



RIGHTS OF AN ADVOCATE

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ABSTRACT

There is not denying the fact that legal profession is a noble profession. This profession is regulated by Advocates Act, 1961. This Act provides for the rules and regulations of legal profession as well as rights and duties of an advocate. It act strictly maintains the legal profession in India. In this paper I have discussed the rights of an advocate under Advocates Act, 1961. This Act of 1961 empowers Bar Councils to make certain rules and regulations for regulating legal profession. This study tries to explore the rights of an Indian advocate.

Key Words: Rights, Advocate, Legal, Profession.

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INTRODUCTION

There is not denying the fact that law forms one of the most important social institution of our life. The law is important for a society for it serves as a norm of conduct for citizens. In the absence of law, we would go from liberty to rugged individualism and there will be a complete state of anarchy. The true democratic State has its origin in the 'rule of law'. Ethics is an art of teaching how social life has to be lived and that it lays principles of converting evil souls to noble ones. Ethics is, thus, an art of dignified living. As a moral science, ethics aims at making sincere efforts to probe deeper and find the moral ground for such principles and institutions that are the real safeguards of the true morality of a society.

RIGHTS OF AN ADVOCATE UNDER ADVOCATES ACT, 1961

All the rights attached to the office of advocate by virtue of law and usages are in the sense his privileges. However, following are some of those rights:

1.1: Right to Audience

It is the privilege of person who fulfills the prescribed qualifications to become a member of the Bar. It is privilege of the member to represent his clients in the Court of law and to



claim audience in Court so long as he acts decorously. This is an exalted profession in which privilege is duty and duty is privilege.¹

1.2: Right to Claim Fee

A lawyer has a right to his fee. This right is absolute and not conditional. It does not depend upon winning or losing of the case. This is not enforceable against the subject-matter of the suit. Sometimes lawyers do take up cases without any fees, and then it will not be their right. An advocate cannot sue for his fees, but accepts what he get in accordance with his bargain.²

1.3: Right of Lien

Once a lawyer has filed his power of attorney in a case it is his privilege that no one else can step in without his consent. Even, courts cannot grant leave to appear in this case if he is unpaid when he will have a right of lien upon the briefs and papers if in his possession. Unless satisfactory arrangement for the payment of his fees has been made and the judge is satisfied on that count, even the judge cannot make an order to hand over the brief either to another advocate or to the client.³

1.4: Right to have Access to Judge

It is right of an Advocate to have access to the judge in urgent judicial matters at any time during day or night and the Judge cannot refuse to give audience to him. When such urgent matters are taken after the working hours of the Court, the convenience of the Judge has to be looked into. Though it looks odd and bitter yet it is the right of the Advocate to refuse to recognise and appear before a presiding Judge who is not the prescribed robe of a Judge in the court. Similarly, a Judge can also refuse to give an audience to a lawyer who is not in the prescribed dress.⁴

¹ A.N. Chaturvedi, *Principles and Forms of Pleadings and Conveyancing with Advocacy and Professional Ethics* 399 (Allahabad Law Agency, Allahabad 9edn. 1999).

² *Id* at 417.

³ *Ibid*.

⁴ *Supra* note 7.



1.5: Right to Practice

Every advocate has a right to see that his name appears on the roll of the State Bar Council within whose jurisdiction he ordinarily practices. An advocate shall keep informed the Bar Council on the roll of which his name stands, of every change of his address. An advocate whose name has been removed by order of the Supreme Court or a High Court or the Bar Council, as the case may be, shall not be entitled to practice the profession of law either before the Courts and authorities mentioned under section 30⁵ or in chambers, or otherwise. An advocate shall not be entitled of practice if in the opinion of the Bar Council he is suffering from such a contagious disease as makes his practice of law a hazard to the health of others. This qualification shall last for such period as the Bar Council directs from time to time.⁶

In *Emperor v. Rajani kanta Bose and Others*⁷ the court observed that the practice of law is not a business open to all who wish to engage in it. It is a personal right or privilege and in the nature of franchise from the State.

1.6: Right to Advertise

One of the most controversial issues relating to profession of advocates is whether a lawyer should be allowed to advertise their services and solicit clients. While on the one hand advertising is necessary for providing information to the public on the legal services available, thereby enhancing access to justice, on the other hand, it sometimes involves practices which give rise to mistrust and discredit the legal profession. Traditionally, lawyers have been prohibited from soliciting, advertising and such prohibitions have been part of the professional ethics of the legal profession.⁸ The Supreme Court of India in *Bar Council of Maharashtra v. M.V. Dabholkar*⁹ ruled that law is not a trade, not business, not merchandise and so the leaven of commercial competition or procurement should not vulgarise the legal profession. The Bar Council of India Rules framed under section 49(1)(c) of the Advocates Act, 1961, prohibit all forms of advertising or solicitation of work. Advocate is deemed to be

⁵ Advocates Act, 1961.

⁶ *Supra note* 6 at 420.

⁷ I.L.R. 49 Cal. 804.

⁸ Raju Ramachandran, *Professional Ethics: Changing Profession, Changing Ethics* 107-108 (LexisNexis Butterworths Wadhwa, Nagpur, 2011).

⁹ (1976) 2 SCC 291.



the responsible person in society. The provisions relating to rights of advocates have been described under Sections 29, 30, 32, 33 and 34 of Advocates Act, 1961. Section 49(1)(ah) of the Advocates Act, 1961, empowers the Bar Council of India to make rules in relation to the conditions subject to which an advocate shall have the right to practice and the circumstances under which a person shall be deemed to practise as an advocate in a court. In the exercise of the power the Bar Council of India has made certain rules. Chapter III of Part VI of the Rules of Bar Council of India contains several rules dealing with the conditions for right to practise.

The objective of The All India Bar Examination (AIBE) is to examine an advocate's capability to practice the profession of law in India. The AIBE will assess skills at a basic level, and is intended to set a minimum benchmark for admission to the practice of law; it addresses a candidate's analytical abilities and understanding basic knowledge of law. After passing the examination candidate will be awarded "Certificate of Practice" by the Bar Council of India. The Supreme Court in the case of *Bar Council of India v. Bonnie FOI Law College and Ors*¹⁰ had delved into the issue relating to general legal education reform to improve standards. However, the legality of the exam has not been tested by the Courts till now. In *re Lilly Isabel Thomas*¹¹ a Constitution Bench of the Supreme Court and a Three Judge Bench of the Supreme Court in *Bar Council of Uttar Pradesh v State of UP*¹² held that the right to practice the profession of law under the 1961, Act is relatable only to the advocates practicing the profession of law before Courts or Tribunals or any other authority. Yet another Constitution Bench of the Supreme Court in *ON Mohindroo v Bar Council of Delhi*¹³ held that since all those who have been enrolled have a right to practice in the Supreme Court and the High Court, the 1961, Act is a piece of legislation which deals with persons entitled to practice before the Supreme Court and the High Courts. Therefore the 1961, Act must be held to fall within entries 77 and 78 of List I of the Constitution of India. As the power of legislation relating to those entitled to practice in the Supreme Court and the High Court is carved out from the general power to legislate in relation to legal and other professions in entry 26 of List III of the Constitution of India.

¹⁰ 2018 (1) SCC(L&S) 231.

¹¹ AIR 1964, SC 855.

¹² (1973) 1 SCC 261.

¹³ AIR 1968 SC 888.



Conclusion

Every court has their rules which serve as a guideline for procedure implementation and these rules also talks about contending case without an advocate. Rules are regulatory provisions and do not impose a prohibition on the practice of law.