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दिनांक 15.05.2019

प्रतिष्ठा में,

श्रीमान अध्यक्ष/सचिव महोदय
राज्य की समस्त बार संघ

मान्यवर जी,

माननीय श्री चिरंजीलाल सैनी, चैयरमैन, बार कौंसिल ऑफ राजस्थान द्वारा अधिवक्ता संरक्षण अधिनियम का ड्राफ्ट तैयार कर दिनांक 20.04.2019 को श्रीमान विधि सचिव, विधि एवं विधिक कार्य विभाग, राजस्थान सरकार को भिजवाया गया है, जिसकी प्रतिलिपि इस पत्र के साथ आपको सूचनार्थ संलग्न है।

मैं आपका ध्यान इस ओर आकर्षित करना चाहता हूँ कि बार कौंसिल ऑफ राजस्थान द्वारा साधारण सभा की बैठक दिनांक 16.09.2018 में अधिवक्ता संरक्षण अधिनियम को राज्य में लागू करने के विषय पर चर्चा की गई एवं इस सम्बन्ध में राज्य सरकार से मिलकर उचित कदम उठाने का निर्णय लिया गया था।

श्रीमान विधि सचिव, विधि एवं विधिक कार्य विभाग, राजस्थान सरकार द्वारा अपने पत्र दिनांक 08.03.2019 द्वारा अधिवक्ता संरक्षण अधिनियम के सम्बन्ध में सुझाव चाहे गये थे।

अतः माननीय चैयरमैन, बार कौंसिल ऑफ राजस्थान के निर्देशानुसार आपसे अनुरोध है कि निम्नलिखित सूचनाएं इस कार्यालय को इस पत्र के मिलने के 7 दिवस के भीतर भीतर भिजावाने का श्रम करावें, जिससे कि आपसे प्राप्त सुझावों पर विचार विमर्श कर उचित कार्यवाही की जा सके :-

1. पिछले पांच वर्ष में अधिवक्ताओं द्वारा अभियुक्तगण के खिलाफ पुलिस थाना एवं न्यायालय में दर्ज करवाई गई रिपोर्ट/शिकायत की जानकारी। उक्त प्रकरणों का क्या नतीजा रहा एवं वर्तमान में किस स्तर पर कार्यवाही जारी है।
2. अधिवक्ताओं द्वारा दुर्व्यवहार की कितनी शिकायतें दर्ज करवाई गई हैं।
3. अधिवक्ता संरक्षण अधिनियम को प्रभावी रूप से लागू करने के लिए आपके अमूल्य सुझाव।

आपसे यह भी अनुरोध है कि आप अपनी बार संघ की तरफ से माननीय मुख्य सचिव, राजस्थान सरकार को एक प्रतिवेदन प्रेषित कर अधिवक्ता संरक्षण अधिनियम को राज्य में जल्द से जल्द लागू करने का निवेदन करें।

भवदीय,

(राजेन्द्रपाल मलिक)

सचिव

बार कौंसिल ऑफ राजस्थान

संलग्न : उपरोक्तानुसार

**(Draft Rajasthan Advocates Protection Bill, 2019
proposed by Sh. Chiranji Lal Saini, Chairman, Bar Council
of Rajasthan.)**

The Rajasthan Advocates Protection Act, 2019.

An Act to prevent the commission of offences of violence, abuse etc against the advocates, to provide for Special Courts and the Exclusive Special Courts for the trial of such offences, for the protection and safeguard of the victims of such offences and for safeguarding advocates against malicious and frivolous prosecutions and for matters connected therewith or incidental thereto.

WHEREAS it is expedient to provide statutory protection to the advocates who are the officers of the court, from unlawful activities like increasing criminal attacks, abuse and malicious prosecution.

BE it enacted by the State Legislature of Rajasthan in the Seventieth Year of the Republic of India as follows:—

PRELIMINARY

1. Short title, extent and commencement.—

(1) This Act may be called the Rajasthan Advocates Protection Act, 2019.

(2) It extends to the whole of the State of Rajasthan.

(3) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act.

2. Definitions.—

(1) In this Act, unless the context otherwise requires,—

- (a) "advocate" means an advocate entered in any roll under the provisions of the Advocates Act, 1961;
- (b) "appointed day", in relation to any provision of this Act, means the day on which that provision comes into force;
- (c) "State Bar Council" means the Rajasthan Bar Council constituted under the provisions of the Advocates Act, 1961;
- (d) "victim" means any individual who falls within the definition of the 'advocate' under clause (a) of sub-section (1) of section 2, and who has suffered or experienced physical, mental, psychological, emotional or monetary harm or harm to his property as a result of the commission of any offence under this Act and includes his relatives, legal guardian and legal heirs;
- (e) "Violence" means activities of causing any harm, injury or endangering the life or intimidation, obstruction or hindrance to any advocate or his staff or his dependent in discharge of his professional duty or damage to his property;
- (f) "witness" means any person who is acquainted with the facts and circumstances, or is in possession of any information or has knowledge necessary for the purpose of investigation, inquiry or trial of any crime involving an offence under this Act, and who is or may be required to give information or make a statement or produce any document during investigation, inquiry or trial of such case and includes a victim of such offence;
- (g) the words and expressions used but not defined in this Act and defined in the Indian Penal Code (45 of 1860), the Indian Evidence Act, 1872 (1 of 1872) or the Code of Criminal Procedure, 1973 (2 of 1974), as the case may be, shall be deemed to have the meanings respectively assigned to them in those enactments.

3. Prohibition of violence: Any act of violence against any advocate or his staff or his dependent or any damage to his property is hereby prohibited.

4. Penalty: Any person who commits any act in contravention of Section 3, shall be punishable with imprisonment for a minimum term of 3 years, which may extend upto 7 years and with fine which may extend to 5 lakh rupees.

5. Prohibition of abuse etc: Any act of using abusive or derogatory language, words, signs or gestures against any advocate is prohibited and punishable with minimum imprisonment of 1 year which is extendable upto 3 years, with fine which may extend upto 1 lakh rupees.

6. Cognizance of offence: Any offence committed under section 3 and 5 shall be cognizable and non-bailable.

7. Investigation of offence under the Act: every offence under this Act shall be investigated by a police officer not below the rank of Deputy Superintendent of police or any officer designated by the State Government.

8. Recovery of loss for the damage caused to the property:
(1) In addition to the punishment specified in section 4, the offender shall also be liable to a penalty of twice the amount of purchase price of the property damaged and loss caused to the property as determined by the Court trying the offender.

9. The provisions of this Act shall be in addition to other laws: The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law, for the time being in force.

10. Punishment for neglect of duties:

(1) Whoever, being a public servant, wilfully neglects his duties required to be performed by him under this Act and the rules made thereunder, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to one year.

(2) The duties of public servant referred to in sub-section (1) shall include--

(a) to read out to an informant the information given orally, and reduced to writing by the officer in charge of the police station, before taking the signature of the informant;

(b) to register a complaint or a First Information Report made by an advocate or anyone on behalf of an advocate under this Act and other relevant provisions and to register it under appropriate sections of this Act;

(c) to furnish a copy of the information so recorded forthwith to the informant;

(d) to record the statement of the victims or witnesses;

(e) to conduct the investigation and file charge sheet in the Special Court or the Exclusive Special Court within a period of sixty days, and to explain the delay if any, in writing;

(f) to correctly prepare, frame and translate any document or electronic record;

(g) to perform any other duty specified in this Act or the rules made thereunder.

(3) The cognizance in respect of any dereliction of duty referred to in sub-section (2) by a public servant shall be taken by the Special Court or the Exclusive Special Court and shall give direction for penal proceedings against such public servant.

(4) The State Bar council or any Bar Association is the competent body to file first information report under this Act or to give information to the police or any other authority designated by the state government.

11. No bar on the court for taking cognizance: The Special Court or the Exclusive Special Court, as the case may be, shall have no bar as regards to sanction from the government or any competent authority, for taking cognizance on a complaint received against any public servant with regard to commission of any offence under this Act.

12. Enhanced punishment subsequent conviction.—Whoever, having already been convicted of an offence under

this Act is convicted for the second offence or any offence subsequent to the second offence, shall be punishable with imprisonment for a term which shall not be less than two years but which may extend to the punishment provided for that offence.

13. Application of certain provisions of the Indian Penal Code.—Subject to the other provisions of this Act, the provisions of section 34, Chapter III, Chapter IV, Chapter V, Chapter VA, section 149 and Chapter XXIII of the Indian Penal Code (45 of 1860), shall, so far as may be, apply for the purposes of this Act as they apply for the purposes of the Indian Penal Code.

14. Forfeiture of property of certain persons.—

(1) Where a person has been convicted of any offence punishable under this Chapter, the Special Court may, in addition to awarding any punishment, by order in writing, declare that any property, movable or immovable or both, belonging to the person, which has been used for the commission of that offence, shall stand forfeited to Government.

(2) Where any person is accused of any offence under this Act, it shall be open to the Special Court or the Exclusive Special Court trying him to pass an order that all or any of the properties, movable or immovable or both, belonging to him, shall, during the period of such trial, be attached, and where such trial ends in conviction, the property so attached shall be liable to forfeiture to the extent it is required for the purpose of realisation of any fine imposed under this Chapter.

15. Presumption as to offences.—In a prosecution for an offence under this Act, if it is proved that the accused rendered any financial assistance in relation to the offences committed by a person accused of, or reasonably suspected of, committing, an offence under this Act, the Special Court shall presume, unless the contrary is proved, that such person had abetted the offence;

16. Conferment of powers:

(1) Notwithstanding anything contained in the Code or in any other provision of this Act, the State Government may, if it considers it necessary or expedient so to do,—

(a) for the prevention of and for coping with any offence under this Act, or

(b) in any district or part thereof, confer, by notification in the Official Gazette, on any officer of the State Government, the powers exercisable by a police officer under the Code in such district or part thereof or, as the case may be, in particular, the powers of arrest, investigation and prosecution of persons before any Special Court.

(2) All officers of police and all other officers of Government shall assist the officer referred to in sub-section (1) in the execution of the provisions of this Act or any rule, scheme or order made thereunder.

(3) The provisions of the Code shall, so far as may be, apply to the exercise of the powers by an officer under sub-section (1).

17. Removal of person likely to commit offence.—

(1) Where the Special Court is satisfied, upon a complaint or a police report that a person is likely to commit an offence under this Act in the area which is under the territorial jurisdiction of the court, it may, by order in writing, direct such person to remove himself beyond the limits of such area, by such route and within such time as may be specified in the order, and not to return to that area from which he was directed to remove himself for such period, not exceeding three years, as may be specified in the order.

(2) The Special Court shall, along with the order under sub-section (1), communicate to the person directed under that sub-section the grounds on which such order has been made.

(3) The Special Court may revoke or modify the order made under sub-section (1), for the reasons to be recorded in writing, on the representation made by the person against

whom such order has been made or by any other person on his behalf within thirty days from the date of the order.

18. Procedure on failure of person to remove himself from area and enter thereon after removal.—

(1) If a person to whom a direction has been issued under section 17 to remove himself from any area—

(a) fails to remove himself as directed; or

(b) having so removed himself enters such area within the period specified in the order, otherwise than with the permission in writing of the Special Court under sub-section (2), the Special Court may cause him to be arrested and removed in police custody to such place outside such area as the Special Court may specify.

(2) The Special Court may, by order in writing, permit any person in respect of whom an order under section 17 has been made, to return to the area from which he was directed to remove himself for such temporary period and subject to such conditions as may be specified in such order and may require him to execute a bond with or without surety for the due observation of the conditions imposed.

(3) The Special Court may at any time revoke any such permission.

(4) Any person who, with such permission, returns to the area from which he was directed to remove himself shall observe the conditions imposed, and at the expiry of the temporary period for which he was permitted to return, or on the revocation of such permission before the expiry of such temporary period, shall remove himself outside such area and shall not return thereto within the unexpired portion specified under section 17 without a fresh permission.

(5) If a person fails to observe any of the conditions imposed or to remove himself accordingly or having so removed himself enters or returns to such area without fresh permission the Special Court may cause him to be arrested and removed in

police custody to such place outside such area as the Special Court may specify.

19. Taking measurements and photographs, etc., of persons against whom order under section 17 is made.—

(1) Every person against whom an order has been made under section 17 shall, if so required by the Special Court, allow his measurements and photographs to be taken by a police officer.

(2) If any person referred to in sub-section (1), when required to allow his measurements or photographs to be taken, resists or refuses to allow the taking of such measurements or photographs, it shall be lawful to use all necessary means to secure the taking thereof.

(3) Resistance to or refusal to allow the taking of measurements or photographs under sub-section (2) shall be deemed to be an offence under section 186 of the Indian Penal Code (45 of 1860).

(4) Where an order under section 17 is revoked, all measurements and photographs (including negatives) taken under sub-section (2) shall be destroyed or made over to the person against whom such order is made.

20. Penalty for non compliance of order under section 17:

Any person contravening an order of the Special Court made under section 17 shall be punishable with imprisonment for a term which may extend to one year and with fine.

21. Special Court and Exclusive Special Court.—

(1) For the purpose of providing for speedy trial, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, establish an Exclusive Special Court for one or more Districts:

Provided that in Districts where less number of cases under this Act is recorded, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, specify for such Districts, the

Court of Session to be a Special Court to try the offences under this Act.

Provided further that the Courts so established or specified shall have power to directly take cognizance of offences under this Act.

(2) It shall be the duty of the State Government to establish adequate number of Courts to ensure that cases under this Act are disposed of within a period of two months, as far as possible.

(3) In every trial in the Special Court or the Exclusive Special Court, the proceedings shall be continued from day-to-day until all the witnesses in attendance have been examined, unless the Special Court or the Exclusive Special Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded in writing:

Provided that when the trial relates to an offence under this Act, the trial shall, as far as possible, be completed within a period of two months from the date of filing of the charge sheet.

22. Appeals.—

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an appeal shall lie, from any judgment, sentence or order, not being an interlocutory order, of a Special Court or an Exclusive Special Court, to the High Court both on facts and on law.

(2) Notwithstanding anything contained in sub-section (3) of section 378 of the Code of Criminal Procedure, 1973 (2 of 1974), an appeal shall lie to the High Court against an order of the Special Court or the Exclusive Special Court granting or refusing bail.

(3) Notwithstanding anything contained in any other law for the time being in force, every appeal under this section shall be preferred within a period of ninety days from the date of the judgment, sentence or order appealed from;

Provided that the High Court may entertain an appeal after the expiry of the said period of ninety days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of ninety days:

Provided further that no appeal shall be entertained after the expiry of the period of one hundred and eighty days.

(4) Every appeal preferred under sub-section (1) shall, as far as possible, be disposed of within a period of three months from the date of admission of the appeal.

23. Special Public Prosecutor and Exclusive Public Prosecutor.—

(1) For every Special Court, the State Government shall, by notification in the Official Gazette, specify a Public Prosecutor or appoint an advocate who has been in practice as an advocate for not less than seven years, as a Special Public Prosecutor for the purpose of conducting cases in that Court.

(2) For every Exclusive Special Court, the State Government shall, by notification in the Official Gazette, specify an Exclusive Special Public Prosecutor or appoint an advocate who has been in practice as an advocate for not less than seven years, as an Exclusive Special Public Prosecutor for the purpose of conducting cases in that Court.

24. Prosecution of advocates:-

(1) No Court shall take cognizance of any offence alleged to have been committed by any advocate while acting or purporting to act in the discharge of his professional duty, except with the previous sanction of the State Bar Council.

(2) No Court shall take cognizance of any Civil or Criminal and other proceedings against any Advocate for the acts done by him during the course of judicial, any other works as an Advocate and quasi judicial proceedings without sanction of the Advocate General or State Bar Council.

25. Professional communications:

(1) No advocate shall at any time be compelled to disclose to any authority or to any court, any communication made to him

in the course and for the purpose of his employment as such advocate, by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional employment, or to disclose any advice given by him to his client in the course and for the purpose of such employment.

(2) No Court shall take cognizance of any offence alleged to have been committed by any advocate based on the professional communication between the advocate and the client or advice tendered by the advocate to the client.

26. Rights of victims and witnesses.—

(1) It shall be the duty and responsibility of the State to make arrangements for the protection of victims, their dependents, and witnesses against any kind of intimidation or coercion or inducement or violence or threats of violence.

(2) A victim shall be treated with fairness, respect and dignity and with due regard to any special need that arises because of the victim's age or gender or educational disadvantage or poverty.

(3) A victim or his dependent shall have the right to reasonable, accurate, and timely notice of any Court proceeding including any bail proceeding and the Special Public Prosecutor or the State Government shall inform the victim about any proceedings under this Act.

(4) A victim or his dependent shall have the right to apply to the Special Court or the Exclusive Special Court, as the case may be, to summon parties for production of any documents or material, witnesses or examine the persons present.

(5) A victim or his dependent shall be entitled to be heard at any proceeding under this Act in respect of bail, discharge, release, parole, conviction or sentence of an accused or any connected proceedings or arguments and file written submission on conviction, acquittal or sentencing.

(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the Special Court or the Exclusive Special Court trying a case under this Act shall provide to a victim, his dependent, informant or witnesses--

(a) the complete protection to secure the ends of justice;

(b) the travelling and maintenance expenses during investigation, inquiry and trial;

(7) The State shall inform the concerned Special Court or the Exclusive Special Court about the protection provided to any victim or his dependent, informant or witnesses and such Court shall periodically review the protection being offered and pass appropriate orders.

(8) Without prejudice to the generality of the provisions of sub-section (6), the concerned Special Court or the Exclusive Special Court may, on an application made by a victim or his dependent, informant or witness in any proceedings before it or by the Special Public Prosecutor in relation to such victim, informant or witness or on its own motion, take such measures including--

(a) concealing the names and addresses of the witnesses in its orders or judgments or in any records of the case accessible to the public;

(b) issuing directions for non-disclosure of the identity and addresses of the witnesses;

(c) take immediate action in respect of any complaint relating to harassment of a victim, informant or witness and on the same day, if necessary, pass appropriate orders for protection:

Provided that inquiry or investigation into the complaint received under clause (c) shall be tried separately from the main case by such Court and concluded within a period of two months from the date of receipt of the complaint:

Provided further that where the complaint under clause (c) is against any public servant, the Court shall restrain such public servant from interfering with the victim, informant or

witness, as the case may be, in any matter related or unrelated to the pending case, except with the permission of the Court.

(9) It shall be the duty of the Investigating Officer and the Station House Officer to record the complaint of victim, informant or witnesses against any kind of intimidation, coercion or inducement or violence or threats of violence, whether given orally or in writing, and a photocopy of the First Information Report shall be immediately given to them at free of cost.

(10) All proceedings relating to offences under this Act shall be video recorded.

(11) It shall be the duty of the concerned State to specify an appropriate scheme to ensure implementation of the following rights and entitlements of victims and witnesses in accessing justice so as--

(a) to provide a copy of the recorded First Information Report at free of cost;

(b) to provide immediate relief in cash or in kind to victims or their dependents;

(c) to provide necessary protection to the victims or their dependents, and witnesses;

(d) to provide relief in respect of death or injury or damage to property;

(e) to arrange food or water or clothing or shelter or medical aid or transport facilities or daily allowances to victims;

(f) to provide the maintenance expenses to the victims and their dependents;

(g) to provide the information about the rights of victims at the time of making complaints and registering the First Information Report;

(h) to provide the protection to victims or their dependents and witnesses from intimidation and harassment;

(i) to provide the information to victims or their dependents or associated organisations or individuals, on the status of investigation and charge sheet and to provide copy of the charge sheet at free of cost;

(j) to take necessary precautions at the time of medical examination;

(k) to provide information to victims or their dependents or associated organisations or individuals, regarding the relief amount;

(l) to provide information to victims or their dependents or associated organisations or individuals, in advance about the dates and place of investigation and trial;

(m) to give adequate briefing on the case and preparation for trial to victims or their dependents or associated organisations or individuals and to provide the legal aid for the said purpose;

(n) to execute the rights of victims or their dependents or associated organisations or individuals at every stage of the proceedings under this Act and to provide the necessary assistance for the execution of the rights.

27. Preventive action to be taken by the law and order machinery:

(1) A District Magistrate or a Sub-divisional Magistrate or any other Executive Magistrate or any police officer not below the rank of a Deputy Superintendent of Police may, on receiving information and after such inquiry as he may think necessary, has reason to believe that a person or a group of persons, residing in or frequenting any place within the local limits of his jurisdiction is likely to commit an offence or has threatened to commit any offence under this Act and is of the opinion that there is sufficient ground for proceeding, take necessary action for keeping the peace and good behaviour and maintenance of public order and tranquility and may take preventive action.

(2) If the officers as mentioned in Sub-section (1) indulge in gross negligence or willfully do not take necessary actions for

keeping the peace and good behavior and maintenance of the public order and tranquility, such officers would be liable for the punishment, of not more than six months of simple imprisonment.

28. Section 438 of the Code of Criminal Procedure, 1973 not to apply to persons committing an offence under the Act.—

Nothing in section 438 of the Code of Criminal Procedure, 1973 shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence under this Act.

29. Section 360 of the Code of Criminal Procedure, 1973 or the provisions of the Probation of Offenders Act not to apply to persons guilty of an offence under the Act.—The provisions of section 360 of the Code of Criminal Procedure, 1973 and the provisions of the Probation of Offenders Act, 1958 (20 of 1958) shall not apply to any person above the age of eighteen years who is found guilty of having committed an offence under this Act.

30. Act to override other laws: Save as otherwise provided in this Act, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any custom or usage or any instrument having effect by virtue of any such law.

31. Case to be committed: If, in any inquiry into an offence or a trial before a court, it appears to the court at any stage of the proceedings that the case is one which ought to be tried by the Special Court or Exclusive Special Court as mentioned in Section of this Act, the court shall commit it to the Special Court or Exclusive Special Court.

32. Duty of the State Government to ensure effective implementation of the Act:

(1) The State Government shall take such measures as may be necessary for the effective implementation of this Act.

(2) In particular, and without prejudice to the generality of the foregoing provisions, such measures may include,—

(i) the provision for adequate facilities, including legal aid, to the persons subjected to violence to enable them to avail themselves of justice;

(ii) the provision for travelling and maintenance expenses to witnesses, including the victims, during investigation and trial of offences under this Act;

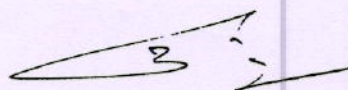
(iii) the appointment of officers for initiating or exercising supervision over prosecutions for the contravention of the provisions of this Act;

(iv) the setting up of committees at such appropriate levels as the State Government may think fit to assist that Government in formulation or implementation of such measures;

(v) provision for a periodic survey of the working of the provisions of this Act with a view to suggesting measures for the better implementation of the provision of this Act;

(3) The State Government shall, every year, place on the table of State Legislature a report on the measures taken by it in pursuance of the provisions of this section.

(Draft Rajasthan Advocates Protection Bill, 2019 proposed by Sh. Chiranji Lal Saini, Chairman, Bar Council of Rajasthan.)



22/04/2019
CHIRANJI LAL SAINI
~~Chairman~~
Chairman
Bar Council of Rajasthan