



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2025 – ISSN 2582-7820

Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

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Recognised Agents and Pleaders under the Code of Civil Procedure

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Received 01 May 2025; Accepted 02 June 2025; Published 05 June 2025

Political leadership holds a crucial position in directing a country's growth, as ministers govern the country and are responsible for creating and implementing laws. However, the increasing participation of individuals with criminal backgrounds in politics has emerged as a serious concern. This article explores the issue of criminalisation in the political sphere, emphasising the disturbing increase in lawmakers who are under criminal investigation or have been charged with offences. It seeks to examine how this trend negatively affects India's democratic development. Furthermore, it examines why current measures such as Supreme Court directives, Election Commission guidelines, and legislative provisions have failed to effectively prevent individuals with criminal backgrounds from entering the political system. This paper also highlights the pressing need for comprehensive electoral reforms and enhanced institutional accountability to ensure the integrity of democratic governance. It concludes by proposing actionable recommendations to address this pressing issue and promote a cleaner, more transparent political environment.

Keywords: *cpc, recognised agents, pleaders, power of attorney, legal representation, advocates.*

INTRODUCTION

Consider a scenario where a piece of land belonging to an individual has been wrongfully possessed by an adverse party, and to seek restitution of such land, the individual finds it

necessary to initiate legal proceedings. Consequently, a petition is filed before the appropriate court to seek a judicial remedy. However, you got stunned by the hustle and bustle going on in the court, where you do not know which court you have to go to or how you have to present your case. Here, the significant role of agents and pleaders comes into play, who are also popularly known as Advocates.

The term Agent is commonly used in commercial law to signify a person who has the authority to act on behalf of another. Unlike Pleader defined in section 2(15) of CPC, the term Agent has not been defined anywhere under the definition clause of the Code of Civil Procedure, 1908. Thus, the same will be dealt with in detail in this paper. On the other hand, Pleaders under the Code of Civil Procedure, 1908 play a significant role while acting as a connecting bridge between justice-imparting courts and justice-seeking aggrieved parties. From the first appearance in the court for the presentation of the case to the final stage of execution of the decree, advocates properly guide the parties.

In this paper, the author will discuss the role of A Legal Analysis of Recognised Agents and Pleaders under Order III of the Code of Civil Procedure, 1908, under CPC. Firstly, the author would be providing an overview of Order 3 of the Code of Civil Procedure, 1908, which primarily deals with recognised agents and pleaders. Secondly, the author would be discussing the interlinkage of the topic with other Indian Legislations. Lastly, the author would critically analyse the assignment with adequate concluding remarks.

RECOGNISED AGENTS AND PLEADERS: AN OVERVIEW OF ORDER 3 OF CPC

In the preceding paragraphs, the author has discussed the significant role of recognised agents and pleaders, which goes without saying. Section 2 (15) of the Code of Civil Procedure, 1908 provides that any person entitled to appear and plead for another in Court, including an advocate, a vakil, and an attorney of a High Court.¹ This definition provides that a pleader is basically a recognised person by law who is authorised to appear on behalf of another in the court. The definition of Pleader is an inclusive definition which includes advocates, vakil, as well as attorneys who represent their clients in the High Courts.

¹ Civil Procedure Code 1908, s 25(1)

Moreover, it is now important to focus on the legislative aspect of the topic, which has been covered under Order 3 of the Code of Civil Procedure, 1908. This order provides a total of six rules which provide the manner and appointment of agents and pleaders on behalf of the parties to represent them in front of the court.

Rule 1 covers court proceedings, including appearances, submitting applications or acting in or to the court of law, which are necessarily required by the court to be made or the law authorises for the same to be made before the court by either of the parties may be made by any of the following:

- Party in Person; or
- Recognised Agent; or
- Pleader

However, the court reserves the discretion to call any party and appear before it in person.²³

Rule 2 deals with Recognised Agents who are the persons either holding power of attorney on behalf of the parties or persons who are authorised to run business and trade on behalf of the parties who are not resident in the area where the jurisdiction of the court extends, wherein parties have to make their appearance.⁴⁵

Rule 3 has to be read in continuance of Rule 2 which provides that the service of any process made on the recognised agent is to be treated in the same manner as if made to the party itself and the provisions related to service of process as provides under Order V and other provisions under CPC are applicable on the service made to the recognised agent.⁶

Rule 4 provides for the appointment of a pleader who holds a restrictive role as compared to the agent, i.e., only to appear in the court.⁷ A pleader can be appointed only by a document which should be in writing and signed by the party or his recognised agent. This written document is commonly known as Vakalatnama.

² Civil Procedure Code 1908

³ *H.D. Srivastava v GN Verma* (1970) AIR 1970 SC 548

⁴ Civil Procedure Code 1908

⁵ *Janki Vashdeo Bhojwani v Indusind Bank Ltd* (2005) 2 SCC 217

⁶ Civil Procedure Code 1908

⁷ *Ibid*

The significance of Vakalatnama was discussed at length by the Apex Court in the case of *Uday Shankar Triyar v Ram Kalewar Prasad Singh*.⁸ It was observed that Vakalatnama ensures the establishment of a relationship between the pleader and the party while providing the particulars as to the extent of delegation.

Sub-rule(2) further provides that such Vakalatnama remains in force until the same is determined in writing and signed by either the client or the pleader, but with the leave of the court. Further, it can also be determined if the client or pleader dies or if all the concerned proceedings have come to an end. Explanation attached to the sub-rule provides a list of applications which shall be considered to be proceedings for this sub-rule. This rule further elaborates that the pleader is only authorized to plead on behalf of the party if he has filed a memo of appearance signed by him in the court with particulars about the names of the parties, name of the party on behalf of whom he is appearing and the name of person by whom he is authorized to appear.

Rule 5 provides for service of process made to the pleader and how the same could be effectuated.⁹

Rule 6 empowers the court to appoint an agent other than the agent appointed under Rule 2. Moreover, such an appointment should be made with the help of an instrument in writing and signed by the principal, and a copy of such instrument should be filed in the court.¹⁰ The rule mandates court approval before a power of attorney holder can represent a party.¹¹

OTHER LEGISLATIONS DEALING WITH AGENTS AND PLEADERS

From the aforesaid discussion, it is clear how agents and pleaders are appointed for the parties and how service is to be done upon them. However, the eligibility of such agents and pleaders has not been provided under CPC. Thus, it is important to discuss other significant legislations wherein these aspects have been discussed.

Firstly, the aspect related to the eligibility and professional ethics related to pleaders and advocates has been primarily dealt with under the Advocates Act 1961¹² and the rules on

⁸ *Uday Shankar Triyar v Ram Kalewar Prasad Singh* (2006) 1 SCC 75

⁹ Civil Procedure Code 1908

¹⁰ *Ibid*

¹¹ *TC Mathai and Anr v District and Sessions Judge* (1999) 3 SCC 614

¹² Advocates Act 1961

“Professional Ethics and Standards” by the Bar Council of India.¹³ Both of these broadly govern the entire legal basis related to Advocates and Pleaders.

Secondly, coming to the aspect of Agents, the Indian Contract Act, 1872, under Chapter X provides for the appointment and eligibility of Agents. However, there are various other legislations in India which deal with the aspect of agency in great detail, such as the Indian Partnership Act, Limited Liability Partnership Act, Sales of Goods Act, and many others.¹⁴

Another significant term which plays a crucial role under Order 3 of CPC is the term Power of Attorney, which is widely used in the legal context while reading civil and commercial laws; however, very rarely is the legislative aspect of the same discussed. As per the Power of Attorney Act, 1882,¹⁵ a Power of Attorney is basically an instrument which provides power to any person to act for or on behalf of another person who executes such instruments.¹⁶ This term has been defined under the Indian Stamp Act, 1899.¹⁷ Similarly, with an additional exception that such an instrument is not chargeable with a fee under the respective legislations related to Court Fees.

In the entire order, the aspect of power of attorney holds a significant place in the commercial laws. The same was discussed in the case of *Purushottam Umedbhai v Manilal*.¹⁸ Wherein the aspect of agent and power of attorney was discussed in the light of the Partnership Act. It was held that if the Power of Attorney is signed by one of the partners, then it would also be a valid power of attorney. Thus, it can be said that apart from CPC, various other legislations deal with the aspect of agents and pleaders to ensure effective administration of Justice. Moreover, it is important that all these rules and laws work in consonance so as to bring synchronised court proceedings.

CRITICAL ANALYSIS

After going through the aforesaid discussion, pleaders and agents are key to representation, but their role raises concerns over accountability, especially when the agents lack legal

¹³ *Ibid*

¹⁴ ‘Types of Agents in Contract Law: Agency & Agent-Principal Relationship’ (*The Legal School*) <<https://thelegalschool.in/blog/types-of-agents-in-contract-law>> accessed 15 April 2025

¹⁵ Powers-of-Attorney Act 1882

¹⁶ Powers-of-Attorney Act 1882, s 1A

¹⁷ The Indian Stamp Act 1899

¹⁸ *Manilal and Sons v Purushottam Umedbhai and Co* (1958) SCC OnLine Cal 56

training. While analysing the proviso attached to Rule 1 clarifies that if a person wants to represent his case before the court without the aid and assistance of any pleader or advocate, he can very well do that with the leave of the court.

Order 3 of CPC conjointly uses the term agents and pleaders, however, a bare perusal of the rules provided therein clarifies that the term agent is much wider than that of pleader as the former has the authority to act for various aspects like conducting business or doing any work for which he has been authorised by way of Power of Attorney. However, the role of Pleader is restricted only to appearing before the court of law on behalf of the party by way of Vakalatnama. By equating the agents with trained pleaders, Order 3 of CPC may jeopardise the procedural competence and legal uniformity. Though pleaders aim to facilitate justice, delay caused by absenteeism and judicial system overload hinders court productivity and deepens the court's burden. However, despite the court's censure, lawyers' strikes persist, exposing the gap in grievance redressal and the need for systemic reform. Recently, in September 2023, the Supreme Court of India criticised the High Court Bar Association at Jaipur regarding the lawyer's strike.¹⁹

Further, in April 2023, in the case of District Bar Association Dehradun v Ishwar Shandilya and Ors,²⁰ the Supreme Court directed all the High Courts to constitute grievance redressal cells for advocates so that instances of strikes could be effectively avoided. Thus, in order to ensure effective administration of justice to the parties, the cases of lawyers' strikes must be avoided. Apart from this, another issue is that the position of advocates is becoming vulnerable as they get attacked and killed inside as well as outside the court premises. Recently, an advocate in Rajasthan was assaulted by 2 men and was consequently killed.²¹ Likewise, there are numerous instances of such cases.

Thus, it is equally important to protect advocates to ensure that they can help the parties to seek justice fearlessly. One such positive step was taken by the State of Rajasthan, wherein

¹⁹ Gyanvi Khanna, "Cases Go Haywire Because Lawyers Go On Strike' : Supreme Court Issues Notice To Rajasthan HC Jaipur Bar Association' *Live Law* (03 November 2023) <<https://www.livelaw.in/top-stories/supreme-court-lawyers-strike-unnecessary-adjunctions-pending-cases-241540>> accessed 22 April 2025

²⁰ *Distt Bar Assn, Dehradun v Ishwar Shandilya* (2023) 16 SCC 199

²¹ 'Rajasthan Shocker: 2 men attack Jodhpur lawyer with knife, crush head with stone; caught on CCTV' *The Free Press Journal* (09 June 2023) <<https://www.freepressjournal.in/india/rajasthan-shocker-2-men-attack-jodhpur-lawyer-with-knife-crush-head-with-stone-shocking-murder-caught-on-cctv>> accessed 22 April 2025

the Rajasthan Advocates Protection Bill 2023²² was introduced.²³ Such steps must be taken by all the states to protect pleaders.

CONCLUSION

The relationship between Bar and Bench plays a crucial role in determining the success of the justice system of a country. The entire purpose of Order 3 is to ensure the efficiency of the administration of justice in a way that it would not always be possible for the parties to appear before the court in person. Thus, the agents and pleaders could make an appearance on behalf of the parties and carry forward the requisite proceedings before the courts.

It is pertinent to note that the rules provided under Order 3, especially rules 4 and 5, only deal with the appointment and procedure of receiving the service by the pleaders. However, the provision is silent upon the ill practices done by the pleaders, like non-appearing without any just cause. This not only hampers the interest of the parties but also delays the effective functioning of the courts. The fact that the Indian judicial system is already working under a burdensome position concerning pending cases is not hidden from anyone.

As per the recent data of the National Judicial Data Grid as on November 9, 2023, a total of 44,244,904 cases are pending before the lower courts, and a similar rate of pendency is there before the High Courts and the Supreme Court. Thus, lawyers should consider these facts and try to avoid these kinds of instances. Further, the legislators could also amend Order 3 in order to bring strictness in this regard, and should consider amending the relevant provisions.

²² The Rajasthan Advocates Protection Bill 2023

²³ *Ibid*