

Advocate Act, 1961

Chapter VI - Miscellaneous

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

Section 46 - Payment of part of enrolment fees to the Bar Council of India

[Omitted by Act 70 of 1993, section 8].

Section 46A - Financial assistance to State Bar Council

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.]

1. Inserted by Act 60 of 1973, section 35.

Section 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 practising the profession of law or subjects them to unfair discrimination in that country, no subject of any such country shall be entitled to practise 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 recognised for the purpose of admission as an advocate under this Act.

Section 48 - Indemnity against legal proceedings

No suit or other legal proceeding shall lie against any Bar Council or any committee thereof or a member of a Bar Council 1[or any Committee thereof] for any act in good faith done or intended to be done in pursuance o the provisions of this Act or of any rules made thereunder

1. Inserted by Act 60 of 1973, section 36.

Section 48A - Power of revision

1[48A. Power of revision. -

(1) The Bar Council of India may, at any time, call for the record of any proceeding under this Act which has been disposed of by a State Bar Council or a Committee thereof, and from which no appeal lies, for the purpose of satisfying itself as to the legality or propriety of such disposal and may pass such orders in relation thereto as it may think fit.

(2) No order which prejudicially affects any person shall be passed under this section without giving him a reasonable opportunity of being heard.]

1. Inserted by Act 21 of 1964, section 19.

Section 48AA - Review

1[48AA. 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.]

1. Inserted by Act 60 of 1973, section 37.

Section 48B - Power to give directions

1 [48B.Power to give directions.-

(1) For the proper and efficient discharge of the functions of a State Bar Council or any Committee thereof, the Bar Council of Indian 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.]

1. Inserted by Act 21 of 1968, section 19.

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

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

2[(a) the conditions subject to which an advocate may be entitled to vote at an election to the State Bar Council, including the qualification or disqualifications of voters, and the manner in which an electoral roll of voters may be prepared and revised by a State Bar Council;

- (ab) qualifications for membership of a Bar Council and the disqualifications for such membership;
- (ac) the time within which and the manner in which effect may be given to the proviso to sub-section (2) of section 3;
- (ad) the manner in which the name of any advocate may be prevented from being entered in more than one State roll;
- (ae) the manner in which the seniority among advocates may be determined;
- 3[(af) the minimum qualifications required for admission to a course of degree in law in any recognised University;]
- (ag) the class or category of persons entitled to be enrolled as advocates;
- (ah) the conditions subject to which an advocate shall have the right to practise and the circumstances under which a person shall be deemed to practise as an advocate in a court;]
- (b) the form in which an application shall be made for the transfer of the name of an advocate from one State roll to another;
- (c) the standards of professional conduct and etiquette to be observed by advocates;
- (d) the standards of legal education to be observed by Universities in India and the inspection of Universities for that purpose;
- (e) the foreign qualifications in law obtained by persons other than citizens of India which shall be recognised for the purpose of admission as an advocate under this Act;
- (f) the procedure to be followed by the disciplinary committee of a State Bar Council and by its own disciplinary committee;
- (g) the restrictions in the matter of practice to which senior advocates shall be subject;
- 4[(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;
- 5[(i) general principles for guidance of State Bar Councils and the manner in which directions issued or orders made by the Bar Council of India may be enforced;]
- (j) any other matter which may be prescribed :
- 6[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];
- 7[Provided further that] no rules made with reference to clause (e) shall have effect unless they have been approved by the Central Government.
- 8[(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, shall continue in force until altered or repealed or amended in accordance with the provisions of this Act].
-

1. Section 49 renumbered as sub-section (1) thereof by Act 60 of 1973, section 38.
2. Clause (a) substituted by Act 21 of 1964, section 20.
3. Clause (af) substituted by Act 60 of 1973, section 38.
4. Clause (gg) inserted by Act 60 of 1973, section 38.
5. Substituted by Act 21 of 1964, section 20, for clause (i).
6. Proviso inserted by Act 60 of 1973, section 38.
7. Substituted by Act 60 of 1973, section 38, for the words "Provided that".
8. Sub-section (2) inserted by Act 60 of 1973, section 38.

Section 49A - Power of Central Government to make rules

1 **[49A. 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 of 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.

2 [(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].

1. Inserted by Act 21 of 1964, section 21.

2. Sub-section (5) Substituted by Act 60 of 1973, section 39.

Section 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), subsections (1), (2) and (3) of section 9, section 15 and section 20 of the Indian Bar Councils 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 Councils 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 in so far as they relate to the admission and enrolment of legal practitioners.

(3) On the date on 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 (Bombay Act 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 in so far 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 Acts referred to in this section which do not stand repealed by virtue of any of the foregoing provisions of this section (except sections 1, 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.

Section 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.

Section 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 1 [actor plead] in that Court.

1. Substituted. by Act 70 of 1993, section 9.
