

Bill No. XXI of 2021

THE ADVOCATES (AMENDMENT) BILL, 2021

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BILL

further to amend the Advocates Act, 1961.

BE it enacted by Parliament in the Seventy-second Year of the Republic of India as follows:—

1. (1) This Act may be called the Advocates (Amendment) Act, 2021.

Short title and commencement.

5 (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

25 of 1961.

2. In section 2 of the Advocates Act, 1961 (hereinafter referred to as the principal Act), after clause (i), the following clause shall be inserted, namely:—

Amendment of section 2.

10 "(ia) "misconduct" includes any act of a legal practitioner that is found to be in breach of or wanting in observance of the standard of professional conduct or etiquette prescribed by the rules framed under clause (c) of sub-section (1) of section of this Act, or any conduct that is a disqualification for enrolment under section 24A of this Act."

Amendment
of section 35.

3. In section 35 of the principal Act, in sub-section (3), after clause (d), the following clauses shall be inserted, namely:—

"(e) impose such fine as it may deem fit, proportionate to the gravity of the misconduct proved against the advocate, subject to the maximum limit of three lakh rupees; and

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(f) award a fair and reasonable compensation of such amount as it may deem fit, subject to the maximum limit of five lakh rupees, payable to the person aggrieved by the misconduct of the concerned advocate."

Amendment
of section 43.

4. In section 43 of principal Act, after clause (b), the following shall be inserted, namely:—

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"Provided that the disciplinary committee may order special or exemplary costs, subject to a maximum of two lakh rupees, to be payable either by the complainant, if the complaint is found to be vexatious or frivolous, or by the respondent advocate, if he is found to have been uncooperative in the disciplinary proceedings under this Act."

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STATEMENT OF OBJECTS AND REASONS

The legal profession is considered a noble profession as it facilitates the establishment of a legal system that dispenses fair and impartial justice and protects the rule of law. The fundamental prerequisite for preserving the nobility of this profession is to ensure adherence to a well-defined set of professional norms that seek to regulate the conduct of advocates and provide adequate punishment in cases of proven misconduct.

Although both the Advocates Act 1961 and the Bar Council of India Rules lay down the standards of professional conduct, they are silent as to what the term 'misconduct' means in the context of the legal profession. This lack of specificity has resulted in the arbitrary usage of section 35 of the Act, which seeks to penalise the misconduct of advocates. Furthermore, the forms of punishment prescribed under section 35 are very limited. They do not allow for imposition of fine on the advocate on whose part the misconduct is proven, or provision of compensation to the party aggrieved by such misconduct. Lastly, the Act fails to provide punishment in case the complaint of misconduct is found to be vexatious or frivolous, or where the advocate has been uncooperative in the disciplinary proceedings.

To remedy this lacunae in the law governing the legal profession, this Bill inserts a comprehensive definition for 'misconduct', expands the scope of penalties and costs provided under sections 35 and 43. By doing so, this Bill lends much-needed clarity and efficacy to the professional norms that are aimed at deterring misconduct of advocates.

This Bill seeks to achieve the above objectives.

DR. SASMIT PATRA

ANNEXURE

EXTRACTS FROM THE ADVOCATES ACT, 1961

(25 OF 1961)

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Definitions.

2. (1) In this Act, unless the context otherwise requires,—

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(i) “legal practitioner” means an advocate or vakil of any High Court, a pleader, mukhtar or revenue agent;

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CHAPTER V

CONDUCT OF ADVOCATES

Punishment of advocates for misconduct.

35. (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.

(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 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.

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Cost of proceedings before a disciplinary committees.

43. 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.

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further to amend the Advocates Act, 1961.

(Dr. Sasmit Patra, M.P.)