

THE ADVOCATES ACT, 1961

CHAPTER 1 PRELIMINARY

1. Short title, extent and commencement

(1) This Act may be called the Advocates Act, 1961.

(2) It extends to the whole of India.

(3) It shall, in relation to the territories other than those referred to in sub-section (4), come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act.

(4) This Act shall, in relation to the State of Jammu and Kashmir and the Union territory of Goa, Daman and Diu, come into force on such date as the Central Government may, by notification in the Official Gazette, appoint in this behalf, and different dates may be appointed for different provisions of this Act.

2. Definitions

(1) In this Act, unless the context otherwise requires:

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

(b) "appointed day", in relation to any provision of this Act, means the day on which that provision comes into force;

(c) [Omitted by Act 107 of 1976, w.e! 15-10-1976]

(d) "Bar Council" means a Bar Council constituted under this Act;

(e) "Bar Council of India" means the Bar Council constituted under section 4 for the territories to which this Act extends;

(f) [Omitted by Act 60 of 1973, w.e! 31-1-1974]

(g) "High Court", except in sub-section (1) and sub-section (IA) of section 34 and in sections 42 and 43, does not include a court of the Judicial Commissioner, and, in relation to a State Bar Council, means:

(i) in the case of a Bar Council constituted for a State

or for a State and one or more Union Territories, the High Court for the State;

(ii) in the case of the Bar Council constituted for Delhi, the High Court of Delhi;

(h) "law graduate" means a person who has obtained a bachelor's 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;

(j) "prescribed" means prescribed by rules made under this Act;

(k) "roll" means a roll of advocates prepared and maintained under this Act;

(l) "State" does not include a Union Territory;

(m) "State Bar Council" means a Bar Council constituted under section 3;

(n) "State roll" means a roll of advocates prepared and maintained by a State Bar Council under section 17.

(2) Any reference in this Act to a law which is not in force in the State of Jammu and Kashmir or in the Union Territory of Goa, Daman and Diu, shall, in relation to that State or that territory, be construed as a reference to the corresponding law, if any, in force in that State or that Territory, as the case may be.

COMMENTS

An advocate is an officer of the court and with that privilege responsibility must follow in its wake. His primary allegiance is to the court and it is no part of the professional duties of an advocate to act merely as a mouthpiece of his client. A member of the bar should use best efforts to restrain and prevent his client from resorting to any unfair or sharp practice.-AIR 1979 NOG 96.

CHAPTER 2 BAR COUNCILS

3. State Bar Councils

(1) There shall be a Bar Council

(a) for each of the States of Andhra Pradesh, Bihar, Gujarat, Jammu and Kashmir, Madhya Pradesh, Karnataka, Orissa, Rajasthan and Uttar Pradesh, to be known as the Bar Council of that State;

(b) for the States of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram Nagaland and Tripura to be known as the Bar Council of Assam, Nagaland, Meghalaya, Manipur, Tripura, Mizoram and Arunachal Pradesh;]

(c) for the State of Kerala and the Union Territory of Lakshadweep, Minicoy and Amindivi islands to be known as the Bar Council of Kerala; (cc) for the State of Tamil Nadu and the Union Territory of Pondicherry to be known as the Bar Council of Madras;

2[(ccc) for the States of Maharashtra and Goa and the Union Territories of Dadra and Nagar Haveli and Daman and Diu, to be known as the Bar Council of Maharashtra and Goa;]

3[(d) for the States of Punjab and Haryana and the Union Territory of Chandigarh, to be known as the Bar Council of Punjab and Haryana;

(dd) for the State of Himachal Pradesh, to be known as the Bar Council of Himachal Pradesh;]

(e) for the State of West Bengal and the 4[Union territory of Andaman and Nicobar Islands], to be known as the Bar Council of West Bengal; and

(f) for the Union Territory of Delhi, to be known as the Bar Council of Delhi.

(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; I[in the case of the State Bar Council of Assam, Nagaland, Meghalaya, Manipur and Tripura, the Advocate-General of each of the States of Assam, Manipur, Meghalaya, Nagaland and Tripura, ex officio; in the case of the State Bar Council of Punjab and Haryana, the Advocate-General of each of the States of Punjab and Haryana, ex officio;] and in the

case of any other State Bar Council, the Advocate-General of the State, ex officio;

(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:]

3[PROVIDED that as nearly as possible one-half of such elected members shall, subject to any rules that may be made in this behalf by the Bar Council of India, be persons who have for at least ten years been advocates on a State roll, and in computing the said period of ten years in relation to any such person, there shall be included any period during which the person has been an advocate enrolled under the Indian fBar Councils Act, 1926 (38 of 1926).]

4[(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.

(3A) Every person holding office as Chairman or as Vice-Chairman of any State Bar Council immediately before the commencement of the Advocates (Amendment) Act, 1977 (38 of 1977) shall, on such commencement, cease to hold office as Chairman or Vice-Chairman, as the case may be :PROVIDED that every such person shall continue to carry on the duties of his office until the Chairman or the Vice-Chairman, as the case may be, of each State Bar Council, elected after the commencement of the Advocates (Amendment) Act, 1977 (38 of 1977), assumes charge of the office.]

3[(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 ~ar Council.

(5) Nothing in the proviso to sub-section (2) shall affect the term of office of any member elected before the commencement of the Advocates (Amendment) Act, 1964 (21 of 1964) but every election after such commencement shall be held in accordance with the provisions of the rules made by the Bar Council of India to give effect to the said proviso.]

1[(6) Nothing in clause (b) of sub-section (2) shall affect the representation of elected members in any Bar Council as constituted immediately before the commencement of the Advocates (Amendment) Act, 1973 (60 of 1973), until that State Bar Council is reconstituted in accordance with the provisions of this Act.]

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 the following members, namely:

- (a) the Attorney-General of India, ex officio;
- (b) the Solicitor-General of India, ex officio;
- (bb) [Omitted by Act 38 of 1977]
- (c) one member elected by each State Bar Council from amongst its members.

1[(1A) No person shall be eligible for being elected as a member of the Bar Council of India unless he possesses the qualifications specified in the proviso to sub-section (2) of section 3.]

2[(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.

(2A) A person holding office as Chairman or as Vice-Chairman of the Bar Council of India immediately before the commencement of the Advocates (Amendment) Act, 1977 (38 of 1977), shall, on such commencement, cease to hold office as Chairman or Vice-Chairman, as the case may be : PROVIDED that such person shall continue to carry on the duties of his office until the Chairman or the Vice-Chairman, as the case may be, of the Council, elected after the commencement of the Advocates (Amendment) Act, 1977 (38 of 1977), assumes charge of the office.]

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

(i) in the case of a member of a State Bar Council who holds office ex officio, be two years from the date of his election 1[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:

PROVIDED that every such member shall continue to hold as a member of the Bar Council of India until his successor is elected.]

COMMENTS

This clause provides for the establishment of an All-India Bar Council. The composition of the Bar Council is on the lines recommended by the All-India Bar Committee. The All-India Bar Committee has suggested that each State Bar Council should send one representative to the All-India Bar Council and where there are more than one thousand advocates on the roll of a State Bar Council, it should be entitled to send one additional representative. In view of a large number of persons having joined the legal profession in recent years and several States having become larger units on account of the recent reorganisation of States, the number of one thousand has been changed to three thousand."-SOR, Gaz. of India, 19-11-1959, Pt. II, s. 2, Ext., p. 1187.

In view of the decision of the Committee that Judges should not be represented on a Bar Council, original sub-cl. (a), which gives representation to Judges of the Supreme Court on the Bar Council of India, has been omitted. Since there will be a separate Bar Council for Delhi, original sub-cl. (d), which gives representation to the Supreme Court Bar Association on the Bar Council of India, has also been omitted. The Committee feels that the representation given to State Bar Councils on the Bar Council of India should be of a uniform pattern and that no distinction should be made between States, which have a large number of advocates and those which have a smaller number of advocates. Original sub-cl. (f) has accordingly been omitted.-J.C.R.-Gaz. of Ind., 28-3-1960, Pt. II, s. 2, Ext., p. 248.

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 by the name by which it is known sue and be sued.

COMMENTS

Bar Councils Act does not contain any provision for the dissolution of a Bar Council created under the Act, but from the very fact that the Bar Council is constituted for a particular High Court, it follows necessarily that when the High Court itself ceases to exist the Bar Council must also come to an end. It may continue to exist, as it is a body corporate only for winding up its affairs after the High Court for which it is constituted ceases to exist, but obviously it cannot carry out any function connected with the High Court which has ceased to exist.-AIR 1955 AI/269 (274). A State Bar Council being a corporate body having perpetual succession continues to exist and the mere circumstance that the term of office of its members has expired does not negative its existence. 1973 Sim LJ 260.

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 referred to in clause (a) of sub-section (2) of this section and clause (a) of sub-section (2) of section 7;]
- (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.

1[(2) A State Bar Council may constitute one or more funds in the prescribed manner for the purpose of

- (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;
- 2[(c) 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.

Sec. 6 lays down the functions of the State Bar Council and one of the functions of a State Bar Council is to admit persons as advocates on its roll if the conditions prescribed are fulfilled by the candidate. Therefore, a woman candidate who had obtained a degree of law of the Calcutta University as non-collegiate student is entitled to claim enrolment.-AIR 1983 Cal461

Having regard to the obligatory functions enjoined upon a State Bar Council under s. 6, the State Bar Council could be regarded as a body constituted for general public utility and entire income of the body would be exempt from tax under s. 11 of the Income Tax Act, 1961.-AIR 1981 SC 1462.

7. Functions of Bar Council of India

3[(1)] The functions of the Bar Council of India shall be

- (a) omitted by Act 600f1973
- (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, which may be 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; 2[or cause the State Bar Councils to visit and inspect universities in accordance with such directions as it may give in this behalf;]
- 4[(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.

1[(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; 2[(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 constituted under that sub-section.]

COMMENTS

The Bar Council is an autonomous body constituted under the Act and has to lay down standards of professional conduct and etiquette for advocates and, therefore, the court is not justified in exercising its inherent powers and prohibiting the advocate engaged by two persons from appearing for either on the ground th'at a conflict of interest has arisen between the persons who engaged the advocate.-1964 (1) Cri LJ 89 (AP)

7 A. 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.

COMMENTS

None of the functions of the Bar Council of India mentioned in section 7 authorise paralising of the working of courts in any manner. Disciplinary jurisdiction over advocates though vested in Bar Council, final authority is with Supreme Court. Thus even if Bar Councils do not rise to the occasion and perform their duties by taking disciplinary action on a complaint from a client against an advocate for non-appearance by reason of a call for strike or boycott, on appeal the Supreme Court can and will take action.- Ex Capt. Harish Uppal v. Union of India, AIR 2003 SC 739

3[8, Term of office of members of State Bar Council

(1) The term of office of an elected member of a State Bar Council (other than an elected member thereof referred to in section 54) shall be five years from the date of publication of the result of his election:

PROVIDED that where a State Bar Council fails to provide for the election of its members before the expiry of the said term, the Bar Council of India may, by order for reasons to be recorded in writing, extend the said term for a period not exceeding six months.

COMMENTS

Sec. 8 limits the term of office-bearers of a Council to five years and no more during which it should complete the process of election for next term.-1987 All we 440 SA.

8 A. Constitution of special committee in the absence of election

(1) Where a State Bar Council fails to provide for the election of its members before the expiry of the term of five years or the extended term, as the case may be, referred to in section 8, the Bar Council of India shall, on and from the date immediately following the day of such expiry, constitute a Special Committee consisting of:

(i) the ex officio member of the State Bar Council referred to in clause (a) of sub-section (2) of section 3 to be the Chairman: PROVIDED that where there are more than one ex officio members, the senior most amongst them shall be the Chairman; and

(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.

(2) On the constitution of the Special Committee and until the State Bar Council is constituted:

(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.

(3) The Special Committee constituted under sub-section (1) 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 from the date of its constitution under sub-section (1), and where, for any reason the Special Committee is not in a position to conduct election within the said period of six months, the Bar Council of India may, for reasons to be recorded by it in writing, extend the said period.]

9. 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.

(2) Notwithstanding anything contained in sub-section (1), any disciplinary committee constituted prior to the commencement of the Advocates (Amendment) Act, 1964 (21 of 1964) may dispose of the proceedings pending before it as if this section had not been amended by the said Act.

COMMENTS

None of the functions of the Bar Council of India mentioned in section 7 authorise paralysing of the working of courts in any manner. Disciplinary jurisdiction over advocates though vested in Bar Council, final authority is with Supreme Court. Thus even if Bar Councils do not rise to the occasion and perform their duties by taking disciplinary action on a complaint from a client against an advocate for non-appearance by reason of a call for strike or boycott, on appeal the Supreme Court can and will take action.- Ex Capt. Harish Uppal v. Union of India, AIR 2003 SC 739.

9 A. 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.

(2) The qualifications, the method of selection and the term of office of the member of a legal aid committee shall be such 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 the following standing committees, namely,

- (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.

(3) A State Bar Council and the Bar Council of India may constitute from amongst its members such other committees as it may deem necessary for the purposes of carrying out the provisions of this Act.

COMMENTS

A State Bar Council has been empowered to constitute more than one disciplinary committee, wherever necessary. The Committee consider that it is not necessary that all the members of a disciplinary committee should be members of the Bar Council although they must necessarily be advocates on the roll of the Bar Council.

1[10 A. Transaction of business by Bar Councils and committees thereof

2[(1) The Bar Council of India shall meet at New Delhi or at such other place as it may, for reasons to be recorded in writing, determine.

(2) A State Bar Council shall meet at its headquarters or at such other place as it may, for reasons to be recorded in writing, determine.]

(3) The committees other than disciplinary committees constituted by the Bar Councils shall meet at the headquarters of the respective Bar Councils.

(4) Every Bar Council and every committee thereof except the disciplinary committees shall observe such rules of procedure in regard to the transaction of business at their meetings as may be prescribed.

(5) The disciplinary committees constituted under section 9 shall meet at such times and places and shall observe such rules of procedure in regard to the transaction of business at their meetings as may be prescribed.]

1[10 B.] 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, if any, shall possess such qualifications as may be prescribed.

12. Accounts and audit

(1) Every Bar Council shall cause to be maintained such books of accounts and other books in such form and in such manner as may be prescribed.

(2) The accounts of a Bar Council shall be audited by auditors duly qualified to act as auditors of companies under the Companies Act, 1956 (1 of 1956), at such times and in such manner as may be prescribed.

2[(3) As soon as may be practicable at the end of each financial year, but not later than the 31st day of December of the year next following, a State Bar Council shall send a copy of its accounts together with a copy of the report of the auditors thereon to the Bar Council of India and shall cause the same to be published in the Official Gazette.

(4) As soon as may be practicable at the end of each financial year, but not later than the 31st day of December of the year next following, the Bar Council of India shall send a copy of its accounts together with a copy of the report of the auditors thereon to the Central Government and shall cause the same to be published in the Gazette of India.]

13. Vacancies in Bar Councils 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.

COMMENTS

Order of disciplinary committee of State Bar Council holding advocate guilty of professional misconduct was passed but two out of the three members present when the defence was closed and arguments were heard the order was held suffering from serious defects and could not be sustained and s. 13 was inapplicable as it could not be said that there was any "vacancy" in the Disciplinary Committee.-AIR 1976 SC 1739

14. Election to Bar Councils not to be questioned on certain grounds

No election of a member to a Bar Council shall be called in question on the ground merely that due notice thereof has not been given to any person entitled to vote thereat, if notice of the date has, not less than thirty days before that date, been published in the Official Gazette.

COMMENTS

Election to the Bar Council does not become invalid merely because notice of the election not published in the Official Gazette. The notice in the Official Gazette is, by s. 14, presumed to be constructive notice to all persons entitled to vote. But if individual notice has in fact been duly given, s. 14 does not come into play at all. This section does not make publication in the Official Gazette a mandatory requirement of the election process.-(1973) 3 Sim W (HP) 260

15. Power to make rules

(1) A Bar Council may make rules to carry out the purposes of this Chapter.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for

(a) the election of members of the Bar Council by secret ballot including the conditions subject to which persons can exercise the right to vote by postal ballot, the preparation and revision of electoral rolls and the manner in which the results of election shall be published;

(b) [Omitted by Act 60 of 1973];

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

(d) the manner in which and the authority by which doubts and disputes as to the validity of an election to the Bar Council³[or to the office of the Chairman or Vice-Chairman] shall be finally decided.

(e) [Omitted by Act 23 of 1966];

(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;

3[(ga) the constitution of one or more funds by a Bar Council for the purpose of giving financial assistance or giving legal aid or advice referred to in sub-section (2) of section 6 and sub-section (2) of section 7;

(gb) organisation of legal aid and advice to the poor, constitution and functions of committees and sub-committees for that purpose and description of proceedings in connection with which legal aid or advice may be given];

(h) the summoning and holding of meetings of the Bar Council, 4[* *]the conduct of business thereat, and the number of members necessary to constitute a quorum;

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

G) 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.

(3) No rules made under this section by a State Bar Council shall have effect unless they have been approved by the Bar Council of India.

COMMENTS

Sec. 15 can override the specific provision made in s. 3(4) and s. 49(1)(a) and the State Bar Council can frame rules for the preparation and revision of electoral rolls under s. 15(2)(a).-AIR 1980 SC 1612.

Question as to whether voting paper defaced and finality of decision of Advocate General or his nominee binding on Returning Officer and not on Election Tribunal.-Ram Avtar Khandelwal v. Bar Council of Rajasthan, AIR 2004 Raj. 259.

CHAPTER 3 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, [standing at the Bar or special knowledge of 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 interest of the legal profession, prescribe.

(4) An advocate of the Supreme Court who was a senior advocate of that court immediately before the appointed day shall, for the purposes of this section, be deemed to be a senior advocate:

2[PROVIDED that where any such senior advocate makes an application

before the 31st December, 1965 to the Bar Council maintaining the roll in which his name has been entered that he does not desire to continue as a senior advocate, the Bar Council may grant the application and the roll shall be altered accordingly].

COMMENTS

This clause provides for the division of the Bar into senior advocates and other advocates as recommended by the Law Commission. The status of a senior advocate will be conferred by the Supreme Court or a High Court on merit only. A senior advocate will be prohibited from accepting certain kinds of minor legal work like draftings, notices, affidavits, etc. A saving provision has been made in respect of the existing senior advocates of the Supreme Court who will continue to be designated as senior advocates.- S.O.R. Gaz. of Ind., 19-11-1959, Pt. II, s. 2, Ext., p. 1188.

The lawyers practicing in District Courts are equally eligible for consideration for the purpose of conferment of the distinction of being senior advocates subject to their fulfilling the prerequisite conditions laid down for the same.- AIR 2000 All 300.

Once the distinction between senior advocates and other advocates is recognised under the provisions of the Advocates Act, wearing of a distinct gown or a coat by senior advocates with a different design cannot be assailed as discriminatory or violative of Art. 14 of Constitution.- AIR 2002 Delhi 482.

Designated Senior Advocate is not supposed to file Restoration Application, for dismissal of petition in default, and vakalatnama by his signature. It is not in consonance with provisions of 1961 Advocate Act and 1975 Rules of Bar Council of India. He cannot say that since earlier he was junior council, he has legal right to file restoration application in his signature along with sworn affidavit of his clerk.-Ram Sagar Shukla v. Uttar Pradesh Textile Printing Corporation Ltd. AIR 2004 All 209.

After designation as senior advocate, senior counsel ceases to be counsel for the purpose of filing pleading, representing and engagement by a client. Senior advocate is not supposed to file vakalatnama of any client or any application in his own hand-writing. Conduct of senior advocate signing restoration application and got affidavit sworn by clerk attached to him is deprecated.-Brij Lal Patel v. V.P. State Agro Industrial Corporation AIR 2004 All 178.

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),

immediately before the appointed day 1 [including persons, being citizens of India, who before the 15th day of August, 1947, were enrolled as advocates under the said Act in any area which before the said date was comprised within India as defined in the Government of India Act, 1935, and who at any time] express an intention in the prescribed manner to practice 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, 2[and, subject to any rule that may be made by the Bar Council of India in this behalf, such seniority shall be determined] as follows:

(a) the seniority of an advocate referred to in clause (a) of subsection (1) shall be determined in accordance with his date of enrolment under the Indian Bar Council Act, 1926 (38 of 1926);

(b) the seniority of any person who was a senior advocate of the Supreme Court immediately before the appointed day shall, for the purposes of the first part of the State roll, be determined in accordance with such principles as the Bar Council of India may specify;

(c) [Omitted by Act 60 of 1973]

(d) the seniority of any other person who, on or after the appointed day, is enrolled as a senior advocate or is admitted as an advocate shall be determined by the date of such enrolment or admission, as the case may be;

1[(e) notwithstanding anything contained in clause (a), the seniority of an attorney enrolled whether before or after the commencement of the Advocates (Amendment) Act, 1980 as an advocate shall be determined in accordance with the date of his enrolment as an attorney.]

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

COMMENTS

A person whose name is entered on the roll of advocates is entitled to practice the profession of law in all the courts including the Supreme Court.-AIR 1985 Gau. 32.

An advocate already on the roll of a High Court should have the option to enrol himself on the State Bar Council within whose jurisdiction he proposes to practice. The Committee further consider that the seniority of a vakil, pleader or attorney who is enrolled as an advocate, whether before or after the commencement of this enactment, should be determined according to the date of his entry in the register of vakils, pleaders or attorneys. In addition, an advocate should not be enrolled on the roll of more than one State Bar Council.-J.C.R. Gaz. of Ind., 28-3-1960, Pt. II, s. 2, Ext., p. 249.

18. Transfer of name from one State roll to another

(1) Notwithstanding anything contained in section 17, any person whose name is entered as an advocate on the roll of any State Bar Council may make an application in the prescribed form to the Bar Council of India for the transfer of his name from the roll of that State Bar Council to the roll of any other State Bar Council and, on receipt of any such application the Bar Council of India shall direct that the name of such person shall, without the payment of any fee, be removed from the roll of the first mentioned State Bar Council and entered in the roll of the other State Bar Council and the State Bar Councils concerned shall comply with such direction:

2[PROVIDED that where any such application for transfer is made by a person against whom any disciplinary proceeding is pending or where for any other reason it appears to the Bar Council of India that the application for transfer has not been made bona fide and that the transfer should not be made, the bar Council of India may, after giving the person making the application an opportunity of making a representation in this behalf, reject the application].

(2) For the removal of doubts it is hereby declared that where on an application made by an advocate under sub-section (1), his name is transferred from the roll of one State Bar Council to that of another, he shall retain the same seniority in the latter roll to which he was entitled in the former roll.

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

Every State Bar Council shall send to the Bar Council of India an authenticated copy of the roll of advocates prepared by it for the first time under this Act and shall thereafter communicate to the Bar Council of India all alterations in, the addition to, any such roll, as soon as the same have been made.

1[20. Special provision for enrolment of certain Supreme Court advocates

(1) Notwithstanding anything contained in this chapter, every advocate who is entitled as of right to practise in the Supreme Court immediately before the appointed day and whose name is not entered in any State roll may, within the prescribed time, express his intention in the prescribed form to the Bar Council of India for the entry of his name in the roll of a State Bar Council and on receipt thereof the Bar Council of India shall direct that the name of such advocate shall, without payment of any fee, be entered in the roll of that State Bar Council, and the State Bar Council concerned shall comply with such direction.

(2) Any entry in the State roll made in compliance with the direction of the Bar Council of India under sub-section (1) shall be made in the order of seniority determined in accordance with the provisions of sub-section (3) of section 17.

(3) Where an advocate referred to in sub-section (1) omits or fails to express his intention within the prescribed time, his name shall be entered in the roll of the State Bar Council of Delhi].

COMMENTS

A person whose name is entered on the roll of advocates is entitled to practise the profession of law in all the courts including the Supreme Court.-AIR 1985 Gau 32.

21. Disputes regarding seniority

(1) Where the date of seniority of two or more persons is the same, the one senior in age shall be reckoned as senior to the other.

1[(2) Subject as aforesaid, if any dispute arises with respect to the seniority of any person, it shall be referred to the State Bar Council concerned for decision)

1[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 under this Act.

(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 pre-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.

2((3A) Subject to the provisions of sub-sections (1), (2) and (3), the

second Additional Solicitor-General of India shall have pre-audience over all other advocates.]

(4) Subject to the provisions of sub-sections (1),³[(2), (3) and (3A)], the Advocate-General of any State shall have pre-audience over all other advocates, and the right of pre-audience among Advocates-General inter se shall be determined by their respective seniority.

(5) Subject as aforesaid:

(i) senior advocates shall have pre-audience over other advocates; and

(ii) the right of pre-audience over senior advocates inter se and other advocates inter se shall be determined by their respective seniority.

COMMENTS

Sec. 23 merely determines the rights of advocates inter se to the pre-audience of the court on the basis of seniority. That is a matter to be settled among advocates themselves and in case of a dispute seniority shall confer the right of pre-audience but the section does not impose any bar on a junior advocate in the matter of conducting the case when no other advocate is present on behalf of the client.-1975 Cri LJ 337 (All).

24. Persons who may be admitted as advocates on a State roll

(1) Subject to the provisions of this Act, and the rules made thereunder, a person shall be qualified to be admitted as an advocate on a State roll, if he fulfills the following conditions, namely:

(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 practice law in that other country;

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

(c) he has obtained a degree in law:

(i) before the ¹[12th day of March, 1967], from any university in the territory of India; or

(ii) before the 15th day of August, 1947, from any university in any area which was comprised before that date within India as defined by the Government of India Act, 1935; or

²[(iii) after the 12th day of March, 1967, save as provided in sub-clause (iia) after undergoing a three year course of study in law from any university in India which is recognized for the purposes of this Act by the Bar Council of

India; or

(iiia) after undergoing a course of study in law, the duration of which is not less than two academic years commencing from the academic year 1967-68 or any earlier academic year from any university in India which is recognized for the purposes of this Act by the Bar Council of India; or] 3[(iv) in any other case, from any university outside the territory of India, if the degree is recognized for the purposes of this Act by the Bar Council of India; or]

1[he is a barrister and is called to the Bar on or before the 31st day of December, 1976 2[or has passed the articled clerk's examination or any other examination specified by the High Court at Bombay or Calcutta for enrolment as an attorney of that High Court]; or has obtained such other foreign qualification in law as is recognized by the Bar Council of India for the purpose of admission as an advocate under this Act];

(d) [Omitted by Act 600f1973]

(e) he fulfills such other conditions as may be specified in the rules made by the State Bar Council under this Chapter;

3[(f) he has paid, in respect of the enrolment, stamp duty, if any, chargeable under the Indian Stamp Act, 1899 and an enrolment fee payable to the State Bar Council of 4[six hundred rupees and to the Bar Council of India, one hundred and fifty rupees by way of a bank draft drawn in favor of that Council]:

PROVIDED that where such person is a member of the scheduled castes or the scheduled tribes and produces a certificate to that effect from such authority as may be prescribed, the enrolment fee payable by him to the State Bar Council shall be 1[one hundred rupees and to the Bar Council of India, twentyfive rupees.]

5[Explanation : For the purposes of this sub-section, a person, shall be deemed to have obtained a degree in law from a university in India on the date on which the results of the examination for that degree are published by the university on its notice board or otherwise declaring him to have passed that examination].

(2) Notwithstanding anything contained in sub-section (1), a vakil or a pleader who is a law graduate may be admitted as an advocate on a State roll, if he:

(a) makes an application for such enrolment in accordance with the provisions of this Act, not later than two years from the appointee day; and

(b) fulfill the conditions specified in clauses (a), (b) and (f) of sub-section (1).

6[(3) Notwithstanding anything contained in sub-section (1) a person who:

(a) 7[* * *] has, for at least three years, been a vakil or a pleader or a mukhtar, or was entitled at any time to be enrolled under any law 7[* * *] as an advocate of a High Court (including a High Court of a former Part B State) or of a Court of Judicial Commissioner in any Union territory; or

8[(aa) before the 1st day of December, 1961, was entitled otherwise than as an advocate to practice the profession of law (whether by way of pleading or acting or both) by virtue of the provisions of any law, or who would have been so entitled had he not been in public service on the said date; or]

(b) [Omitted by Act 60 of 1973]

(c) before the 1st day of April, 1937, has been an advocate of any High Court in any area which was comprised within Burma as defined in the Government of India Act, 1935; or

(d) is entitled to be enrolled as an advocate under any rule made by the Bar Council of India in this behalf, may be admitted as an advocate on a State roll if he:

(i) makes an application for such enrolment in accordance with the provisions of this Act; and

(ii) fulfill the conditions specified in clauses (a), (b), (e) and (f) of sub-section (1).

(4) [Omitted by Act 1070f1976]

COMMENTS

Sec. 24 confers an unqualified power and discretion on the Bar Council of India to recognise or not to recognise the degrees in law conferred by Universities in India after 28-2-1963.-AIR 1972.

The right to practice as an advocate is governed by the provisions of the statute, viz., the Advocates Act and is not a fundamental right. It is a privilege conferred by the statute. Therefore, the right to practice as an advocate is not an absolute right.-1984 Lab IC 498 (AP).

Person receiving full wages under section 17-8 of Industrial Disputes Act in view of pendency of industrial dispute in higher Court is deemed to be in employment of management and is not entitled for enrollment as an advocate.-AIR 2003 (NOC) 295 (AP).

Provisional admission and enrolment as an advocate granted subject to condition of submitting original LL.B. Degree certificate. Non-fulfilment of condition within prescribed period. Reply given by candidate to show cause notice satisfactorily. Provisional admission and enrolment become non est in eyes of law once condition is not satisfied. Admitting him afresh as advocate, not from the date he was originally enrolled is proper.-Salfaraz Hamid v. High Court of J & K AIR 2004J & K 157.

24 A. 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 the Untouchability (Offences) Act, 1955;

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

Explanation: In this clause, the expression "State" shall have the meaning assigned to it under Article 12 of the Constitution]:

PROVIDED that the disqualification for enrolment as aforesaid shall cease to have effect after a period of two years has elapsed since his 2[release or dismissal or, as the case may be, removal.]

(2) Nothing contained in sub-section (1) shall apply to a person who having been found guilty is dealt with under the provisions of the Probation of Offenders Act, 1958 (20 of 1958).

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 practice.

26. Disposal of an application 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) 1[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:

1[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.

(3) The enrolment committee of a State Bar Council shall dispose of any application referred to the Bar Council of India under sub-section (2) in conformity with the opinion of the Bar Council of India.

1[(4) 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.]

26 A. 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

Where a State Bar Council has refused the application of any person for admission as an advocate on its roll, no other State Bar Council shall entertain an application for admission of such person as an advocate on its roll, 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.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for:

2[(a) the time within which and form in which an advocate shall express his intention for the entry of his name in the roll of a State Bar Council under section 20;]

(b) [Omitted by Act 600f1973]

(c) the form in which an application shall be made to the Bar Council for admission as an advocate on its roll and the manner in which such application shall be disposed of by the enrolment committee of the Bar Council;

(d) the conditions subject to which a person may be admitted as an advocate on any such roll;

(e) the instalments in which the enrolment fee may be paid.

(3) No rules made under this chapter shall have effect unless they have been approved by the Bar Council of India.

COMMENTS

Handicapped person running STD booth in his name, enrolled as advocate. A complaint was received in this behalf. He failed to surrender booth within the time given by Bar Council of India. Direction to State Bar Council to delete his name from roll of advocates. Advocate surrendered booth subsequently. Review petition against order of Bar Council of India dismissed on ground of limitation. It was held that orders of Bar Council of India are liable to be set aside. Enrolment of advocate restored.-AIR 2003 SC 2502.

CHAPTER 4 RIGHT TO PRACTISE

29. Advocates to be the only recognized class of persons entitled to practice law
Subject to the provisions of this Act and any rules made thereunder, there shall, as from the appointed day, be only one class of persons entitled to practice the profession of law, namely, advocates.

COMMENTS

The advocates have been conferred rights to practice not only in all courts including the Supreme Court but also before any tribunal or person legally authorized to take evidence and also before any other authority or person before whom such advocate is by or under any law for the time being in force entitled to practice. Therefore, the rights of an advocate to practice profession of law is a statutory right and not a fundamental right.-(1981) 2 Cal HN 56.

Right of the advocate to appear and conduct cases in the court is not an absolute right. It is subject to the rule framed by Supreme Court under Art. 145 of the Constitution of India or High Court under section 34. Court can thus frame rules debarring advocates guilty of contempt, unprofessional or unbecoming conduct from appearing before courts.-Ex Capt. Harish Uppal v. UOI, AIR 2003 SC 739.

30. Right of advocates to practice

Subject to the provisions of this Act, every advocate whose name is entered in the [State roll] shall be entitled as of right to practice throughout the territories to which this Act extends,:

- (i) in all courts including the Supreme Court;
- (ii) before any tribunal or person legally authorized 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 practice.

COMMENTS

The rights of an advocate to practice profession of law clearly flows from the Advocates Act and therefore it is a statutory right and not a fundamental right.-(1981) 2 Cal HN 56.

Disciplinary jurisdiction over advocates though vested in Bar Council but final authority is with Supreme Court. If Bar Council fails to take disciplinary action Supreme Court can and will take action.-Ex Gapt. Harish Uppal v. UOI, AIR 2003 SG 739.

Notification prohibiting advocates from practicing deed writing and appearing before Registrar. Writ petition was filed by members of Tripura Bar Association, an unregistered association. Member of Association did not belong to class of persons who due to poverty or some other disability were unable to approach court. They could certainly file writ petition in their personal capacity or representative capacity but failed to do so. They had, therefore, no locus standi to maintain writ petition-Tripura Bar Association, Agartala v. State of Tripura-AIR 2004 NaG 397 (Gauhati).

31. Special provision for attorney [Repealed by Act 107 of 1976, w.ef 1-1-19771

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.

COMMENTS

A private person, who is not an advocate, has no right to argue for a party. He must get the prior permission of the court, for which the motion must come from the party itself. It is open to the court to grant or withhold or withdraw permission in its discretion.-AIR 1978 SG 1019.

33. Advocates alone entitled to practice

Except as otherwise provided in this Act or in any other law for the time being in force, no person shall, on or after the appointed day, be entitled to practice in any court or before any authority or person unless he is enrolled as an advocate under this Act.

COMMENTS

A recognized representative cannot claim to appear as of right. Previous permission of court is necessary. There is no warrant whatsoever to place a recognized agent holding a general power-of-attorney to take proceedings in courts, in the same position, as an advocate to whom a vakalatnama has been given. To do so, would be to defeat the provisions of the Advocates Act, 1969.-1 Mad LJ 207.

The expression "practice" contemplates practicing as a profession for gain. That neither precludes a party in person in court to argue his own case or appoint an agent who is acceptable to the court to present his case other than a lawyer. Prohibition is to practice as a profession and not for mere appearance in an isolated case.-LR (1986) 2 Kant 2329 (2338).

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 practice in the High Court and the courts subordinate thereto.

1[(IA) The High Court shall make rules for fixing and regulating by taxation or otherwise the fees payable as costs by any party in respect of the fees of his adversary's advocate upon all proceedings in the High Court or in any court subordinate thereto.]

1[(2) Without prejudice to the provisions contained in sub-section (1), the High Court at Calcutta may make rules providing for the holding of the Intermediate and the Final examinations for articled clerks to be passed

by the persons referred to in section 58AG for the purpose of being admitted as advocates on the State roll and any other matter connected therewith.]

(3) [Omitted by Act 1070f1976]

COMMENTS

The right of an accused person to be defended by a counsel of his choice does not come to an end when he engages a counsel. Rule 8(2) of the Rules framed by High Court of Punjab and Haryana which lays down that the appointment of an advocate made by an accused in a criminal case continues till the determination of the case and cannot be cancelled without the leave of the court must, therefore, give way to the fundamental right enshrined in art. 22(1) of the Constitution.-1978 Punj W (Cri) 67.

Appropriate rules are required to be framed by the High Courts under section 34 by making it clear that strike by advocate/advocates would be considered interference with administration of justice and concerned advocate/advocates may be barred from practising before courts in a district or in the High Court.-Ex Capt. Harish Uppal v. UOI, AIR 2003 SC 739.

Advocate is not discharged merely by filing a "no instruction pursis". Appointment of advocate can be determined only with leave of court on written request by client in view of Order 3, Rule 4(2) of C.P.C. or if advocate wishes to withdraw his appearance by written notice to his client and with permission of court as per Rule 1 (b). Practice adopted by court of treating act of filing "non-instruction pursis" as discharge of advocate deprecated being in contravention of legal provisions. Dattusing Giridharsingh Rajput (Thakur) v. Bhagwat Devasthan, Barshi and others AIR 2005 Bombay 86.

Designated Senior Advocate is not supposed to file Restoration Application, for dismissal of petition in default, and vakalatnama by his signature. It is not in consonance with provisions of 1961 Advocate Act and 1975 Rules of Bar Council of India. He cannot say that since earlier he was junior council, he has legal right to file restoration application in his signature along with sworn affidavit of his clerk.-Ram Sagar Shukla v. Uttar pradesh Textile Printing Corporation Ltd. AIR 2004 All 209.

CHAPTER 5
CONDUCT OF ADVOCATES

35. Punishment of advocates for misconduct

(1) Where on receipt of a complaint or otherwise a State Bar Council has reason to believe that any advocate on its roll has been guilty of professional or other misconduct, it shall refer the case for disposal to its disciplinary committee.

2[(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 under clause (c) of sub-section (3) he shall, during the period of suspension, be debarred from practising in any court or before any authority or person in India.

(5) Where any notice is issued to the Advocate-General under sub-section (2), the Advocate-General may appear before the disciplinary committee of the State Bar Council either in person or through any advocate appearing on his behalf.

[Explanation : In this section, [section 37 and section 38] the expressions " Advocate-General" and " Advocate-General of the State" shall, in relation to the Union Territory of Delhi, mean the Additional Solicitor General of India.

COMMENTS

After the passing of the Advocates Act, the Bar Councils have been given the jurisdiction to take disciplinary proceedings against the advocates if they are found to be remiss in the performance of their duties in a manner which is worthy of their profession. No court is invested with any jurisdiction to control the actions of an advocate who is cited as a witness and who wants to represent an accused person in a criminal trial-(1973) 1 Ch. LR (Cri) 347 (punj).

Advocates have no right to go on strike. They have obligation to ensure smooth functioning of the Court. They cannot disrupt court proceedings and put interest of their client in jeopardy.-Ex. Capt. Harish Uppal v. UOI, AIR 2003 SC 739.

Cross examination of witness by the advocate not completed on a particular day. Matter adjourned by trial court for a month. Failure of advocate in not making application for cross-examination on next working day amounts to failure in their duties and not abuse of process of court or misconduct.-2002 Cri.L.J. 690 (Sikkim).

Relationship between an advocate and his client is of trust and therefore sacred. Acts of professional misconduct and the frequency with which such acts are coming to light distressed the court. Preservation of the mutual trust between the advocate and the client is a must otherwise the prevalent judicial system in the country would collapse and fail. Such acts do not only affect the lawyers found guilty of such acts but erode the confidence of the general public in the prevalent judicial system. It is more so, because today hundred percent recruitment to the Bench is from the Bar starting from the subordinate judiciary to the higher judiciary. You cannot find honest and hard working Judges unless you find honest and hard working lawyers in their chambers. Time has come when the society in general, respective Bar Council of the States and the Judges should take note of the warning bells and take remedial steps and nip the evil or the curse, in the bud.- Vikas Deshpande v. Bar Council of India AIR 2003 SC 308.

Conduct of Advocate in filing review petition containing baseless allegations and insinuation reflecting on conduct of judges does not credit to noble profession to which he belongs. Bar Council of India directed to take appropriate action against such advocate.-Vikas Deshpande v. Bar Council of India (2003) 7 Scale 212; (2003) 6 Supreme 414 (SC).

Citing overruled case by advocates in a case, order holding 'investigation as unauthorised' based on case which was overruled by Supreme Court. Matter remitted. It was held that falling standard of professional conduct viz. citing overruled judgments is deprecated.-State of Orissa v. Nalinikanta Muduli AIR 2004 SC 4272.

Advocate engaging himself actively in business of petroleum products. License to practice suspended by Bar Council for a period of 5 years. Appellant remained out of practice for a period of more than 5 years. Entering into Partnership with his younger brother that appellant would remain a sleeping partner and younger brother will actively look after

business. Appellant allowed liberty to approach State Bar Council and satisfying it that he would confine himself only to profession of advocacy.- Madhav M. Bhokariker v. Ganesh M. Bhokariker AIR 2004 SC 1877.

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 Councilor 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 disposed 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 under this section 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 (3) of section 35, and where any proceedings have been withdrawn for inquiry 2[before the disciplinary committee of the Bar Council of India], the State Bar Council concerned shall give effect to any such order.

COMMENTS

Where an advocate practicing as an advocate on record in the Supreme Court filed a review petition making baseless allegations and insinuations reflecting on the conduct of Judges of Supreme Court, the matter is not within jurisdiction of Supreme Court and only Bar Council of India is empowered to take appropriate action.- Vikas Deshpande v. Bar Council of India (2003) 7 Scale 212.

36 A. Changes in constitution of disciplinary committees

Whenever in respect of any proceedings under section 35 or section 36, a disciplinary committee of the State Bar Council or a disciplinary committee of the Bar Council of India ceases to exercise jurisdiction and is succeeded by another committee which has and exercises jurisdiction, the disciplinary committee of the State Bar Council or the disciplinary committee of the Bar Council of India, as the case may be, so succeeding

may continue the proceedings from the stage at which the proceedings were so left by its predecessor committee.

36 B. 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 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) Notwithstanding anything contained in sub-section (1), where on the commencement of the Advocates (Amendment) Act, 1973 (60 of 1973), any proceedings in respect of any disciplinary matter against an advocate is pending before the disciplinary committee of a State Bar Council, that disciplinary committee of the State Bar Council shall dispose of the same within a period of six months from the date of such commencement or within a period of one year from the date of the receipt of the complaint or, as the case may be, the date of initiation of the proceedings at the instance of the State Bar Council, whichever is later, failing which such proceedings shall stand transferred to the Bar Council of India for disposal under sub-section (1).]

COMMENTS

Where the matter was not decided by the Disciplinary Committee of State Bar Council within the period of one year, the order made by it was vitiated, and the proceedings get automatically transferred to the Bar Council of India in view of mandatory words of s. 36B, and Bar Council of India would be entitled to deal with those proceedings as if it was a proceeding u/s 36B(2).-(1986) 2 Mad LJ 362.

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 [under section 35] 2[or the Advocate-General of the State] may, within sixty days of the date of the communication of the order to him, prefer an appeal to the Bar Council of India.

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

2[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.]

COMMENTS

Where an advocate is held guilty of professional misconduct but adequate sentence is not imposed by the State Bar Council, the person filing the complaint would be a 'person aggrieved' within s. 37 to prefer an appeal to the Bar Council of India.

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 or the Attorney-General of India¹ [or the Advocate-General of the State concerned, as the case may be], 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 [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 State 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.]

COMMENTS

In appeal under s. 38, the Supreme Court would not, as a general rule, interfere with the concurrent finding of fact by the Disciplinary Committee of the Bar Council of India and of the State Bar Committee unless the finding is based on no evidence or it proceeds on mere conjecture and unwarranted inference. The fact that a different view is possible is not sufficient to interfere. - AIR 1984 SC 110.

Disciplinary jurisdiction over advocates though vests in Bar Councils, the final authority is with the Supreme Court-Ex Capt. Harish Uppal v. UOI, AIR 2003 SC 739.

Misappropriation of client's money is an act of grave misconduct. Excuse that delinquent advocate did not make payment de facto complainant as he had utilized money for personal need for treatment, not entertainable being frivolous and unsustainable. More so, when it was neither pleaded nor shown that delinquent advocate was in dire financial crisis. Removal of his name from roll of Bar Council was appropriate punishment.-Bar Council of A.P. v. Kurapati Satyanarayana AIR 2003 SC 175.

2[39. Application of sections 5 and 12 of Limitation Act, 1963

The provisions of sections 5 and 12 of the Limitation Act, 1963 (36 of 1963), shall, so far as may be, apply to appeals under section 37 and section 38.

40. Stay of order

3[(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.

3[(2) Where an application is made for the stay of the order before the expiration of the times allowed for appealing therefrom under section 37 or 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;

(b) [Omitted by Act 60 of 1973]

anywhere any order is made removing an advocate from practice, his name shall be struck off the State roll 1[* * *].

(2) [Omitted by Act 60 of 1973]

(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 the 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 within the meaning of sections 193 and 228 of the Indian Penal Code, 1860 (45 of 1860), and every such disciplinary committee shall be deemed to be a Civil Court for the purpose of sections 480, 482 and 485 of the Code of Criminal Procedure, 1898 (5 of 1898).

(3) For the purposes of exercising any of the powers conferred by sub-section (1), a disciplinary committee may send to any civil court in the territories to which this Act extends, any summons or other process, for the attendance of a witness or the production of a document required by the committee or any commission which it desires to issue, and the Civil Court shall cause such process to be served or such commission to be issued, as the case may be, and may enforce any such process as if it were a process for attendance or production before itself.

2[(4) Notwithstanding the absence of the Chairman or any member of a disciplinary committee on a date fixed for the hearing of a case before it, the disciplinary committee may, if it so thinks fit, hold or continue the proceedings on the date so fixed and no such proceedings and no order made by the disciplinary committee in any such proceedings shall be invalid merely by reason of the absence of the Chairman or member thereof on any such date:

PROVIDED that no final orders of the nature referred to in sub-section (3) of section 35 can be made in any proceedings unless the Chairman and other members of the disciplinary committee are present.

(5) Where no final orders of the nature referred to in sub-section (3) of section 35 can be made in any proceeding 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].

COMMENTS

The Disciplinary Committee has been conferred powers vested in a civil court in respect of certain matters including summoning and enforcing attendance of any person and examining him on oath, the Act which enjoins disciplinary committee to afford an opportunity of hearing to the advocate does not prescribe the procedure to be followed at the hearing. However, as far as the procedure followed by the State Bar Council at the enquiry is concerned, in order to enable the concerned advocate to defend himself properly, an appropriate specific charge is required to be framed.- AIR 1989 SC 245.

1[42A. Powers of Bar Council of India and other committees

The provisions of section 42, shall so far as may be, apply in relation to the Bar Council of India, the enrolment committee, the election committee, the legal aid committee, or any other committee of a Bar Council as they apply in relation to the disciplinary committee of a Bar Council].

43. Cost of proceedings before a disciplinary committee

The disciplinary committee to a Bar Council may, make such order as to the cost of any proceedings before it as it may deem fit and any such order shall be executable as if it were an order:

(a) in the case of an order of the disciplinary committee of the Bar Council of India, of the Supreme Court;

(b) in the case of an order of the disciplinary committee of a State Bar Council, of the High Court.

COMMENTS

Under s. 43(b) an order for costs passed by the Disciplinary Committee of State Bar Council is, by fiction, made executable as if it were an order of the High Court. But it is not an order passed by the High Court. Such an order, however, is to be treated like, an order passed by the court and to that order s. 38, CPC would apply. It is for the party to apply for execution before the disciplinary committee itself and then have the decree transferred to such a court as an execute it.-AIR 1974 Raj 20.

44. Review of orders by disciplinary committee

The disciplinary committee of a Bar Council may of its own motion or otherwise review any order 1[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 of India.

COMMENTS

The powers of review are not circumscribed by the Act. The analogy of the CPC must not be carried too far. Such powers may be exercised in a suitable case for or against an advocate even after the matter has gone through the hands of the disciplinary committee at some stage or even through the Supreme Court. -AIR 1971 SC 107.

CHAPTER 6 MISCELLANEOUS

45 Penalty for persons illegally practicing in courts and before other authorities

Any person who practices in any court or before any authority or person, in or before whom he is not entitled to practice under the provisions of this Act, shall be punishable with imprisonment for a term which may extend to six months.

COMMENTS

A specific prohibition has been laid down both in positive or negative form that no person other than an advocate will be entitled to practice law in any court or before any authority. Therefore, recognizing the right of a labour adviser to practice law in Industrial Court will be in breach of the provisions of the Act.-1985 Lab IC 82 (Born).

46. Payment of part of enrolment fees to the Bar Council of India

[Omitted by Act 700f1993]

1[46A. Financial assistance to State Bar Council

The Bar Council of India may, if it is satisfied that any State Bar Council is in need of funds for the purpose of performing its functions under this Act, give such financial assistance as it deems fit to that Bar Council by way of grant or otherwise.]

47. Reciprocity

(1) Where any country, specified by the Central Government in this behalf by notification in the Official Gazette, prevents citizens of India from practicing the profession of law or subjects them to unfair discrimination in that country, no subject of any such country shall be entitled to practice the profession of law in India.

(2) Subject to the provisions of sub-section (1), the Bar Council of India may prescribe the conditions, if any, subject to which foreign qualifications in law obtained by persons other than citizens of India shall be recognized for the purpose of admission as an advocate under this Act.

COMMENTS

The powers of review are not circumscribed by the Act. The analogy of the CPC must not be carried too far. Such powers may be exercised in a suitable case for or against an advocate even after the matter has gone through the hands of the disciplinary committee at some stage or even through the Supreme Court. -AIR 1971 SC 107.

48. Indemnity against legal proceedings

No suit or other legal proceedings shall lie against any Bar Council or any committee thereof or a member of a Bar Council¹[or any committee thereof] for any act in good faith done or intended to be done in pursuance of the provisions of this Act or of any rules made thereunder.

1[48A. Power of revision

(1) The Bar Council of India may, at any time, call for the record of any proceedings 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.]

1[48 AA. Review

The Bar Council of India or any of its committees, 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.]

COMMENTS

So far as the commencement of period of limitation for filing the review petition is concerned, the expression 'the date of the order' as occurring in section 48-AA has to be construed as meaning the date of communication or knowledge of the order of the review petition.-D Saibaba v. Bar Council of India AIR 2003 SC 2502.

2[48 B. 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.

(2) Where a State Bar Council is unable to perform its functions for any

reason whatsoever, the Bar Council of India may, without prejudice to the generality of the foregoing power, give such directions to the ex officio member thereof as may appear to it to be necessary, and such directions shall have effect, notwithstanding anything contained in the rules made by the State Bar Council].

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

3[(1)] The Bar Council of India may make rules for discharging its functions under this Act, and in particular, such rules may prescribe:

4[(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 dis-qualifications 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 qualifications 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;

l[(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 practice and the circumstances under which a person shall be deemed to practice 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 recognized 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;

1 [(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;

2[(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;]

G) any other matter which may be prescribed:

3[PROVIDED that no rules made with reference to clause (c) or clause (gg) shall have effect unless they have been approved by the Chief Justice of India]:

4[PROVIDED FURTHER that] no rules made with reference to clause (e) shall have effect unless they have been approved by the Central Government.

3[(2) Notwithstanding anything contained in the first proviso to sub-section (1), any rule made with reference to clause (c) or clause (gg) of the said sub-section and in force immediately before commencement of the Advocates (Amendment) Act, 1973 (60 of 1973), shall continue in force until altered or repealed or amended in accordance with the provisions of this Act.]

COMMENTS

The rules framed by the Bar Council of India have a mandatory effect so far as the qualifications for admission to the roll of advocates is concerned. It is open to the university to run a law course purely for an academic purpose, but if it proposes to run a professional law course, it has no option but to implement the new law course provided by the Rules framed by Bar Council of India.-(1986) 27 (1) Guj LR 604.

This section merely empowers the Bar Council to frame rules laying down conditions subject to which an advocate shall have a right to practise. However, Art. 145 of the Constitution of India empowers the Supreme Court to make rules for regulating this practice and procedure of court including inter alia rules as to persons practicing before Supreme Court.- Ex Capt. Harish Uppal v. UOI, AIR 2003 SC 739.

Inspite of specific directions from Bar Council of India and university not to make any admissions, the law college took risk to admit students. Non-approval of admissions by BCI and university and consequently prohibiting student of such unrecognized college from appearing at examinations is not unreasonable or arbitrary.-Ennomuri Subharao v. Bar Council of India AIR 2004 NaG 239 (Kant.)

Evidence on behalf of bank was examined by advocate and several documents were produced. Suit was decreed in its favour ex parte. More fact that no evidence was adduced by defendant cannot be a ground for denial of claim of full advocate fees under Rule 6(2) of Kerala Advocate Fees Rules.-State Bank of India v. Kerala Electricals and others AIR 2004 Kerala 204.

After designation as senior advocate, senior counsel ceases to be counsel for the purpose of filing pleading, representing and engagement by a client. Senior advocate is not supposed to file vakalatnama of any client or any application in his own hand-writing. Conduct of senior advocate signing restoration application and got affidavit sworn by clerk attached to him is deprecated.-Brij Lal Patel v. U.P. State Agro Industrial Corporation AIR 2004 AI/178.

1 [49 A. Power of Central Government to make rules

(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act including rules with respect to any matter for which the Bar Council of India or a State Bar Council has power to make rules.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for:

(a) qualifications for membership of a Bar Council and disqualifications for such membership;

(b) the manner in which the Bar Council of India may exercise supervision And control over State Bar Councils and the manner in which the directions issued or orders made by the Bar Council of India may be enforced;

(c) the class or category of persons entitled to be enrolled as advocates under this Act;

(d) the category of persons who may be exempted from undergoing a course of training and passing an examination prescribed under clause (d) of sub-section (1) of section 24;

(e) the manner in which seniority among advocates may be determined;

(f) the procedure to be followed by a disciplinary committee of a Bar Council in hearing cases and the procedure to be followed by a disciplinary committee of the Bar Council of India in hearing appeals;

(g) any other matter which may be prescribed.

(3) Rules under this section may be made either for the whole of India or for all or any of the Bar Councils.

(4) If any provision of a rule made by a Bar Council is repugnant to any provision of a rule made by the Central Government under this section, then, the rule under this section, whether made before or after the rule made by the Bar Council, shall prevail and the rule made by the Bar Council shall, to the extent of the repugnancy, be void.

1[(5) Every rule made under this section 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 thirty days which may be comprised in one session or in two or more successive sessions and if, before the expiry of the sessions 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.]

50. Repeal of certain enactments

(1) On the date on which a State Bar Council is constituted under this Act, the provisions of sections 3 to 7 (inclusive), sub-sections (1), (2) and (3) of section 15 and section 20 of the Indian Bar Council Act, 1926 (38 of 1926), shall stand repealed in the territory for which the State Bar Council is constituted.

(2) On the date on which Chapter III comes into force, the following shall stand repealed, namely,:

(a) sections 6, 7, 18 and 37 of the Legal Practitioners Act, 1879 (18 of 1879), and so much of sections 8, 9, 16, 17, 19 and 41 of that Act as relate to the admission and enrolment of legal practitioners;

(b) sections 3, 4 and 6 of the Bombay Pleaders Act, 1920 (Bombay

act 17 of 1920);

(c) so much of section 8 of the Indian Bar Council Act, 1926' (38 of 1926), as relates to the admission and enrolment of legal practitioners;

(d) the provisions of the Letters Patent of any High Court and of any other law insofar as they relate to the admission and enrolment of legal practitioners.

(3) On the date of which Chapter IV comes into force, the following shall stand repealed, namely,:

(a) sections 4, 5, 10 and 20 of the Legal Practitioners Act, 1879 (18 of 1879), and so much of sections 8, 9, 19 and 41 of that Act as confer on legal practitioners the right to practise in any court or before any authority or person;

(b) sections 5, 7, 8 and 9 of the Bombay Pleaders Act, 1920 (Bombay Act 17 of 1920);

(c) section 14 of the Indian Bar Councils Act, 1926 (38 of 1926), and so much of sections 8 and 15 of that Act as confer on legal practitioners the right to practise in any court or before any authority or person;

(d) the Supreme Court Advocates (Practice in High Courts) Act, 1951 (18 of 1951);

(e) the provisions of the Letters Patent of any High Court and of any other law conferring on legal practitioners the right to practise in any court or before any authority or person.

(4) On the date on which Chapter V comes into force, the following shall stand repealed, namely,:

(a) sections 12 to 15 (inclusive), sections 21 to 24 (inclusive) and sections 39 and 40 of the Legal Practitioners Act, 1879 (18 of 1879), and so much of sections 16, 17 and 41 of that Act as relate to the suspension, removal or dismissal of legal practitioners;

(b) sections 24 to 27 (inclusive) of the Bombay Pleaders Act, 1920 (17 of 1920);

(c) sections 10 to 13 (inclusive) of the Indian Bar Councils Act, 1926 (38 of 1926);

(d) the provisions of the Letters Patent of any High Court and of any other law insofar as they relate to the suspension, removal or dismissal of legal practitioners.

(5) When the whole of this Act has come into force:

(a) the remaining provisions of the Act referred to in this section which do not stand repealed by virtue of any of the foregoing provisions of this section except sections I, 3 and 36 of the Legal Practitioners Act, 1879 (18 of 1879) shall stand repealed;

(b) the enactments specified in the Schedule shall stand repealed to the extent mentioned therein.

51. Rule of construction

On and from the appointed day, references in any enactment to an advocate enrolled by a High Court in any form of words shall be construed as references to an advocate enrolled under this Act.

52. Saving

Nothing in this Act shall be deemed to affect the power of the Supreme Court to make rules under Article 145 of the Constitution:

(a) for laying down the conditions subject to which a senior advocate shall be entitled to practise in that court;

(b) for determining the persons who shall be entitled to [act or plead] in that court.

CHAPTER 7 TEMPORARY AND TRANSITIONAL PROVISIONS

53. Elections to first State Bar Council

Notwithstanding anything contained in this Act, the elected members of a State Bar Council, constituted for the first time under this Act, shall be elected by and from amongst advocates, vakils, pleaders and attorneys who on the date of the election are entitled as of right to practise in the High Court and are ordinarily practising within the territory for which the Bar Council is to be constituted.

Explanation: Where the territory for which the Bar Council is to be constituted includes a Union territory, the expression "High Court" shall include the court of the Judicial Commissioner of that Union territory.

54. Term of office of members of first 1[* * *] State Bar Council

Notwithstanding anything contained in this Act, the term of office of the 2[* * *] elected members of 1[* * *] a State Bar Council constituted for the first time, shall be two years from the date of the first meeting of the Council :

3[PROVIDED that such members shall continue to hold office until the State Bar Council is reconstituted in accordance with the provisions of this Act.]

55. Rights of certain existing legal practitioners not affected

Notwithstanding anything contained in this Act:

(a) every pleader or vakil practising as such immediately before the date on which Chapter IV comes into force (hereinafter in this section referred to as the said date) by virtue of the provisions of the Legal Practitioners Act, 1879 (18 of 1879), the Bombay Pleaders Act, 1920 (17 of 1920) or any other law who does not elect to be, or is not qualified to be enrolled as an advocate under this Act;

(b) [Omitted by Act 107 of 1976]

4[(c) every mukhtar practising as such immediately before the said date by virtue of the provisions of the Legal Practitioners Act, 1879 (18 of 1879), or any other law, who does not elect to be, or is not qualified to be, enrolled as an advocate under this Act;

(d) every revenue agent practising as such immediately before the said date by virtue of the provisions of the Legal Practitioners Act 1879 (18 of 1879) or any other law;] shall, notwithstanding the repeal by this Act of the relevant provisions of the Legal Practitioners Act, 1879 (18 of 1879), the Bombay Pleaders Act, 1920 (Bombay Act, 17 of 1920), or other law, continue to enjoy the same rights as respects practice in any court or revenue office or before any authority or person and be subject to the disciplinary jurisdiction of the same authority which he enjoyed or, as the case may be, to which he was subject immediately before the said date and accordingly the relevant provisions of the Acts or law aforesaid shall have effect in relation to such persons as if they had not been repealed.

COMMENTS

Sec. 55 would apply to such pleaders or vakils who were in the eye of law validly practising as such immediately before the date on which Chap. IV came into operation. A person who happens to obtain a certificate as a pleader by mistake or contrivance could not be said to be practising as a pleader of vakil 'as such'. This provision would not preserve the right to practise for a person who was not lawfully admitted as a pleader.-AIR 1,969 AI/112.

56. Dissolution of existing Bar Councils

(1) On the constitution under this Act of a State Bar Council, other than the Bar Council of Delhi (hereinafter referred to as the new Bar Council):

(a) all properties and assets vesting in the corresponding Bar Council shall vest in the new Bar Council;

(b) all rights, liabilities and obligations of the corresponding Bar Council, whether arising out of any contract or otherwise, shall be the rights, liabilities and obligations respectively of this new Bar Council;

(c) all proceedings pending before the corresponding Bar Council in respect of any disciplinary matter or otherwise shall stand transferred to the new Bar Council.

(2) In this section, "corresponding Bar Council" in relation to a State Bar Council, other than the Bar Council of Delhi, means the Bar Council for the High Court in the territory for which the State Bar Council is constituted under this Act.

57. Power to make rules pending the constitution of a Bar Council

Until a Bar Council is constituted under this Act the power of that Bar Council to make rules under this Act shall be exercised:

(a) in the case of the Bar Council of India, by the Supreme Court;

(b) in the case of a State Bar Council, by the High Court.

1[58. Special provisions during the transitional period

(1) Where a State Bar Council has not been constituted under this Act or where a State Bar Council so constituted is unable to perform its functions by reason of any order of a court or otherwise, the functions of the Bar Council or any committee thereof, insofar as they relate to the admission and enrolment of advocates, shall be performed by the High Court in accordance with the provisions of this Act.

(2) Until Chapter IV comes into force, a State Bar Council or a High Court performing the functions of a State Bar Council may enrol any person to be an advocate on a State roll, if he is qualified to be so enrolled under this Act, notwithstanding that no rules have been made under section 28 or that the rules so made have not been approved by the Bar Council of India, and every person so enrolled shall, until that chapter comes into force, be entitled to all the rights of practice conferred on an advocate under section 14 of the Indian Bar Councils Act, 1926 (38 of 1926).

(3) Notwithstanding anything contained in this Act, every person who, immediately before the 1st day of December, 1961, was an advocate on the roll of any High Court under the Indian Bar Councils Act, 1926 or who has been enrolled as an advocate under this Act shall, until Chapter IV comes into force, be entitled as of right to practise in the Supreme Court, subject to the rule made by the Supreme Court in this behalf.

(4) Notwithstanding the repeal by sub-section (2) of section 50 of the provisions of the Legal Practitioners Act, 1879 (18 of 1879) or of the Bombay Pleaders Act, 1920 (17 of 1920) [or of any other law relating to the admission and enrolment of legal practitioners, the provisions of the Acts and law aforesaid] and any rules made thereunder insofar as they relate to 3[the renewal or the issue by way of renewal] of a certificate to a legal practitioner authorising him to practise shall have effect until Chapter IV comes into force and, accordingly, every certificate "issued or renewed to a legal practitioner (who is not enrolled as an advocate under this Act) which is or purports to be issued or renewed under the provisions of either of the aforesaid Acts 4[or of the other law] during the period beginning with the 1st day of December, 1961 and ending with the date on which Chapter IV comes into force, shall be deemed to have been validly issued or renewed.]

COMMENTS

Even under sub-so (4) as it was originally introduced the High Court had only the power of renewal or the issue of a certificate by way of renewal and it had no power to admit or enrol fresh persons as pleaders which power is lost on 1-12-1961 when Chap. III of the Act was enforced.-AIR 1969AI/112.

1[58 AA. Special provisions in relation to the Union Territory of Pondicherry

(1) Notwithstanding anything contained in this Act, all persons who immediately before the date on which the provisions of Chapter IT are brought into force in the Union Territory of Pondicherry, were entitled to practise the profession of law (whether by way of pleading or acting or both) under any law in force in the said Union territory or who would have been so entitled had they not been in public service on the said date shall for the purposes of clause (a) of sub-section (1) of section 17, be deemed to be persons who were entered as advocates on the roll of a High Court under the Indian Bar Councils Act, 1926 (38 of 1926) and every such person may, on an application made in this behalf within such time as may be specified by the Bar Council of Madras, be admitted as an advocate on the State roll maintained in respect of the said Union Territory.

(2) Notwithstanding anything contained in this Act, every person who immediately before the date on which the provisions of Chapter IV are brought into force in the Union Territory of Pondicherry, was practising the profession of law (whether by way of pleading or acting or both or in any other way) by virtue of the provisions of any law in force in the said Union Territory, who does not elect to be or is not qualified to be, enrolled as an advocate under sub-section (I), shall, notwithstanding the repeal of the relevant provisions of such law by the Pondicherry (Extension of Laws) Act, 1968 (26 of 1968) continue to enjoy the same rights as respects in any court or revenue office or before any authority or person and be subject to the disciplinary jurisdiction of the same authority which he enjoyed, or as the case may be, to which he was subject, immediately before the said date and accordingly the relevant provisions of the law aforesaid shall have effect in relation to such persons as if they had not been repealed.]

2[58 AB. Special provisions with respect to certain persons enrolled by Mysore State Bar Council

Notwithstanding anything contained in this Act or any judgment, decree or order of any court or any resolution passed or direction given by the Bar Council of India, every person who was admitted as an advocate on the State roll by the State Bar Council of Mysore during the period beginning with the 28th day of February, 1963, and ending on the 31st day of March, 1964 on the basis of his having obtained a certificate of pleadership from the High Court of Kamataka, shall, save as otherwise provided, be deemed to have been validly admitted as an advocate on that State roll and accordingly entitled to practise the profession of law (whether by way of pleading or acting or both):

PROVIDED that where any such person has been elected to be enrolled as an advocate on the roll of any other State Bar Council, his name shall be deemed to have been struck off the roll of the State Bar Council, of Kamataka from the date he was enrolled by the other State Bar Council:

PROVIDED FURTHER that the seniority of such person, whether his name is borne on the State roll of the Stilfe Bar Council of Kamataka, or on the State roll of any other Bar Council, shall, for the purposes of clause (d) of

sub-section (3) of section 17, be determined by reckoning the 16th day of May, 1964, as the date of admission.]

1[58 AC. Special provisions with respect to certain persons enrolled by Uttar Pradesh State Bar Council

Notwithstanding anything contained in this Act or any judgment, decree or order of any court, every person who was enrolled as an advocate by the High Court during the period beginning with the 2nd day of January, 1962 and ending on the 25th day of May, 1962 and was subsequently admitted as an advocate on the State roll by the State Bar Council of Uttar Pradesh shall be deemed to have been validly admitted as an advocate on that State roll from the date of his enrolment by the High Court and accordingly entitled to practise the profession of law (whether by way of pleading or acting or both).]

2[58 AD. Special provisions with respect to certain persons migrating to India

Notwithstanding the repeal by this Act of the provisions of the Legal Practitioners Act, 1879 (18 of 1879), or of any other law relating to the admission and enrolment of legal practitioners (hereafter in this section referred to as such Act or law), every person who migrates to the territory of India from any area which, before the 15th day of August, 1947, was comprised within India as defined in the Government of India Act, 1935, and who has, before such migration, been a pleader, mukhtar or revenue agent in any such area under any law in force therein, may be admitted and enrolled under the relevant provisions of such Act or law as a pleader, mukhtar or, as the case may be, revenue agent, if he:

(a) makes an application for the purpose to the appropriate authority under such Act or law; and

(b) is a citizen of India and fulfils other conditions, if any, specified in this behalf by the appropriate authority aforesaid,

and notwithstanding the repeal by this Act of the relevant provisions of such Act or law, every pleader, mukhtar or revenue agent so enrolled shall have the same right as respects practise in any court or revenue office or before any other authority or person and be subject to the disciplinary jurisdiction of the same authority to which he would be subject under the relevant provisions of such Act or law as if they had not been repealed and accordingly, those provisions shall have effect in relation to such persons.

58 AE. Special provisions in relation to the Union Territory of Goa, Daman and Diu

(1) Notwithstanding anything contained in this Act, all persons who, immediately before the date on which the provisions of Chapter III are brought into force in the Union Territory of Goa, Daman and Diu were entitled to practise the profession of law (whether by way of pleading or acting or both) under any law in force in the said Union Territory or who would have been so entitled had they not been in public service on the said date, shall, for the purpose of clause (a) of sub-section (1) of section 17, be deemed to be persons who were entered as advocates on the roll of a High Court under the Indian Bar Councils Act, 1926 (38 of 1926), and every such person may, on an application made in this behalf within such time as may be specified by the Bar Council of Maharashtra, be admitted as an advocate on the State roll maintained in respect of the said Union Territory:

PROVIDED that the provisions of this sub-section shall not apply to any person who, on the date of the application aforesaid, was not a citizen of India.

(2) Notwithstanding anything contained in this Act, every person who, immediately before the date on which the provisions of Chapter IV are brought into force in the Union Territory of Goa, Daman and Diu, was practising the profession of law (whether by way of pleading or acting or both or in any other way) by virtue of the provisions of any law in force in the said Union Territory, or who does not elect to be or is not qualified to be enrolled as an advocate under sub-section (1), shall notwithstanding the repeal by this Act of the relevant provisions of such law, continue to enjoy the same rights as respects practise in any court or revenue office or before any other authority or person and be subject to the disciplinary jurisdiction of the same authority which he enjoyed, or, as the case may be, to which he was subject, immediately before the said date and accordingly the relevant provisions of the law aforesaid shall have effect in relation to such persons as if they had not been repealed.

(3) On the date on which this Act or any part thereof comes into force in the Union Territory of Goa, Daman and Diu, the law in force in that Union Territory which corresponds to this Act or such part and which does not stand repealed by virtue of the provisions of section 50 of this Act, shall also stand repealed.

58 AF. Special provisions in relation to Jammu and Kashmir

(1) Notwithstanding anything contained in this Act, all advocates who, immediately before the date on which the provisions of Chapter VII are brought into force in the State of Jammu and Kashmir, were entitled to practise in the High Court of that State, or who would have been so entitled had they not been in public service on the said date, shall for the purpose of clause (a) of sub-section (1) of section 17, be deemed to be persons who were entered as advocates on the roll of a High Court under the Indian Bar Councils Act, 1926 (38 of 1926), and every such person may, on an application made in this behalf within such time as may be specified by the Bar Council of India, be admitted as an advocate on the State roll maintained in respect of the said State.

(2) Notwithstanding anything contained in this Act, every person who, immediately before the date on which the provisions of Chapter III are brought into force in the State of Jammu and Kashmir, was entitled otherwise than an advocate to practise the profession of law (whether by way of pleading or acting or both) by virtue of the provisions of any law in force in the said State, or who would have been so entitled had he not been in public service on the said date, may be admitted as an advocate on the State roll maintained in respect of the said State, if he:

(i) makes an application for such enrolment in accordance with the provisions of this Act; and

(ii) fulfils the conditions specified in clauses (a), (b), (e) and (f) of sub-section (1) of section 24.

(3) Notwithstanding anything contained in this Act, every person who, immediately before the date on which the provisions of Chapter IV are brought into force in the State of Jammu and Kashmir, was practising the profession of law (whether by way of pleading or acting or both or in any other way) by virtue of the provisions of any law in force therein, or who does not elect to be or is not qualified to be enrolled as an advocate under sub-section (1) or sub-section (2), shall, notwithstanding the repeal by this Act of the relevant provisions of such law, continue to enjoy the same rights as respects practise in any court or revenue office or before any other authority or person and be subject to the disciplinary jurisdiction of the same authority which he enjoyed, or as the case may be, to which he was subject, immediately before the said date and accordingly the relevant provisions of the law aforesaid shall have effect in relation to such persons as if they had not been repealed.

(4) On the date on which this Act or any part thereof comes into force in the State of Jammu and Kashmir, the law in force in that State which corresponds to this Act or such part thereof which does not stand repealed by virtue of the provisions of section 50 of this Act, shall also stand repealed.]

[58 AG. Special provisions in relation to articled clerks

Notwithstanding anything contained in this Act, every person who, immediately before the 31st day of December, 1976, has commenced his articleship and passed the Preliminary examination, for the purpose of enrolment as an attorney of the High Court at Calcutta in accordance with the rules made under sub-section (2) of section 34, before the omission of that sub-section by the Advocates (Amendment) Act, 1976 (107 of 1976), may be admitted as an advocate on the State roll if he:

(i) passes, on or before the 31st day of December, 1980,:

(a) the Final examination in a case where such person has, before the 31st day of December, 1976, passed the Intermediate examination,

(b) the Intermediate and the Final examinations in any other case.

Explanation: For the purpose of this clause, the High Court at Calcutta may prescribe such rules as may be necessary under sub-section (2) of section 34, specifying the nature of the examination and any other matter relating thereto;

(ii) makes an application for such enrolment in accordance with the provisions of this Act; and

(iii) fulfils the conditions specified in clauses (a), (b), (e) and (f) of sub-section (1) of section 24.]

2[58 B. Special provisions relating to certain disciplinary proceedings

(1) As from the 1st day of September, 1963, every proceeding in respect of any disciplinary matter in relation to an existing advocate of a High Court shall, save as provided in the first proviso to sub-section (2), be disposed of by the State Bar Council in relation to that High Court, as if the existing advocate had been enrolled as an advocate on its roll.

(2) If immediately before the said date, there is any proceeding in respect of any disciplinary matter in relation to an existing advocate pending before any High Court under the Indian Bar Councils Act, 1926 (38 of 1926), such proceeding shall stand transferred to the State Bar Council in relation to that High Court, as if it were a proceeding pending before the corresponding Bar Council under clause (c) of sub-section (1) of section 56 :

PROVIDED that where in respect of any such proceeding the High Court has received the finding of a Tribunal constituted under section 11 of the Indian Bar Councils Act, 1926 (38 of 1926), the High Court shall dispose of the case and it shall be lawful for the High Court to exercise for the purpose all powers conferred on it under section 12 of the said Act as if that section had not been repealed:

PROVIDED FURTHER that where the High Court has referred back any case for further inquiry under sub-section (4) of section 12 of the said Act, the proceeding shall stand transferred to the State Bar Council in relation to the High Court as if it were proceeding before corresponding Bar Council under clause (c) of sub-section (1) of section 56.

(3) If immediately before the said date there is any proceeding in respect of any disciplinary matter pending in relation to any pleader, vakil, mukhtar or attorney, who has been enrolled as an advocate on any State roll under the Act, such proceeding shall stand transferred to the State Bar Council on the roll of which he has been enrolled and be dealt with

under this Act as if it were a proceeding arising against him thereunder.

(4) In this section "existing advocate" means a person who was enrolled as an advocate on the roll of any High Court under the Indian Bar Councils Act, 1926 (38 of 1926), and who, at the time when any proceeding in respect of any disciplinary matter initiated against him, is not enrolled as an advocate on a State roll under this Act.

(5) The provisions of this section shall have effect, notwithstanding anything contained in this Act.]

COMMENTS

Though s. 12 of the Bar Councils Act stood repealed by s. 50 of the Advocates Act, on the date on which the petitioner sought redress and the power of review is not saved even by s. 58B, yet the power is indisputably saved, assuming that the case is not provided for in the Advocates Act, by virtue of s. 6. Clauses (c) and (e) of the General Clauses Act, 1897 as the power embodied in s. 12(6) of the Bar Councils Act is not merely a power vested in High Court but is also a remedy in favour of the affected party. Hence the High Court has power to entertain the application and to dispose of it, as though the Bar Councils Act, were in full force and effect today.-AIR 1965 Mad 166.

1[59. Removal of difficulties

(1) If any difficulty arises in giving effect to the provisions of this Act, particularly in relation to the transition from the enactments repealed by this Act to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provision not inconsistent with the purposes of this Act, as appear to it to be necessary or expedient for removing the difficulty.

(2) An order under sub-section (1) may be made so as to have retrospective effect from the date not earlier than the 1st day of December, 1961.]

2[60. Powers of Central Government to make rules

(1) Until rules in respect of any matter under this Act are made by a State Bar Council and approved by the Bar Council of India, the power to make rules in respect of that matter shall be exercisable by the Central Government.

(2) The Central Government after consultation with the Bar Council of India may by notification in the Official Gazette, make rules under sub-section (1) either for any State Bar Council or generally for all State Bar Councils and the rules so made shall have effect, notwithstanding anything contained in this Act.

(3) Where in respect of any matter any rules are made by the Central Government under this section for any State Bar Council, and in respect of the same matter, rules are made by the State Bar Council and approved by the Bar Council of India, the Central Government may, by notification in the Official Gazette, direct that the rules made by it in respect of such

matter shall cease to be in force in relation to that Bar Council with effect from such date as may be specified in the notification and on the issue of such notification, the rules made by the Central Government shall, accordingly, cease to be in force except as respects things done or omitted to be done before the said date.]

COMMENTS

In the matter of disciplinary proceedings against advocates, the procedure to be followed in an enquiry under s. 35 of the Advocates Act is outlined in Part VII of the Bar Council of India Rules made under the authority of s. 60 of that Act. In order to enable the concerned advocate to defend himself properly an appropriate specific charge was required to be framed.-AIR 1989 SC 245.