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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

Press release dated 20.4.2017 relating to the protest and issues regarding the anti-Lawyer "The Advocates(amendment) Bill, 2017


At the outset the Bar Council of India would like to make it clear that the independence and autonomy of the Advocates cannot be compromised at any cost. Advocates are the backbone of any civil society. Advocates are the class which ensures actual implementation of the constitutional, fundamental and legal rights when they are violated. Any attempt to gag the spirit or words of an Advocate would lead to the death of democracy and middle-class and the deprived gentry whose rights have been violated and infringed upon by the rich and the almighty will cease to get justice and would merely become pawns in the hands of the corrupt and influential people. Ultimately when the patience of the gentry would reach its last ebb, there would be chaos in the society and it would lead to a situation which will be akin to a civil revolt/war against the judiciary and the government which will be extremely detrimental for society.

- (i) The Advocates(amendment) Bill, 2017 has been proposed by the Law Commission of India to the Government of India without properly inviting the views/objections of the stakeholder's viz. Bar Associations of various High Courts, Bar Association of District Courts/Taluka Courts, State Bar Councils and individual lawyers and without proper publicity in a very short period of 8 months. Thus, the bill has been proposed without following the due process of law in an undemocratic manner.
- (ii) The Law Commission of India has hastily prepared the draft bill and proposed it for passing by parliament without waiting for the Bar Council of India's suggestions as is evident from the BCI letter dated 10.3.2017. The BCI had by letter dated 10/3/2017 sought time for sending final suggestions but without waiting for the final suggestions, the bill was sent to the Union Law Ministry.
- (iii) The recommendation of the Law Commission and Amendment Bill has been sent pursuant to the judgment of the Hon'ble Supreme Court in the case of Mahipal Singh Rana Versus State of Uttar Pradesh (Criminal Appeal No.63 of 2006 judgment dated 5/7/2016) AIR 2016 SC 3302. It is interesting to note that the genesis of this case is in one decision of the Allahabad High Court where contempt proceeding was initiated against Mahipal Singh in which the charge was framed by the bench consisting of Justice Dr. B. S. Chauhan [please refer to Contempt Petition (Criminal) 27 of 2004 order dated 5/10/2015 paragraph 15 mentions that the charge was framed by Justice B S Chauhan on 11/1/2005]. Now, the personal views of Justice B. S. Chauhan is being thrust upon on the entire nation in the form of the amendment in the Advocates Act which is impermissible on the doctrine "*nemo judex in suaproperia causa*"(nobody can be a judge in his own cause). The Amendment Bill shows *ex facie* personal bias of justice Chauhan towards the lawyers' community.

- (iv) The provision of the amendment bill takes away the freedom of lawyers to act fearlessly in the court proceedings and thereby directly affecting the fundamental rights of the Citizen of India which are sought to be protected by the advocates in court. The Advocates won't even be able to raise their voice against the injustice done to their clients or against the corrupt Judges OR Judicial officers because on a simple complaint of a Judge/Judicial officer about the behaviour or conduct of an Advocate, his certificate of Practice (licence) could also be cancelled under the proposed Report. Lawyer is never interested in any matter personally. He is essentially concerned with the protection or vindication of the fundamental, constitutional and other statutory rights of the citizens.
- (v) The amendment bill also provides for suspension of the practice-license of a lawyer even pending inquiry against him without realizing the fact that the lawyer will have no source of survival during the suspension period like government officers who are paid subsistence allowance. The provisions are so arbitrary that even on the information/complaint of a judicial officer or a judge the State Bar Council can remove the name of the Advocate from the State roll.
- (vi) The amendment bill provides for imposing of fine Rs. 3 Lakhs and cost of the proceedings in a complaint filed by a litigant against the lawyer. It provides for payment of compensation up to Rs. 5 Lakhs to a person aggrieved by the misconduct of a lawyer. It provides for cost of Rs. 2 Lakhs to be imposed upon a lawyer if the lawyer does not cooperate in the disciplinary proceedings.
- (vii) The amendment bill proposes that and Advocate who has not received even a single farthing from his/her client shall not even be able to claim the defence of non-receipt of fees while defending himself against any proceeding initiated against him.
- (viii) The definition of misconduct has been introduced for the first time which is all-inclusive and drafted in the best possible provocative manner. The definition covers within its sweep the acts like not working diligently, non-observation of etiquette required to be observed by the advocate, non-observation of the standard of professional conduct, disgraceful and dishonorable conduct. The amendment bill provides that an advocate causing obstruction in courts functions or strikes can be removed from the rolls of the Bar Council
- (ix) The constitution of the State Bar Council and Bar Council of India is completely changed so as to destroy the autonomy of the State Council and the Bar Council of India. The autonomy of Bar is proposed to be abolished. The majority of the members of the State Bar Councils are to be nominees of the High Courts and such nominees also include the non-lawyers (like architects, Chartered Accountants, Doctors, Engineers or Politicians). The legal profession and legal education of the country is proposed to be regulated by the non-lawyers. The Advocates are the judicial officers and judges. Instead of elections, after 69 years of independence, the mechanism of nomination by High Court and the Supreme Court is proposed to be adopted. The maintenance of autonomy of the Bar Council was one of the fundamental objectives of the Advocate Acts, 1961 when it was enacted. This very purpose is sought to be defeated by the Amendment Bill, 2017.

- (x) The Bar Council of India had convened a meeting with all the State Bar Councils on 8th and 9th April, 2017 and further another meeting with the High Court Bar Associations was held on 15.4.2017 and had discussed and consented to all the above said issues and points being raised. Further on 16th April, 2017, the State Bar Councils had convened meetings with all the representatives of all Bar Associations in order to make them aware of the abovesaid discussions and resolutions and about the agitational programs mentioned below.
- (1). A signature campaign is being undertaken by the Bar Associations of country demanding the rejection of recommendations of Law commission in toto.
 - (2) On 21st April, 2017 during Luncheon interval, the lawyers throughout the country will assemble outside their respective Court premises and burn the copies of recommendations and bill of Law commission. Thereafter, they will hand-over a memorandum to Union Government through the Concerned District Magistrates/Governor. The memorandum will be addressed to the Hon'ble Union Law Minister and Union Government shall demand the rejection of the recommendations and Bill of Law Commission and to throw it in dustbin. The lawyers will abstain from court works after luncheon interval on 21st April, 2017.
 - (3) If the recommendations of Law Commission are not rejected in toto till 1st May, 2017, then **on 2nd May, 2017**, there shall be rally of Bar Council of India. All the members of all the Bar Councils throughout India (sitting and former, who are members of ad-hoc committees and the representatives of all the Bar Associations of the Country) shall assemble at Delhi outside Patiala House Court campus by 11 AM. The protest March will start from the premises of Patiala House Court, Delhi and proceed for Rajghat. In all the protest programs the lawyers will be in full court dresses.
 - (4) If the demands against the anti lawyer recommendations are not accepted even after rally of 2nd May, 2017, then massive rallies and Jail Bharo campaign will be undertaken by Bar Council of India, State Bar Councils and Bar Associations of the country at Delhi gheraoing the office of Law Commission of India, Parliament etc.
- (xi) In nutshell on all counts the Amendment Bill 2017 is utterly regressive and its right place is not parliament but a dustbin and the current office bearers of the Law Commission are required to be deposed from their office.
- (xii) However, based on the assurances given by the Government of India, the Bar Council of India is very hopeful that such a situation will not arise and the impasse/deadlock shall be resolved by our Hon'ble Union Law Minister Mr. Ravi Shankar Prasad very soon, as he himself is a very renowned Senior Advocate of the country and he has always supported the Advocates.
- (xiii) The Delegation of Bar Council of India will meet the Hon'ble Union Law Minister tomorrow i.e. 21.4.2017 and handover a copy of the memorandum to him also.

Regards!


Manan Kumar Mishra,
Chairman &

All the Members of Bar Council of India