

PART XXVII—LEGAL PRACTITIONERS.

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THE BAR COUNCIL ACT.

[INDIA ACT XXXVIII, 1926.] (1st January, 1929.)¹

Preliminary.

1. * * * * *

2. In this Act, unless there is any thing repugnant in the subject or context.— Interpreta-
tion.

(a) "advocate" means an advocate entered in the roll of advocates of the High Court under the provisions of this Act ;

(b)—(c) * * * * *

(d) "prescribed" means prescribed by rules made under this Act.

Constitution of Bar Council.

3. (1) For the High Court a Bar Council shall be constituted in the manner hereinafter provided. Constitution
and incorpo-
ration of Bar
Council.

(2) The Bar Council so constituted shall be a body corporate having perpetual succession and a common seal, with power to acquire and hold property, both moveable and immoveable, and contract, and shall by the name of the Bar Council of the High Court at Rangoon sue and be sued.

4. (1) The Bar Council shall consist of fifteen members, of whom— Composition
of Bar
Council.

(a) one shall be the Attorney-General ;

(b) four shall be persons nominated by the High Court, of whom not more than two may be Judges of that Court ; and

(c) ten shall be elected by the advocates of the High Court from amongst their number.

(2) Of the elected members of the Bar Council not less than five shall be persons who have for not less than ten years been entitled as of right to practise in the High Court.

(3) * * * * *

¹ Sections 2, 17, 18 and 19 came into force on the 9th September, 1926, the date of commencement of the Indian Bar Councils Act, 1926 (India Act XXXVIII, 1926).

Section 1 (3) of the Indian Bar Councils Act, 1926, authorized the Governor-General in Council to direct by notification that the other provisions of that Act or any portion thereof shall come into force in respect of any High Court on such date as he may, by notification, appoint. By a notification appearing in the Gazette of India, 1928, Part 1, page 714, the rest of the Act was made applicable to the Rangoon High Court with effect from the 1st January, 1929.

¹(4) The Attorney-General shall be the Chairman of the Bar Council and a Vice-Chairman for the said Council shall be elected by the Council in such manner as may be prescribed.

5. * * * *

Power to make rules regarding constitution and procedure of Bar Council.

6. (1) Rules, consistent with this Act, may be made to provide for the following matters, namely :—

- (a) the manner in which elections of members of the Bar Council shall be held ; the method of determining, in accordance with the provisions of sub-section (2) of section 4, the candidates who shall be declared to have been elected ; the manner in which the result of elections shall be published ; and the manner in which and the authority by which doubts and disputes as to the validity of an election shall be finally decided ;
- (b) the terms of office of nominated and elected members of the Council ;
- (c) the filling of casual vacancies in the Council ;
- (d) the convening of meetings of the Council, and the quorum necessary for the transaction of business thereat ;
- (e) the manner of election and the respective terms of office of the Chairman and of the Vice-Chairman ; and
- (f) any matter incidental or ancillary to any of the foregoing matters.

(2) The first rules under this section shall be made by the High Court, but the Bar Council may thereafter, with the previous sanction of the High Court, add to, amend or rescind any rules so made.

(3) No election of a member or members to the Council shall be called in question on the ground that due notice thereof has not been given to any person entitled to vote thereat, if notice of the date fixed for the election has, not less than thirty days before that date, been published in the Gazette.

(4) Rules made under clause (b) of sub-section (1) may provide for the retirement of members from office by rotation and for the manner in which the order of such retirement shall be determined.

Power of Bar Council to make bye-laws.

7. The Bar Council may make bye-laws consistent with this Act and any rules made thereunder to provide for any of the following matters, namely :—

- (a) the appointment of such ministerial officers and servants as the Bar Council may deem necessary, and the pay and allowances and other conditions of service of such officers and servants ; and

¹ Substituted by the Union of Burma (Adaptation of Laws) Order, 1948.

- (b) the appointment and constitution of committees of the Council, the procedure of such committees, and the determination of the powers or duties of the Council which may be delegated to such committees.

Admission and enrolment of advocates.

8. (1) No person shall be entitled as of right to practise in the High Court, unless his name is entered in the roll of the advocates of the High Court under this Act. Enrolment
of advocates.

(2) The High Court shall prepare and maintain a roll of advocates of the High Court in which shall be entered the names of—

- (a) all persons who were, as advocates or pleaders, entitled as of right to practise in the High Court immediately before the 1st January, 1929¹, in respect thereof; and
(b) all other persons who have been admitted to be advocates of the High Court under this Act:

Provided that such persons shall have paid in respect of enrolment the stamp-duty, if any, chargeable under the Burma Stamp Act, and a fee, payable to the Bar Council, which shall be ten rupees in the case of the persons referred to in clause (a), and in other cases such amount as may be prescribed.

(3) Entries in the roll shall be made in the order of seniority, and such seniority shall be determined as follows, namely:—

- (a) all such persons as are referred to in clause (a) of sub-section (2) shall be entered first in the order in which they were respectively entitled to seniority *inter se* immediately before the 1st January, 1929¹; and
(b) the seniority of any other person admitted to be an advocate of the High Court under this Act after that date shall be determined by the date of his admission or, if he is a barrister, by the date of his admission or the date on which he was called to the Bar, whichever date is earlier:

Provided that, for the purposes of clause (b), the seniority of a person who before his admission to be an advocate was entitled as of right to practise in another High Court shall be determined by the date on which he became so entitled.

(4) The respective rights of pre-audience of advocates of the High Court shall be determined by seniority:

Provided that the [Attorney-General]² shall have pre-audience over all other advocates * * * * *

(5) The High Court shall issue a certificate of enrolment to every person enrolled under this section.

¹ Date of commencement of this Act.

² Substituted by the Union of Burma (Adaptation of Laws) Order, 1948.

³ Omitted *ibid.*

(6) The High Court shall send to the Bar Council a copy of the roll as prepared under this section, and shall thereafter communicate to the Bar Council all alterations in, and additions to, the roll as soon as the same have been made.

(7) The Bar Council shall enter in the copy of roll all alterations and additions so communicated to it.

Qualification
and admis-
sion of
advocates.

9. (1) The Bar Council may, with the previous sanction of the High Court, make rules to regulate the admission of persons to be advocates of the High Court :

Provided that such rules shall not limit or in any way affect the power of the High Court to refuse admission to any person at its discretion.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules shall provide for the following matters, namely :—

- (a) the qualifications to be possessed by persons applying for admission as advocates ;
- (b) the form and manner in which applications shall be made to the High Court for admission ;
- (c) the giving of notice by the High Court to the Bar Council of all such applications ;
- (d) the hearing by the High Court of any objection preferred on behalf of the Bar Council to the admission of any applicant ;
- (e) the charging of fees payable to the Bar Council in respect of enrolment ; and
- (f) the charging of annual subscriptions to be paid to the Bar Council after enrolment.

(3) Rules made under this section shall provide that no woman shall be disqualified for admission to be an advocate by reason only of her sex.

Misconduct.

Punishment
of advocate
for miscon-
duct.

10. (1) The High Court may, in the manner hereinafter provided, reprimand, suspend or remove from practice any advocate of the High Court whom it finds guilty of professional or other misconduct.

(2) Upon receipt of a complaint made to it by any Court or by the Bar Council or by any other person that any such advocate has been guilty of misconduct, the High Court shall, if it does not summarily reject the complaint, refer the case for inquiry either to the Bar Council or, after consultation with the Bar Council, to the Court of a District Judge (hereinafter referred to as a District Court), and may of its own motion so refer any case in which it has otherwise reason to believe that any such advocate has been so guilty.

Tribunal of
Bar Council.

11. (1) Where any case is referred for inquiry to the Bar Council under section 10, the case shall be inquired into by a committee of the Bar Council (hereinafter referred to as the Tribunal).

(2) The Tribunal shall consist of not less than three and not more than five members of the Bar Council appointed for the purpose of the inquiry by the Chief Justice of the High Court, and one of the members so appointed shall be appointed to be the President of the Tribunal.

12. (1) The High Court shall make rules to prescribe the procedure to be followed by Tribunals and by District Courts, respectively, in the conduct of inquiries referred under section 10. Procedure in inquiries.

(2) The finding of a Tribunal on an inquiry referred to the Bar Council under section 10 shall be forwarded to the High Court through the Bar Council, and the finding of a District Court on such an inquiry shall be forwarded direct to the High Court which shall cause a copy thereof to be sent to the Bar Council.

(3) On receipt of the finding, the High Court shall fix a date for the hearing of the case and shall cause notice of the day so fixed to be given to the advocate concerned and to the Bar Council and to the [Attorney-General]¹, and shall afford the advocate concerned and the Bar Council and the [Attorney-General]¹ an opportunity of being heard before orders are passed in the case.

(4) The High Court may thereafter either pass such final orders in the case as it thinks fit or refer it back for further inquiry to the Tribunal through the Bar Council or to the District Court, as the case may be, and, upon receipt of the finding after such further inquiry, deal with the case in the manner provided in sub-section (3) and pass final orders thereon.

(5) In passing final orders the High Court may pass such order as regards the payment of the costs of the inquiry and of hearing in the High Court as it thinks fit.

(6) The High Court may, of its own motion or on application made to it in this behalf, review any order passed under sub-section (4) or sub-section (5) and maintain, vary or rescind the same, as it thinks fit.

(7) When any advocate is reprimanded or suspended under this Act, a record of the punishment shall be entered against his name in the roll of advocates of the High Court, and when an advocate is removed from practice his name shall forthwith be struck off the roll; and the certificate of any advocate so suspended or removed shall be recalled.

13. (1) For the purposes of any such inquiry as aforesaid, a Tribunal or a District Court shall have the same powers as are vested in a Court under the Code of Civil Procedure in respect of the following matters, namely:— Powers of the Tribunal and Courts in inquiries.

- (a) enforcing the attendance of any person and examining him upon oath,
- (b) compelling the production of documents, and
- (c) issuing commissions for the examination of witnesses:

Provided that the Tribunal shall not have power to require the attendance of the presiding officer of any Court save with the previous sanction of the High Court or, in the case of an officer of a criminal or revenue Court, of the President of the Union.

¹ Substituted by the Union of Burma (Adaptation of Laws) Order, 1948.

¹(1A) Notwithstanding anything contained in any other law for the time being in force, no person shall, without the previous permission in writing of the President of the Tribunal or of the District Judge (as the case may be), publish any report or account of any inquiry before the Tribunal or the Court of the District Judge or the name of any Advocate whose alleged misconduct is the subject of any such inquiry.

(2) Every such inquiry shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Penal Code; and a Tribunal shall be deemed to be a civil Court for the purposes of sections 480, 482 and 485 of the Code of Criminal Procedure.

(3) For the purpose of enforcing the attendance of any person and examining him upon oath or of compelling the production of documents or of issuing commissions—

(a) the local limits of the jurisdiction of a Tribunal shall be those of the jurisdiction of the High Court; and

(b) a Tribunal may send to any civil Court having jurisdiction in the place where the Tribunal is sitting any summons or other process for the attendance of a witness or the production of a document required by the Tribunal, or any commission which it desires to issue, and the civil Court shall serve such process or issue such commission, as the case may be, and may enforce any such process as if it were a process for attendance or production before itself.

(4) Proceedings before a Tribunal or a District Court in any such inquiry shall be deemed to be civil proceedings for the purposes of section 132 of the Evidence Act and the provisions of that section shall apply accordingly.

¹(5) A Tribunal or a District Judge before which any such inquiry is held shall also be deemed to be a Court subordinate to the High Court for the purposes of the Contempt of Courts Act.

Miscellaneous.

Right of
advocates to
practise.

14. (1) An advocate shall be entitled as of right to practise—

(a) in the High Court, and

(b) save as otherwise provided by sub-section (2) or by or under any other law for the time being in force, in any other Court [subordinate to the High Court]² in the Union of Burma and before any other Tribunal or person legally authorized to take evidence, and

(c) before any other authority or person before whom such advocate is by or under the law for the time being in force entitled to practise.

(2) Where rules have been made by the Bar Council under section 15, regulating the conditions subject to which advocates of other High Courts

¹ Inserted by Act XXXII, 1947.

² Inse ted by Act IX, 1951.

may be permitted to practise in the High Court, such advocates shall not be entitled to practise therein otherwise than subject to such conditions.

15. The Bar Council may, with the previous sanction of the High Court, make rules consistent with this Act to provide for and regulate any of the following matters, namely :--

General power of Bar Council to make rules.

- (a) the rights and duties of the advocates of the High Court and their discipline and professional conduct ;
- (b) the conditions subject to which advocates of other High Courts may be permitted to practise in the High Court ;
- (c) the giving of facilities for legal education and training and the holding and conduct of examinations by the Bar Council ;
- (d) the charging of fees payable to the Bar Council in respect of the enjoyment of educational facilities provided, or of the right to appear at examinations held, by the Bar Council ;
- (e) the investment and management of the funds of the Bar Council ; and
- (f) any other matter in respect of which the High Court may require rules to be made under this section.

16. The High Court shall make rules¹ for fixing and regulating by taxation or otherwise the fees payable as costs by any party in respect of the fees of his adversary's advocate upon all proceedings in the High Court or in any Court subordinate thereto.

Power to fix fees payable as costs.

17. No suit or other legal proceeding shall lie against the Bar Council or any committee, Tribunal or member of the Bar Council for any act in good faith done or intended to be done in pursuance of the provisions of this Act or of any rule made thereunder.

Indemnity against legal proceedings.

18. All rules made under this Act shall be published in the Gazette.

Publication of rules.

219. * * * *

THE LEGAL PRACTITIONERS ACT.

CONTENTS.

CHAPTER I.

PRELIMINARY.

Sections.

- 1-2. * * * *
- 3. Interpretation clause.
- 4. Women not to be disqualified by reason only of sex.
- 5. * * * *

¹ See the High Court Rules and Orders.
² Deleted by Act IX, 1951.

CHAPTER III.

OF PLEADERS.

Sections.

6. Power to make rules as to qualifications, etc., of pleaders.
Publication of rules.
7. Certificates to pleaders.
8. Pleaders on enrolment may practise in Courts and revenue-offices.
9. * * * *
10. No person to practise as pleader unless qualified.
11. * * * *
12. Suspension and dismissal of pleaders convicted of criminal offence.
13. Suspension and dismissal of pleaders guilty of unprofessional conduct.
14. Procedure when charge of unprofessional conduct is brought in
subordinate Court or revenue-office.
Suspension pending investigation.
15. Power to call for record in case of acquittal under section 14.
16. * * * *

CHAPTER IV.

- 17—24. * * * *

CHAPTER V.

OF CERTIFICATES.

25. Fee for certificates.
26. Dismissed practitioners to surrender certificates.

CHAPTER VI.

OF THE REMUNERATION OF PLEADERS.

27. High Court and Financial Commissioner to fix fees in civil and revenue proceedings.
- 28—31. * * * *

CHAPTER VII.

PENALTIES.

32. On persons illegally practising as pleaders.
33. On suspended or dismissed pleader, etc., failing to deliver certificate.
34. On suspended or dismissed pleader practising during suspension or after dismissal.
35. Revision of fines.
36. Power to frame and publish lists of touts.

CHAPTER VIII.

MISCELLANEOUS.

Sections-

- 37. President to appoint examiners.
- 38. Exemption of advocates from provisions of Act.
- 39. * * * *
- 40. Pleaders not to be suspended or dismissed without being heard.
- 41. Definitions of " act " and " plead ".
- 42. Agreement for engagement of legal practitioner.
- 43. Right of legal practitioner to sue for fees.
- 44. Liability of legal practitioner to be sued.

FIRST SCHEDULE.

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SECOND SCHEDULE.

VALUE OF STAMPS FOR CERTIFICATES.

THE LEGAL PRACTITIONERS ACT.

[INDIA ACT XVIII, 1879.] (1st January, 1880.)¹

CHAPTER I.

PRELIMINARY.

1-2. * * * *

3. In this Act, unless there be something repugnant in the subject or context,— Interpretation clause

" Judge " means the presiding judicial officer in every civil and criminal Court, by whatever title he is designated ;

" subordinate Court " means every Court subordinate to the High Court ;

" revenue-office " includes all Courts (other than civil Courts) trying suits under any Act for the time being in force relating to landholders and their tenants or agents ;

" legal practitioner " means an advocate of the High Court or a pleader ;

" tout " means a person—

(a) who procures, in consideration of any remuneration moving from any legal practitioner, the employment of the legal

¹ Sections 1 and 2 of the Legal Practitioners Act, 1879 (India Act XVIII, 1879), came into force on the 1st January, 1880. By a notification issued under section 1, section 3 and Chapters II, III, V to VIII and the Second Schedule to the Act were extended to Lower Burma with effect from the 16th April, 1900 ; see *Burma Gazette*, 1900, Part I, page 320.