



Advocate Protection Act: Safeguarding Legal Professionals and Justice

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Abstract:

This article delves into the critical need for the Advocate Protection Act in India, highlighting the vulnerable position of advocates in the legal system. It explores the Acts provisions, which aim to protect the rights, safety, and security of advocates, ensuring they can fulfill their essential roles in the pursuit of justice. The article also discusses recent incidents and the demands of the legal community for such protection, emphasizing the Acts significance in maintaining the integrity of the judicial process and upholding the constitutional right to justice. Additionally, the article touches upon the Acts potential impact on the legal profession and access to justice in India.

Keywords:

Advocate Protection Act, legal professionals, justice, safety, security

I. Introduction:

In India, Advocates are generally considered as the lender of last resort in case of any legal tensions. To much to their dismay, there is no specific law for the advocates to protect their own rights in case of justice dispensation. To fill this void in the legal system there was a dire need of their protection through the Advocate protection act. The act has rightly provided the necessary protection of the rights of an Advocate and trying to lacerate the hurdles which might not only hinder the proceedings of the case but also prevent the stonewalling of the path of Justice. The act also provides social security to an advocate by stating that an advocate should be provided with the bare necessities. The act further provides to compensate the advocates in case of any injury or harm rendered to them. A clear intention is to do away with any type of impediment which may step on the path of justice and prevent people from availing the help of the advocate and eventually the courts. Another purpose of enacting the advocate protection act could be that the previous act

concerning the Advocates which was Advocates act, 1961 had undergone through a lot of contemporary question which still lies hanging to be answered. Advocates act provided powers, Right to practice but nothing was mentioned regarding the Protection of the people in Black Robes. Advocate protection act bridges this distance by providing them necessary and requisite protection and security.

The protection and security of the advocates undoubtedly is an indispensable task of the government. In India, where there is an establishment of the common law system inherited from the British, We pursue an Adversarial system where the Advocates have a responsibility to tactfully tailor the judge through the requests of its clients. An advocate really acts as linchpin for the process of Justice and is unavoidable too. Visualising a situation without the propriety services of the advocate is a disaster in itself and will lead to the judiciary comes to a standstill. Absence of the Advocate will lead to a lot of consequences unprecedented like halt in justice, wastage of the courts precious time as new procedures have to be followed, anomaly from the actual aim of the case. A client who is financially not strong enough to extend its fees till the appointment of a new advocate may compel him to withdraw the case forever. This does not solve the client's problem and neither help in sweeping the humongous mountain of cases which are to be solved by the judiciary. Absence of protection might also lead to an innate trepidation in the minds of the fellow advocates as they prioritise their personal life and liberty over the discharging of their professional duty. Young Advocates who dare to dream and define the course of their lives by becoming an advocate would also like to distance and redefine their choices as they would feel unsafe to practice in this profession. The safety has to be provided as an obligation of the government which lies in their hands because advocates are the people who fight for client's inborn right to justice.(Article 14 and 21 of the Indian Constitution).



The sad story of imminent attacks and threats on the advocates is a trail from past two years. This has led to strikes by the advocate association demanding their rights. A case where there was brutal murder in broad day light of the Telangana lawyer couple Advocates - Gattu Vaman Rao and his wife PV Nagamani. The case was known to walk up to the gates of the honourable Supreme Court where Advocate J Sai Deepak had argued for the enactment of the Advocates protection act. He argued that the respondents have infringed petitioner's fundamental rights under Article 14, 19 1(g) and 21 of the Indian Constitution and Section 30 of the Advocates Act where every advocate has a right to practice before any court, Tribunal or person and is legally authorised to take evidence. The three-judge Bench of CJI Bobde, Justice Bopanna and Justice Ramasubramanian granted the petitioner liberty to withdraw the plea and approach the Law Ministry regarding enactment of Advocate Protection Act. Following the requests and the Advocates outrage a seven- member team was relied to form the Advocates protection act containing senior advocates and Advocates by the Bar Council of India (BCI). Following that, there have been various instances of Advocates being ruthlessly attacked in public also extending to cold blooded murder. There was a case in Mumbai where a lawyer in Mumbai had a narrow escape after he was attacked by a mob wielding swords, iron rods and sticks. In the viral video it could be seen that the Lawyer was seen mercilessly hit and a few others could be seen being assaulted by several people and hit with sword and sticks in the middle of a busy road. For the case, the police has registered an FIR and arrested the people accused. Advocates association and Advocates have been fighting for their rights while discharging their duties and they should be provided with it. Mumbai has shown a lot of energy and held demonstrations against continued attacks on advocates. There was also a signature campaign held for the passing of the Advocates Protection Act, which had the participation of a lot of advocates signing the petition.

The act has explicitly brought changes to protect the dignity of the advocates by providing for the prevention of offences like assault, grievous hurt, criminal force, and criminal intimidation against the advocates including the damage or loss to their property. In case of causing grievous hurt to an advocate, the bill proposes a maximum imprisonment of seven years and a fine of ₹50,000. Whereas in case of assault on a lawyer, the maximum punishment will be imprisonment of two years and a fine of ₹25,000. Further, in cases of

criminal force and intimidation against a lawyer, a maximum punishment of two years has been proposed in the bill. These offences have also been made cognizable which means that they are open to investigation by the Police without the order of the court and compoundable where there is an option take back the charges levied on the accuse in case of any bonafide intention under the section 4 and 5 of the act. Section 4 of the Bill makes provision for police protection to advocate in need. The bill also proposes to punish an advocate who misuses the provision of this Act or uses the same for malicious purposes or makes a false complaint under the bill with imprisonment up to two years, or with a fine or both. The bill also proposes to punish an advocate who misuses the provision of this Act or uses the same for malicious purposes or makes a false complaint under the bill with imprisonment up to two years, or with a fine or both. Punishments in case can range from six months to five years, with a maximum of ten years for repeating offenses. Penalties range from Rs.50, 000 to Rs.1 lakh for the first offense, while fines for consecutive offenses can reach Rs.10 lakhs. According to Section 11 of the act, the bill also gives the court the authority to compensate advocates for wrongs done to them. It reads as "No Police Officer shall arrest an Advocate or investigate a case against an Advocate without the explicit direction of the Chief Judicial Magistrate," When an Advocate provides information to an Officer-in-Charge of a Police Station about the commission of any offence, the Officer-in-Charge shall enter or cause to be entered the substance of the information in a book to be kept by such officer, and refer the information with other related materials to the nearest Chief Judicial Magistrate, who shall hold a preliminary inquiry into the case. Following the hearing, if the CJM determines that the FIR was brought against the Advocate for malicious motives arising from the discharge of the Advocate's professional responsibilities, the CJM will grant bail to the Advocate. The act also includes a significant provision for Social Security of the Advocates practicing in the courts as they are considered the soldiers of the government in fight with injustice and discrimination stuck in the society. In unforeseen events like natural catastrophes or epidemics, the legislation recommends that the state and federal governments establish arrangements to offer financial help to all needy Advocates in the nation and thus protecting them and their duty, professional and personal work. Every month, a minimum of Rs.15, 000 must be supplied. Section 12 states that if any public servant with investigative



or arrest power under the CrPC is found in possession of or using in his investigation any privileged communication or material that can be shown to have been obtained from an Advocate, it is presumed that such privileged communication or material was obtained by coercion. Recently, Rajasthan has also stepped up and enacted the Advocates protection act, 2023. In its various sections, it covers the welfare, protection of the advocates as seen in the light of the horror attacks on their dignity and even their family.

Advocates protection act finds a lot of relevance for the advocates by providing a shield to them. Protecting them while they are performing their judicial duty will remove all the impediments to all court proceedings. This might lead to smooth working of the courts and the judiciary. Advocates can have all their tensions released regarding their safety and security of themselves and their family. The bill also encourages advocacy, potentially boosting legal careers and access to justice as there does not remain any innate fear of practicing and delivering their judicial duty. It also sends a message to the youth of India that advocates are people of esteem and the government is interested and bound to protect their dignity. They respect the service they provide to the society and the people and also recognizing the magnitude of protection it needs. It reasonably sends a message to the world that India cares about each and every advocate it produces and their safety. Additionally, Advocates-also have the challenge of representing detainees, those who are imprisoned or incarcerated. In order to aid in the investigation of alleged wrongdoing, attorneys are questioned about privileged communications with their clients. All of the above issues that the advocates are facing will be remedied if the bill is passed. Passing of the act will also lead to the stopping of all the demonstrations by the advocate which has an indelible impact on the society's justice system. Advocates whose duty is to provide justice to their clients seeking justice delays a lot of ongoing cases and increase the mountain of cases backlog. In 2019, a data suggests that - "According to sources in the High Court registrar's office in Jabalpur, 960 hours of judicial work at the Court and 40,000 hours in the lower courts were lost due to the advocates' strike. The concept of speedy trial can also be uphold as advocates can concentrate on justice dispensation with their safety ensured.

The Advocates protection act nonetheless comes with criticism about misuse of provisions, inadequate enforcement, and potential bias. The Act establishes the requirements for practicing law in

India and a system of legal education and training. The viability of the Act depends on its professional regulation, rights and privileges, disciplinary mechanisms, and accessibility to justice. The Act's effectiveness depends on its ability to protect the independence and autonomy of the legal profession. The Act's flexibility is crucial to adapt to the changing legal environment, including societal requirements and technological advancements. The Act must be flexible enough to accommodate new legal practices and current issues in the legal industry.

Various other criticisms of the act include prohibition from sharing privileged information with their client without the permission of the court, making it difficult to represent the client effectively. This unreasonably creates a hole in the client-advocate relationship. An Advocate who is responsible for the well-being of its client should follow the rule of transparency. Another disadvantage is that the bill creates a chilling effect on the freedom of speech by prohibiting scandalous; frivolous, or vexatious" statements that tends to lower the authority of any court. Hence, Discouraging them from voicing out important socio-legal issues. Freedom of speech forms an integral part of the constitution and the democracy we live in. Advocates, who are the soldiers of the democracy The act acts as arbitrary when it empowers the Bar Council to investigate and prosecute advocates, disintegrating the existing structure which puts on a mechanism of checks and balance and giving them undue power. It also does not specify how the offences and penalties will be enforced, leading to confusion amongst the various law enforcement agencies present regarding the execution of the necessary procedure at the given crime. The lack of quality education and the easy-gateway of licensing procedure mingled with corruption enables criminals to avail protection under this bill.

Thus, Advocates, under no doubt, need to be protected within the society. Advocates protection act duly and expediently satisfies their needs of security. A loss of an Advocate (or his services), reverberates not only to his /her families but also to the client, adding to its complications. This problem swifts through the case and eventually the Justice system which is already waterlogged. The Advocate protection act is an answer to all those unscathed questions on the burgeoning cases of attacks and assaults on the advocates. Advocates, like judges, can walk with all of their judicial honour with an assured and sense of confidence. The society, amidst all the escalating voices, also



need to unequivocally stand for the Advocates, their comrades in their protection so as to accept and validate the Valour of their Valuables. The society, with all its due capacity, should understand that Advocates, unselfishly put themselves under the vicious and cumbersome circle of judicial procedures so that the justice stays ablaze in the society and every individual gets what the constitution and the constitution makers contemplated for their welfare, Minorities will be filled with fruits which they did not get. Their impact leaves an indelible and insoluble mark on the society which can forever cause a revulsion or a caprice in the society and ultimately transmuting a metamorphosis. Society should acknowledge the legal benefit they have provided to them and their families as these benefits are always in compensation of the acts or the wrongs done against you and also acts as a further cover to the people in future. An Advocate always walks alone in the pursuit of the justice with the name of the client and the society on his chest. Its contribution should never be written off as mere lines of some forgetful fiction story. It should always be painted with a class of gold as a mark of their dignity and respect. As an individual, a class, a society, let's stand and defy to all the odds and stones in front of the Advocates and curate a rise of those bruised and battered (but fighter) spirits.

Let's provide a shade of Light for the Black Robes!

CONSTITUTIONAL VALIDITY OF SECTION 15 OF HINDU SUCCESSION ACT, 1956

INTRODUCTION:

In this context, Inheritance property amongst Hindu, Sikh, Jains and Buddhists are governed by the Hindu Succession Act, 1956. The confusing and vague status of religious personal laws operates to legitimize the continued denial of equality to women in matters of family law as it generates a space for rules or laws to operate that are not compliant with the constitutional requirements and yet are enforced by the state. Religious personal laws with their ambiguous status serve to legitimize the continued denial by the state of gender equality to women in family law matters. Such as, in succession rules present status of Hindu women with respect to inheritance of property and whether section 15 Hindu Succession Act, 1956 needs to be amended to grant gender equality to Hindu women.

HISTORICAL BACKGROUND :

Sec. 15 in the Hindu Succession Act, 1956

Section 15 in the Hindu Succession Act 1956, General rules of succession in the case of female Hindu property of a female Hindu dying inheritance shall devolve according to the rules set out in section 16.

- a) Firstly upon the sons and daughters (including the children of any pre-deceased son or daughter) & the husband
- b) Secondly, upon the heirs of the husband
- c) Thirdly, upon the mother & father
- d) Fourthly, upon the heirs of the father &
- e) Lastly, upon the heirs of the mother.

NOTWITHSTANDING ANYTHING CONTAINED IN SUB. SEC. (1) :

- a) Any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (Including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub sec. (1) in the order specified therein but upon the heirs of the father
- b) Any property inherited by a female Hindu from her Husband or from her father-in-law shall devolve in the absence any son or daughter of deceased (including the children of any pre-deceased son or daughters) not upon the others heirs referred to in sub sec. (1) in the order specified therein but upon the heirs of the Husband.

CASE LAW : GURNAM SINGH V/S SMT. ASS KAUR 23RD MARCH 1976

In this case the Punjab H. C. that the plain and natural meaning of the words "Son or Daughter of the deceased in sub sec. (2) sec.15, is that the son or daughter should be heirs even though she might have married once or more than once they given birth to children from these marriages because these offspring's are capable of establishing their blood relations to the female Hindu as son or a Daughter.

OPINION AND SUGGESTION:

The Hindu Succession (Amendment) Act, 2005 (39 of 2005) was enacted to remove gender discriminatory provision in the Hindu Succession Act, 1956 under the amendment the daughter of a coparcener shall by birth become a coparcener in her own right in the same manner as the son



Daughters have equal birth rights to inheritance property : Supreme Court

The Supreme Court on Tuesday held that daughters like sons have an equal bright right to inherit joint Hindu Family property. The court decided that the amended Hindu Succession Act which gives daughters equal rights to ancestral property will have retrospective.

“ A daughter always remains a loving daughter. A son is a son until gets a wife. A daughter is a daughter throughout her life. “ Justice Arun Mishra heading the three Judge Bench authorized the judgment.

Amended case laws : Vineeta Sharma V/s Rakesh Sharma [2020] The HSA Act (Amendment) 2005

STATUS QUO :

Constitution validity of section 15 of Hindu Succession Act 1956 Article 15(1) the constitution mandates that there cannot be discrimination any citizen bases solely on religion, race, caste, sex, place of birth or any of them since it is against the principles of the constitution.

ORDER OF SUCCESSION :

Order of Succession and manner of distribution among heirs of a Female Hindu dying intestate are given in section 15 of the Act.

1) RULE-I : Heirs in the first entry u/s 15[1] of the act shall be preferred to those in the second entry. In the absence of heirs in Second entry shall be preferred in third entry and so on. In the entry preferred, such heirs shall take simultaneously.

2) RULE-II : The children's deceased son or daughter, between them get the share which son or daughter would have taken if living off the intestate's death I. e. the division as per stripes.

3) RULE-III : This rule provides for the devolution of the property on the heirs of the father, on the heirs of the mother or on the heirs of the husband. Shall be in the same order and according to the rule as if the father, the mother or the husband, had died intestate in respect of that property immediately after the female's death.

II. CONCLUSION:

The Hindu Succession Act discriminates against Hindu women by advocating different rules for the devolution of property held by men or women. These provisions-excessively and unfairly select the husband's family in the structure

of devolution as compared to the women's own family even when the property belongs to the woman or is- self acquired by her. The legislation is a resultant of an ERA when it was implausible for Indian Women to own & acquire property. However, these biases continue to be committed upon Hindu women in India even today.

Safeguarding Legal Professionals and Justice
Article Abstract: This article delves into the critical need for the Advocate Protection Act in India, highlighting the vulnerable position of advocates in the legal system. It explores the Acts provisions, which aim to protect the rights, safety, and security of advocates, ensuring they can fulfill their essential roles in the pursuit of justice. The article also discusses recent incidents and the demands of the legal community for such protection, emphasizing the Acts significance in maintaining the integrity of the judicial process and upholding the constitutional right to justice. Additionally, the article touches upon the Acts potential impact on the legal profession and access to justice in India.
Keywords: Advocate Protection Act, legal professionals, justice, safety, security
Conclusion: The Advocate Protection Act emerges as a vital instrument in securing the dignity, safety, and rights of legal professionals in India. With its provisions aimed at preventing and addressing attacks, assaults, and other threats faced by advocates, this Act bridges a crucial gap in the legal system. It not only safeguards the interests of advocates but also ensures the unhindered delivery of justice, benefiting both clients and society at large. However, it is essential to acknowledge that the Act is not without its criticisms and challenges, which need to be addressed for its effective implementation. Nevertheless, the Act represents a significant step toward recognizing and protecting the invaluable role that advocates play in upholding justice and the rule of law.

Footnotes :

- www.indiankanoon.org
- www.thehindu.com
- Vineeta Sharma V. Rakesh Sharma [2020] The Hindu Succession (Amendment) Act 2005
- Omprakash & others V. Ramcharan & others [2009]
- Mamta Dinesh Vakil V. Bansi V. Wadhwa [2012]