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The Need for Advocate Protection Bill: Safeguarding the Legal Warriors against State and Mafia Oppression

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India, being the largest democracy in the world, has witnessed several challenges to its democratic values over the years. From the emergency imposed by Indira Gandhi to the rule of mafias in certain areas of the country, Indian democracy has faced many tests. However, amidst these challenges, one organ and one profession have always come to the rescue whenever the country needed them the legal profession. Lawyers in India are perhaps given the most difficult job one can imagine - to challenge the state itself on various occasions. They have to act like a shield and armor, protect people from the draconian rules of these mafias, and uphold the law of the land as supreme. They play a vital role in maintaining the balance of power in a democracy by ensuring that the government is accountable to the people. However, one may not realize that a lawyer is a warrior without any weapons, who is given the power to fight a person or an actor who has enormous muscle power and money. Lawyers act as a shield and take scars upon themselves to protect others in need. In many instances, they are abused by the local goons. The rising killings and attacks on lawyers by these mafias have strengthened the demand for a law that protects lawyers and their families from any influence or threat. The need for such a law is not only essential for the survival of the independence of the judiciary but also for the survival of our democracy. It is imperative to protect the legal profession, which is the backbone of our judicial system. Without their support and guidance, our democracy would be at risk of collapsing. This article examines the need for such a law and explains the key aspects of the Advocate Protection Bill, 2021, which is yet to be passed by the government. It highlights the importance of protecting the legal profession in India and the role that lawyers play in upholding the rule of law and defending democracy. It also underscores the need for a robust legal framework that safeguards the rights and freedoms of citizens and ensures justice for all.

Keywords: *India, democracy, law, judiciary, independence, legal framework, rights, freedoms, justice.*

INTRODUCTION

The sensational killing of Atiq Ahmed and his brother has captured the attention of the entire country, with opinions divided on the demise of this politician-turned-mafioso. Ahmed was commonly known as the 'first gangster of Uttar Pradesh',¹ having been implicated in over 100 serious criminal cases, including murder and extortion².

Despite an ongoing pursuit to bring Ahmed to justice for more than three decades, it was only after the murder of Umesh Pal, a Delhi-based lawyer, that the Uttar Pradesh government took a proactive stance against the mafia³. The incident has sparked a nationwide debate on the role of law enforcement agencies in addressing the menace of organized crime in the country. The murder of Atiq Ahmed has brought to the forefront an issue that has long been overlooked - the need for a law to protect the families and lawyers themselves from dangerous criminals. Violence against advocates and lawyers has only increased over time, posing a significant threat to the fair and impartial functioning of the judiciary.

The judiciary plays a vital role in upholding democracy, and thus it is essential that it is given extraordinary powers and made independent from the overwhelming power of the state. However, protecting judges alone is not sufficient, and the safety of lawyers is also crucial. Advocates are the pillars of the judiciary, and failing to protect them is tantamount to failing to protect the judiciary itself.

¹ 'Who is Atiq Ahmed, Uttar Pradesh's First Gangster?' (*Outlook India*, 13 April 2023) <<https://www.outlookindia.com/national/who-is-atiq-ahmed-uttar-pradesh-s-first-gangster--news-278074>> accessed 24 April 2023

² Kapil Dixit, 'Prayagraj Shootout: Umesh Pal beginning 1979, Atiq Ahmed has 100 criminal cases against him' (*The Times of India*, 25 February 2023) <<https://timesofindia.indiatimes.com/city/allahabad/prayagraj-shootout-umesh-pal-beginning-1979-atiq-ahmed-has-100-criminal-cases-against-him/articleshow/98237515.cms?from=mdr>> accessed 26 April 2023

³ 'Police question Atiq, brother Ashraf in Umesh Pal murder case' (*Hindustan Times*, 14 April 2023) <<https://www.hindustantimes.com/cities/lucknow-news/gangsterpolitician-atiq-ahmed-confesses-to-killing-lawyer-umesh-pal-over-property-business-interference-say-police-officials-crime-atiqahmed-umeshpal-property-illegalbusiness-101681496736926.html>> accessed 26 April 2023

THE URGENT NEED FOR A NATIONWIDE LAW

As the saying goes, "Every guardian needs a guardian." The increasing number of crimes against lawyers has made it necessary and urgent to demand this bill. Even though lawyers are judicial officers, the Supreme Court emphasizes that they must be protected by society to carry out their functions without fear or intimidation. Lawyers are entrusted with the task of challenging the overwhelming power of the state and protecting citizens from the abuse of government machinery. They are often called upon to defend the weak and vulnerable against the powerful. It is no surprise that powerful actors would try to manipulate and harm those who stand in the way of their interests, and lawyers are no exception.

As a result, there is an urgent need for a law that regulates and provides protection to lawyers and their families. The increasing violence against advocates and lawyers has highlighted the need for such a law, which would ensure that they can carry out their duties without fear or threat from powerful actors. Thus, the role of lawyers in upholding the principles of justice and protecting the rights of citizens cannot be overstated. It is, therefore, the responsibility of the state to ensure their safety and provide them with adequate protection under the law. A robust legal framework that grants protection to lawyers and their families would not only safeguard their interests but also strengthen the democratic fabric of the country.

LANDMARK CASES ASSOCIATED WITH THIS ISSUE

Ramon Services Pvt. Ltd. v Subhash Kapoor (2001)⁴, In the case of Ramon Services Pvt. Ltd. v Subhash Kapoor (2001), the Supreme Court of India made a statement about lawyers' social and professional status in society. The Court held that the legal profession is regarded as a social elite, and lawyers have an important role to play in the development and progress of society, not just in the sphere of law, but also in the wider political and social contexts.

The Court also observed that lawyers are respected by society as they have always been willing to perform their duties and obligations in the greatest interest of mankind. This statement reflects the importance of the legal profession in upholding the rule of law and ensuring that justice is served fairly and impartially. The Court's observation underscores the significant role

⁴ *Ramon Services Pvt Ltd v Subhash Kapoor* (2001) 1 SCC 118

that lawyers play in the functioning of the legal system and in promoting the welfare of society as a whole.

OP SHARMA v HC OF PUNJAB AND HARYANA,⁵ In the case of O.P Sharma v High Court of Punjab and Haryana (2011), the Supreme Court of India affirmed the significance of advocates as officers of the court and essential components of the justice system. The Court declared that lawyers play a crucial role in assisting the justice system to function effectively and uphold the rights of citizens. However, in the recent case of Secretary v Ishwar Shandilya and others (2020)⁶, the Supreme Court ruled that advocates' boycott or strike from courts is illegal and falls outside the scope of the right to freedom of speech and expression guaranteed under Article 19(1)(a) of the Indian Constitution⁷ The Court emphasized that lawyers have a responsibility to work in the larger interest of achieving the ultimate goal of speedy justice, recognized as fundamental rights under Article 14⁸ and Article 21⁹ of the Constitution.

The Court observed that strikes by lawyers cause significant delays in the disposal of criminal trials, which ultimately undermines the right to speedy justice. The Court highlighted that lawyers should not resort to strikes or boycotts as a means of protest, as this disrupts the functioning of the justice system and adversely affects the interests of their clients. The judgment in Secretary v Ishwar Shandilya and others underscores the need for lawyers to uphold their professional and ethical obligations while practicing law¹⁰. While advocates are officers of the court and play an essential role in the justice system, they must refrain from strikes or boycotts, as this impedes the speedy delivery of justice. Instead, lawyers could assist courts in the efficient disposal of criminal trials to achieve the larger goal of speedy justice.

EXAMINING KEY PROVISIONS OF THE ADVOCATE PROTECTION BILL

The Advocate Protection Act is a critical legislation aimed at safeguarding the rights and safety of lawyers in India. The act encompasses various provisions that address the challenges faced

⁵ *OP Sharma & Ors v High Court of Punjab & Haryana* (2011) 6 SCC 86

⁶ *District Bar Association v Ishwar Shandilya* (2020) SC 244

⁷ Constitution of India 1950, art 19(a)

⁸ Constitution of India 1950, art 14

⁹ Constitution of India 1950, art 21

¹⁰ *District Bar Association v Ishwar Shandilya* (2020) SC 244

by legal professionals, such as threats, violence, and intimidation. The passage of the Advocate Protection Act is a significant step towards creating a safer environment for lawyers to carry out their duties without fear or coercion

One of the key aspects of the Act is the provision of comprehensive protection to lawyers and their families. It recognizes the importance of shielding not only the advocates themselves but also their loved ones from any form of harm or retaliation. This is crucial, as often lawyers face threats that extend beyond their professional lives, putting their families at risk as well. The Act also emphasizes the role of law enforcement agencies in implementing its provisions. It calls for the establishment of specialized units or dedicated cells within the police force to handle cases involving attacks on lawyers. This ensures that these cases receive the attention and priority they deserve, leading to a more efficient investigation and prosecution process.

Furthermore, the Act promotes awareness and sensitization among law enforcement personnel about the unique challenges faced by lawyers. Training programs and awareness campaigns are essential in fostering a better understanding of the legal profession and the importance of protecting the rights and safety of advocates. Another significant aspect of the Act is the establishment of a centralized reporting system. This allows lawyers to confidentially report threats or attacks, ensuring their safety and anonymity. By collecting data and identifying patterns of violence, authorities can take targeted interventions and preventive measures to mitigate the risks faced by lawyers.

Additionally, the Act emphasizes the role of the legal community itself in advocating for their own protection. Bar associations and professional organizations are encouraged to engage with the government and raise awareness about the challenges faced by lawyers. Unity among lawyers and their proactive involvement in addressing issues of violence and intimidation is crucial in creating a safer environment for legal professionals. To support affected advocates, the Act proposes the allocation of resources and the establishment of a fund for their welfare. This fund provides financial assistance, medical support, and legal aid to affected lawyers and their families. By alleviating the financial burdens that may arise from such incidents, the Act ensures the well-being and security of lawyers.

The Bar Council of India released the Advocates Protection Bill 2021 on July 2, 2021, which was drafted by a team of seven members who had considered the challenges faced by advocates and their families. The primary objectives of the bill are to safeguard the interests of advocates and eliminate obstacles that hinder their ability to discharge their duties effectively. The bill outlines several factors that impede the fulfillment of their responsibilities.

The bill defines the term 'acts of violence' which encompasses any action taken against advocates to influence or disrupt the process of fair and unbiased litigation. These acts may include threats, harassment, coercion, assault, malicious prosecution, criminal force, harm, hurt, injury, property damage, and others that can affect the advocates' living and working conditions¹¹. These offenses are cognizable and non-bailable.

The bill's Sections 3¹² and 4¹³ deal with punishment and restitution, with penalties ranging from six months to five years in jail and up to ten years for repeat offenders. The fines for first-time offenses range from Rs. 50,000 to Rs. 1 lakh, while fines for subsequent offenses may reach up to Rs. 10 lakhs¹⁴.

According to the bill, the court has the power to compensate advocates for any wrongdoing against them. Section 11 states that no police officer can arrest or investigate an advocate without the explicit direction of the Chief Judicial Magistrate¹⁵. If an advocate informs the Officer-in-Charge of a Police Station about the commission of any offense, the Officer-in-Charge must enter the substance of the information in a book and refer it to the nearest Chief Judicial Magistrate along with other related materials for a preliminary inquiry. If the CJM finds that the FIR was brought against the advocate with malicious intent related to the discharge of their professional responsibilities, bail will be granted to the advocate.

To ensure safety, an Advocate facing threats can request police protection for a duration determined by the court¹⁶. The request must be made to the High Court of the state in which the

¹¹ Advocates (Protection) Bill 2021, s 2(1)(c)

¹² Advocates (Protection) Bill 2021, s 3

¹³ Advocates (Protection) Bill 2021, s 4

¹⁴ Advocates (Protection) Bill 2021, s 3(2)

¹⁵ Advocates (Protection) Bill 2021, s 10

¹⁶ Advocates (Protection) Bill 2021, s 7

Advocate is registered to practice law. Before granting the order, the High Court must review the Advocate's background, including criminal history, and may seek a report from the state Bar Council to verify the legitimacy of the application¹⁷.

If police security is provided, the superintendent of police cannot reduce or withdraw it without consulting the registrar of the court where the Advocate practices law. The superintendent should further provide one week's prior notice and obtain approval from the concerned court before taking any action¹⁸.

The law also contains a crucial provision for Social Security. In unforeseen circumstances such as natural disasters or pandemics, the law suggests that state and federal governments establish mechanisms to provide financial assistance to all needy Advocates in the country. A minimum of Rs.15,000 must be provided each month¹⁹. Section 12 stipulates that if any public official with investigative or arrest authority under the CrPC is found to have or utilizing in their investigation any privileged communication or material obtained from an Advocate, it is presumed that such privileged communication or material was obtained through coercion²⁰.

RAJASTHAN: SILVER LINING BESIDES THE DARK CLOUD

While numerous lawyers across the country are still urging the legislature to recognize the criticality of the situation and pass the bill, Rajasthan has created a landmark event in the legal history of India. On March 21st, 2023, Rajasthan became the first state in the country to enact the Advocate Protection Bill, providing immunity to lawyers against threats and other forms of criminal intimidation by gangsters²¹.

However, the necessity of this bill came to the forefront only after the heinous murder of Jugraj Chauhan in Jodhpur, which was related to a land dispute. This incident led to a month-long protest in the state, demanding the formulation of a law aimed at safeguarding lawyers and

¹⁷ Advocates (Protection) Bill 2021, s 7(2)

¹⁸ Advocates (Protection) Bill 2021, s 7(4)

¹⁹ Advocates (Protection) Bill 2021, s 15

²⁰ Advocates (Protection) Bill 2021, s 12

²¹ Danita Yadav, 'Rajasthan Becomes First State to Pass Bill for Safety of Lawyers: All About the Advocates Protection Act' (*Times Now*, 22 March 2023) <<https://www.timesnownews.com/india/rajasthan-becomes-first-state-to-pass-bill-for-safety-of-lawyers-all-about-the-advocates-protection-act-article-98903055>> accessed 24 April 2023

their families²². The Rajasthan Bar Council also advocated for the urgent need for this long-awaited law. Finally, the state legislature acquiesced to the lawyers' demands and passed the historic bill on March 21st, 2023, giving hope to lawyers across the country who have been demanding a nationwide law to address the same issue²³.

KEY PROVISIONS OF THE BILL

Section 3	If an act of criminal intimidation, criminal force, or violence is used against an advocate while they are doing their responsibilities in a courtroom, it will be considered a crime under the Act ²⁴ .
Section 4	If a lawyer reports to the police about any of the acts listed in Section 3, the police must, if appropriate, offer the lawyer protection ²⁵ .
Section 5	5(1) - A maximum of two years in jail and a fine of up to 25,000 are the penalties for assaulting or using criminal force against an advocate ²⁶ .
	A maximum of seven years in jail and a fine of up to 50,000 are the penalties for violating Section 5(2), which prohibits intentionally causing grave harm to an advocate ²⁷ .
	5(3) - A maximum of two years in jail and a fine of up to 10,000 are the penalties for the voluntary commission of the criminal intimidation offense against an advocate ²⁸ .

²² 'Lawyers across state protest peer's brutal murder' (*The Times of India*, 21 February 2023) <<https://timesofindia.indiatimes.com/city/jaipur/lawyers-across-state-protest-peers-brutal-murder/articleshow/98109211.cms>> accessed 24 April 2023

²³ Advocates (Protection) Bill 2021, s 7(4)

²⁴ Rajasthan Advocates Protection Bill 2023, s 3

²⁵ Rajasthan Advocates Protection Bill 2023, s 4

²⁶ Rajasthan Advocates Protection Bill 2023, s 5(1)

²⁷ Rajasthan Advocates Protection Bill 2023, s 5(2)

²⁸ Rajasthan Advocates Protection Bill 2023, s 5(3)

<p>Section 6</p>	<p>All offenses covered by the law are cognizable. If a person commits a cognizable offense, police can conduct an arrest without a warrant or previous court approval²⁹.</p>
<p>Section 11</p>	<p>If any of the act's requirements are misused, the offender might face up to two years in jail³⁰.</p>

CONCLUSION & WAY FORWARD

The legal profession has always played a crucial role in upholding justice and protecting the rights of the people. However, the growing influence of mafias and their use of muscle power and money to manipulate the law has put the lives of lawyers at risk. The government must provide a safe and secure working environment for lawyers who are constantly battling these powerful players to uphold the law and protect the interests of the people.

The need for an advocate protection bill has become more urgent than ever before. The bill aims to provide legal professionals with the necessary safeguards and protection from intimidation, harassment, and violence. The rising instances of attacks on lawyers, including the recent incidents in Delhi and Rajasthan, have highlighted the gravity of the situation and the need for immediate action.

The protection of lawyers is not only crucial for the survival of an independent judiciary but also for the survival of our democracy itself. Lawyers are often the first line of defense against the misuse of power by the state and other powerful players. They are tasked with challenging the state and upholding the rule of law, regardless of the personal risks involved. Therefore, it is important to recognize the contributions of lawyers and to provide them with the necessary support and protection.

The advocate protection bill, 2021, is a step in the right direction toward ensuring the safety of lawyers and their families. The bill, if passed, would provide for the establishment of a national council for the protection of advocates and the setting up of special courts to try cases related to

²⁹ Rajasthan Advocates Protection Bill 2023, s 6

³⁰ Rajasthan Advocates Protection Bill 2023, s 11

attacks on legal professionals. Additionally, the bill would provide for the creation of a fund for the welfare of advocates and their families in case of any untoward incident.

To effectively safeguard the legal warriors against state and mafia oppression, a multi-pronged approach is necessary. Firstly, it is crucial for the government to prioritize the passage of the Advocate Protection Bill, 2021, at the national level. This bill should encompass comprehensive provisions that provide robust protection to lawyers and their families, addressing issues such as threats, violence, and intimidation.

In addition to the legislative action, the government should collaborate with law enforcement agencies to ensure the proper implementation of the bill. Special units or dedicated cells can be established within the police force to investigate and address cases of attacks on lawyers promptly and efficiently. Training programs and awareness campaigns should also be conducted to sensitize law enforcement personnel about the unique challenges faced by lawyers and the importance of protecting their rights and safety.

Furthermore, the legal community itself plays a crucial role in advocating for their own protection. Bar associations and professional organizations should actively engage with the government, raising awareness about the challenges faced by lawyers and advocating for their rights and safety. Unity among lawyers and their proactive involvement in addressing issues of violence and intimidation is vital in fostering a safer environment for legal professionals to carry out their duties. It is also important to establish mechanisms for monitoring and reporting incidents of violence against lawyers. A centralized reporting system can be developed where lawyers can confidentially report threats or attacks, ensuring their safety and anonymity. This will help in collecting data and identifying patterns of violence, enabling targeted interventions and preventive measures.

The government should allocate resources and establish a fund for the welfare of advocates and their families in case of any untoward incidents. This fund can provide financial assistance, medical support, and legal aid to affected lawyers, ensuring their well-being, and alleviating the financial burdens they may face. By adopting this comprehensive approach, which involves legislative measures, effective implementation, advocacy, monitoring, and support

mechanisms, we can pave the way forward for a safer and more secure environment for legal professionals in India.