p. M.
and 5 p. M. in
Room No. 29.)

The elections, if necessary, will be conducted in accordance with the system of proportional representation by means of the single transferable vote.

THE INDIAN MEDICAL COUNCIL BILL, 1956—*continued*

Clause 12—Recognition of medical qualifications granted by medical institutions in countries with which there is a scheme of reciprocity.

MR. CHAIRMAN: Now we go back to the discussion on the Indian Medical Council Bill. We take up clause 12 and there are two amendments proposed to that clause.

THE MINISTER FOR HEALTH (RAJKUMARI AMRIT KAUR): Sir, I move:

1. "That at page 6, line 2, for the words 'after consulting the Council' the words 'after obtaining from the Council a report, if any, as to the reasons for any such refusal' be substituted."

MR. CHAIRMAN: And Mr. Sinha, are you moving the other amendment?

SHRI RAIENDRA PRATAP SINHA (Bihar): No, Sir.

MR. CHAIRMAN: Very well. The question is:

1. "That at page 6, line 2, for the words 'after consulting the Council' the words 'after obtaining from the Council a report, if any, as to the reasons for any such refusal' be substituted."

The motion was adopted.

MR. CHAIRMAN: The question is:

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

The motion was adopted.

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

Clause 13—Recognition of medical qualifications granted by certain medical institutions whose qualifications are not included in the First or Second Schedule.

RAJKUMARI AMRIT KAUR: Sir, I have two amendments to clause 13. I move:

[Rajkumari Amrit Kaur.]

27. "That at page 6, after line 21, the following be inserted, namely :

'(3A) The Central Government, after consulting the Council, may by notification in the Official Gazette, amend Part II of the Third Schedule so as to include therein any qualification granted by a medical institution outside India which is not included in the Second Schedule'."

Also I move:

2. "That at page 6, lines 22 to 24, for the words 'Any medical institution in a state in India which grants a medical qualification not included in the First Schedule or in Part I of the Third Schedule' the words 'Any medical institution in India which is desirous of getting a medical qualification granted by it included in Part I of the Third Schedule' be substituted."

MR. CHAIRMAN: I shall put the amendments

SHRI P. N. SAPRU (Uttar Pradesh): Sir, I would like to say something.

MR. CHAIRMAN: On the whole clause or on these particular amendments?

SHRI P. N. SAPRU: On the first of the two amendments just now moved by the hon. Minister.

MR. CHAIRMAN: Yes, go ahead.

SHRI P. N. SAPRU: Sir, I have no objection to the power which the hon. Minister now proposes to take to add to the number of universities in Part II by rule-making powers. But for reasons which I stated at some length in my speech of yesterday, I would suggest that "Munich" be included in the list. In fact, I have a copy of her speech of yesterday.....

SHRI KISHEN CHAND (Hyderabad): That is in Part II of the Third Schedule. It will be moved when we come to that.

SHRI P. N. SAPRU: But are we not dealing with the Third Schedule now?

RAJKUMARI AMRIT KAUR: May I reply to the hon. Member? I am accepting Mr. Kishen Chand's amendment:

"That at page 20, after line 13, the following be added, namely: or

•M. D. (Munich)'."

I propose accepting that amendment proposed by him.

SHRI P. N. SAPRU: That will be all right. Thank you very much.

MR. CHAIRMAN: The question is:

27. "That at page 6, after line

27., the following be inserted namely:

'(3A) The Central Government, after consulting the Council, may by notification in the Official Gazette, amend Part II of the Third Schedule so as to include therein any qualification granted by a medical institution outside India which is not included in the Second Schedule'."

The motion was adopted.

MR. CHAIRMAN: The question is:

2. "That at page 6, lines 22 to 24, for the words Any medical institution in a State in India which grants a medical qualification not included in the First Schedule or in Part I of the Third Schedule, the words 'Any medical institution in India which is desirous of getting a medical qualification granted by it included in Part I of the Third Schedule' be substituted."

The motion was adopted.

MR. CHAIRMAN: The question is:

"That clause 13, as amended stand part of the Bill."

The motion was adopted.

Clause 13, as amended, was added to the Bill.

Clause 14—Special provision in certain cases for recognition of medical qualifications granted by medical institutions in countries with which there is no scheme of reciprocity.

RAJKUMARI AMRIT KAUR: I have to move an amendment to this clause, I move:

3. "That at page 7, line 3, the words 'and such persons shall not practise medicine for personal gain' be deleted."

MR. CHAIRMAN: The question is:

3. "That at page 7, line 3, the words 'and such persons shall not practise medicine for personal gain' be deleted."

The motion was adopted.

MR. CHAIRMAN: The question is:

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

The motion was adopted.

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

*Clause 15—Rights of persons
12 NOON POSSESSORS qualifications in
the Schedules to be enrolled*

RAJKUMARI AMRIT KAUR: Sir, I beg to move:

4. "That at page 7, line 8 for the words 'The medical qualifications' the words 'Subject to the other provisions contained in this Act, the medical qualifications' be substituted."

MR. CHAIRMAN: The question is:

4. "That at page 7, line 8 for the words 'The medical qualifications' the words 'Subject to the other provisions contained in this Act, the medical qualifications' be substituted."

The motion was adopted.

MR. CHAIRMAN: The question is:

"That clause 15, as amended, —stand part of the Bill.

The motion was adopted.

Clause 15, as amended, was added to the Bill.

Clause 16—Powers to require information as to courses of study and examinations.

SHRI KISHEN CHAND: Sir, I beg to move:

17. "That at page 7, line 17, after the word 'qualification' the following be inserted, namely: or

"The Council shall give general directions regarding improvement of medical courses, etc., as are submitted by all institutions or universities engaged in the granting of medical qualifications'."

MR. CHAIRMAN: The clause and the amendment are open for discussion.

SHRI KISHEN CHAND: I will have to read out the whole clause to explain my amendment. The clause reads as follows:

"Every University or medical institution in India which grants a recognised medical qualification shall furnish such information as the Council may, from time to time, require as to the courses of study and examinations to be undergone in order to obtain such qualification, as to the ages at which such courses of study and examinations are required to be undergone and such qualification is conferred and generally as to the requisites for obtaining such qualification."

This clause only requires information to be supplied to the Medical Council but when the information is sent to the Medical Council, what is it that the Council will do with that information? It will examine the information and try to find out whether the course of study of any University is below par and so on and so forth. After examining the facts, if the Council comes to the conclusion that the qualifications prescribed by any particular University are below par, the next step naturally will be to advise the Universities to raise their standards of examination and qualification to bring them on a par with other Universities. After getting the information, the Medical Council will have to make up its mind as to whether the particular examination conducted by a University is up to the mark or not; once it comes to the conclusion that it is not a proper examination, it must disqualify that University and must not allow persons who have qualified from the University to get themselves enrolled on the Medical Register. Without such a sanction, there is no point in having this information collecting bureau. What is the point of collecting this information unless the Council had got certain sanctions and powers to regulate and advise the

[Shri Kishen Chand.] Universities. At the time of the general discussion, the hon. Minister pointed out that the Universities are autonomous bodies and that the Medical Council had no right to interfere in the fixation of the curricula. Well, Sir, the very idea and object of the establishment of this Medical Council is to regulate the teaching and the qualifications for the medical profession. This can only be achieved if my amendment is accepted. My amendment is:

"The Council shall give general directions regarding improvement of medical courses, etc., as are submitted by all institutions engaged in the granting of medical qualifications."

This means that the Council is really going to perform its function of regulating the teaching of medical sciences to students. Therefore, I submit, Sir, that it is very essential that my amendment be accepted.

RAJKUMARI AMRIT KAUR: After the inspection of any medical college, if the Medical Council feels that the education in that particular institution is not up to the mark, it has every right to withhold recognition. It seems to me that that is the power • that should be given to it and that is the work that it has been doing throughout. In fact, sometimes complaints have come to me that the Medical Council is almost overdoing it.

SHRI KISHEN CHAND: I want to know under what clause?

MR. CHAIRMAN: Under what clause does the Medical Council withhold recognition? That is what he asks.

RAJKUMARI AMRIT KAUR: "Clause 19, regarding withdrawal of recognition. Naturally, the Medical Council recommends to the Central Government.

DR. P. C. MITRA (Bihar): I want to know what the "ages" mentioned in the clause refer to? Is it to the period of the course or the age of the students?

RAJKUMARI AMRIT KAUR: It refers to the age of the students.

SHRI KISHEN CHAND: They want to penalise the students by withholding recognition but they do not want to •

advise the Universities about the courses. My suggestion is that the Universities be advised by the Medical Council about the courses. What is the point of withholding recognition after the students have undergone training and have passed an examination at the end of five years?

RAJKUMARI AMRIT KAUR: It is not possible for anybody to get a fully qualified Doctor's degree if he is under 21 and that is why age has been given there.

The Medical Council has power to recommend withdrawal of recognition and that is good enough. We cannot enforce regulations on the Universities who are at liberty to set their own curricula for the various colleges.

DR. M. D. D. GILDER (Bombay): The age is regarding entry into the Universities prescribed by the Universities. It is fixed at 16 so that when the five year course is finished, the person should be at least 21.

PANDIT S. S. N. TANKHA (Uttar Pradesh): Although I am in agreement with the spirit of the amendment which has been moved by my hon. friend Mr. Kishen Chand, I do not quite agree with its wordings. I find that according to the wordings of the amendment, as tabled, it will be incumbent upon the Council to give general directions even where they are not found necessary. It is therefore necessary that the amendment should be so worded that wherever a necessity is found for giving general directions by the Council, then alone will it be incumbent upon the Council to give such directions but where it is found that the courses and instructions are in proper order and that the Universities are working well, there is no reason why the Medical Council should be called upon to give such directions. The hon. Minister has stated that clause 19 covers the giving of directions but I do not think that clause 19 covers the sort of directions contemplated by Mr. Kishen Chand.

SHRI P. N. SAPRU: Mr. Chairman, I find myself unable to agree with my hon. friend, Mr. Kishen Chand, in regard to the amendment which he has proposed to clause 16. The Universities enjoy a certain measure of autonomy and the Council is to be a professional body. I do not think the Council would be competent to advise

Universities in regard to the manner in which the subject should be taught or the text books that should be prescribed or the way in which examinations should be conducted.

In a general way authority has been given to the Council to advise the Universities so far as post-graduate instruction is concerned, it will have as its members not only medical graduates—some of them will come through election and they may not be highly qualified from an academic point of view—but also a fair number of licentiates. I have very high respect for the efficiency of the licentiate class. I have myself come across licentiates who do their clinical work as well as the M. B. B. S. or M. D. or M. R. C. P., but I doubt whether they would be in a position to direct the Universities where you have, at all events, a certain standard even to-day as to what subjects shall be taught, how the subjects shall be taught, how the examination shall be conducted.....

SHRI KISHEN CHAND: The hon. Member should read clause 17 according to which inspectors to attend at examinations can be appointed by this Medical Council. They can inspect the examinations but not

SHRI P. N. SAPRU: This Medical Council has to deal with other countries also so far as the recognition of our medical qualifications is concerned. Inspection is one thing and giving directions is another. It may be that it has "become usual for Chancellors to give directions to Universities as to what the curriculum of the Universities shall be. It may even be that Education Ministers give directions to Universities as to what courses of study they should prescribe or how teachers should teach their subjects. Well, I think all that, from an academic point of view, is wrong, and I think in these matters we should take an academic view, and I am surprised that an educationist of Mr. Kishen Chand's distinction, a person who has had experience of education and who should stand up for autonomy for the Universities should sponsor this amendment.

SHRI R. U. AGNIBHOJ (Madhya Pradesh): I think in one year the inspector would prove himself to be a super-Chancellor of the Universities if he is given the power to go and inspect the examinations of the Universities.

Therefore I do not think an inspector of this Medical Council should interfere with the Universities' examinations.

RAJ KUMARI AMRIT KAUR: There is no question of interfering with any examination or anything. It is their duty to see to it that the prescribed standards are maintained. This body is for the maintenance of standards, and if we read clauses 19(1) and 19(2) on page 8, all the powers that should be given to the Medical Council in regard to withdrawal of recognition which they can recommend to the Central Government are there.

DR. D. H. VARIAVA (Saurashtra): It is stated in sub-clause (3) of clause 18: "Visitors appointed under this section shall not interfere with the conduct of any examination but they shall report to the Chairman of the Council on the sufficiency of every examination which they attend and on any other matters in regard to which the Council may require them to report."

DR. M. D. D. GILDER: There is such a thing as academic independence but there is also such a thing as the required standard for a definite profession. The standards for the legal profession are defined by the legal profession itself. Similarly the standards for the medical profession will have to be defined by the medical profession itself and in order to define its standards it must visit those places and see what instruction is given and what sort of examinations are being taken. Sir, I have worked as an examiner; I have worked as an inspector and I have gone and inspected other examiners examining the students and I have had to make a report on this. I do not see that there is anything wrong with the arrangement that is proposed here.

MR. CHAIRMAN: The question is:

17. "That at page 7, line 17, after the word 'qualification' the following be inserted, namely :—

"The Council shall give general directions regarding improvement of medical courses, etc., as are submitted by all institutions or universities engaged in the granting of medical qualifications."

The motion was negatived.

MR. CHAIRMAN: The question is:

"That Clause 16 stand part of the Bill."

The motion was adopted.

Clause 16 was added to the Bill.

Clauses 17 to 20 were also added to the Bill.

Clause 21—The Indian Medical Register

SHRI KISHEN CHAND: I beg to move:

21. "That at page 9, line 22, for the word 'and' the word 'or' be substituted."

It is a very simple amendment, Sir. I am very glad and thankful that the hon. Minister has agreed to add the degree of M. D. of Munich to the list and to some extent it fulfils the reason for my submitting this amendment. No doubt there are so many Universities all over the world which are giving very good degrees and the hon. Minister has moved an amendment to clause 13 to-day by which the Central Government has taken the power to add to Part II of the Third Schedule but, Sir, till the hon. Minister takes such a step, there is at present a State medical register and there is an all-India medical register. There are qualified medical men who are on that register, but the moment this Bill comes into operation it is quite possible that persons who are on the medical register but do not possess the qualifications at present included in Part II of the Third Schedule will, immediately this Bill is passed, become disqualified. They will be running about the hon. Minister bringing pressure on the hon. Minister and the Medical Council that the name of their University should be included in Part II of the Third Schedule. It is quite possible that the period between their representation and the sanction may be one year, two years or three years, and it is possible that the hon. Minister may not agree to include their names. My question is: When they have been on the medical register for 15 years and 20 years and have been practising, is it fair now, today, after they have practised for 15 years or 20 years in this country possessing a proper medical qualification from a University just to disqualify them? Therefore, Sir, to clause 21 I have brought in this amendment. In clause 21—I will not

read the whole clause—in clause 21 (1) I am reading this portion from line 21: "shall contain the names of all persons"—now what is the qualification of of all persons?—"who are for the time being enrolled on any State Medical Register and who possess any of the recognised medical qualifications. It is a question of language and it is a question of interpretation. It is the repetition of the word "who" which appears in the portion "and who possess any of the recognised medical qualifications" which means that the person may possess one or the other qualification at the time of being enrolled on any State Medical Register. If the interpretation is that once they are on the Medical Register they will continue to remain on the Medical Register, or if they possess the recognised medical qualifications they can be put on the Medical Register then I would have had no grievance, but this "and" makes the qualification as a double qualification, that is, they must be on the Medical Register as well as possess the qualification in Part II. I say either the word "who" should not have been repeated or the word "and" should have been replaced by "or" as otherwise there is no fairness and there is no equitable basis. A person has been practising and is on the Medical Register for the last twenty years and are we justified to-day by passing a law in disqualifying him retrospectively? We pass always laws for the future, but we never pass laws for the past. A man is on the Medical Register. It is not our practice to deprive him of that privilege retrospectively.

SHRI J. S. BISHT (Uttar Pradesh): Why not?

SHRI KISHEN CHAND: Well, the Parliament is supreme. They can do anything, wrong or right! But it is not the usual practice. It is not the practice, when once they are on the Register, unless they have misrepresented their case or committed any fraud or any such thing to.....

SHRI J. S. BISHT: What is proposed to be done here has been done in the Dentists Act.

SHRI KISHEN CHAND: You have put them on the Medical Register and now you suddenly wake up after twenty years and you say, "We are not going to recognise that particular examination,

that particular, degree" and you disqualify them. Then those people will come and make representation and after six months or one year the hon. Minister will become convinced and will add their name. So for one year they will be starving and they will be running about persuading the Government. Is that right? Therefore I want the word "and" to be changed to "or" thereby giving an option. If they are once on the Register they continue or, if they possess the recognised medical qualification, they are put on the Register. That is my amendment.

RAJKUMARI AMRIT KAUR: Sir, in no circumstances whatever can I accept the substitution of "or" for "and". We are forming an All India Register and we must see to it that everybody who comes on that Register has got the recognised medical qualifications. I may say that there are many today who have got bogus qualifications. They may be on State Medical Registers and on no account will they be permitted to come on the All India Register and the Medical Council must have that right. And when I have said that from time to time the Second Schedule, as far as foreign degrees are concerned, shall be added to by the Centre on the recommendation of the Medical Council. I consider that I have given enough latitude. And 21(2) by which from time to time they may revise the register and publish it in the Gazette of India and in such other manner as may be prescribed is perfect guarantee.

DR. D. H. VARIAVA: Sir, as my friend Mr. Kishen Chand pointed out, a man is on the State Register for 20 years. He is practising. He has done very good work. Will he be disqualified from practising in that State if his name is not taken on the Central Register? Will he be stopped from practising? Will he not be allowed to give certificates to Government servants or others?

RAJKUMARI AMRIT KAUR: I hope very sincerely that those persons whom the States have put on their register and those to whom they have given the right to issue certificates and so on have got the recognised qualifications. But I cannot say that all will be taken on the All-India Register because that would be cutting at the very root of the object for which this Bill is being brought forward.

SHRI P. N. SAPRU: So far as I am concerned, I am satisfied with the line taken by Rajkumari Sahiba. Yesterday I referred in my speech on this Bill to a case which deserved the attention of the House and she has been good enough to include "Munich" as one of the Universities which shall be recognised by Part II. Now, she has further taken the power of recognising on a reciprocal basis other Universities and institutions also.

So far as the State register is concerned, I do not think that we are dealing with the State Medical Register here. This is an All India Medical Council Bill and it deals with the All India Medical Register. I think if a person is on the State Medical Register he will remain on the State Medical Register, because we are not doing away with the State Medical Register by this Bill. I do not think that we are competent to abolish the State Medical Registers. That is a State concern. We are here only dealing with the question of All India Medical Register. Therefore I can see no valid objection to the course that Rajkumari Sahiba is taking.

SHRI R. U. AGNIBHOJ: I want to get enlightenment on one point. What would be the difference between a doctor who is not registered at all under this Bill, and one who is registered in the State and thirdly one who is registered under this measure? What would be the difference between these three types of doctors?

DR. M. D. D. GILDER: A man who has the recognised qualifications, has got a right of entry into the State register and into the Central Register. If he has got a recognised qualification, that is, a qualification recognised by the State Government, by this Council and by the Central Government, then he has a right to be on the State Register and on this Register but the amendment will be mischievous in this sense that there is such a thing as disciplinary jurisdiction or the Council. There are certain rules of medical ethics. If you break those rules you behave in an unprofessional manner, in a manner not deserving of your being a medical man. Take, for instance, committing adultery with a patient. This is a crime—or whatever you would like to call it—on which medical ethics is strict and the medical man's name is

[Dr. M. D. D. Gilder.]

removed from the register. But his qualification is not taken away. His qualification has been given to him by the University and whether the University will take away his qualification or not is an entirely different thing altogether. Therefore if you put the word "or" here instead of the word "and" what would happen is that the person whose name has been removed by the disciplinary jurisdiction of the Council for behaving in an unprofessional manner would still have the right to be on the register.

MR. CHAIRMAN: The question is:

21. "That at page 9, line 22, for the word 'and' the word 'or' be substituted."

The motion was negatived.

MR. CHAIRMAN: The question is:

"That Clause 21 stand part of the Bill."

The motion was adopted.

Clause 21 was added to the Bill.

Clause 22 was added to the Bill.

Clause 23—Registration in the Indian Medical Register

RAJKUMARI AMRIT KAUR: Sir, I move:

5. "That at page 9, line 38, the brackets and figure '(1)' be deleted."

Sir, this is a very minor amendment; just a printing error. There is no need for those brackets and that figure "1" because there is no other sub-clause.

MR. CHAIRMAN: The question is:

"That at page 9, line, 38, the brackets and figure '(1)' be deleted."

The motion was adopted.

MR. CHAIRMAN: The question is:

"That clause 23, as amended, stand part of the Bill."

The motion was adopted.

Clause 23, as amended, was added to the Bill.

Clause 24—Removal of names from the Indian Medical Register

MR. CHAIRMAN: Mr. Sinha, your amendments to clause 24 depend on clause 23A which you have not moved.

SHRI RAJENDRA PRATAP SINHA: I am not moving amendment No. 23, but I can move amendment No. 24.

MR. CHAIRMAN: Yes.

SHRI RAJENDRA PRATAP SINHA: Sir, I move:

24. "That at page 10, after line 18, the following be inserted, namely:

'(3) Any person aggrieved by the removal of his name from the Indian Medical Register may, within three months after the date on which notice is given to him by the Registrar that his name has been so removed, appeal against the removal, in manner provided by rules of High Court, to the High Court, and on any such appeal, the High Court may give any such directions in the matter as it thinks proper, including any directions as to the costs of the appeal, and the orders of the High Court shall be final and conclusive'."

[MR. DEPUTY CHAIRMAN in the Chair]

MR. DEPUTY CHAIRMAN: The clause and the amendment are open for discussion.

SHRI RAJENDRA PRATAP SINHA: Mr. Deputy Chairman, I would like to invite your attention to clause 24. If a person's name is removed from the medical register he has a right to appeal to the State Government. Now if he is dissatisfied with the decision of the State Government, clause 24(2) provides that he can appeal to the Central Government. But it says further that the decision of the Central Government will be final and binding on the State Government and the State Medical Register will be corrected accordingly.

Now, I would invite your attention to the fundamental right that is given to every citizen of India under article 19(1) (g) which says "to practise any profession, or to carry on any occupation, trade or business." This is governed by article 19 (6) which says that a profession can be regulated by any existing law and subject to that regulation you are entitled to carry on any profession. What I say is that this is a fundamental right and I must be entitled to be adjudicated upon by the highest judicial tribunal of the land, that is to

say, the Supreme Court. Now, the question was raised by some friends whether a person aggrieved against the decision of the Central Government is entitled under the Constitution to go to the Supreme Court or not? The only way by which he can go to the Supreme Court is through article 136. I wish to draw your attention to this that if it can come under article 136, then alone he could go to the Supreme Court for a review of the final decision taken by the Central Government in this matter. Article 136 says,

"(1) Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India."

Now, I would like to ask: Can the Central Government be construed to be a court or a tribunal? In my opinion, it will not be. Now, Sir, it can be argued that even then the Supreme Court in its discretion admits any appeal, provided it can be shown that the matter is of procedure or a mistake of law or a fraud or a fundamental right. I have stated that none of these things can come in here. It cannot go as a matter of procedure because procedure will be all right. The State Government is there, the Central Government is there. It cannot go as a mistake of law, because it is according to the law. The question of fraud does not arise. The Supreme Court has the power to examine his petition on the merits of the case itself. Now, what can be the merits? This is a very important matter. It is happening everyday. What you find is this. I have been a doctor practising for twenty or twenty-five years when in the course of my practice I am often called upon to perform some major operation on a very high personage, a political personage. The man dies, may be for no fault of mine. A hue and cry is raised that the doctor has murdered the person and often a tribunal is appointed to examine whether that doctor is guilty of any professional misconduct. If supposing on such a finding the doctor is removed from the medical register, that doctor whose livelihood is being taken away is being deprived of his means of livelihood. He cannot support his children, his family, his dependents. If that is the case that doctor must have the

right to appeal to the highest court in this land. Now, this is what my amendment No. 24 provides. In case the man is dissatisfied, had there been any course open for him to go to the Supreme Court to get his case examined on its merits, then I would not have moved this amendment. In other countries also I find this provision. In the U. K. even when a decision has been taken by the Medical Council or by the Government, there a doctor has a right of appeal to the Privy Council and the Judicial Committee of the Privy Council — which is the highest tribunal there— has the right to examine this case. I would like once more to invite your attention to the fact that this is a fundamental right. I must be entitled to carry on my profession according to the existing law of the land. Now, what you say is "no, you have not carried on your profession according to the law of the land. You are guilty of professional misconduct." Now a finding is given on this by the Central Government. I want to know whether I shall be entitled to go to the highest court in the land or not. On this question of merits of the case itself my submission is that there is no constitutional right for me, if you have clause 24 as it is, to go to the highest court of the land. My amendment, No. 24, does not in anyway interfere with your day to day administration of the Medical Council Act and this is an additional provision that I am giving you. I concede that the Central Government is the final authority in the matter, but it is only when I am not satisfied that I want to go to the Supreme Court.

MR. DEPUTY CHAIRMAN: That will do.

SHRI RAJENDRA PRATAP SINHA: Thank you, Sir.

SHRI P. N. SAPRU: May I speak after Rajkumari Sahiba has spoken.

MR. DEPUTY CHAIRMAN: No. Usually the hon. Minister replies after the debate.

SHRI P. N. SAPRU: Mr. Deputy Chairman, I may quite frankly say that so far as this amendment is concerned, my sympathies are very largely with the mover of the amendment. But I suggested a compromise solution yesterday and if that is acceptable to the hon. Health Minister, it will meet very largely the point of view which has been

[Shri P. N. Sapru.] pressed by the mover of the amendment. First, let me just elaborate a little the legal position. Undoubtedly under our fundamental rights every citizen has the right to carry on his business, trade or profession and it would be a sad day for this country if this right could be interfered with in individual cases by executive fiat. We have got a lot of controversy today about what happened in the Soviet Union and Stalinism, and all that. Two remarkable statements were made by two left wing leaders, one was by Seigneur Togliatti, Italian Communist leader, and the other was Seigneur Nenni, who had kept himself in touch with the Soviet world when the other social democrats were not keeping in touch with it. Seigneur Togliatti said that Stalinist tyranny became possible because the judiciary failed the Soviet Union. Seigneur Nenni said that that analysis "is not wholly correct and for the real reason we have to go deeper into the matter. Things happened as they did in the Soviet Union because there was no parliamentary democracy to enforce the rule of law. Now, I think it is a wrong principle to give the executive authorities or even professional authorities final authority over the professional life of people. You •deprive me of my profession; you deprive me of my honour; you deprive me of my means of livelihood. That is something terrible. The consideration that this should not be done without judicial or quasi-judicial safeguards has always to be borne in mind by those who establish autonomous institutions for professional bodies in democratic countries. For example, the Bar is an autonomous organisation, but visitorial jurisdiction over the Bar in England is vested in the Law courts, in the supreme court of judicature. The medical profession is an autonomous institution, but the visitorial jurisdiction is vested, as was pointed out by my friend, in the Judicial Committee of the Privy Council which is an advisory body. But we know that advice is always binding upon the sovereign.

Now I should like some such convention to be developed in this country.

MR. DEPUTY CHAIRMAN: But we have no Privy Council in India.

SHRI P. N. SAPRU: We have no Privy Council. We have a court of

appeal, the Supreme Court. But assuming that for some reason it is not considered necessary to give to the Supreme Court that power, I should like some safeguard to be inserted, so far as the individual is concerned. The safeguard which I suggested to the Health Minister yesterday was that before action is taken on the report of the Medical Council, the matter should be referred for opinion to the Attorney-General or the Solicitor General. They are men of the highest standing in the profession, and they will certainly, and always bring to bear upon their work a legal approach. Another thing is that it is not as if the individual concerned is without any remedy, so far as the law courts are concerned. I will invite your attention to clause 31 which protects only those acts which are done in good faith. There is much case law on the point what is good faith and what is not good faith. If it can be shown that the act done is not in good faith, then this clause will not protect the Central Government or the Medical Council in courts of law. The second protection that the individual concerned will have is under article 226 of the Constitution. Also there is article 32 of the Constitution. The word "jurisdiction" in article 226 of the Constitution has been somewhat narrowly interpreted, if I may say so, with the highest respect for the Supreme Court, by the Supreme Court. But even so, under article 226, in any case, assuming that the Central Government because of its location only within the jurisdiction of the Punjab High Court a writ will lie to the Punjab High Court. I know that writ cases are decided on the basis of affidavits generally, and we do not generally go into facts. But in the Northumberland case which has been approved by the Supreme Court, the rule that has been laid down is that the courts will interfere even where there is a substantial error of law. For example, where the professional body or the Central Government has acted upon grossly improper evidence, or has adopted a procedure contrary to principles of natural justice. I think, the courts will interfere, and should interfere. Therefore, it is not as if the citizen will be left without any remedy, provided the safeguard, which I have suggested as a matter of compromise, namely, that the Solicitor-General or the Attorney-General should invariably be consulted before any action is taken, and a convention developed that their advice will be regarded as binding by

the Central Government, is accepted. So far as my attitude is concerned, it will be determined on this clause, which is a vital clause from the point of view of my legal conscience, by the line to be taken by the Health Minister. Thank you, Mr. Deputy Chairman.

RAJKUMARI AMRIT KAUR: Well, Sir, I cannot understand what fears my hon. friend, who has moved this amendment, has in his mind. If we were to read clause 24 (2), it has clearly been stated there that "the Central Government, whose decision, which shall be given after consulting the Council, shall be binding on the State Government and on the authorities concerned with the preparation of the State Medical Register." In no sense is the fundamental right of the citizen, which exists in the Constitution, going to be abrogated. He can go to the courts.

SHRI RAJENDRA PRATAP SINHA: Then, why not clarify it?

RAJKUMARI AMRIT KAUR: There is no need to clarify what already exists in the Constitution. Further, Sir, I may say that the Centre invariably consults the Ministry of Law. And in the further amendment that I am going to move for the incorporation of the new clause 31 A, which will give to the Central Government power to make rules, I have given to this House the assurance on the recommendation of my hon. friend, Shri Sapru, who has been a Judge of the High Court—nobody is more keen to defend the rights of any citizen than he—that we shall make a rule to the effect that the Centre shall always, in case an appeal is sent to it by the medical man or woman concerned against the decision of the State Medical Council and the State Government, consult either the Attorney-General or the Solicitor-General. In my opinion, therefore, there is no need for any fear, and I do not therefore want to accept this amendment.

MR. DEPUTY CHAIRMAN: The question is:

24. "That at page 10, after line 18, the following be inserted, namely:-

(3) Any person aggrieved by the removal of his name from the Indian Medical Register may, within three months after the date on which notice is given to him by the

Registrar that his name has been so removed, appeal against the removal, in manner provided by rules of High Court, to the High Court, and on any such appeal, the High Court may give any such directions in the matter as it thinks proper, including any directions as to the costs of the appeal, and the orders of the High Court shall be final and conclusive."

The motion was negatived.

MR. DEPUTY CHAIRMAN: ° The question is:

"That Clause 24 stand part of the Bill."

The motion was adopted.

Clause 24 was added to the Bill.

Clauses 25 to 31 were added to the Bill.

New Clause 31A—Power to make rules

RAJKUMARI AMRIT KAUR: Sir, I move:

29. "That at page 12, after 5, the following be inserted, namely:

Power to make rules.—31 A. (1) The Central Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

(2) All rules made under this section shall be laid for not less than thirty days before both Houses of Parliament as soon as possible after they are made, and shall be subject to such modifications as Parliament may make during the session in which they are so laid or the session immediately following."

MR. DEPUTY CHAIRMAN: The new clause is before the House.

RAJKUMARI AMRIT KAUR: Mr. Deputy Chairman, I have not got to say much, because I have given an assurance to this House to the effect that the Centre will always consult the Attorney-General or the Solicitor-General. I feel therefore that the Central Government should have the power to make rules.

MR. DEPUTY CHAIRMAN: The question is:

29. "That at page 12, after line 5, the following be inserted namely:

Power to make rules.—31 A. (1) The Central Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

(2) All rules made under this section shall be laid for not less than thirty days before both Houses of Parliament as soon as possible after they are made, and shall be subject to such modifications as Parliament may make during the session in which they are so laid or the session immediately following."

The motion was adopted.

New clause 31A was added to the Bill.

Clauses 32 and 33 were added to the Bill.

The First Schedule

SHRI R. U. AGNIBHOJ: Sir, I move:

28. "That at page 13, after line 6, the following be inserted namely:

'Banaras Aurveda- Aurveda-
Hindu charya charya'.
University.

MR. DEPUTY CHAIRMAN: The Schedule and the amendment are now before the House.

SHRI R. U. AGNIBHOJ: Sir, my amendment is for the inclusion of the degree of Ayurvedacharya of the Banaras Hindu University. I have already made my point clear that the Indian systems of medicine should also be given proper status and recognition. I submit that the definition of "medicine" as modern scientific medicine is wrong and it should not have come as a definition. In that way if we want to define a man, we shall have to say " 'Man' means modern scientific man", that "modern scientific men are those that are born in the Health Ministry's maternity homes". This definition would become quite absurd. I submit that all systems, Unani, Allopathy, Ayurveda, all are serving the country.

SHRI J. S. BISHT: Having passed the definition clause, is this amendment not barred now?

SHRI R. U. AGNIBHOJ: I am now moving this amendment not to that clause but to the Schedule.

MR. DEPUTY CHAIRMAN: This point has already been made. You need not extend your speech.

SHRI R. U. AGNIBHOJ: I only want to submit that the Banaras University Ayurvedacharya degree is a degree in modern medicine and should be added and recognised here, according to that definition. My point is that this Ayurvedic education should not be allowed to run from pillar to post and should not be ignored. Otherwise, our nation would suffer tremendously. My request is this: The Health Ministry and our Government recognise only the allopaths, and therefore these other Indian systems of medicine are being ignored day after day and if they are left out under clause 11 of this Bill, then the Ministry would not recognise them and the Medical Council which would be practically of the allopathic people will not allow the recognition of these systems. Therefore, I request that this august House should recognise these systems as scientific medical systems.

RAJKUMARI AMRIT KAUR: I have already explained this point at length yesterday. It is impossible for me in this Bill, the scope of which has been clearly defined in clause 2, to accept this amendment. I have given an assurance that the moment the Universities and the State Governments agree to have uniform standards, there shall be an Ayurvedic Council, a Unani Council and a Council for Homeopathy. So long as standards vary from place to place—they have no Universities—it is impossible to have a Council. In this Indian Medical Council Bill they cannot certainly be included.

SHRI R. U. AGNIBHOJ: In view of the remarks of the hon. Minister, I withdraw my amendment.

Amendment No. 28 was, by leave, withdrawn.

For text of amendment *vide cols. 417 Supra.*

MR. DEPUTY CHAIRMAN: The question is:

"That the First Schedule stand part of the Bill."

The motion was adopted.

The First Schedule was added to the Bill.

The Second Schedule

RAJ KUMAR i AMRIT KAUR: Sir, I move:

"That at page 17, line 19, for '(e)' substitute '(c)'."

MR. DEPUTY CHAIRMAN: The question is:

"That at page 17, line 19, for '(e)' or substitute '(c)'."

The motion was adopted.

MR. DEPUTY CHAIRMAN: The question is:

"That the Second Schedule, as amended, stand part of the Bill."

The motion was adopted.

The Second Schedule, as amended, was added to the Bill.

The Third Schedule

SHRI KISHEN CHAND: Sir, I move:

6. "That at page 20, after line 13, the following be added, namely :

M. D. (Munich)'."

MR. DEPUTY CHAIRMAN: It has been accepted.

SHRI RAJENDRA PRATAP SINHA: I want to oppose this amendment. I will take only two minutes.

MR. DEPUTY CHAIRMAN: We have already exceeded the time limit.

SHRI RAJENDRA PRATAP SINHA: I want to oppose this amendment and so I have got a right to speak.

This amendment is against the very essence and spirit of the Bill. The whole spirit of the Bill is that the Government will consult the Medical Coun-

3—4 Rajya Sabha, 56.

cil and then alone add to the list in Part II of the Third Schedule. In this case, no proper consultation has taken place. The Medical Council has not studied this question properly and given any opinion. Let them refer the matter first to the Medical Council and then add it.

I would also like to say that the hon. Minister has probably misunderstood me. I did not quote yesterday any letter from the President of the Medical Council of India. I had no communication from him. I quoted from his Presidential Speech which is a public document.

RAJKUMARI AMRIT KAUR: I was given to understand yesterday that it was the unanimous opinion of the House that M. D. (Munich) should be added, and I gave an assurance that I would accept it and would persuade the Medical Council to agree to it.

SHRI RAJENDRA PRATAP SINHA: Let her do it first.

RAJKUMARI AMRIT KAUR: Let there be a free vote of the House. Whatever the decision of the House, I will abide by it.

SHRI RAJENDRA PRATAP SINHA: Sir, I raise it as a point of order. We have already passed a clause that unless the Medical Council is consulted, no name could be added to the Schedule. I raise this point of order, and I appeal to you to rule this amendment out of order.

RAJKUMARI AMRIT KAUR: If that is the legal ruling, I will abide by it.

MR. DEPUTY CHAIRMAN: What clause are you referring to?

SHRIMATI CHANDRAVATI LAKHANPAL (Uttar Pradesh): We want that M. D. (Munich) should be added.

SHRI KISHEN CHAND: That is only after the Act comes into force.

MR. DEPUTY CHAIRMAN: There is no point in your objection, because we are passing the Act only now.

SHRI RAJENDRA PRATAP SINHA: It is not in the spirit of the Bill.

RAJKUMARI AMRIT KAUR: I accept the amendment.

MR. DEPUTY CHAIRMAN: The question is:

6. "That at page 20, after line 13, the following be added, namely :—

'M. D. (Munich)'."

The motion was adopted.

MR. DEPUTY CHAIRMAN: The question is:

"That the Third Schedule, as amended, stand part of the Bill."

The motion was adopted.

The Third Schedule, as amended, was added to the Bill.

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

RAJKUMARI AMRIT KAUR: Sir, I move:

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

(*Dr. Shrimati Seeta Parmanand rose to speak.*)

MR. DEPUTY CHAIRMAN: We have already exceeded the time limit by one hour.

DR. SHRIMATI SEETA PARMANAND: In view of the fact that we have not spoken during the clause by clause consideration of the Bill and in view of the fact that the motion for reference to a Select Committee has not been accepted, I should be given a chance to say a few words.

MR. DEPUTY CHAIRMAN: I am very sorry. We have already exceeded the time limit. The question is:

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

The motion was adopted.

MR. DEPUTY CHAIRMAN: The House stands adjourned till 2-30 P.M.

The House adjourned for lunch at one of the clock.

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

NINTH REPORT OF THE COMMITTEE ON PETITIONS

SHRI JASPAT ROY KAPOOR (Uttar Pradesh): Sir, I beg to present the Ninth Report of the Committee on Petitions dated the 1st August 1956 in respect of a petition which was referred to it relating to the States Reorganisation Bill, 1956, Sir, I herewith present it.

THE HINDU MINORITY AND GUARDIANSHIP BILL, 1955

THE MINISTER FOR LEGAL AFFAIRS (SHRI H. V. PATASKAR): Sir, I beg to move:

"That the following amendments made by the Lok Sabha on the Hindu Minority and Guardianship Bill, 1955, be taken into consideration :—

Enacting Formula

1. "That at page 1, line 1, for 'Sixth Year' substitute 'Seventh year'."

Clause 1

2. "That at page 1, line 4, for '1955' substitute '1956'."

Clause 3 .

3. "That at page 1, lines 21 and 22, for 'for which provision is made' substitute 'dealt with'."

Clause 4.

4. "That at page 2,—

(i) line 26, omit 'or',

(ii) line 28, omit 'or'; and (iii) line 29, for 'or' substitute 'and'."

Clause 5

5. "That at page 3, line 3, for 'made' substitute 'contained'."

Sir, these are all merely formal amendments. As will be readily seen, this Bill was passed by the Rajya Sabha and at that time it was the year 1955. Now the year is 1956. So I have asked for that change. Similarly in the Enacting Formula it is stated that it is the Sixth Year of the Republic of India. Now it is the seventh year when it has