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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

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प्रेस विज्ञप्ति

बार काउंसिल ऑफ इंडिया की 7 सदस्यीय समिति ने तैयार किया "एडवोकेट्स प्रोटेक्सन बिल" का ड्राफ्ट:

बार काउंसिल की 7 सदस्यीय समिति ने देश के अधिवक्ताओं की सुरक्षा हेतु एडवोकेट्स प्रोटेक्सन एक्ट संबंधी रुपरेखा व ड्राफ्ट बिल तैयार कर लिया है।

बार काउंसिल ऑफ इंडिया की समिति जिसमें सर्वश्री 1. एस. प्रभाकरन, वरीय अधिवक्ता, उपाध्यक्ष, बार काउंसिल ऑफ इंडिया 2. देवी प्रसाद ढल, वरीय अधिवक्ता, सह-अध्यक्ष, बार काउंसिल ऑफ इंडिया 3. सुरेश चंद्र श्रीमाली, सह-अध्यक्ष, बार काउंसिल ऑफ इंडिया 4. शैलेन्द्र दुबे, सदस्य, बार काउंसिल ऑफ इंडिया एवम् प्रैस काउंसिल ऑफ इंडिया 5. प्रशांत कुमार सिंह, अध्यक्ष, को-ऑर्डिनेशन कमेटी, राज्य बार काउंसिल 6. ए. रामी रेड्डी, कार्यकारिणी सह-अध्यक्ष, बार काउंसिल ऑफ इंडिया ट्रस्ट 7. श्रीनाथ त्रिपाठी, अध्यक्ष, लीगल ऐड कमेटी हैं, ने अपने ड्राफ्ट में अधिवक्ताओं के हितों की सुरक्षा के लिए जो प्रस्ताव किये हैं उनमें कुल गिलाकर 16 धाराएँ बनाई गयी हैं। प्रस्तावित बिल के अनुसार किसी भी अधिवक्ता या उसके परिवार को किसी प्रकार की क्षति या चोट पहुँचाने, धमकी देने या उसके मुवक्किल द्वारा दिये गये किसी प्रकार की सूचना का खुलासा करने हेतु पुलिस या किसी पदाधिकारी के द्वारा अनुचित दबाव या किसी वकील को किसी मुकदमे की पैरवी करने से रोकने का दबाव या वकील की सम्पत्ति को किसी रूप में नुकसान पहुँचाने या किसी भी वकील के विरुद्ध अपशब्द या अपमानजनक शब्द का इस्तेमाल, इस प्रस्तावित कानून के तहत 'अपराध' की श्रेणी में आयेगा ऐसे अपराधों के लिए सक्षम न्यायालय द्वारा 6 माह से 2 वर्ष तक की सजा तथा साथ में 10 लाख तक का जुर्माना लगाया जा सकता है। साथ ही अधिवक्ता को हुए नुकसान की भरपाई हेतु अलग से जुर्माना भी सक्षम त न्यायालय द्वारा लगाया जा सकता है।

M.K.M.

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अधिवक्ताओं के विरुद्ध उक्त अपराध गैर-जमानतीय एव सेंज़य अपराध की श्रेणी में आयेंगे, जिनकी जाँच पुलिस के उच्च-अधिकारी द्वारा ही की जायेगी। उक्त अपराधों की जाँच (Investigation) तीस दिन की अवधि में पूरी करनी होगी एवम् उक्त अपराध संबंधी मामले जिला व सत्र न्यायाधीश या समकक्ष के न्यायालयों द्वारा ही देखे जायेंगे।

हाँलाकि ये प्रावधान यदि कोई अधिवक्ता ही अभियुक्त हो, तो लागू नहीं होंगे।

बार काउंसिल ऑफ इंडिया की समिति ने अधिवक्ताओं को जरूरत पड़ने पर पुलिस द्वारा समुचित सुरक्षा मुहैया कराने का प्रावधान प्रस्तावित किया है। उक्त सुरक्षा हेतु माननीय उच्च न्यायालय में आवेदन देना होगा एवम् उच्च न्यायालय आवेदक के आचरण एवम् सुरक्षा की आवश्यकता संबंधी सभी तथ्यों की जाँच कर; एवम् आवश्यक हो तो राज्य बार काउंसिल या बार काउंसिल ऑफ इंडिया से अधिवक्ता के आचरण या अन्य बातों संबंधी जानकारी लेकर, पुलिस प्रशासन को उस अधिवक्ता को सुरक्षा प्रदान करने हेतु आदेश पारित कर सकेगा।

एक बार मुहैया की गयी पुलिस सुरक्षा की व्यवस्था, तब तक वापस नहीं ली जा सकती है, जब तक कि जिला जज, उच्च न्यायालय या सर्वोच्च न्यायालय के निबंधक का इस संबंध में स्पष्ट निर्देश नहीं प्राप्त हो जाये।

अधिवक्ताओं को न्यायालय का पदाधिकारी माना जायेगा एवम् उनके साथ न्यायपालिका के पदाधिकारियों के भाँति ही व्यवहार करना होगा।

अधिवक्ता या वकील संघ के किसी शिकायत संबंधी मामलों के निपटारे के लिए जिला स्तर से लगायत सर्वोच्च न्यायालय तक के स्तर पर 'शिकायत निवारण समिति' (Grievance Redressal Committees) बनाई जायेगी, जिसके अध्यक्ष जिला स्तर के अधिवक्ताओं हेतु जिला जज, उच्च न्यायालय हेतु संबंधित मुख्य-न्यायाधीश (या उनके द्वारा नामित जज) एवम् सर्वोच्च न्यायालय हेतु देश के प्रधान न्यायाधीश या उनके द्वारा नामित जज होंगे। समिति के अन्य दो सदस्य राज्य बार काउंसिल व बार काउंसिल ऑफ इंडिया द्वारा मनोनित किये जायेंगे। मामलों का निपटारा आपसी बातचीत से किया जायेगा तथा आवश्यकता पड़ने पर समिति सरकार या किसी भी पदाधिकारी को उचित निर्देश या सुझाव दे सकेगी।

अधिवक्ताओं के कर्तव्यों के निर्वहन में किसी प्रकार की त्रुटी होने पर, अधिवक्ता को जिम्मेदार नहीं ठहराया जायेगा एवम् इस त्रुटी के संबंध में किसी प्रकार का सिविल या आपराधिक विवाद किसी भी न्यायालय या प्राधिकरण में मान्य नहीं होगा।

MANAN

कोई भी पुलिस अधिकारी किसी भी वकील को तब तक गिरफ्तार नहीं कर सकेगा जब तक मुख्य दण्डाधिकारी का स्पष्ट आदेश नहीं हो। किसी भी अधिवक्ता के विरुद्ध किसी प्रकार का आपराधिक मामला दर्ज होने पर, संबंधित पुलिस पदाधिकारी द्वारा नजदीकी मुख्य न्यायिक दण्डाधिकारी को अविलंब सूचित किया जायेगा; एवम् उक्त पुलिस पदाधिकारी को प्रथम सूचना रिपोर्ट के साथ-साथ मामले से संबंधित सभी कागजात व सबूत प्रस्तुत करने होंगे। मुख्य न्यायिक दण्डाधिकारी वकील को (जिसे अभियुक्त बनाया गया हो) 24 घंटों के अंदर सूचना (Notice) को देंगे तथा उक्त वकील या उनके प्रतिनिधि को सुनवाई का अवसर देंगे। तत्पश्चात या तो जमानत देंगे या अनुसंधान करने के बाद उचित कार्यवाही का आदेश देंगे।

यदि मुख्य न्यायिक दण्डाधिकारी या समकक्ष दण्डाधिकारी को यह स्पष्ट हो कि उक्त वकील को सिर्फ इसलिए अभियुक्त बनाया जा रहा है चूँकि उसने वादी/सूचक (Informant/Complainant) या किसी गवाह के विरुद्ध किसी मुकदमें में कार्य किया है या मात्र पेशेगत राजनीति या द्वेष के कारण उक्त अधिवक्ता को झूठे केस में फँसाया गया है, तो वैसी स्थिति में अधिवक्ता को जमानत दी जायेगी। सत्र न्यायालय द्वारा देखे जाने वाले मामले, जिला व सत्र न्यायाधीश को प्रेषित किये जायेंगे।

ड्राफ्ट बिल में यह भी प्रस्तावित है कि किसी प्रकार के प्राकृतिक आपदा की स्थिति में राज्य व केन्द्र सरकार हरेक जरूरतमंद वकील को आवश्यकतानुसार कम से कम 15000 रु० प्रति माह की आर्थिक सहायता प्रदान करेगी। इसी प्रकार ड्राफ्ट में प्रस्ताव देकर केन्द्र व राज्य सरकारों को अधिवक्ताओं हेतु बीमा एवम् चिकित्सा हेतु सामाजिक सुरक्षा संबंधी योजनाएं लागू करने का प्रावधान करने को कहा गया है।

“एडवोकेट्स प्रोटेक्सन एक्ट” को एक विशेष अधिनियम का दर्जा देने का प्रावधान प्रस्तावित किया गया है, ताकि किसी अन्य कानून से इस अधिनियम का टकराव होने पर, इस बिल को प्रभावी माना जाये।

बी.सी.आई. के अध्यक्ष वरीय अधिवक्ता श्री मनन कुमार मिश्र ने कहा है कि उक्त ड्राफ्ट बिल को सभी राज्य बार काउंसिलों, सर्वोच्च न्यायालय व अन्य उच्च न्यायालयों के संघों को भेजा जा रहा है, एवम् इसे प्रकाशित किया जा रहा है ताकि जिस संघ या वकील को कोई सुझाव देना हो, उन सुझावों पर बार काउंसिल ऑफ इंडिया द्वारा विचार विमर्श करने के बाद ही ड्राफ्ट को माननीय विधि एवम् न्याय मंत्री को भेजा जायेगा।

बी.सी.आई. द्वारा एक सप्ताह के अंदर सुझाव आमंत्रित किये गये हैं जिसे **advprotectionbill.bci@gmail.com** इमेल पर भेजा जा सकेगा।

Manan

श्री मिश्र ने कहा है कि बार काउंसिल ऑफ इंडिया का प्रयास होगा कि संसद से इस बिल को जल्द से जल्द पारित करा लिया जाये।

श्री मिश्र ने यह भी कहा कि यदि अधिवक्ताओं के सोशल मीडिया द्वारा किये गये कदाचार संबंधी नियमों को जल्द लागू नहीं किया जाता, तो सर्वोच्च न्यायालय के निर्णयों के आलोक में वकीलों के कदाचार संबंधी मामलों की जाँच सरकारी पदाधिकारियों एवम् न्यायिक पदाधिकारियों द्वारा कराया जाना तय था। अतः ऐसी परिस्थिति से बचने के लिए, पेशे की गरिमा को बरकरार रखना ही था एवम् अपराधिक चरित्र व गलत आचरण करने वाले उग्रवादी किस्म के तथाकथित वकीलों के विरुद्ध अनुशासनात्मक कार्यवाही कर पेशे से बाहर करना ही होगा।

बार काउंसिल वकीलों के कल्याण के लिए हर संभव कदम उठाती है, लेकिन सर्वप्रथम यह कदाचार के मामलों में अनुशासनात्मक कार्यवाही के लिए सर्वोच्च वैधानिक संस्था है। जानबूझकर अपने चुनावी या निजी स्वार्थवश संस्था का मजाक बनाने का प्रयास करने वाले लोग कभी सच्चे वकील हो ही नहीं सकते; न ही वैसे लोगों को इस सम्मानित पेशे में रहने का कोई अधिकार है।

बार काउंसिल ऐसे चंद गलत तत्वों के दबाव में नहीं आयेगी, क्योंकि खुशी की बात यह है कि आज भी 95 फीसदी से ज्यादा वकील सभ्य हैं एवम् पेशे की मर्यादा का बखूबी पालन करते हैं। पेशा इन्हीं 95 फीसदी के बंदोबस्त जिन्दा है और हमेशा गरिमामय रहेगा।

मनन कु. मिश्र,

(मनन कुमार मिश्र) २७.०७.२०२१

अध्यक्ष,

बार काउंसिल ऑफ इंडिया

ADVOCATES (PROTECTION) BILL, 2021

An Act for the protection of Advocates

Preamble

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

Statement of Objects and Reasons

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

"Clause 16. Governments shall ensure the lawyers,

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

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



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

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

Freedom of expression and association

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

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

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



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

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

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



ADVOCATES (PROTECTION) BILL, 2021

1. Short title and commencement

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

2. Definitions

- (1) In this Act, unless the context otherwise requires-
 - (a) 'Act' means Advocate (Protection) Act, 2021;
 - (b) "Advocate" shall have the same meaning as provided under Sec. 2(1)(a) of the Advocates Act, 1961;
 - (c) "act of violence" refers to acts committed by any person against an Advocate, with an intent to prejudice or derail the process of impartial, fair and fearless conduct of any litigation before any court, tribunal or authority in which such Advocate is engaged or acts of retribution towards the outcome of proceedings before any of the above forums and includes the following:

Threat, Harassment, coercion, assault, malicious prosecution, criminal force impacting the living or working conditions either inside or outside of such Advocates and preventing them from discharging their duties;

 - (i) Harm, injury, hurt, either grievous or simple, or danger to the life of such Advocates, or their family members, either within the premises of the Courts or otherwise;
 - (ii) Coercion by whatsoever means, of an Advocate to reveal or part with privileged communication or material which such Advocate is bound to hold in confidence under law;



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

3. Punishments for offences

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

4. Compensation

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



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

5. Nature of Offence and Jurisdiction of Courts

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

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

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



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

6. Compounding of offences

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

7. Police Protection:

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



8. Advocate deemed to be officer of the Institution

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

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

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

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

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

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

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



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

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

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

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

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



11. Protection from illegal arrests and Malicious Prosecution of Advocates

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

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

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

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

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



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

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

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

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

13. Power to make rules

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



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

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

15. Social Securities for Advocates

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

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

Loan Facility:-

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

16. Act to have overriding effect.-

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


