



NEED FOR ADVOCATE PROTECTION ACT FOR LAWYERS IN INDIA

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NEED FOR ADVOCATE PROTECTION ACT FOR LAWYERS IN INDIA

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ABSTRACT

Advocate Protection Act is prepared for the benefit and safety of lawyers so that they can conduct their professional obligation and duties without any fear. An advocate plays a vital role in providing justice to his client. Whereas at several times the Apex court in various cases held that advocates do not come under the purview of Consumer Protection Act, 1986. Advocate protection act will provide strength to legal profession. Where any advocate may take any case of his choice and will help to retain the faith of society on judiciary. As advocates take the case of his client

personally and strive hard to provide justice to his client. But fear, threatening and attacks to his life and family emotion stop them doing so. As a result, number of cases passes unheard and fail to provide the clear picture of the case to the court, which imbalance the judiciary. As doctors also has various acts and provisions to safeguard themselves. Similarly advocates also require protection to present the facts of the case accordingly and to secure their life throughout. So, my paper will focus on all indispensable points which are require to provide strength to legal profession for the efficient and smooth functioning of judiciary with recent facts and analysis.

INTRODUCTION

Without Advocates no one can get justices. They are the only one who are there to bring justice and discipline in society. Without advocates judiciary cannot function. As advocates are the integral part of the judicial system. Therefore, without all these judiciary cannot exist or have value. Advocate's face number of threats, fear in

their day-to-day life. Which disturb not only their legal profession but also their personal life. Which disturb the mental status of the advocate. As their standard of living goes down. And thus, advocates start taking their profession as profit making business from the noble job to serve the society to its great extent.

Criticism faced by the advocate A.P. Singh was also very alarming. Let's focus on significance of Hippocratic Oath for Doctors. Where they are asked to provide the best of care to all patients without any discrimination of religion, race, sex, caste, personal beliefs or socioeconomic status. Above all Doctors can do nothing which may harm patients. Basically, they cannot refuse any patients for treatment under their capacity on any basis. That is their Dharma, to protect their patients without any discrimination in mind.

It did not bother them whether the patients who is there for treatment is rapist, murderer, thief, etc. or he may be enemy of country. Above all he is only patient for Doctors. Similarly, Advocates are also governed by law. Under the Advocate Act, 1961. Chapter 6 sec. 2 Rule 15 of BCI (Bar Council of India) state that it mandates on the part of advocate fearlessly to uphold the interest of client by all fair and honourable means regardless of his personal opinion, keeping in mind that advocate loyalty is

towards the law, which requires that no man should be convicted without adequate evidence.

Advocate should never mind, what his client did. He may be rapist, murderer, or what so ever. That is the Dharma of Advocate to safeguard the interest of his client, to give chance to prove his fact or circumstance, which made or compel them to do so. As the famous saying goes "**Hate the sin, not the sinner.**" Advocate has the power or right to provide the means to safeguard his client within the framework of law. From nowhere I find this wrong infect the best lawyer is who, who follows the ethics of law. As it is rightly said by Albert Schweitzer that "**ethics is the activity of man directed to secure the inner perfection of his own personality**".

Bar Council of Maharashtra refused the Mumbai lawyers to defend Ajmal Kasab. this was really disturbing that the country with the largest democracy in the world refused to get the lawyer. Therefore, court considered that it was shameful act. Thus, from their behalf two advocate defended Ajmal Kasab on the directions of the Bombay High Court. Ajmal may lose the case that was another thing. Main thing was to provide him with a lawyer.

According to Article - 22 of the constitution of India 1949 and Article 22(1) Right to be informed clearly mention that who so ever

police arrest it is their Fundamental Right to ask for legal petitioner or lawyer of their choice. So that they can prepare their defence and meet their lawyer.

And also, according to the Indian evidence Act, 1872. Section 126 talks about professional communication that is the duty or responsibility of Advocate to safeguard his client and it cannot be reveal to anyone, even it is revealed that is inadmissible in the court of law.

Illustrations: - a) A, a client says to an attorney _ I have committed forgery and I wish you to defend me. As the defence of a man known to be guilty is not a criminal purpose, this communication is protected from disclosure.

But all these rights, benefits, obligations, etc. are there for the welfare of client, but not for the advocate protection. So directly or indirectly all these are related for the common good of society at large. But not for the personal well-being of an advocate.

At this point of time people need to realize the importance of lawyer safety in our country as they are the integral part of judicial system in India. Court cannot proceed without the presence of the advocates. Advocates are there to prove whether the convict is innocent or guilty. An advocate has the power to save an innocent and punish the real culprit. Even

advocate has the power to punish or suspend police through court or snatch his job on valid evidences. Even though advocates have the power to order any police including IPS by court.

To boost up all these values of advocates, it's very much essential to bring forward Advocate Protection Act so that advocate can use or implement all their power and rights to its full extend so that without any fear or pressure of anyone they can easily enforce their all rights and obligation. Indian judiciary very smartly provided or drafted the rights and power of an Advocate. But the obstacle or huddles in the path of advocate which prevent them to bring it to its real sense are fear, threat, blackmailing, bribery, etc. it is very clear that advocates are the means to bring justice in society. They have the direct representation with the society. Advocates are known as learned person because it is considered that they have complete knowledge about all laws in society and crimes. So basically, we can understand that in civil matters advocates have the power to provide legal remedy and compensation and in criminal matters they have the power to save innocent and punish the culprit. Thus, advocate can go to any court across India.

Our country India is governed by the Rule of law which means whole India is govern

by the law and of which advocates are the integral part. Whole country will get disbalance, or disturb if advocate do not act fearlessly. As every brick is matter or valued for strengthening the wall or building.

P. D. Gupta v. Ram Murti and Others

“A lawyer owes a duty to be fair not only to his client but also to the court as well as to the opposite party in the conduct of the case. The primary duty of the lawyer is to inform the court as to the law and facts of the case and to aid the court to do justice by arriving at the correct conclusions.

Need of the Hour:

According to the data it is found that lot of time of judiciary get waste while protesting. For example, Jabalpur High Court registrars noted that 960 hours of judicial work at the court and 40,000 hours of lower courts were lost due to the advocate's strike.

Thus, enactment of provisions of the advocate's protection is very essential, but to have a check and rider to the enforcement as well as usage/misuse of the same should be the topmost priority while enacting and special focus or attention should be made by regulating the strikes and

demonstrations by the advocates, making them accountable not only to their clients but also to the entire society, for whose benefit they render their invaluable service.

Advocate Protection Act must not be limited to the State of Madhya Pradesh but the union should also bring forward the demand and necessity of this bill in the parliament, because the legal profession is unified and uniform across the whole nation, therefore the protection, privileges and responsibilities be made same throughout the entire nation. Thus, advocate are the indispensable part of society and judiciary.

They are the one who maintain the public policy and order within the country further more being the protector they serve the society or nation to its full capacity. While the nation acknowledged them as their work to serve society but mankind hails the as great as well as nobel people who through their selfless service taught us invaluable lesson to humanity. To this extremely special fraternity mankind must express sincere gratitude and demand government to bring Advocate Protection Act for the common good for whole nation. So that society can grow fast and live more. As advocates are the one to promote love, affection, compassion, modesty, sympathy, forgiveness and equality, across the nation. Last but not the least by Advocate

Protection Act, advocates may blossom into an incredible gentleman who may be capable of satisfying all needs of society. and by Advocate Protection Act advocates can carry out their duties without any fear, threats or attacks.

While serving the society advocates always keep in my one of the motto of judiciary that “the 100 culprits may let go free but no innocent should be punished”. To fulfil this motto it is very essential for advocates to play their part perfectly.

CULTURE OF JURISDICTION THROUGH POWER

Logic behind fair trial to most dreaded criminals: - Fair trials are the only way to prevent unfair and illegal justice. Every person should have right to determine their guilt by a fair and effective legal process or means. It's not only just to protect suspects or defendants. It also necessary to make societies safer and stronger. Without fair proceedings, accused or victims can have no confidence or surety that justice will be provided. Without fair procedure of judiciary, faith in government and the rule of law collapses.

The right to fair trial is not new; it has long been recognized by the international community as a basic human right. despite this, it's only a right that is being harmed or

abused in nations across the globe with critical human and social consequences.

The Universal Declaration of Human Rights (UDHR) key provision in Article 10 states that, “everyone is entitled in full equality to go through a fair hearing by an impartial tribunal, in the acknowledging of his rights and liabilities.” In the India Constitution article 20 clause 3 determine the right against self-incrimination. Further, after Maneka Gandhi v union of India, (1978) case, constitution article 21 talks about fair and equitable means to be followed up.

The sentiments, emotions, feelings, mood and temper of the society in respect to the maintenance of crime, terror and criminals play a significant role. E.g., public sentiments were high and against the criminals in the Disha murder case of Hyderabad. Thus, it effects the concept of Rule of law. Sometimes in our country when situation goes out of control than the “culture of jurisdiction through power” comes into existence. So, most of the time judiciary can't work in their full capacity. for e.g.: - controversies of the encounters of gangsters in Mumbai.

Therefore, blood lust become the means to serve the justice in society due to slow or weak procedure of judiciary, where

advocates play a vital role to maintain the balance between judiciary and public policy. As society start losing faith on judiciary and public initiate the police department and various other authorities to provide them instant justice. And this disturbs the whole legal system of country. Due to this concept of natural justice, equality before law and equal protection of law become ineffective. As people appreciate and acknowledge the encounter done by the police. So, nobody questions for various other formalities to take place. This is how the concept of right to fair trail which is recognized internationally as a fundamental human right and countries are required to respect it become invalid at such circumstances. People rated the encounter of Priyanka Reddy case valid due to the loss of faith of people on judiciary. Slow and weak procedure has disbalanced the whole process of maintenance of power in country. As when the culprit of Priyanka Reddy case was encounter till than the culprit of Nirbhaya were not punished accordingly. Therefore, it validates the encounter of Priyanka Reddy case. From all these, we can easily relate our point due to lack of interest of advocates on such issues cases goes on pending as there is no such provision or act which can safeguard the rights of an advocates.

Madhya Pradesh may become the first state in India to enforce a special law for the

protection of its advocates, who are around 90,000. There are other several State's like Maharashtra, Andhra Pradesh and Uttar Pradesh who have asked for a specific act to safeguard or protect advocates from physical assault, and this is all for the upliftment of advocate and judiciary as a whole but no state government or respective authorizes has worked or acted upon the demand so far. The congress, ensured the people that it will implement. The act within a month, if the party win the election.

FEW TRAGEDIES OF AN ADVOCATE

1. Advocate Shahid Jamal 36-year-old in November 2016 was assaulted by a group of youths in Bhopal. Police of Bhopal therefore replied that it was the consequence of personal enmity between the attackers and the lawyers.
2. A woman advocate in Jan, 2017 was assaulted by her client husband in Indore. As husband of her client was quite furious over dismissal of the petition filed against his wife.
3. Advocate Mahendra Sigh (a government lawyer) was brutally bitten up by a group of women with slippers in his chamber in the Guna district court in July 2017. Women

- claimed that advocate used the filthy language for to collect their children's birth certificates from his home.
4. In December 2017 Advocate Ashok Vishwakarma was hit on his head with a hard object by three accused, therefore a group of lawyers protested at the superintendent of police 's office. But the motive behind this incident was not clear.
 5. In January 2018 in Indore an advocate was shot by an unidentified person. While advocate was going to get the left money related to registry of land documents. The motive behind this attack was unknown.
 6. In March 2018 in Bhopal a woman advocate was assaulted with lathi by an unknown person while going on her scooty. As culprit was not arrested thus motive left unclear.
 7. In Narsinghpur district April 2018 a group of advocates clashed with youths near court premises. Stones were pelted from both sides. Police authorities replied that the clash followed an attack on the youths as they were being produced in the court in related with an assault on an advocate and his son.
 8. Ajay Kumar Waghmare also asked the Bombay high court to set up a judicial committee for assault cases on advocates. He even tried to bring the attention of the court for the protection of advocates so that their dignity can be secure. He even mentioned 63-year-old senior advocate media report in Maharashtra as he being assaulted by a former corporator whom he was questioning in a land dispute matter.
 9. Similarly, in November 2017 advocates in Andhra Pradesh demanded for a security act in the alert of assaults on many advocates in Vijyawada and Rajahmundry.
 10. Even our senior advocate of Supreme court of India Mr. Rajiv Dhawan told in an interview with a news agency that how he was assaulted and intimidated while he was acting as the counsel for the appellants of Ayodhya Babri masjid matter.
- Advocates all around the country are seen as the preservers of the legal system and are considered to be an integral part of the judiciary system. They are the voices who play a major role in the reformation of the judiciary and the society at large. Yet, several instances take place all over the nation which involve physical violence on advocates.

The recent *R. Muthukrishnan v Registrar of High Court of Judicature of Madras* case emphasized upon the importance of the Bar as, “*The legal profession cannot be equated with any other traditional professions. It is not commercial in nature and is a noble one considering the nature of duties to be performed and its impact on the society. The independence of the Bar and autonomy of the Bar Council has been ensured statutorily in order to preserve the very democracy itself and to ensure that judiciary remains strong. Where Bar has not performed the duty independently and has become a sycophant that ultimately results in the denigrating of the judicial system and judiciary itself. There cannot be existence of a strong judicial system without an independent Bar.*”

Further, this bill should also cover maintenance and protection of their families from these acts as it is also seen that the lives of families of advocates are also put under high threat in such situations. The suggestions provided in this article regarding this legislation are not rigid in their approach but only intend to provide a general idea of what can be essential areas which this bill should cover. Its specific provisions for its proper implementation should only be drafted by the persons having the technical knowhow associated with it.

THE ADVOCATE PROTECTION ACT

– The need of the hour

The act asks the government for Rs 5 lakh to be the maximum limit of funds for treatment of serious ailments effecting advocates and in case of death, Rs 4 lakh will be provided to the family of deceased advocates, which includes Rs 2 lakh from the State government and Rs 2 lakh from the respective bar council. According to the data, Bill may include various safety measures for advocates in discharge of their duty and obligation in good faith within the frame work of judiciary and quasi- judicial proceedings and advocates have also demanded to add in the bill a provision which will ensure that the use of derogatory language in judicial proceedings against lawyers appearing on the behalf of either party will be a cognizable, non- bailable offence.

For the effective governance an independent body be established which shall include designated senior advocates, advocate as chosen by the bar and a person not below the rank of high court judge to prescribe the speedy procedure for the disposal of the cases under the act and also to make enquiry and decide into the matters of professional misconduct by the advocate , because the provision of advocate act (regarding disciplinary committee, is not as par to regulate the professional misconduct

, as every day the code of conduct is breached , but no action is being taken by the fellow advocate against their own advocate friends) has failed to uphold the professional conduct within the legal profession.

Lapses occur from both sides, which tend to stiffen their relationship. Statements of lawyers influences the court, so they are under moral and legal obligation to be sober, fair and cordial in their dealings with the court. It does not mean that the lawyers have to surrender to the improper behaviour of the judges.

SOLUTION:

When the Advocate Protection Act is there, the most challenging thing for an advocate becomes easy and when the advocate protection act is not there, the smallest difficulty seems like an unassailable wall. So, this advocate protection act has to come, or in other words, it is the need of the hour. As it acts as a sense of security for an advocate. now advocates have to start developing their awareness and need to be more alert, until they would be able to gaze and judge and dodge fear behind their life. So, it's a question of being completely aware.

As when advocate is interested in any serious or alarming case. They do it when

they like but when they are having protection or surety of their life, advocate do it whether they like or don't like. That's the kind of surety or support from government advocates are seeking for. So that crime rate from country slow down.

Now the time is demanding need of protection for advocates. This is much needed Bill at the present times because the lawyers who are busy to provide reliefs to their clients become victims by the other sides and seeing the condition of the Howrah court in West Bengal where almost 200 lawyers were brutally assaulted by the Howrah city, police on 24.04.2019 the protection of advocates Act is indispensable now. I support the bill and eagerly waiting to be passed as soon as possible by both the houses. Such attack on an independence of judiciary needs to be secure by Advocate Protection Act.

CONCLUSION:

By the advocate protection act across country it will boost the legal profession and will provide surety to the hard work, sincerity, punctuality, loyalty of an advocate towards their profession. It's not that it will get misuse main thing is to recognize it from its wider aspects of benefit. As people find loopholes in everything. And government and society

highlight loopholes to the public more so that they can drive benefit out of it. Thus, government moulds the points accordingly. But while keeping in mind its benefits we can provide to our nation efficient and independent judiciary. As advocates holds the great power and from great power come the great responsibility.

In India people are using several ways to harass or blackmail advocates for their own benefit. These people feels that whole judiciary should move according to their interest and benefit. Therefore, they succeed in manipulating the facts and evidences, which increases the workload of whole judiciary system which thus leads to pending of cases from months to year and therefore judiciary becomes mockery in society and people start losing their faith on judiciary and public try to take judiciary power in their own hands. And with the help of government and police department, even without any hearing they come to the conclusion to do instant justice. The best recent example of this could be Vikas Dubey encounter and the culprits of Priyanka Reddy case encounter. This all was very well appreciated by the people of India. And it clearly signifies that how much faith is remaining in the hearts of people of India on Judiciary. Therefore, it is high time to realize the necessity to bring forward the Advocates Protection Act so that dignity of judiciary can be secure and

the faith of people on judiciary remain intact. According to the sources it is found that at several times advocates knew the exact facts of the case and every evidence are in the hands of advocates but due to fear they won't come out. As at the end of the day advocates has to secure his life and livelihood.

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