

Course Name- B.A.L.L.B. IVth Sem.

Subject- History

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Topic Growth of Legal Profession

The Indian Bar Councils Act, 1926

The Indian Bar Councils Act, 1926 act was enacted on 9 September 1926 to provide for constitution and incorporation of Bar Councils 2 and other purposes which extends to whole of India including Union Territories Judicial Commissioners Courts but except for the State of Jammu and Kashmir it is not applied.

Section 2 of act explains about interpretation of words like Advocate, Advocate-General, High Court, and Prescribed. For every High Court a Bar Council is constituted and incorporated and it shall be a body corporate which has its own seal and has power to acquire movable and immovable property. It can also sue and be sued in its name.

Bar Councils shall consist of 15 members one is an Advocate General, 4 nominated by High Court, 10 elected advocates of High Court. Five persons of Bar Council should have practised in High Court for 10 years to be its member. A Chairman and Vice-Chairman shall be elected by Council. But Advocates-General of West Bengal, Madras, Maharashtra and Gujarat will have Chairman ex-officio of Bar Council for it. Special provisions with regard to constitution in first Bar Council is explained under Section 5 of the Act. Terms of office for elected members of first Bar Council, Powers to make rules regarding constitution and procedure of Bar Councils are explained under Section 6 of the Act. The term of office for elected members will be 3 years from date of first meeting of council.

Bar Council has the power to make bye-laws and rules under the Act. Appointment of such officers and their payments and condition of service and forming committees of Council and procedure of committees, powers and duties as such are stated under Section 7 of the Act.

If a person has to practise in High Court then his/her name has to be entered in roll of advocates of High Court under this Act. High Court maintains and prepares the roll of advocates which has details of the practising advocates, vakils, and pleaders. Such enrolled person has to pay enrolment stamp-duty under Indian Stamp Act 1899 and a fee

to Bar Council. Seniority basis entries are made and pre-audience rights of advocates are determined by seniority. Every enrolled person shall get a certificate of enrolment by High Court and a copy of it is sent to Bar Council. All alterations and additions with regard to this shall be made by Bar Council.

Bar Council can make rules with regard to admission of persons to be an advocate of High Court and the High Court has the power to refuse any admission. Rules are made with regard to qualification for admission as an advocate, form and manner of application made to High Court, Notice to Bar Council on applications, Hearing by High Court, fees payable to Bar Council with regard to enrolment. Women cannot be disqualified for admission to be an advocate just on the basis of her gender. Some clauses that are repealed by Advocates Act 1961 in this Act are Punishment of advocate for misconduct, Tribunal of Bar Council, Procedure in inquiries, Powers of Tribunal with effect from 1963.

Section 14 states about right of advocates to practice in High Court under the provisions of the Act. Nothing will affect the power of the High Court of Judicature in Bengal or of the High Court of Judicature at Bombay to make rules under this Act.

General power of Bar council to make rules with regard to right and duties of advocates, conditions on which advocates can practice, giving legal education and training and conduct of Bar exams, investment and management of funds of Bar Council or any other matter which High Court deems fit.

High Court may fix fees payable as cost of any advocate. No Bar Council or Committee, Tribunal or member of Bar Council can be sued by any one for his/her act done in good faith under this Act. All rules has to be published in Official Gazette of the State when the High Court sanctions it. Amendment of the act has been discussed under section 19 of the Act. With regard to States of Bombay, Madhya Pradesh, Mysore, Punjab, Rajasthan, and Travancore-Cochin which started functioning before 1 November 1956 will be under High Courts of Corresponding New States of Bombay, Madhya Pradesh, Mysore, Punjab, Rajasthan, and Kerala. But the Hyderabad

and Saurashtra Bar councils are dissolved and their assets is transferred to Andhra Pradesh, Bombay and Mysore.

The All India Bar committee, 1951

The dissatisfaction with the provisions of the act, 1926 continued to be prevailed. The Supreme Court of India was established in 1950 .The Advocates act 1951 was passed which provided that every advocate of the supreme court can have right to practice in High Court. A committee, called all India Bar committee was appointed under the chairmanship of Justice S.R. Das. The committee made the following recommendations-

1. An All India Bar Council and state bar councils should be established for regulating legal profession at National and state level.
2. The power of enrolment and taking disciplinary action against the members of the bar i.e., the advocates including their suspension or removal from the rolls should be vested in the bar councils.
3. Enrolment of non-law graduates as pleaders of mukhtars should be stopped forthwith. However, the pleaders and mukhtars who were already enrolled should be allowed to practice for some time.
4. There should be a single common roll of advocates who should be allowed to practice in any Court of India.

The committee did not suggest for separate Bar Council for the supreme court because the purpose was to unify the system. It recommended the existence of distinction between Counsels and solicitors in Bombay, and Calcutta High Court while rest of the classes among practitioners be abolished and common nomenclature of 'Advocate' be used. Only law graduates be enrolled as advocate

THE ADVOCATES ACT, 1961

To implement the recommendations of the All India Bar Committee (fully endorsed by fourteenth Report of the Law Commission in 1955), the Advocates Act, one thousand nine hundred sixty one was enacted. The Act extends to the whole of India, except the State of Jammu and Kashmir. The Act provides for amending and consolidating the law relating to legal practitioners and to provide for the constitution of State Bar Councils and an All India Bar Council (for the first time in India). The Act took away the powers till then vested in the Courts, in the matter of admission of advocates and the maintenance of the rolls, and their disciplinary conduct (subject to an ultimate appeal to the Supreme Court). These powers now vest in the Bar Councils. Every Bar Council constituted under the Act is a body corporate having a common seal, and may, by the name of which it is known sue and be sued.

The main features of the Act are,

- (1) 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.
- (2) Integration of the bar into a single class of legal practitioners known as *advocates*.
- (3) A uniform qualification for the admission as advocates viz, degree in law.
- (4) Division of advocates into senior advocates and other advocates based on merit.
- (5) 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.

Bar Council of India

Composition –

The Bar Council of India consists of

- (a) The Attorney-General of India *ex-officio*
- (b) The Solicitor-General, *ex-officio*,
- (c) One member elected by each State Bar Council from amongst its members.

There are elected Chairman and a Vice-Chairman of the Council, and, a Secretary and an Accountant the Bar Council of India has been authorised to constitute one or more of the following *committees*,

- (1) Legal Aid Committee
- (2) Disciplinary Committee
- (3) Executive Committee
- (4) Enrolment Committee
- (5) Legal Education Committee,

Every Disciplinary Committee is to consist of three members, two persons to be elected from amongst its members and one other to be co-opted from such members as have at least ten years' practice. The senior-most advocate from amongst its members is to be chairman of the committee. The Legal Education Committee consists of ten members of whom five persons elected by the Council from amongst its members and the other five are those who are not members of the Council.

The main source of income of the Bar Council of India is the contribution of forty per cent out of the fee of Rupees two hundred fifty paid by each applicant for enrolment to the State Bar Council.

Functions –

Main functions of the Bar Council of India include,

- (1) To prepare and maintain a common roll/roster of all the advocates in the country.
- (2) To lay down standards of professional conduct and etiquette for advocates and rules regarding enrolment, suspension, etc., of advocates.
- (3) To safeguard the rights, privileges and interests of advocates.
- (4) To exercise general supervision and control over State Bar Councils, to deal with and dispose of any matter arising under Act, which may be referred to it by a State Bar Council.
- (5) To promote and support law reforms.
- (6) To promote legal education and to lay down standards of such education in consultation with Universities and State Bar Councils.
- (7) To recognize Universities whose degree will qualify a person to be enrolled as an advocate and to recognize foreign law degrees?
- (8) To conduct seminars and talks on legal matters and to publish legal journals.
- (9) To organize legal aid to the poor.
- (10) To manage and invest the funds of the Bar Council.
- (11) To provide for the election of its members.

Powers –

Apart from the powers already enumerated, the Bar Council of India (BCI) has been specifically conferred special powers,

(1) Power to remove name from the rolls– The BCI is empowered, either on a reference made to it or otherwise, if it is satisfied that any person has got his name entered in the roll of the Advocates by misrepresentation, to remove such person from the roll after giving him an opportunity of being heard. Besides, the name of advocate may be removed from the roll as punishment for misconduct in disciplinary proceedings.

(2) Revision- Apart from the power vested in it to remove the name of an advocate in certain cases, and the power vested in the disciplinary committee to hear and dispose of the disciplinary matters whether by way of original hearing or on appeal, the BCI has the power at any time to call for the record of any proceeding under the Act, which has been disposed of by a State Bar Council or a Committee thereof, and from which no appeal lies, for satisfying itself as to the legality or propriety of such a disposal and may pass such orders thereon as it deemed fit.

(3) Directives- Section 48B empowers the BCI for the proper and efficient discharge of the functions of a State Bar Council or any Committee thereof, to give such directions to the State Bar Council or its Committee as may appear it to be necessary, and the latter has to comply with the directions. Where a State Bar Council is unable to perform its functions for any reason whatsoever, the BCI may 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.

(4) Rule-making power- Section 15 enumerates the powers of the State Bar Councils/BCI to make rules relating to the Bar Councils. Section 28 gives power to the State Bar Councils to make rules on some matters connected with the preparation of rolls, training and examination for admission as advocates, form of application for enrolment, and conditions for enrolment. Any rule made by State Bar Council shall have effect only if it has been approved by the BCI. Section 49 confers on the BCI a general power to make rules for discharging its functions under the Act. Rules include rules the statement of the grounds in support of the refusal to the Bar Council of India, and has to dispose of the application finally in conformity with such opinion.

Qualifications for Admission as an Advocate

The person has to be a citizen of India and has completed the age of 21 years, and has obtained a degree in law (LL.B.) from any university in India or of any university outside India considered equivalent to Indian degree, A person eligible to pursue the course in law (LL.B.- Three Year Course) should be a graduate of a university or have other equivalent academic qualification.

The requirement of practical training is now abolished. A law graduate is required to pay an enrolment fee of Rupees two hundred fifty 250 to the State Bar Council (in case of SC and STs, fee is Rupees one hundred twenty five).

With regard to a barrister also, the Bar Council of India has specified the same requirement as to a degree in law. It may be noted that the Advocates Act, one thousand nine hundred sixty one has done away with the distinction between advocates and *vakils*. Now all members enrolled shall be called 'advocates'. But among advocates, there shall be Senior Advocates also. Those who were senior advocates as on 1 12.one thousand nine hundred sixty one shall be deemed to be senior advocates. Besides, power has been conferred under Section 16 of the Act to the Supreme Court and the High Courts to designate any advocate as senior advocate if in its opinion by virtue of his ability, experience (10 years' practice) and standing at the Bar, he is deserving of such distinction. Senior advocates are governed by the rules of the Supreme Court applicable to them, and are also subject to the restrictions laid down by the Bar Council of India in the interest of the legal profession.

Disqualification for Enrolment

No person shall be admitted as an advocate .f he is convicted of an offence involving moral turpitude, if he is convicted of an offence under the provisions of Unsociability (Offences) Act, 1955, Section 28 of the Advocates Act generally prohibit the enrolment of a person who, though he may be otherwise qualified, is in full or part-time service or employment (except when he is a law officer) or is engaged in any trade, business or occupation (except when he is a sleeping partner). An advocate may edit legal books at a salary, coach pupils for legal examinations and subject to the rules against full-time employment, engage in journalism, lecturing and teaching subjects both legal and non-legal,

Right to Practice

Every advocate, whose name is entered in the State roll, shall be entitled as of right to practice throughout the territories to which the Act extends-

(1) in all courts including the Supreme Court

(2) before any tribunal or person legally authorised to take evidence (Section 29). Under Section 33, advocates alone are entitled to practise in any court. However, this right to practice is subject to rules framed by the High Court under Section 34.

Persons illegally practising in Courts or before other authorities when they are not entitled to practise under the provisions of the Act are liable for punishment with imprisonment for a term which may extend to six months.