

Right to Practice Legal profession in India

Dr . Bhanu Pratap , Assistant Professor , Faculty of Law .

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Right to Practice the Profession of Law in India

Advocate Act , 1961 confers Advocates the status of being the only recognized class of persons to practice law . ¹ Advocates are the only categories of legal practitioners and the term vakil , mukhtar , barrister , revenue agent come within the definition of Advocate . There exists a fiduciary and a contractual relationship between a lawyer and a client ² In the case of Legal practice Board vs Wilhelmus Van Der Zwaan the Supreme Court of Western Australia the Supreme Court of West Australia held that the term practice included legal advice , pleading , drafting , conveyancing and appearing on behalf of client before a court . ³ In the Indian context following points have been interpreted as part of the term practice :

- (1) Appearing in the Courts.
- (2) Consultation .
- (3) Rendering of Legal Opinion .
- (4) Drafting , Pleading and Conveyancing .
- (5) Work in a legal firm or office . ⁴

From 2009 onwards all law graduates are entitled to enroll themselves as an advocate but in order to practice they shall qualify an All India Bar Exam . ⁵ It is held twice a year and there are no restrictions on the number of attempts .

Advocate Act provides monopoly power to an advocate to practice in court including Supreme Court , before any tribunal and authority . ⁶ Non lawyers can make an appearance only with the permission of the concerned court. ⁷ Bar Council India Rules 1975 , prohibit lawyers from taking up duties that are of executive character , hence they cannot be Director or Chairman of the Board of Directors . ⁸ An advocate shall not be a full time salaried employee of any person , government firm , corporation or concern and if a lawyer takes up such an employment he shall cease to practice as an advocate till he

¹ Section 29 of Advocate Act , 1961 .

² Order III Rule 2 and 4 of CPC , 1908 and Law of Agency as given in Indian Contract Act , 1872

³ Legal practice Board vs Wilhelmus Van Der Zwaan , (2002) WASC 133 .

⁴ Yashomati Ghosh *Legal Ethics and the Profession of Law* (Lexis nexis 2014) 120.

⁵ Rule 9 to 11 in Part VI ,Chapter III of Bar Council India Rules .

⁶ Section 30 of Advocate Act , 1961 .

⁷ Sec 32 of Advocate Act , 1961 .

⁸ Rule 48 sec vii BCI Rules , 1975 .

is in such an employment .⁹ An advocate cannot actively engage in business. He can only be a sleeping partner in a partnership .¹⁰ An advocate can however review parliamentary bills for remuneration , edit legal text books , coach pupils for legal examinations , set exam question papers , lecture and teach subjects legal and non legal .¹¹ As per a Supreme Court Judgment , an advocate cannot practice two professions together .¹² Full time law teachers cannot practice , however there are certain exceptions :

- (1) They are permitted to appear in courts for social action / PIL matters as well as for legal aid services .
- (2) Legal consultancy is allowed .
- (3) University may allow the teachers of International Law to represent sovereign states before International Court of Justice .

Lawyer's do not have a right to strike as held in Harish Uppal Case¹³ by the Supreme Court . A five judge bench in this case held :

- (a) Strikes by advocates are illegal .
- (b) Strikes affect the administration of justice .
- (c) Alternative recourses like press statements , banners and placards can be taken recourse to only outside the court premises .
- (d) No lawyer can be coerced to join a protest nor suffer adverse consequences for it by the Bar.
- (e) No Bar council or association shall permit strike or boycott.
- (f) If any action is to be taken then The president of the Bar or Association shall take permission from High Court or Session Judge as the case may be .
- (g) Courts have no obligation to postpone a case because of strike or boycott.

⁹ Rule 49 , BCI Rules 1975

¹⁰ Rule 47 , BCI Rules 1975.

¹¹ Rule 51 , BCI Rules 1975 .

¹² Dr. Hanirraj L Chulani vs Bar Council of Maharashtra and Goa (AIR 1996 SC 1708).

¹³ AIR 2003 SC 739.