

# Right to Practice Legal profession in India

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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 .<sup>1</sup> 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 <sup>2</sup> 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 .<sup>3</sup> In the Indian context following points have been interpreted as part of the term *practice* :

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

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 .<sup>5</sup> 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 .<sup>6</sup> Non lawyers can make an appearance only with the permission of the concerned court.<sup>7</sup> 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 .<sup>8</sup> 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

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<sup>1</sup> Section 29 of Advocate Act , 1961 .

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

<sup>3</sup> Legal practice Board vs *Wilhelmus Van Der Zwaan* , (2002) WASC 133 .

<sup>4</sup> *Yashomati Ghosh Legal Ethics and the Profession of Law* ( Lexis nексis 2014 ) 120.

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

<sup>6</sup> Section 30 of Advocate Act , 1961 .

<sup>7</sup> Sec 32 of Advocate Act , 1961 .

<sup>8</sup> Rule 48 sec vii BCI Rules , 1975 .

is in such an employment .<sup>9</sup> An advocate cannot actively engage in business. He can only be a sleeping partner in a partnership .<sup>10</sup> 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 .<sup>11</sup> As per a Supreme Court Judgment , an advocate cannot practice two professions together .<sup>12</sup> 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 Case<sup>13</sup> 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.

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<sup>9</sup> Rule 49 , BCI Rules 1975

<sup>10</sup> Rule 47 , BCI Rules 1975.

<sup>11</sup> Rule 51 , BCI Rules 1975 .

<sup>12</sup> Dr. Haniraj L Chulani vs Bar Council of Maharashtra and Goa (AIR 1996 SC 1708).

<sup>13</sup> AIR 2003 SC 739.