

MANAN KUMAR MISHRA

Senior Advocate

CHAIRMAN



Phone : 011-4922 5000

Fax : 011-4922 5011

E-mail : info@barcouncilofindia.org

Website : www.barcouncilofindia.org

भारतीय विधिज्ञ परिषद् BAR COUNCIL OF INDIA

(Statutory Body Constituted under the Advocates Act, 1961)

21, Rouse Avenue Institutional Area, New Delhi - 110 002

Press Release dated 02.07.2021

The Bar Council of India would like to announce that pursuant to the decision of the Bar Council of India on 10.06.2021 whereby a 7-Member Committee was constituted to draft the Advocates Protection Bill, the Committee has furnished its report today to the Council and the Council had decided for its circulation to all the Bar Councils, High Court Bar Associations and Supreme Court Bar Association and also to all other Bars of the country. All the stakeholders have been requested to peruse the draft and provide their inputs, if any, section wise, within a week from today i.e. by/on/before 9th July, 2021 on the Email ID- advprotectionbill.bci@gmail.com.

The suggestions received in the office of Bar Council of India shall be duly considered by the Council and thereafter, the Council will consider about incorporation of necessary changes, if any. The final draft Bill shall be sent to Hon'ble Minister for Law and Justice to table the same before the Parliament.

The seven member committee, which comprised of

1. Mr. S. Prabakaran, Senior Advocate, Vice-Chairman, Bar Council of India;
2. Mr. Debi Prasad Dhal, Senior Advocate, Co-Chairman, Bar Council of India;
3. Mr. Suresh Chandra Shrimali, Co-Chairman, Bar Council of India;
4. Mr. Shailendra Dubey, Member, Bar Council of India and Press Council of India;
5. Mr. Prashant Kumar Singh, Chairman, Co-ordination Committee of State Bar Councils;
6. Mr. A. Rami Reddy, Executive Vice-Chairman, Bar Council of India Trust; and
7. Mr. Shreenath Tripathi, Chairman, Legal Aid Committee.

has discussed and deliberated threadbare about all the important issues affecting the Advocates fraternity.

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The Advocates fraternity is literally acting as one of essential wings of the justice delivery system akin to the Police and the Judiciary and while the police and judiciary have access to protection, social security and even privileges; the most important link between the two who argue and present the cases/matters in courts is/are not given proper protection against the nefarious activities of anti social elements.

The Committee has also deliberated upon the need for social security, apart from physical security and protection against illegal arrest and detention and redressal of grievances of Advocates and Bar Associations too.

The Committee has endeavoured to take all these connected issues into consideration and drafted the "Advocates Protection Bill". The Bill, if passed by the Parliament will ensure adequate protection to members of the legal fraternity, so that they can carry on their duties as officers of the court, fearlessly without having to worry about their and their family's social and physical safety.



(Manan Kumar Mishra)
Chairman
Bar Council of India

ADVOCATES (PROTECTION) BILL, 2021

An Act for the protection of Advocates

Preamble

For the greater protection of Advocates and their functions in discharge of Professional duties. It is enacted as follows:-

Statement of Objects and Reasons

1. The recent incidents of assault, killings, intimidation and regular threats caused to Advocates, due to proper and honest discharge of their professional duties, have reached alarming heights. This has also resulted in law and order situations and sometimes causes obstruction and deficiencies in rendering professional services by Advocates to their clients; apart from this, due to such incidents and threats there is a deep sense of apprehension in the minds of Advocates while discharging their professional duties.
2. In order to protect Advocates from such assaults, intimidation, coercion and threats, it is necessary to bring a Legislation for the protection of Advocates.
3. To provide Social Securities to the Advocates and to ensure the basic and Minimum necessities of their lives.
4. This is in consonance with Resolutions of the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba held from 27th August to 7th September, 1990, to which India was a participant, where it has adopted the "Basic Principles on the Role of Lawyers". Clauses 16 to 18 of the declaration deals with "Guarantees for the functioning of lawyers which are as follows:

"Clause 16. Governments shall ensure the lawyers,

That they are able to perform all of their professional services/functions without intimidation, hindrance, harassment or improper interference,

They are able to travel and to consult with their clients freely both within their own country and abroad; and



They shall not suffer or be threatened with prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

Clause 17. Where the security of lawyers is threatened as a result of discharging their duty, they shall be adequately safeguarded by the authorities”.

Freedom of expression and association

Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization. In exercising these rights, lawyers shall always conduct themselves in accordance with the law and the recognized standards and ethics of the legal profession.

5. The Supreme Court of India in the case of **Ramon Services Pvt. Ltd. V/s Subbash Kapoor (AIR 2001, SC, 207)** has observed “persons belonging to the Legal Profession are concededly the elite of the society. They have always been in the vanguard of progress and development of not only law but the polity as a whole. Citizenry looks at them with hope & expectations for traversing on the new paths and virgin fields to be marched on by the society. The profession by & large, till date has undoubtedly performed its duties and obligations and has never hesitated to shoulder its responsibilities in larger interest of the mankind.” This judgement has reiterated the earlier view of the Apex Court in the case of **Hari Shankar Rastogi v/s. Giridhar Sharma, (1978) 2 SCC 165** has observed that “*Indeed, the Bar is an extension of the system of justice, an advocate is an officer of court. He is master of an expertise, but more than that, accountable to the court and governed by a high professional ethics. The success of the judicial process often depends on the services of the legal profession*”.

Further the Hon'ble Apex Court in O.P.Sharma V/s. High Court of Punjab and Haryana ,2011 (6) SCC 86 held that the Advocates are officers of the Court and they were the essential part of the justice system and with them the Justice System will work with full potential to uphold justice and rights of Citizens.



6. Another issue which seems to be prevalent is that Advocates in due discharge of their professional duties also face the threat of malicious and frivolous prosecution by the rival parties which is also intended to interfere with the performance of their duties, in turn interfering with the administration of justice itself.
7. Yet another hurdle faced by Advocates stems from their representing detainees or arrested or incarcerated persons. It has been seen in several cases that Advocates are sought to be questioned about privileged communication in order to make detection of alleged crime easier. However this militates against the basic tenets of the legal profession and violates the sanctity which the law enjoins the Advocate to maintain with respect to such privileged communication or materials. This requires immediate attention, as observed in the United Nations Human Rights Council, Resolution on the independence of judges and lawyers - A/HRC/RES/29/6 wherein, while acknowledging the fact that the principle of confidentiality in lawyers' communication with clients is violated, and that they are denied free access to their clients and documents, it was decided as follows:

"Calls upon all States to guarantee the independence of lawyers who promote and defend human rights. Provide assistance to human rights defenders, journalists and activists and their ability to perform their functions accordingly, including by taking effective legislative, law enforcement and other appropriate measures that will enable them to carry out their professional functions without interference, harassment, threats or intimidation of any kind."

8. The Advocates Act has been interpreted by the Supreme Court in the case of *O. N. Mohindroo v. The Bar Council of Delhi & Ors.*, 1968 SCR (2) 709 to fall within the scope of Entries 77 and 78 of List I of Schedule VII, as the Act is a piece of legislation which deals with persons entitled to practice before the Supreme Court and the High Courts, apart from other Courts, therefore, a central enactment of such nature is required to be put in place to ensure that the Advocates can render professional services without fear or external influence for the ultimate cause of the administration of Justice and Rule of Law.
9. The Advocates (Protection) Bill, 2021 seeks to achieve the above objectives.



ADVOCATES (PROTECTION) BILL, 2021

1. Short title and commencement

- (1) This Bill may be called the Advocates (Protection) Bill, 2021.
- (2) It extends to the whole of India.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Definitions

- (1) In this Act, unless the context otherwise requires-
 - (a) 'Act' means Advocate (Protection) Act, 2021;
 - (b) "Advocate" shall have the same meaning as provided under Sec. 2(1)(a) of the Advocates Act, 1961;
 - (c) "act of violence" refers to acts committed by any person against an Advocate, with an intent to prejudice or derail the process of impartial, fair and fearless conduct of any litigation before any court, tribunal or authority in which such Advocate is engaged or acts of retribution towards the outcome of proceedings before any of the above forums and includes the following:
 - Threat, Harassment, coercion, assault, malicious prosecution, criminal force impacting the living or working conditions either inside or outside of such Advocates and preventing them from discharging their duties;
 - (i) Harm, injury, hurt, either grievous or simple, or danger to the life of such Advocates, or their family members, either within the premises of the Courts or otherwise;
 - (ii) Coercion by whatsoever means, of an Advocate to reveal or part with privileged communication or material which such Advocate is bound to hold in confidence under law;



- (iii) Coercion by whatsoever means, of an Advocate not to represent or to withdraw his Vakalatnama or appearance to act, plead or appear on behalf of a client before any court, tribunal or authority;
 - (vi) Loss or damage to any property or documents or materials which such Advocate is bound to hold under law;
 - (v) Usage of derogatory language during the course of the judicial and quasi-judicial proceedings.
- (2) The words and expressions used in this Act, but not specifically defined shall have the same meaning as assigned to them in the Advocates Act, 1961, the Bar Council of India Certificate and Place of Practice (Verification) Rules, 2015 and the Indian Penal Code, 1860.

3. Punishments for offences

- (1) Whoever commits or abets the commission of an act of violence, except grievous hurt covered by sub-section (2) hereunder, against an Advocate shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine of not less than fifty thousand up to one lakh rupees depending on the gravity of the offence.
- (2) Whoever, having already been convicted of an offence under this Act is convicted for the second or subsequent offence, shall be punishable with imprisonment for a term which shall not be less than two years but which may extend to ten years and fine which shall not be less than ten lakh rupees depending on the gravity of the offence.

4. Compensation

- (1) In addition to the punishment provided
- (2) for an offence under Section 3, the person so convicted shall also be liable to pay, by way of compensation, such amount as may be determined by the Court for causing any act of violence against any Advocate.



- (3) Notwithstanding the compounding of an offence under Section 6 hereunder, in case of damage to any property or loss caused, the compensation payable shall be twice the amount of fair market value of the damaged property or the loss caused, as may be determined by the Court.
- (4) Upon failure to pay the compensation awarded under sub-section (1) and (2) hereinabove, such amount shall be recovered as an arrear of land revenue under the Revenue Recovery Act, 1890.

5. Nature of Offence and Jurisdiction of Courts

Notwithstanding anything contained in the Code of Criminal Procedure, 1973-

- (i) an offence punishable under Section 3 shall be cognizable and non-bailable;
- (ii) any case registered under Section 3 shall be investigated by a police officer not below the rank of Deputy Superintendent of Police;
- (iii) investigation of a case under Section 3 shall be completed within a period of thirty days from the date of registration of the First Information Report;
- (iv) No court inferior to that of the rank of a District and Sessions Judge shall try an offence punishable under Section 3;
- (v) in every inquiry or trial of a case under Section 3, the proceedings shall be held as expeditiously as possible, and in particular, when the examination of witness has once begun, the same shall be continued from day to day until all the witness in attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded, and an endeavour shall be made to ensure that the inquiry or trial is concluded within a period of one year;

PROVIDED that where the trial is not concluded within the said period, the Judge shall record the reasons for not having done so:



PROVIDED further that the said period may be extended by such further period, for reasons to be recorded in writing, but not exceeding six months.

6. Compounding of offences

Where a person is prosecuted for committing an offence punishable under Section 3, such offence may, with the permission of the Court, be compounded by the person against whom such act of violence is committed.

7. Police Protection:

- (1) Any Advocate who is under the threat of being a victim of act of violence shall be entitled to Police Protection for a duration which the Court deems fit, upon making an application before the High Court of the State within which he is registered to Practice law.
- (2) Every High Court shall, before passing orders under Sec. 7(1), scrutinise the personal antecedents of such Advocate, including his criminal record, if any, and any other necessary material which it requires, in order to satisfy itself of the character and conduct of such Advocate, and the bona-fides of the application filed under Sec. 7(1). The High Court, if it thinks fit and proper, may call for a report from the concerned State Bar Council or Bar Council of India about the conduct or otherwise of the applicant-Advocate.
- (3) Wherever the Police security is provided to the Advocate, the Superintendent of Police shall, before taking a decision to withdraw, reduce or discontinue such security, refer the matter to the Registrar of the District Court or in the case of an Advocate ordinarily in the High Court, the Registrar General of the High Court ; and in case of an practicing Advocate practicing in the Supreme Court of India, the Secretary General of the Supreme Court for their concurrence.
- (4) No decision shall be taken by the Superintendent of Police to withdraw, reduce or discontinue the security provided to the Advocate, unless a notice of one week is first served on the Advocate in this regard, and the intent of the Superintendent of Police is approved by the concerned District Court, High Court or Supreme Court, as the case may be.



8. Advocate deemed to be officer of the Institution

An advocate pleading for a party before the Court, Tribunal or Authority, including the Police, shall be deemed to be an officer of such Institution, and be extended same treatment available to other officers of such institution.

9. 3-Member Committee for Redressal of Grievances of Advocates/Bar Associations-

The Central/State Government, as the case may be, shall constitute a Grievance Redressal Committee for redressal of grievances of the Advocates at every level i.e. in every District Courts, High Courts and Supreme Court.

The said Committee shall consist of the Head of the Judiciary i.e. the District Judge at District and Taluka Level, the Chief Justice of concerned High Court (or a Judge of High Court nominated by him) for the concerned State and the Chief Justice of India (or any Judge of Supreme Court nominated by him) for the purpose of redressal of grievances of Advocates practicing in Supreme Court.

The District Judge, Chief Justice of High Court (or his nominee) and the Chief Justice of India (or his nominee) shall be the Chairperson of the respective Committee(s); And the Committee shall consist of two other Members or Advocates to be nominated by the concerned State Bar Councils. However, for the nominations to be made for the High Court Bar Associations, the State Bar Councils shall be required to consult the Bar Council of India; And in Case of Supreme Court, the nomination of two members of the Grievance Redressal Committee shall be made by Bar Council of India.

The President of the concerned Bar Association shall be Special Invitee in the Meetings of the Committee. However, the Committee may invite any other Advocate or Officer, Authority and/or Judge etc. in its meetings, if the Committee deems fit and proper. The time and place of Meeting(s) shall be fixed by the Chairperson of the Committee.

Provided that if the issue/grievance is of such a nature which affects the Advocates of entire State (and/or relates to some demands raised by the Bar Council of State), then the matter will be dealt by the High Court Level Committee; and if the grievance/issue relates to the Advocates of entire country (and/or some demands made by or issue



raised by Bar Council of India), then the Committee at the level of Supreme Court shall deal with the matter. The Committee will take care of the larger interest of the Legal Fraternity.

Any grievance, brought to the notice of the Chairman of the Committee shall be properly addressed by the Committee and the Committee shall hear the concerned parties in order to settle the matter amicably. If the grievance of the Advocate or the concerned Bar Association is against any Executive Authority, the Committee shall do the needful for addressing and removal of the grievances of Advocates/Bar Associations or Bar Councils.

The Committee shall be empowered to issue appropriate directions/suggestions to the concerned Police Officer (not below the rank of Superintendent of Police) or other Governmental Authorities under the concerned Government for the redressal of grievances received.

10. Protection of action in due conduct of duties by Advocates

- (1) Notwithstanding anything to the contrary in any other law for the time being in force, no suit, prosecution or other legal proceeding shall lie against any Advocate for anything which is in good faith done or intended to be done in the due conduct of duties of such Advocate in pursuance of the provisions of this Act and any rule, order, notification thereunder or under any direction of a Court or any other authority which is empowered to give directions to Advocates.
- (2) Government shall recognise and respect all communications and consultations between lawyers and their clients within the professional relationship and they are to be treated as confidential.
- (3) Lawyers shall be entitled to form and join professional associations to represent their interest, promote their continued education, and training and protest for their rights, privileges, professional integrity, and duties and shall exercise their functions without any external interference (except any direct or indirect prohibitory order/resolution of the Statutory bodies under Advocates Act).



11. **Protection from illegal arrests and Malicious Prosecution of Advocates**

- (1) No Police Officer shall arrest an Advocate and/or investigate a case against an Advocate without the specific Order of the Chief Judicial Magistrate. When information is given to an Officer-In-charge of a Police Station of a Commission of any offence by an Advocate, the Police Officer shall enter or cause to be entered the substance of information with a book to be kept by such Officer and refer the information with other connected materials to the nearest Chief Judicial Magistrate or any other Magistrate empowered to take cognizance in such cases, who shall hold a preliminary inquiry into the case; and the Chief Judicial Magistrate or the concerned Magistrate shall issue notice to the Advocate and give an opportunity of hearing to him or to his Counsel or to his representative.

Upon such hearing and/or perusal of the materials placed before him, if the Chief Judicial Magistrate or the concerned Magistrate finds that the FIR has been lodged against the Advocate because of some malicious reasons emanating from the discharge of some official duties of the Advocate, then in such case, the Chief Judicial Magistrate or the concerned Magistrate shall grant bail to the Advocate.

Provided that if the offence alleged is triable by the Court of Sessions, the Chief Judicial Magistrate or the concerned Magistrate shall grant interim bail and refer the matter to the concerned Sessions Judge for the needful; and the Sessions Judge shall act as per the provisions contained under Chapter-XXXIII of Cr. P. C.

Provided further that if the Chief Judicial Magistrate or the concerned Magistrate finds that the plea and the materials placed by the Advocate are prima-facie without any substance, then he will allow the police to proceed with investigation and may issue the warrant of arrest, if required.

- (2) Where any suit, prosecution or other legal proceeding, instituted against an Advocate by any person, is found to be vexatious, or motivated by a malicious intention to derail the process of impartial, fair and fearless conduct of any litigation before any court, tribunal or authority in which such Advocate is engaged,



or, if any prosecution suit or Legal proceeding is found to be/ is an act of retribution towards the outcome of proceedings before any of the above forums, the said proceedings shall be liable to be dismissed, or quashed with cost, as the concerned court deems fit and proper.

- (3) Any person found to have initiated a vexatious or malicious proceeding against an Advocate shall be liable to pay, by way of compensation, such amount as may be determined by the Court, which amount shall not be less than Rs.2,00,000/- and can be extended to rupees ten lakhs depending upon the nature of allegation and extent of damage.

12. Presumption as to coercion in case of a public servant obtaining privileged communication from legal practitioner

Whenever any public servant having powers of investigation under Chapter XII of the Code of Criminal Procedure, 1973 (2 of 1974) or such other powers of detention, arrest and investigation under any other law or purporting to so act under any law, is found in possession of or found to use in his investigation any such privileged communication or material which can be shown to be obtained from an Advocate, it shall be presumed that such privileged communication or material was obtained by such public servant by coercion.

13. Power to make rules

- (1) The Central Government after consultation with the Bar Council of India may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.
- (2) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of sixty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.



14. Application of Code of Criminal Procedure, 1973 to proceedings under the Act

Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) (including the provisions as to bail and bonds and appeals) shall apply to the proceedings before the Court.

15. Social Securities for Advocates

The Central Government as well as the State Governmetns may make provisions to provide financial assistance to all the needy Advocates of the country during any unforeseen situation like epidemic or any other natural calamities. A minimum of Rs.15,000/- (Rupees Fifteen Thousand) every month may be made available to each needy/affected Advocate through the Local District Magistrate/District Court on the recommendation(s) of concerned State Bar Council. Out of the total financial assistance, 50% may be borne by the Central Government and rest half may be borne by the concerned State Bar Council. This assistance may be granted till the end of pandemic situation or the ill affects of calamity is over.

Similarly, the Central Government may provide for some insurance and medi-claim scheme for Advocates.

Loan Facility:-

If needed, the Central Government may issue appropriate circulars directing the P.S.U.s. (Public Sector Undertakings) and Scheduled Banks to grant loans to the needy Advocates on reasonable rate of interest.

16. Act to have overriding effect.-

The provisions of this Act and any rule or regulation made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.


