

Bill No. LX of 2019

THE ADVOCATES (AMENDMENT) BILL, 2019

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BILL

further to amend the Advocates Act, 1961.

BE it enacted by Parliament in the Seventieth Year of the Republic of India as follows:—

1. (1) This Act may be called the Advocates (Amendment) Act, 2019.

Short title and
Commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions
5 of this Act.

25 of 1961.

2. In section 2 of the Advocates Act, 1961, (hereinafter referred to as the principal Act) in sub-section (1):—

Amendment
of section 2.

(i) for clause (a) the following clause, shall be substituted, namely:—

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"(a) "advocate" means and advocate entered in any roll under the provisions of this Act and includes an advocate carrying on practice in law with

a law firm, by whatever name called, and a foreign lawyer registered under any law in a country outside India and recognised by the Bar Council of India in such manner as may be prescribed—

(aa) "practicing advocate" means an advocate with twelve or more recorded hearings and name in five or more *vakalatnamas* in a year; 5

(ab) "young practicing advocate" means an advocate under the age of thirty years who is practicing for a period of less than three years from the date of registration;".

(ii) after clause (n), the following clause shall be inserted, namely:—

(o) "Advocates' Social Security Fund" means the fund maintained by the Central Government under section 44C to be specifically used for the purposes mentioned in Section 44A." 10

Insertion of new Sections 44A, 44B, 44C, 44D and 44E.

3. After section 44 of the principle Act, the following new sections shall be inserted, namely:—

"CHAPTER - VA

SOCIAL SECURITY BENEFITS

Welfare Schemes.

44A. (1) The Central Government shall, in consultation with the Bar Council of India, formulate and notify, from time to time, suitable welfare schemes for practicing lawyers on matters relating to—

(a) life and disability cover; 20

(b) health and maternity benefits;

(c) stipend for young practicing lawyers;

(d) group health insurance cover;

(e) compensation in case of death; and

(f) any other benefits as may be determined by the Central Government. 25

(2) The State Government may, in consultation with the State Bar Council formulate and notify, from time to time, suitable welfare schemes for practicing advocates, including schemes relating to—

(a) housing; and

(b) capacity building of practicing lawyers. 30

Fund of Schemes.

44B. (1) The scheme notified by the Central Government in consultation with the Bar Council of India may be—

(i) wholly funded by the Central Government; or

(ii) partly funded by the Central Government and partly funded through contributions collected from the beneficiaries of the scheme or the employers as may be prescribed in the scheme by the Central Government: 35

Provided that the contribution from the beneficiaries under clause (ii) shall not exceed 30 per cent of the total cost of the scheme; or

(iii) partly funded by the Central Government and partly funded through the Advocates' Social Security Fund: 40

Provided that any expenditure made from the Advocates' Social Security Fund towards any scheme shall be made only after due consultation with the Bar Council of India.

(2) Every scheme notified by the Central Government in consultation with the Bar Council of India shall provide for all matters that are necessary for the efficient implementation of the scheme including but not limited to,— 45

- (i) scope of the scheme;
- (ii) beneficiaries of the scheme;
- (iii) resources of the scheme; and
- (iv) any other relevant matter."

- 5 **44C.** (1) The Central Government shall constitute a fund to be called the "Advocates' Social Security Fund" which shall be managed by the Central Government in consultation with the Bar Council of India. Advocates Social Security Fund.
- (2) There shall be credited to the fund, a compulsory contribution called the social security contribution from practicing advocates with income after tax exceeding 10 rupees one crore, which shall be at least one per cent of the net income after tax or such higher percentage as may be prescribed by the Central Government from time to time.
- (3) There shall also be credited to the Fund—
- (a) any voluntary donation or contribution made to the Fund by the Bar Council of India, any State Bar Association, any State Advocates' Association or other 15 association or institution, or any advocate or other person;
 - (b) any grants which may be made by the Central Government or a State Government to the Fund;
 - (c) all sums collected by way of sale of welfare stamps under section 46B.
- 20 **44D.** (1) The Central Government, may, in consultation of the Bar Council of India, by notification, make rules for carrying out of the provisions sections 44A, 44B and 44C. Power to make rules.
- (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—
- (a) the form and the manner in which the annual statement of accounts and annual report shall be prepared;
 - 25 (b) the amount of social security contribution as a percentage of the net income after tax of advocates with income more than rupees one crore; and
 - (c) the value and design of welfare stamps to be printed and distributed under section 46B.
- 30 **44E.** (1) The State Government may, in consultation with the State Bar Council, by notification, make rules for carrying out the provisions of sub-section (2) of section 44A. Power of State Government to make rules.
- (2) In particular, and without prejudice to the generality of the foregoing power, such rules may, provide for all or any of the following matters, namely,—
- (a) the form and the manner in which the annual statement of accounts and annual report shall be prepared;
 - 35 (b) recognising and earmarking the land for group housing schemes for practicing advocates; and
 - (c) entering into Memorandum of Understanding with institutions and organisations for capacity building of practicing advocates.
- 40 **4.** After section 46A of the principle Act, the following section shall be inserted, namely:— Insertion of new section 46B.
- "**46B.** (1) The Central Government shall cause the printing of welfare stamps to be affixed on every *Vakalatnama*, Power of Attorney, Agreements for litigation, Affidavits, documents relating to consultation and other similar instruments, called by Printing of Welfare Stamps.

whatever name, but involving service of advocates (2) the sale proceeds of welfare stamps shall be credited to the Advocates Social Security fund.

(2) The instruments referred at sub-section (1) shall be treated as deficient unless they are affixed with the welfare stamps.

Amendment
of Section 49.

5. In section 49 of the principal Act, in sub-section(1),—

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(i) after the words "State Bar Council", wherever they occur, the words "and the Supreme Court Bar Association" shall be inserted.

(ii) after clause (i), the following clauses shall be inserted namely:—

"(ia) the manner in which the State Bar Council may exercise supervision and control over Bar Associations except the Supreme Court Bar Association, Association of law firms and foreign lawyers, situated within its territorial jurisdiction and the manner in which the directions issued or orders passed by the State Bar Council may be enforced;

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(ib) to carry out welfare schemes and social security measures for practicing advocates as notified by the Central Government".

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STATEMENT OF OBJECTS AND REASONS

The first resolve which our Preamble to the Constitution makes is that of justice. It is not a mere coincidence that it is first in the order. All other resolves are part of or can be accomplished only if Justice is secured first Justice is the bare minimum and the basis of the formation of our country as our freedom struggle based upon fight against injustice. Considering the importance of justice, all aspects related to it must be cared for and strengthened.

One of the most crucial components of the justice delivery system in India is its human resource element which is the Advocate. Their role cannot be overstated in the whole process. They act as a bridge between the aggrieved and the adjudication institution. They also play an important role in shaping our society, not to forget their role in assisting courts to arrive at several judgments protecting the environment.

Despite the importance attached to the profession, these are no concrete measures in place to ensure their social security. Other limbs in the administration of justice that is the judges and the Government employees are much ahead in this aspect. The Central Government till now did not have any specific responsibility towards the lawyers, and as most of the social security measures such as insurance and banking fell under list I of the seventh schedule, the need to fix specific responsibility arose.

Hence this Bill.

V. VIJAYASAI REDDY

ANNEXURE

EXTRACTS FROM THE ADVOCATES ACT, 1961

(25 OF 1961)

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2. Definitions.— * * * *

(a) "advocate" means an advocate entered in any roll under the provisions of this Act;

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49. General power of the Bar Council of India to make rules.—(1) The Bar Council of India may make rules for discharging its functions under this Act, and, in particular, such rules may prescribe—

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

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²[(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;]

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FINANCIAL MEMORANDUM

Clause 3 of the Bill intends to formulate and notify welfare schemes for the practising lawyers by inserting a new section 44A to Advocates Act, 1961. Similarly, the clause also proposes to constitute the Advocates' Social Security Fund to be managed by the Central Government by inserting a new section 44C to the Act. It has been provided that Central Government may provide grants for crediting to the fund. Therefore, the Bill, if enacted, will involve expenditure from the Consolidated Fund of India. However, it is not possible at this stage as to the exact amount which is likely to be incurred towards recurring and non-recurring expenditure for the purpose.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 3 of the Bill empowers the Central Government to make rules for carrying out the purposes of this Bill. As the rules will relate to matters of detail only, the delegation of legislative power is of a normal character.

RAJYA SABHA

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further to amend the Advocates Act, 1961.

(Shri V. Vijayasai Reddy, M.P.)