

**2. What is the historical background and need for the enactment of Advocates Act, 1961?**

**3.** According to you, what are the requisite skills and qualities needed for the successful Advocate in the legal Profession with two living examples of any Advocates with whom you were associated with or acquainted with?

**4.** What would be your contribution towards the evolution of law in the legal profession and society at large, after you become an Advocate? Explain it with minimum 5 points about your vision and execution?

**8.** Comment on declining standards of Professional Conduct of Lawyers in light of the case Titled **“R. K. Anand v. Registrar, Delhi High Court, Criminal Appeal No 1393 of 2008, (2009) 8 SCC 106.”**

**10.** What is the difference between Advocate and Senior Advocate and how Senior Advocate is designated in light of the Supreme Court Judgment **“Indira Jaising v. Supreme Court of India” (2017) 9 SCC 766?**

The Advocates Act, 1961

Details Of The Act

Act Id: 196125 - Act Number: 25 - Enactment Date: 19th/05/1961 -  
Enforcement Date: 16th/08/1961 - Act Year: 1961

Short Title: The Advocates Act. 1961, Long Title: An Act To Amend And Consolidate The Law Relating To The Legal Practitioners And To Provide For The Constitution Of Bar Councils And An All-India Bar.

Ministry: Ministry Of Law And Justice - Department: Department Of Legal Affairs

### Summary of the Act

The Advocate Acts lay out the legal framework for legal practitioners, as well as guidelines for the establishment of Bar Councils and an All-India Bar. Basically, the Act lays out the process for registering with state-level bar councils, as well as the credentials that an individual must have in order to practice law. The Bar Council of India is the supreme body that sets the rules and regulations for registration. It also specifies what kind of quality a legal institution can uphold.

The Advocates Act, 1961 is a revised version of the Indian Bar Council Act, 1926, or we can assume that it has replaced the Indian Bar Councils Act. The Indian parliament passes an act with the purpose or motive of establishing laws governing legal practitioners. Under the authority granted by the act, the Bar Council of India enacted such rules known as Bar Council of India Rules, which outline the types of rules that apply to practice or necessary requirements for legal education, with a focus on professional misconduct.

The following are the key characteristics of this act:

The Bar Council of India and State Bar Councils were formed as a result of this act

Any supporter does not join more than one State Board, though he may be moved from one to the other.

The Bar Council was granted self-governing status.

It stipulated that similar rolls of Advocates be established across the world.

It also included provisions for combining all of the legal system's laws into a single document.

At both the state and federal levels, different regulations for the Bar Council were enacted.

As previously mentioned, various titles such as lawyer and vakil were eliminated in favor of a single title of Advocate.

There are 7 Chapters in this act, as follows:

Preliminary, Bar Councils, Admission and Enrollment of Advocates, Right to Practice, Conduct of Advocates, Miscellaneous, and Temporary and Transitional Provisions. These chapters are discussed in detail in this study.

## Chart of the Act

Chapter	Section	Brief Details
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Chapter 1	Preliminary	Section 1 Short title, extent, and commence This section states that the Act shall be called The Advocates Act. 1961. It extends to the whole of India.
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Section 2	Definitions	The section lays out various definitions as follows:
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Advocate ♦ advocate entered in any roll under the provision of this Act

Appointed day ♦ means the day on which that the provision came into force,

Bar Council ❖ Bar Council constituted under this Act,

Bar Council of India ❖ Bar Council constituted under section 4 for the territories to which this Act extends,

Law Graduate ❖ a person who has obtained a bachelor's degree in law from any university established in India

Legal Practitioner ❖ an advocate of any High Court, a pleader, a mukhtar, or revenue agent,

Prescribed ❖ prescribed rules made under this Act,

Roll ❖ roll of advocates prepared and maintained under this act

State ❖ does not include a union territory,

State Bar Council ❖ Bar Council constituted under section 3,

State Roll ❖ roll of advocates prepared and maintained by a State Bar Council under section 17.

Chapter 2 Bar Councils      Section 3   State Bar Councils      For the respective States, there shall be a State Bar Council k/a the Bar Council of that State.

The States are - Andhra Pradesh, Bihar, Gujarat, J&K, Jharkhand, Madhya Pradesh, Chhattisgarh, Karnataka, Orissa, Rajasthan, Uttar Pradesh, Uttaranchal, Meghalaya, Manipur, Tripura

For the states of Arunachal Pradesh, Assam, Mizoram, and Nagaland, to be known as Bar Council of the respective states,

Kerala + Union Territory of Lakshadweep = Bar Council of Kerala,

Tamil Nadu + Union Territory of Pondicherry = Bar Council of Madras,

Maharashtra + Goa + Union Territory of Daman and Diu and Dadra and Nagar Haveli = Bar Council of Maharashtra and Goa,

Punjab + Haryana + Union Territory of Chandigarh = Bar Council of Punjab and Haryana,

West Bengal + Union Territory of Andaman and Nicobar Islands = Bar Council of West Bengal,

Union Territory of Delhi = Bar Council of Delhi.

Members of the State Bar Council:

Delhi ♦ Additional Solicitor General of India, ex-officio

Assam, Arunachal Pradesh, Mizoram, Nagaland ♦ Advocate General of each State, ex-officio,

Punjab, Haryana ♦ Advocate General of each State, ex-officio,

Other State Bar Councils ♦ Advocate General of the State, ex-officio.

State Bar Council with an electorate:

5,000 ♦ 15 members elected,

5,001-10,000 ♦ 20 members elected,

10,001 ♦ 25 members elected.

Members are elected on the basis of voting by casting a single transferable vote by the advocates.

♦ of these elected members be the person who has at least 10 years of experience in being an advocate. 10 years should include the time frame where the advocate has been enrolled under the Indian Bar Council Act, 1926.

There shall be a Chairman and a Vice-Chairman of each State Bar Council.

A person shall cease to hold office as a Chairman or Vice-Chairman of any State Bar Council immediately before the commencement of Advocates (Amendment) Act, 1977. A person shall continue to hold office as a Chairman or Vice-Chairman of any State Bar Council until and unless a new Chairman or Vice-Chairman has been appointed.

A person can be disqualified from voting at an election or for being chosen as the one to get elected, and for being the member of the State Bar Council, if he fails to possess the necessary qualifications prescribed by the Bar Council of India.

After the commencement of the Advocates (Amendment) Act, 1964, every election shall be conducted in accordance with the provisions of the rule made by the Bar Council of India.

Nothing will affect the representation of the members elected in any State Bar Council constituted before the commencement of the Advocates (Amendment) Act, 1973, until that State Bar Council, is reconstituted in accordance with the provisions of this Act.

**Section 4 Bar Council of India** There shall be a Bar Council of India consisting of the following persons:

Attorney General of India, ex officio

Solicitor General of India, ex officio,

One member elected by each State Bar Council from amongst its members.

A person cannot be elected if he does not possess the qualification mentioned in sub-section (2) of section 3.

There shall be a Chairman and Vice-Chairman of the BCI as elected by the Council.

A person shall cease to hold office as a Chairman or Vice-Chairman of any State Bar Council immediately before the commencement of Advocates (Amendment) Act, 1977. A person shall continue to hold office as a Chairman or Vice-Chairman of any State Bar Council until and unless a new Chairman or Vice-Chairman has been appointed.

Members elected by the State Bar Council shall hold office, ex-officio, for a period of 2 years from the date of their election, or till he ceases to be an officer, whichever is earlier. Others hold the office till the successor has been elected by the State Bar Council.

Section 5 Bar Council to be body corporate. Bar Council is a corporative entity and acts as an artificial person. It can:

Have perpetual succession

Have a seal,

Power to acquire and hold property, (movable and immovable)

Can enter into contracts,

Can sue and can be sued.

Section 6 Functions of State Bar Councils Functions of the State Bar Council:

Admit persons as advocates on its roll

Prepare and maintain such roll,

Entertain and determine cases of misconduct against the advocates,

Safeguard the rights, privileges, and interests of advocates on its roll,

Promote the growth of Bar Association,

Promote and support of law reforms,

Conduct seminars and organize talks on legal topics by eminent jurists and publish journals

Organize legal aid to the poor in the prescribed manner,

Manage and invest the funds of the Bar Council,

Election for its members,

Visit and inspect universities in accordance with the direction given under clause (i) of sub-section (1) of section 7,

Perform all other functions conferred by it by or under this Act,

Do all other necessary things for discharging the aforesaid functions.

State Bar Council may constitute one or more funds for the purpose of:

Financial assistance to provide welfare schemes,

Giving legal aid or advice,

Establishing libraries related to law.

State Bar Council may receive donations, grants, gifts, or beneficiaries and these shall be credited to appropriate funds.

Section 7 Bar Council of India Functions of the Bar Council of India

Lay down standards of professional conduct and etiquette for advocate

Lay down the procedure to be followed by its disciplinary committee and the disciplinary committee of each State Bar Council,

Safeguard the rights, privileges, and interests of advocates,

Promote the growth of Bar Association,

Promote and support of law reforms,



Exercise general supervision and control over the State Bar Council,

Promote legal education and lay down standards of legal education

Recognize universities whose degree in law shall be a qualification for enrollment as an advocate,

Visit and inspect universities,

Manage and invest funds of the Bar Council

Provide for the election of its members,

Conduct seminars and organize talks on legal topics by eminent jurists and publish journals,

Organize legal aid to the poor in the prescribed manner,

Perform all other functions conferred by it by or under this Act,

Do all other necessary things for discharging the aforesaid functions.

Bar Council of India may constitute one or more funds for the purpose of:

Financial assistance to provide welfare schemes

Giving legal aid or advice,

Establishing libraries related to law.

Bar Council of India may receive donations, grants, gifts, or beneficiaries and these shall be credited to appropriate funds.

**Section 7A** Membership in international bodies      The Bar Council of India has the power to become a member of the International bodies. Bar Council of India is a member of the International Bar Association or the International Legal Aid Association

**Section 8** Term of office of members of the State Bar Council      A member is elected for a term of 5 years from the date of publication of his election results.

If the State Bar Council fails to conduct elections and elect a new member before the expiration of the term of office of the current member, then it can extend the term of office of the current member for not more than 6 months.

**Section 8A Constitution of special committee in the absence of election** In case the State Bar Council fails to conduct elections or elect a new member before the expiry of the term of the current member or the term continued after given the extension, then, it can constitute a special committee consisting of the following members to discharge the functions of State Bar Council until it is constituted. The members are:

Ex-officio member of the State Bar Council ♦ to be the Chairman. If there are more than one ex-officio members, then the member is chosen on the basis of the ageism factor, i.e., the senior-most person shall be chosen as the chairman,

2 members are nominated by the Bar Council of India amongst the advocates on the electoral roll of the State Bar Council.

On the constitution of the Special Committee and until the State Bar Council is constituted:

All legal properties and assets of the State Bar Council are vested in the Special Committee

Rights, liabilities and obligations of the State Bar Council are vested in the Special Committee,

Proceedings pending before the State Bar Council stands transferred to the Special Committee.

The Special Committee is deemed to hold elections of the State Bar Council within a period of 6 months from the date of its constitution. If it fails to do so, then the Bar Council of India may extend the period.

**Section 9 Disciplinary committees** Bar Council shall constitute 1 or more disciplinary committees. Each committee shall consist of 3 persons:

2 of them elected by the Council from among its members.

Others co-opted by the council from its advocates who possess the required qualifications,

Senior most advocate amongst the members becomes the chairman.

Disciplinary committee set up before the commencement of the Advocates (Amendment) Act, 1964 can dispose off all the pending proceedings before it.

**Section 9A Constitution of legal aid committees** Bar Council can set up one or more legal aid committees. The members should not be less than 5 and not more than 9.

Method of selection of the legal aid, members will be such as prescribed.

**Section 10 Constitution of committees other than disciplinary committees**  
State Bar Council can establish and constitute the following committees:

**EXECUTIVE COMMITTEE** consisting of 5 members, elected by the council from amongst its members

**ENROLMENT COMMITTEE** consisting of 3 members, elected by the council from amongst its members.

Bar Council of India can establish and constitute the following committees:

**EXECUTIVE COMMITTEE** consisting of 9 members, elected by the council from amongst its members,

**LEGAL EDUCATION COMMITTEE** consisting of 10 members, 5 persons elected by the council from amongst its members and the rest 5 persons co-opted by the council who are not members thereof.

State Bar Council and the Bar Council of India can together constitute any committee as it may deem fit.

**Section 10A** Transaction of business by Bar Councils and committees thereof Bar Council of India shall meet at New Delhi or any other place as determined.

State Bar Council shall meet at its headquarters or any such place as determined.

Other committees except for the Disciplinary Committee shall meet at the headquarters of the respective Bar Councils.

Every Bar Council and every committee except for the Disciplinary Committee observes a rule of procedure in relation to the transaction of business at their meetings.

Disciplinary Committee constituted under Section 9 shall meet at time and place for their business as prescribed.

**Section 10B Disqualification of members of bar Council** Elected member of the Bar Council is said to have either vacated his office/disqualified, if:

He is absent from the meetings for three consecutive times without giving a sufficient and a reasonable cause

His name is removed from the roll of advocates,

He is disqualified by the Bar Council of India directly.

**Section 11 Staff of Bar Council** Bar Councils can appoint Secretary, Accountant or any number of other persons as it may deem fit/necessary. They will be selected on the basis of the possession of their qualifications as prescribed.

**Section 12 Accounts and Audits** Bar Councils need to maintain books of accounts and other important books.

The auditors/accountants to audit should be duly qualified to act, as per the Companies Act, 1956.

State Bar Councils shall send a copy of their accounts/audits to the Bar Council of India at the end of each financial year but not exceeding the time limit of 31st December of the year next following and get it published in the official gazette.

The Bar Council of India shall send a copy of its accounts/audits to the Central Government of India at the end of each financial year but not exceeding the time limit of 31st December of the year next following and get it published in the official gazette.

Section 13 Vacancies in Bar Councils and Committees thereof not to invalidate the actions taken A Bar Council cannot be questioned of its actions taken if there is an vacancy in, or, any defect in the constitution of the Council, Committee or as the case may require.

Section 14 Elections to Bar Councils not to be questioned on certain grounds

Election of a member cannot be called in question on the grounds of discrepancy arising out of the voting procedure/ persons casting the votes, if the notice date has not less than 30 days before getting published in the official gazette.

Section 15 Power to make rules Bar Council makes various rules. Such rules are made for the purpose of

Election of the members of the Bar Council by a secret ballot system. They also have the right to vote by using postal ballots

Manner of the election of the Chairman or Vice-Chairman,

Manner in which the authority settles disputes and doubts,

Filling the casual vacancies in the Bar Council,

Power and duties of the Chairman and Vice-Chairman

Constitution and setup of one or more funds by Bar Council,

Organization of legal aid and advice for the poor,

Summoning and holding of meetings of the Bar Council, conduct of the business and evaluation of how many members required,

Constitution and function of any committee of the Bar Council

Summoning and holding of meetings of these committees, conduct of the business and evaluation of how many members required,

Qualifications and conditions of the secretary, accountant or any other persons,

Maintenance of books of accounts and other essential books,

Appointment of auditors and audit of the accounts of the Bar Council,

Management and investment of the funds of the Bar Council.

### Chapter 3

Admission and enrolment of advocates Section 16 Senior and other advocates

Mainly there are two classes of advocates:

Senior,

Other.

If the Supreme Court or the High Court is of the view that the concerned advocate possesses the necessary skills and qualification, special knowledge or experience in law.

Senior advocates are subject to certain restrictions in the interest of the legal profession.

An advocate of the Supreme Court who already was a senior advocate of that court immediately before the appointment, shall be a senior advocate.

Section 17 State bar councils to maintain roll of advocates Every State Bar Council shall prepare and maintain a roll of Advocates. It shall contain two parts. First part containing the list of Senior Advocates and the second part containing the other Advocates.

In the Advocates roll, the following details should be mentioned. The name, Date of Birth, Permanent address, details about his education, the place where he is interested to practice etc.

When more than one Advocate is enrolled in a single day, based on their seniority in age their name will be entered in the order. Seniority is determined based on:

## Enrolment under Indian Bar Councils Act, 1926

Senior advocate in the Supreme Court before the appointed day on the State Roll,

Seniority of any other person, who, on or after the appointed day, is enrolled as a senior advocate shall be determined by the date of enrolment.

A person cannot enroll himself as an Advocate in more than one Bar Council.

**Section 18 Transfer of name from one state roll to another** A person whose name is registered in one state Roll can transfer his name in other State Roll on genuine grounds by an application to the Bar Council of India. The person is not required to pay any fees or so for getting a transfer. If there is no genuine reason for transfer or any disciplinary proceedings are pending against him then transfer application will be rejected.

**Section 19 State Bar Councils to send copies of rolls of advocates to the Bar Council of India** The State Bar Council should send an authenticated copy of the Advocates Roll to the Bar Council of India, whenever the new Advocates are included or names are removed from the roll (any alterations are made).

**Section 20 Special provisions for enrolment of certain Supreme Court advocates** An advocate can get his name enlisted in a state roll by expressing his intention to the Bar Council of India. The Bar Council of India shall direct his entry without asking for any payment of the fees. The State Bar Council to which the name has been referred shall comply with the Bar Council of India's decision.

This is done based on seniority. The senior-most judge gets preferred and enlisted first.

If an advocate fails to express his intention within the prescribed time, then his entry shall be made in the state roll of the State Bar Council of Delhi.

Section 21 Disputes regarding seniority      When the seniority of two judges is the same, then the one senior in age shall be recognized as senior. Further, if any dispute arises, it can be referred to the concerned State Bar Council.

Section 22 Certificate of enrolment      A certificate shall be issued for the enrolment in the prescribed form by the State Bar Council to every person whose name is enlisted.

Any change in the place of permanent residence of such person shall be notified to the concerned State Bar Council within 90 days.

Section 23 Right of pre-audience Attorney General of India, Solicitor General of India, Additional Solicitor General of India, second Additional Solicitor General of India, Advocate General of any State, senior advocates, and finally other advocates shall have pre audience towards all other advocates.

They are subject to the seniority basis. The senior advocates shall have pre-audience over other advocates.

Right of pre-audience means the right to be heard before the other advocate if heard.

Section 24 Persons who may be admitted as advocates on a State Roll      The section states that subject to the provisions of this Act, and the rules made thereunder, a person shall be qualified to be admitted as an advocate on a State roll, if he fulfills the following conditions:

He is a citizen of India, although a national of any other country may be admitted as an advocate on a State roll, if citizens of India, duly qualified, are permitted to practice law in that other country, subject to other restrictions

He has completed the age of twenty-one years,



He has obtained a degree in law after the 12th March, 1967, after undergoing a three years course of study in law from any University in India which is recognized for the purposes of the Advocates Act by the Bar Council of India. In some cases, a lawyer who has obtained a degree from any University outside the territory of India, if the degree is recognized for the purpose of this Act by the Bar Council of India, he may be admitted,

He fulfills such other conditions as may be specified in the rules made by the State Bar Council under this Chapter,

A person who has been an advocate, a vakil, a mukhtar, or a pleader for 3 years, or was entitled to be enrolled under any law as an advocate of a high court,

A person was entitled as an advocate to practice law at any time before 1st December, 1961,

He is entitled to be listed as an advocate under any rule made by the Bar Council of India.

The Council's Enrolment Committee may scrutinize a candidate's application. Those admitted as advocates by any State Bar Council are eligible for a Certificate of Enrolment.

All applicants for enrolment as advocates are required under Section 24 (1) (f) of the Advocates Act, 1961 to pay an enrolment fee of Rs.600/- (Rupees Six hundred only) to the respective State Bar Council and Rs.150/- (Rupees One hundred Fifty only) to the Bar Council of India. These payments should be made using separate demand drafts.

An advocate, a vakil, or a pleader who is a law graduate may be admitted in the state roll if:

Makes an application for enrolment,

Fulfill the conditions as listed above.

**Section 24A Disqualifications for enrolment** An advocate shall be disqualified on the basis of:

Conviction of an offense involving moral turpitude,

Conviction of an offense under the provisions of Untouchability (Offences) Act, 1955,

Dismissal or removal from employment or office involving moral turpitude.

The disqualification for enrollment ceases to have effect after 2 years have elapsed since the advocate's release, dismissal, or removal.

Nothing in this section applies to a person who is found guilty and is dealt with under the provisions of the Probation of Offenders Act, 1958.

**Section 25 Authority to whom applications for enrolment may be made** An application has to be submitted to the concerned State Bar Council in whose jurisdiction the advocate is willing to practice.

**Section 26 Disposal of applications for admission as an advocate** State Bar Council has the authority to dispose off any application in the prescribed manner. If the Bar Council of India is satisfied about the fact that an advocate got his name enrolled on the grounds of misrepresentation, fraud, undue influence then it can remove his name from the roll.

If the enrollment committee refuses the application of an advocate, it has to report it to the Bar Council of India. When the enrollment committee of a State Bar Council has refused and denied the application of an advocate, it has to report the same to other Bar Councils stating the reasons for dismissal along with the name, address, and qualification.

**Section 26A Power to remove names from roll** The State Bar Council has the authority to remove an advocate's name from the roll if he is dead or places a request for the same.

**Section 27 Application once refused not to be entertained by another Bar Council except in certain circumstances** When application of an

advocate is refused by one State Bar Council, no other State Bar Council can entertain the application for the admission of the concerned person on its roll until and unless a previous consent is acquired from both the State Bar Council which refused the application and the Bar Council of India.

**Section 28 Power to make rules** A State Bar Council makes rules without prejudice for:

Time and form in which an advocate expresses his intention for the entry of his name in a State Bar Council

Conditions subject to which a person may be admitted as an advocate on any such roll,

Installment in which the enrollment fee may be paid.

**Chapter 4 Right to practice** **Section 29** Advocates to be the only recognized class of persons entitled to practice law Subject to the rules and provisions of this act, there are only one class of persons entitled to practice law, i.e., advocates.

**Section 30 Rights of advocates to practice** The advocates are enriched with the following right to practice:

In all courts including the Supreme Court,

Before any tribunal or person who is legally authorized to take pieces of evidence,

Before any other authority or person before whom such advocate is by or under any law for the time being in force entitled to practice.

**Section 31 Special provisions for attorneys** OMITTED

**Section 32 Power of court to permit appearances in particular cases** Any court, authority, person may permit any person as required who is not enrolled as an advocate to appear before the court or him in any particular case.

**Section 33 Advocates alone entitled to practice** No person on or after the appointed day is entitled to practice in any other court or authority or person unless he is enrolled as an advocate under this act.

**Section 34 Power of High Court to make rules** The High Court has the authority make rules related to the permittance of practice in the High Court or any other subordinate court. High Court can make rules related to taxation or fees payable.

**Chapter 5 Right to practice Section 35 Punishment of advocates for misconduct** A person is found guilty of professional misconduct; it shall refer the case to a disciplinary committee, shall fix a date of hearing and issue a show-cause notice to the Advocate and the Advocate General of the State. The disciplinary committee of the State Bar Council, after being heard of both the parties, may:

Dismiss the complaint, or where the proceedings were initiated at the instance of the State Bar Council directs that proceedings be filed

Reprimand the advocate,

Suspend the advocate from practice for such a period as it deems fit,

Remove the name of an advocate from the state roll of advocates.

Section 35 of the Act also says that an Advocate may be punished for professional misconduct or other misconduct although the terms misconduct and professional misconduct is not defined in Section 35 or any other provisions of the Advocate Act, 1961.

**Section 36 Disciplinary powers of the Bar Council of India** The Bar Council of India on receipt of a complaint of an advocate whose name is not enrolled in any State roll shall refer the advocate's name to its disciplinary committee. The disciplinary committee can dispose of a pending complaint. The disciplinary committee has to be in line with section 35 of this Act.

**Section 36A** Changes in the constitution of disciplinary committees

Whenever in relation to section 35 or section 36, the disciplinary committee of either the State Bar Council or the Bae Council of India ceases

to exist, a new disciplinary committee, succeeding the previous one takes over the proceedings.

**Section 36B Disposal of disciplinary proceedings** Disciplinary committee can dispose off a complaint within a period of 1 year from the date of its receipt. If this fails, then it the complaint goes to the Bar Council of India.

**Section 37 Appeal to the Bar Council of India** Empowers the Bar Council of India to hear appeal against the order of Disciplinary Committee of a Bar Council. Every such appeal shall be heard by the disciplinary committee of Bar Council of India. It shouldn't be prejudicial to affect an aggrieved person and should give a reasonable opportunity of being heard.

**Section 38 Appeal to the Supreme Court** It provides that any person aggrieved by the order passed by the Disciplinary Committee of Bar Council of India, maybe challenged within 60 days by way of appeal before Supreme Court. It shouldn't be prejudicial to affect an aggrieved person and should give a reasonable opportunity of being heard.

**Section 39 Application of section 5 and 12 of Limitations Act, 1963**

Section 5 and 12 of Limitations Act, 1963 applies to appeals under section 37 and 38.

**Section 40 Stay of order** An appeal made under section 37 and section 38 can work as a stay order if directed by either the disciplinary committee of the Bar Council of India or the Supreme Court, whichever seems fit.

**Section 41 Alteration in roll of advocates** When an order is made, reprimanding or suspending an advocate then a record of his punishment shall be put against his name in the case where an advocate's name is entered in the State roll and where an order is made, suspending him of practicing as an advocate, then his name shall be struck off.

**Section 42 Powers of disciplinary committee** Disciplinary committee of a Bar Council have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 when it comes to certain matters:

summoning and enforcing the attendance of any person and examining him on oath

requiring discovery and production of any documents,

receiving evidence on affidavits,

requisitioning any public record or copies thereof from any court or office,

issuing commissions for the examination of witnesses or documents,

any other matter which may be prescribed,

The disciplinary committee does not have the right to require the attendance of:

any presiding officer of a court except with the previous sanction of the High Court to which such court is subordinate,

any officer of a revenue court except with the previous sanction of the State Government.

All proceedings before the disciplinary committee are deemed to be judicial proceedings within the ambits of section 193 and 228 of the IPC and disciplinary committee shall be deemed to be a civil court for the purposes of sections 480, 482 and 485 of the Code of Criminal Procedure, 1898.

For the reasons of executing its powers, the disciplinary committee can send to any civil court summons or other processes in the territories to where the act extends, for the reasons of attendance of a witness, production of any document etc.

The absence of the Chairman or any member of a disciplinary committee on a date fixed for the hearing of a case, the disciplinary committee if it thinks fit, hold or continue the proceedings on the date so fixed and no such proceedings.

No order made by the disciplinary committee in these proceedings be invalid merely by reason of the absence of the Chairman or member.

It is essential to note that no final orders of the nature referred to in sub-section (3) of section 35 shall be made in any proceeding unless the Chairman and other members of the disciplinary committee are present.

#### Section 42A Powers of Bar Council of India and other committees

Provisions of section 42 shall apply to the Bar Council of India, the Enrollment Committee, the Election Committee, the Legal Aid Committee, or any other committee of any Bar Council (disciplinary committee).

Section 43 Cost of proceedings before a disciplinary committee The disciplinary committee of a Bar Council makes orders related to the cost of any proceedings as it may find suitable. Any such order can be executed if it were an order:

in the case of an order of the disciplinary committee of the Bar Council of India, of the Supreme Court,

in the case of an order of the disciplinary committee of a State Bar Council, of the High Court.

Section 44 Review of order by a disciplinary committee Review committee may on its own review an order passed by it, provided that the order of review shall have no effect unless it has been approved by the Bar Council of India.

Chapter 6 Misc. Section 45 Penalty for persons illegally practicing in courts and before other authorities Any advocate who practices in any court or before any authority or person, before whom he is not entitled to practice, shall be punishable with imprisonment for a term which may extend to six months.

## Section 46 Payment of part of enrollment fees to the Bar Council of India OMITTED

**Section 46A Financial assistance to the State Bar Council** If the Bar Council of India is satisfied that any State Bar Council is in need of funds for the purpose of performing its functions then it will provide such financial assistance as it deems fit to that Bar Council by way of grant or otherwise.

**Section 47 Reciprocity** No subject of any such country shall be entitled to practice the profession of law in India that are prevented for the citizens of India from practicing. It means that the countries, which are prevented for Indians to practice in, the subjects of those counties cannot practice in India, either. This should be published as a notification in the Official Gazette.

The Bar Council of India may prescribe the conditions, subject to which foreign qualifications in law obtained by persons other than citizens of India shall be recognized for the purpose of admission as an advocate under this Act.

**Section 48 Indemnity against legal proceedings** No suit or other legal proceeding can lie against any Bar Council or any committee thereof or a member of a Bar Council for any act done in good faith or intended to be done to pursue the rules made under this Act.

**Section 48A Power of revision** The Bar Council of India can call for any proceeding under this Act which has been disposed of by a State Bar Council or a committee, and from which no appeal lies. No order which prejudicially affects any person shall be passed under this section without giving him a reasonable opportunity of being heard.

**Section 48AA Review** Bar Council of India may review on its own any order, within 60 days of the date of that order.

**Section 48B Power to give directions** The Bar Council of India, for proper and efficient discharge of the functions of a State Bar Council. It may exercise its powers of general supervision and control and give directions.



When a State Bar Council is unable to perform its functions, the Bar Council of India without prejudice give directions to the ex officio member as it may appear necessary.

Section 49 General power of the Bar Council of India to make rules      Bar Council of India can make rules to discharge its functions. These rules may prescribe certain conditions like:

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

qualifications for membership of a Bar Council and the disqualifications for such membership,

time within which and the manner in which effect may be given to the proviso to sub-section (2) of section 3,

manner in which the name of any advocate may be prevented from being entered in more than one State roll,

manner in which the seniority among advocates may be determined

minimum qualifications required for admission to a course of degree in law in any recognized University,

class or category of persons entitled to be enrolled as advocates,

conditions subject to which an advocate shall have the right to practice and the circumstances under which a person shall be deemed to practice as an advocate in a court

form in which an application shall be made for the transfer of the name of an advocate from one State roll to another,

standards of professional conduct and etiquette to be observed by advocates,

standards of legal education to be observed by Universities in India and the inspection of Universities for that purpose

foreign qualifications in law obtained by persons other than citizens of India which shall be recognized for the purpose of admission as an advocate under this Act,

procedure to be followed by the disciplinary committee of a State Bar Council and by its own disciplinary committee,

restrictions in the matter of practice to which senior advocates shall be subject

form of dresses or robes to be worn by advocates, having regard to the climatic conditions, appearing before any court or tribunal,

the fees which may be levied in respect of any matter under this Act,

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,

any other matter which may be prescribed.

Section 49A      Power of Central Government to make rules      Central Government can make rules for carrying out the purposes of this Act, including the rules made by the Bar Council of India and Bar Councils as follows

qualifications for membership of a Bar Council and the disqualifications for such membership

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,

class or category of persons entitled to be enrolled as advocates under this Act,

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,

manner in which seniority among advocates may be determined,

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,

any other matter which may be prescribed.

Rules made under this section are made for the whole of India or for all the Bar Councils.

If any rule that is made by the Bar Council of India 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 be void.

Section 50 Repeal of certain enactments      Date on which a State Bar Council is constituted under this Act, the provisions of sections 3 to 7 (inclusive), sub-sections (1), (2) and (3) of section 9, section 15 and section 20 of the Indian Bar Councils Act, 1926 (38 of 1926), stands repealed in the territory for which the particular State Bar Council is constituted.

Date on which chapter 3 comes into force, the following sections stands repealed:

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

sections 3, 4 and 6 of the Bombay Pleaders Act, 1920 (Bombay Act 17 of 1920),

section 8 of the Indian Bar Councils Act, 1926 (38 of 1926), as relates to the admission and enrolment of legal practitioners,

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.

Date on which chapter 4 comes into force, the following sections stands repealed:

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 practice in any court or before any authority or person

sections 5, 7, 8 and 9 of the Bombay Pleaders Act, 1920 (Bombay Act 17 of 1920),

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 practice in any court or before any authority or person,

the Supreme Court Advocates (Practice in High Courts) Act, 1951 (18 of 1951),

the provisions of the Letters Patent of any High Court and of any other law conferring on legal practitioners the right to practice in any court or before any authority or person.

Date on which chapter 5 comes into force, the following sections stands repealed

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,

sections 24 to 27 (inclusive) of the Bombay Pleaders Act, 1920 (Bombay Act 17 of 1920),

sections 10 to 13 (inclusive) of the Indian Bar Councils Act, 1926 (38 of 1926),

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.

**Section 51 Rule of construction** References made in the enactment to an advocate enrolled by a High Court in any form of words shall be construed to have been made to an advocate enrolled under this section.

## **Section 52 Saving**

Nothing can affect the power and authority of the Supreme Court to make rules under Article 145 of the constitution for laying out conditions according to which a senior advocate is entitled to practice in a court and for determining who will be entitled to practice.

**Chapter 7 Temporary & transitional provisions** **Section 53 Elections to first State Bar Council** Elected members of a State Bar Council which is constituted for the first time under this Act, shall be elected by and from amongst advocates, vakils, pleaders, and attorneys who on the date of the election, are entitled as of right to practice in the High Court and are ordinarily practicing within the territory for which the Bar Council is to be constituted.

**Section 54 Term of office of members of first State Bar Councils** The term of office of the elected members of a State Bar Council constituted for the first time, shall be two years from the date of the first meeting of the Council.

**Section 55 Rights of certain existing legal practitioners not affected** As per Section 55 of the Advocates Act despite anything contained in this Act:

Each pleader or vakil rehearsing as such preceding the date on which Chapter IV (Sections 29 to 34) comes into power by temperance of the arrangements of the Legal Practitioners Act, 1879 (18 of 1879), the Bombay Pleaders Act 1920 or whatever other law who doesn't choose to be or isn't able to be enlisted as a promoter under this Act,

Each Mukhtar rehearsing as such preceding the said date by the goodness of the arrangements of the Legal Practitioners Act, 1879 or whatever other law who doesn't choose to be or isn't able to be selected as an advocate under this Act,

Each income specialist rehearsing as such preceding the said date by ideals of the arrangements of the Legal Practitioners Act, 1879 or some other law will, despite the nullification by this Act of the applicable arrangements of the Legal Practitioners Act, 1879, the Bombay Pleaders Act, 1920 or other law, keep on getting a charge out of indistinguishable rights from regards practice in any Court or income office or before any position of individual and be dependent upon the disciplinary locale of a similar power which he delighted in or, by and large, to which he was subject preceding the said date and as needs are the pertinent arrangements of the Acts or law previously mentioned will have an impact according to such people as though they had not been revoked.

**Section 56 Dissolution of existing Bar Councils** On constitution of any State Council other than the State Council of Delhi:

all properties and assets vesting in the corresponding Bar Council shall vest in the new Bar Council

all rights, liabilities, and obligations of the corresponding Bar Council, whether arising out of any contract or otherwise, shall be the rights, liabilities and obligations respectively of the new Bar Council,

all proceedings pending before the corresponding Bar Council in respect of any disciplinary matter or otherwise shall stand transferred to the new Bar Council.

**Section 57 Power to make rules pending the constitution of Bar Council** The power of that Bar Council to make rules under this Act shall be exercised:

in the case of the Bar Council of India, by the Supreme Court,

in the case of a State Bar Council, by the High Court.

**Section 58 Special provisions during the transitional period** When a State Bar Council has not been constituted or when a State Bar Council is unable to perform its functions then, the functions of that Bar Council or of any committee thereof, related to the admission and enrolment of advocates, shall be performed by the High Court.

A State Bar Council or a High Court performing the functions of a State Bar Council may enroll any person to be an advocate on a State roll if he is qualified to be so enrolled.

Every person who before 1st December 1961, was an advocate on the roll of any High Court under the Indian Bar Councils Act, 1926 or who has been enrolled as an advocate under this Act shall, until Chapter IV comes into force, be entitled as of right to practice in the Supreme Court.

**Section 58A Special provisions with respect to certain advocates**

Advocates who immediately before the 26th July, 1948, were entitled to practice in the High Court in Allahabad or the Chief Court in Oudh and who under the provisions of the United Provinces High Courts (Amalgamation) Order, 1948 were recognized as advocates who are entitled to practice in the new High Court of Allahabad but whose names were not formally entered on the roll of advocates of that High Court merely by reason of the non-payment of the fee payable to the Bar Council of the said High Court. All advocates who are enrolled between the time of 26th July 1948 ◆ 26th May 1952 be deemed to be persons who were entered as advocates on the roll of the said High Court under the Indian Bar Councils Act, 1926 and every such person shall be admitted as an advocate on the State roll of Uttar Pradesh.

Advocates who immediately before the 10th October, 1952 were entitled to practice in the High Court of Hyderabad but whose names were not formally entered on the roll of advocates of that High Court merely by reason of the non-payment of the fee payable to the Bar Council of the said High Court

shall, be deemed to be persons who were entered as advocates on the roll of the said High Court under the Indian Bar Councils Act, 1926 and every such person may, on an application being made in this behalf, be admitted as an advocate on the State roll of Andhra Pradesh or of Maharashtra.

Advocates who immediately before the 1st May, 1960 were entitled to practice in the High Court of Bombay who applied to get their names entered on the roll of the High Court of Gujarat but whose names were not formally entered on the roll of advocates of that High Court merely by reason of the non-payment of the fee payable to the Bar Council of the said High Court shall, be deemed to be persons who were entered as advocates on the roll of the said High Court under the Indian Bar Councils Act, 1926 and every such person may, on an application being made in this behalf, be admitted as an advocate on the State roll of Gujarat.

**Section 58B** Special provision relating to certain disciplinary proceedings

From 1st September 1963, every proceeding related to any disciplinary matter in relation to an existing advocate of a High Court shall, be disposed of by the State Bar Council in relation to that High Court, as if the existing advocate had been enrolled as an advocate on its roll.

If before 1st September 1963, there is any pending proceeding in respect of any disciplinary matter in relation to an existing advocate before any High Court under the Indian Bar Councils Act, 1926, such proceeding shall be transferred to the State Bar Council in relation to that High Court, as if it were a proceeding pending before the Bar Council.

If before 1st September 1963, there is any pending proceeding in respect of any disciplinary matter in relation to an existing pleader, vakil, mukhtar or attorney, who has been enrolled as an advocate on any State roll under the Act, such proceeding shall be transferred to the State Bar Council on the roll on which he has been enrolled.



**Section 59 Removal of difficulties**      If any issues arise in bringing in effect the enactments that are repealed and other provisions of this Act, the Central government may publish it in the official gazette, so as to remove that difficulty.

**Section 60 Power of the Central Government to make rules**    Until the rules are made by either the State Bar Council and approved by the Bar Council of India, the Central Government has the power to do the same. The Central Government in consultation with the Bar Council of India may make rules for the State Bar Councils or any particular State Bar Council.

The Central government by making a notification in an official gazette direct the rules made by it.

## Landmark Judgments

### Section 15 ♦ Power To Make Rules

**Pratap Chandra Mehta vs. State Bar Council of Madhya Pradesh :**

it was observed that, on failure to provide for election, the Bar Council of India has to constitute a special committee to do so instead. Section 15(2) then provides that without prejudice to the generality of the foregoing powers, rules may be framed to provide for the preparation of electoral rolls and the manner in which the result shall be published.

In terms of Section 15(2)(c), the manner of the election of the Chairman and the Vice-Chairman of the Bar Council and appointment of authorities which would decide any electoral disputes is provided. The expression `manner of

election of the Chairman' again is an expression which needs to be construed in its wide connotation. The rules so framed by the State Bar Council shall become effective only when approved by the Bar Council of India in terms of Section 15(3) of the Advocates Act.

The powers delegated have an in-built element of guidance that the Chairman/Vice-Chairman will be appointed and regulated by the majority members of the State Bar Council. Their conduct, and the conduct of the State Bar Council as a whole, is to be maintained in consonance with democratic principles and keeping the high professional standards of advocates in mind.

Thus, it is not a power which falls beyond the purview and scope of Section 15 of the Advocates Act read in conjunction with other provisions, particularly Chapter II and also keeping in view the object of the Act. Finally, it was held, that in view of the language of Section 15(3) of the Advocates Act and the factual matrix afore-noticed by us, it is clear that the amended rules of the M.P. Rules had received the approval of the Bar Council of India, particularly Rule 122-A. The Rules would not be invalidated for want of issuance of any notification, as it is not the requirement in terms of Section 15(3) of the Advocates Act and in any case would be a curable irregularity at best.

## Section 16 ♦ Senior And Other Advocates

T.N.Raghupathy vs High Court Of Karnataka & Ors:

the appellant sought for a writ of mandamus for framing new norms strictly in consonance with the provisions of Section 16(2) of the Advocates Act, 1961 in the matter of designation of senior advocates. A writ of certiorari is also sought for quashing notifications whereby 15 advocates have been designated as senior advocates by the High Court of Karnataka.

As per the impugned interim, the High Court has taken the view that the appellant does not have locus standi to file writ petition in the public interest. Mr. K.K. Venugopal, Mr. Kapil Sibal, Mr. Gopal Subramaniam, Mr. Aditya Sondhi, learned senior counsel appearing for some of the parties and the other counsel appearing for others before this Court have graciously submitted that the High Court is not right in holding that view.

Some of the issues raised in the writ petition require consideration. As rightly pointed out by the learned senior counsel, these are the issues to be considered by the High Court only since it is the High Court concerned which frames the rules/regulations/guidelines regarding the designation of senior advocates. Therefore, we set aside the impugned order with a request to the High Court to consider the matter on merits. The appeal is accordingly disposed of. No costs.

#### Section 24a Disqualification For Enrollemnt

Mahipal Singh Rana vs State Of U.P:

the Bar Council of India submitted that Section 24A of the Advocates Act, 1961 provides for a bar against admission of a person as an advocate if he is convicted of an offense involving moral turpitude, apart from other situations in which such bar operates. The proviso, however, provides for the bar being lifted after two years of release.

However, the provision did not expressly provide for removal of an advocate from the roll of the advocates if conviction takes place after enrolment of a person as an advocate. Only other relevant provision under which action could be taken is Section 35 for proved misconduct. It is further stated that though the High Court directed the Bar Council of Uttar Pradesh to initiate proceedings for professional misconduct on 2.12.2005, the consequential action taken by the Bar Council of the State of Uttar Pradesh was not known.

It is further stated that the term moral turpitude has to be understood having regard to the nature of the noble profession of law which requires a person to possess higher level of integrity.

Even a minor offense could be termed as an offense involving moral turpitude in the context of an advocate who is expected to be aware of the legal position and the conduct expected from him as a citizen is higher than others. It was further submitted that only the State Bar Council or Bar Council of India possess the power to punish an advocate for professional misconduct as per the provisions of Section 35 of the Advocates Act, 1961 and reiterated the law laid down by this Court in Supreme Court Bar Association versus Union of India.

In addition, the counsel submitted that a general direction to all the Courts be given to communicate about conviction of an advocate for an offense involving moral turpitude to the concerned State Bar Council or the Bar Council of India immediately upon delivering the judgment of conviction so that proceedings against such advocates can be initiated under the Advocates Act, 1961.

## Section 35 ❖ Punishment Of Advocates For Misconduct

In the case, *Noratanman Courasia v. M. R. Murali*:

the Supreme Court explored the amplitude and extent of the words ❖professional misconduct❖ in Section 35 of the Advocates Act. The facts of the case involved an advocate (appearing as a litigant in the capacity of the respondent, and not an advocate in a rent control proceeding) assaulted and kicked the complainant and asked him to refrain from proceeding with the case.

The main issue in this case was whether the act of the advocate amounted to misconduct, the action against which could be initiated in the Bar Council, even though he was not acting in the capacity of an advocate.

It was upheld by the Supreme Court that a lawyer is obliged to observe the norms of behavior expected of him, which make him worthy of the confidence of the community in him as an officer of the Court. Therefore, in spite of the fact that he was not acting in his capacity as an advocate, his behavior was unfit for an advocate, and the Bar Council was justified in proceeding with the disciplinary proceedings against him.

It may be noted that in arriving at the decision in the case, the Supreme Court carried out an over-view of the jurisprudence of the courts in the area of misconduct of advocates, reiterated that the term ❖misconduct❖ is incapable of a precise definition. Broadly speaking, it envisages any instance of breach of discipline.

It means improper behavior, intentional wrongdoing or deliberate violation of a rule of standard of behavior. The term may also include wrongful intention, which is not a mere error of judgment. Therefore, ❖misconduct❖, though incapable of a precise definition, acquires its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of duty.

In N.G. Dastane v. Shrikant S. Shind, where the advocate of one of the parties was asking for continuous adjournments to the immense inconvenience of the opposite party, it was held by the Supreme Court that seeking adjournments for postponing the examination of witnesses who were present without making other arrangements for examining such witnesses is a dereliction of the duty that an advocate owed to the Court, amounting to misconduct.

### Section 36 ❖ Disciplinary Powers Of The Bar Council Of India

In Thyssen Krupp Industries v Suresh Maruti Chougule, Union of India, Bar Council of India & Ors, Bombay High Court dismissed a challenge by Thyssen as to the constitutional validity of section 36(4) of the Industrial Disputes Act, 1947 (ID Act), which restricts the appearance of lawyers in labor courts, tribunals and national tribunals, and held that there is a legal distinction between the right of an advocate to practice law guaranteed by sections 29 and 30 of the Advocates Act, 1961, and the right to appear and address a court of law or tribunal.

In this case, Thyssen dismissed a welder from its employment in 2015 for acts of misconduct. The matter was initially heard before a conciliation officer and then in reference before a labor court in Pune. An application was filed by the welder under section 36(4) of the ID Act, objecting to Thyssen's engagement of a legal practitioner, which was allowed by the labor court.

Thyssen's counsel argued that because industrial adjudication is becoming increasingly complicated, employees/companies are unable to represent their cases effectively before a labor court, and therefore the assistance of a trained advocate is necessary. On the contrary, the counsel for the welder argued that the right to practice law is not a fundamental, vested, or a legal right, therefore a party cannot claim such a right to engage an advocate.

The high court held that there is a legal distinction between a right of an advocate to practice law, guaranteed by sections 29 and 30 of the Advocates Act, and the right to appear and address a court of law or tribunal. The right to practice granted by the Advocates Act does not confer on a litigant the right to be represented by a particular advocate and only presupposes that a litigant is entitled to be represented by an advocate if necessary. Further, the right to practice is not an absolute right but only restricted in nature.

Limitations can be placed on such a right by prescribing dress for legal practitioners or in some other manner. It was observed that as a litigant does not have a fundamental right to be represented by a lawyer in any court, it is difficult to accept the argument that section 36(4) of the ID Act is unconstitutional, and ultra vires articles 14 and 21 of the constitution of India.

Supreme Court Bar Association v. Union of India:

Supreme Court found Vinay Chandra Mishra, an Advocate, guilty of committing criminal contempt of Court for having interfered with and obstructing the course of justice by trying to threaten, overawe and overbear the court by using insulting, disrespectful and threatening language.

The Supreme Court invoked its power under article 129 read with article 142 of the Constitution and awarded the contemner a simple sentence of imprisonment for a period of six weeks together with suspension from practicing as an advocate for a period of three years. Aggrieved by this direction of suspension the Supreme Court Bar Association, through its Honorary Secretary, has filed a writ petition under Article 32 of the Constitution of India.

One of the key functions of the Bar Council in regard to standards of professional conduct of lawyers is to receive complaints against lawyers. If Bar Council believes that any advocate has been guilty of professional misconduct then it might refer the case for clearance to the disciplinary committee. In case if the Bar Council even after getting 'reference' from the court, fails to take any action against the concerned lawyer, then the court might consider raising its powers U/S 38 of the Act by transferring the record of the proceedings of the Bar Council and passing suitable orders.

The appellate powers U/S 38 would be available to this Court only and not to the High Courts. It was concluded that this court cannot in exercise of its jurisdiction under Article 142 read with Article 129 of the Constitution, punish a contemner for committing contempt of court and also impose a punishment of suspending his license to practice, where the contemner happens to be an Advocate.



Such a punishment cannot even be imposed by taking recourse to the appellate powers under Section 38 of the Act while dealing with a case of contempt of court (and not an appeal relating to professional misconduct as such). To that extent, the law laid down in the Vinay Chandra Mishra case was overruled.

It is the power of the Bar Council of the State or Bar Council of India to punish that Advocate who is found guilty of contempt of court and of professional misconduct by either debarring him from practice or suspending his license, as may be warranted, in the facts and circumstances of each case.

## 10 KEY SKILLS EVERY LAWYER NEEDS TO MASTER

To build a successful career in law, there are certain core legal skills that every law student should have. Legal positions of lawyers may vary in terms of responsibility and scope, but the impact of these skills remain unvarying and persistent on all aspects of the legal profession.

The best colleges of law in India ensure their students are skilled in the following abilities so their journey as future lawyers and lawmakers is notable, productive, and transformative for the Indian society. Here are the 10 key skills you need to develop for a victorious career in law:

### **#1 Fluent Verbal Communication**

In the legal profession, good command over spoken language is fundamentally important. Oral communication is a tool that allows lawyers to advocate a cause or a position with conviction. To convey legal information in a logical manner, lawyers need to communicate fluently. Their verbal stance should be clear, concise, and persuasive. Clients expect lawyers to make logical use of legal terminologies while speaking and, at the same time, be keen listeners.

## **#2 Superior Writing Skills**

Lawyers have to create legal documents in various formats. Writ petitions, court application, power of attorney, sale deed agreements, and licensing contracts are some of the common legal documents that every lawyer should be able to draft precisely.

To master the skill of writing great legal documents, lawyers must practice:

- Understanding audience/client personas
- Identifying and using suitable action words
- Writing persuasively in the passive voice
- Keeping drafts concise, chronological, and organized
- Editing ruthlessly

With these skills, lawyers can excel in writing – a function integral to nearly every legal position in their career.

## **#3 Logical and Analytical Rationale**

Reviewing legal documents, analyzing their complexities, identifying pain-points and drawing inferences is a reasoning process that every lawyer must follow. However, the thinking behind this process must be logical. Problem-solving analysis and argumentative evaluation are highly important for practising law. With a structured and deductive rationale, lawyers are able to reach effective and sensible conclusions.

#### **#4 Extensive Legal Research**

Legal research is a core skill that allows lawyers to support and validate their conclusions and arguments. For thorough and extensive research, legal professionals should use proper citations, incorporate the techniques of statutory interpretations, integrate legal authorities, and deep-dive into legal research database software and other credible applications available online.

#### **#5 Coherent Client Service**

For effective client service, a lawyer needs to be more than persuasive and empathetic. Using positive language, drawing inferences for actions, and adapting to the client's expectations helps lawyers in keeping their clientele satisfied. With self-control, patience, and a responsible approach, lawyers can secure higher professional success through an increasing client base in their careers.

#### **#6 Well-versed In Technology**

Technology is transforming the Indian legal landscape. **Best law colleges in Delhi**, Mumbai, Kolkata, and several other cities are enabling their students with legal practice-related software applications. To become proficient in legal research, lawyers are now trained with litigation support software, document management systems, and electronic discovery processes.

### **#7 Substantive Knowledge on Law and Legal Procedures**

It is obvious for clients to choose lawyers showcasing great amount of knowledge on legal proceedings, acts and laws, and other legal entities. This knowledge encompasses the differences between local, federal, and state court procedures, the evolution of law principles, and the updated glossary of relevant legal terminologies.

### **#8 Initiated toward Teamwork**

Secure lawyers are not scared to collaborate with colleagues to attain their legal goals. Teamwork is a key trait of a successful legal practitioner; who shares and coordinates information, builds relationships with experts, staff, vendors, etc., and contributes to the legal system by voluntarily participating in meetings and conferences.

### **#9 Time Management**

A lawyer is essentially a multi-tasker. With a strong ethic towards time management, legal professionals must be able to meet deadlines,

manage court hearings and legal calendars, generate maximum productivity during billable hours, and juggle competitive activities.

## **#10 Organization**

Lastly, every lawyer should be good at managing data and documents. The skill of organizing large volumes of information into proper files, logical categories, and hierarchical folders is essential in almost every profession, but more importantly in legal. Unrelated information needs to be filtered out with a well-structured data catalogue. These skills enable lawyers to use technology applications for managing case files efficiently.

To develop mastery in these skills, keep practising them to the fullest. The more you exercise these abilities, your legal career becomes more secure and successful.

### **1. Good communication or negotiation skills:-**

Lawyers

or advocates must possess excellent communication skills, both oral as well as written. Communication skill is a key success factor that must not depart from that mouth of any good lawyer. Law is not an abstract practice or exercise to involve only certain activities. To be a good advocate it doesn't matter you study hard and how well you scored academically but it matters only how you deal with the people and interact with them. A lawyer must be persuasive and have an acquired ability to read others.

### **2. Decision-making skills:-**

A good lawyer should have the ability to draw reasonable, logical conclusions or assumptions from limited information. Anticipate and spot the possible event and happening, analyze the positive and negative

areas of the case to prepare the same in such a manner that is beneficial and in the favour and taken into consideration the interest of the client.

### **3. Analytical skills and Logical thinking ability:-**

If you want to be a good advocate or lawyer, you should have the ability to look at any situation and analyze it from all the points of view. A criminal defence advocate has to look at the case from the view of the prosecutor, and vice versa. To absorb large volumes of data and be able to distill it into something manageable, you need to have analytical skills, and this goes without saying.

### **4. Research skills:-**

Being a good advocate you should have the ability to research quickly and effectively which is essential to understand your clients, their needs, and preparing legal strategies.

### **5. Perseverance:-**

The mere act of becoming a lawyer requires a lot of commitment. A lawyer has to spend many hours preparing the case. They spend a lot of time conducting research, preparing documents and interviewing witness. Perseverance is the skill on the one side and attitude on the other. I want to confess perseverance is the nature and attitude which develops the capability to deal and perform the activities and task assigned productively and constructively with the numerous and variety full events which in further embodies distractions.

### **6. Creativity in problem solving:-**

The top or excellent lawyers are not only logical and analytical, but they display a great deal of creativity in their problem-solving. The best solution is not always the most obvious and it is often necessary to think outside the box to overcome its challenges.

The best way to create unique solutions is to approach each situation with compassionate listening, which enables you to really understand the issues and what the client and the adversary need. That the level of understanding can lead to a long-lasting solution that works for all interested parties.

### **7. Writing and drafting skills:-**

To be a great lawyer, tremendous writing and drafting skills are needed which are useful and beneficial while preparing the case arguments, briefs, and other legal documents.

### **8. Listening skills:-**

To be a great lawyer or advocate one must have and possess the quality and skill to listen to each, and every individual tends to speak before him, develop the ability to listen to others patiently and carefully.

In practical, this skill helps the lawyer and their practice in every possible manner so as to cross-examine the witness or to the finding of the opposite counsel and facilitate in an effective rebuttal.

### **9. Attention to detail:-**

A sharp eye for accuracy is critical to the success of your legal career. A single word out of place can change the entire meaning of a clause or contract, while miss-spelled or ungrammatical emails, letters or documents can give clients a bad impression, costing your firm their business.

### **10. Comprehension skills:-**

To be a great lawyer you should have comprehension skill which means one must have the ability to comprise many topics and small details to study, so it is important to absorb the information in an organized and a sensible manner.

### **11. Compassion:- Emotional balance:-**

Compassion is an emotional response whereby one perceives another's problem and authentically, genuinely wants to help resolve the problem. People come to us with their problems, or to avoid future problems and we help resolve or avoid the issues, whichever the case maybe.

Compassion is the foundation for good people skills. Without compassion, you cannot put yourself in your client's shoes or fully understand the issues your client faces.

If you want to be an excellent lawyer than you must have all these above mentioned ability. These are also the skills which require to be a lawyer namely, General education, Firmness, Patience, Leadership skills, Being organized, etc.

## **Skills of a good lawyer**

## **Good Communication Skills**

Lawyer or advocates must possess excellent communication skills, both oral and written. To argue with more persuasiveness before the Hon'ble Judge(s) in a Court of

Law, speaking with fluency efficiently and effectively is a skill that can be learned and developed during the time in pursuance of the graduation while indulging in extra-curricular activities like, Moot Court(s), Youth Parliament(s) and various competitions.

As if the activities built the communication skills of an individual in writing by researching on various topics and oral by presenting that conducted research before the Judge or even to the public at large.

## Judgment

It is the skill to make, draw or reach the logical and logical conclusions from the limited information provided and received. Anticipate and spot the possible event(s) and happening(s), analyze the positive and negative areas of the case to prepare the same in such a manner that is beneficial and in the favour and taken into consideration the interest of the client.

## Analytical Skills

Being involved and as a part of the legal industry, a lawyer or Advocate must possess a distinctive attribute of analytical skills as if to crystallize the information received either, half or wrong. A lawyer or Advocate must be able to analyze the events by using the critical method of analyzing.



# Research Skills

Another most crucial skill needed to be a good lawyer or Advocate is the ability to research as quick as lightning, also, to be ready, the research and approach towards the same must be valid and efficient taken into consideration the legal strategies which satisfy and safeguards the interest of the clients.

# Perseverance

Perseverance is the skill on the one side and attitude on the other. I want to confess perseverance is the nature and attitude which develops the capability to deal and perform the activities and task(s) assigned productively and constructively with the numerous and variety-full events which in further embodies distractions.

# Creativity

Few of the eminent Jurist(s) and Attorneys not only be perseverant but logical and analytical also have the traits of creativity. In order to reach a possible best conclusion it is not always to take the paths of the precedents or the obviousness, one must be creative and possess the ability to think out of the box.

# Logical Thinking Ability

It has to be logical enough to draw and make out the conclusions, following the approach of justifiableness and reasonableness.

Even though the other counsel is your opponent, but it should not be minded and must not be considered and regarded as the enemy of the client or the lawyer or advocate itself.

A fair amount of good relations must be formed with the opposite counsel, but that ties must not be affecting or disregard the interest of the client.

# Public Speaking Skills

Well-spoken and be expressive being an essential skill that a great lawyer or Advocate possesses. A critical element(s) like public speaking and addressing a Court of Law, a lawyer or Advocate must be flawless and magnificent;

Public speaking is a skill which can be developed by acknowledging the fact that one correctly and genuinely want(s) to work upon his this skill.

# Writing Skills

Excellent writing skills assists and aids in making the position of the client and case, the marriage and fusion of both speaking and writing skills are invincible. In order to become

a great lawyer or Advocate, tremendous writing skills are needed which are useful and beneficial while preparing the case arguments, briefs and other legal documents.

## Leadership Skills

No individual lacking leadership quality in itself can become a lawyer or Advocate. A lawyer or Advocate must be accompanied by managerial skills (manage the people one is working within a manner which is peaceful and responsive) and leadership skills, and thus leadership skills are necessary for a lawyer or advocate to be successful.

## Listening Skills

To be a great lawyer or advocate one must have and possess the quality and skill to listen to each, and every individual tend(s) to speak before him, develop the ability to listen to others patiently and carefully.

In practical, this skill helps the lawyer or Advocate and their practice in every possible manner so as to cross-examine the witness, or to the finding of the opposite counsel and facilitate in an effective rebuttal.

## Decision Making Skills

Based on the understanding of the event with full reasonableness and in a logistic manner, a lawyer or Advocate can make out and draw conclusions based upon the information provided to him and his past experience(s).

Decision-making skills are the ability to take decisions out of situations and events after analyzing them, and another person can judge the lawyer or advocate through his ability to make decisions that may in future events bring stability and upgrade the personality of his client and perform accordingly with the needs of the client taking into consideration its interest.

## Enquiring Skills

A good lawyer or Advocate must have the capacity and ability to understand the topics in its deepest sense and essence form, in lightning speed to understand the numerous things simultaneously, the client, case, remedy, and justice he wishes to seek, or likewise.

Not only enquiring but, inquiring and analyzing the appropriate provisions are pointed out and implied in a particular case, so this is done, in a smoother way as if a lawyer or Advocate acquires the skill of enquiring.



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## Comprehension Skills

Understanding of minute details of the topics of Law is taken into consideration while doing study and practice of law, as to understand, organize the information gathered in a comprehensive manner.

So, as to develop this skill, one must indulge in the practice of client competition(s) and Moot Court (s) while studying in the Law College.

# Firmness

Firmness, being a very important and crucial trait as if it tests the consistency and regularities in a good lawyer or advocate to pursue a case. It is the ability and skill demanded by this career from a lawyer or advocate to be consistent and stick loyally towards the client and his case in a Court of Law before the Hon'ble Judges.

## Characteristics of a good lawyer

## Client Care

Professionalism and courtesy, these two are the qualities and traits of those lawyers or advocates who know that their clients are to be treated with.

Client's care must be taken as a primary concern by a lawyer or advocate and must be taken into consideration and acknowledged in a fact that client is the only person who is going to arrange for you and your family's bread and butter and therefore, must be treated with utmost respect and sincerity.

## Understanding the Client's Business

Understanding and analyzing the business of the client, which helps its Attorney to act and perform in accordance with its business sector and industry, in a manner which suits the need of its client and benefit them.

As if a lawyer or Advocate is well versed with his client's business, then only the favourable outcome is guaranteed out of its lawyer or Advocate's conduct while acting and performing on behalf of its clients.

## Business Development

The lawyer or Advocate who understands and acknowledges the client care and its business will definitely be good at Business Development; it will eventually increase his working pace by building new business relations and tie-ups.

## Leadership

It is generally noticed that in a small practice, usually Leadership skills are needed neither, the management skills are needed at peak or god level.

Whereas on the other hand, large firm's leadership skills play a very crucial and important role while determining the skill-set and thought process of the lawyer or Advocate so as to be a leader of a follower.

## Project Management

Lawyer or advocates engaged in the cross-border transaction(s) or case(s), project management skills are crucial, to do, perform and manage the project(s) indulged in. Coordination is a very primary and generic factor that helps in facilitating the management of a project between different nations indulging in the lawyer or advocates

practising in a variety of field(s) and industries at different paces.

## Responsiveness

The lawyer or Advocate must deal with all the situation(s) and event(s) with the utmost responsive manner. Timely research, planning, execution, present on the date of the hearing, all these activities performed by a lawyer or Advocate reflects the responsive behaviour.

This type of skill and quality is appreciated not only by the client(s) but the Hon'ble Judge(s) as well. This trait, skill, and quality also appreciates in value of a particular lawyer or advocate and increase its demand at the marketplace.

## Emotional Balance

Apart from professionalism and ethics, a lawyer or Advocate must possess a balance of emotional trait, and this should be a part of his personality. So as to ensure the performance made by him in a Court of Law, he could be able to attach the variety of events in the case of his client so as to drive and explain the happenings of the event(s) to the Hon'ble judges.

It is very much important to have an emotional balance, which will help in the client's case as a whole.



# Organized

Although, it is said to be a lawyer or Advocate's desk should be a messy one; but on the other side, it is demanded in the character of a lawyer or advocate to be and stay organized. He should always be well versed with the cases he indulged in, the case files, the main theme, and the subject matter of the case he pursued.

It is another attitude pursued by a lawyer or Advocate, to be and stay organized, keeping a routine check over all his belongings in a stipulated time, regularly.

# Patience

It's a saying; A Good Listener is a Good Speaker, that's why, a lawyer or Advocate must be patient enough to listen to the client, the opposing counsel, the Hon'ble Judge(s), the members of the jury, and the people involved in a particular case. As this is a skill that a good lawyer or Advocate must be well versed with, and it should be a part of his personality.

# Code of conduct for lawyers or advocates in India

Code of Professional Ethics in the Legal Industry is the sum of adopted key principles for the lawyer or advocates and their code of conduct. These principles are of obligatory nature and lawyers or advocates must act and perform in its accordance.

Some of the general provisions are discussed below:

## Independence

Lawyer or Advocate, being an individual and independent personality, he should not be driven by third-party influence or even his personal interest harms his client's interest and shall act in a manner that serves his client(s) need in the best possible manner or degrade his standing at the Bar.

## Confidence

Confidence, need time to be built, it is one part of the client to have and moreover on his lawyer or advocate to build confidence, and this should only be done and visible if the lawyer or Advocate maintains the dignity, integrity, and honour of this Noble profession.

## Personal Advertising

Law, is a noble profession and thou shalt never solicit; this is the learning my mentor gave me. It is the profession of utmost respect, treating every man equal and providing services to the underprivileged and indigenous people, which is our duty as a lawyer or advocate towards the society and it is a matter of honour and great pleasure.

And some other code of conduct or the specified duties that a lawyer or Advocate must not forget, and must act, perform in accordance and in compliance with the general principles of professional and work ethics of the Bar:

## A. Duties towards the Court

1. A lawyer or Advocate should be straight forward, and his arguments should be pointed clear and precise.
2. A lawyer or Advocate should have a sense of honour and pleasing manners in his arguments.
3. A lawyer or Advocate must be tactful in presenting the matter.
4. A lawyer or Advocate should not mislead the Court.
5. A lawyer or Advocate should not influence the decision of the Court by any illegal or improper means.
6. A lawyer or Advocate shall appear in the Court at all times only in the prescribed dress. He shall not wear a band or the gown in the public place(s) other than a Court.
7. A lawyer or Advocate shall consider when presenting the case and while otherwise acting before a Court, conduct himself with dignity and self-respect.
8. A lawyer or Advocate shall not enter an appearance, plead or practice in any way before a Court, Tribunal or Authority on behalf of kith and kin.
9. A lawyer or Advocate should not criticize the judiciary with malice.
10. A lawyer or Advocate should not act or plead in any matter in which he has some pecuniary interest.

## B. Duties towards the Client

1. A lawyer or Advocate shall fearlessly uphold the interest of his client by all fair and honourable means without regard to unpleasant consequences to himself or any other.
2. A lawyer or Advocate shall fairly and reasonably submit the case on behalf of his client.
3. A lawyer or Advocate shall pay attention which he is capable of giving to the case he is dealing with.
4. A lawyer or Advocate shall not act on the instructions of any person other than his client or his authorized agent.
5. A lawyer or Advocate shall not ordinarily withdraw from engagements once accepted, without sufficient cause and unless reasonable and sufficient notice given to a client.
6. A lawyer or Advocate shall not do anything whereby abuses or takes advantage of the confidence reposed in him by his client.
7. A lawyer or Advocate shall not accept a fee less than the fee taxable under the rules when the client is able to pay the same.
8. A lawyer shall not adjust the fee payable to him by his client against his own personal liberty to the client where liability does not arise in the course of his employment as an Advocate.
9. A lawyer or Advocate shall keep the accounts of its client's money entrusted to him.
10. A lawyer or Advocate shall not disclose communications made to them in the course of their

professional engagement(s) even after the case is over.

## C. Duties towards Opponent

- 1.A lawyer or Advocate shall not communicate or negotiate upon the subject matter of controversy with any party represented by an Advocate except through that Advocate.
- 2.A lawyer or Advocate shall not mislead an opponent, or put him on the wrong way regarding any point in the case.
- 3.A lawyer or Advocate shall do his best to carry out all legitimate promises made to the opposite party even though not reduced to writing.

## D. Duties towards the Society

- 1.A lawyer or Advocate shall establish Legal Aid Societies for the purpose of rendering legal assistance to poor, underprivileged and indigenous person(s).
- 2.A lawyer or Advocate shall help the people, local bodies such as Panchayat in villages to function on sound lines, so that the people may discharge their functions in an enlightened and responsible manner.
- 3.A lawyer or Advocate shall provide legal education to the illiterate and working people by informing them for the rights and legal provisions in simple language.

4.A lawyer or Advocate shall work with social welfare committees to promote social order in which Political, Economic and Social Justice will be assured to all.

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