

Reading Material for VIII semester (07.04.2020)

The Advocates Act, 1961

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SALIENT FEATURES OF ADVOCATES ACT

Following are some of the important salient features.

1. The Act has consolidated all the existing law on legal profession.
2. The Act has made provision for the creation of Bar Council of India at the Central level and State Bar Councils in each state.
3. The Act has made the provision for the preparation of common roll of Advocates throughout India.
4. It empowers Advocates whose name is in the common roll to practice in all the courts in India.
5. The difference between the Advocates and Vakil is abolished and all those who practice law is called as Advocates.
6. Provisions are made to confer the status as Senior Advocate for those Advocates who posses extraordinary knowledge in the field of law.
7. It has conferred autonomous status to the Bar Councils.
8. Establishment of an All India Bar Council and a number of State Bar Councils – a *federal* structure for legal profession. An advocate is initially enrolled with a State Bar Council and a common roll of all the advocates in the country is maintained by All India Bar Council. An advocate on common roll has a right to practice in any court of the country including the Supreme Court. The Advocates Act was passed by the Parliament in the year 1961.
9. Integration of the bar into a single class of legal practitioners known as advocates.
10. A uniform qualification for the admission as advocates viz, degree in law.
11. Division of advocates into senior advocates and other advocates based on merit.
12. No advocate can get himself enrolled with more than one State Bar Council, though he can get himself transferred from one State Bar Council to another.

STATE BAR COUNCIL

Constitution: S.3 of the Advocates Act empowers for the creation of State bar councils for every state. Number of members of the Bar Council varies from state to state, depending upon the number of Advocates on the State roll.

1. If the number of Advocates in the state roll is less than 5000 then the number of Bar Council members are 15.
2. If the number of Advocates are 5000 to 10000 then the number of Bar Council members are 20.
3. If the number of Advocates are more than 10000 then the number of bar Council members are 25.

Members are elected by the Advocates whose names are there in the state roll by a single transferrable vote. The members hold office for a period of 5 years.

The Advocate General of the Concerned State is an ex-officio member of the State Bar Council. So long as he is holding the office as Advocate General he can act as the member of the Bar Council.

Powers: The State Bar Council is empowered with the following powers.

1. It is body corporate.
2. It is a legal body having the autonomous status.
3. It has a common seal and perpetual succession.
4. It can do the following things in its own name. Buying and selling properties, Entering into agreements, Filing cases.
5. It can constitute executive committee etc.
6. It can frame rules and regulations relating to day to day administration.

Functions: Advocates Act empowers the State Bar Council to do the following functions.

1. Enroll the qualified persons as Advocates.
2. Prepare the Advocates roll.
3. Take disciplinary action for professional misconduct.

4. Protect the rights and privileges of the Advocates.
5. Encourage law reforms. For this purpose, it organize seminars, talks and publish journals.
6. Constitute executive committee, enrolment committee, disciplinary committee, legal aid committee etc.
7. Manage the funds of the Bar Council.
8. Conduct the election for electing the members of the State Bar Council.
9. Prepare legal aid programmers and allot separate funds for the implementation of such schemes.
10. Prepare Schemes for helping the poor Advocates and allot separate funds for the implementation of such schemes.
11. Grant recognition to the law colleges.
12. Do all other acts which are necessary for the effective implementation of the above said functions.

BAR COUNCIL OF INDIA

Constitution: The following persons are the members of the Bar Council of India.

1. One member from each State Bar Councils. He will be elected by the members of the respective State Bar Councils.
2. Attorney General of India-Ex Officio member.
3. Solicitor General of India-Ex officio member.

Ex-officio members will continue as members so long as they hold the offices of Attorney General and Solicitor General posts. The other members will continue as members so long they are continuing as members of the State Bar Council.

Powers: Bar Council of India is empowered with the following powers.

1. It is a body corporate.
2. It is legal persons having the autonomus status.

3. It has a common seal and perpetual succession.
4. It can do the following things in its own name. Buying and selling properties, Entering into agreements, Filing cases etc.
5. Transfer the name of the Advocate from one state roll to another state roll on his application.
6. It can constitute executive committee, disciplinary committee, legal aid committee etc.
7. To hear and decide appeal, review and revision against the orders of the disciplinary committee of the State Bar Council.
8. Frame rules relating to day to day administration.

Functions: S.7 of the Advocates Act empowers the Bar Council of India to perform the following functions.

1. Frame the rules relating to the professional ethics.
2. Frame the rules of procedure to be followed by the disciplinary committee of the State Bar Councils and the Bar Council of India.
3. Protect the rights and the privileges of the Advocates.
4. Encourage legal reforms.
5. Decide the repute relating to professional misconduct which is transferred from the disciplinary committee of the State Bar Council to the Bar Council of India.
6. Decide the appeal against the disciplinary committee of the State Bar Council.
7. Supervise the functions of the State Bar Council.
8. Prescribe the syllabus of the law course in consultation with the State Bar Councils and the universities.
9. Inspect the universities for the purpose of giving recognition to the law degrees of the universities.
10. Spend the Funds of the Bar Council of India for the proper purposes.
11. Conduct elections for the purpose of electing its members.

12. Allow the persons studied abroad to practice in India.
13. Do all other acts which are necessary for the effective implementation of the above said function.

QUALIFICATION PRESCRIBED FOR ENROLMENT

S.24 of the Advocates Act prescribes the following qualifications for a person to enroll as an Advocate.

1. He must be a citizen of India.
2. He must have completed 21 years of age.
3. He must have passed 3 years law course (regular study from the university after graduation) or 5 years integrated Law course after 10 +2. If the law degree is from any Foreign University then it must be a recognized degree, for the Advocates Act by the Bar Council of India.
4. He should pay an enrolment fee as may be prescribed by the State Bar Council.
5. He must fulfill such other conditions as may be prescribed by the State Bar Council for the purpose of enrolment.

No upper age limit for enrolment is fixed in the Advocates Act. So, after 21 years at any age one can enroll as an Advocate.

DISQUALIFICATION OF ENROLMENT

The following persons are disqualified to enroll as an Advocate (S.24A).

1. A person convicted for an offence involving moral turpitude.
2. A person convicted for an offence under untouchability (offences) Act, 1955.
3. A person dismissed or removed from government service on any charge involving moral turpitude.

The disqualification ceases to have effect after the period of two years of his release from jail or dismissal from service.

There is no disqualification for a person found guilty in the above said cases and who has been given benefit under the provisions of the Probation of Offenders Act, 1958.

If an application for the enrolment is refused on any one of the above grounds of disqualification, the State Bar Council has intimate that fact stating the name, address, reasons for refusal to all other State Bar Councils, thereby he shall be prevented from applying to the other State Bar Councils for Enrolment.

A person cannot be permitted to carry on other profession along with legal profession. So, a person with a law degree is carrying on the other profession is disqualified to enroll as an Advocate.

A full time salaried law officer is not entitled to enroll as an Advocate (Sathish Kumar Sharma V. Bar Council of Himachal Pradesh (AIR 2001 SC 509).

SENIOR ADVOCATE

S.16 of the Advocates Act classifies the Advocates into two types namely, Senior Advocates and other Advocates.

The Supreme Court or a High Court shall designate an Advocate with his consent, as Senior Advocate, if the court is of the opinion that by virtue of his ability, standing at the Bar or special knowledge or experience in the law, he deserves such distinction. It is a honor and privilege conferred on an Advocate.

By virtue of the pre-eminence which a senior Advocate enjoys in the profession, they carry the greatest responsibilities and they should act as a model to the junior members of the profession. A senior Advocate more or less occupies a position like a Queen 's Counsel in England next after the Attorney General, the Solicitor General and the State Advocate General.

Order-Iv Rule-2 regarding the 1966 deals with the rules regarding the designating an Advocate as a Senior Advocate in the Supreme Court and their conditions of practice. Each High court has framed their own rules of procedures for designating an Advocate as Senior Advocate.

The Bar Council of India has prescribed the following restrictions in the matter of practice of a Senior Advocate.

1. A senior Advocate shall not file a vakalatnama or a memo of appearance or pleading or application in any court or tribunal or before any person or authority mentioned in S.30 of the Act.
2. A Senior Advocate in the Supreme Court shall not appear without an Advocate on record in the Supreme Court.
3. A Senior Advocate in the High Court shall not appear Without an Advocate of the state roll.
4. He shall not accept instructions to draft pleading or affidavits, or to do any drafting work of an analogous nature.
5. He shall not undertake conveyancing work of any kind what so ever.
6. He shall not directly accept a case from a client or instructions from his client to appear in any court or tribunal.
7. He is free to make concessions or give undertakings in course of arguments on behalf of his client on instructions from the junior Advocate.

When an Advocate is designated as a Senior Advocate, the registrar of the Supreme court or the High court, as the case may be, shall communicate it to all the High courts and the secretary to the State Bar Council and the Bar Council of India. In the communication, the Name of the Advocate and the date on which he was designated as the Senior Advocate should be mentioned.

ADVOCATE ON RECORD

The Supreme Court rules of practice classifies the Advocates into three categories. They are (i) Ordinary Advocates (ii) Senior Advocates (iii) Advocates on Record.

An Advocate should have the following qualifications to become as an Advocate on Record.

1. He must have completed 4 years of service as Advocate.
2. In addition to the four years of Service as Advocate he should work for one year with an Advocate On Record, who has more than 10 years of service.
3. He should pass the Advocate On Record test conducted by the Supreme Court.

The Successful Advocates will be recognized as Advocate On Record by the Supreme Court and their name will be entered in a separate register maintained for this purpose. Only Advocates on

Record alone is entitled to file cases in the Supreme Court. Every year they should submit their annual income and expenditure account to the Supreme Court.

If an Advocate on Record is selected as the Senior Advocate then his name will be removed from the register of the Advocate on Record and will be put in the register of the Senior Advocate.

ADVOCATES ROLL

According to S.17 of the Advocates Act, every State Bar Council shall prepare and maintain a roll of Advocates. It shall contain two parts. First part containing the list of Senior Advocates and the second part containing the other Advocates.

When more than one Advocate is enrolled in a single day, based on their seniority in age their name will be entered in order.

In the Advocates roll the following details should be mentioned.

The name, Date of Birth, Permanent address, details about his education, the place where he is interested to practice etc.

A person cannot enroll himself as an Advocate in more than one Bar Council. A person whose name is registered in one state Roll can transfer his name in other State Roll on genuine grounds by an application to the Bar Council of India. If there is no genuine reason for transfer or any disciplinary proceedings are pending against him then transfer application will be rejected.

The State Bar Council should send an authenticated copy of the Advocates Roll whenever the new Advocates are included or names are removed from the roll.

AMICUS CURIAE

Amicus Curiae means ‘friend of the court’. He is the person who is voluntarily or on an invitation of the court gives his opinion to the Court on a question of law in which the court is doubtful.

Amicus Curiae is not an Advocate retained by any of the parties to the dispute. He is altogether a stranger to the case. By virtue of his standing in the profession and the Experience in the particular field of law the court may request to give his opinion on a particular issue. His views are only an information or a suggestion to the court. Amicus curiae can express his views only with the leave of the court. Normally he is not entitled to any remuneration of such work.

LAWYERS PRIVILEGES

Privilege means special kind of right. An Advocate being the officer of the court and belonging to the noble profession enjoys certain privileges inside and outside the court. The practice of law itself is a privilege conferred on lawyers. It is not open to anyone who wishes to practice law, only lawyers alone can practice law. Following are some of the privileges.

1. A Lawyer has the privilege to represent his clients in the court and tribunals.
2. A lawyer while going to the court to attend the case or while returning from the court is exempted from arrest under civil process.
3. A lawyer has a privilege of becoming judge, Attorney general, Solicitor General, Advocate General and government councils.
4. Since he is fighting for the justice, he is respected next to God.