



THE BAR ASSOCIATION OF INDIA

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3rd July, 2021

RESOLUTION

The Bar Association of India in its Executive Committee Meeting held on Wednesday, 30th June, 2021 unanimously passed the following resolution :

The Bar Association of India is deeply concerned about the notification dated 25th June, 2021 issued by the Bar Council of India amending the Bar Council of India Rules, whereby two new sections have been inserted in Part-VI, Chapter II of the Rules i.e. section V and VA.

Section V has laid out “Duties” which is applicable to all Advocates. They proscribe “motivated, malicious or mischievous” statements against “any Court or Judge or any member of Judiciary, or against State Bar Council or Bar Council of India”. These are vague standards, which are not defined in the law, and are contrary to the established principles on permissible limits of speech¹.

Section VA of the rules contain, in sub-section (i), a blanket prohibition against statements issued by members of the Bar Councils “against any Resolution or Order of concerned State Bar Council of Bar Council of India.” Sub-section (ii) goes on to state that, “the Decision of any State Bar Council or Bar Council of India shall not be criticized or attacked by any Member/s of Bar Council in public domain.”

The amendment in an illegal and arbitrary manner prescribes that violation of section V and section VA shall result in suspension and removal from membership of such Bar Council.

The Bar Association of India is concerned that these rules would have a chilling effect on lawyers’ public engagement and participation in public life, and would impinge on their right to freedom of speech and expression under Article 19 (1) (a) which is crucial for the healthy functioning of a democracy governed by the rule of law,

¹Shreya Singhal v. Union of India (2015) 5 SCC 1.

which depends on a robust exchange of ideas. The right to dissent is the cornerstone of our democracy, and it is in the interests of administration of justice that public criticism and public scrutiny of our institutions is permitted, and encouraged. In this context attention is drawn to Principle 23 of the UN Basic Principles on the Roles of Lawyers,² which guarantees that lawyers have the right to freedom of expression and association.

23. Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization. In exercising these rights, lawyers shall always conduct themselves in accordance with the law and the recognized standards and ethics of the legal profession.

The Bar Association of India is of the view that a fearless and independent Bar is imperative in a democracy to not only uphold the rights of the citizenry, but also to provide effective evaluation of the country's institutions. Members of the legal community must be able to work and express themselves in an atmosphere free of fear of reprisal for their work, or for participation in public life, in accordance with the standards laid out in our Constitution, in international human rights law, as well as international standards on role of lawyers.

Section VA (i) and (ii) have the effect of granting complete immunity to the orders/ resolutions of the Bar Council of India and the State Bar councils, thereby placing these institutions above the law and violative of the Constitutional guarantees.

The Bar Association of India is also concerned that there are serious procedural lacunae in how these rules were notified. Section 49 of the Advocates Act, 1961 gives the Bar Council of India the power to make rules, including, in S.49(c) the standards of professional conduct and etiquette to be observed by advocates. However, the proviso to Section 49 specifies that rules made with reference to clause (c), shall not have effect "unless they have been approved by the Chief Justice of India." The said procedure has been given a go by in the present case.

²*Basic Principles on the Role of Lawyers*, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfLawyers.aspx>.

The Bar Association of India also expresses its concern that vide the amendment there is an attempt to usurp the power of contempt of court by the Bar Council of India by having a parallel process of enquiry on issues of allegation against members of the judiciary which is uncalled for.

In view of the above concerns the Bar Association of India calls on the Bar Council of India to restore the independence and dignity of the legal profession and withdraw the amendments to the Rules forthwith since merely keeping it in abeyance or placing the same before the Review Committee would not serve any purpose.



PRASHANT KUMAR
President