

# **ADVOCATES ACT**

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**Class-room live lectures edited, enlarged**  
**and updated**

*Msrlawbooks*

# THE ADVOCATES ACT AND PROFESSIONAL CONDUCT

1961 Act (As amended up to date)

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### QUESTIONS BANK.....

1. Write a note on: (i) Common Roll of Advocates (ii) Bar Council of India (iii) Legal Aid Committee.
2. Discuss the composition, powers and functions and the disciplinary powers of the Bar Council of India.
3. Summarise the provisions relating to Admission and enrollment of Advocates.
4. What is Professional Ethics ?  
An Advocate should act as an officer of the court, a privileged member of the community and a gentleman. Discuss.
5. What are the rights and privileges of Advocates.
6. An Advocate has duty to the court, duty to client, duty to the profession and duty to the opponent and duty to himself 'Elucidate'.

## CHAPTER 1

### THE ADVOCATES ACT its salient features:

#### Ch. 1-1 Introduction & Salient features:

The Advocates Act, passed by the Parliament received the assent of the President on 19th May 1961. Before this Act, there were different classes of legal practitioners called pleaders, vakils, Lawyers, Attorneys," revenue agents, practicing under Legal Practitioners Act" and other Acts.

The objective of the. Advocates Act is to integrate and constitute one class of legal practitioners called "Advocates" (a common roll of advocates in India)- and to prescribe uniform qualification for admission to the Bar.

The Act has created an autonomous All India Bar Council and also various State Councils with powers vested inter alia, to take disciplinary action in suitable cases. On enrolment an advocate is entitled to practice in any court of India including the Supreme Court.

#### Salient Features: "Advocate":

Sn.2 (a) of the Advocates Act 1961 defines an "Advocate". According to it, an Advocate means "an advocate entered in any roll under the provisions of this Act." Before the passing of this Act, there were different classes of legal practitioners recognised under the Legal Practitioners Act. They were called as Advocates, lawyers, vakils , pleaders, "revenue agent" etc. the Advocates Act has abolished these classes and has recognised only one class of Advocates (Sn.29)

On merits they are grouped as "Senior Advocates" and "other advocates". The status of a Senior Advocate is conferred by the High Court or the Supreme Court with the consent of such advocate.

The senior advocate is barred from taking minor legal work like drafting of pleadings, notices, affidavits etc.

An advocate duly enrolled in the "Common roll" is entitled to practice in the Supreme Court and in any court, tribunal and in any other body where an advocate is allowed to practice (Sns.29 & 33). Any person, who is not on the rolls and who practices law, is liable for punishment which may extend to 6 months imprisonment (Sn.45).

#### Ch. 1-2 "Common roll"

Sn.2(f) of the Advocates Act, defines a "Common roll" .This means the common roll of advocates, prepared and maintained by the Bar Council of India under Sn.20

The common roll consists of the names of Advocates duly entered in all the State rolls, and also includes the names of the Supreme Court Advocates.

The common roll consists of two classes: (i) Senior advocates, (ii) other advocates.

Any dispute as to seniority is decided by the State Bar Council in respect of state roll, and by the -Bar Council of India in respect of common roll. The decision of the Bar Council is final.

**State roll:**

- i) The Advocate Act defines State roll in Sn.2(n) It means a roll of advocates prepared and maintained by the State Bar Council under Sn.17.
- ii) Every State Bar Council should prepare and maintain a roll of advocates. This consists of the names and addresses of:
  - "i) All persons who were advocates according to Indian Bar Council Act.
  - ii) All persons who are admitted as advocates under the Advocates Act.
  - iii) A person cannot be enrolled in more than one State Bar Council.
  - iv) Each state sends the roll of advocates to the Bar Council of India, and also additions or omissions, from time to time. The Bar Council of India, prepares a common roll of advocates from these State rolls.

**Ch. 1-3 Bar Council of India:**

- i) The Advocates Act 1961 has provided for the formation of the Bar Council of India as an autonomous body, charged with certain duties and functions.  
Sn.2(e) defines the Bar Council of India as the "Bar Council constituted under Sn.4 for the territories to which this Act extends".

**ii) Composition: Sn.4**

- It consists of
- a) The attorney-General of India (ex-officio)
  - b) Solicitor General of India (ex-officio)
  - c) One elected member from each State Bar Council elected from amongst its members).

The Chairman & Vice Chairman are elected by the Council. **Tenure: Sn.4**

- a) For ex-officio members, the tenure is 2 years.
- b) For others, they continue as long as they hold an office as members of the State Bar Council.

iv) **Status:** Sn.5 The Bar Council of India is a body corporate and hence, a legal person. It is an autonomous body. It is a legal 'person, having the right to acquire movable and immovable properties and to sue and be sued. It has a common seal and is having perpetual succession. It may become a member of the International Bar Association, or International Legal Aid Association and send delegates to the international conferences or seminars conducted by such bodies.

v) **Functions:** (Sn 7 with 1973 amendment). The functions of the Bar Council of India are as follows:

**a) Legal Profession:**

- i) To safeguard the rights interests and privileges of the Advocates.
- ii) To lay down standards of professional conduct and etiquette for advocates.
- iii) To promote Law reforms.

**b) Supervision:**

- i) To supervise and control the State Bar Councils.
- ii) To lay down the .procedures to be followed by the disciplinary committees of State Bar Councils.

**c) Legal Education:**

- i) To promote legal education in India and also to lay down educational standards. It should consult the universities and State bar councils.
- ii) To Recognise law degrees given by universities for enrolment as advocates, to visit and inspect universities for that purpose.

**d) Functional:**

- i) To conduct seminars, to arrange for lecture by legal experts and to publish legal journals etc.
- ii) To organise legal aid to the poor.

iii) To reorganise foreign degree for admission to the Bar.

**e) Fund Collection:**

It may constitute one or more funds.

- i) to give financial assistance to organize welfare schemes to the needy advocates.

- ii) to give legal aid to them.
- iii) to receive grants, donations etc.

**f) Miscellaneous functions:**

- i) to resolve disputes regarding seniority in the common roll of advocates.
- ii) to lay down rules to be followed by the disciplinary committees.
- iii) to manage and invest the funds of the Bar Council of India, iv) to provide for election of its members.
- v) to perform all other function necessary under the Advocates Act.
- vi) It may give directions to the State Bar Councils.

**Rule making powers:**

The Bar Council of India has the authority to prescribe rules in various areas where it is to function under the Act.

- e.g. i) to prescribe standards for legal education, ii) to recognise foreign degrees, iii) to prescribe the fee that may be levied, iv) Enrolment of advocates, etc

**Ch. 1-4 State Bar Council:**

The Advocates Act 1961, has provided for a State Bar Council in each State under Sn.3.

**a) Composition:**

Each State Bar Council, .consists of

- 1) The Advocate-General of the State (Ex-officio)
- 2) 20 members elected in accordance with the system of proportional representation by means of single transferable vote from among the advocates of the State Bar Council. Of course, at least ten of these must be from advocates having 10 years standing at the Bar.

- 3) This Council elects a chairman and a vice-chairman.

**Legal Status:** The Bar Council is a body corporate and hence a legal person. It is an autonomous body. It has a right to acquire and dispose of property, to sue and be sued etc. It has a right of succession.

**c) Tenure:**

The tenure of office of the elected members is six years (one third of the members retire once in two years)

d) **Powers:**

i) Appointment: It is authorised to appoint the necessary staff of the State Bar Council to carry out the management and the functions.

**Disciplinary committees:**

The State Bar Council has powers to constitute disciplinary committee having three persons (2 members of the Bar Council and an Advocate).

**iii) Constituting other committees:**

The Bar Council may constitute standing committees called "Executive Committee" (having 5 council members), enrolment committee (having 3 council members and other committees).

**iv) Power to make rules:** (Sn. 15)

'To carry out the purposes of the Advocates Act, the State Bar Council is empowered to make rules relating to:

i) Election of members of the Bar Council, ii) Election of chairman and vice chairman, iii) Summoning of meetings.

iv) Constitution of Fund. v) Appointment of Auditors etc. e) **Functions:**

The main functions are: i) To admit persons as advocates on its roll, ii) To prepare and maintain such roll.

iii) To safeguard the rights, privileges and interests of advocates.

vi) To manage the funds of the Bar Council. v) To promote law reforms.

vi) To create a fund to give financial assistance to indigent or disabled advocates.

vii) To conduct seminars etc. and to publish papers and journals.

viii) To organise legal aid to the poor etc.

**Ch. 1-5 Enrolment:**

i) Persons who may be admitted as advocates on a state roll of the Bar Council.

The Advocates Act has prescribed in Sn.24 certain qualifications.

i) He must be a citizen of India.

ii) Must have been a citizen of India.

iii) He must have obtained a degree in law.

a) Before 12<sup>th</sup> March 1967, a degree in law recognised by the Advocate's Act P T O

Bar Council.

After 12th March 1967, the person should have undergone a 3 years course of study in law from any university in India. c) Barrister in law etc.  
iv) He must have paid an enrolment fee of Rs.250/- to the State Bar Council.

**Procedure for enrolment:**

i) Application: The person who desires to enroll must file an application to the State Bar Council, in the prescribed form with the necessary fee (Rs.250/-).He must have the qualifications as prescribed by the Advocates Act (Sn.24).

**Enrolment committee:**

The application is considered by the enrolment committee which shall scrutinise the same and either accept or refuse admission. If it accepts, the person shall sign the admission register, after due public notice in the prescribed manner.

**Procedure on refusal:**

If the "Enrolment Committee" refuses to accept the admission:

- a) It shall with reasons refer the same for the opinion of Bar Council of India and shall act according to its direction.
  
- b) It should notify to all State Bar Council in India about the details of the application and the ground for its refusal.

**Powers to remove:**

If a person has enrolled himself by fraud, misrepresentation or undue influence, his name can be removed by the Bar Council of India, after giving due opportunity to the concerned person.

**v) Appeal:**

If enrollment is refused by the Enrollment committee, an appeal may be preferred under Act 226 of the Constitution to the High Court.

**CONDUCT OF ADVOCATES**

**Ch. 1-6 Disciplinary Committee:**

### **i) Practice Exclusive to Advocates:**

The Advocates Act recognises "Advocates" only as those who are entitled to practice law. They may practice in all the courts in India including the Supreme Court, or before any tribunal or authority empowered to take evidence.

### **Disciplinary Committee: (Sn.9)**

#### **a) Composition :**

It consists of 3 elected by the bar council and one co-opted member and the "Senior most" person shall be the chairman of the committee.

#### **b) Complaint:**

On receipt of complaint or otherwise, the State Bar Council shall refer the same to the disciplinary committee. The complaint must relate to the "Professional or other misconduct" of the concerned advocate.

#### **c) Enquiry:**

The committee shall give due notice to the advocate and shall hear him. Notice to advocate-general of the State is also to be given who shall have the right of audience. The committee may dismiss the complaint, reprimand the Advocate, suspend, or remove him from the rolls.

#### **d) Review:**

The committee has the powers to review its own order.

#### **e) Appeal:**

Any person aggrieved by the orders of the above committee may prefer an appeal to the Bar Council of India within 60 days. The disciplinary committee shall hear and dispose of the appeal.

#### **f) Appeal to Supreme Court:**

The aggrieved person may prefer an appeal from the disciplinary committee of the Bar Council of India to the Supreme Court within 60 days. The court may issue a stay and/or dispose of the appeal.

#### **g) Punishment:**

In case of reprimanding or suspending an advocate the punishment shall be duly recorded on the rolls of the Advocates. In case of removal, the persons name shall be struck off from the rolls.

### **Powers of the committee:**

It has the same powers as are vested in the civil courts under C.P.C. It may summon and enforce attendance of any person, it may receive evidence, issue commissions etc. The proceedings are judicial and the committee acts as a Civil Court.

### **Illustrative Cases:**

- (1) An advocate neglected to furnish the required papers to the court which he could have easily produced. Time was repeatedly given to him by the court to produce the documents. The advocate had not informed his client about the development of the case, but had informed that the hearing date has not been announced. Held, this was gross negligence and amounted to professional misconduct (AIR 1965 Mys-28).
- (2) Advocate for defence in a criminal case terrorised his client. Held, this was professional misconduct. Advocate was barred from practicing (Punjab case-65 L.J.619)

## **CHAPTER 2**

### **Ch.2 PROFESSIONAL ETHICS, MEANING & SCOPE**

The legal profession is one of the noblest and the brilliant professions of the world. Absolute independence is its characteristic feature.

"Ethics "of the legal profession, embodies a code of conduct, a set of standard moral principles which should be observed by a legal practitioner in relationship with his client, the court, the profession, his brethren and himself. The Bar Council of India has framed the rules for professional conduct which are to be followed by the members of the profession.

Every profession has a code of morality and the legal profession has its own code for observance by those who are in the profession.

The first and the foremost principle is that an advocate should be a "Gentleman". Honesty and integrity are his prized virtues in the profession. Moral excellence is like a torch in the

darkness. He should not falsify facts or conceal a wrong by resorting to deception. He should not accept any work which is not honourable.

He should not appoint touts to canvas business for him. He should not advertise. He should not undersell himself. Junior in the profession should be treated with kindness by the seniors.

Abbot Parry J has summarised the qualities of an advocate in his book "**The Seven Lamps of Advocacy**". He States that Honesty, Courage, Industry, wit, eloquence judgment and fellowship are the seven lamps that spread light and bring glory .to the advocate.

The Advocates Act 1961, has provided for disciplinary action against those advocates who are guilty of "Professional or other misconduct".

The disciplinary committee, after duly conducting an enquiry (by giving notice and hearing) is empowered to suspend, reprimand or remove an advocate from the rolls. Appeal is allowed to the Bar Council of India and then to the Supreme Court.

If fine, the principles of professional ethics are not just the moral norms, they have the force or the sanction under the Advocates Act.

Those who are guilty of misconduct should be punished, and in that direction the Advocates Act is a progressive and regulatory enactment.

## CHAPTER 3

### Ch.3 UNPROFESSIONAL CONDUCT

The legal profession is one of the noblest and the brilliant professions of the world. As in other professions, it has a code of morals technically called "Professional ethics". This aims at establishing the highest standards of dignity, honesty, character and moral excellence in the profession. This onerous responsibility is on the "Advocates" whose professional conduct should be in-keeping with the established "ethics" of the profession. Provisions have been made in the Advocates Act 1961, to 'punish those who are guilty of professional misconduct.

The Bar Council of India has laid down a code of professional ethics. But over the centuries, the profession has evolved these ethical standards which are to be followed by the Advocates.

It becomes a "professional misconduct" when these standards are not observed by the Advocates.

In this context, an advocate should act as an officer of the court, a privileged member of the community and a gentleman. The standards so set are briefly as follows:

1) **Gentleman:**

The first and the foremost duty of an advocate is that he should be a "gentleman". The word "gentleman" is a compendious term that includes great many qualities and values of the legal profession. He should uphold these at any cost, and should not violate them under stresses of temptations and opportunities.

2) **Professional habits:**

As a professionalist an advocate is a privileged member of the community & has a social responsibility to fulfill. To him money making must be secondary & incidental. He must work like an artist

to reach perfection. Service to Society & to his fellow men should be the objective underlying his work. He should conduct himself with honesty, dignity & sincerity. He should be industrious. He should equip himself well in the field of law and also acquire- knowledge in other fields: Arts, Science. Social Sciences etc. His conduct should be in keeping with the great traditions of the legal profession.

**Officer of the court:**

An advocate must assist in the administrator of justice. For this he has a code of ethics to follow:

i) **Toutism:**

"Tout" is a person who acts like an agent and procures to an advocate an employment and he does this for some consideration or remuneration paid by the advocate. He is a procurer of clients. It is professional misconduct to appoint such touts or to get clients through them, directly or indirectly.

**ii) Advertisement:**

The general rule of professional etiquette is that an advocate should not advertise in any media to get business for him. Any such advertisement amounts to unprofessional conduct.

**iii) Traffic in litigation:**

No advocate should directly or indirectly resort to traffic in litigation. The objective is to curb the litigious tendency in public interest. Such a traffic in litigation is an unprofessional conduct.

**iv) False Certificates:**

Filing false certificates by an advocate of the receipt of fees to obtain a promissory note or a bond for fees is unprofessional.

v) **Misappropriation:** It is professional misconduct for an advocate to misappropriate the client's money.

**vi) Purchasing client's property:**

The advocate should not, for himself or for other person purchase in a court action any property of his client.

**vii) Negligence:**

Wilful negligence or carelessness of the Advocate in appearing or in conducting the case of his client, Failure to communicate the decision of the court to the client, or its proceedings etc. are examples.

**viii) Appearing for opposite party:**

No advocate should directly or indirectly take up the case of the opposite party. This applies in case of appeals also. Similarly he should not betray the confidence the client has reposed in him.

The contents of the documents and records of the client should not be disclosed, except with the permission of the client. He must not do anything which may damage the interests of his client. He should not make admissions or resort to compromises without the consent of his client. He should not give evidence as witness against his client. If it turns out that in the interest of justice he must give evidence, he must retire from the case, before tendering evidence as a witness.

It may be difficult to mention all the ethical norms which are unprofessional. But the touchstone for testing is that all those acts which are unbecoming of the legal profession are generally professional misconduct. There is an appeal to the Bar Council of India and a further appeal to the Supreme Court of India. **Thus, these ethical norms have the legal "sanction" and are not mere moral principles.**

## CHAPTER 4

### Ch.4 RIGHTS & PRIVILEGES OF ADVOCATES

The legal profession is one of the noblest and the brilliant professions. Advocates have a number of rights and privileges, apart from their duties.

1. An advocate has a personal right or privilege to practice law. It is a franchise right to him given by the State.

2. To become a member of the Bar, to represent his client in any court in India and to claim audience in the court are his privileges.

3. An advocate while going to the court, during the proceedings and while returning from the court, is exempted from civil arrest. This privilege is based on public interest and sound administration of Justice (Sn.135-Civil Procedure Code) This does not apply to arrest for contempt of court or arrests for criminal offences.

4. With the vakalatnama, the advocate gets his exclusive privilege to represent his client. No other advocate can take up that case, without his consent.

5. An advocate is eligible to be appointed as a Magistrate, Munsiff or a judge of the High Court or the Supreme Court, or as an Advocate General or Attorney General for India etc.

6. An advocate has a right of access to a judge in urgent judicial matters during day and night. The judge will hear the advocate beyond court hours at his discretion and convenience.

7. An advocate has a right to his fees. Of course, he cannot sue his client for the recovery of his fee, he may exercise a lien over the documents and papers of the client.

8. It is the privilege of an advocate to appear in the prescribed robes in the courts.

9. Though an advocate is not allowed to have any engagement except law, the Bar Council of India has in its Code of Ethics allowed an advocate to engage himself in various

employments. He may become an M.P., M.L.A. or M.L.C. He may become a member of the co-operative society, he may act as an arbitrator. He may accept appointment to teach law, to write books, articles etc.

Thus an advocate has an enviable position in society. As a member of the learned legal profession he has a leading role to play in the field of politics, in upholding and fighting for the fundamental and others legal rights of the individuals, in uplifting and protecting the down-trodden sections of the society, in espousing the cause of the weaker sections of the society.

History is full of such illustrious advocates who have championed these causes, and stood for the highest professional standards of the legal profession.

## **CHAPTER 5**

### **CH.5 DUTIES OF ADVOCATES**

An advocate has a duty to the court, duty to the client, duty to the profession, duty to the opponent and duty to himself.

The Bar Council of India has formulated a code of duties of the Advocates.

#### **Primary Duties:**

An advocate should uphold the Constitution of India and assist in enforcing the fundamental Rights and the Rule of Law. He should be honest and sincere, in all professional dealings. He should be a gentleman.

Moral-excellence is his watch word. He should maintain his dignity and self-respect and should not undersell himself.

#### **Duties to the Court:**

The advocate should show respect to the judiciary and should not do any thing to undermine its prestige. He should not exert any personal influence on the court. He should not speak ill of the judges.

He must attend the hearing of his cases or should make proper arrangement to attend. He should not make a show of his familiarity with the judges nor should he do anything to affect the dignity and impartiality of the judges.

He should not mislead the court, by citing a repealed statute or an overruled decision etc. He should not make false pleadings, petitions etc.

He should be punctual and conduct himself in the court with dignity and candor.

#### **Duty to the client:**

It is 'the primary duty of the advocate to give proper advice to

his client, and for this purpose, hear him patiently, and use his own skill and knowledge to the best advantage of the client. He should not disclose communications which are "privileged" according to the Evidence Act.

The Advocate should not accept a brief which is against his professional conduct or which is not in the best interests of the administration of Justice. If, he is to give evidence as a witness, then he must not accept such a brief.

An advocate should not refuse to defend an accused. It is his duty to put the defence to the best of his ability and to protect the life and personal liberties of individuals.

In civil or in criminal cases, once the advocate is appointed, he should not withdraw without valid excuse. Non-payment of full fee is no reason to withdraw.

### **Client's interest and properties:**

An advocate should not take advantage of the confidence reposed in him by the client. He must maintain regular and correct accounts of all credits and debits of his client. Amounts received through the court or from other parties must be properly accounted for. He may deduct his fees and refund the balance to the client. He has a lien over the documents and papers until his fee is paid.

He should not have any interest in the subject matter of litigation. He should not bid or purchase his client's properties.

### **Duty to the legal profession:**

#### **i) Toutism:**

"Tout" is a person who acts like an agent and procures to an advocate an employment and he does this for some consideration or remuneration paid by the advocate. He is a procurer of clients. It is professional misconduct to appoint such touts or to get clients through them, directly or indirectly.

#### **ii) Advertisement:**

The general rule of professional etiquette is that an advocate should not advertise in any media to get business for him. Any such advertisement amounts to unprofessional conduct.

#### **iii) Traffic in litigation:**

No advocate should directly or indirectly resort to traffic in litigation. The objective is to curb the litigious tendency in public interest. Such a traffic in litigation is an unprofessional conduct.

#### **iv) False Certificates:**

Filing false certificates by an advocate of the receipt of fees to obtain a promissory note or a bond for fees is unprofessional.

v) **Negligence:**

Wilful negligence or carelessness of the Advocate in appearing or in conducting the case of his client, Failure to communicate the ..decision of the court to the client, or its proceedings etc. are examples of misconduct.

vi) **Appearing for opposite party:**

No advocate should directly or indirectly take up the case of the opposite party. This applies in case of appeals also. Similarly he should not betray the confidence the client has reposed in him.

**Duty to opponent:** As an advocate belongs to the noblest and the highly esteemed legal profession, he should be fair to the opposite party and to his advocate. No doubt, an advocate will be fighting a battle for his client, but at the same time, he is assisting the courts in the administration of justice. He should give due respect to the counsel, and should not interrupt unnecessarily, or laugh at or do anything to degrade the opposite counsel.'

**Duty to self:** An advocate should be independent, and maintain his dignity and professional conduct. He must be highly equipped in his profession and should be fearless and sincere. He should not tender false documents or produce knowingly false witnesses. He should not take up a false case or a case where he himself may be called a witness.

**He must be industrious and tactful. According to Abbot Parry J, he must have the seven qualities:- Honesty, courage, Industry, wit, eloquence, judgment and fellowship.**

Lord Eldon has said '**An advocate must live like a hermit and work like a horse**'. These qualities and duties bring success to the advocate and glory to the prestigious legal profession of which he is a proud and privileged member

**. THE END**

# REFERENCE SECTION

## SELECTED SECTIONS

### THE ADVOCATES ACT, 1961.

#### Sn.2. Definitions.

(a) "advocate" means an advocate entered in any roll under the provisions of this Act;

(h) "law graduate" means a person who has obtained a bachelors degree in law from any University established by law in India;

(i) "legal practitioner" means an advocate or vakil of any High Court, a pleader, mukhtar or revenue agent;

**(2) A State Bar Council shall** consist of the following members, namely:--

(a) in the case of the State Bar Council of Delhi, the **Additional Solicitor-General of India, ex officio**; State Bar Council, the Advocate-General of the State, ex officio;

4\*[(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 a 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:]

5\*[Provided that as nearly as possible one-half of such elected members shall, be persons who have for at least ten years been advocates on a State roll,

1\*[(3) There shall be a Chairman and a Vice-Chairman of each State Bar Council elected by the Council in such manner as may be prescribed.

2\*[(4) An advocate shall be disqualified from voting at an election under sub-section (2) or for being chosen as, and for being, a member of a State Bar Council, unless he possesses such qualifications or satisfies such conditions as may be prescribed in this behalf by the Bar Council of India, and subject to any such rules that may be made, an electoral roll shall be prepared and revised from time to time by each State Bar Council.

**4. Bar Council of India.**-(1) There shall be a Bar Council for the territories to which this Act extends to be known as the Bar Council of India which shall consist of

(a) the Attorney-General of India, ex officio;

(b) the Solicitor-General of India, ex officio;

(c) one member elected by each State Bar Council from amongst its members.

2) There shall be a Chairman and a Vice-Chairman of the Bar Council of India elected by the Council in such manner as may be prescribed.

3) The term of office of a member of the Bar Council of India elected by the State Bar Council shall--

in the case of a member of a State Bar Council who holds office ex officio, **be two years** from the date of election 2\*[or till he ceases to be a member of the State Bar Council, whichever is earlier]; and

(ii) in any other case, be for the period for which he holds office as a member of the State Bar Council:

#### **5. Bar Council to be body corporate.**

Every Bar Council shall be a body corporate having perpetual succession and a common seal, with power to acquire and hold property, both movable and immovable, and to contract, and may be the name by which it is known sue and be sued.

#### **6. Functions of State Bar Councils.-** (1) The functions of a State

Bar Council shall be--(a) to admit persons as advocates on its roll;

(b) to prepare and maintain such roll; (c) to entertain and determine cases of misconduct against advocates on its roll; (d) to safeguard the rights, privileges and interests of advocates on its roll;

dd) to promote the growth of Bar Associations for the purposes of effective implementation of the welfare schemes (e) to promote and support law reform;

ee) to conduct seminars and organise talks on legal topics by eminent jurists and publish journals and papers of legal interest;

(eee) to organise legal aid to the poor in the prescribed manner;]

(f) to manage and invest the funds of the Bar Council; (g) to provide for the election of its members;

\*[(gg) to visit and inspect Universities in accordance with the directions given under clause (i) of sub-section (1) of section 7;]

(h) to perform all other functions conferred on it by or under this Act;

**(i) to do all other things necessary for discharging the aforesaid functions.**

2) **A State Bar Council** may constitute one or more funds

(a) giving financial assistance to organise welfare schemes for the indigent, disabled or other advocates;

(b) giving legal aid or advice in accordance with the rules made in this behalf; establishing law libraries.]

(3) A State Bar Council may receive any **grants, donations, gifts** or benefactions for all or any of the purposes specified in sub-section (2) which shall be credited to the appropriate fund or funds constituted under that sub-section.]

#### **7. Functions of Bar Council of India.**

The functions of the Bar Council of India shall be--

(b) to lay down standards of professional conduct and etiquette for advocates;

(c) to lay down the procedure to be followed by its disciplinary committee and the disciplinary committee of each State Bar Council;

(d) to safeguard the rights, privileges and interests of advocates;

(e) to promote and support law reform;

(f) to deal with and dispose of any matter arising under this Act, referred to it by a State Bar Council;

(g) to exercise general supervision and control over State Bar Councils;

**(h) to promote legal education and to lay down standards of such education in consultation with the Universities** in India imparting such education and the State Bar Councils;

**(i) to recognise 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 give in this behalf;]

- ia) to conduct seminars and organise talks on legal topics by eminent jurists and publish journals and papers of legal interest;
- (ib) to organise legal aid to the poor in the prescribed manner;
- (ic) to recognise on a reciprocal basis foreign qualifications in law obtained outside India for the purpose of admission as an advocate under this Act;]
- (j) to manage and invest the funds of the Bar Council;
- (k) to provide for the election of its members;
- (l) to perform all other functions conferred on it by or under this Act;
- (m) **to do all other things necessary for discharging the aforesaid functions.**

2) The Bar Council of India may constitute one or more funds in the prescribed manner for the purpose of--

- (a) giving financial assistance to organise welfare schemes for indigent, disabled or other advocates;
- (b) giving legal aid or advice in accordance with the rules made in this behalf.
- c, establishing law libraries.

(3) The **Bar Council of India may receive any grants**, donations, gifts or benefactions for all or any of the purposes specified in sub-section (2) which shall be credited to the appropriate fund or funds

7A. Membership in international bodies.

The Bar Council of India may become a member of international legal bodies such as the International Bar Association or the International Legal Aid Association, contribute such sums as it thinks fit to such bodies by way of subscription or otherwise and authorise expenditure on the participation of its representatives in any international legal conference or seminar.]

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 **shall be five years** from the date of publication of the result of his election:

8A. Constitution of **Special Committee** in the absence of election.---

- (i) the ex officio member of the State Bar Council to be the Chairman;
- (ii) two members to be nominated by the Bar Council of India from amongst advocates on the electoral roll of the State Bar Council, to discharge the functions of the State Bar Council until the Bar Council is constituted under this Act. (a) all properties and assets vesting in the State Bar Council shall vest in the Special Committee;
- (b) all rights, liabilities and obligations of the State Bar Council, whether arising out of any contract or otherwise, shall be the rights, liabilities and obligations of the Special Committee;
- (c) all proceedings pending before the State Bar Council in respect of any disciplinary matter or otherwise shall stand transferred to the Special Committee.

shall, in accordance with such directions as the Bar Council of India may give to it in this behalf, hold elections to the State Bar Council within a period of six months

**Disciplinary committees.**-(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.

**9A. Constitution of legal aid committees.**- (1) A Bar Council may constitute one or more legal aid committees each of which shall consist of such number of members, **not exceeding nine** but not less than five, as may be prescribed.

**10. Constitution of committees other than disciplinary committees.**- (1) A State Bar Council shall constitute the following standing committees, namely:--

- (a) an **executive committee** consisting of five members elected by the Council from amongst its members;
- b) an **enrolment committee** consisting of three members elected by the Council from amongst its members.

(2) **The Bar Council of India shall** constitute

- (a) an **executive committee consisting** of nine members elected by the Council from amongst its members;
- (b) a **legal education committee** consisting of ten members, of whom five shall be persons elected by the Council from amongst its members and five shall be persons co-opted by the Council who are not members thereof.

**10B.] Disqualification of members of Bar Council.**- An elected member of a Bar Council shall be deemed to have vacated his office if he is declared by the Bar Council of which he is a member to have been absent without sufficient excuse from three consecutive meetings of such Council, or if his name is, for any cause, removed from the roll of advocates or if he is otherwise disqualified under any rule made by the Bar Council of India.]

**11. Staff of Bar Council.**- (1) Every Bar Council shall appoint a secretary and may appoint an accountant and such number of other persons on its staff as it may deem necessary.

(2) The secretary and the accountant,

59.12.Accounts and Audit.

**13. Vacancies in Bar Council and committees thereof not to invalidate action taken.**-No act done by a Bar Council or any committee thereof shall be called in question on the ground merely of the existence of any vacancy in, or any defect in the constitution of, the Council or committee, as the case may be.

**15. Power to make rules.**- (1) A Bar Council may provide for--

2\*[(a) the election of members of the Bar Council by secret ballot

2\*[(c) the manner of election of the Chairman and the Vice-Chairman of the Bar Council;]

(f) the filling of casual vacancies in the Bar Council;

(g) the powers and duties of the Chairman and the Vice-Chairman of the Bar Council;

4\*[(ga) the **constitution of one or more funds by** a Bar Council for the purpose of giving financial assistance or giving legal aid advice to the poor,

(i) the constitution and functions of any committee of the Bar Council and the term of office of members of any such committee;

- (j) the summoning and holding of meetings, the conduct of business of any such committee, and the number of members necessary to constitute a quorum;
- (k) the qualifications and the conditions of service of the secretary, the accountant and other employees of the Bar Council;
- (l) the maintenance of books of accounts and other books by the Bar Council;
- m) the appointment of auditors and the audit of the accounts of the Bar Council;
- (n) the management and investment of the funds of the Bar Council.

### CHAPTER III                    **ADMISSION AND ENROLMENT OF ADVOCATES**

**16. Senior and other advocates.**-(1) There shall be two classes of advocates, namely, senior advocates and other advocates.

(2) An advocate may, with his consent, be designated as senior advocate if the Supreme Court or a High Court is of opinion that by virtue of his ability, 1\*[standing at the Bar or special knowledge or experience in law] he is deserving of such distinction.

(3) Senior advocates shall, in the matter of their practice, be subject to such restrictions as the Bar Council of India may, in the interests of the legal profession, prescribe.

**17. State Bar Councils to maintain roll of advocates.**- (1) Every State Bar Council shall prepare and maintain a roll of advocates in which shall be entered the names and addresses of--

(a) all persons who were entered as advocates on the roll of any High Court under the Indian Bar Councils Act, 1926.(38 of 1926), express an intention in the prescribed manner to practise within the jurisdiction of the Bar Council;

.(b) all other persons who are admitted to be advocates on the roll of the State Bar Council under this Act on or after the appointed day.

(2) Each such roll of advocates shall consist of two parts, the first part containing the names of senior advocates and the second part, the names of other advocates.

(3) Entries in each part of the roll of advocates prepared and maintained by a State Bar Council under this section shall be in the order of seniority,

(4) **No person shall be enrolled as an advocate on the roll of more than one State Bar Council.**

**18. Transfer of name from one State roll to another.** 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 same

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

**22. Certificate of enrolment.**- (1) There shall be issued a certificate of enrolment in the prescribed form by the State Bar Council to every person whose name is entered in the roll of advocates maintained by it

(2) Every person whose name is so entered in the State roll shall notify any change in the place of his permanent residence to the State Bar Council concerned within ninety days of such change.]

23. **Right of audience.**-(1) The Attorney-General of India shall have pre-audience over all other advocates. (2) Subject to the provisions of sub-section (1), the Solicitor-General of India shall have pre-audience over all other advocates. (3) Subject to the provisions of sub-sections (1) and (2), the Additional Solicitor-General of India shall have pre-audience over all other advocates. (5) Subject as aforesaid--(i) senior advocates shall have pre-audience over other advocates, and (ii) the right of pre-audience of senior advocates inter se and other advocates inter se shall be determined by their respective seniority.

24. **Persons who may be admitted as advocates on a State roll.-(1)**

(a) he is a citizen of India:

.Provided that subject to the other provisions contained in this Act, a national of any other country may be admitted as an advocate on a State roll, if citizens of India, duly qualified, are permitted to practise law in that other country;

(b) he has completed the age of **twenty-one years**;

(c) he has obtained a degree in law--

after undergoing a **three-year course** of study in law from any University in India which is recognised for the purposes of this Act by the Bar Council of India; or

(iii) after undergoing a course of study in law, the duration of which is not less **than two academic years** he is a **barrister and** is called to the Bar

(e) he fulfils such other conditions as may be specified in the rules made by the State Bar Council f) he has paid, in respect of the enrolment, stamp duty, and an enrolment fee payable to the State Bar Council of **six hundred rupees and** to the Bar Council of India, **one hundred and fifty rupees**

Scheduled Castes or the Scheduled Tribes \* [one hundred rupees and to the Bar Council of India, twenty-five rupees".]

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;

(b) if he is convicted of an offence under the provisions of of the Untouchability (Offences) Act,

c) if he is dismissed or removed from employment or office under the State on any charge involving moral turpitude.

Provided that the disqualification for enrolment as aforesaid shall cease to have effect after a period of two years has elapsed since his released or dismissal or, as the case may be, removal]

25. **Authority to whom applications for enrolment may be made.**- An application for admission as an advocate shall be made in the prescribed form to the State Bar Council within whose jurisdiction the applicant proposes to practise.

26. **Disposal of applications** for admission as an advocate.- (1) A

State Bar Council shall refer every application for admission as an advocate to its enrolment committee, and subject to the provisions of sub-sections (2) and (3) 6\* [and to any direction that may be given in writing by the State Bar Council in this behalf], such committee shall dispose of the application in the prescribed manner:

Provided that the Bar Council of India may, if satisfied, either on a reference made to it in this behalf or otherwise, that any person has got his name entered on the roll of advocates by misrepresentation as to an

essential fact or by fraud or undue influence, remove the name of such person from the roll of advocates after giving him an opportunity of being heard.]

(2) Where the enrolment **committee of a State Bar Council proposes to refuse any such application, it shall refer the application for opinion to the Bar Council of India** and every such reference shall be accompanied by a statement of the grounds in support of the refusal of the application. .

24) **Where the enrolment committee of a State Bar Council** has refused any application for admission as an advocate on its roll, the State Bar Council shall, as soon as may be, send intimation to all other State Bar Councils about such refusal stating the name, address and qualifications of the person whose application was refused and the grounds for the refusal.]

26A. **Power to remove names from roll.**- A State Bar Council may remove from the State roll the name of any advocate who is dead or from whom a request has been received to that effect.]

27. **Application once refused not to be entertained by another Bar Council except in certain circumstances.** except with the previous consent in writing of the State Bar Council which refused the application and of the Bar Council of India.

**28. Power to make rules.**- (1) A State Bar Council may make rules to carry out the purposes of this Chapter.

### **RIGHT TO PRACTISE**

29. **Advocates to be the only recognised class of persons entitled to practise law.**

30. **Right of advocates to practise.** Subject to the provisions of this Act, every advocate whose name is entered in the 1\*[State roll] shall be entitled as of right to practise throughout the territories to which this Act extends,--

(i) in all courts including the Supreme Court; (ii) before any tribunal or person legally authorised to take evidence; and (iii) before any other authority or person before whom such advocate is by or under any law for the time being in force entitled to practise.

32. **Power of court to permit appearances** in particular cases. Notwithstanding anything contained in this Chapter, any court, authority, or person may permit any person, not enrolled as an advocate under this Act, to appear before it or him in any particular case.

33. **Advocates alone entitled to practise.**

34. **Power of High Courts to make rules.** (1) The High Court may make rules laying down the conditions subject to which an advocate shall be permitted to practise in the High Court and the courts subordinate thereto.

## **CHAPTER V CONDUCT OF ADVOCATES**

35. **Punishment of advocates for misconduct.**

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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.

1A) The State Bar Council may, either of its own motion or on application made to it by any person interested, withdraw a proceeding pending before its disciplinary committee and direct the inquiry to be made by any other disciplinary committee of that State Bar Council.]

(2) The disciplinary committee of a State Bar Council shall fix a date for the hearing of the case and shall cause a notice thereof to be given to the advocate concerned and to the Advocate-General of the State.

(3) The **disciplinary committee** of a State Bar Council after giving the advocate concerned and the Advocate-General an opportunity of being heard, may make any of the following orders, namely:--

(a) dismiss the complaint or, where the proceedings were initiated at the instance of the State Bar Council, direct that the proceedings be filed;

(b) reprimand the advocate;

(c) suspend the advocate from practice for such period as it may deem fit;

(d) remove the name of the advocate from the State roll of advocates.

(4) **Where an advocate is suspended from practice** he shall, during the period of suspension, be debarred from practising in any court or before any authority or person in India.

**36. Disciplinary powers of Bar Council of India.**- (1) Where on receipt of a complaint or otherwise the Bar Council of India has reason to believe that any advocate whose name is not entered on any State roll has been guilty of professional or other misconduct, it shall refer the case for disposal to its disciplinary committee.

(2) Notwithstanding anything contained in this Chapter, the disciplinary committee of the Bar Council of India may, either of its own motion or on a report by any State Bar Council or on an application made to it by any person interested], withdraw for inquiry before itself any proceedings for disciplinary action against any advocate pending before the disciplinary committee of any State Bar Council and dispose of the same.

(3) The disciplinary committee of the Bar Council of India, in disposing of any case under this section, shall observe, so far as may be, the procedure laid down in section 35, the references to the Advocate-General in that section being construed as references to the Attorney-General of India.

(4) In disposing of any proceedings the disciplinary committee of the Bar Council of India may make any order which the disciplinary committee of a State Bar Council can make under sub-section

**36B. Disposal of disciplinary proceedings.**- (1) 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.(2)

**37. Appeal to the Bar Council of India.**- (1) Any person aggrieved by an order of the disciplinary committee

of a State Bar Council made may, within sixty days of the date of the communication of the order to him, prefer an appeal to the Bar Council of India.

73.(2) Every such appeal shall be heard by the disciplinary committee of the Bar Council of India which may pass such order including an order varying the punishment awarded by the disciplinary committee of the State Bar Council thereon as it deems fit:

Provided that no order of the disciplinary committee of the State Bar Council shall be varied by the disciplinary committee of the Bar Council of India so as to prejudicially affect the person aggrieved without giving him reasonable opportunity of being heard.

**38. Appeal to the Supreme Court.**- Any person aggrieved by an order made by the disciplinary committee of the Bar Council of India under section 36 or section 37 2\*[or the Attorney-General of India or the Advocate-General of the State concerned, as the case may be,] may, within sixty days of the date on which the order is communicated to him, prefer an appeal to the Supreme Court and the Supreme Court may pass such order 2\*[including an order varying the punishment awarded by the disciplinary committee of the Bar Council of India)] thereon as it deems fit:

Provided that no order of the disciplinary committee of the Bar Council of India shall be varied by the Supreme Court so as to prejudicially affect the person aggrieved without giving him a reasonable opportunity of being heard.]

40. Stay of order.- 1)] An appeal, made under section 37 or section 38, shall not operate as a stay of the order appealed against, but the disciplinary committee of the Bar Council of India, or the Supreme Court, as the case may be, may, for sufficient cause, direct the stay of such order on such terms and conditions as it may deem fit.

2) Where an application is made for stay of the order before the expiration of the time allowed for appealing there from under section 37 or 74.section 38, the disciplinary committee of the State Bar Council, or the disciplinary committee of the Bar Council of India, as the case may be, may, for sufficient cause, direct the stay of such order on such terms and conditions as it may deem fit.]

**41. Alteration in roll of advocates.**- (1) Where an order is made under this Chapter reprimanding or suspending an advocate, a record of the punishment shall be entered against his name--

(a) in the case of an advocate whose name is entered in a State roll, in that roll;

and where any order is made removing an advocate from practice, his name shall be **struck off the State**

roll (3) Where any advocate is suspended or removed from practice, the certificate granted to him under section 22, in respect of his enrolment shall be recalled.

**42. Powers of disciplinary committee.**- (1) The disciplinary committee of a Bar Council shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters, namely:--

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring discovery and production of any documents;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copies thereof from any court or office;

(e) Issuing commissions for the examination of witnesses or documents;

(f) any other matter which may be prescribed:

Provided that no such disciplinary committee shall have the right to require the attendance of--

(a) any presiding officer of a court except with the previous sanction of the High Court to which such court is subordinate;

(b) any officer of a revenue court except with the previous sanction of the State Government.

(2) All proceedings before a disciplinary committee of a Bar Council shall be deemed to be judicial proceedings

(5) **Where no final orders of the nature referred** to in sub-section (3) of section 35 can be made in any proceedings in accordance with the opinion of the Chairman and the members of a disciplinary committee either for want of majority opinion amongst themselves or otherwise, the case, with their opinion thereon, shall be laid before the Chairman of the Bar Council concerned or if the Chairman of the Bar Council is acting as the Chairman or a member of the disciplinary committee, before the Vice-Chairman of the Bar Council, and the said Chairman or the Vice-Chairman of the Bar Council, as the case may be, after such hearing as he thinks fit, shall deliver his opinion and the final order of the disciplinary committee shall follow such opinion .

**44. Review of orders by disciplinary committee.**- The disciplinary committee of a Bar Council may of its own motion or otherwise review any order 2\*[within sixty days of the date of that order] passed by it under this Chapter:

Provided that no such order of review of the disciplinary committee of a State Bar Council shall have effect unless it has been approved by the Bar Council

**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.

**48A. Power of revision.**- (1) The Bar Council of India may, at any time, call for the record of any proceeding under this Act which has been disposed of by a State Bar Council or a committee thereof, and from which no appeal lies, for the purpose of satisfying itself as to the legality or propriety of such disposal and may pass such orders in relation thereto as it may think fit. (2) No order which prejudicially affects any person shall be passed under this section without giving him a reasonable opportunity of being heard.

**48AA. Review.**- The Bar Council of India or any of its committee, other than its disciplinary committee, may of its own motion or otherwise review any order, within sixty days of the date of that order, passed by it under this Act.]

**48B. Power to give directions.**- (1) For the proper and efficient discharge of the functions of a State Bar Council or any committee thereof, the Bar Council of India may, in the exercise of its powers of general supervision and control, give such directions to the State Bar Council or any committee thereof as may appear to it to be necessary, and the State Bar Council or the committee shall comply with such directions.

**49. General power of the Bar Council of India to make rules.--**

1\*[(1)] The Bar Council of India may make rules for discharging its functions under this Act, and, in particular, such rules may prescribe--2\*[(a) the conditions subject to which an advocate may be entitled to vote at an election to the State Bar Council including the qualifications or disqualifications of voters, and the manner in which an electoral roll of voters may be prepared and revised by a State Bar Council;

- (ab) qualifications for membership of a Bar Council and the disqualifications for such membership;
- (ac) the time within which and the manner in which effect may be given to the proviso to sub-section (2) of section 3; (ad) the manner in which the name of any advocate may be prevented from being entered in more than one State roll; (ae) the manner in which the seniority among advocates may be determined;
- 3\*[(af) the minimum qualifications required for admission to a course of degree in law in any recognized University;](ag) the class or category of persons entitled to be enrolled as advocates;
- (ah) the conditions subject to which an advocate shall have the right to practise and the circumstances under which a person shall be deemed to practise as an advocate in a court;]
- (b) the form in which an application shall be made for the transfer of the name of an advocate from one State roll to another; (c) the standards of professional conduct and etiquette to be observed by advocates;
- (d) the standards of legal education to be observed by Universities in India and the inspection of Universities for that purpose;**
- .(e) the foreign qualifications in law obtained by persons other than citizens of India which shall be recognised for the purpose of admission as an advocate under this Act; (f) the procedure to be followed by the disciplinary committee of a State Bar Council and by its own disciplinary committee;
- (g) the restrictions in the matter of practice to which senior advocates shall be subject;
- gg) the form of dresses or robes to be worn by advocates, having regard to the climatic conditions, appearing before any court or tribunal;] (h) the fees which may be levied in respect of any matter under this Act; i) general principles for guidance of State Bar Councils and the manner in which directions issued or orders made by the Bar Council of India may be enforced;
- (j) any other matter which may be prescribed:]**

**THE END**

