



# Jus Corpus Law Journal

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## Advocates Protection Bill 2021: Overview and Importance

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*The Advocates fraternity acts as one of the essential wings of the justice delivery system similar to the Police and the Judiciary while the Police and Judiciary have access to protection, social security, and privileges; the Advocates who bridge the gap between the two and argues/present the cases/matters in courts is/are deprived of social security and protection against the anti-social elements, Therefore the Bar Council of India on 2nd July 2021 The Advocates (Protection) Bill, 2021<sup>1</sup> (hereinafter referred to as the “Bill”) was released as a draught. This, if passed, will provide enough protection to the legal profession so that they can operate without worry for their social and physical security and that of their families.*

**Keywords:** *advocates, security, BCI, protection bill.*

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### INTRODUCTION

The Bar Council of India released a draft of the Bill, which was created by a seven-member group to protect advocates and their families. The Bill's main goals are reported to be advocate protection and the removal of impediments to advocates performing their jobs. In addition, given the recent increase in assaults, kidnappings, and threats against advocates and their work, the government is obligated to take the necessary actions and provide protection and

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<sup>1</sup> Advocates (Protection) Bill, 2021

security to them. The Bill is also written in accordance with the resolution adopted at the Eighth United Nations Congress on Crime Prevention and Treatment of Offenders, which was held in Havana, Cuba from August 27 to September 7, 1990, and in which India participated and adopted the “Basic Principles of the Role of Lawyers.”<sup>2</sup>

## NEED AND IMPORTANCE OF BILL

- The Advocates Act 1961<sup>3</sup> (hereinafter referred to as the “Act”) has been passed by the Indian Parliament which provides the establishment of State Bar Councils and All India Bar Association to govern, organize and protect the interest of the Members of the Council
- The Advocates Act 1961 also provide to safeguard the rights privileges and interest of Advocates but there is no such specific Act for the protection of Advocates akin many state legislatures have passed Act for the protection of Doctors and Hospital For example in Uttar Pradesh, the “UP Medicare Service Persons and Medicare Service Institutions (Prevention of Violence and Damage to Property) Act 2013 has been enacted.

There is a rise in frequent assaulting, kidnapping, and threats to Advocates. Recently, Supreme Court lawyers received over 1000 threatening calls, the callers stated that all Supreme Court Judges must refrain from hearing the case regarding PM’s security breach.<sup>4</sup> Two country-made bombs were hurled at the house of an advocate and a former Pattali Makkal Katchi (PMK) functionary in Madurai.<sup>5</sup> Also, two lawyers were attacked with swords by a group of 20 Men and

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<sup>2</sup> 'BASIC Principle on the Role of Lawyer' (UNHR)

<<https://www.ohchr.org/en/professionalinterest/pages/roleoflawyers.aspx>> accessed 12 January 2022

<sup>3</sup> Advocates Act, 1961

<sup>4</sup> V.V. Vishnu, 'Supreme Court Lawyers Get over 1000 Threat Calls; SCAORA VP Urges Agencies to Intervene' (Republic World, 10 January 2022) <<https://www.republicworld.com/india-news/law-and-order/supreme-court-lawyers-get-over-1000-threat-calls-scaora-vp-urges-agencies-to-intervene-articleshow.html>> accessed 12 January 2022

<sup>5</sup> 'Petrol Bombs Hurlled at Advocate’s House' (The Times of India, 17 November 2021) <<https://timesofindia.indiatimes.com/city/madurai/petrol-bombs-hurled-at-advocates-house/articleshow/87745414.cms>> accessed 12 January 2022

Women, while the lawyers were meeting with their client in a place in Mumbai.<sup>6</sup> These kinds of attacks and threats result in rendering professional services by Advocates to their clients and therefore arises the need for implementation of the bill. While representing the detainees or arrested persons often Advocates are questioned about their privileged communication with the client which violates the Resolution on Independence and Impartiality of the Judiciary and Lawyers adopted by UN General assembly vide A/HRC/RES/29/6. There is also a need of providing the Advocates and their families with social security, basic needs, and necessities.

This Bill aligns with the 1990's resolution passed in the Eighth United Nations Congress on Prevention of crimes and treatment of offenders where "Basic principles of the role of lawyers" was adopted where **clause 16** states that Governments shall ensure the lawyers: *That they will be able to carry out all of their professional services/functions without fear of intimidation, harassment, or improper interference. They are free to travel and consult with their clients both within and outside of their nation; they are not subject to prosecution or administrative, economic, or other punishment for actions conducted in accordance with accepted professional duties, standards, and ethics.*

**Clause 17.** Where the security of lawyers is threatened as a result of discharging their duty, they shall be adequately safeguarded by the authorities.<sup>7</sup> The Bill, therefore, looks into the concerns of the Advocates and ensures the fulfillment of the above objectives

### **IMPORTANT PROVISIONS OF THE ADVOCATES (PROTECTION) BILL, 2021<sup>8</sup>**

The term "advocate" is defined in the Bill in the same way that it is defined in Sec. 2(1)(a) of the Advocates Act, 1961, where "advocate" denotes a person who is registered as an advocate under the Act's provisions. Acts performed by any person against an Advocate to disturb or cause difficulty in litigation or to appear before any Court, Tribunals, or Authority on behalf of his/her client or himself are also defined in the same provision of the Bill and include:

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<sup>6</sup> 'Two Lawyers Attacked with Swords over Property Tiff in Mumbai, 3 Held' (*The Times of India*, 20 July 2021) <<https://timesofindia.indiatimes.com/city/mumbai/mumbai-2-lawyers-attacked-with-swords-over-property-tiff-3-held/articleshow/84566559.cms>> accessed 12 January 2022

<sup>7</sup> Basic Principle on the Role of Lawyer (n 2)

<sup>8</sup> Advocates (Protection) Bill, 2021

Harm, Injury, Hurt, Threat, Coercion whatever conditions cause hindrance in delivery of effective services by an Advocate to their client on or off the premises of the Court, Tribunals or Authority, it also includes Damage and Loss to the property document of an Advocate.

## **PUNISHMENT FOR OFFENCES**

According to Section 3(1)<sup>9</sup> of the Bill, anyone who commits or even aids in the commission of an Act of Violence against an Advocate or commits an offense under this Act will be sentenced to a term of not less than six months and a maximum of five years in prison, as well as a fine of not less than fifty thousand rupees and up to one lakh rupees, depending on the seriousness of the act, committed. If a person who has already been convicted under this act commits a future offense, he or she will be sentenced to a term of not less than two years and a fine of not less than fifty thousand rupees and a maximum of one lakh rupees, depending on the nature of the committed act. The commission of a crime not only results in a penalty but also in compensation under Section 4 of this act, the amount of which is determined by the court based on the circumstances. Despite the compounding of an infraction under Sec. 6<sup>10</sup>, if any property is harmed or a loss is caused, the compensation payable is double the fair market value of the damaged property or the loss caused. In addition, if the Compensation awarded under subsections (1) and (2) of this section is not paid, the sum will be reclaimed as a land revenue arrear under the Revenue Recovery Act of 1890.

## **INVESTIGATING OFFICER**

According to Section 5(2)<sup>11</sup>, the crime under this Act must be investigated by a police officer with at least the rank of Deputy Superintendent of Police (DSP), and according to Section 5(3)<sup>12</sup>, the investigation must be completed within 30 days of the filing of the First Information Report (FIR) under section 154<sup>13</sup> of the Indian Penal Code, 1860.

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<sup>9</sup> Advocates (Protection) Bill, 2021, s 3(1)

<sup>10</sup> Advocates (Protection) Bill, 2021, s 6

<sup>11</sup> Advocates (Protection) Bill, 2021, s 5(2)

<sup>12</sup> Advocates (Protection) Bill, 2021, s 5(3)

<sup>13</sup> Indian Penal Code, 1860, s 154

## **JURISDICTION OF THE COURT**

The trial of an offense punishable under Sec.3<sup>14</sup> of this Act shall be done by a court not less than a District and Sessions Court and proceedings of such case shall be dealt quickly, the trial must be concluded within one year and on non-completion, in stipulated time a maximum of six-month extension can be taken for the same.

## **PROTECTION BY POLICE**

When an Advocate is threatened with being a victim of an act of violence, according to Section 7<sup>15</sup> of the Act, police protection should be provided to him for a period determined by the court.

## **ADVOCATE AS AN OFFICER OF THE COURT**

While representing a client before a court, tribunal, or other authority, an advocate is considered an official of the court.

## **REDRESSAL COMMITTEE**

The Bill also establishes a redressal committee at three levels: District court, High court, and Supreme Court, each headed by a District Judge, the Chief Justice of the High Court (or a judge of the High Court nominated by him) for the concerned state, and the Chief Justice of India (or any judge of the Supreme Court nominated by him) and two other members nominated after consultation with the Bar Council of India.

## **PROTECTION AGAINST SUITS, ARRESTS, AND PROSECUTION**

Without a Chief Judicial Magistrate's order, no police officer can arrest or investigate an advocate without a Chief Judicial Magistrate's order (CMJ), also for a case being investigated against an advocate should be primarily enquired by such Magistrate, Notice shall be served to the Advocate or his representative to provide an opportunity to be heard.

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<sup>14</sup> Advocates (Protection) Bill, 2021, s 3

<sup>15</sup> Advocates (Protection) Bill, 2021, s 7

As per Sec. 11(3)<sup>16</sup> If any person is found to have filed a complaint against an Advocate that is Vague, Fallacious, or Intrigue then that person is obligated to pay a sum of money being not less than two lacs rupees and can be extended up to ten lacs rupees depending upon the nature of allegation and damage caused by such allegation.

## **SOCIAL SECURITY**

In case of Epidemic or any other calamity financial assistance will be provided under this act to the Advocate of a minimum amount of Fifteen thousand rupees per month till the epidemic or calamity lasts, such amount shall be provided by the District Judicial Magistrate/District Court on the recommendation(s) of concerned state bar council and expense of such financial assistance shall be borne by Central Government and state bar council equally. Central Government may also provide some medical claims or Insurance schemes for Advocates. Also, a Loan facility to the needy advocate at a reasonable rate shall be granted by P.S.U and Scheduled Banks.

## **CONCLUSION**

Keeping in mind the nature of public services provided by the Advocates and Risk involved in the Advocates (Protection) Bill, 2021 has been carefully drafted by the committee looking into all the aspects and the problems faced by the Advocates, which will provide them with the healthy environment to render their professional services fearlessly without hindrance, also the bill ensures social security to the Advocates. Looking into the problems and remedies to it employing this bill, This Bill should be made into an Act that applies to the entire country of India.

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<sup>16</sup> Advocates (Protection) Bill, 2021, s 11(3)