



Press Note

English (04.04.2023 | 12:30 PM at Bar Council of Punjab and Haryana, Law Bhawan, Sector 37-A Chandigarh)

Greetings and wishes to all on Mahavir Jayanti. We pledge to follow Bhagwan Mahavir's teachings of satya, daya and ahimsa as parmo dharma.

Bar Council of Punjab and Haryana is the apex regulatory and representative body of around 1.5 lakh lawyers from the states of Punjab, Haryana and Chandigarh. Under Section 6 of the Advocates Act 1961, the Council has been assigned to protect and safeguard the rights, privileges and interests of all advocates on its roll.

There have often been serious recommendations and earnest requests from concerned quarters to create an instrument that would ensure respect, protection, and promotion of the '*freedom of exercise of the profession of lawyer*'. There have been genuine concerns, with countless examples, highlighting how acts of violence aimed at advocates dwindles the access to legitimate representation and fundamentally compromises the rule of law. It is now being observed how attacks against advocates and cases of false implication against legal professionals have increased manifolds. Now more than ever, it has become imperative to prohibit acts against, penalise such acts and protect advocates while discharging their duties by enacting effective legislation making such offences cognisable in the territories of the states of Punjab and Haryana.

From broad daylight incidents of murder, violent attacks, grievous hurts, kidnapping, intimidation etc in different parts of the states of Punjab and Haryana as well as in the parking of Hon'ble High Court and false implication by disgruntled/opposite parties to the opprobrium of breach of the client-lawyer privilege, there have been many such incidents which have been reported to the State Bar Council by Bar Associations, individual lawyers or their families. The year 2023 alone, as reported so far, has sadly witnessed two broad-daylight murders of Adv Umesh Pal in Uttar Pradesh and the recent of Adv Virender Narwal in Delhi. The trend is clear: lawyers are under attack because of their work, and they need better legal protections to sustain the viability of justice delivery systems.

Internationally valued and indispensable, the right to legal counsel reflects the central role the legal profession plays in upholding the rule of law and the protection of individual rights. The 1990 Basic Principles on the Role of Lawyers and the 1993 Vienna Declaration on Human Rights, corroborated afterwards by a number of states' resolutions at the UN Human Rights Council (UNHRC) and General Assembly (UNGA) firmly establish the independence of the legal profession as the hallmark of a vibrant democratic system. This obligation was later mirrored in the 2030 Sustainable Development Goals (SDGs) agenda, as providing the '*necessary elements in the realization of Sustainable Development Goal in which Member States committed, inter alia, to provide equal access to justice for all and build effective, accountable and inclusive institutions at all levels*'. In 2016, the then-UN Special Rapporteur on the independence of judges and lawyers presented a Report to the UN that advocated protection for lawyers and gave clear recommendations in this regard. The last 2022 Report stated that in the decade from 2010 to 2020, more than 2,500 lawyers were killed, detained or kidnapped around the world. Since 2010, every year, the International Day of the Endangered Lawyer has been observed worldwide with the purpose to create awareness about the threat to the safety of lawyers.

It cannot be gainsaid that lawyers have contributed to the nation's struggle for independence. They have helped in framing the Constitution of India and helped the Courts evolve jurisprudence by doing hard labour and invaluable research work. The lawyers are supposed to be fearless and independent in the protection of the rights of litigants and this essential facet cannot be compromised. It is the obligation of the state to respect, protect, fulfil and promote the independence and security of lawyers, as well as their ability to perform their professional duties free from intimidation, hindrance, harassment, improper interference or reprisals from state and anti-social actors.

As we move towards the 75th year of Indian independence, the vibrance of the nation is clearly reflected in its outperforming institutions. In India, laws already protect serving professionals in their line of duty i.e., media persons, doctors etc from acts of violence. After the broad daylight stabbing of Jodhpur-based lawyer Adv Jugraj Chauhan and the resultant uproar, the Rajasthan Legislative Assembly has become the first state to pass The Rajasthan Advocates Protection Bill, 2023 on 21.03.2023.

On careful perusal of all related legislations and international conventions, the State Bar Council of Punjab and Haryana has prepared two drafts of the Punjab Advocates (Protection) Bill 2023 and Haryana Advocates (Protection) Bill 2023 and demands the enactment of the same at the earliest. State Bar Council will send the draft legislations to respective State Governments through proper channels. In the coming days, if adequate steps are not taken and if need be, all advocates from Punjab, Haryana and U.T. Chandigarh shall be compelled to gather at a mass congregation/maha panchayat and initiate peaceful protest (*without abstaining/suspending any judicial work*) by participating in a state-wide agitation in this regard.

We sincerely hope that the state governments of Punjab and Haryana shall duly consider our genuine request for the enactment of the Advocates (Protection) Act, 2023 at the earliest.

THE PUNJAB ADVOCATES (PROTECTION) BILL, 2023

1. Short title and commencement

1. (1) This Bill may be called the Advocates (Protection) Bill, 2022.
2. (2) It extends to all the territories administered by the (State Government) State of Punjab.
3. (3) It shall come into force at once on such date as the State Government may, by notification in the Official Gazette, appoint.

2. Definitions

1. In this Act, unless the context otherwise requires –
 - (a) “act of violence” refers to acts committed by any person against an advocate, with an intent to prejudice or derail the process of impartial, fair and fearless conduct of any litigation/matter before any court, tribunal or authority in which such Advocate is engaged or acts of retribution towards the outcome of proceedings before any of the above forums and includes the following:-
 - i. Harassment, coercion, assault, criminal force or threat impacting the living or working conditions of such advocates and preventing him from discharging his duties;
 - ii. Harm, injury, hurt, either grievous or simple, or danger to the life of such advocates, either within the premises of the Courts or otherwise;
 - iii. Coercion by whatsoever means, of an Advocate to reveal or part with privileged communication or material which such Advocate is bound to hold in confidence under law;
 - iv. Coercion by whatsoever means, of an Advocate not to represent or to withdraw his Vakalatnama, memo of appearance to act, plead or appear on behalf of a client before any court, tribunal or authority;
 - v. Loss or damage to any property or documents or materials which such Advocate is bound to hold under law;
 - vi. Usage of derogatory language during the course of the judicial and quasi-judicial proceedings.
 - (b) “Advocate” shall have the same meaning as provided under Sec. 2(1)(a) of the Advocates Act, 1961.
2. The words and expressions used in this Act, but not specifically defined shall have the same meaning as assigned to them in the Advocates Act, 1961, the Bar Council of India Certificate and Place of Practice (Verification) Rules, 2015 and the Indian Penal Code, 1860.

3. Punishment for offences

1. (1) Whoever commits or abets the commission of an act of violence, except grievous hurt covered by sub-section (2) hereunder, against an advocate shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and with fine up to one lakh rupees.
2. (2) Whoever, having already been convicted of an offence under this Act is convicted for the second or subsequent offence, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to ten years and fine which shall not be less than two lakh rupees.

4. Compensation

1. (1) In addition to the punishment provided for an offence under Section 3, the person so convicted shall also be liable to pay, by way of compensation, such amount as may be determined by the Civil Court having jurisdiction for causing any act of violence against any advocate.
2. (2) Notwithstanding the compounding of an offence under Section 6 hereunder, in case of damage to any property or loss caused, the compensation payable shall be twice the amount of fair market value of the damaged property or the loss caused, as may be determined by the Court.
3. (3) Upon failure to pay the compensation awarded under sub-section (1) and (2) hereinabove, such amount shall be recovered as an arrear of land revenue under the Revenue Recovery Act, 1890.

5. Nature of Offence and Jurisdiction of Courts

Notwithstanding anything contained in the Code of Criminal Procedure, 1973—

1. i) an offence punishable under Section 3 shall be cognizable and non-bailable;
2. ii) any case registered under Section 3 shall be investigated by a police officer not below the rank of local area Superintendent of Police or from BOI, Punjab whichever is higher in rank;
3. iii) investigation of a case under Section 3 shall be completed within a period of thirty days from the date of registration of the First Information Report.
4. iv) No Court inferior to that of a District and Sessions Judge shall try an offence punishable under Section 3 and the Sessions Court will have exclusive jurisdiction to hear all matters arising therefrom.
5. v) in every inquiry or trial of a case under Section 3, the proceedings shall be held as expeditiously as possible, and in particular, when the examination of witness has once begun, the same shall be continued from day to day until all the witness in attendance have been examined, unless the competent Courts finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded, and an endeavour shall be made to ensure that the inquiry or trial is concluded within a period of one year.

PROVIDED that where the trial is not concluded within the said defined period, the competent Judge shall record the detailed reasons for not having done so:

PROVIDED further that the said period may be extended by such further period, for reasons to be recorded in writing, but not exceeding six months in total.

6. Compounding of offences

Where a person is prosecuted for committing an offence punishable under Section 3, such offence may, with the permission of the Court, be compounded by the person against whom such act of violence is committed.

7. Police Protection—

1. (1) Any Advocate who is under the threat of being a victim of act of violence shall be entitled to Police Protection for a duration which the Court deems fit, upon making an application before the High Court of the State within which he is registered to practice law;

PROVIDED that such an application will have the prior written consent of the Advocate General for the State of Punjab and the Chairman of Bar Council of state:

2. (2) Every High Court shall, before passing orders under Sec. 7(1), scrutinise the personal antecedents of such advocates, including his criminal record and any other necessary material which it requires, in order to satisfy itself of the character and conduct of such advocate, and the *bona-fides* of the application filed through proper channel under Sec. 7(1).

3. (3) Wherever the Police security is provided to the Advocate under this Act, the Superintendent of Police shall, before taking a decision to withdraw, reduce or discontinue such security, refer the matter to the Registrar of the District Court and Bar Council of the state or in the case of an Advocate ordinarily practising in the High Court, the Registrar General of the High Court and Bar Council of the state for their prior concurrence.
4. (4) No decision shall be taken by the Superintendent of Police to withdraw, reduce or discontinue the security provided to the Advocate, unless a prior notice of one week is first served on the advocate in this regard.

8. Advocate deemed to be officer of the Institution

An advocate pleading for a/any party before the Court, Tribunal or Authority, including the Police, shall be deemed to be an officer of such Institution, and be extended same treatment/protocol available to other officers of such Institution.

9. Protection of action in due conduct of duties by Advocates

Notwithstanding anything to the contrary in any other law for the time being in force, no suit, prosecution or other legal proceeding shall lie against any Advocate for anything which is done in good faith done or intended to be done in the due conduct of duties of such Advocate in pursuance of the provisions of this Act and any rule, order, notification thereunder or under any direction of a Court or any other authority which is empowered to give directions to Advocates.

10. Malicious Prosecution of Advocates

1. (1) Where any suit, prosecution or other legal proceeding instituted against an Advocate by any person is found by the Court hearing such proceeding to be vexatious in nature, or motivated by a malicious intention to derail the process of impartial, fair and fearless conduct of any litigation before any Court, Tribunal or authority in which such Advocate is engaged, or, is an act of retribution towards the outcome of proceedings before any of the above forums, the said proceedings shall be liable to be dismissed, with heavy costs.
2. (2) Any person found to have initiated a vexatious or malicious proceeding against an Advocate shall be liable to pay, by way of compensation, such amount as may be determined by the Court, which shall not be less than Rs.1,00,000/-.

11. Presumption as to coercion in case of a public servant obtaining privileged communication from an advocate/legal practitioner

Whenever any public servant having powers of investigation under Chapter XII of the Code of Criminal Procedure, 1973 (2 of 1974) or such other powers of detention, arrest and investigation under any other law or purporting to so act under any law for the time being in force is found in possession of or found to use in his investigation privileged communication or material which can be shown to be obtained from a barrister, attorney, pleader, vakil or any other legal practitioner duly practising the profession of law, it shall be presumed that such privileged communication or material was obtained by such public servant by coercion/duress.

12. Act not in derogation of any other law

The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

13. Power to make rules

- (1) The State Government after consultation with the State Bar Council of Punjab and Haryana may, by notification in the Official Gazette, make rules for carrying out the purpose of this Act.

4

(2) Every rule made under this Act shall be laid, as soon as may be after it is made, before the State Assembly for approval so, however, that if any rules, modification or annulment are suggested the same shall be without prejudice to the validity of anything previously done under that rule/law in force.

14. Application of Code of Criminal Procedure, 1973 to proceedings under the Act

Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) (including the provisions as to bail and bonds and appeals) shall apply to the proceedings before the Court.

This is the second copy of draft prepared for the intended/proposed legislation, for which valuable comments/suggestions as per procedure are required to be obtained from all stakeholders in due course. The first draft was sent for discussion on 26.09.2022.

THE HARYANA ADVOCATES (PROTECTION) BILL, 2023

1. Short title and commencement

1. (1) This Bill may be called the Advocates (Protection) Bill, 2022.
2. (2) It extends to all the territories administered by the (State Government) State of Haryana.
3. (3) It shall come into force at once on such date as the State Government may, by notification in the Official Gazette, appoint.

2. Definitions

1. In this Act, unless the context otherwise requires –

(a) "act of violence" refers to acts committed by any person against an advocate, with an intent to prejudice or derail the process of impartial, fair and fearless conduct of any litigation/matter before any court, tribunal or authority in which such Advocate is engaged or acts of retribution towards the outcome of proceedings before any of the above forums and includes the following:-

- vii. Harassment, coercion, assault, criminal force or threat impacting the living or working conditions of such advocates and preventing him from discharging his duties;
- viii. Harm, injury, hurt, either grievous or simple, or danger to the life of such advocates, either within the premises of the Courts or otherwise;
- ix. Coercion by whatsoever means, of an Advocate to reveal or part with privileged communication or material which such Advocate is bound to hold in confidence under law;
- x. Coercion by whatsoever means, of an Advocate not to represent or to withdraw his Vakalatnama, memo of appearance to act, plead or appear on behalf of a client before any court, tribunal or authority;
- xi. Loss or damage to any property or documents or materials which such Advocate is bound to hold under law;
- xii. Usage of derogatory language during the course of the judicial and quasi-judicial proceedings.

(b) "Advocate" shall have the same meaning as provided under Sec. 2(1)(a) of the Advocates Act, 1961.

2. The words and expressions used in this Act, but not specifically defined shall have the same meaning as assigned to them in the Advocates Act, 1961, the Bar Council of India Certificate and Place of Practice (Verification) Rules, 2015 and the Indian Penal Code, 1860.

3. Punishment for offences

3. (1) Whoever commits or abets the commission of an act of violence, except grievous hurt covered by sub-section (2) hereunder, against an advocate shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and with fine up to one lakh rupees.
4. (2) Whoever, having already been convicted of an offence under this Act is convicted for the second or subsequent offence, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to ten years and fine which shall not be less than two lakh rupees.

4. Compensation

4. (1) In addition to the punishment provided for an offence under Section 3, the person so convicted shall also be liable to pay, by way of compensation, such amount as may be determined by the Civil Court having jurisdiction for causing any act of violence against any advocate.
5. (2) Notwithstanding the compounding of an offence under Section 6 hereunder, in case of damage to any property or loss caused, the compensation payable shall be twice the amount of fair market value of the damaged property or the loss caused, as may be determined by the Court.
6. (3) Upon failure to pay the compensation awarded under sub-section (1) and (2) hereinabove, such amount shall be recovered as an arrear of land revenue under the Revenue Recovery Act, 1890.

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Notwithstanding anything contained in the Code of Criminal Procedure, 1973—

6. i) an offence punishable under Section 3 shall be cognizable and non-bailable;
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8. iii) investigation of a case under Section 3 shall be completed within a period of thirty days from the date of registration of the First Information Report.
9. iv) No Court inferior to that of a District and Sessions Judge shall try an offence punishable under Section 3 and the Sessions Court will have exclusive jurisdiction to hear all matters arising therefrom.
10. v) in every inquiry or trial of a case under Section 3, the proceedings shall be held as expeditiously as possible, and in particular, when the examination of witness has once begun, the same shall be continued from day to day until all the witness in attendance have been examined, unless the competent Courts finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded, and an endeavour shall be made to ensure that the inquiry or trial is concluded within a period of one year.

PROVIDED that where the trial is not concluded within the said defined period, the competent Judge shall record the detailed reasons for not having done so:

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6. (2) Every High Court shall, before passing orders under Sec. 7(1), scrutinise the personal antecedents of such advocates, including his criminal record and any other necessary material which

it requires, in order to satisfy itself of the character and conduct of such advocate, and the *bona-fides* of the application filed through proper channel under Sec. 7(1).

7. (3) Wherever the Police security is provided to the Advocate under this Act, the Superintendent of Police shall, before taking a decision to withdraw, reduce or discontinue such security, refer the matter to the Registrar of the District Court and Bar Council of state or in the case of an Advocate ordinarily practising in the High Court, the Registrar General of the High Court and Bar Council of state for their prior concurrence.
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10. Malicious Prosecution of Advocates

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(2) Every rule made under this Act shall be laid, as soon as may be after it is made, before the State Assembly for approval so, however, that if any rules, modification or annulment are suggested the same shall be without prejudice to the validity of anything previously done under that rule/law in force.

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