



सत्यमेव जयते

GOVERNMENT OF INDIA

LAW COMMISSION OF INDIA

Report No.266

**The Advocates Act, 1961
(Regulation of Legal Profession)**

March, 2017

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D.O.No.6(3)/297/2016-LC(LS)

March 23rd, 2017,

Dear Shri Ravi Shankar Prasad Sir,

The Supreme Court in *Mahipal Singh Rana v. State of U.P.* (AIR 2016 SC 3302) while hearing the appeal in the matter of criminal contempt for intimidating and threatening a Civil Judge (Senior Division) by an advocate expressed its concern over unsatisfactory regulatory mechanism governing the advocates and observed that there was an urgent need to review the provisions of the Advocates Act, 1961, particularly dealing with the regulatory mechanism for the legal profession and other identical issues in consultation with all concerned. Accordingly the matter was referred to the Law Commission of India asking to go into all relevant aspects relating to regulation of the legal profession and submit its report.

2. The Law Commission invited suggestions from all stakeholders on the issue under examination and as to how the system could be improved. In particular, the Law Commission requested the Bar Council of India the highest body in the hierarchy under the Advocates Act, to send their views/suggestions on review of the Advocates Act. The Registrar General of all High Courts, the State Bar Councils, Supreme Court Bar Association and Supreme Court Advocates on Record Association were requested to send their suggestions on the subject matter under examination.

3. On 10th March, 2017, the Bar Council of India made comprehensive recommendations on various issues relating to the Advocates Act and also submitted a draft bill, in a comparative statement, for consideration of the Commission. The BCI was of the view that in addition to the regulatory mechanism, other inter-related issue i.e. constitution of the BCI and the State Bar Councils are required to be revisited.

4. A large number of stakeholders have suggested that the Bar Council of India as well as the State Bar Councils must have some non-lawyers as members as provided in other professional bodies. The Medical Council of India, the Council of Institute of Chartered Accountants, and the Council of Architects provide for representation by respective non-professionals also. Therefore, the Commission has accepted this concept for the Bar Councils to a limited extent.

Contd...

5. The Law Commission, while reviewing the Advocates Act, felt that the conduct of the advocates, directly as well indirectly affects the functioning of the courts, and thereby contributes to the pendency of cases. The Commission felt that some provisions would be necessary to regulate the conduct of advocates in the court, which affects the functioning of the court as well as the expectations of the aggrieved, alike. Keeping this in view, all the High Courts through the Chief Justices were requested to send data on loss of working days by call of strikes in their respective jurisdictions, during the last five years. The Commission was astonished on going through the responses received pursuant to its request, as it was found that the strikes by the advocates were rampant throughout the length and breadth of the country with little variation in degree. The Commission deliberated upon all suggestions that have been received from all stakeholders throughout the country and hence come to the conclusion that the proposal to reform the Advocates Act has become imperative.

6. The Commission, therefore, recommends that comprehensive amendment should be brought forth in the Advocates Act, not only keeping in view the present requirements, but such other requirements that may arise in future for the better management and regulation of the legal profession. A report titled "**The Advocates Act, 1961 (Regulation of Legal Profession)**" is placed below for consideration of the Government. With a view to facilitate the initiative of taking forward the reforms in legal profession, the Law Commission has prepared The Advocates (Amendment) Bill, 2017 which placed at **Annexure-III** of this Report.

7. The Commission acknowledges the commendable assistance provided by Ms. Sakshi Vijay, Sh. Arijeet Ghosh and Sh. Lalit Panda, Consultants while working on this project.

With warmer regards.

Yours sincerely

B.S. Chauhan

[Dr. Justice B.S. Chauhan]

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Report No.266

The Advocates Act, 1961: Regulation of Legal Profession

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CHAPTER-I

Background – Inception of the Legal Profession

1.1 The dawn of Legal Profession in our country could be seen in the Indian High Courts Act, 1861 (commonly known as the Charter Act) which authorised establishment of the High Courts under the Letters Patent and those Letters Patent empowered the High Courts to make rules for enrolment of Advocates and attorneys who were also known as solicitors. In the early days three Acts, namely, the Legal Practitioners Act, 1879 (18 of 1879), the Bombay Pleaders Act, 1920 (17 of 1920) and the Indian Bar Councils Act, 1926 (38 of 1926) relating to legal Practitioners were enacted. The importance of legal profession in the Judicial Administration while dispensing justice with the aid of those who could effectively present the case of a litigant, was designed to usher in bringing the rule of law. The legal profession was acknowledged as the noble profession as it catered to, and contributed to lay the firm foundations of a system that dispenses fair and impartial justice. The desire of common man to receive justice was taken care of by making provisions for the presentation of a case and its redressal through persons in whom trust was reposed.

1.2 Roscoe Pound, an eminent jurist states that “historically, there are three ideas involved in a profession: organization, learning, and a spirit of public service.”¹ While considering these elements essential, he states that the idea of gaining a livelihood through profession is nothing more than an incidental element. However, amongst the three elements, the most important with regards to a profession is the spirit of public service. The ethical compunctions of the professionals are similarly exemplified in a

¹ Roscoe Pound, “What is a Profession - The Rise of the Legal Profession in Antiquity”, 19 *Notre Dame L. Rev.* 203 (1944), at p. 204.

European Union Directive in which “liberal professions” were described as “those practised on the basis of relevant professional qualifications in a personal, responsible and professionally independent capacity by those providing intellectual and conceptual services in the interest of the client *and the public*”² (*emphasis added*).

1.3 In this background, the founding fathers of our Constitution while adopting a federal governmental system, entrusted a duty on the judiciary to strike a balance between the functioning of the other organs of the Government while protecting the life and liberty of the citizens. With the avowed objective of conforming to the rule of law and dispensation of justice as contained in it, the elements of a perfect system of constituting courts on different tiers together with the system of advocates in the legal profession, who have been conferred with right to practice under the Constitution which now stands embedded in the Advocates Act, 1961 (hereinafter referred to as the Advocates Act).

² Directive 2005/36/EC of the European Parliament and of the Council on the Recognition of Professional Qualifications (7 September 2005).

CHAPTER-II

Advent of the Constitution

2.1. Our judicial system is enshrined in the Constitution with powers to dispense justice, including their constitution and jurisdictions, and with powers to make their own rules. The Supreme Court has been described as a court of record and conferred with all powers including the powers to punish for its contempt under article 129 of the Constitution. The power to frame rules, subject to the provisions of any law made by Parliament and with the approval of the President, has been conferred on the Supreme Court under article 145 of the Constitution. Sub-clause (a) of clause (1) of article 145 specifically empowers the Supreme Court to frame rules regarding the persons who can practice before it.

2.2. There exists a distinction in the conferment of powers on the High Courts. While conferring the powers on the High Courts, rules as to the persons practicing before the Court have not been provided for under the Constitution as compared to the Supreme Court referred to hereinabove. The power to enact a law pertaining to the right to practice before a High Court has been retained under Entry 78 of List I of the VIIth Schedule to the Constitution, with Parliament itself. However, the High Court, being a court of record and has been conferred with powers to punish for its contempt under article 215 of the Constitution. This article has significance as it confers the power in relation to the proceedings of criminal contempt that extends to awarding a sentence of punishment in the event of a breach by an advocate vis-à-vis his professional misconduct in the Court. The power, however, to frame a law on contempt and to make provisions for the same are available with Parliament

and the State Legislatures under Entry 14 of List III of Schedule VII to the Constitution.

2.3 The expression 'administration of justice' also occur in Entry 11-A of List III (Concurrent List). Whenever, it comes to taking a broad view of the terminology aforesaid, the same can also include within its fold the role of advocates in the administration of justice. Entry 13 of List III, empowers Parliament as well as the State Legislatures to frame rules regarding procedure. Order 3 Rule 1 of the Code of Civil Procedure, 1908 and section 303 of the Code of Criminal Procedure, 1973 make exhaustive provisions for representation of litigants through recognised agents and pleaders. Thus, the statute has given a legal status to the participation of an advocate in judicial proceedings. Separate sets of rules govern engagement of advocates as empaneled lawyers on behalf of the Central Government and State Governments as well as their undertakings and such other bodies that are within their control. Thus, the presence of advocates as part of the justice delivery system is ingrained in our laws. With this in view Entry 26 in List III of Schedule VII was incorporated in the Constitution, empowering Parliament and the State Legislatures to frame laws with regard to the legal profession as well.

CHAPTER-III

Era of the Advocates Act, 1961

3.1 With the passage of time, it was felt that the Judicial Administration should be changed according to the needs of the time. The First Law Commission examined and made a Report on Reforms of Judicial Administration. The All India Bar Committee also examined the matter and made its recommendations in 1953. To implement the recommendations of All India Bar Committee after taking into account the Law Commission's recommendations made in its Fourteenth Report in so far as they relate to the Bar and to legal education, the Advocates Act was enacted.

3.2 The Advocates Act amalgamates, codifies and consolidates the law relating to the regulation of practice by advocates and the system of the legal profession. This regulatory law with the various bodies constituted under it, including the Bar Council of India and the State Bar Councils, has been controlling the legal profession for more than half a century with many amendments in the past.

3.3 The effectiveness of our judicial system and growing legal awareness amongst the masses, has seen a corresponding growth in the enrolment of advocates throughout the country compared to that existed in the pre-independence era. The legal profession has now become one of the most sought after professions and not as a secondary profession by any means. The nature of litigation in our multi-dimensional legal system with a variety of laws and redressal mechanisms has brought forward the participation of advocates in every field of socio-economic growth and development. The advocates have now

become an indispensable part of our judicial system at all levels, including courts, tribunals, quasi-judicial authorities and administrative authorities as well.

CHAPTER-IV

Period of Aberration

4.1 The opening of new vistas in the legal profession has brought with it the inherent problems of deficiency in professionalism, ethical decline and lack of devotion. The inter-rivalry between professionalism and competition with a materialistic approach in a growing society affected by social, political and economic changes has led to the legal profession acquiring a mantle that it did not possess long before. The fraternity of advocates had in the past actively been participating on all social fronts but this dimension has now become multi-faceted. This holistic form of participation in all walks of life, therefore, demands more responsibility and obligations requiring observance of moral and ethical values for preserving the basic ethos of this legal profession.

4.2 In recent years, the role of advocates, particularly in the dispensation of justice through courts of law, has come under sharp criticism and is being viewed as an eyesore by the public. A news item published in the Indian Express dated 09 March 2009, titled '*Laws for Lawyers*', spoke of the crumbling regulatory structure after having witnessed a decline in the conduct of advocates; and lawyers that was unprofessional and inconvenienced by a variety of instances. More particularly, it referred to lawyers resorting to strikes and boycotts to the detriment of the litigants. The news item refers to the Sri Krishna Commission's Interim Report that has brought out the kind of violent incident that took place in the Madras High Court. It also quoted regulations adopted abroad, particularly in the United Kingdom by passing of the Legal Services Act, 2007

with an express purpose to set up an independent Board to examine allegations of lawyers' misconduct. It also refers to the systems prevalent in other democracies i.e., in the United States of America. The item concludes that the time had come to reform the Bar Councils in India and to revisit the laws regulating the professional conduct of advocates.

4.3 Several unpleasant incidents in the past, some of them occasional in nature, and most of them organized, have led to a severe criticism by the society and the members of the legal profession by reason of their behaviour and misconduct are now being looked upon with distrust. The advocates' conduct in courts, behaviour with litigants and their unprofessional conduct, including the act of going on frequent strikes as a measure of protest for irrelevant issues has reached to terrifying proportions. This has resulted in the loss of opportunity to litigants to get their grievances redressed, coupled with the introduction of greater violence, both in courts and outside, in various forms. This has even forced working advocates to absent themselves from work, a fact that has come in the notice of the courts through its judicial pronouncements. In spite of repeated pronouncements of the Supreme Court and the High Courts declaring strikes and boycotts to be illegal, the same has continued unabated, coupled with violence and instances of misconduct. This issue has been addressed in certain instances with severe punishments, including debarment of lawyers from even practicing in courts.

CHAPTER-V

Judicial Pronouncements and the Law

5.1 The full bench judgment of the Jharkhand High Court in the case of *K K Jha “Kamal” & Anr. v. Pankaj Kumar & Anr.*³, the full bench judgment of the Allahabad High Court in the case of *Sadhna Upadhyay v. State of U.P.*⁴, and the recent judgment of the Apex Court in the case of *Mahipal Singh Rana v. State of UP*⁵, are pointers in relation to professional misconduct of lawyers that ultimately resulted in a direction by the Supreme Court asking the Law Commission of India to go into all relevant aspects relating to regulation of legal profession in consultation with all concerned at an early date. It also requested Parliament to consider enactment of the law that would effectively empower the authorities for such effective regulation.

5.2 The Courts have been making observations and commenting on the effective application and working of the provisions of the Advocates Act, particularly in respect of regulation of disciplinary proceedings against advocates. In *Mahipal Singh Rana*⁶, the appellant therein was found guilty of criminal contempt for intimidating and threatening a Civil Judge (Sr. Division), by the High Court of Judicature at Allahabad. He was awarded a sentence of a short term imprisonment along with fine and was also restrained from entering the court premises, and was debarred from appearing and practicing in the District Court of Etah, in U.P. He preferred an appeal before the Supreme Court and the Court

³ AIR 2007 Jhar 67.

⁴ 2009 (4) ADJ 434.

⁵ AIR 2016 SC 3302.

⁶ *Ibid.*

considering that an important legal issue was involved, referred it to a larger bench.

5.3 The Supreme Court upheld the judgment and order of the High Court observing that superior courts have supervisory powers to regulate the right of an advocate to appear in court, and even in the absence of any rule framed under section 34(1) of the Advocates Act, the Court can restrain an advocate from appearing for a specific period of time. The Court further observed that it was undesirable for a convicted person to perform important public functions in view of section 24A of the Advocates Act and that there was an urgent need to amend the provisions so that the bar applicable at the entry level could be extended to a situation post enrolment where the delinquent advocate had already been enrolled by the Bar Council concerned. Further, due to failure of the State Bar Council to take action against the appellant therein, the Court exercised its *suo motu* powers under section 38 of the Advocates Act and suspended the licence of the appellant for a period of 5 years.

5.4 Being dismayed with the unsatisfactory regulatory mechanism governing the advocates, the Supreme Court expressed its anguish observing that there was an urgent need to review the provisions of the Advocates Act, particularly dealing with the regulatory mechanism for the legal profession and other identical issues in consultation with all concerned. And, thus the matter has been referred to the Law Commission of India asking to go into all relevant aspects relating to regulation of the legal profession and submit its report.

CHAPTER-VI

Law Commission's Initiative

6.1 The Commission invited suggestions from all stakeholders by putting on its website a notice dated 22nd July, 2016, as to how the system could be improved. The attention of the Bar Council of India was drawn to the said notice by writing a letter on 3rd August, 2016. The Registrar General of all High Courts were addressed a similar email on 4th August, 2016. Simultaneously, an email was sent to all the State Bar Councils, Supreme Court Bar Association and Supreme Court Advocates on Record Association. On the same day, the Chairman addressed a letter to the Chief Justices of all the High Courts, requesting them to use their good offices to give wide publicity to the endeavour of the Commission amongst the various associations of Advocates' (in whatever name they exist), with a request to send their response directly to the Commission by email at the earliest.

6.2 In pursuance of the aforesaid, the Bar Council of India, the highest body in the hierarchy under the Advocates Act, appointed an Advisory Committee headed by Mr. Justice Shivraj Patil, former Judge, Supreme Court of India. The BCI made comprehensive recommendations on various issues relating to the Advocates Act and also submitted a draft Bill for consideration of the Commission. The Bar Council of India was of the view that in addition to the regulatory mechanism, other inter-related issues, i.e., constitution of the BCI and the State Bar Councils are also required to be revisited. The BCI made some suggestions in this regard. The draft Bill prepared by the Bar Council of India is annexed as **Annexure I** to this Report. In response to the request of the Commission, several stakeholders

like Bar Associations, individual advocates and judicial officers have sent their valuable suggestions. A summary of their responses is annexed as **Annexure II** to this Report.

6.3 The Law Commission, while reviewing the Advocates Act, felt that the conduct of the advocates, directly as well indirectly affects the functioning of the courts, and thereby contributes to the pendency of cases. The Commission felt that some provisions would be necessary to regulate the conduct of advocates in the court, which affects the functioning of the court as well as the expectations of the aggrieved, alike. Keeping this in view, all the High Courts through the Chief Justices were requested to send data on loss of working days by call of strikes in their respective jurisdictions, during the last five years. The Commission was astonished on going through the responses received pursuant to its request, as it was found that the strikes by the advocates were rampant throughout the length and breadth of the country with little variation in degree.

CHAPTER-VII

Loss of Courts' Working Days: A Staggering Fact

7.1 Every High Court, on its administrative side, takes a decision fixing the minimum number of working days for subordinate courts which varies from State to State.

7.2. In the State of Uttarakhand, the information sent by the High Court for the years 2012-2016 shows that in Dehradun District, the Advocates were on strike for 455 days during 2012-2016 (on an average, 91 days per year). In Haridwar District, 515 days (103 days a year) were wasted on account of strike.

7.3 In the case of the State of Rajasthan, the High Court of Judicature at Jodhpur saw 142 days of strike during 2012-2016, while the figure stood at 30 for the Jaipur Bench. In Ajmer District courts, strikes remained for 118 days in the year 2014 alone, while in Jhalawar, 146 days were lost in 2012 on account of strike.

7.4 The case of Uttar Pradesh appears to be the worst. The figures of strike for the years 2011-2016 in the subordinate courts are alarmingly high. In the State of Uttar Pradesh, the District courts have to work for 265 days in a year. The period of strike in five years period in worst affected districts has been as - Muzaffarnagar (791 days), Faizabad (689 days), Sultanpur (594 days), Varanasi (547 days), Chandauli (529 days), Ambedkar Nagar (511 days), Saharanpur (506 days) and Jaunpur (510 days). The average number of days of strike in eight worst affected districts comes to 115 days a year. Thus, it is evident that the courts referred to hereinabove could work on an average for 150 days only in a year.

7.5 In this regard, the situation in subordinate courts in Tamil Nadu had by no means, been better. The High Court of Tamil Nadu has reported that there are 220 working days in a year for the courts in the State. During the period 2011-2016, districts like Kancheepuram, 687 days (137.4 days per year); Kanyakumari, 585 days (117 days per year); Madurai, 577 days (115.4 days per year); Cuddalore, 461 days (92.2 days per year); and Sivagangai, 408 days (81.6 days per year), were the most affected by strike called by advocates.

7.6 As per the responses received from the High Courts of Madhya Pradesh and Odisha, the picture does not emerge to be satisfactory.

7.7 The Commission noted that the strike by advocates or their abstinence from the court were hardly for any justifiable reasons. It could not find any convincing reasons for which the advocates resorted to strike or boycott of work in the courts. The reasons for strike call or abstinence from work varied from local, national to international issues, having no relevance to the working of the courts. To mention a few, bomb blast in Pakistan school, amendments to Sri Lanka's Constitution, interstate river water disputes, attack on / murder of advocate, earthquake in Nepal, to condole the death of their near relatives, to show solidarity to advocates of other State Bar Associations, moral support to movements by social activists, heavy rains, or on some religious occasions such as *shraadh*, *Agrasen Jayanti*, etc. or even for *kavi sammelan*.

7.8 The Commission is of the view that unless there are compelling circumstances and the approval for a symbolic strike of one day is obtained from the Bar Council concerned, the advocates shall not resort to strike or abstention from the court work.

CHAPTER-VIII

Supreme Court Judgements on Strike – Reprehensible act

8.1 The prevailing situation in the courts are a real eye-opener and ironically it is one of the reasons for pendency of about 2.5 crores cases in subordinate courts. The Supreme Court had consistently been declaring that advocates do not have a right to call for strikes and held that the lawyers' strikes are illegal and that effective steps should be taken to stop the growing tendency. In numerous cases beginning from *Pandurang Dattatraya Khandekar v. Bar Council of Maharashtra, Bombay*⁷; to *Ex Capt. Harish Uppal v. Union of India*⁸, it was held that the advocates have no right to go on strike. The Courts are under no obligation to adjourn matters because lawyers are on strike. On the contrary, it is the duty of all Courts to go on with matters on their boards even in the absence of lawyers. In other words, Court must not be privy to strikes or calls for boycotts. It was held that if a lawyer, holding a vakalatnama of a client, abstains from attending Court due to a strike call, he shall be personally liable to pay costs which shall be in addition to damages which he might have to pay his client for loss suffered by him.

8.2 It is relevant to mention here that the Supreme Court, in *Ex-Capt. Harish Uppal*,⁹ dealt extensively with strikes by advocates. The Court held:

“... that lawyers have no right to go on strike or give a call for boycott, not even on a token strike. The protest, if any is required, can only be by giving press

⁷ AIR 1984 SC 110.

⁸ AIR 2003 SC 739.

⁹ *Ibid.*

statements, TV interviews, carrying out of Court premises banners and/or placards, wearing black or white or any colour arm bands, peaceful protest marches outside and away from Court premises, going on dharnas or relay fasts etc. ...only in the rarest of rare cases where the dignity, integrity and independence of the Bar and/or the Bench are at stake, Courts may ignore (turn a blind eye) to a protest abstention from work for not more than one day...”

8.3 In spite of all these, the strikes have continued unabated. The dispensation of justice must not stop for any reason. The strike by lawyers have lowered the image of the courts in the eyes of the general public. The Supreme Court has held that right to speedy justice is included in article 21 of the Constitution. In *Hussainara Khatoon v. Home Secy., State of Bihar*¹⁰; and in some other cases, it was held that the litigant has a right to speedy justice. The lawyers’ strike, however, result in denial of these rights to the citizens in the State.

8.4 Recently, the Supreme Court while disposing off the Criminal Appeal of *Hussain & Anr. v. Union of India*¹¹ deprecated the practice of boycotting the Court observing that:

“One other aspect pointed out is the obstruction of Court proceedings by uncalled for strikes/abstaining of work by lawyers or frequent suspension of court work after condolence references. In view of judgment of this Court in *Ex. Captain Harish Uppal versus Union of India*, such suspension of work or strikes are clearly illegal and it is high time that the legal fraternity realizes its duty to the society which is the foremost. Condolence references can be once in a while periodically say once in two/three months and not frequently. Hardship faced by witnesses if their evidence is not recorded on the day they are summoned or impact of delay on under trials in custody on account of such avoidable interruptions of court proceedings is a matter of concern for any responsible

¹⁰ AIR 1979 SC 1360.

¹¹ Criminal Appeal No. 509 of 2017 decided on 9th March 2017.

body of professionals and they must take appropriate steps. In any case, this needs attention of all concerned authorities – the Central Government/State Governments/Bar Councils/Bar Associations as well as the High Courts and ways and means ought to be found out to tackle this menace. Consistent with the above judgment, the High Courts must monitor this aspect strictly and take stringent measures as may be required in the interests of administration of justice.”.

8.5 In *Ramon Services Pvt. Ltd. v. Subhash Kapoor*¹², the apex Court observed that if any advocate claims that his right to strike must be without any loss to him, but the loss must only be borne by his innocent client, such a claim is repugnant to any principle of fair play and canons of ethics. Therefore, when he opts to strike or boycott the Court he must as well be prepared to bear at least the pecuniary loss suffered by the litigant client who entrusted his brief to that advocate with all confidence that his cause would be safe in the hands of that advocate.

8.6 The Constitution provides for an independent and efficient justice delivery system. Any delay in disposal of cases not only creates disillusionment amongst the litigants, but also undermines the capability of the system to impart justice in an effective manner.¹³ The Supreme Court disapproved the conduct of the party resorting to dilatory tactics before the court seeking adjournments on one or other pretext and observed that the party acted in a manner to cause colossal insult to justice and to the concept of speedy disposal of cases¹⁴.

8.7 In addition to the issue of strikes, the Supreme Court has also dealt with a large number of cases of browbeating of courts by advocates for getting a favourable order. As a rule, an

¹² AIR 2001 SC 207.

¹³ *Syed Gulzar Hussain v. Dewan Syed Ale Ramul Ali Khan*, (2014) 10 SCC 825.

¹⁴ *Gayathri v. M.Girish*, (2016) 14 SCC 142.

Advocate, as an officer of the court, cannot be adamant on any unwarranted and uncalled for issue.

8.8 The Supreme Court in *Vishram Singh Raghubanshi v. State of Uttar Pradesh*¹⁵ held:

“The Superior Courts have a duty to protect the reputation of judicial officers of subordinate courts, taking note of the growing tendency of maligning the reputation of judicial officers by unscrupulous practising advocates who either fail to secure desired orders or do not succeed in browbeating for achieving ulterior purpose. Such an issue touches upon the independence of not only the judicial officers but brings the question of protecting the reputation of the Institution as a whole.”

8.9 In *M.B. Sanghi v. High Court of Punjab and Haryana*¹⁶, it has been opined that:

“The tendency of maligning the reputation of judicial officers by disgruntled elements who fail to secure the desired order is ever on the increase and it is high time it is nipped in the bud. And, when a member of the profession resorts to such cheap gimmicks with a view to browbeating the Judge into submission, it is all the more painful. When there is a deliberate attempt to scandalise which would shake the confidence of the litigating public in the system, the damage caused is not only to the reputation of the Judge concerned but also to the fair name of the judiciary.”

¹⁵ AIR 2011 SC 2275.

¹⁶ AIR 1991 SC 1834.

8.10 In *R.D. Saxena v. Balram Prasad Sharma*¹⁷, the Supreme Court held:

“In our country, admittedly, a social duty is cast upon the legal profession to show the people beckon (sic beacon) light by their conduct and actions. The poor, uneducated and exploited mass of the people need a helping hand from the legal profession, admittedly, acknowledged as a most respectable profession. No effort should be made or allowed to be made by which a litigant could be deprived of his rights, statutory as well as constitutional, by an advocate only on account of the exalted position conferred upon him under the judicial system prevalent in the country.”

8.11 In *Mahabir Prasad Singh v. Jacks Aviation Pvt. Ltd.*¹⁸, the Supreme Court held that it is the solemn duty of every Court to proceed with the judicial business during court hours and no Court should yield to pressure tactics or boycott calls or any kind of browbeating. The Court held:

“At any rate, no advocate can ask the Court to avoid a case on the ground that he does not want to appear in that Court.”

8.12 In *M/s. Chetak Construction Ltd. v. Om Prakash*¹⁹, the Court deprecated the practice of making allegations against the Judges observing as under:

“Lawyers and litigants cannot be allowed to “terrorize” or “intimidate” Judges with a view to “secure” orders which they want. This is basic and fundamental and no civilised system of administration of justice can permit it.”

¹⁷ AIR 2000 SC 2912.

¹⁸ AIR 1999 SC 287.

¹⁹ AIR 1998 SC 1855.

Similar view has been reiterated in *Radha Mohan Lal v. Rajasthan High Court*²⁰.

8.13 In view of the observations by the Courts, in the event of a strike, a court is not obliged to become complicit in the illegality by adjourning the case for the absence of counsel, it may proceed to pass orders *ex parte*. Litigation work requires the representatives and authorities to systematically engage in legal proceedings at various points over sustained periods of time so as to arrive at resolution to the disputes. To use this situation of necessity to claim increased bargaining power is a wanton perversion of the aims of the justice delivery system. To forcibly prevent other advocates from appearing in their respective proceedings is even worse. The act of going on strike amounts to a violation of an advocate's duty as an officer of the court and his duty to maintain standards of professional conduct and ethics. It also results in a violation of his agreement with the client. At the same time, it is also contempt of court and a violation of the right of speedy trial for litigants. The unacceptable actions of advocates have not shown any significant improvement despite the establishment of competent authorities to regulate the conduct of advocates. The reasons for strikes reported in case law have not been found to justify organised violence directly prejudicial to the vital function of justice delivery.

8.14 The unacceptable trend of making false allegations against judicial officers and humiliating them requires to be curbed, otherwise the judicial system would lose its credibility. The Bench and the Bar have to avoid unwarranted situations on trivial issues that hamper the cause of justice and are in the interest of none. "Liberty of free expression is not to be

²⁰ AIR 2003 SC 1467.

confounded or confused with license to make unfounded allegations against any institution, much less the Judiciary”²¹. An Advocate in a profession as well in his conduct should be diligent and conform to the requirements of the law by which an Advocate plays an important role in the preservation of justice system. Any violation of the principles of professional ethics by an Advocate is unfortunate and unacceptable. Any kind of deviance not only affects the system but corrodes the faith of the people at large²².

8.15 In *Arun Kumar Yadav v. State of Uttar Pradesh Through District Judge*²³, the Supreme Court observed:

“The judicial proceeding has its own solemnity and sanctity. No one has any authority to sully the same. It is the obligation of everyone to behave with propriety when a judicial proceeding is conducted. Any kind of deviancy not only affects the system but corrodes the faith of the collective at large. Neither any counsel nor a litigant can afford to behave in this manner.”

8.16 The lawyer who presents the application before the court making unfounded allegations against a judicial officer, impleading him by name, though not permissible in law as explained by the Court in *Savitri Devi v. District Judge, Gorakhpur*²⁴, without reasonably satisfying himself about the prima facie existence of adequate grounds, is equally responsible for contempt for scandalizing the court for the reason that he cannot be a mouthpiece of his client and cannot associate himself with his client in maligning the reputation of judicial officer merely because his client failed to secure the desired order from the said officer. A deliberate attempt to

²¹ *Dr.D.C. Saxena v. Hon'ble Chief Justice of India*, (1996) 5 SCC 216, 220.

²² *O.P. Sharma v. High Court of Punjab and Haryana*, AIR 2011 SC 2101.

²³ (2013) 14 SCC 127.

²⁴ AIR 1999 SC 976.

scandalise the court which would shake the confidence of the litigating public in the system would cause a very serious damage to the name of the judiciary²⁵.

8.17 *In Re: Ajay Kumar Pandey*²⁶, the Supreme Court held:

“No one can be permitted to intimidate or terrorize judges by making scandalous unwarranted and baseless imputations against them in the discharge of their judicial functions so as to secure orders which the litigant ‘wants’...The liberty of expression cannot be treated as a licence to scandalize the court...”

8.18 In *Bar Council of India v. High Court of Kerala*²⁷, the Supreme Court observed, “*An advocate in no circumstances is expected to descend to the level of appearing to support his view in a vulgar brawl.*”

8.19 *In Re: S. Mulgaokar*²⁸, the Supreme Court observed that public interest and public justice require that whenever there is an attack on the judge, it is scurrilous, offensive, intimidatory or malicious, the law must strike a blow on him as he challenges the supremacy of law by fouling the source and stream.

8.20 The legal profession requires the safeguarding of moral standards. As an officer of the court, a lawyer has a duty to the court towards his profession and to the public. Since the prime duty of a lawyer is to assist the court in dispensing justice, the members of the Bar cannot behave in a manner which is

²⁵ *M.Y. Shareef v. Hon'ble Judges of Nagpur High Court* AIR 1955 SC 19; *Shamsher Singh Bedi v. High Court of Punjab & Haryana* AIR 1955 SC 1974; *Tushar D. Bhatt v. State of Gujarat* (2009) 11 SCC 678 and *R.K.Anand v. Registrar, Delhi High Court* (2009) 8 SCC 106.

²⁶ AIR 1998 SC 3299.

²⁷ AIR 2004 SC 2227.

²⁸ AIR 1978 SC 727.

doubtful, or full of scruples or which strives to thrive on litigation. Lawyers must remember that they are to assist the court in the administration of justice. If lawyers do not perform their function properly, it would be degenerative to the rule of law.

8.21 A suggestion has been made that at every district headquarters, the District Judge may constitute an Advocates' Grievance Redressal Committee headed by a Judicial Officer which will deal with the day to day routine matters, as large number of issues and grievances arise in the smooth working of the advocates. In this regard, the High Court may issue a circular in exercise of its power under article 235 of the Constitution providing for redressal of grievances of the Advocates which will help in improving their efficiency.

8.22 In case there is some grievance against a Judicial Officer, the Bar may raise the grievance before the Chief Justice of the concerned High Court.

CHAPTER-IX

Denouncing the Contemptuous acts of Advocates

9.1 In a case, where the attitude of a lawyer is contemptuous, the Court may initiate the proceeding for contempt against the lawyer and restrain him from appearance. In *Supreme Court Bar Association v. Union of India*²⁹, the Supreme Court held as under:

“In a given case it may be possible, for the Court or the High Court, to prevent the contemnor Advocate to appear before it till he purges himself of the contempt but that is much different from suspending or revoking his licence or debarring him to practice as an Advocate....”

9.2 Similarly in *Ex Capt. Harish Uppal v. Union of India*³⁰, the Supreme Court held as under:

“One last thing which must be mentioned is that the right of appearance in Courts is still within the control and jurisdiction of courts. Section 30 of the Advocates Act has not been brought into force and rightly so. Control of conduct in Court can only be within the domain of courts. Thus, article 145 of the Constitution of India gives to the Supreme Court and section 34 of the Advocates Act gives to the High Court power to frame rules including rules regarding condition on which a person (including an advocate) can practice in the Supreme Court and/or in the High Court and Courts subordinate thereto. Many Courts have framed rules in this behalf. Such a rule would be valid and binding on all. Let the Bar take note that unless self-restraint is exercised, Courts may now have to consider framing specific rules debarring advocates, guilty of contempt and/or unprofessional or unbecoming conduct, from appearing before the courts. Such a rule if framed would not have anything to do with the disciplinary

²⁹ AIR 1998 SC 1895.

³⁰ *Supra* note 8.

jurisdiction of the Bar Councils. It would be concerning the dignity and orderly functioning of the courts. The right of the advocate to practice envelopes a lot of acts to be performed by him in discharge of his professional duties. Apart from appearing in the Courts he can be consulted by his clients, he can give his legal opinion whenever sought for, he can draft instruments, pleadings, affidavits or any other documents, he can participate in any conference involving legal discussions, he can work in any office or firm as a legal officer, he can appear for clients before an arbitrator or arbitrators etc. Such a rule would have nothing to do with all the acts done by an advocate during his practice. He may even file vakalatnama on behalf of a client even though his appearance inside the Court is not permitted. **Conduct in Court is a matter concerning the Court and hence the Bar Council cannot claim that what should happen inside the Court could also be regulated by them in exercise of their disciplinary powers.**” (Emphasis Added)

9.3 In *R.K. Anand v. Registrar, Delhi High Court*³¹, the Supreme Court upheld the judgment of the Delhi High Court debaring the advocate to appear in Courts for a particular period for proved misconduct, observing that unless a person purges himself of contempt or is permitted by the court conviction results in debaring an advocate from appearing in the court even in absence of suspension or termination of the licence to practice. In *Amit Chanchal Jha v. High Court of Delhi*³², the Supreme Court reiterated the same view upholding the order debaring the advocate from appearance in court on account of his conviction for criminal contempt.

9.4 The Supreme Court in *R.K. Anand v. Registrar, Delhi High Court*³³, directed that the contemnor shall not do any kind of professional work charging any fees or for any personal considerations for one year from the date of judgment. He shall

³¹ (2009) 8 SCC 106.

³² (2015) 13 SCC 288.

³³ AIR 2013 SC 670.

exclusively devote his professional services to help pro bono the accused who, on account of lack of resources, are not in a position to engage any lawyer to defend themselves and have no means to have their cases effectively presented before the court. The contemnor shall place his professional services at the disposal of the Delhi Legal Services Authority which, in coordination with the Delhi High Court Legal Services Authority, will frame a scheme to avail of the contemnor's services for attending the case of undefended accused either at the trial or at the appellate stage. The contemnor shall appear in court only in cases assigned to him by the Legal Services Authority. The Delhi Legal Services Authority shall keep a record of all the cases assigned to the contemnor and the result/progress made in those cases. At the end of the year, the Delhi Legal Services Authority shall submit a report to Supreme Court in regard to all the cases done by the contemnor at its instance which shall be placed before the Judges for perusal. At the end of one year it will be open to the contemnor to resume his private law practice. But he shall not leave any case assigned to him by the Legal Services Authority incomplete. He shall continue to do those cases, free of cost, till they come to a close.

9.5 Keeping in view the aforesaid judgments, most of the High Courts have framed the rules under s.34(1) of the Advocates Act, empowering High Courts as well as the district judges concerned to pass an order debaring an advocate from appearing in court. The relevant parts of the Allahabad High Court Rules, read as under:

“10. Suspension of advocate under C.P.C.:- No advocate who has been debarred or suspended or whose name has been struck off the Roll of Advocates shall be permitted to act as a recognised agent of any party within the meaning of Order III of the Code of Civil Procedure, 1908.

11. Appearance of advocate after committing contempt:- No advocate who has been found guilty of contempt of Court shall be permitted to appear, act or plead in any Court unless he has purged himself of contempt, either by tendering apology which is accepted or by suffering punishment imposed on him or where, in case of an appeal, a stay order is in operation.

[*Explanation:* For the purpose of purging of contempt under this Rule, the suffering of punishment or payment of fine or both shall not necessarily be sufficient.]”

9.6. The Madras High Court, on 20 May 2016 published amendments to rules framed under section 34(1) of the Act, 1961. The relevant portions are reproduced below:

“14-A: Power to Debar:-

....

(vii) An Advocate who is found to have accepted money in the name of a Judge or on the pretext of influencing him; or

(viii) An Advocate who is found to have tampered with the Court record or Court order; or

(ix) An Advocate who browbeats and/or abuses a Judge or Judicial Officer; or

(x) An Advocate who is found to have sent or spread unfounded and unsubstantiated allegations/petitions against a Judicial Officer or a Judge to the Superior Court; or

(xi) An Advocate who actively participates in a procession inside the Court campus and/or involves in *gherao* inside the Court Hall or holds placard inside the Court Hall; or

(xii) An Advocate who appears in the Court under the influence of liquor;

shall be debarred from appearing before the High Court or Subordinate Courts permanently or for such period as the Court may think fit and the Registrar

General shall thereupon report the said fact to the Bar Council of Tamil Nadu.

14-B: Power to take action:-

...

(iv) Where any such misconduct referred to under Rule 14-A is committed by an Advocate before the High Court, the High Court shall have the power to initiate action against the Advocate concerned and debar him from appearing before the High Court and all Subordinate Courts.

(v) Where any such misconduct referred to under Rule 14-A is committed by an Advocate before the Court of Principal District Judge, the Principal District Judge shall have the power to initiate action against the Advocate concerned and debar him from appearing before any Court within such District.

(vi) Where any such misconduct referred to under Rule 14-A is committed by an Advocate before any subordinate court, the Court concerned shall submit a report to the Principal District Court within whose jurisdiction it is situate and on receipt of such report, the Principal District Judge shall have the power to initiate action against the Advocate concerned and debar him from appearing before any Court within such District.

14-C: Procedure to be followed:-

The High Court or the Court of Principal District Judge, as the case may be, shall, before making an order under Rule 14-A, issue to such Advocate a summon returnable before it, requiring the Advocate to appear and show cause against the matters alleged in the summons and the summons shall if practicable, be served personally upon him.

14-D: Power to pass Interim Order:-

The High Court or the Court of Principal District Judge may, before making the Final Order under Rule 14-C, pass an interim order prohibiting the Advocate concerned from appearing before the High Court or Subordinate Courts, as the case may be, in appropriate cases, as it may deem fit, pending enquiry.”

9.7. Other High Courts, like the Gujarat High Court, have also framed similar set of rules under section 34(1) of the Advocates Act.

CHAPTER-X

Propriety of performing public functions by convicted persons

10.1 The Law Commission considered the desirability of suggesting modifications in section 24A of the Advocates Act which provides for disqualification for enrolment in certain cases. Section 24A provides that any person who has been convicted of an offence, may become eligible to be enrolled as an advocate after the expiry of two years from completion of the sentence. Further, it is also seen that section 26A, which makes provision for Bar Councils to remove names from the rolls, does not provide for removal of names of advocates, who stands convicted for an offence. These aspects need examination, keeping in view the judgment given by the Gujarat High Court in '*C*' v. *Bar Council of Gujarat*³⁴ which was quoted and reiterated by the *Supreme Court in Mahipal Singh Rana* (supra), as under:

“... We, however, wish to avail of this opportunity to place on record our feeling of distress and dismay at the fact that a public servant who is found guilty of an offence of taking an illegal gratification in the discharge of his official duties by a competent court can be enrolled as a member of the Bar even after a lapse of two years from the date of his release from imprisonment. It is for the authorities who are concerned with this question to reflect on the question as to whether such a provision is in keeping with the high stature which the profession (which we so often describe as the noble profession) enjoys and from which even the members of highest judiciary are drawn. It is not a crime of passion committed in a moment of loss of equilibrium. Corruption is an offence which is committed after deliberation and it becomes a way of life for him. ... It is for the legal profession to consider whether it would like such a provision to continue to remain on the statute book and would like to continue to admit persons who

³⁴ (1982)2Guj LR 706.

have been convicted for offences involving moral turpitude and persons who have been found guilty of acceptance of illegal gratification, rape, dacoity, forgery, misappropriation of public funds, relating to counterfeit currency and coins and other offences of like nature to be enrolled as members merely because two years have elapsed after the date of their release from imprisonment. Does passage of 2 years cleanse such a person of the corrupt character trait, purify his mind and transform him into a person fit for being enrolled as a member of this noble profession? Enrolled so that widows can go to him, matters pertaining to properties of minors and matters on behalf of workers pitted against rich and influential persons can be entrusted to him without qualms, court records can be placed at his disposal, his word at the Bar should be accepted? Should a character certificate in the form of a black gown be given to him so that a promise of probity and trustworthiness is held out to the unwary litigants seeking justice? A copy of this order may, therefore, be sent to the appropriate authorities concerned with the administration of the Bar Council of India and the State Bar Council, Ministry of Law of the Government of India and Law Commission in order that the matter may be examined fully and closely with the end in view to preserve the image of the profession and protect the seekers for justice from dangers inherent in admitting such persons on the rolls of the Bar Council.”.

10.2. The Law Commission is of the view that wiping out the bar after enrolment, in case of conviction of an advocate after two years in the nature of cases mentioned in section 24A, does not render the person in any way desirable to plead on behalf of a person seeking redressal of his grievance through the justice delivery system. The legal profession, as such, has been placed on a very high pedestal acknowledging advocates' legal status and authority to plead on behalf of a person in court of law. Similarly, there can be hardly any justification for wiping out such disqualification, which is otherwise applicable for enrolment, after the enrolment is made. Having regard to the broader objective of the provision, the said bar should certainly operate post enrolment. With this in view, the Commission

recommends the substitution of section 24A and 26A with new provisions to take care of the objectives of undesirability of a convicted person being allowed to perform important public functions.

CHAPTER-XI

Advocacy lurking in the shadows

11.1 As per recent media reports³⁵, the Bar Council of India conducted verification of advocates under the Bar Council of India Certificate and Place of Practice (Verification) Rules, 2015, and it was reported that a very high percentage (33 to 45%) of lawyers were fake. Such lawyers were practicing either with the fake law degree or without any degree at all. The process of verification is not yet complete and the so-called bogus lawyers could be identified only by scrutiny. Apprehension has been raised that the alleged bogus lawyers could have succeeded in making entry in the judiciary, government services and some of them could have been appointed as Government pleaders, Law Officers, etc. Such persons might have succeeded in mission by impersonation and entering into criminal conspiracy. Thus legal advice offered by such persons could affect the deliverance and quality of justice and their mere existence in legal system would definitely erode the public trust.

11.2 This is a crucial matter casting shadow on the nobility of the legal profession. As such, to establish the probity of advocacy, it requires a thorough scrutiny and verification. Towards this end, the Law Commission recommends a specific rule making power for Bar Council of India to make rules for verification of certificates of Advocates and for periodical verification of antecedents, conduct, place of practice of Advocates; and to make a data based web-portal of all the advocates.

³⁵ *The Times of India, Delhi* dated 23.01.2017, *The Hindu* dated 26.01.2017 and *Hindustan Times* dated 19.03.2017.

CHAPTER – XII

Legal Education in India

12.1 The mandate to the Commission is centred on regulating the conduct of advocates in the profession. It is necessary to point out that it would only be a piecemeal effort of addressing the issues involved if, we do not realise that the regulatory scheme for the maintenance of standards should run in a straight line from the stage of education and training to enrolment and active practice. Any laxity in standard-setting at the foundational level would multiply the problems at later stages.

12.2 Lawyers have been in the vanguard of a country's progress and have always zealously guarded human liberties and the rule of law. Having specialised in the legal field, they champion the cause of victims of violations of fundamental and legal rights; protect the civil and human rights of the citizens. They also canvass before the courts that the action of the State cannot be arbitrary. Therefore, legal education should also prepare professionals equipped to meet the new challenges and dimensions of internationalisation where the nature and organization of law and legal practice are undergoing a paradigm shift. Further, there is need for original and path-breaking legal research to create new legal knowledge and ideas that will help meet these challenges in a manner responsive to the needs of the country and the ideals and goals of our Constitution. Today, legal education derives its impetus from the economic, socio-economic and political setup of the society.

A. Historic perspective

12.3 Legal education plays an important role in promoting social justice. Education or awareness of laws, characterises the lawyers as Social Engineers. Legal education was formally introduced in 1855 when it was started in Government Hindu College, Calcutta, Elphinstone College, Madras and Government Law College, Bombay.

12.4 Felix Frankfurter observed, “*In the last analysis, the law is what the lawyers are. And the law and the lawyers are what the law schools make them.*”³⁶

12.5 The University Education Commission was appointed by Government of India under the chairmanship of Dr. S Radhakrishnan, “to report on Indian University Education and suggest improvements and extensions that might be desirable to suit the present and future requirements of the country³⁷.” The Commission in its report submitted in August 1949 *inter alia* recommended substantial improvement in legal education.

B. Constitutional framework

12.6 The Constitution initially laid down the duty of imparting education on the States by putting the matter pertaining to education in List II of the Seventh Schedule. But it now forms part of List III, giving concurrent legislative powers to the Union and the States. Legal profession along with the medical and other professions also falls under List III (Entry 26). However,

³⁶ Letter from Felix Frankfurter to Mr. Rosenwold, (May 13, 1927) cited in Benjamin H. Barton, *The Lawyer-Judge Bias in the American Legal System* (Cambridge University Press, New York, 2011) 273.

³⁷ Ministry of Education, Government of India, “The Report of the University Grants Commission” (Dec.1948-Aug.1949), Vol. I (1950), available at : www.academics-india.com/Radhakrishnan%20Commission%20Report%20of%201948-49.pdf. at page 1.

the Union is empowered to coordinate and determine standards in institutions for higher education or research and scientific and technical education besides having exclusive power, inter alia, pertaining to educational institutions of national importance, professional, vocational or technical training and promotion of special studies or research.

12.7 The Supreme Court, taking into account the provisions of articles 21 and 39A of the Constitution, directed the State Governments to provide grants-in-aid to the institutions imparting legal education³⁸.

C. Reports of previous Law Commissions

12.8 The Law Commission of India, in its 14th Report published in 1958, titled “Reform of Judicial Administration”, emphasised on the standard of legal education and portrayed a dismal picture and lamented the system observing that legal education was imparted in large number of schools by part time teachers of mediocre ability and indifferent merits. There was mushroom growth of law colleges. Most of the schools had skeleton libraries. Students were taught how to pass LL.B. examinations by cramming short summaries published by enterprising publishers. Colleges were housed in dingy rooms without adequate trained staff. Such institutions were basically fee collecting centres as there was no institution with proper facilities. There was no regular attendance of students. Thus, the law college had been producing half-baked lawyers who did not even have basic knowledge of law and were considered as drones and parasites.

³⁸ *Prem Chand Jain & Anr. v. R K Chhabra*, AIR 1984 SC 981; *University of Delhi v. Raj Singh*, AIR 1995 SC 336; and *V. Sudeer v. Bar Council of India*, AIR 1999 SC 1167.

12.9 On the question of the Bar Council's involvement in the regulation of legal education, it is worth noting that there has been some scrutiny given to the issue of what the appropriate body should be for the governance in higher education. As mentioned in the 184th Report of the Law Commission, the composition of the Legal Education Committee may need to be changed to accommodate specialized and dedicated persons in the education sector while also ensuring that legal education remains relevant to rapid developments in legal practice. The Commission also examined questions relating to standard-setting in legal education, skills and values, globalization and accreditation, ADR training, adjunct teachers from the Bar and the Bench, processes for establishment of law schools, apprenticeship, etc. However, the suggestions contained in the 184th Report have not been taken forward.

12.10 A similar line of reasoning is found in the National Knowledge Commission's Report in 2009³⁹ which proposed and explained the need for an Independent Regulatory Authority in Higher Education as well as a Standing Committee for Legal Education with 25 persons representing all stakeholders. As part of this set-up, the Commission also made a number of suggestions regarding quality of education, rating systems, curriculum development, examination system, legal research, faculty talent, legal education finance, international dimensions and usage of Information and Communication Technologies.

D. Legal Position

12.11 The Supreme Court, through its decision in the matter of *Bar Council of India v. Board of Management, Dayanand*

³⁹ National Knowledge Commission, Report to the Nation 2006-2009, March 2009, at pp. 79-81.

*College of Law*⁴⁰, surveyed the statutory powers available to BCI under the provisions of the Advocates Act, as well as the Rules framed thereunder, and concluded that BCI was concerned with the standards of the legal profession and legal education in the country.

12.12 In *Prem Chand Jain & Anr. v. R K Chhabra*⁴¹, the Supreme Court emphasised at length the role and responsibility of University Grants Commission (UGC) vis-à-vis the regulation of standards of higher education in India.

12.13 The decision of the Supreme Court in the matter of *University of Delhi v. Raj Singh*⁴², is illuminative in this regard. The Supreme Court held that regulations framed by UGC prescribing qualifications for teaching staff would override and prevail over all other legislations in this regard. UGC's regulatory character was succinctly reaffirmed by the Supreme Court in the case of *Prof. Yashpal v. State of Chhattisgarh*⁴³, as well.

12.14 The BCI is envisaged as a body for regulating the minimum standards to be maintained by institutions imparting legal education, and the Rules framed by BCI in exercise of its powers under the Advocates Act, indeed provide for a comprehensive framework for the evaluation of institutions on *de minimis* criteria. However, a need for the qualitative improvement of the Bar has been long felt, and has also been the subject matter of judicial attention in *V. Sudeer v. Bar Council of India*⁴⁴. Two measures have been recognised as

⁴⁰ AIR 2007 SC 1342.

⁴¹ AIR 1984 SC 981.

⁴² AIR 1995 SC 336.

⁴³ AIR 2005 SC 2026.

⁴⁴ AIR 1999 SC 1167.

imperative for the melioration of the standards of the legal profession, i.e., introduction of a bar examination as well as compulsory requirement of apprenticeship under a senior lawyer prior to admission to the Bar.

12.15 In 1994, in order to check the declining standards of the legal profession, a High Powered Committee on Legal Education, headed by Justice A.H.Ahmadi was constituted. This Committee recommended and reiterated the requirement for apprenticeship and a bar examination. The Bar Council of India (Training) Rules, 1995, were, therefore, framed by BCI in furtherance to the recommendations of the said Committee, which were struck down by the Supreme Court in *V. Sudeer*⁴⁵.

E. Conclusion

12.16 The law colleges require transformation in infrastructure and resources. Library facilities in our law colleges need to be upgraded, for which resources have to be mobilised.

12.17 Legal education in India should be structured in a manner where the BCI, along with legal academics may endeavour to innovate, experiment and compete globally. A balance should be maintained in order to change the entire fabric of legal education system in India, keeping in mind the necessity of globalisation.

⁴⁵ *Ibid.*

CHAPTER-XIII

Pre-enrolment Training of Advocates

13.1 Another problem that requires to be highlighted is that without undergoing any training or facing subordinate courts, fresh graduates start appearing before the superior courts. Counsel engaged by litigants do not appear in the court, rather send raw hands to deal with the matters. While dealing with such a situation, the Supreme Court in *Sanjay Kumar v. State of Bihar*⁴⁶, deprecated such practice by observing that an “arji”, “farji” half-baked lawyer under the label of “proxy counsel”, without any acquaintance with or authorisation from the litigant use, abuse or misuse the process of the court under the false impression that he has a right to waste public time.

13.2 In an unprecedented step, the Supreme Court in *In re: Rameshwar Prasad Goyal*⁴⁷, held that conduct of Shri Goyal, AOR, lending his signature for petty amount without appearing in court had been reprehensible and not worth pardoning, and he was censured. The court also put him on probation for a year.

13.3 In view of above, the Law Commission recommends a specific clause in section 7(1) of the Advocates Act to provide for the rule making power of the Bar Council of India for pre-enrolment training and apprenticeship before the induction of a person as an advocate.

⁴⁶ (2014) 9 SCC 203.

⁴⁷ AIR 2014 SC 850.

CHAPTER-XIV

Prospects of Foreign Law Firms and Lawyers in India

14.1 In recent years, fast transformation has been experienced in every field, whether it is social or economic. With the opening of new vistas, the world is increasingly shrinking. Countries are becoming more and more inter-dependent. The opening of the economy to other countries and widening of the international trade and commerce has brought the dire necessity of reviewing various municipal laws relating to “ease of doing business” and other relevant laws which also includes the Advocates Act. The increase in the quantum of import and export, formation of new companies and concerns with import of technology and invitation to multi-national companies to establish their subsidiary companies in India and have their commercial establishment here, necessitated the beginning of international arbitration. In arbitration matters, very often foreign lawyers appear on behalf of companies and their establishments in India from time to time.

14.2 At times, the issue of allowing foreign firms and lawyers in India and having vice-a-versa arrangement for advocates practicing law in India in other counties has been raised in different forums. In this context, sections 17, 29 and 47 of the Advocates Act require a passionate examination. In terms of section 17, a person desirous of taking up the profession of advocacy is required to be enrolled on the rolls of the advocates maintained by the State Bar Council. Section 29 visualises that only the advocates registered under the Advocates Act are considered to be the recognised class of persons entitled to practice law. Section 47 relates to reciprocity whereunder the

nationals of any other country may also be admitted as an advocate on the State roll, if citizens of India duly qualified are permitted to practice law in such other country.

14.3 In the matters of allowing foreign lawyers and law firms to practice law in India, the basic objections raised at different forums over the time is that the law graduates from India are allowed to practice the profession of law in U.K., USA, Australia and other countries subject to following their cumbersome procedure which is very costly also. Further, there are many restrictions like qualifying tests, prior experience, work permit etc. which is not contemplated under the Advocates Act in respect of foreign lawyers who intend to practice in India. Therefore, issue of allowing entry of foreign law firms and lawyers without any reciprocal arrangements similar to that of arrangements prevailing in those foreign countries should not be entertained.

14.4 An examination of the issue in its correct perspective of allowing the foreign law firms carrying on its business in India requires consideration as to how this necessity has arisen. From the past practices, it can be seen that the foreign law firms are carrying on consultancy/support services in the field of protection and management of business and industrial proprietary rights, and carrying out market survey and market research. They also protect their intellectual property rights. The foreign lawyers usually visit India for giving advices on their own system of law. The foreign law firms do also come with the objective of taking part in negotiations, for settling documents and conducting arbitrations in India.

14.5 International arbitration is growing in India and in almost all countries across the world. India is a signatory to the

General Agreement on Trade in Services (GATS), which has opened up the gates for many international business establishments based in different parts of the world to come and set up their own respective business in India. The large number of Indian companies even reaching out to foreign destination by mergers, acquisitions or direct investment. There may be several transactions in which an Indian company or a person of Indian origin may enter into transaction with a foreign company and the laws applicable to such transaction are the laws of the said foreign country. In this context, seeking legal advice on the manner in which the foreign law would be applied to said transaction from a foreign lawyer cannot be considered as inappropriate.

14.6 Besides the on-going discussions, the issue of foreign law firms establishing their place of business in India (liaison office) and related issues have been raised in certain High Courts. The High Court of Madras in *A.K. Balaji v. Government of India*⁴⁸ has observed, as under:

- “(i) Foreign law firms or foreign lawyers cannot practice the profession of law in India either on the litigation or non-litigation side, unless they fulfil the requirement of the Advocates Act, 1961 and the Bar Council of India Rules.
- (ii) However, there is no bar either in the Act or the Rules for the foreign law firms or foreign lawyers to visit India for a temporary period on a fly in and fly out basis, for the purpose of giving legal advice to their clients in India regarding foreign law or their own system of law and on diverse international legal issues.
- (iii) Moreover, having regard to the aim and object of the International Commercial Arbitration introduced in the Arbitration and Conciliation Act, 1996, foreign lawyers

⁴⁸ WP No.5614 of 2010 decided on 21.02.2012.

cannot be debarred to come to India and conduct arbitration proceedings in respect of disputes arising out of a contract relating to international commercial arbitration.

- (iv) The B.P.O. Companies providing wide range of customised and integrated services and functions to its customers like word-processing, secretarial support, transcription services, proof-reading services, travel desk support services, etc. do not come within the purview of the Advocates Act, 1961 or the Bar Council of India Rules. However, in the event of any complaint made against these B.P.O. Companies violating the provisions of the Act, the Bar Council of India may take appropriate action against such erring companies.”.

14.7 In *Lawyers Collective v. Bar Council of India & Ors.*⁴⁹, the High Court of Bombay quashed the permission granted by the Reserve Bank of India to foreign law firms to establish their place of business in India (liaison office) under section 29 of the Foreign Exchange Regulation Act, 1973. On the issue as to whether these foreign law firms could carry on their liaison activities in India only on being enrolled as advocates under the Advocates Act, the Court held that the expression “to practice the profession of law” in section 29 of the Advocates Act is wide enough to cover the persons practising in litigious matters as well as persons practising in non-litigious matters. Therefore, to practice in non-litigious matters in India, the foreign lawyer and law firms were bound to follow the provisions contained in the Advocates Act.

14.8 The judgment referred to hereinabove was challenged before the Supreme Court in *Bar Council of India v. A K Balaji & Ors.*⁵⁰, wherein the Supreme Court granted leave and

⁴⁹ WP No.1526 of 1995 decided on 16.12.2009.

⁵⁰ Civil Appeal No.7875-7879 of 2015.

maintained the interim order passed on 4 July 2012, which reads as under:

“In the meanwhile, it is clarified that Reserve Bank of India shall not grant any permission to the foreign law firms to open liaison offices in India under section 29 of the Foreign Exchange Regulation Act, 1973. It is also clarified that the expression “to practice the profession of law” under section 29 of the Advocates Act, 1961 covers the persons practicing litigious matters as well as non-litigious matters other than contemplated in para 63(ii) of the impugned order and, therefore, to practice in non-litigious matters in India the foreign law firms, by whatever name called or described, shall be bound to follow the provisions contained in the Advocates Act, 1961.”.

14.9 In view of the developments that have taken place, if the foreign law firms are not allowed to take part in negotiations, settling up documents and arbitrations in India, it may have a counter-productive effect on the policy of the government to make India a hub of International Arbitration. In this regard, it may be stated that many arbitrations with Indian Judges and Lawyers as Arbitrators are held outside India, where both foreign and Indian Law Firms advise their clients. If foreign law firms are denied entry to deal with arbitrations in India, then India may lose many of the arbitrations to Singapore, Paris and London. It may be contrary to the declared policy of the government and against the national interest. With this in view and judgement of the High Courts, the Law Commission considers it necessary to have enabling provisions in the Advocates Act which will enable the Bar Council of India to frame rules to recognise and register foreign law firms and lawyers in India, as and when a decision is taken in this regard, particularly in view of the reciprocity provisions.

CHAPTER-XV

Need for Defining Misconduct

15.1. The question of creating a conducive environment for the effective regulation of the profession requires a statutory framework. This statute provides for the regulator's powers in many subtle ways. The specificity of the words employed in the statute is one such subtle way in which powers and duties are framed. Neither the Advocates Act nor the Bar Council of India Rules, defines professional misconduct. However, the Apex Court has elucidated on the concept of "misconduct".

15.2 Misconduct means a wrongful action and not mere error of judgment. A transgression of some well-established and definite rule of action, where no discretion is left. It is a forbidden act, carelessness, an unlawful behaviour or neglect by which the right of a party has been affected e.g. allegation of disproportionate asset; misappropriation; and criminal breach of trust; not working diligently; an action which is detrimental to the prestige of the institution and acting beyond authority. It may be synonymous to an improper behaviour or mismanagement. It is detrimental to public interest. Misconduct is to be construed and understood with reference to the subject matter and context wherein the term occurs taking into consideration the scope and object of the statute involved.⁵¹

15.3 Professional misconduct refers to disgraceful or dishonourable conduct, not befitting to the profession

⁵¹ Black's Law Dictionary, Sixth Edition; P Ramanatha Aiyar's Law Lexicon, Reprint Edition 1987 at page 821; *N.G.Dastane v. Shrikant S. Shivde* AIR 2001 SC 2028, *Baldev Singh Gandhi v. State of Punjab* AIR 2002 SC 1124; *General Manager, Appellate Authority, Bank of India v. Mohd. Nizamuddin* AIR 2006 SC 3290; *Ravi Yashwant Bhoir v. Distt. Collector, Raigarh* AIR 2012 SC 1339; and *Vijay Singh v. State of U.P* AIR 2012 SC 2840.

concerned. Legal profession is not a trade or business. Therefore, it must remain a de-contaminated profession. Advocates have a duty to uphold the integrity of the profession and to discourage corruption so that justice may be secured by the citizenry in a legal manner.⁵² A lawyer must strictly adhere to the norms of profession which make him worthy as an officer of court⁵³. Dignity of the judiciary is to be maintained, failing which the institution itself will collapse.⁵⁴ Indulging in practices of corrupting the judiciary or offering bribe to the Judge⁵⁵; retaining money deposited with the advocate for the decree holder even after execution proceedings⁵⁶; scandalizing the Judges⁵⁷; constant abstention from the conducting of cases; misappropriation of the amount paid⁵⁸; attesting forged affidavit⁵⁹; failure to attend trial after accepting the brief⁶⁰; taking money from client in the name of the Judge⁶¹; gross negligence involving moral turpitude⁶²; indecent cross-examination⁶³; breach of trust⁶⁴; conducting fraud and forgery⁶⁵ by the advocates, have been held to be serious misconduct by the Supreme Court.

15.4 In light of the above decisions, the Law Commission considered and provided the definition of “Professional Misconduct” in the Amendment Bill recommended by it.

⁵² *Shambhu Ram Yadav v. Hanuman Das Khatri*, AIR 2001 SC 2509.

⁵³ *Noratanmal Chouraria v. M R Murli & Anr.*, AIR 2004 SC 2440.

⁵⁴ *In Re : Vinay Chandra Mishra*, AIR 1995 SC 2348.

⁵⁵ *Shanbhu Ram Yadav Supra.*

⁵⁶ *Prahlad Saran Gupta v. Bar Council of India*, AIR 1997 SC 1338.

⁵⁷ *Dr. D C Saxena v. Chief Justice of India*, AIR 1996 SC 2481.

⁵⁸ *D S Dalal v. State Bank of India*, AIR 1993 SC 1608; and *J S Jadhav v. Mustafa Haji Mohamed Yusuf*, AIR 1993 SC 1535.

⁵⁹ *M Veerabhadra Rao v. Tek Chand*, AIR 1985 SC 28.

⁶⁰ *S J Chaudhary v. State*, AIR 1984 SC 618.

⁶¹ *Chandra Shekhar Soni v. Bar Council of Rajasthan*, AIR 1983 SC 1012.

⁶² *In the matter of P an Advocate*, AIR 1963 SC 1313; and *V P Kumaravelu v. the Bar Council of India*, AIR 1997 SC 1014.

⁶³ *Shiv Narain Jafa v. The Hon' Judges of the High Court, Allahabad*, AIR 1953 SC 368.

⁶⁴ *Bapurao Pakhiddey v. Suman Dondey*, AIR 1999 SC 916.

⁶⁵ *LC Goyal v. Nawal Kishore*, (1997) 11 SCC 258; and *Devender Bhai Shanker Mehta v. Ramesh Chandra Vithal Dass Seth*, AIR 1992 SC 1388; See also: Dr. Elbe Peter, MDS, LL.B, DCR, Professional misconduct of lawyers in India.

CHAPTER – XVI

The Relevance of Framework of Regulation of Legal Profession in the United Kingdom

16.1 After undertaking a review of the regulatory framework of legal profession in 2002, ⁶⁶ based on the report titled “*Competition and Regulation in the Legal Services Market*”,⁶⁷ the Department of Constitutional Affairs (UK Government) concluded that the regulatory framework for legal services in England and Wales was out-dated, inflexible, over-complex and insufficiently accountable or transparent.⁶⁸ As a result, Sir David Clementi was appointed on 24th July 2003, to conduct a Review of the Regulatory Framework for Legal Services in England and Wales with the terms of reference being:

- “To consider what regulatory framework would best promote competition, innovation and the public and consumer interest in an efficient, effective and independent legal sector.
- To recommend a framework which will be independent in representing the public and consumer interest, comprehensive, accountable, consistent, flexible, transparent, and no more restrictive or burdensome than is clearly justified.⁶⁹

16.2 As a result of the Clementi Report and implementation of the recommendations made therein, the Legal Services Act 2007 (hereinafter referred to as the Act, 2007) came into force which liberalises and regulates the market for legal

⁶⁶ *In the Public Interest?*, A Consultation following the Office of Fair Trading's report on Competition in Professions, A Lord Chancellor's Department Consultation paper, July 2002.

⁶⁷ A report following the consultation "In the public interest?", July 2003. Available at <http://webarchive.nationalarchives.gov.uk/+http://www.dca.gov.uk/consult/general/oftreptc onc.htm> (Last Accessed 3rd November, 2016).

⁶⁸ *Ibid.*

⁶⁹ Sir David Clementi, “Review of The Regulatory Framework For Legal Services In England And Wales Final Report”, (Clementi Report) Foreword, at p.1.

services in England and Wales so as to encourage more competition and to provide a new route for consumer complaints. Accordingly a Legal Services Board, an independent statutory body, was established under the Act 2007⁷⁰, which is responsible for overseeing legal regulators in England and Wales. It is independent of government and the legal profession, and is the oversight regulator for eight separate bodies, named as ‘Approved Regulator’⁷¹ in the Act, 2007.

16.3 While the Act, 2007 also deals with other kinds of legal practitioners such as Legal Executives, Licensed Conveyancers, Patent Attorneys, Trade Mark Attorneys, Law Costs Draftsmen as well as Notaries. For the present purposes, the regulatory mechanisms for Solicitors and Barristers have only been analysed.

16.4 The enactment of the Act, 2007 has ushered in a new era of regulation of legal profession in the United Kingdom which has recognised the short-comings of ‘self-regulation’ and has shifted its focus towards the interests of consumers. Emphasising on the need for independence of legal profession from outside influences (especially government) as well as the call for a regulatory framework which was independent in representing the public and consumer interest, a statutory oversight body (Legal Services Board – in short, LSB) has been created for consistent oversight of Front-line regulators (who are responsible for regulation of their own professionals). Being an Independent Statutory body, the provisions of the Act, 2007 have ensured that the Board comprises of a lay majority as a whole with the Chairman of the Board also mandated to be a lay member. For the protection of Consumer interests, an

⁷⁰ Section 2, Legal Services Act, 2007.

⁷¹ Section 20, Legal Services Act, 2007; Body designated as an approved regulator by Part I of Schedule 4 or Part 2 of the Schedule (or both).

independent arm of the LSB such as Consumer Panel has been established which acts as an advisory body to the LSB so as to help them make decisions that are shaped around the needs of users.

16.5 With regard to the functioning of the front-line regulators for solicitors and barristers, it has been made imperative that the representative and regulatory functions are separated and distinguished. For the same purpose, the Law Society acts as a representative body for solicitors whereas, the Solicitors Regulation Authority (in short, SRA) discharges the regulatory functions. While acting as an independent regulatory arm of the Law society, the composition of the Board of SRA is diluted wherein out of the 15 members, seven members are solicitors and remaining eight are lay persons out of whom one is appointed as the Chairman. Such a setup is inclusive in nature wherein through dilution in the composition of the board, specific problems in regard to disciplinary action against lawyers by lawyers are avoided. The same principle has also been applied with regard to the Solicitors Disciplinary Tribunal, whose composition includes both solicitor members as well as persons who are neither solicitors nor barristers (lay members). Similar set up also exists for the regulation of barristers wherein the Bar Council takes care of the representative functions and Bar Standard Board along with Professional Conduct Committee and Disciplinary Tribunals discharge the regulatory obligations as prescribed under the Act, 2007. Similar ratios of practicing barristers as well as lay members are ensured in Professional Conduct Committee whereby a lay member majority is mandated. In regard to the composition of the Disciplinary Tribunals for barristers, along with the presence of a barrister (having experience of not less than seven years), the presence of

a Judge (as Chairman) and at least one lay member is mandated.

16.6 It is important to note here that in India, the Ministry of Law and Justice, Department of Legal Affairs floated a draft bill namely Legal Practitioners (Regulations and Maintenance of Standards in Professions, Protecting the Interest of Clients and Promoting the Rule of Law) Bill, 2010, which intended to establish a Legal Services Board on the lines of the Legal Services Board in UK suitable in the Indian situation. However, no further progress has been reported on the draft Bill.

CHAPTER-XVII

Need of Reviewing Regulatory Mechanism

17.1 There is a dire necessity of reviewing the regulatory mechanism of the Advocates Act, not only in matters of discipline and misconduct of the advocates, but in other areas as well, keeping in view the wide expanse of the legal profession being involved in almost all areas of life. The very constitution of the Bar Councils and their functions also require the introduction of a few provisions in order to consolidate the function of the bar councils in its internal matters as well. The globalization of the legal profession has brought forth the issues of the participation of foreign lawyers and foreign law firms in Indian legal system.

17.2 With the Bar Council of India creating the All India Bar Examination Rules, 2010; the Certificate of Practice and Renewal Rules, 2014 (which now stands repealed), and the Certificate and Place of Practice (Verification) Rules, 2015, it has become evident that this basic function has not been performed adequately. While it is understandable that lawyers in India constitute an improperly organised group, the inability of the Bar Councils to even keep a count on the number of advocates practicing in the country is indicative of the need to expand the institutional capacity of these authorities.

Regulatory bodies:

17.3 It may be pertinent to compare the composition of Governing Body of the Bar Council of India with other institutions like Institute of Chartered Accountants of India

(ICAI), Medical Council of India (MCI), Council of Architects (CoA), etc. The position of the MCI is that there are 17 elected representatives of professionals, 53 elected from educational institutions, 34 Central Government nominees, totaling to 104. The Council of Architects has 5 elected representatives from professionals, 5 elected members from educational institutions, 1 Central Government nominee and 35 State Government nominees. It also contains 5 other nominees, and 2 ex-officio members (from the Central Government). Thus, they have total strength of 53.

17.4 So far as the Chartered Accountants Act, 1949 is concerned, it provides that in the Council of the Institute, there would be not more than 32 persons elected by the members of the Institute and not more than eight persons nominated by the Central Government.

17.5 Recently, the Constitution of the Governing Council of the Indian Law Institute has been changed vide decision dated 8 December 2016 and the number of members of the Governing Council has been reduced to nearly half; and all members of the Governing Council will be either nominated or ex-officio. There is not even a single elected person in the Council.

17.6 Thus, from the above it may be concluded that the composition of the body should be determined on four parameters:

- (1) The elected-to-nominated member ratio should be determined based on whether elected representatives from the profession can be expected to function without excessive bias in favour of their colleagues. There may be a majority of nominated members if there is a need to

accommodate and have representation of a wide variety of bodies, governmental or technical. However, the ratio must at least be loaded with sufficient nominees where there are essential questions of public interest that cannot be left to members of the profession itself.

- (2) The professional-to-lay member ratio should be determined on similar criteria but with greater emphasis towards client welfare and interaction with allied fields, and less emphasis on representation of public bodies.
- (3) The identity of the electors and nominators determines the extent of control exercised by groups and bodies over a regulator. Nominations indicate direct control and elections indicate diffused and indirect control. A good practice would be to split seats across different groups to accommodate regional and technical knowledge-based diversity and split seats across bodies so that each body has a say but does not exercise complete control. For this, it is necessary to identify all groups that require representation in the regulatory body and all bodies that need to be given a share of control over the body.
- (4) Where a particular public office or department must be given representation in the regulatory body, provision may be made to appoint them ex-officio. However, the body appointing the office-holder may gain further say in the regulator's decisions, depending on the independence of that office.

17.7 The Commission is of the view that the nominated/co-opted members would have a right to participate in all


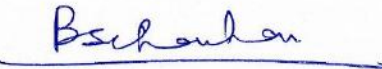
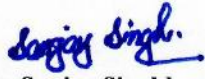



proceedings and to vote therein except on the issue of removal of office-bearers of the Councils.

17.8 Further, in relation to regulatory mechanism, it is necessary to address the mushrooming of bar associations right from the Taluka level, up to the apex bodies also requires a regulatory mechanism including their recognition and control by the bar council. This is obviously coupled with special emphasis of not only controlling the advocates but the collective actions of bar associations that has a local and even a nation-wide implication on issues that are concerned with proceedings of the court and with regard to the organization of lawyers entering into other fields of activities. Towards this, the measures of punishments, the inclusion of other types of misconducts and the disciplinary control with its effective mechanism, both reformatory and deterrent, deserves to be introduced. This has become necessary as the present law is gradually losing its effectiveness due to lack of appropriate empowerment. The standards of professional ethics and behaviour, the training of lawyers and facets of continuing legal education are other areas as well that require a passionate consideration.

17.9 It is with the aforesaid objective in view that the Law Commission called upon the Bar Council of India to make available its suggestions in particular and upon having received the same, the Commission has deliberated upon the suggestions that have been received from the stakeholders throughout the country that the proposal to reform the Advocates Act has become imperative.

17.10 The Commission, therefore, recommends that comprehensive amendment should be brought forth in the

Advocates Act, not only keeping in view the present requirements, but such other requirements that may arise in future for the better management and regulation of the legal profession. The Advocates (Amendment) Bill, 2017 as recommended by the Law Commission is annexed as **Annexure-III** of the Report for consideration of the Central Government.

 [Justice Ravi R. Tripathi] Member	 [Justice Dr. B.S. Chauhan] Chairman	 [Dr. Sanjay Singh] Member-Secretary
 [Suresh Chandra] Ex-officio Member	 [Prof. (Dr.) S. Sivakumar] Member	 [Dr. G. NarayanaRaju] Ex-officio Member

MANAN KUMAR MISHRA
Senior Advocate
CHAIRMAN



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भारतीय विधिज्ञ परिषद्
BAR COUNCIL OF INDIA

(Statutory Body Constituted under the Advocates Act, 1961)

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

BCI:D: 1315/2017 (Advisory Committee)

Date: 10.03.2017

To,

oll

Hon'ble Mr. Justice B. S. Chauhan,
Chairman, Law Commission of India,
14th Floor, Hindustan Time House,
K. G. Marg, New Delhi-110001.

Sub.: Forwarding of suggestions made by the Advisory Committee of the Bar Council of India with regard to amendments to the Advocates Act, 1961.

My Lordship,

The suggestions made by the Advisory Committee was duly considered by the Council in its meeting dated 28th February, 2017 and 1st March, 2017. The same is being forwarded herewith to your lordship for your kind perusal and consideration.

As regards the issue of Corporate Law Firms and such other Law Firms that are to be regulated by the Bar Council of India as well as the entry of foreign law firms in this field, the Committee was of the view that in view of the importance and seriousness of the matter and keeping in view Section 47 of the Advocates Act, 1961 a deeper deliberation and a further serious consideration is required on this subject.

Thus, in lieu of the above, one or two more meetings of the Advisory Committee may be required to be held for the purpose of finalizing the abovesaid issue.

After finalizing the matter in respect of the above issue, the Council shall positively send the suggestions relating to it to your Lordship the very earliest. We would request you to kindly bear with us for the time being.

Yours sincerely,

M K Mishra
(Manan Kumar Mishra)
Chairman

Encl.: As above

10/3/17

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SUGGESTED AMENDMENTS TO THE ADVOCATES ACT, 1961

Section	Present ACT	Proposed Amendments
1	No Change	No suggestion received in this regard
2	No Provision/Clause	<p>(o) “Misconduct” means and includes an act of a legal practitioner whose conduct is found to be in breach of or wanting in observance of the standard of professional conduct or etiquette prescribed by the Rules framed under Section 49(1)I of the Act or his conduct is a disqualification under Section 24A of the Act.</p> <p>(p) <u>Electoral college means and consists of:-</u></p> <p style="padding-left: 40px;">(a) The Chairmen of all the State Bar Councils or their nominee members; and</p> <p style="padding-left: 40px;">(b) One member elected by each State Bar Council to be a member of electoral college.</p>
3 (1)	State Bar Council No Change	No suggestion received in this regard
3(2)	(a) No Change	No suggestion received in this regard

Section	Present ACT	Proposed Amendments
	<p>(b) in the case of a State Bar Council with an electorate not exceeding five thousand, fifteen members, in the case of a State Bar Council with an electorate exceeding five thousand but not exceeding ten thousand, twenty members, and in the case of the State Bar Council with an electorate exceeding ten thousand, twenty-five members, elected in accordance with the system of proportional representation by means of the single transferable vote from amongst advocates on the electoral roll of the State Bar Council.</p>	<p>(b) in the case of a State Bar Council with an electorate not exceeding five thousand, eleven members, in the case of a State Bar Council with an electorate exceeding five thousand but not exceeding fifteen thousand, fifteen members, and in the case of the State Bar Council with an electorate exceeding fifteen thousand, twenty-one members, elected in accordance with the system of proportional representation by means of the single transferable vote from amongst advocates on the electoral roll of the State Bar Council after undertaking the process of verification of certificate and place of practice of advocates under the relevant Rules.</p>
	<p>No Provision/Clause</p>	<p>(c) <u>Co-option of senior and experienced members:-</u></p> <p>In every Bar Council, in addition to the elected members, three designated senior advocates with at least 35 years of practice from the bar and in case of non-availability of such senior advocates, three advocates having experience of a minimum of thirty five years shall be co-opted as members of the Council by the elected members, soon after the declaration of result of elections, but prior to the elections of the Office Bearers.</p> <p>In the matter of co-option if there is no unanimity amongst the elected members, co-option shall be by decision of the majority of the members.</p>

Section	Present ACT	Proposed Amendments
Proviso to Section 3(2)(b)	Provided that as nearly as possible one-half of such elected members shall subject to any rules that may be made in this behalf by the Bar Council of India, be persons who have for at least ten years been advocates on a State roll, and in computing the said period of ten years in relation to any such person, there shall be included any period during which the person has been an advocate enrolled under the Indian Bar Councils Act, 1926 (38 of 1926).”	Provided that as nearly as possible one half of such elected members shall subject to any rules that may be made in this behalf by the Bar Council of India, be persons who have for at least twenty years been advocates on a State roll and who are in practice as per Verification Rules. Note:- Verification Rules mean Bar Council of India Certificate and place of Practice(Verification) Rules, 2015 and amendments made thereto from time to time.
3(3)	No Change	No suggestion received in this regard
3(4)	No Change	No suggestion received in this regard
3(5)	No Change	No suggestion received in this regard
3(6)	Nothing in clause (b) of sub-section (2) shall affect the representation of elected members in any State Bar Council as constituted immediately before the commencement of the Advocates (Amendment) Act, 1973 (60 of 1973), until that State Bar Council is reconstituted in accordance with the provision of this Act.	Nothing in clause (b) of sub-section (2) shall affect the representation of elected members in any State Bar Council as constituted immediately before the commencement of this amendment, until that State Bar Council is reconstituted in accordance with the provisions of this Amendment Act of 2017.
4 (1)	Bar Council of India (a) No Change	No suggestion received in this regard
	(b) No Change	No suggestion received in this regard

Section	Present ACT	Proposed Amendments
	(c) one member elected by each State Bar Council from amongst its members.	(c) one member elected by each State Bar Council from amongst its members having at least 35 years of experience at the Bar. Provided that where the number of Advocates enrolled in any Bar Council is less than five thousand, a cluster of not more than three Bar Councils of such nearby State Bar Councils shall be made and representation to the Bar Council of India from such cluster shall be made by rotation from amongst the Bar Councils within the cluster, as per the Rules prescribed in this behalf by Bar Council of India.

Section	Present ACT	Proposed Amendments
	No Provision/Clause	<p>(d) Three members co-opted by the members specified in clause I in the following manner: -</p> <p>(i) Two Senior Advocates whose names have been on any State roll for at least 35 years.</p> <p>Provided that in case of non-availability of Senior Advocates with 35 years of standing at the Bar, the senior Advocates with lesser length of practice shall be co-opted as prescribed under the Rules of Bar Council of India.</p> <p>(ii) One Senior Advocate whose name has been on any State roll for at least 35 years and having a minimum of 5 years experience as member of Bar Council of India.</p> <p>Provided that where there are more than one such senior Advocates with 5 years of experience as member of Bar Council of India are available, then the Senior Advocate with longer experience as the member, Bar Council of India, shall be co-opted.</p> <p>Provided further that where no Senior Advocate with 5 years experience as member, Bar Council of India is available, any other Advocate with 35 years of practice with 5 years of experience as member of Bar Council of India shall be co-opted.</p> <p>In the matter of co-option, in absence of unanimity amongst the elected members, co-option shall be by decision of the majority of the members.</p> <p>The term of members of Bar Council of India mentioned in this clause(d) and I of this sub-section shall be six years from the date of publication of result of such members.</p> <p>Bar Council of India shall co-opt its members under clause (d) and hold elections under clause I of this sub-section under this clause within a period of 6 months from the date of commencement of this amendment Act of 2017.</p>

Section	Present ACT	Proposed Amendments
		<p>(e) One member whose name has been on the State roll for atleast 35 years and who has been a member of the Bar Council of India for at least 5 years shall be co-opted by the electoral college.</p> <p>Provided that where there are more than one such Advocate with 5 years of experience as member of Bar Council of India are available, then the senior amongst them shall be co-opted.</p> <p>The co-option of such member shall be held as provided under the Rules in this regard.</p>
4(1A)	No Change	No suggestion received in this regard
4(2)	No Change	No suggestion received in this regard.
4(2A)	No Change	No suggestion received in this regard. But in place of Amendment Act 1977, 2017 shall be substituted.
Proviso to Section 4(2A)	No Change	No suggestion received in this regard. But in place of Amendment Act 1977, 2017 shall be substituted.
4(3)	No Change	No suggestion received in this regard
5	No Change	No suggestion received in this regard
6 (1)	Functions of State Bar Councils- (a) No Change	No suggestion received in this regard

Section	Present ACT	Proposed Amendments
	(b) No Change	No suggestion received in this regard
	(c) No Change	No suggestion received in this regard
	(d) No Change	No suggestion received in this regard
	(dd) No Change	No suggestion received in this regard
	(e) No Change	No suggestion received in this regard
	(ee) No Change	No suggestion received in this regard
	(eee) No Change	No suggestion received in this regard
	(f) No Change	No suggestion received in this regard
	(g) No Change	To provide for the elections of its members as prescribed under the Rules framed by the Bar Council of India in this regard.
	(gg) to visit and inspect Universities in accordance with the directions given under clause (i) of sub-section (1) of section 7;]	(gg) to visit and inspect Universities and Institutions imparting Legal Education in accordance with the directions given under clause (i) of sub-section (1) of section 7;
	(h) No Change	No suggestion received in this regard

Section	Present ACT	Proposed Amendments
	(i) No Change	No suggestion received in this regard
	No Provision/Clause	(j) to organize compulsory Continuing Legal Education either directly or through Bar Associations, Bar Council of India Trust, the State Bar Councils, Lawyers' Society and any institute of repute recognized by Bar Council of India for this purpose in accordance with the rules made in this behalf.
6(2)	No Change	No suggestion received in this regard
6(3)	No Change	No suggestion received in this regard
7 (1)	Functions of Bar Council of India- (b) No Change	No suggestion received in this regard
	(c) No Change	No suggestion received in this regard
	(d) No Change	No suggestion received in this regard
	(e) No Change	No suggestion received in this regard
	(f) No Change	No suggestion received in this regard
	(g) No Change	No suggestion received in this regard

Section	Present ACT	Proposed Amendments
	(h) No Change	No suggestion received in this regard
	(i) to recognize Universities whose degree in law shall be a qualification for enrolment as an advocate and for that purpose to visit and inspect Universities [or cause the State Bar Councils to visit and inspect Universities in accordance with such directions as it may given in this behalf];	(i) to recognize Universities and Institutions imparting Legal Education leading to a degree in law, constituting a qualification for enrolment as an advocate, and for that purpose to visit and inspect Universities and Institutions imparting Legal Education [or cause the State Bar Councils to visit and inspect Universities and Institutions imparting Legal Education in accordance with such directions as it may given in this behalf];
	(ia) No Change	No suggestion received in this regard
	(ib) No Change	No suggestion received in this regard
	(ic) No Change	No suggestion received in this regard
	(j) No Change	No suggestion received in this regard
	(k) No Change	To provide for elections of its members and co-option in state Bar Councils and Bar Council of India.
	(l) No Change	No suggestion received in this regard
	(m) No Change	No suggestion received in this regard

Section	Present ACT	Proposed Amendments
	No Provision/Clause	<p>(n) to provide for pre-enrolment training and apprenticeship of a person who has obtained degree in a law course, which is recognized as a qualification for enrolment as an advocate under the Act, for a period of one year.</p> <p>(o) to provide for Verification of Certificates or Places of Practice of the Advocates; either directly or through State Bar Council</p> <p>(p) to prescribe conditions for enrolment of persons as advocate with a State Bar Council including the one as to clearing of All India Bar Examination of the Bar Council of India as may be prescribed by the Rules.</p> <p>(q) to provide for, organize and monitor compulsory Continuing Legal Education through Bar Council of India Trust, a society or association recognized by it and as prescribed by guidelines/rules.</p> <p>(r) to provide mechanism for resolving election disputes in relation to any election to Bar Council of India and State Bar Council.</p> <p>(s) to provide common entrance test for admission in the institutions imparting legal education in the country.</p> <p>(t) to register Indian and Foreign Law Firms and to regulate such Firms.</p> <p>(u) to regulate Foreign Lawyers registered and allowed to practice in India under the Rules prescribed by it.</p>

Section	Present ACT	Proposed Amendments
		<p>(v) to register and regulate Bar Associations or other Associations, Societies, Trusts of Advocates operating within the territory of India.</p> <p>(w) to register and regulate the Law Firms, Limited Liability Partnerships operating within the territorial jurisdiction of the State Bar Council.</p>
7(3)	No Change	No suggestion received in this regard
7(3)	No Change	No suggestion received in this regard
7(4)	No Provision/Clause	May create or recognize any Trust under Indian Trust Act, 1882 or Society registered under Society Registration Act in aid of carrying out the functions mentioned in this Section.
7A	No Change	No suggestion received in this regard
8	Term of office of Members of State Bar Council.—The term of office of an elected member of a State Bar Council (other than an elected member thereof referred to in section 54) shall be five years from the date of publication of the result of his election:	Term of office of Members of State Bar Council.—The term of office of an elected member of a State Bar Council shall be six years from the date of publication of the result of his election:
8A	No Change	No suggestion received in this regard

Section	Present ACT	Proposed Amendments
9(1)	A Bar Council shall constitute one or more disciplinary committees, each of which shall consist of three persons of whom two shall be persons elected by the Council from amongst its members and the other shall be a person co-opted by the Council from amongst advocates who possess the qualifications specified in the proviso to sub-section (2) of section 3 and who are not members of the Council, and the senior-most advocate amongst the members of a disciplinary committee shall be the Chairman thereof.	<p>Constitution of disciplinary committees by the Bar Council of India and State Bar Council.</p> <p>In the case of</p> <p>(a) Bar Council of India, the Committee shall comprise of three members comprising a retired High Court Judge who shall be the Chairperson of the Committee, one Member nominated by the Council from amongst its members and one advocate or Senior Advocate to be nominated by the Council.</p> <p>(b) State Bar Council, the Committee shall comprise of three members comprising a retired District Judge who shall be the Chairperson of the Committee, one Member nominated by the Council from amongst its members and one advocate or Senior Advocate to be nominated by the Council.</p> <p>(c) The Bar Council shall constitute one or more disciplinary committees each of which shall consist of 3 persons of whom, in the case of Bar Council of India would be a retired High Court Judge and in the case of State Bar council a retired District Judge. One person shall be nominated by the Council from amongst its member and the third shall be a person nominated by the respective Council from amongst Senior Advocates or an Advocate on the roll of the Council for 25 years.</p>

Section	Present ACT	Proposed Amendments
9(2)	Notwithstanding anything contained in sub-section (1), any disciplinary committee constituted prior to the commencement of the Advocates (Amendment) Act, 1964, (21 of 1964) may dispose of the proceedings pending before it as if this section had not been amended by the said Act.	Deleted
9A	No Change	No suggestion received in this regard
10	No Change	No suggestion received in this regard
10A	No Change	No suggestion received in this regard
10B	No Change	No suggestion received in this regard
11	No Change	No suggestion received in this regard
12	No Change	No suggestion received in this regard
13	No Change	No suggestion received in this regard

Section	Present ACT	Proposed Amendments
14	Election to Bar Councils not to be questioned on certain grounds.—No election of a member to a Bar Council shall be called in question on the ground merely that due notice thereof has not been given to any person entitled to vote threat, if notice of the date has, not less than thirty days before that date, been published in the Official Gazette.	<p>Dispute as to election to Bar Councils:-</p> <p>(1) Any dispute as to the election to the Bar Council of India or the State Bar Councils including election of office bearers shall be referred to the committees, specially constituted for this purpose by the Bar Council of India prior to election.</p> <p>Provided that No election of a member to a Bar Council shall be called in question on the ground merely that due notice thereof has not been given to any person entitled to vote threat, if notice of the date has, not less than thirty days before that date, been published in the Official Gazette.</p> <p>(2) The Committee referred to in Sub-Section-1 shall comprise (a) in case of Bar Council of India a retired Supreme Court Judge as its Chairman and Chairmen of two State Bar Councils as its Members; and (b) in case of State Bar Councils, a retired High Court Judge as its Chairman and two Members of the Bar Council of India other than one hailing from the concerned State. The Committee shall have such powers as may be prescribed under the Rules and shall have powers to pass any interim order.</p>
15	No Change	No suggestion received in this regard
16	No Change	No suggestion received in this regard
17	No Change	No suggestion received in this regard

Section	Present ACT	Proposed Amendments
18(1)	Notwithstanding anything contained in section 17, any person whose name is entered as an advocate on the roll of any State Bar Council may make an application in the prescribed form to the Bar Council of India for the transfer of his name from the roll of that State Bar Council to the roll of any other State Bar Council and, on receipt of any such application the Bar Council of India shall direct that the name of such person shall without the payment of any fee , be removed from the roll of the first mentioned State Bar Council and entered in the roll of the other State Bar Council and the State Bar Councils concerned shall comply with such direction:	Notwithstanding anything contained in section 17, any person whose name is entered as an advocate on the roll of any State Bar Council may make an application in the prescribed form to the Bar Council of India for the transfer of his name from the roll of that State Bar Council to the roll of any other State Bar Council and, on receipt of any such application the Bar Council of India shall direct that the name of such person shall upon payment of such transfer fee as may be prescribed by the rules , be removed from the roll of the first mentioned State Bar Council and entered in the roll of the other State Bar Council and the State Bar Councils concerned shall comply with such direction:
Proviso to Section 18(1)	No Change	No suggestion received in this regard
18(2)	No Change	No suggestion received in this regard
19	No Change	No suggestion received in this regard
20	No Change	No suggestion received in this regard
21	No Change	No suggestion received in this regard
22	No Change	No suggestion received in this regard
23	No Change	No suggestion received in this regard

Section	Present ACT	Proposed Amendments
24(1)	No Provision/Clause	<p>(f) he has paid in respect of the enrolment, stamp duty, if any, chargeable under the Indian Stamp Act, 1899 and an enrolment fee payable to the State Bar Council as may be prescribed by the Rules.</p> <p>(g) He has paid the professional development fee chargeable under the Rules of Bar Council of India and the State Bar Council.</p> <p>(h) he clears the All India Bar Examination or any other test prescribed by Bar Council of India and fulfils such other conditions as may be specified in the rules made by the Bar Council of India under its Rules;</p>

Section	Present ACT	Proposed Amendments
24A	<p>Disqualification for enrolment.—</p> <p>(b) No person shall be admitted as an advocate on a State roll—</p> <p>(a) if he is convicted of an offence involving moral turpitude;</p> <p>(b) if he is convicted of an offence under the provisions of the Untouchability (Offences) Act, 1955 (22 of 1955);</p> <p>(c) if he is dismissed or removed from employment or office under the State on any charge involving moral turpitude.</p> <p>Explanation.—In this clause, the expression “State” shall have the meaning assigned to it under Article 12 of the Constitution:]</p> <p>Provided that the disqualification for enrolment as aforesaid shall cease to have effect after a period of two years has elapsed since his [release or dismissal or, as the case may be, removal].</p> <p>(2) Nothing contained in sub-section (1) shall apply to a person who having been found guilty is dealt with under the provisions of the Probation of Offenders Act, 1958 (20 of 1958).]</p>	<p>Disqualification for enrolment.— No person shall be admitted as an advocate on a State roll—</p> <p>(a) if he is convicted of an offence involving moral turpitude;</p> <p>(b) if he has been dismissed or removed from employment or office by the State or any State Undertaking or any State Aided or Statutory Body or Corporation on the charge of misconduct;</p> <p>(c) if he has been convicted of contempt of court subject to any order or decision of Court of competent jurisdiction otherwise.</p> <p>Explanation.—In this clause, the expression “State” shall have the meaning assigned to it under Article 12 of the Constitution:]</p>
25	No Change	No suggestion received in this regard
26	No Change	No suggestion received in this regard
26A	No Change	No suggestion received in this regard

Section	Present ACT	Proposed Amendments
27	No Change	No suggestion received in this regard
28	No Change	No suggestion received in this regard
29	No Change	No suggestion received in this regard
30	No Change	No suggestion received in this regard
31	No Change	No suggestion received in this regard
32	No Change	No suggestion received in this regard
33	No Change	No suggestion received in this regard
34	No Change	No suggestion received in this regard
35(1)	Where on receipt of a complaint or otherwise a State Bar Council has reason to believe that any advocate on its roll has been guilty of professional or other misconduct, it shall refer the case for disposal to its disciplinary committee.	Where on receipt of a complaint or otherwise a State Bar Council has reason to believe that any advocate on its roll has been guilty of professional or other misconduct, it shall refer the case for disposal to its disciplinary committee. The decision in this regard shall be taken by the concerned Bar Council within a period of six months from the date of receipt of this complaint. The complaint to the State Bar Council shall be in proper format accompanied with the prescribed fee under the Rules of the State Bar Councils.

Section	Present ACT	Proposed Amendments
35(1A)	No Change	No suggestion received in this regard
35(2)	No Change	No suggestion received in this regard
35(3)	(a) No Change	No suggestion received in this regard
	(b) No Change	No suggestion received in this regard
	(c) No Change	No suggestion received in this regard
	(d) No Change	No suggestion received in this regard
	No Provision/Clause	<p>(e) impose such fine as it may deem fit, proportionate to the gravity of the misconduct proved against the advocate, subject to the maximum limit of Rs.3 lacs and cost of the proceeding;</p> <p>(f) award a fair and reasonable compensation of such amount, subject to the maximum of Rs.5 lacs as it may deem fit, payable to the person aggrieved, if any, by the misconduct of the concerned advocate.</p> <p>(g) impose special and exemplary costs subject to the maximum of Rs.2 lacs on the complainant in case, the complaint is found to be vexatious or frivolous or on the respondent-advocate in case he is found to have been un-cooperative in the disciplinary proceedings under the Act.</p>

Section	Present ACT	Proposed Amendments
35(4)	No Change	No suggestion received in this regard
35(5)	No Change	No suggestion received in this regard
35(6)	No Provision/Clause	During the pendency of a disciplinary proceeding in the complaints of grave misconduct, the Bar Council of India and State Bar Council as the case may be, if, it deems fit and proper may suspend the advocate from practice, but, no such suspension shall be made without the prior recommendation of concerned Disciplinary Committee.
35A	No Provision/Clause	<p>Prohibition on the boycotts or abstention from work –</p> <p>(1) No association of advocates or any member of the association either individually or collectively shall boycott or abstain from courts work or cause obstruction in any form in court's functioning during court working hours in court premises nor shall individually or collectively give a call for such boycott or abstinence from work during court hours.</p> <p>(2) Violation of this clause shall be treated as misconduct and shall be liable for disciplinary action as contemplated under the Act and Rules.</p>
36	No Change	No suggestion received in this regard
36A	No Change	No suggestion received in this regard

Section	Present ACT	Proposed Amendments
36B(1)	<p>The disciplinary committee of a State Bar Council shall dispose of the complaint received by it under section 35 expeditiously and in each case the proceedings shall be concluded within a period of one year from the date of the receipt of the complaint or the date of initiation of the proceedings at the instance of the State Bar Council, as the case may be, failing which such proceedings shall stand transferred to the Bar Council of India which may dispose of the same as if it were a proceeding withdrawn for inquiry under sub-section (2) of section 36.</p>	<p>(a) The State Bar Council shall dispose of the complaint received by it under section 35 expeditiously and in each case the proceeding shall be initiated by the concerned Bar Council within a period of 6 months from the date of receipt of the complaint.</p> <p>(b) The proceeding initiated either on the complaint or Suo-Motu shall be completed within a period of one year from the date of initiation subject to extension for a maximum period of one year by the Bar Council of India, for the reason to be recorded in writing.</p> <p>(c) (i) In case the final decision whether or not to initiate the proceeding within a period of six months from the date of receipt of the complaint is not taken by the State Bar Council</p> <p style="text-align: center;">OR</p> <p>(ii) When the proceedings are initiated, but not completed by the disciplinary committee within a period of one year or extended period as the case may be,</p> <p>such complaint or the proceeding shall stand transferred to the Bar Council of India, which may dispose of the same as if it were a proceeding withdrawn for inquiry under sub-section (2) of section 36.</p>

Section	Present ACT	Proposed Amendments
36B(2)	No Provision/Clause	In case of a transfer of proceedings to Bar Council of India, under the provisions of this section, the State Bar Council shall be required to pay three-fourth of the amount received from the complainant at the time of filing the complaint.
37(1)	No Provision/Clause	The memo of appeal shall be in proper format accompanied with the prescribed fee under the Rules of the Bar Council of India.
38	No Change	No suggestion received in this regard
39	No Change	No suggestion received in this regard
40	No Change	No suggestion received in this regard
41	No Change	No suggestion received in this regard
42	No Change	No suggestion received in this regard
42A	No Change	No suggestion received in this regard
43	No Change	No suggestion received in this regard
44	No Change	No suggestion received in this regard

Section	Present ACT	Proposed Amendments
45	Penalty for persons illegally practising in courts and before other authorities.-Any person who practises in any court or before any authority or person, in or before whom he is not entitled to practise under the provisions of this Act, shall be punishable with imprisonment for a term which may extend to six months.	Penalty for persons illegally practising in courts and before other authorities.-Any person who practises in any court or before any authority or person, in or before whom he is not entitled to practise under the provisions of this Act, shall be punishable with imprisonment which may extend to three years and with fine, which may extend to one lakh and this shall be in addition to penalty imposed under any other law for the time being in force.
46.	Omitted by Act 70 of 1993 w.e.f. 26.12.1993	
46A	No Change	No suggestion received in this regard

Section	Present ACT	Proposed Amendments
46B	No Provision/Clause	<p data-bbox="1211 156 2040 220">Financial assistance to all the Advocates and/or their families in need –</p> <p data-bbox="1211 260 2107 743">(1) The Central Government shall cause the printing of welfare stamps to be affixed on every Vakalatnama, Power of Attorney, Agreements for Litigation, Affidavits, documents relating to consultation and other similar instruments, called by whatever name, but, involving service of advocates. The sale proceeds of such stamps shall be utilized for creation of corpus, which in turn shall be used for initiation and maintenance of various schemes for the assistance, aid, welfare and benefit of practicing advocates and/or their families in the manner prescribed under the relevant Rules. The said corpus shall be managed and maintained by the Central Government and shall be exclusively utilized for the purpose indicated.</p> <p data-bbox="1305 783 2107 879">The instruments referred to above in this sub-Section shall be treated as incomplete unless they are affixed with the welfare stamps.</p> <p data-bbox="1211 919 2107 1046">(2) The fund and schemes referred to in Sub-Section-(1) shall be in addition to the schemes evolved by the State Governments for the benefit and welfare of the advocates</p>
47	No Change	No suggestion received in this regard
48	No Change	No suggestion received in this regard
48A	No Change	No suggestion received in this regard

Section	Present ACT	Proposed Amendments
48AA	No Change	No suggestion received in this regard
48B	No Change	No suggestion received in this regard
49(1)	(a) No Change	No suggestion received in this regard
	(ab) No Change	No suggestion received in this regard
	(ac) No Change	No suggestion received in this regard
	(ad) No Change	No suggestion received in this regard
	(ae) No Change	No suggestion received in this regard
	(af) No Change	No suggestion received in this regard
	(ag) No Change	No suggestion received in this regard
	(ah) No Change	No suggestion received in this regard
	(b) No Change	No suggestion received in this regard
	(c) No Change	No suggestion received in this regard

Section	Present ACT	Proposed Amendments
	(d) the standards of legal education to be observed by universities in India and the inspection of universities for that purpose;	(d) the standards of legal education to be observed by universities in India and the inspection of Universities and Institutions imparting Legal Education for that purpose;
	(e) No Change	No suggestion received in this regard
	(f) No Change	No suggestion received in this regard
	(g) No Change	No suggestion received in this regard
	(gg) No Change	No suggestion received in this regard
	(h) No Change	No suggestion received in this regard
	(i) No Change	No suggestion received in this regard

Section	Present ACT	Proposed Amendments
	No Provision/Clause	<p>(ia) to provide for, organize and monitor compulsory Continuing Legal Education for Advocates or class of Advocates either directly or through Bar Council of India Trust.</p> <p>(ib) to make rules to regulate the Indian Law Firms operating in more than one State.</p> <p>(ic) to register and regulate Foreign Law Firms as prescribed under this Act.</p> <p>(id) to register and regulate the Bar Associations, Trusts, Societies of Advocates operating in more than one State.</p>
	(j) No Change	No suggestion received in this regard
49(2)	No Change	No suggestion received in this regard
49A(1)	No Change	No suggestion received in this regard
49A(2)	(a) No Change	No suggestion received in this regard
	(b) No Change	No suggestion received in this regard
	(c) No Change	No suggestion received in this regard
	(d) No Change	No suggestion received in this regard

Section	Present ACT	Proposed Amendments
	(e) No Change	No suggestion received in this regard
	(f) No Change	No suggestion received in this regard
	(g) No Change	No suggestion received in this regard
	No Provision/Clause	(h) To carry out Welfare Schemes for practicing Advocates.
49A(3)	No Change	No suggestion received in this regard
49A(4)	No Change	No suggestion received in this regard
49A(5)	No Change	No suggestion received in this regard
50	No Change	No suggestion received in this regard
51	No Change	No suggestion received in this regard
52	No Change	No suggestion received in this regard
53	No Change	No suggestion received in this regard
54	No Change	Repealed

Section	Present ACT	Proposed Amendments
55	No Change	No suggestion received in this regard
56	No Change	No suggestion received in this regard
57	No Change	No suggestion received in this regard
58	No Change	No suggestion received in this regard
58A	No Change	No suggestion received in this regard
58AA	No Change	No suggestion received in this regard
58AB	No Change	No suggestion received in this regard
58AC	No Change	No suggestion received in this regard
58AD	No Change	No suggestion received in this regard
58AE	No Change	No suggestion received in this regard
58AF	No Change	No suggestion received in this regard
58AG	No Change	No suggestion received in this regard

Section	Present ACT	Proposed Amendments
58B	No Change	No suggestion received in this regard
59	No Change	No suggestion received in this regard
60	No Change	No suggestion received in this regard

**Analysis of Responses Received by Law
Commission of India**

Based on the facts in the matter of *Mahipal Singh Rana*,⁷² the Apex Court highlighted the dismal state of the regulatory mechanism governing lawyers with emphasis on an urgent need to review the provisions of the Advocates Act dealing with the regulatory mechanism for the legal profession and other incidental issues, in consultation with all concerned.⁷³

Consequently, the Court requested the Law Commission of India to go into all relevant aspects relating to regulation of legal profession and submit a report on the same. In light of the above direction, the 21st Law Commission of India issued a notice on 29th August 2016, inviting comments on “the need for reform in regulation of legal profession”. In response to the notice, 136 responses have been received, out of which 79 are from judges; 10 are from Bar Council(s) and Bar Associations; 16 are from Lawyers; 6 from Government Lawyers and Officials; 7 are from academics, research organisations and other organisations; and 18 from others.

At the very inception, the general tenor of the comments received point out the lack of defined regulatory objectives and principles in the Advocates Act itself. Although the provisions of the Act do provide for the basic regulation of legal profession throughout its scheme, it has been observed that a set of defined objectives and guiding principles would do better in regard to the interpretation of the Act with the regulatory

⁷² *Supra* Note 5.

⁷³ *Ibid.* at p. 52.

framework in mind. As the regulatory mechanism for legal profession in India still abides by the principles of 'self-regulation', overwhelming number of responses point out the failure of the existing mechanism and hence have realised the need for urgent reform required. In regard to the responses regarding specific provisions, a number of responses have highlighted the existence of faulty/unsatisfactory definitions such as the definition of advocate (which does not extend to the law firms, partnerships, body corporate etc.). Additionally, the general tenor of the responses have highlighted that at present, there exists no definition of professional or other misconduct which has resulted in the arbitrary usage of Section 35 (Punishment of advocates for misconduct). It is important to point out here that changes to definition will also result in changes in the accompanying provisions such as maintenance of rolls of advocates (to include rolls of law firms, partnerships, corporate entities etc.).

For the ease of access to the list of State Bar Councils as well as to forgo the necessity of making amendments to the Advocates Act every time a new State comes into existence, a list of the State Bar Councils in the form of a schedule has been suggested. Moreover, a number of responses have highlighted the need for stricter requirements regarding the eligibility of members to be elected in the State Bar Councils as well as the Bar Council of India. Additionally, apart from lawyers, to dilute the 'self-regulatory' mechanism in place, a number of responses have suggested the need to change the composition of Bar Councils to include individuals outside of the legal profession. In regards to the functions performed by the State Bar Councils as well as the Bar Council of India, the general tenor of responses highlight the need for reform in relation to Nation Entrance Tests, Continuing Education Schemes, Apprenticeship

Programs as well as concerns regarding inspection and approval of law universities across the country. Some responses have also highlighted the lack of welfare schemes for advocates due to paucity of funds received by the State Bar Councils for the same. Some specific responses also point out the mushrooming of Bar Associations thereby urging the need to regulate the same.

While dealing with the provisions regarding the establishment of disciplinary committees for regulating the conduct of lawyers, a large number of responses have highlighted corrupt practices within the lawyer fraternity thereby giving rise to issues of vested interests while performing the disciplinary functions. The responses have hence urged to make amendments in the Act providing for composition of disciplinary committees which would include retired judges, persons from high court registry, civil society members, bureaucrats, and legal academicians so as to dilute the majority of lawyers in the disciplinary committees. There have also been calls to make disciplinary committees as permanent standing bodies. A number of responses have also pointed out the need for uniform qualifying examination and thorough verification of documents and character of a person as a pre-requisite for enrolment.

Moreover, to give effect to the observations made in the *Mahipal Singh Rana* judgment (*supra*), the responses have unanimously agreed with the observation of the Supreme Court thereby necessitating amendment in section 24A of the Advocates Act to provide for post-enrolment disqualification. Also, the responses have suggested increasing the duration of disqualification (from 2 to 5 years) and have suggested necessary amendments in the provision to include certificate of

good character an essential before re-enrolment after the disqualification period. Certain responses have also highlighted the need for statutory recognition of suspension of right to practice until advocate purges himself of contempt. A number of responses have also called for stricter penalties such as fine and imprisonment for professional or other misconduct and also pointed out the need for statutory recognition of the power of the courts and disciplinary committees to pass interim orders for the same. Additionally, some responses point out the need to increase the time granted for disposal of disciplinary committee proceedings because it has not been found to sufficient given the current capacity of the Bar Councils.

In regard to the power of the Bar Council of India as well as the High Court to make rules regulating the conduct of lawyers, responses suggest that there is a need of specific mention in section 49 I to exclude the jurisdiction of the Bar Council of India to regulate the conduct the lawyers within the court thereby giving effect to the *Harish Uppal's* judgement establishing the domain of the High Courts' to regulate conduct of lawyers even if has a limited effect on the right to practice. In reiteration of the Supreme Court's observation in *Mahipal Singh Rana case*, certain responses have agreed that appeal to High Courts from the State Disciplinary Committees should be made statutory recognising the existing powers of the High Court as found under Article 226 of the Constitution of India.

Other general suggestions include the need for establishment client forums and legal ombudsman for protection of client interests. Problems regarding the charging of exorbitant fees of by advocates have also resulted in responses urging the need for structuring fee payments as well as capping and incidence of fee payments. A specific response has also

called for lifting the restriction on advocates for advertising while highlighting the need for legal profession to adapt to evolving international best practices.

THE ADVOCATES (AMENDMENT) BILL, 2017

A

BILL

further to amend the Advocates Act, 1961

BE it enacted by Parliament in the Sixty-eighth Year of the Republic of India as follows:-

CHAPTER I
PRELIMINARY

1. Short title and commencement. (1) This Act may be called the Advocates (Amendment) Act, 2017.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act.

CHAPTER II
AMENDMENTS TO THE ADVOCATES ACT, 1961

2. Amendment of Section 2. In the the Advocates Act, 1961 (25 of 1961) (hereinafter referred to as the Advocates Act), in section 2, in sub-section(1),-

(i) for clause (a), the following clause shall be substituted, namely:-

(a) “advocate” means an advocate entered in any roll under the provisions of this Act and includes an advocate carrying on practice in law with a law

firm, by whatever name called, and a foreign lawyer registered under any law in a country outside India and recognised by the Bar Council of India;”;

- (ii) after clause (b), the following clause shall be inserted, namely:-

“(bb) ‘Bar Association’ means the association of Advocates recognized by the State Bar Council and includes a district, taluka and town level associations, whether registered or not, under the Societies Registration Act (Act No.XXI of 1860);”;

- (iii) after clause (g) the following clause shall be inserted, namely:-

“(gg) ‘law firm’ means a firm, formed and registered under the Indian Partnership Act, 1932 (9 of 1932); or under the Limited Liability Partnership Act, 2008 (6 of 2009); or a private or public limited company incorporated under the Companies Act, 2013 (18 of 2013) comprising of an advocate or advocates for carrying on practice in law and includes law firms formed and registered under any other law outside India;”;

- (iv) after clause (i), the following clauses shall be inserted, namely:-

“(ii) ‘legal services’ includes the rendering of any assistance or service by an advocate in the conduct of any case or other legal proceedings on behalf of a person before any court, tribunal or any other quasi-judicial body; or giving advice or assistance to a person on any legal matter;”;

“(iii) ‘misconduct’ includes-an act of an advocate whose conduct is found to be in breach of or non-observance of the standard of professional conduct or etiquette required to be observed by the advocate; or forbidden act; or an unlawful behaviour; or disgraceful and dishonourable conduct; or neglect; or not working diligently and

criminal breach of trust; or any of his conduct incurring disqualification under section 24A;”

- (v) after clause (k), the following clauses shall be inserted, namely:-

“(kk) ‘register of law firms’ means a register of law firms,-

- (i) maintained by the Bar Council of India in respect of a law firm formed under any law outside India; and,
(ii) maintained by a State Bar Council in respect of all law firms formed and registered in India;

(kkk) “scheme” means any scheme framed by the Bar Council of India or as the case may be by the State Bar Council, for the purpose of giving effect to any of the provisions of this Act.”.

3. Amendment of section 3. In section 3 of the Advocates Act,-

- (i) in sub-section (2), for clause (b) and the proviso relating thereto, the following shall be substituted, namely : -

“(b) in the case of a State Bar Council, with an electorate not exceeding five thousand, eleven members; in the case of a State Bar Council with an electorate exceeding five thousand but not exceeding fifteen thousand, fifteen members; and in the case of a State Bar Council with an electorate exceeding fifteen thousand, twenty-one members,-

- (i) to be elected in accordance with the system of proportional representation by means of the single transferable vote from amongst advocates on the electoral roll of the State Bar Council, after undertaking the process of verification of certificate and place of practice of advocates under this Act, and
(ii) from amongst retired judges, senior advocates or an advocate referred to in sub-clause (ii), eminent persons from fields other than law and officers of the State Government to be nominated by the High Court,

and of the total number of members of the State Bar Council of a State-

- (i) as nearly as may be, one half of such members shall be elected subject to any rules that may be made in this behalf by the Bar Council of India from amongst the advocates carrying on practice in law for at least ten years;
- (ii) as nearly as may be the one-third of members shall be nominated by the High Court from senior advocates having experience of not less than twenty-five years of practice and in case of non-availability of senior advocate, any advocate with such experience, retired Judges of the High Court, retired district judges.
- (iii) the remainder shall be nominated by the High Court from Select List of eminent persons of the ability, integrity and standing having professional experience of not less than twenty-five years in accountancy, commerce, medical science, management, public affairs or social science matters, to be provided by the State Bar Council;

Explanation.- An Advocate shall only be entitled to be a member of the State Bar Council if he has been in continuous practice for ten years and has appeared in any court, Tribunal or any other quasi-judicial body as a lead counsel in at least twelve cases a year for a continuous period of three years preceding the year of election or nomination.”;

(ii) after sub-section(4), the following sub-sections shall be inserted, namely:-

“(4A) An advocate who has been elected as a member of the State Bar Council consecutively for two terms shall not be eligible to contest elections under clause (b) of sub-section(2), for the ensuing next term of the State Bar Council.

(4B) A Member nominated to the State Bar Council shall not be eligible for nomination, as such, for more than two terms.”.

4. Amendment of section 4. In section 4 of the Advocates Act,–

- (i) in sub-section (1), for clause (c), the following clauses shall be substituted, namely:–

“(c) five members to be nominated by rotation every two years, one each in seriatim from the zones as specified in the Second Schedule to represent the Bar Council of the States and Union Territories;

(d) six eminent persons of the ability, integrity and standing having professional experience of not less than twenty-five years in accountancy, commerce, medical science, management, public affairs or social science matters, to be nominated by the Supreme Court on the recommendation of a Committee comprising of a Judge of the Supreme Court, Chairperson of the Appellate Authority constituted under section 22A of the Chartered Accountants Act 1949 (38 of 1949) and the Central Vigilance Commissioner appointed under sub-section (1) of section 4 of the Central Vigilance Commission Act, 2003 (45 of 2003);”;

- (ii) in sub-section (1A),–
- (a) for the words – “No person”, the words “No person, except the persons mentioned in clause (d)”, shall be substituted;
- (b) for the words "the proviso", the words "the Explanation" shall be substituted.

- (iii) for sub-section (3), the following sub-section shall be substituted, namely:–

“(3) The term of office of a member of the Bar Council of India–

(a) nominated by the State Bar Council or Bar Council of the Union territories, as the case may be, under clause (c) shall be two years from the date of his nomination;

(b) nominated under clause (d) shall be four years from the date of assumption of his office:

Provided that every such member shall continue to hold office as a member of the Bar Council of India until his successor is nominated.”.

5. Amendment of section 6. In section 6 of the Advocates Act,-

(i) for clause (gg), the following clause shall be substituted, namely:-

“(gg) to visit and inspect Universities and institutions imparting legal education in accordance with the directions given under clause (i) of sub-section(1) of section 7;”;

(ii) after clause (dd), the following clause shall be inserted, namely:-

“(ddd) to provide for the recognition, registration and regulation of Bar Associations (except the Supreme Court Bar Association, Association of law firms, foreign lawyers) including election of its office bearers from amongst the list of regular practitioners of such Bar Association situated within its territorial limits and to make rules, schemes with concurrence of the Bar Council of India to secure their orderly growth;”.

6. Amendment of section 7. In sub-section (1) of section 7 of the Advocates Act,-

(i) in clause (i), for the word “Universities”, wherever it occurs, the words “Universities and institutions imparting legal education” shall respectively be substituted;

(ii) after clause (k), the following clauses shall be inserted, namely: -

“(l) to provide for legal services to the persons belonging to the Scheduled Castes and the Scheduled Tribes, Other Backward Classes, women, differently abled persons, victims of social unrest, natural calamities, victim of diseases impacting the social acceptability, and needy

persons and for spreading legal literacy, legal awareness amongst the people;

- (m) to frame schemes achieving the objectives mentioned in clause (l) and to generate funds for the same by way of securing aid from the Government or non-government organization engaged in social work;
- (n) to provide for pre-enrolment training and apprenticeship to a person who has obtained from a recognised institution degree in law for a period not exceeding one year;
- (o) to provide for continuing legal education for advocates;
- (p) to provide for recognition and registration of law firms and conditions subject to which they may practice law, and other legal services based Bar Associations or law firms and foreign lawyers, if any;
- (q) to make rules for verification of certificates of Advocates and for periodical verification of antecedents, conduct, place of practice of Advocates; and to make a data based web-portal of all the advocates;
- (r) to make rules for identifying the non-practicing advocates and barring their voting rights in the elections to the State Bar Councils, the Bar Associations and to impose such other conditions as it may deem fit;
- (s) to provide for supervision over the election of the members of the State Bar Councils; for issuance of directions in relation to the conduct of such elections and for resolution of all elections disputes relating thereto;
- (t) to make rules to deal with strikes, boycotts or abstentions from courts by the Advocates, provide for suitable measures in this regard and to provide for punishments including the punishment of

disqualification from contesting any election of Bar Councils or of Bar Association for a period of six years;

- (u) to provide for Entrance Test for admission in the Institutions imparting legal education in the country and to provide for measures for improvement of legal education and to make provision for on-line teachings for all the law students of the country either directly or through some charitable Institution;
- (v) to provide for Lawyers Academies and other similar institutions in each State through State Bar Councils, or any other organization, Institutions or Agencies for imparting continuous legal education for Advocates;
- (w) to provide for recognition, registration and regulation of law firms, foreign lawyers;”;

(iii) clauses (l) and (m) shall be re-numbered as clauses (x) and (y) respectively.

7. Amendment of section 8. In section 8 of the Advocates Act, for the words “five years”, the words “six years” shall be substituted.

8. Substitution of new section for section 9. For section 9 of the Advocates Act, the following section shall be substituted, namely:-

“9. **Disciplinary Committees.**- A Bar Council shall constitute one or more disciplinary committees, each of which shall consist of five persons of whom—

- (i) two persons shall be elected by the Council from amongst its members;
- (ii) two persons shall be from amongst eminent persons from fields other than law to be co-opted by the Council; and
- (iii) the fifth member shall be a person nominated by the High Court, in the following manner, namely:-

- (a) in case of the Bar Council of India, fifth member of such Disciplinary Committees shall be a person, who has been the Chief Justice or a Judge of a High Court, as its nominated member;
- (b) in case of a State Bar Council, fifth member of such Disciplinary Committees shall be a person, who has been a district judge, as its nominated member;

Provided that the co-opted member shall not be a member of the Council, in case of Disciplinary Committee constituted by the Bar Council of India, the Judge shall be the Chairman of the Committee, and the the members of a Disciplinary Committee of the State Bar Council, in its first meeting decide as to who shall preside over as the Chairman of the Committee.

- 9. Substitution of new section for section 9A.** For section 9A of the Advocates Act, the following section shall be substituted, namely:-

“9A. Constitution of legal aid committees.-(1) A Bar Council may constitute one or more legal aid committees each of which shall consist of seven members, of whom four shall be persons elected by the Council from amongst its members and three persons who are not members, to be co-opted by the Council from the following categories, namely:-

- (i) former Chief Justice or a Judge of a High Court;
- (ii) advocates who possess the qualifications specified in the first proviso to sub-section (2) of section 3;

and the Chief Justice or the Judge of the High Court, co-opted as member thereof, shall be the Chairman of the committee.

- (2) The term of office of the members of legal aid committee shall be five years.”

10. Insertion of new section 9B. After section 9A of the Advocates Act, the following section shall be inserted, namely:-

9B. Special Public Grievance Redressal Committee of Bar Council of India:-

- (1) The Bar Council of India shall constitute a Special Public Grievance Redressal Committee consisting of the following members, namely:-
 - (i) one former Judge of Supreme Court or Chief Justice of any High Court as its Chairman;
 - (ii) two retired Judges of different High Courts as its members;
 - (iii) one senior Advocate;
 - (iv) one member of the Bar Council of India;
- (2) The Special Public Grievance Redressal Committee shall inquire into any allegation or complaint of corrupt practices or misconduct against any office bearer or member of the Bar Council of India in discharge of his duties as a member of the Council, which is referred to it by the Council.
- (3) The inquiry report of the Committee shall be placed before the General Body meeting of the Council and the Council after considering the report may-
 - (i) accept the findings of the report and lodge a First Information Report; or
 - (ii) accept the report and may refer the matter to initiate a disciplinary proceedings against the office-bearer or as the case may be a member, or
 - (iii) not accept the report, for the reasons to be recorded in writing.”.

11. Amendment of section 10. In sub-section (1) of section 10 of the Advocates Act, after clause (b), the following clause shall be inserted, namely: -

“(c) a bar associations affairs committee consisting of five members, of whom three shall be persons elected by the Council from amongst its members and two persons who

are not members to be co-opted by the Council one each from the following categories, namely: -

- (i) former Chief Justice or a Judge of a High Court or retired district Judge;
- (ii) advocates who possess the qualifications specified in the first proviso to sub-section (2) of section 3;

and the Chief Justice or the Judge of the High Court, co-opted as member thereof shall be the Chairman of the committee.”.

12. Amendment of section 10A. In section 10A of the Advocates Act, after sub-section (4), the following sub-section shall be inserted, namely: -

"(4A). A nominated member shall have a right to participate in all proceedings of the Bar Council and shall be entitled to vote on any matter except on the issue of removal of any office bearer of the Council."

13. Substitution of new section for section 14. For section 14 of the Advocates Act, the following section shall be substituted, namely:-

“14. Dispute as to election to Bar Councils:-

- (1) Any dispute as to the election to the Bar Council of India or the State Bar Council including election of its office bearers shall be referred to a committee constituted for this purpose by the Bar Council of India prior to the conduct of elections:

Provided that an election of a member to a Bar Council shall not be called in question merely on the ground that due notice thereof has not been given to any person entitled to vote thereat, if notice of the date of election has been published in the Official Gazette, not less than thirty days before the date of election.

- (2) The Committee referred to in sub-section(1) shall be comprised of (a) in case of Bar Council of India a retired Judge of the Supreme Court as its Chairman and

Chairmen of two State bar Councils as its Members; and
(b) in case of State Bar Councils, a retired Judge of the High Court as its Chairman and two Members of the Bar Council of India of whom one Member shall be a person from the other State.

(3) The Committee shall have powers to pass any interim order and such other power as may be prescribed."

14. Amendment of section 15. In sub-section (2) of section 15 of the Advocates Act, after clause (j), the following clause shall be inserted, namely:-

“(ja) the form in which complaint shall be made to the State Bar Council and fees payable therewith;”.

15. Substitution of new section for section 19. For section 19 of the Advocates Act, the following section shall be substituted, namely:-

“19. State Bar Councils to send copies of rolls of advocates to Bar Council of India.

Every State Bar Council shall send to the Bar Council of India a copy of the roll of advocates prepared by it for the first time under this Act and shall thereafter communicate to the Bar Council of India all alterations in, the additions to, any such roll, electronically, as soon as the same has been made within a period not later than seven days.

16. Amendment of section 22. After sub-section (2) of section 22 of the Advocates Act, the following sub-section shall be inserted, namely: -

“(3) The State Bar Council shall maintain an electronic data base of all the advocates on its roll containing such information as may be prescribed; and it shall keep updating it, as and when any change takes place, and such Data be made available on the web-site of the State Bar Council.”

17. Amendment of section 24. In sub-section (1) of section 24 of the Advocates Act,-

(a) in clause (f),-

- (I) (i) for the words “six hundred rupees”, the words “two thousand rupees” shall be substituted;
(ii) for the words “one hundred fifty rupees”, the words “five hundred rupees” shall be substituted;
- (II) (i) for the words “one hundred rupees”, the words “five hundred rupees” shall be substituted;
(ii) for the words “twenty-five rupees”, the words “one hundred rupees” shall be substituted;

(b) after clause (f) the following clauses shall be inserted, namely:-

“(g) he has paid professional development fees of three hundred rupees to the State Bar Council and two hundred rupees to the Bar Council of India:

Provided that where such person is a member of the Scheduled Castes or the Scheduled Tribes, the professional development fee payable by him to the State Bar Council shall be two hundred rupees and to the Bar Council of India, one hundred rupees;

(h) he clears the All India Bar Examination or any other test prescribed by Bar Council of India and fulfils such other conditions as may be specified in the rules made by the Bar Council of India.”.

18. Substitution of new section for section 24A. For section 24 A of the Advocates Act, the following section shall be substituted, namely: -

“24A. **Disqualification for enrolment.** (1) No person shall be admitted as an advocate on a State roll-

- (a) if he is convicted of an offence involving moral turpitude; or

- (b) if he is convicted on an offence under the provisions of the Untouchability (Offences) Act, 1955 (22 of 1955) or the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (33 of 1989); or
- (c) if he has been convicted of contempt of court subject to any order or decision of court.
- (d) if he has been dismissed or removed from service or employment under the Union or the State or its undertakings or any statutory body or Corporation.”.

19. Substitution of new section for section 26A. For section 26A of the Advocates Act, the following shall be substituted, namely:-

“26A. **Power to remove names from rolls.**- A State Bar Council may on receipt of information or request, remove from the State roll, the name of any advocate,-

- (a) who is dead; or
- (b) from whom a request has been received to that-effect; or
- (c) who is found guilty of serious misconduct or abstaining from courts work or causing obstruction in court’s functioning; or
- (d) who has incurred any disqualification under section 24A.”.

20. Amendment of section 33. In section 33 of the Advocates Act, the following proviso shall be inserted, namely:-

“Provided that the practice by law firms and foreign lawyers recognized and registered by the Bar Council of India shall be subject to the terms and conditions of the registration under this Act.”.

21. Insertion of new section 33A. After section 33 of the Advocates Act, the following section shall be inserted, namely: -

“33A. **Registration of an advocate with a Bar Association.**_

- (1) An advocate enrolled with the State Bar Council engaged in or intend to practice before a court of law, tribunal or before any authority or person shall get himself registered as a member of the Bar Association where he ordinarily practices or intends to practice law.
- (2) In case any advocate leaves one Bar Association and joins another by reason of change of place of practice or by reason of change of field of law, he shall intimate such change to the Bar Association of which he is a member within a period of thirty days.”.

22. Amendment of section 35. In section 35 of the Advocates Act, -

- (i) after sub-section(1A), the following sub-section shall be inserted, namely:-

“(1AB) The decision of referring a case under sub-section(1), to the disciplinary committee shall be taken by the concerned Bar Council within a period of six months from the date of receipt of the complaint.

(1AC) The complaint to the State Bar Council shall be made in such form and accompanied by such fees, as may be prescribed by the State Bar Council.”;

- (ii) in sub-section (3), the following clauses shall be inserted, namely:-

“(e) impose a fine which may extend of rupees three lakhs and the cost of proceedings;

(f) award compensation of such an amount, subject to a maximum of rupees five lakhs as it may deem fit, payable to the person aggrieved by the misconduct of the advocate;

(g) impose costs, subject to a maximum of rupees two lakhs,-

- (i) on the complainant in case the complaint is found to be vexatious, false or frivolous;

(ii) on the advocate concerned in case he is found to be not cooperating in the disciplinary proceedings under the Act.”,

(iii) after sub-section(5), the following sub-section shall be inserted, namely:-

“(6) During the pendency of a disciplinary proceeding in the complaints of grave misconduct, the State Bar Council, if deems fit, it may suspend the advocate concerned from practice during the pendency of such proceedings, provided no such suspension shall be made without the recommendation of a Committee consisting of (a) a former Judge of the High Court who will be the Chairman of the Committee; and (b) two Senior Advocates, as may be constituted by the State Bar Council.

(iv) after sub-section (6), the following proviso shall be inserted, namely:-

“Provided that if the advocate is convicted under section 24A, he shall be deemed to have been guilty of professional misconduct unless operation of such conviction is stayed by a court of competent jurisdiction.”.

23. Insertion of new section 35A. After section 35 of the Advocates Act, the following section shall be inserted, namely:-

“35A.Prohibition on the boycotts or abstention from courts’ work.– No association of advocates or any member of the association or any advocate, either individually or collectively, shall, give a call for boycott or abstinence from courts’ work or boycott or abstain from courts’ work or cause obstruction in any form in court’s functioning or in court premises.”.

24. Amendment of section 36B. For sub-section (1) of section 36B of the Advocates Act, the following sub-section shall be substituted, namely:-

“(1)(a) The disciplinary committee of the State Bar Council shall dispose of the complaint received by it under section 35 expeditiously and in each case the proceedings shall be concluded by the concerned Bar Council within a period of six months from the date of receipt of the complaint.

(b) The proceedings initiated by the State Bar Council either on the complaint or *suo motu* shall be completed within a period of six months from the date of initiation subject to extension for a maximum period of six months by the Bar Council of India, for the reasons to be recorded in writing.

(c) In the event of,-

(i) a decision not being taken whether to initiate the proceeding within a period of six months from the date of receipt of the complaint, or

(ii) the proceedings being initiated, but not completed within a period of six months or the extended period, as the case may be,

then, such complaint or the proceedings shall stand transferred to the Bar Council of India, which may dispose of the same as if it were a proceeding withdrawn for inquiry under sub-section(2) of section 36.”.

25. Amendment of Section 45. In section 45 of the Advocates Act, for the words “with imprisonment for a term which may extent to six months”, the words “with imprisonment for a term which may extend to three years and with fine which may extend to rupees two lakhs” shall be substituted.

26. Insertion of new section 45A. After section 45 of the Advocates Act, the following section shall be inserted, namely:-

45A. Claim for compensation in certain cases.-

(1) If any person suffers loss due to the misconduct of the advocate or for his participation in strike or otherwise,

then, such person may make a claim for compensation against the advocate in the appropriate forum established under any law for the time being in force.

- (2) The non-payment of fees, either in full or part, by a person to his advocate shall not be a defence available for the advocate against whom such claim for compensation is made.

27. Amendment of section 49. In sub-section (1) of section 49 of the Advocates Act,-

- (i) after the words “State Bar Council”, wherever they occur, the words “and the Supreme Court Bar Association” shall be inserted;
- (ii) for clause (af), the following clause shall be substituted, namely:-
“(af) the minimum qualifications and other eligibility including age required for admission to a course of degree of law in any recognised university;”
- (iii) for clause (d), the following clause shall be substituted, namely:-
“(d) the standards of legal education to be observed by Universities and institutions imparting legal education in India; and for that purpose the manner of inspection, and the fees relating thereto keeping in view the budgetary provisions of universities and institutions imparting legal education, and the term and conditions for approval of the courses;
- (iv) after clause (i), the following clauses shall be inserted, namely:-
“(ia) the manner in which the State Bar Council may exercise supervision and control over Bar Associations except the Supreme Court Bar Association, Association of law firms and foreign lawyers, situated within its territorial jurisdiction and the manner in which the

directions issued or orders passed by the State Bar Council may be enforced;

(ib) to provide for continuing legal education for advocates and its monitoring;

(ic) to make rules to register and regulate the law firms including such firms operating in more than one State;

(id) to register and regulate Bar Associations;

(ie) for rendering of legal services and spreading legal literacy;

(if) regulation of the Supreme Court Bar Association in consultation with the President of the Bar Association and for regulation of Associations of law firms and foreign lawyers;

(ig) to prepare and carry out welfare schemes for advocates in practice.”.

28. Amendment of section 50. In sub-section (5) of section 50 of the Advocates Act, in clause (b) for the words “the Schedule”, the words “the First Schedule” shall be substituted.

29. Insertion of the Second Schedule.-After section 60 of the Advocates Act, for the words “THE SCHEDULE”, the words “THE FIRST SCHEDULE” shall be substituted and after the First Schedule, the following schedule shall be inserted, namely:-

“THE SECOND SCHEDULE

[See section 4(1)I]

Zone I

1. Adhra Pradesh
2. Goa
3. Karnataka
4. Kerala
5. Maharashtra
6. Odisha

7. Tamil Nadu
8. Telangana

Zone II

1. Haryana
2. Himachal Pradesh
3. Jammu and Kashmir
4. Punjab
5. Uttarakhand
6. Uttar Pradesh

Zone III

1. Bihar
2. Chhattisgarh
3. Gujarat
4. Jharkhand
5. Madhya Pradesh
6. Rajasthan
7. West Bengal

Zone IV

1. Arunachal Pradesh
2. Assam
3. Manipur
4. Meghalaya
5. Mizoram
6. Nagaland
7. Sikkim
8. Tripura

Zone V

1. Andaman and Nicobar Islands
2. Chandigarh
3. Dadra and Nagar Haveli
4. Daman and Diu
5. Delhi
6. Lakshadweep
7. Puducherry.”.
