

Advocate Act, 1961

Chapter V - Conduct of Advocates

(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.

1[(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 2[***] 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.

3[Explanation.-In this section, 4[section 37 and section 38] the expression "Advocate-General" and "Advocate-General of the State" shall, in relation to the Union territory of Delhi, mean the Additional Solicitor General of India].

1. Sub-section (1-A) inserted by Act 60 of 1973, section 24.

2. Certain words omitted by Act 601 of 1973, section 24.

3. Inserted by Act 21 of 1964, section 17.

4. Inserted by Act 60 of 1973, section 24.

Section 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 [1](#)[***] 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, [2](#)[either of its own motion or on a report by any State Bar Council or an application made to it by any person interested], withdraw for inquiry before itself any proceedings for disciplinary action against any advocate pending before the disciplinary committee of any State Bar Council and dispose of the same.

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

(4) In disposing of any proceedings 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 [3](#)[before the disciplinary committee of the Bar Council of India] the State Bar Council concerned shall give effect to any such order.

1. The words "On the common roll" omitted by Act 60 of 1973, section 25.

2. Substituted by Act 60 of 1973, section 25, for the words "of its own motion".

3. Substituted by Act 60 of 1973, section 25, for the words "before the Bar Council of India".

Section 36A - 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.

1. Inserted by Act 60 of 1973, section 26.

Section 36B - Disposal of disciplinary proceedings

(1) The disciplinary committee of a State Bar Council shall dispose of the complaint received by it under Section 35 expeditiously and in each case the proceedings shall be concluded within a period of one year from the date of the receipt of the complaint or the date of initiation of the proceedings at the instance of the State Bar Council, as the case may be, failing which such proceedings shall stand transferred to the Bar Council of India which may dispose of the same as if it were a proceeding withdrawn for inquiry under sub-section (2) of section 36.

(2) Notwithstanding anything contained in sub-section (1), where on the commencement of the Advocates (Amendment) Act, 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 other proceedings shall stand transferred to the Bar Council of India for disposal under sub-section (1).]

Section 37 - The Bar Council of India

(1) Any person aggrieved by an order of the disciplinary committee of a State Bar Council made [1](#)[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 [3](#)[including an order varying the punishment awarded by the disciplinary committee of the State Bar Council] thereon as it deems fit.

[4](#)[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.]

1. Substituted by Act 21 of 1964, section 18, for the words "under sub-section (3) of section 35".

2. Inserted by Act 60 of 1973, section 27.

3. Inserted by Act 60 of 1973, section 27.

4. Inserted by Act 60 of 1973, section 27.

Section 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 [1](#) [or the Attorney-General of India 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 [2](#) [including an order varying the punishment awarded by the disciplinary committee of the Bar Council of India] thereon as it deems fit.

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

1. Inserted by Act 60 of 1973, section 27.

2. Inserted by Act 60 of 1973, section 27.

3. Inserted by Act 60 of 1973, section 28

Section 39 - Application of sections 5 and 12 of the Indian Limitation Act

The provisions of sections 5 and 12 of the Indian Limitation Act, 1908 (9 of 1908) shall, so far as may be, apply to appeals under section 37 and section 38.]

1. Substituted by Act 60 of 1973, section 29.

Section 40 - Stay of order

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

[2](#) [(2)]Where an application is made for the stay of the order before the expiration of the time 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.]

1. Section 40 renumbered as sub-section (1) thereof and sub-section (2) inserted by Act 60 of 1973, section 30.

2. Section 40 renumbered as sub-section (1) thereof and sub-section (2) inserted by Act 60 of 1973, Section 30.

Section 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

[1](#) [***]

any where any order is made removing an advocate from practice, his name shall be struck off the State roll [2](#) [***].

[3](#) [***]

(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.

1. Clause (b) omitted by Act 60 of 1973, section 31.

2. The words "or the common roll, as the case may be" omitted by Act 60 of 1973, section 31.

3. Sub-section (2) omitted by Act 60 of 1973, section 31.

Section 42 - Powers of disciplinary committee

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

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring discovery and production for 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 (45 of 1860), and every such disciplinary committee shall be deemed to be a civil court for the purposes 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.

1[(4) Notwithstanding the absence of the Chairman of 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 order of the nature referred to in sub-section (3) of section 35 can be made in any proceedings in accordance with the opinion of the Chairman and the members of a disciplinary committee either for want of majority opinion amongst themselves or otherwise, the case, with their opinion thereon, shall be laid before the Chairman of the Bar Council concerned or if the Chairman of the Bar Council is acting as the Chairman or a member of the disciplinary committee, before the Vice-Chairman of the Bar Council, and the said Chairman or the Vice-Chairman of the Bar Council, as the case may be after such hearing as he think fit, shall deliver his opinion and the final order of the disciplinary committee shall follow such opinion.]

Section 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.]

1. Inserted by Act 60 of 1973, section 33.

Section 43 - Cost of proceedings before a disciplinary committee

The disciplinary committee of a Bar Council may make such order as to the costs 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.

Section 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.

1. Inserted by Act 60 of 1973, section 34.
