

TO BE INTRODUCED IN THE RAJYA SABHA

Bill No. LIV of 2023

THE ADVOCATES (AMENDMENT) BILL, 2023

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BILL

further to amend the Advocates Act, 1961.

BE it enacted by Parliament in the Seventy-fourth Year of the Republic of India as follows:—

1. (1) This Act may be called the Advocates (Amendment) Act, 2023.

Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification
5 in the Official Gazette, appoint.

Insertion of new section 45A.

Power to frame and publish lists of touts.

2. After section 45 of the Advocates Act, 1961 (hereinafter referred to as the principal Act), the following section shall be inserted, namely:— 25 of 1961.

‘45A. (1) Every High Court, District Judge, Sessions Judge, District Magistrate, and every Revenue-officer, not being below the rank of a Collector of a district (each as regards their or his own Court and the Courts, if any, subordinate thereto) may frame and publish lists of persons proved to their or his satisfaction, or to the satisfaction of any subordinate Court as provided in sub-section (3) by evidence of general repute or otherwise, habitually to act as touts, and may, from time to time, alter and amend such lists. 5

Explanation.—The passing of a resolution, declaring any person to be or not to be a tout, by a majority of the members present at a meeting, specially convened for the purpose, of an association of persons entitled to practice as legal practitioners in any Court or revenue-office, shall be evidence of the general repute of such person for the purposes of this sub-section. 10

(2) No person's name shall be included in any such list until he shall have had an opportunity of showing cause against such inclusion. 15

(3) Any authority empowered under sub-section (1) to frame and publish a list of touts may send to any Court subordinate to such authority the names of any persons alleged or suspected to be touts, and order that Court to hold an inquiry in regard to such persons; and the subordinate Court shall thereupon hold an inquiry into the conduct of such persons and, after giving each such person an opportunity of showing cause as provided in sub-section (2), shall report to the authority which has ordered the inquiry the name of each such person who has been proved to the satisfaction of the subordinate Court to be a tout; and that authority may include the name of any such person in the list of touts framed and published by that authority: 20 25

Provided that such authority shall hear any such person who, before his name has been so included, appears before it and desires to be heard.

(4) A copy of every such list shall be kept hung up in every Court to which the same relates.

(5) The Court or Judge may, by general or special order, exclude from the precincts of the Court any person whose name is included in any such list. 30

(6) Any person who acts as a tout whilst his name is included in any such list shall be punishable with imprisonment which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

(7) For the purposes of this section,— 35

(a) "Judge" means the presiding judicial officer in every Civil and Criminal Court, by whatever title he is designated;

(b) "subordinate Court" means all Courts subordinate to the High Court, including Courts of Small Causes established under any law for the time being in force; 40

(c) "revenue-office" includes all Courts (other than Civil Courts) trying suits under any law for the time being in force relating to landholders and their tenants or agents;

(d) "tout" means a person—

(i) who procures, in consideration of any remuneration moving from any legal practitioner, the employment of the legal practitioner in any legal business; or who proposes to any legal practitioner or to any person interested in any legal business to procure, in consideration of any remuneration moving from either of them, the employment of the legal practitioner in such business; or 45 50

(ii) who for the purposes of such procurement frequents the precincts of Civil or Criminal Courts or of revenue-offices, or railway stations, landing stages, lodging places or other places of public resort.’

3. In section 50 of the principal Act, after sub-section (5), the following sub-section shall be inserted, namely:— Amendment of section 50.

25 of 1961.
18 of 1879.

“(6) On the date on which section 45A of the Advocates Act, 1961 comes into force, sections 1, 3 and 36 of the Legal Practitioners Act, 1879 shall stand repealed.”.

STATEMENT OF OBJECTS AND REASONS

The Advocates Act, 1961 (25 of 1961) was enacted to amend and consolidate the law relating to the legal practitioners and to provide for the constitution of Bar Councils and an All-India Bar.

2. Before independence, the Indian High Courts Act, 1861 passed by the British Parliament enabled the Crown to establish High Courts in India by Letters Patent and these Letters Patent authorised and empowered the High Courts to make rules for enrolment of advocates and attorneys. The Legal Practitioners Act, 1879 (18 of 1879) was enacted to consolidate and amend the law relating to legal practitioners in certain Provinces, and to empower the Provincial Government of every other Province to extend thereto such portions of this Act as such Government may think fit. Legal practitioners were governed by the Legal Practitioners Act, 1879, the Bombay Pleaders Act, 1920 (17 of 1920) and the Indian Bar Councils Act, 1926 (38 of 1926).

3. After independence, in line with the need for change in Judicial Administration in India, the Law Commission was assigned the job of preparing a report on the Reforms of Judicial Administration. The All-India Bar Committee also went into detail of the matter and made its recommendations in 1953. A comprehensive the Advocates Act, 1961 was enacted after taking into account the recommendations of the All-India Bar Committee and the Law Commission on the subject of Reforms of Judicial Administration insofar as the recommendations related to the Bar and to legal education.

4. All the aspects which are dealt with in the Legal Practitioners Act, 1879 are already covered under the Advocates Act, 1961 except the matter relating to 'touts'. All sections of the Legal Practitioners Act, 1879, except sections 1, 3 and 36 have been repealed *vide* clause (a) of sub-section (5) of section 50 of the Advocates Act, 1961. The Law Commission of India in its Report No. 249 titled 'Obsolete Laws: Warranting Immediate Repeal (Second Interim Report)' has also recommended for repealing of the Legal Practitioners Act, 1879 after making suitable amendments to the Advocates Act, 1961.

5. In keeping with the Government's policy of repealing all obsolete laws or pre-independence Acts which have lost their utility, the Government of India in consultation with the Bar Council of India has decided to repeal the Legal Practitioners Act, 1879 and to amend the Advocates Act, 1961 by incorporating the provisions of section 36 of the Legal Practitioners Act, 1879 in the Advocates Act, 1961 so as to reduce the number of superfluous enactments in the statute book. This would also help to regulate the legal profession by a single Act, the Advocates Act, 1961.

6. The Bill seeks to achieve the above objectives.

NEW DELHI;
The 21st July, 2023.

ARJUN RAM MEGHWAL.

FINANCIAL MEMORANDUM

The provisions of the Bill do not involve any expenditure of recurring or non-recurring nature from the Consolidated Fund of India.

RAJYA SABHA

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BILL

further to amend the Advocates Act, 1961.

(Shri Arjun Ram Meghwal, Minister of State (I/C) for Law & Justice and Minister of State for Parliamentary Affairs and Culture)