

Indian Bar Councils Act, 1926

38 of 1926

[09 September 1926]

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SCHEDULE 1 :-SCHEDULEAMENDMENT OF ENACTMENTS THE SCHEDULE

Indian Bar Councils Act, 1926

38 of 1926

[09 September 1926]

An Act to provide for the constitution of Bar Councils 2 and for other purposes. WHEREAS it is expedient to provide for the constitution and incorporation of Bar Councils for certain Courts 2 to confer powers and impose duties on such Bar Councils, and to consolidate and amend the law relating to legal practioners entitled

to practise in such Courts; It is hereby enacted as follows:--

1. Short Title, Extent And Application :-

(1) This Act may be called the Indian Bar Councils Act, 1926 .

(2) 3[It extends to the whole of India except the State of Jammu and Kashmir, and shall apply to the High Court of 4[every State] other than the State of Jammu and Kashmir and also to such Judicial Commissioners Courts in 5[Union territories] as the Central Government may, by notification in the Official Gazette, declare to be High Courts to which this Act applies.] 6[

1. This Act has been amended in its application to-- (1) the High Court of Judicature at Nagpur by the C. P. and Berar Act 24 of 1939: (2) the Province of Madras by Mad. Act 9 of 1947. ss. 1, 2, 17, 18 and 19 came into force at once. The rest of the Act came into force in respect of- (i) the Calcutta High Court, ss. 3 to 7 from 1st March, 1928 (see Gazette of India, 1928, Pt. I, p. 325) and ss. 8 to 16 from 1st July 1928 (see *ibid.*, p. 382); (ii) the Madras High Court, from 16th July, 1928 (see *ibid.*, p. 382); (iii) the Bombay High Court from 1st January, 1929 (see *ibid.*, p. 714); (iv) the Allahabad High Court from 1st June, 1928 (see *ibid.*, p. 400); (v) the Patna High Court from 1st January, 1929 (see *ibid.*, p. 703); (vi) the Oudh Chief Court from 1st March, 1928 (see *ibid.*, p. 325); (vii) the Nagpur High Court, ss. 3 to 7 from 1st January, 1937 and ss. 8 to 16 from 1st April, 1937, see Gazette of India, 1936, Pt. I, p. 1170. 2. The words " in the Provinces of India" omitted by the A. O. 1950. 3. Subs. by Act 3 of 1951, s. 3 and Sch., for sub- section (2). 4. Subs. by the Adaptation of Laws (No. 2) Order, 1956, for " every Part A State and of every Part B State". 5. Subs., *ibid.*, for " Part C States". 6. Sub- section (3) omitted, *ibid.*

2. Interpretation :-

(1)] In this Act, unless there is anything repugnant in the subject or context,--

(a) " advocate" means an advocate entered in the roll of advocates of a High Court under the provisions of this Act;

(b) " Advocate- General" includes, where there is no Advocate- General, the Government Advocate and, where there is no Advocate- General or Government Advocate, such officer as the State Government may declare to be the Advocate- General for the purposes of this Act;

(c) " High Court" means a High Court to which this Act applies; and

(d) " prescribed" means prescribed by rules made under this Act.

(2) 2[In this Act" the State Government" means, in relation to any High Court, the State Government of the State in which the High Court has its principal seat.] CONSTITUTION OF BAR COUNCILS

3. Constitution And Incorporation Of Bar Councils :-

(1) For every High Court a Bar Council shall be constituted in the manner hereinafter provided.

(2) Every Bar Council so constituted shall be a body corporate having perpetual succession and a common seal with power to acquire and hold property, both movable and immovable, and to contract, and shall by the name of the Bar Council of the High Court for which it has been constituted sue and be sued.

4. Composition Of Bar Councils :-

(1) Every Bar Council shall consist of fifteen members, of whom--

(a) one shall be the Advocate- General;

(b) four shall be persons nominated by the High Court, of whom not more than two may be Judges of that Court; and

(c) ten shall be elected by the advocates of the High Court from amongst their number.

(2) the elected members of every Bar Council not less than five shall be persons who have for not less than ten years been entitled as of right to--

1. S. 2 may be deemed to have been renumbered as sub- section (1) of that section by the A. O. 1937. 2. Ins., ibid. 3. The provision of ss. 3 to 7, sub- sections (1), (2) and (3) of section 9, section 15 and section 20, shall stand repealed in the territory for which the State Bar Council is constituted vide Act 25 of 1961, s. 50 (1).

practise in the High Court for which the Bar Council has been constituted. 1[Explanation.-- For the purpose of election to the Bar Council for the High Court of Gujarat, the period of ten years aforesaid shall be computed after taking into account the period for which the person concerned was entitled as of right to practise in the High Court of Bombay or of Saurashtra or in the Judicial Commissioner s Court of Kutch before the 1st day of May, 1960 .]

(3) Of the elected members of the Bar Councils to be constituted for the High Courts of Judicature at Fort William in Bengal and at Bombay such proportion as the High Court may direct in each case shall be persons who have, for such minimum period as the High Court may determine, been entitled to practise in the High Court in

the exercise of its original jurisdiction, and such number as may be fixed by the High Court out of the said proportion shall be barristers of England or Ireland or members of the Faculty of Advocates in Scotland.

(4) There shall be a Chairman and Vice- Chairman of each Bar Council elected by the Council in such manner as may be prescribed: 2[Provided that the Advocates- General of West Bengal, Madras Maharashtra and Gujarat shall be Chairmen ex officio, respectively, of the Bar Councils constituted for the High Courts of those States.

5. Special Provisions Regarding Constitution Of First Bar Councils :-

(1) Notwithstanding anything contained in clause (c) of sub-section (1) of section 4, the elected members of the first Bar Council constituted under this Act for any High Court shall be elected by and from amongst the advocates, vakils and pleaders who are on the date of the election entitled as of right to practise in the High Court.

(2) The terms of office of the nominated and elected members of any such first Bar Council shall be three years from the date of the first meeting of the Council.

1. Ins. by Act 11 of 1960, s. 72. 2. Subs. by s. 72, *ibid.*, for the proviso. 3. The provisions of ss. 3 to 7, sub- section (1), (2) and (3) of section 9, section 15 and section 20, shall stand repealed in the territory for which the State Bar Council is constituted vide Act 25 of 1961, s. 50 (1).

6. Power To Make Rules Regarding Constitution And Procedure Of Bar Councils :-

(1) Rules, consistent with this Act, may be made to provide for the following matters, namely:--

(a) the manner in which elections of members of the Bar Council shall be held; the method of determining, in accordance with the provisions of sub- sections (2) and (3) of section 4, the candidates who shall be declared to have been elected; the manner in which the result of elections shall be published; and the manner in which and the authority by which doubts and disputes as to the validity of an election shall be finally decided;

(b) the terms of office of nominated and elected members of the Council;

- (c) the filling of casual vacancies in the Council;
- (d) the convening of meetings of the Council, and the quorum necessary for the transaction of business thereat;
- (e) the manner of election and the respective terms of office of the Chairman, in cases where the Chairman is to be elected, and of the Vice- Chairman; and
- (f) any matter incidental or ancillary to any of the foregoing matters.

(2) The first rules under this section shall be made by the High Court, but the Bar Council may thereafter, with the previous sanction of the High Court, add to, amend or rescind any rules so made.

(3) No election of a member or members to the Council shall be called in question on the ground that due notice thereof has not been given to any person entitled to vote thereat, if notice of the date fixed for the election has, not less than thirty days before that date, been published in the Official Gazette of the State, or of each State, as the case may be, in which the High Court exercises jurisdiction.

(4) Rules made under clause (b) of sub- section (1) may provide for the retirement of members from office by rotation and for the manner in which the order of such retirement shall be determined.

7. Power Of Bar Council To Make Bye- Laws :-

The Bar Council may make bye- laws consistent with this Act and any rules made thereunder to provide for any of the following matters, namely:--

(a) the appointment of such ministerial officers and servants as the Bar Council may deem necessary, and the pay and allowances

1. The provisions of ss. 3 to 7, sub- section (1), (2) and (3) of section 9, section 15 and section 20, shall stand repealed in the territory for which the State Bar Council is constituted vide Act 25 of 1961, s. 50 (1).

and other conditions of service of such officers and servants; and

(b) the appointment and constitution of Committees of the Council, the procedure of such Committees, and the determination of the powers or duties of the Council which may be delegated to such Committees.

ADMISSION AND ENROLMENT OF ADVOCATES

8. Enrolment Of Advocates :-

(1) No person shall be entitled as of right to practise in any High Court, unless his name is entered in the roll of the advocates of the High Court maintained under this Act: Provided that nothing in this sub-section shall apply to any attorney of the High Court.

1. So much of the section as relates to the admission and enrolment of legal practitioners repealed by the Advocates Act, 1961 (25 of 1961), s. 50 (2) (w. e. f. 1-12-1961).

(2) The High Court shall prepare and maintain a roll of advocates of the High Court in which shall be entered the names of-

(a) all persons who were, as advocates, vakils or pleaders, entitled as of right to practise in the High Court immediately before the date on which this section comes into force in respect thereof; and

(b) all other persons who have been admitted to be advocates of the High Court under this Act: Provided that such persons shall have paid in respect of enrolment the stamp-duty, if any, chargeable under the Indian Stamp Act, 1899 (2 of 1899), and a fee, payable to the Bar Council, which shall be ten rupees in the case of the persons referred to in clause (a), and in other cases such amount as may be prescribed.

(3) 1[Entries in the roll shall be made in the order of seniority, and such seniority shall be determined as follows, namely:--

(a) all such persons as are referred to in clause (a) of sub-section (2) shall be entered first in the order in which they were respectively entitled to seniority inter se immediately before the date on which this section comes into force in respect of the High Court; and

(b) the seniority of any other person admitted to be an advocate of the High Court under this Act after that date shall be determined by the date of his admission or, if he is a barrister, by the date of his admission or the date on which he was called to the Bar, whichever date is earlier: Provided that, for the purposes of clause (b), the seniority of a person who before his admission to be an advocate was entitled as of right to practise in another High Court shall be determined by the date on which he became so entitled.

(4) The respective rights of pre-audience of advocates of the High Court shall be determined by seniority: Provided that the Advocate-General shall have pre-audience over all other advocates 2[.]

1. Sub-sections (3) and (4) ins. by Act. 13 of 1927, s. 2.

2. The words "and King's Counsel shall have pre-audience over all advocates except the Advocate-General" omitted by Act 3 of 1951, s. 3 and Sch.

(5) 1[The High Court shall issue a certificate of enrolment to every person enrolled under this section.

(6) 1[] The High Court shall send to the Bar Council a copy of the roll as prepared under this section, and shall thereafter communicate to the Bar Council all alterations in, and additions to, the roll as soon as the same have been made.

(7) 1[] The Bar Council shall enter in the copy of the roll all alterations and additions so communicated to it.

9. Qualifications And Admission Of Advocates :-

(1) The Bar Council may, with the previous sanction of the High Court, make rules to regulate the admission of persons to be advocates of the High Court: Provided that such rules shall not limit or in any way affect the power of the High Court to refuse admission to any person at its discretion.

(2) 2[In particular and without prejudice to the generality of the foregoing power, such rules shall provide for the following matters, namely:--

(a) the qualifications to be possessed by persons applying for admission as advocates;

(b) the form and manner in which applications shall be made to the High Court for admission;

(c) the giving of notice by the High Court to the Bar Council of all such applications;

(d) the hearing by the High Court of any objection preferred on behalf of the Bar Council to the admission of any applicant; and

(e) the charging of fees payable to the Bar Council in respect of enrolment.

(3) 2[Rules made under this section shall provide that no woman shall be disqualified for admission to be an advocate by reason only of her sex.

(4) Nothing in this section or in any other provision of this Act shall be deemed to limit or in any way affect the powers of the High Courts of Judicature at Fort William in Bengal and at Bombay to prescribe the qualifications to be possessed by persons applying to practise in those High Courts respectively in the exercise of their original jurisdiction or the powers

1. Sub- section (3), (4) and (5) re- numbered as sub- sections (5), (6) and (7) respectively by Act 13 of 1927, s. 2. 2. The provisions of ss. 3 to 7, sub- sections (1), (2) and (3) of section 9, section 15 and section 20, shall stand repealed in the territory for which the

State Bar Council is constituted vide Act 25 of 1961, s. 50 (1). of those High Courts to grant or refuse, as they think fit, any such applications 1[or to prescribe the conditions under which such person shall be entitled to practise or plead]. MISCONDUCT

10. Punishment Of Advocate For Misconduct :-

Rep. by the Advocates Act, 1961 (25 of 1961), s. 50 (4) (w. e. f. 1- 9- 1963).

11. Tribunal Of Bar Council :-

Rep. by the Advocates Act, 1961 (25 of 1961), s. 50 (4) (w. e. f. 1- 9- 1963).

12. Procedure In Inquiries :-

Rep. by the Advocates Act, 1961 (25 of 1961), s. 50 (4) (w. e. f. 1- 9- 1963).

13. Powers Of The Tribunal And Courts In Inquires :-

Rep. by the Advocates Act, 1961 (25 of 1961), s. 50 (4) (w. e. f. 1- 9- 1963). MISCELLANEOUS

14. Right Of Advocates To Practise :-

(1) An advocate shall be entitled as of right to practise--

(a) subject to the provisions of sub- section (4) of section 9, in the High Court of which he is an advocate, and

(b) save as otherwise provided by sub- section (2) or by or under any other law for the time being in force in any other Court 2[and before any other Tribunal or person legally authorized to take evidence, and

(c) before any other authority or person before whom such advocate is by or under the law for the time being in force entitled to practise.

(2) Where rules have been made by any High Court within the meaning of clause (24) of section 3 of the General Clauses Act, 1897 (10 of 1897), or in the case of a High Court for which a Bar Council has been constituted under this Act, by such Bar Council under section 15, regulating the conditions subject to which advocates of other High Courts may be permitted to practise in the High Court, such advocates shall not be entitled to practise therein

otherwise than subject to such conditions.

(3) Nothing in this section shall be deemed to limit or in any way affect the power of the High Court of Judicature at Fort William in Bengal or of the High Court of Judicature at Bombay to make rules 1. Ins. by Act 13 of 1927, s. 3. 2. The words "in the Provinces" omitted by the A. O. 1950.

determining the persons who shall be entitled respectively to plead and to act in the High Court in the exercise of its original jurisdiction.

15. General Power Of Bar Councils To Make Rules :-

A Bar Council may, with the previous sanction of the High Court for which it is constituted, make rules consistent with this Act to provide for and regulate any of the following matters, namely:--

- (a) the rights and duties of the advocates of the High Court and their discipline and professional conduct;
- (b) the conditions subject to which advocates of other High Courts may be permitted to practise in the High Court;
- (c) the giving of facilities for legal education and training and the holding and conduct of examinations by the Bar Council;
- (d) the charging of fees payable to the Bar Council in respect of the enjoyment of educational facilities provided, or of the right to appear at examinations held, by the Bar Council;
- (e) the investment and management of the funds of the Bar Council; and
- (f) any other matter in respect of which the High Court may require rules to be made under this section.

16. Power To Fix Fees Payable As Costs :-

The High Court shall make rules for fixing and regulating by taxation or otherwise the fees payable as costs by any party in respect of the fees of his adversary's advocate upon all proceedings in the High Court or in any Court subordinate thereto.

17. Indemnity Against Legal Proceedings :-

No suit or other legal proceeding shall lie against a Bar Council or any Committee, Tribunal or member of a Bar Council for any act in good faith done or intended to be done in pursuance of the provisions of this act or of any rule made thereunder.

18. Publication Of Rules :-

All rules made under this Act shall be published in the Official Gazette of the State, or of each State, as the case may be, in which the High Court by which or with whose sanction the rules are made exercises jurisdiction.

19. Amendment Of Enactments, Etc :-

(1) When sections 8 to 16 come into force in respect of any High Court, any enactment mentioned in the first column of the Schedule which is in force in any State in

1. The provisions of ss. 3 to 7, sub-sections (1), (2) and (3) of section 9, section 15 and section 20, shall stand repealed in the territory for which the State Bar Council is constituted vide Act 25 of 1961, s. 50 (1).

which the High Court exercises jurisdiction shall, for the purpose of its application to that State, be amended to the extent and in the manner specified in the second column of the Schedule.

(2) When sections 8 to 16 come into force in respect of any High Court of Judicature established by Letters Patent, this Act shall have effect in respect of such Court notwithstanding anything contained in such Letters Patent, and such Letters Patent shall, in so far as they are inconsistent with this Act or any rules made thereunder, be deemed to have been repealed.

(3) When sections 8 to 16 come into force in respect of the High Court of Judicature at Bombay, the Bombay Pleaders Act, 1920 (Bom. Act 17 of 1920) except section 7 thereof, shall cease to apply to or in respect of any person enrolled as an advocate of the High Court under this Act, and nothing in that Act shall be deemed to authorize the admission or enrolment of any person as a vakil or pleader of the High Court.

(4) When this Act has come into force in respect of any High Court, any provision of any other enactment or any order, scheme, rule, form or bye-law made thereunder, which was before that date applicable to advocates, vakils or pleaders entitled to practise in such High Court shall, unless such a construction is repugnant to the context or to any provision made by or under this Act, be construed as applying to advocates of the High Court enrolled under this Act.

20. Transitional Provision Regarding Certain Bar Councils Affected By States Reorganisation :-

(1) The Bar Councils for the High Courts of the States of Bombay, Madhya Pradesh, Mysore, Punjab, Rajasthan and Travancore-Cochin functioning immediately before the 1st day of November, 1956, shall be deemed to be the Bar Councils for the High Courts of the corresponding new States of Bombay, Madhya Pradesh, Mysore, Punjab, Rajasthan and Kerala, respectively.

(2) As from the said day,--

(a) the Bar Councils for the High Courts of Hyderabad and Saurashtra shall stand dissolved, and

(b) the assets and liabilities of the Bar Council for the High Court of Hyderabad shall stand transferred to, the Bar Councils for the High Courts of Andhra Pradesh, Bombay and Mysore and be divided among them in such proportion as may be agreed upon, and in default of such agreement, in the proportion of 57. 61: 27. 81: 14. 58.]

1. Ins. by the Adaptation of Laws (No. 2) Order, 1956. 2. The provision of ss. 3 to 7, sub-sections (1), (2) and (3) of section 9, section 15 and section 20, shall stand repealed in the territory for which the State Bar Council is constituted vide Act 25 of 1961, s. 50 (1).

SCHEDULE 1

SCHEDULE AMENDMENT OF ENACTMENTS THE SCHEDULE

(See section 19)

AMENDMENT OF ENACTMENTS

Enactments amended Extent and manner of amendment The Legal Practi- (1) In section 4, after the words" with the tioners Act, 1879. permission of the Court" the words and figures" or in the case of a High Court in respect of which the Indian Bar Coun- cils Act, 1926, is in force, subject to rules made under that Act" shall be inserted. (2) In section 6, clauses (a) and (b), after the words" Royal Charter" the words and figures" in respect of which the Indian Bar Councils Act, 1926, is not in force" shall be inserted. (3) To section 38 the following words and fi- gures shall be added, namely:--" and except as provided by section 36, nothing in this Act applies to persons enrolled as advocates of any High Court under the Indian Bar Council Act, 1926 ". (4) In section 41, sub- section (1), after the words" Royal Charter" the words and fig- ures" in respect of which the Indian Bar Councils Act, 1926, is not in force" shall be inserted. The Indian Stamp Act, In Article 30 of theFirst Schedule after 1899. the words" High Court," where they first occur the words and figures" under the Indian Bar Councils Act, 1926, or" shall be inserted. The Madras Stamp In Article 25 of Schedule 1A, after the words (Amendment) Act, 1922 ." High Court," where they first occur, the words and figures" under the Indian Bar Councils Act, 1926, or" shall be inserted. The Bengal Stamp In Article 30 of Schedule 1A, after the words (Amendment) Act, 1922 ." High Court," where they first occur, the words and figures" under the Indian Bar Councils Act, 1926, or" shall be inserted. The Indian Stamp In Article 30 of Schedule 1A, after the words (Punjab Amendment)" High Court," where they first occur, the Act, 1922. words and figures" under the Indian Bar Councils Act, 1926, or" shall be inserted. The Assam Stamp In Article 30 of Schedule 1A, after the words (Amendment) Act, 1922

. " High Court," where they first occur, the words and figures" under the Indian Bar Councils Act, 1926, or" shall be inserted.