

Report on
The Advocates (Amendments) Bill, 2017



Submitted to

Surat District Bar Association
Surat, Gujarat

Submitted by

Dr. Kalpeshkumar L Gupta
Law Teacher & Law Researcher
Surat, Gujarat
www.klgupta.in

June 28, 2017

Table of Content

Sr. No.	Topic	Page No
1	Background of the issue	3
2	Issue raised in haste	4
3	Issue of Strike	5
4	Section 19 : State Bar Council to send copies of rolls of advocates to Bar Council of India	7
5	Section 35 :- Punishment of advocates for misconduct	8
6	Advocates' Role (Relevant to present issue)	11
7	Final Remarks	12

1. Background of the Issue

Law Commission of India in its report No. 266 dated March 23, 2017 recommended certain amendments in the Advocates Act, 1961.

Law Commission emphasised on better regulatory mechanism for proper conduct of law professional. It heavily relied upon on recent case *Mahipal Rana Singh Rana v/s. State of UP (AIR 2016 SC 3302)*, in which an Advocate intimidated and threatened a Civil Judge (Senior Division). Law Commission of India invited suggestions from all stakeholders from all over the India. Bar Council of India submitted recommendations alongwith draft bill. The Law Commission while reviewing the Advocates Act felt that the conduct of the advocates, directly as well indirectly affects the functioning of the courts and thereby contributes to the pendency of cases. The Commission felt that some provisions would be necessary to regulate the conduct of advocates in the court, which affects the functioning of the court as well as expectations of the aggrieved.

Full Report is here <http://lawcommissionofindia.nic.in/reports/Report266.pdf>

2. Issue raised in haste

Looking at law commission's report, it has come out that Hon'ble Supreme Court of India referred the matter in haste to Law Commission of India for research purpose (para 5.4, page 10). Ultimately the commission sent the recommendations to Bar Council of India to amend the Advocate Act.

5.4 Being dismayed with the unsatisfactory regulatory mechanism governing the advocates, the **Supreme Court expressed its anguish** observing that there was an urgent need to review the provisions of the Advocates Act, particularly dealing with the regulatory mechanism for the legal profession and other identical issues in consultation with all concerned.

SC should have asked Bar Council to take disciplinary action under Section 35 (Punishment of advocates for misconduct) rather than demanding radical change in whole Advocates Act.

Chapter XI – Advocacy lurking in the shadow. In this chapter the law commission highlights the issue of fake/bogus advocates which is affecting the Indian Judicial system. The commission cited the media report stating that 33 to 45% of advocates are fake. This raises further issue, why the commission did not collect and cited the figure received from Bar Council of State.

As per recent media reports, the Bar Council of India conducted verification of advocates under the Bar Council of India Certificate and Place of Practice (Verification) Rules, 2015, and it was reported that a very high percentage (33 to 45%) of advocates were fake.

Chapter XII – Legal Education in India. In this chapter, the commission highlighted issue of legal education in India. As per my view, the commission should have prepared a separate report on this rather than including in the present report which focuses on amendment in Advocates Act.

Chapter XIII – Pre-enrolment training of advocates. In this chapter, the commission opined with the support of some judicial pronouncements that half baked advocates appearing in court. It recommended pre-enrolment training and apprenticeship before the induction of a person as an advocate. This is creating another layer after All India Bar Exam (AIBE) which seeks suitability of law graduate to be an advocate. As per my understanding and experience, there is no requirement of this training. From my view point law graduates must go under training/apprenticeship from their first year of law study. District Bar Council provide for proper training programmes for young budding advocates.

3. Issue of Strike

Law Commission should have mentioned figures (State Bar Council wise, reasons of strike) of number of days wasted in strike. This would have helped the stakeholders to respond well.

.....all the High Courts through the Chief Justices were requested to send data on loss of working days by call of strikes in their respective jurisdictions, during the last five years. The Commission was astonished on going through the responses received pursuant to its request, as it was found that the strikes by the advocates were rampant throughout the length and breadth of the country with little variation in degree. (Page 12)

Chapter VII regarding loss of court's working days: A Staggering Fact does not give proper picture of the strike issue. Commission highlighted the some district courts and recommended insertion of new Section 35A

Section 35A – Prohibition on the boycotts or abstention from court's work

No association of advocate or any member of the association or any advocate, either individually or collectively, shall, give a call for boycott or abstinence from court's work or boycott or abstain from court's work or cause obstruction in any form in court's functioning or in court premises.”

No collective bargain for advocates

Chapter VIII – Supreme Court Judgement on Strike – Reprehensible Act. In this chapter the commission relied upon some judgements of Hon'ble SC which upheld advocate's strike as illegal. SC opined that this act of advocates lead to pendency of cases. Advocates also have right for collective bargaining if their genuine and urgent demands are not met with.

What if judges fail in their duty?

In the report the commission put stress on advocates' conduct towards judiciary and their clients. Advocates are having greater responsibility towards the society in securing justice. If we look at other side judges also have same responsibility towards the litigants who approach courts seeking timely justice but unfortunately they failed to get so. Judges' case disposal rate is too low to reduce the backlog. It is true that vacancy of judges is one of the reasons but what about judges' efficiency in justice delivery in timely manner. Vacation in courts also one of the reason of pendency of cases in India. We have not heard that judges

want to waive the vacation period. Judiciary is heavily taking on the advocates in country in greater haste.

4. Section 19 : State Bar Council to send copies of rolls of advocates to Bar Council of India

“Every state bar council shall to the Bar Council of India a copy of the roll of advocates prepared by it for the first time under this act and shall thereafter communicate to the Bar Council of India all alteration in, the additions to, any such roll, electronically, as soon as the same has been made within a period not later than seven days”.

In the era of digital world, Bar Council of India should come up with an integrated platform where state bar council will fill all information online on platform created by BCI. Anybody can visit the website of BCI and see the statewise/bar council wise details of advocates. Online mechanism is efficient rather than sending updates on roll to BCI time to time.

Note :- No suggestions received in revision of Bill¹

¹ <http://www.barcouncilofindia.org/wp-content/uploads/2017/03/Suggested-Amendments-to-the-Advocate-Act-1961-1.pdf> June 28, 2017

5. Section 35 :- Punishment of advocates for misconduct

Insertion of Section 2(i)(iii) Misconduct

“Misconduct” includes an act of an advocate whose conduct is found to be in breach of or non-observance of the standard of professional conduct or etiquette required to be observed by the advocate; or forbidden act; or an unlawful behaviour; or disgraceful and dishonourable conduct; or neglect; or not working diligently and criminal breach of trust; or any of his conduct incurring disqualification under Section 24A.

Remarks

BCI in its draft bill first time has given inclusive definition of Misconduct having wider meaning. Inclusive definition gives wider scope for complaint to complaint but at the same time create ambiguity. For example not working diligently mentioned in definition, now how to judge diligent work of an advocate, what constitute diligent work. Different advocates carry different skills sets, efficiency, way of working. Client may complaint against an advocate if matter goes beyond desired period because of various reasons. Advocates have no recourse to hold case file if fees is not paid by client either full or part. After case is completed and if client does not give fees then what will be remedy for advocates where majority of them don't raise the bill/invoice for professional service.

To have professional behaviour of an advocate in court room, it is desired to have cctv in the court room. Recently Supreme Court has directed the installation of CCTV cameras inside lower courts in at least two districts in every state and union territory within the next three months.²

Insertion of Section 35(3)(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 Rs. 1 Lakh and cost of the proceedings.³

² <http://www.thehindu.com/news/national/sc-orders-installation-of-cctv-cameras-inside-district-courts/article17725432.ece>, March 29, 2017

³ <http://www.barcouncilofindia.org/wp-content/uploads/2017/03/Suggested-Amendments-to-the-Advocate-Act-1961-1.pdf> June 28, 2017

Earlier proposed provision

Impose a fine which may extend of rupees 3 Lakhs and the cost of proceedings.

Insertion of Section 35(3)(f)

Award a fair and reasonable compensation of such amount, subject to a maximum of 1 Lakh as it may deem fit, payable to the person aggrieved, if any by the misconduct of the concerned advocate.⁴

Earlier proposed provision

Award compensation of such an amount, subject to a maximum of 5 Lakhs as it may deem fit, payable to the person aggrieved by the misconduct of the advocate.

Insertion of Section 35(3)(g)

Impose special and exemplary costs subject to the maximum of Rs. 1 Lakh on the complainant in case, the complainant is found to be vexatious or frivolous or on the respondent-advocate in case he is found to have been un-cooperative in the disciplinary proceedings under the Act.⁵

Earlier proposed provision

Impose costs, subject to a maximum of rupees 2 Lakhs

On the complainant in case the complaint is found to be vexatious, false or frivolous

On the advocate concerned in case he is found to be not cooperating in the disciplinary proceedings under the act.

Remarks

Quantum of fine and compensation is harsh and has been proposed without any proper reasoning. The Law Commission of India should have gone through

⁴ <http://www.barcouncilofindia.org/wp-content/uploads/2017/03/Suggested-Amendments-to-the-Advocate-Act-1961-1.pdf> June 28, 2017

⁵ *ibid*

the past cases and calculated the quantum of fine and compensation should have been awarded in those cases. This would be the proper base of deciding fine and compensation. Quantum of fine should be fixed at three stages shown as under

Stage(s)	Quantum of Punishment
1	Rs. 25, 000 fine plus Reprimand
2	Rs. 50,000 fine, 1 st Warning & Compensation upto Rs. 25,000
3	Rs. 1,00,000, suspension of licence for 3 to 5 years depending upon gravity of misconduct plus Compensation upto Rs. 50, 000

Fine collected to be deposited in separate account and compensation to be paid from the said account to aggrieved client.

Insertion of Section 35(6)

During pendency of a disciplinary proceedings in the complaints of grave misconduct, the Bar Council of India and State Bar Council as the case may be, if it deems fit and proper may suspend the advocate from practice, but, no such suspension shall be made without the prior recommendation of concerned Disciplinary Committee.⁶

Remarks

Action under Section 35(6) should be initiated only under Stage 3 as mentioned above.

⁶ ibid

6. Advocates' Role (Relevant to present issue)

Professional Conduct in Court

Advocate is an officer of the court. He is supposed to behave professionally i.e. showing greatest respect to the judicial officers. Present report shows many cases decided by higher judiciary mentioning unprofessional, unwanted, undesired behaviour of the advocate.

Ethical Conduct

Advocate carries greater responsibility towards their clients. In absence of this, it defeats very purpose of justice. Advocate should stop being decision maker in the case. He/She should guide the client(s) properly so that they can take the decision in right manner. Presently advocates have become decision maker in the cases rather than being a guide. As a decision maker they tend to forget their professional duties and end up doing professional misconduct as cited by higher judiciary in various cases.

7. Final Remarks

Looking at above observation we can conclude that the report prepared by the law commission has been prepared in haste without looking at overall aspects of the issue. Report contains some features which ought not to be there esp. amendment in Section 35 of Act. Bar Council of India prepared draft amendments without giving much publicity to most affected stakeholder i.e. advocate. Proposed amendment gives unlimited power in hands of judges and esp. clients which may hamper advocate's professional skills and efficiency.

It is recommended that Law Commission of India and Bar Council of India further look into the present report, proposed amendments and remove inconsistency so that we can have balanced and efficient legislation in place.