

ADVOCATES (PROTECTION) BILL, 2021

Statement of Objects and Reasons

1. The recent incidents of assault, criminal force, intimidation and threats caused to Advocates, while they discharge their professional duties, have reached alarming heights. This has also resulted in law and order situations and deficiencies in rendering professional services by Advocates to their clients apart from causing a deep sense of fear in the minds of Advocates.
2. In order to protect Advocates from the said assaults, criminal force, intimidation and threats, it is necessary to enact a legislation to protect Advocates while discharging their professional duties as contemplated under Law.
3. This is in consonance with the Eight United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba 27 August to 7 September 1900, to which India was a participant, where it has adopted the "Basic Principles on the Role of Lawyers". Clauses 16 to 18 of the declaration deals with "Guarantees for the functioning of lawyer which are as follows:

"Clause 16. Governments shall ensure the lawyers,

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

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

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

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

4. The Supreme Court of India in the case of ***Hari Shankar Rastogi v/s. Giridhar Sharma***, (1978) 2 SCC 165 has observed that *"Indeed, the Bar is an extension of the system of justice, an advocate is an officer of court. He is master of an expertise, but more than that, accountable to the court and governed by a high professional ethics. The success of the judicial process often depends on the services of the legal profession"*.
5. Another issue which seems to be prevalent is that Advocates in due discharge of their professional duties also face the threat of malicious and frivolous prosecution by the rival parties which is also intended to interfere with the

performance of their duties, in turn interfering with the administration of justice itself.

6. Yet another hurdle faced by Advocates stems from them representing detainees or arrested or incarcerated persons. It has been seen on several cases that Advocates are sought to be questioned about privileged communication in order to make detection of alleged crime easier. However this militates against the basic tenets of the legal profession and violates the sanctity which the law enjoins the Advocate to maintain with respect to such privileged communication or materials. This requires immediate attention, as observed in the United Nations Human Rights Council, Resolution on the independence of judges and lawyers – A/HRC/RES/29/6 wherein, while acknowledging the fact that the principle of confidentiality in lawyers' communication with clients is violated, and that they are denied free access to their clients and documents, it was decided as follows:

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

7. A Mechanism, therefore, has to be put in place to ensure that the Advocates can render professional services without fear or external influence for the ultimate cause of the administration of Justice and Rule of Law.

ADVOCATES (PROTECTION) BILL, 2021

1. Short title and commencement

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

2. Definitions

- (1) In this Act, unless the context otherwise requires-
 - (a) “act of violence” refers to acts committed by any person against an advocate, with an intent to prejudice or derail the process of impartial, fair and fearless conduct of any litigation before any court, tribunal or authority in which such Advocate is engaged or acts of retribution towards the outcome of proceedings before any of the above forums and includes the following:
 - i. Harassment, coercion, assault, criminal force or threat impacting the living or working conditions of such advocates and preventing him from discharging his duties;
 - ii. Harm, injury, hurt, either grievous or simple, or danger to the life of such advocates, either within the premises of the Courts or otherwise;
 - iii. Coercion by whatsoever means, of an Advocate to reveal or part with privileged communication or material which such Advocate is bound to hold in confidence under law;
 - iv. Coercion by whatsoever means,, of an Advocate not to represent or to withdraw his Vakalath or appearance to act, plead or appear on behalf of a client before any court, tribunal or authority;
 - v. Loss or damage to any property or documents or materials which such Advocate is bound to hold under law;
 - vi. Usage of derogatory language during the course of the judicial and quasi-judicial proceedings.
 - (b) “Advocate” shall have the same meaning as provided under Sec. 2(1)(a) of the Advocates Act, 1961
- (2) The words and expressions used in this Act, but not specifically defined shall have the same meaning as assigned to them in the Advocates Act, 1961, the Bar Council of India Certificate and Place of Practice (Verification) Rules, 2015 and the Indian Penal Code, 1860.

3. Punishments for offences

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

4. Compensation

- (1) In addition to the punishment provided for an offence under Section 3, the person so convicted shall also be liable to pay, by way of compensation, such amount as may be determined by the Court for causing any act of violence against any advocate.
- (2) Notwithstanding the compounding of an offence under Section 6 hereunder, in case of damage to any property or loss caused, the compensation payable shall be twice the amount of fair market value of the damaged property or the loss caused, as may be determined by the Court.
- (3) Upon failure to pay the compensation awarded under sub-section (1) and (2) hereinabove, such amount shall be recovered as an arrear of land revenue under the Revenue Recovery Act, 1890

5. Nature of Offence and Jurisdiction of Courts

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

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

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

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

6. Compounding of offences

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

7. Police Protection:

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

8. Advocate deemed to be officer of the Institution

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

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

Notwithstanding anything to the contrary in any other law for the time being in force, no suit, prosecution or other legal proceeding shall lie against any Advocate for anything which is in good faith done or intended to be done in the due conduct of duties of such Advocate in pursuance of the provisions of this Act and any rule,

order, notification thereunder or under any direction of a Court or any other authority which is empowered to give directions to Advocates.

10. Malicious Prosecution of Advocates

- (1) Where any suit, prosecution or other legal proceeding instituted against an Advocate by any person is found by the Court hearing such proceeding to be vexatious in nature, or motivated by a malicious intention to derail the process of impartial, fair and fearless conduct of any litigation before any court, tribunal or authority in which such Advocate is engaged, or, is an act of retribution towards the outcome of proceedings before any of the above forums, the said proceedings shall be liable to be dismissed, with costs.
- (2) Any person found to have initiated a vexatious or malicious proceeding against an Advocate shall be liable to pay, by way of compensation, such amount as may be determined by the Court, which amount shall not be less than Rs.100,000/-.

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

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

12. Act not in derogation of any other law

The provisions of this Act shall be in addition to and not in derogation of the provisions of the any other law for the time being in force.

13. Power to make rules

- (1) The Central Government after consultation with the Bar Council of India may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.
- (2) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect,

as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

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

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