



Recommendations on the  
**DRAFT ADVOCATES PROTECTION BILL**

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**LAW & SOCIETY COMMITTEE**  
(2021-22)

**STUDENT INITIATIVE FOR  
PROMOTION OF LEGAL AWARENESS**  
(2020-21)

**NATIONAL LAW SCHOOL OF INDIA UNIVERSITY**

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To,

The Chairman,  
Bar Council of India  
21, Rouse Avenue Institutional Area  
New Delhi – 110 002

*Subject:* Recommendations on the Draft Advocates Protection Bill, 2021 by the students of the National Law School of India University, Bangalore.

Respected Sir,

We are the students of the National Law School of India University, Bangalore (NLSIU). We are writing to the Bar Council of India with our recommendations on the Draft Advocates Protection Bill.

Law students contribute to the legal profession not only in our capacity as interns and research assistants, but also in our proactive engagement with issues concerning the delivery of justice in the legal system.<sup>1</sup> We believe that the influence of the legal profession on legal education, and law students' future participation in the legal profession makes us important stakeholders of the Draft Bill.<sup>2</sup>

We understand the role legal practitioners play in delivering justice and upholding the ideals of the Constitution.<sup>3</sup> We are also conversant with instances of

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<sup>1</sup> 'Petition filed by journalists and law students in Allahabad HC seeking public access to virtual court proceedings' (*The Leaflet*, 16 May 2021) <[www.theleaflet.in/petition-filed-by-journalists-and-law-students-in-allahabad-hc-seeking-public-access-to-virtual-court-proceedings/](http://www.theleaflet.in/petition-filed-by-journalists-and-law-students-in-allahabad-hc-seeking-public-access-to-virtual-court-proceedings/)>; ANI, 'Prashant Bhushan Contempt Case: 122 Law Students Urge SC to Reconsider Judgment' (*The Times of India*, 30 August 2020) <[timesofindia.indiatimes.com/india/prashant-bhushan-contempt-case-122-law-students-appeal-sc-to-reconsider-judgment/articleshow/77834600.cms](http://timesofindia.indiatimes.com/india/prashant-bhushan-contempt-case-122-law-students-appeal-sc-to-reconsider-judgment/articleshow/77834600.cms)>

<sup>2</sup> Fiona Cownie, *Stakeholders in the Law School* (Oxford: Hart Publishing, 2010) 65

<sup>3</sup> Kathleen M. Sullivan, 'The Good That Lawyers Do' (2000) 4 *Washington University Journal of Law and Policy* 7, 11-14

intimidation and violence faced by Advocates in the recent past,<sup>4</sup> outlining the urgency of the Draft Bill. Therefore, we believe that the protection of Advocates interests us not only as fledgling members of the legal fraternity, but also as responsible citizens of civic society.

Purposively, we have collated our thoughts on the same in the form of these recommendations on the Draft Bill – from a neutral, non-partisan perspective.

The following report has been compiled by a research panel constituted by the Law & Society Committee (LawSoc) in association with the Student Initiative for Promotion of Legal Awareness (SIPLA). The panel comprises B.A. LL. B. (Hons.) students from the Second to Fourth year of study at the NLSIU.

We begin our recommendations with our reflections on the Preamble of the Bill, and an excursion of the relevant materials cited therein. We follow this with our recommendations on the Draft Advocates Protection Bill, which we have presented in the form of section-wise comments and suggestions. We conclude this report with a brief editorial note acknowledging the contributions of all volunteers who helped draft these recommendations.

As students of the law, we understand that our recommendations may not be perfectly reflective of the nuances of the legal profession across the nation. Yet, through our recommendations, we have endeavoured to engage in the discourse surrounding the legal profession as interested stakeholders.

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<sup>4</sup> Press Trust of India, ‘Inquire If Witness, Hathras Victim's Lawyer Threatened during Trial’: HC to District Judge, CRPF IG’ (*The New Indian Express*, 20 March 2021) <[www.newindianexpress.com/nation/2021/mar/21/inquire-if-witness-hathras-victims-lawyer-threatened-during-trial-hc-to-district-judge-crpf-ig-2279364.html](http://www.newindianexpress.com/nation/2021/mar/21/inquire-if-witness-hathras-victims-lawyer-threatened-during-trial-hc-to-district-judge-crpf-ig-2279364.html)>; Puneet Nicholas Yadav, ‘I Was Assaulted By Cops, My Clients Threatened: Delhi Riots Lawyer Mehmood Pracha’ (*Outlook India*, 25 December 2020) <[www.outlookindia.com/website/story/india-news-i-was-assaulted-by-cops-my-clients-told-that-i-will-be-jailed-or-encountered-mehmood-pracha/368358](http://www.outlookindia.com/website/story/india-news-i-was-assaulted-by-cops-my-clients-told-that-i-will-be-jailed-or-encountered-mehmood-pracha/368358)>; Uma Sudhir, ‘On Camera, Lawyer Couple Hacked To Death In Telangana’ (*NDTV*, 17 February 2021) <[www.ndtv.com/india-news/on-camera-lawyer-couple-hacked-to-death-in-telangana-2372731](http://www.ndtv.com/india-news/on-camera-lawyer-couple-hacked-to-death-in-telangana-2372731)>

We hope that our recommendations will add value to the consultation process, and help the Bar Council present a more robust and more representative Draft Bill to the Hon'ble Minister for Law and Justice to table before the Parliament.

Sincerely Yours,

Sarthak Wadhwa & Anchal Bhatheja  
(Convenor & Joint Convenor)

LAW & SOCIETY COMMITTEE 2021-22

Manthan D & Anshul Vats  
(Convenor & Joint Convenor)

STUDENT INITIATIVE FOR PROMOTION  
OF LEGAL AWARENESS 2020-21

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## I. PREAMBLE & STATEMENT OF OBJECTS AND REASONS

1. This chapter sheds light on the background of the Draft Bill, *viz.* the Statement of Objects and Reasons that the Draft Bill seeks to achieve, and the composition of the seven-member committee that drafted the same.
  - 1.1. The Draft Bill seeks to protect Advocates from a recent surge in the assault, killings, intimidation and threats faced by them, disrupting the honest discharge of their professional duties. This is in consonance with the ‘Basic Principles on Role of Lawyers’ as adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 1990. The importance of the confidentiality of the privileged communication between lawyers and their clients has also been upheld at the 29<sup>th</sup> Session of the United Nations Human Rights Council *vide* Resolution A/HRC/RES/29/6 (adopted 2 July 2015).

United Nations  
Resolutions

These instruments are *per se* non-binding on the member-States of the United Nations. However, they may be brought into force by domestic enactments and parliamentary legislation to give effect to their contents. Only the Parliament is empowered to legislate on Entries 77 & 78 of List I of Schedule VII of the Constitution.<sup>5</sup> To this effect, these instruments may only, validly *guide* the provisions of the Draft Bill.

- 1.2. There is extensive jurisprudence that recognizes Advocates as officers of the Court: illustratively the press release cites *Hari Shankar Rastogi v Giridhar Sharma* [(1978) 2 SCC 165] and *O.P. Sharma v High Court of Punjab and Haryana* [(2011) 6 SCC 86] which affirm this point of law.

‘Officer of the  
court’

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<sup>5</sup> *O.N. Mohindroo v The Bar Council of Delhi & Ors*, (1968) SCR 2 709

Further, the Preamble to Chapter II of the Bar Council of India Rules – titled ‘Standards of Professional Conduct and Etiquette’ – declares the Advocate’s status as an officer of the Court.

However, even as Courts empathize with the need to instate certain privileges for Advocates, these privileges are understood to be balanced against the corresponding duties shouldered by the Advocates. Both the judicial pronouncement in *Ramon Services Pvt. Ltd. v Subbash Kapoor* [AIR 2001 SC 207] (as cited in the Draft Bill) and the Bar Council of India Rules recognize that the privileges enjoyed by Advocates are qualified by due discharge of their duties and responsibilities.

‘Officer of the court’

- 1.3. On 10.06.2021, the Bar Council of India constituted a seven-member committee to draft the Advocates Protection Bill to give statutory shape to the above concerns.

The seven-member committee does not have any woman member. At the same time, gendered issues such as workplace discrimination, sexual harassment, and gendered violence faced by women Advocates have not been represented in the Draft Bill. Similarly, the experiences of lawyers belonging to gender and sexual minorities such as the transgender community, or other marginalized communities such as the Bahujan and Adivasi communities are not adequately represented on the drafting committee.

Need for diversity and representation

Curatively, the Bar Council of India should invite collectives of women lawyers, Bahujan lawyers, Adivasi lawyers, etc. to audit the Draft Bill. Their specific comments and concerns must be incorporated into the Draft Bill to make it more representative of the interests of Advocates from diverse backgrounds.

## II. SECTION 2: DEFINITIONS

2. Upon a careful perusal of the Definitions provided under the Draft Bill, we would like to propose the following recommendations for the Bar Council's consideration.
  - 2.1. We recommend that the phrase “...*impacting the living or working conditions either inside or outside of such Advocates...*” in Section 2(1)(c) be modified as the current provision is worded vaguely. Instead, we recommend that this phrase be substituted by “...*impacting the living or working conditions of such Advocates either inside or outside of court premises...*”.
  - 2.2. We recommend that the use of ‘*family members*’ in Section 2(1)(c)(i) be substituted with broader phrasing such as “...*any other person the Advocate may be interested in...*”. This reflects the phrasing of Section 503 of the Indian Penal Code, 1860 (IPC).
  - 2.3. We recommend that ‘coercion’ be defined within Section 2(1) of the Draft Bill. Presently, the word does not have any clear definition despite its significance in illustrating ‘act of violence’ under Section 2(1)(c) thereof. We propose the following definition:

Typographical  
error, fixed

*“Whosoever threatens an Advocate, or any such person the Advocate may be interested in, with any injury to either person, reputation or property with the intent–*

- (i) *to cause that Advocate to do any act which that Advocate is not legally bound to do; or*
- (ii) *to omit to do any act which that Advocate is legally entitled to do; or*
- (iii) *to compel an Advocate to reveal or part with privileged communication or material which such Advocate is bound to hold in confidence under law; or*
- (iv) *to compel an Advocate to not represent, or act, plead or appear on behalf of a client before any adjudicatory court, tribunal or authority,*

Definition for  
Coercion

–commits the offence of coercion.”

2.4. We recommend that Section 2(1)(c)(v) be omitted in its entirety. ‘Derogatory language’ *per se* cannot be defined objectively without reference to either subjective qualifiers or existing offences under the IPC (such as definition, outraging the modesty, etc.). The use of ‘derogatory language’ is ambiguous at preset; insofar as it has the potential to infringe upon free speech rights under Article 19(1)(a) of the Constitution, it must be removed from the Draft Bill. Further, existing contempt-of-court procedures and recourses under criminal law already exist – the definition does not serve any exclusive purpose in the Draft Bill.

Removal of  
‘derogatory  
language’

2.5. We recommend the addition of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 – to Section 2(2). The Bill can then be available for caste-based violence that may be perpetrated against Advocates, to disrupt them in the discharge of their duties and obligations.

Adding  
Prevention of  
Atrocities Act

2.6. We further recommend the addition of a suitable definition for an ‘officer of the institution’ (discussed *infra* in Chapter VIII).

2.7. Finally, we recommend that the structure of Section 2(1)(c) be modified suitably to reflect the structure of Section 1A of the Epidemic Diseases Act, 1897 to make it clearer and more cohesive. Illustratively, the new Section could be redrafted as:

Redrafted  
Section

“(1) In this Act, unless the context otherwise requires –

(a) ‘Act’ means the Advocate (Protection) Act, 2021;

(b) ‘Act of violence’ refers to acts committed by any person against an Advocate or any person such Advocate may be interested in, with an intent to prejudice or derail the fair conduct of any litigation before any court, tribunal or authority in which such Advocate is engaged, or

acts of retribution against the outcome of proceedings before such court, tribunal or authority. It includes:

- (i) *Harassment impacting the living or working conditions either inside or outside court premises.*
- (ii) *Causation of injury, hurt, either grievous or simple, or danger to the life of an Advocate or any other person the Advocate may be interested in.*
- (iii) *An act of coercion against an Advocate or any other person the Advocate may be interested in.*
- (iv) *Loss or damage to any property or documents or materials an Advocate is bound to hold under law.*

(c) 'Advocate' shall have the same meaning as provided under the Advocates Act, 1961;

(d) 'Coercion' – *Whosoever threatens an Advocate, or any such person the Advocate may be interested in, with any injury to either person, reputation or property with the intent–*

- (i) *to cause that Advocate to do any act which that Advocate is not legally bound to do; or*
- (ii) *to omit to do any act which that Advocate is legally entitled to do; or*
- (iii) *to compel an Advocate to reveal or part with privileged communication or material which such Advocate is bound to hold in confidence under law; or*
- (iv) *to compel an Advocate to not represent, or act, plead or appear on behalf of a client before any adjudicatory court, tribunal or authority,*  
*–commits the offence of coercion*

(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 Indian Penal Code, 1860, the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, and the Bar Council of India Certificate and Place of Practice (Verification) Rules, 2015.”

### III. SECTION 3: PUNISHMENT FOR OFFENCES

3. Upon a perusal of the Statements of Objects and Reasons, and comparison with other relevant legislations we find that the punishments prescribed by the Draft Bill are onerous, and can be reduced

3.1. The minimum punishment prescribed by the Draft Bill for an offence is imprisonment for six-months; even under the amended Epidemic Diseases Act, the minimum punishment does not exceed a three-month imprisonment.<sup>6</sup> Whereas the latter seeks to protect healthcare professionals during the time of an ‘*epidemic*’, the former protects Advocates in the day-to-day conduct of their business. The enhanced minimum-sentence under the Draft Bill stands out for this reason.

Minimum  
punishment (1)

3.2. Further, penalties for some offences designated ‘acts of violence’ under Section 2(1)(c) of the Draft Bill are greater than those prescribed by the IPC. For assault or use of criminal force, for instance, the punishment prescribed by the Draft Bill is a minimum imprisonment of six-months *and* a minimum fine of fifty-thousand rupees – whereas, the IPC prescribes a maximum imprisonment of three-months *or* fine up to five-hundred rupees *or* both.

Minimum  
punishment (2)

3.3. We do not believe that such an offence becomes ‘aggravated’ merely for being committed against an Advocate; and, even if it does, that the punishments prescribed by the Draft Bill are disproportionate and should be relaxed. Therefore, the minimum period of imprisonment prescribed by the Draft Bill should be suitably reduced – or altogether removed, allowing Courts/grievance redressal bodies sentencing discretion in the matter.

Sentencing  
Discretion

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<sup>6</sup> Epidemic Diseases (Amendment) Act, 2020, s 6

- 3.4. Purposively, we recommend that punishments under the IPC should be used vis-à-vis corresponding offences under the Draft Bill insofar as possible. By extension, we recommend the removal of a minimum prison sentence and exorbitant minimum fines under sub-Sections 1 and 2 of Section 3 of the Draft Bill.
- 3.5. We further recommend that the words '*or any other person the Advocate may be interested in*' be inserted into Section 3(1) after the words '*against an Advocate*' in conformity with the language used in Section 503 of the IPC, and paragraphs 2.2 and 2.6 of this report.

#### IV. SECTION 4: COMPENSATION

4. As regards Section 4 of the Draft Bill, our recommendations are as follows:

4.1. We believe that *mandatory* compensation, in *addition* to the punishments prescribed in Section 3, is not justified in light of the Statement of Objects and Reasons of the Draft Bill. Where the Court may order the payment of a suitable amount as fine into the State's victim relief fund, it is unclear why compensation must be *mandatorily* awarded to a complainant, apart from such amount.

Mandatory  
Compensation

4.2. Even where such compensation ought to be paid to a complainant, in case of damage to any property or loss caused, the Court should have the discretion to determine the amount for such compensation. Presently, the Draft Bill prescribes a flat compensation of "...*twice the amount of fair market value of the damaged property or the loss caused, as may be determined by the Court*". It is unclear how the amount of compensation 'may be determined by the Court' in light of the Draft Bill expressly prescribing compensation amount to be twice the value of property lost/damaged.

Court's  
Discretion

## V. SECTION 5: NATURE OF OFFENCE & JURISDICTION OF COURTS

5. Our recommendations on Section 5 of the Draft Bill are motivated by a preliminary inquiry into whether different procedural standards of bail, investigation and/or trial are necessary to achieve the objectives of the Draft Bill.

5.1. The First Schedule of the Code of Criminal Procedure, 1973 (CrPC) charts out whether offences under the IPC are cognizable/non-cognizable and bailable/non-bailable. For the offences contemplated under the Draft Bill, the relevant portions thereof have been reproduced as follows.

Categorization  
of Offences

| <u>Offence (Section of the IPC)</u>          | <u>Cognizable (C)/<br/>Non-Cognizable (NC)</u> | <u>Bailable (B)/<br/>Non-Bailable (NB)</u> |
|--|--|--|
| Criminal intimidation (506)                  | NC   | B  |
| Assault and Criminal force (352)             | NC   | B  |
| Malicious prosecution (211)                  | NC   | B  |
| Causing hurt (323)                           | NC   | B  |
| Causing hurt by dangerous weapons (324)      | C  | NB   |
| Causing grievous (G.) hurt (325)             | C  | B  |
| G. hurt by dangerous weapon/acid (326, 326A) | C  | NB   |
| Throwing acid (326B)                         | C  | NB   |

Evidently, offences contemplated under the Draft Bill are categorized as cognizable or non-cognizable and bailable or non-bailable under the CrPC, on the basis of the gravity of the crime. Except for public servants appointed by the State, the nature of an offence does not change depending on the victim thereof.

5.2. The First Schedule to the CrPC further mentions the Court before which an offence may be tried (Magistrate or a Sessions Court); relevant portions thereof have been reproduced as follows.

Selection of  
Trial Court

| <u>Offence</u>  | <u>Court</u>      |
|---|-------------------|
| Criminal intimidation (506)                                   | Any Magistrate    |
| Assault/Criminal force (352)                                  | Any Magistrate    |
| Malicious prosecution (211)                                   | Any Magistrate    |
| Causing hurt (323)  | Any Magistrate    |
| Causing hurt by dangerous weapons (324)                       | Any Magistrate    |
| Causing grievous hurt (325)                                   | Any Magistrate    |
| Causing grievous hurt by dangerous weapon/acid (326 and 326A) | Court of Sessions |
| Throwing acid (326B)  | Court of Sessions |

Evidently, the seriousness of the offence also determines the Court before which an offence may be tried.

5.3. Using a *non-obstante* clause excluding such categorization of offences in the CrPC – the Draft Bill declares all offences punishable under Section 3 thereof as cognizable and non-bailable. Effectively, it distinguishes Advocates as a class warranting expeditious procedures for the investigation and trial of any offences against them. The Draft Bill affords a higher standard of investigation [Section 5(ii)]<sup>7</sup> and an expedited timeline for investigation [Section 5(iii)].<sup>8</sup> Further, it bars a Court inferior to the rank of a District and Sessions Judge from trying an offence punishable under Section 3 [Section 5(iv)].

Non-Obstante  
Clause

5.4. It is unclear why these *procedural* exceptions must be carved out for Advocates to achieve the objectives of the Draft Bill. We recommend that the *non-obstante* clause that enables Section 5 of the Draft Bill to supersede the provisions of the CrPC be removed. In effect, we recommend the restoration of the application of the CrPC to determine the appropriate procedures for investigation and trial, depending on the gravity of the offence.

Restoring the  
application of  
the CrPC

<sup>7</sup> *c/f* Code of Criminal Procedure, 1973, ss 155, 156

<sup>8</sup> *c/f* Code of Criminal Procedure, 1973, s 167

## VI. SECTION 6: COMPOUNDING OF OFFENCES

6. As regards making the offences punishable under Section 3 of the Draft Bill *compoundable* under Section 6, we recognize that the Draft Bill is in consonance with the recommendations contained in Report No. 237 of the Law Commission of India. Compounding of offences lessens the burden on Courts, while also allowing the victims of these offences. Our recommendations flow from this assessment of compoundable offences.
- 6.1. Presently, offences punishable under Section 3 of the Draft Bill are ‘acts of violence’ committed against the person of an Advocate, rather than the society at large. To that end, compounding these offences may be allowed insofar as the offence is not a ‘crime against society’.<sup>9</sup>
- 6.2. The requirement of the Court’s permission to compound an offence, coupled with Section 5(iv) which bars a Court inferior to a District & Sessions Judge from trying the offence, makes the compounding of offences more complicated. For instance, while ‘hurt’<sup>10</sup> is compoundable without the Court’s punishment under the CrPC,<sup>11</sup> – as a cognizable, non-bailable offence under the Draft Bill,<sup>12</sup> it may not be compoundable without the Court’s permission.
- 6.3. To this effect, it may be relevant to distinguish between compoundable offences where the Court’s permission is needed from more minor compoundable offences where such permission may be foregone. We recommend that the compounding of offences under the Draft Bill be redrafted to resemble the procedural requirements prescribed by the CrPC in this regard.

Compounding  
complicated

Incorporating  
the CrPC

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<sup>9</sup> *Gian Singh v State of Punjab*, (2012) 10 SCC 303 [61]

<sup>10</sup> Indian Penal Code, 1860, s 323

<sup>11</sup> Code of Criminal Procedure, 1973, s 320

<sup>12</sup> Draft Advocates Protection Bill, s 5

## VII. SECTION 7: POLICE PROTECTION

7. Section 7 of the Draft Bill entitles any Advocate under threat of being a victim of an act of violence to receive Police Protection from the Court where such Advocate may be practising, upon making an application. Our recommendations seek to make this Court application process fairer.
- 7.1. Section 7(2) of the Draft Bill, seeks to protect against the victimization of Advocates. To this effect, the institution of an appellate mechanism may be a relevant addition to these provisions as well. The appellate mechanism could also double as the State Government's forum to contest a *mala fide* application(s) for police protection by an Advocate which could discourage frivolous applications.

Appellate  
Mechanism

## VIII. SECTION 8: ADVOCATE DEEMED TO BE OFFICER

8. The Statement of Objects and Reasons to the Draft Bill mentions a number of instances where Advocates have been recognized as integral parts of the justice-delivery system in India. Our recommendations seek to make their role clearer and more defined.

8.1. Even as they have been called ‘officers’ of the Court, there is no formal definition of ‘officers of the institution’ which can be relied on to identify the scope and import of their office. Such a definition is often found in different States’ cooperative societies legislations, and in laws addressing non-penal offences. Without a clear definition of the extent of such power, an ‘officer of an institution’ could exercise unbridled power within that institution.

The nature of such power is also unclear considering Section 8 includes within its ambit Courts, Tribunals other similar Authorities, and the Police: without any indication as to the scope of the powers of an ‘officer of the institution’ – it is unclear whether the Section deems Advocates to be treated like administrative officers, police officers, or judicial officers. Insofar as the officers of these institutions are appointed by the State, the propriety of treating Advocates, with a voluntary professional practise, at par with these officers is also suspect.

No formal definition of ‘officer of the institution’

8.2. To this effect, our recommendations are co-extensive: *first*, an ‘officer of the institute’ must be defined with reference to Courts, Tribunals, other Authorities and Police – for an Advocate to be treated at par with, within that institution; and, *second*, the privileges and protections that this Section intends to confer upon Advocates – by deeming them

Clear definition of ‘officer of the institution’

to be ‘officers of an institution’ – should be laid down clearly and comprehensively.

- 8.3. In other words, Section 8 should be redrafted to present an indicative list of the powers and privileges enjoyed by an Advocate before a Court, Tribunal, other Authority or the Police. This should be followed by a residuary clause stating that for any other purpose apart from these aforesaid privileges, the Advocate shall be deemed to be an ‘officer of the institution’, bearing such rank and discharging such a role as laid down in Section 2 of the Draft Bill/Act.

Privileges  
conferred to  
Advocates

## IX. SECTION 9: GRIEVANCE REDRESSAL COMMITTEE

9. Section 9 of the Draft Bill posits the creation of a three-member Committee for redressal of grievances of Advocates, at the District Court, High Court and Supreme Court levels. Withholding comment as to the specifics of its constitution and administrative functioning of this committee, which we assume shall be notified through the Rules framed under the Advocates Protection Act, 20xx, our recommendations on the proposed composition of this Committee are as follows.

9.1. Assuming that the objectives of the Draft Bill as contained in the Statement of Objects and Reasons warrant the creation of a separate grievance-redressal mechanism, we will also withhold our remarks on the feasibility of constituting such Committees at every level.<sup>13</sup> However, we must flag that the composition of such designated Committees at every level of the judiciary (from District Courts and above), would impact the pendency of cases before the judiciary.

Judicial  
pendency

9.2. Nonetheless, as regards the constitution of the Committee – as prescribed by the Draft Bill – we must note that Section 9 does not make any special provisions to make this Committee more representative by mandating the presence of a woman-member or members from Scheduled Castes, Schedules Tribes or other Backward Classes and marginalized backgrounds. Considering that ‘acts of violence’ can manifest as gendered and caste-based discrimination/violence,<sup>14</sup> it is imperative that the Committee be adequately representative and sensitized to these dimensions of

Representative  
Committee

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<sup>13</sup> See: Jeremy McBride, *Study on the Feasibility of a New, Binding or Non-Binding, European Legal Instrument on the Profession of Lawyer: Possible Added-Value and Effectiveness* (Council of Europe, November 2020) 97

<sup>14</sup> Pragati KB, ‘Skewed Corridors of Justice: Women Continue to Face Sexism in Courts’ *The Wire* (21 Apr 2019) <[thewire.in/women/sexism-courts-women-lawyers-judges](http://thewire.in/women/sexism-courts-women-lawyers-judges)>; Kiruba Munuswamy, ‘The Nauseating Nepotism and Caste-Based Discrimination that Exists in Indian judiciary’ *The Print* (11

violence, to assure a more comfortable and confidence-inspiring process to complainants from this background. To this effect, we recommend that the Committee be made more inclusive with the addition of members from these inadequately-represented communities.

- 9.3. Presently, Section 9 is ambiguous with respect to the scope and nature of the Committee’s powers and functions.

*Firstly*, it is unclear as to whether the Committee would resemble Courts or, resemble the functioning of internal grievance redressal mechanisms found under Labour Laws: would the committee be a judicial/quasi-judicial forum or an administrative/disciplinary body? Moreover, how will the Committee function alongside court proceedings, a remedy available to bar associations under Article 32 and 226 of the Constitution of the Country?

*Secondly*, what constitutes a ‘grievance’ under the Draft Bill, for the consideration of and redressal by the Committee? Can such grievances be filed against executive authorities such as police officers, municipal officers, etc.?

*Thirdly*, would the directions/suggestions by the grievance redressal committee be binding in nature or only advisory? If it is the latter, then how will it be ensured that the directions of the committee are enforced?

- 9.4. We recommend that the constitution of the grievance redressal committee be condensed into a single subsection, incorporating the representation of members from marginalized communities. To this

Preliminary questions on the scope of Committee’s power

Suggested model for Committee

effect, we find that the constitution of grievance redressal committees under the Industrial Disputes Act, 1947 could serve as a model to aspire towards. We further recommend that preliminary questions about the Committee's scope and nature (as listed in paragraph 9.3) be answered in subsequent sub-sections of Section 9 – to aid the formulation of any Rules therefor.

9.5. By way of substantive responses to the question in paragraph 9.3, we would like to recommend:

*Firstly*, that the grievance redressal committee be a quasi-judicial body, with a relatively informal setting compared to a Court proceeding.

*Secondly*, that the Draft Bill state the mandate of the grievance redressal committee – stipulating the criteria for filing a grievance, the scope of such grievance, and what may be excluded from the scope of adjudication/redressal by the committee. Building on the contents of Chapter V, we recommend that the grievance redressal Committee exclude from within its scope non-compoundable and cognizable offences, which may be addressed by filing a criminal complaint before the appropriate authorities.

*Thirdly*, that, similar to the grievance redressal committee under the Industrial Disputes Act, the complaint be disposed of within 30 days from the receipt of the complaint.<sup>15</sup>

*Fourthly*, that the decision of the committee be binding on the concerned police officer/government body – to give effect to the relief granted to the advocate. Further – that there should also be leave to appeal the decision of the committee before the relevant High Court or the Supreme Court of India.

Substantive  
Recommendations

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<sup>15</sup> Industrial Disputes (Amendment) Act, 2010, s 9(c).

*Lastly*, that, wherever feasible and lawful, the committee take recourse to Alternative Dispute Resolution mechanisms for speedy disposal of cases as well as mutual settlement of disputes.<sup>16</sup>

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<sup>16</sup> Murali Neelakantan, 'Conciliation and Alternative Dispute Resolution in India' (1998) *Lawasia J* 143, 145-146.

## X. SECTION 10: PROTECTION FROM ACTION

10. Section 10 of the Draft Bill posits three sub-sections: *first*, protecting Advocates from suits related to actions done by them in good faith, and/or in discharge of a specific legal duty; *second*, obligating the Government to uphold the confidentiality of the privileged communication between lawyers and their clients; and, *third*, allowing lawyers to form and join professional associations without external interference.

10.1. We recommend that these sub-sections be extracted from Section 10 and incorporated with other Sections on account of how disjointed they are in proximity to each other. To this effect, we recommend that Section 10(1) be folded in with Section 11 (Malicious Prosecution), Section 10(2) be folded in with Section 12 (Privileged Communication), and Section 10(3) be converted into a standalone Section 10 under the Draft Bill. This will ensure thematic grouping of the relevant provisions under the Draft Bill.

Change  
Numbering

10.2. Section 49 (1) (c) of the Advocates Act, 1961 laid down the Bar Council of India Rules. Specifically, Part VI, Chapter II of the Bar Council of India Rules deal with the professional standards that an advocate must maintain. Section II (Rules on an Advocates Duty Towards the Client) Rule 7 states that an advocate must not disclose, directly or indirectly, any communication between himself and his client. He must not disclose the legal advice given by him to the client. Section 126 of the Indian Evidence Act, 1872 further bars Advocates from sharing such information. By analogy, putting in place a bar on the Government (and its agencies) from obtaining such information is a welcome move.

Confidentiality of  
Communication

## XI. SECTION 11: PROTECTION FROM ACTION

11. While Section 11 of the Draft Bill is a step in the right direction, we would like to make some recommendations to make it stronger and better tuned to protecting lawyers from malicious prosecution and illegal arrests.

11.1. Sections 11(2) and 11(3) of the Draft Bill punish whoever initiates malicious proceedings against an Advocate, in order to derail the conduct of any litigation or to punish the Advocate for due discharge of any duties. Similar safeguards against malicious prosecution are provided under Section 209 of the IPC *read with* Section 340 of the CrPC. We recommend that punishments prescribed under the IPC be reflected in the Draft Bill *viz.* up to two years of imprisonment, or fine or both. The present minimum fine of two-lakh rupees takes away sentencing discretion from the Court and does not deter parties with deep-pockets from harassing Advocates.

Malicious  
Prosecution

## XII. SECTION 12: PRIVILEGED COMMUNICATION

12. Section 12 of the Draft Bill posits a presumption of coercion on the part of a public servant if such public servant is found to be in possession of or otherwise using material obtained from an Advocate.

12.1. As noted in recommendations made in paragraph 10.2, the Draft Bill is right to impose a bar on the Government from obtaining privileged communication between clients and Advocates. Section 12 of the Draft Bill concretizes this by declaring any such privileged information in the Government's possession as coercively obtained from the Advocate. However, the Evidence Act, 1872 only bars admission of *unconstitutionally* obtained information/evidence; coercion (or any other illegal mode of obtaining such evidence) *per se* does not bar the Court from assessing such information insofar as relevant.<sup>17</sup> Unless it specifically mentions that coercively obtained information shall be inadmissible in Court, Section 12 of the Draft Bill carries limited forced.

Coerced  
Information to  
be inadmissible

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<sup>17</sup> *State of Maharashtra v Natwarlal Damodardas Soni*, AIR 1980 SC 593; *R.M. Malkani v State of Maharashtra*, AIR 1973 SC 157

### XIII. MISCELLANEOUS

13. **Power to Make Rules** – Section 13(2) of the Draft Bill is convoluted and can be slightly amended and restructured as follows:

*“Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of sixty days which may be comprised in one session or in two or more successive sessions.*

*Provided, prior to the end of these sixty-days, if both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made – such modification or annulment shall be without prejudice to the validity of anything previously done under that rule”*

Redrafting  
Power to Make  
Rules

14. **Social Securities for Advocates** –

- 14.1. Section 15 of the Draft Bill aims to provide financial assistance ‘*to all the needy advocates of the country during unforeseen circumstances.*’ However, the existing Advocates Welfare Fund Act, 2001 (“the Act”) serves to ‘*to provide for the constitution of a welfare fund for the benefit of advocates and for matters connected therewith or incidental thereto.*’ Evidently, the abovementioned Section and the Act aim to achieve the same objective. Hence, if there is ever a need for further strengthening the social security structure for advocates,<sup>18</sup> the existing Act can be amended to suit that need. Purposively, the existing Act itself can be augmented with membership requirements, Government contributions, and tax incentives for private contributions – for funds to be disbursed to needy lawyers as indicated in Section 15 of the Draft Bill.

Existing Act  
sufficient

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<sup>18</sup> Only two types of people are ineligible under the Act, senior advocates and people already receiving pension from the Central/State government.

14.2. On the broader subject of social security, in *Indu Kaul v. Union of India*,<sup>19</sup> the Supreme Court had issued a notice to the Central Government and the Bar Council of India on a plea seeking formulation of a scheme that ensures social security for women advocates in coordination with the respective State Bar Councils. Moreover, foreign legislations show how social security may be provided to advocates with disabilities.<sup>20</sup> The model of social security proposed in the Draft Bill can be more conducive towards ensuring enduring structural change and support for advocates who belong to the most vulnerable background.

Enduring social  
security

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<sup>19</sup> WP(C) 914/2019.

<sup>20</sup> Social Security (Scotland) Act, 2018, § 10,11.

#### XIV. ACKNOWLEDGMENTS

We the representatives of the Law & Society Committee 2021-22, and the Student Initiative for Promotion of Legal Awareness 2020-21, would like to acknowledge and appreciate the research effort contributed by the following students of the National Law School of India University, Bangalore – towards the compilation of these recommendations:

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| Chiranth S       | Pratyush Singh     | V Sreedharan        |
| Dhawal M         |                    | Vidhi Srivastava    |

We hope that the Bar Council of India finds some value in the students' perspective on the Draft Advocates Protection Bill – and that this report contributes, if only a little, to the final draft to be presented to the Hon'ble Minister for Law and Justice.

Yours Sincerely,

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LAW & SOCIETY COMMITTEE 2021-22

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