

# **UNIT I — Legal Profession & The Advocates Act, 1961**

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*KSLU — Professional Ethics & Accounting System — Study Bundle*

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# SECTION — Visual Notes

**Hook (Landmark Case):** *Indian Council of Legal Aid & Advice v. Bar Council of India (1995) 1 SCC 732* — The Supreme Court held that "The legal profession is a partner with the judiciary in administration of justice." This means an advocate is not a businessman — he is an officer of the court whose first duty is to truth.

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## 1. The Legal Profession & Its Importance

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**Hook:** *In Re Lily Isabel Thomas (1964)* — The Supreme Court declared that the right to practise law is not a fundamental right but a statutory right, regulated by the Advocates Act, 1961.

The legal profession is one of the three "noble professions" along with medicine and teaching. Its importance lies in:

- It is the **handmaid of justice** — without lawyers, courts cannot function.
- It protects citizens' rights against State excess.
- It develops jurisprudence through pleadings and arguments.
- It guides social reform (the framers of India's Constitution — Ambedkar, Nehru, Patel — were all lawyers).

**In Simple Terms:** A doctor saves the body, a teacher saves the mind, but a lawyer saves society itself by fighting for justice.

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## 2. Seven Lamps of Advocacy

These are the seven essential qualities laid down by **Justice Abbot Parry** in his book *The Seven Lamps of Advocacy*:

#	Lamp	Meaning
1	<b>Honesty</b>	Truthfulness in dealings with the court, client, and opponent.
2	<b>Courage</b>	Boldness to speak truth to power; never afraid of judges or the State.
3	<b>Industry</b>	Hard work; constant study of law and facts.
4	<b>Wit</b>	Quick presence of mind to ease tense court moments.
5	<b>Eloquence</b>	Power of clear, persuasive speech.
6	<b>Judgment</b>	The ability to weigh facts and select the best legal strategy.
7	<b>Fellowship</b>	Brotherhood among advocates — no personal enmity in court.

**Justice K.V. Krishnaswamy Iyer added an 8th Lamp:**

- **8. Tact** — Handling people and situations with sensitivity and grace.

**In Simple Terms:** Think of these as the seven flames a lawyer must keep burning. If even one goes out, his advocacy becomes weak.

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## 3. Equipments of a Lawyer

The "equipment" means the personal and professional tools an advocate must possess:

- **Knowledge of Law** — Bare Acts, latest amendments, leading judgments.
- **General Knowledge** — economics, science, sociology, current affairs.
- **A Library** — Bare Acts, AIR, SCC, commentaries.
- **Office & Clerk** — for proper file management.
- **Good Memory & Communication** — pleading, drafting, oral argument.
- **Health & Discipline** — long working hours demand stamina.
- **Honesty and a Clear Conscience** — the most powerful equipment.

**In Simple Terms:** A surgeon needs scalpels; a lawyer needs books, brains, and a backbone.

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## 4. Salient Features of the Advocates Act, 1961

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**Section 4 of the Advocates Act, 1961** — "There shall be a Bar Council for the territories to which this Act extends to be known as the Bar Council of India which shall consist of the following members..."

**In Simple Terms:** This section sets up the BCI — a national body to control the entire legal profession.

### Key Features:

- **Unified Bar:** Abolished the earlier classification of Vakils, Pleaders, Mukhtars, Attorneys, and Barristers. Now there is only **one class — Advocate**.
- **Autonomy:** The legal profession is regulated by lawyers themselves through the BCI and SBCs (not by Government).
- **All-India Practice:** An advocate enrolled in any State Bar Council can practise in any court in India (*Section 30*).
- **Two Classes of Advocates:** Senior Advocates and Other Advocates (*Section 16*).
- **Disciplinary Mechanism:** Sections 35-44 set out misconduct procedures.
- **Welfare Provisions:** Funds for advocates' welfare.

### Reasons & Objects of the Act

- To **consolidate** the law relating to legal practitioners (earlier scattered in Bar Councils Act 1926, Legal Practitioners Act 1879, etc.).
- To **unify** the Bar across India.
- To create an **autonomous** regulatory framework.
- To **uplift standards** of legal education and the profession.
- Acted on the recommendations of the **All India Bar Committee (1953)** chaired by Justice S.R. Das, and the **Fifth Law Commission Report**.

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## 5. Admission & Enrolment

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**Section 24 of the Advocates Act, 1961** — Qualifications: A person shall be qualified to be admitted as an advocate on a State Roll if: (a) he is a citizen of India; (b) he has completed the age of 21 years; (c) he has obtained a degree in law... (d) he fulfils such other conditions as specified.

**In Simple Terms:** To become an advocate you must be (1) Indian, (2) at least 21, (3) a law graduate, and (4) pay enrolment fees + clear AIBE.

### Step-by-Step Enrolment Process:

1. **Apply** to the State Bar Council where you intend to practise (Section 17).
2. **Verify** documents (degree, citizenship, character certificate).
3. **Pay enrolment fee** (Section 24(1)(f)).
4. **Enrolment Committee** examines the application.
5. **Issue of Certificate of Enrolment** (Section 22).
6. **Clear AIBE (All India Bar Examination)** within 2 years to begin actual practice (mandated post *V. Sudeer v. BCI, 1999*; brought back by BCI Rules, 2010).

### Disqualifications (Section 24A):

- Convicted of an offence involving **moral turpitude**.
- Convicted under the **Untouchability (Offences) Act, 1955**.
- Dismissed from service on grounds of moral turpitude.

**In Simple Terms:** Moral turpitude means a crime that shows the person is dishonest or cruel (e.g., theft, rape, cheating). Such people cannot become advocates.

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## 6. Rights and Privileges of an Advocate

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*"The opportunity of an advocate to practise is a right, not a privilege"* — affirmed in **O.N. Mohindroo v. BCI (1968)**.

### Rights:

- **Right to Practise** (Section 30) — in all courts including Supreme Court.
- **Right of Pre-audience** (Section 23) — order of being heard:

- Attorney-General of India
- Solicitor-General of India
- Additional Solicitor-General
- Advocate-General of the State
- Senior Advocates
- Other Advocates (by seniority)
- **Freedom from Arrest** (Civil arrest, while going to / returning from court).
- **Privileged Communication** — Section 126, Indian Evidence Act, 1872. Client-lawyer talk is confidential.
- **Right to Wear Lawyer's Robe** inside court premises.
- **Right to Enter any Court** in India (Section 30).

### **Famous statement: "Advocacy is not a craft but a calling"**

This means law is not just a job for money — it is a vocation that demands dedication, sacrifice, and high ethics. (Krishna Iyer, J., in *Bar Council of Maharashtra v. M.V. Dabholkar*).

**In Simple Terms:** A craft is a skill you sell. A calling is a service you live by. Advocacy is the second kind.

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## **7. Bar Council of India (BCI)**

**Section 4** — Establishes the BCI. **Section 7** — Lists its functions.

### **Composition (Section 4):**

- **Attorney General of India** (ex-officio Member)
- **Solicitor General of India** (ex-officio Member)
- **One member elected by each State Bar Council** from amongst its own members.
- A **Chairman** and **Vice-Chairman** elected by Council members (Section 4(1A)).

### **Functions of BCI (Section 7):**

- Lay down **standards of professional conduct & etiquette** for advocates.
- Lay down **procedure** for Disciplinary Committees.
- **Safeguard** rights, privileges & interests of advocates.
- Promote and support **law reform**.
- Recognise universities whose **law degrees** qualify for enrolment (Section 7(1)(h)).
- Conduct **All India Bar Examination (AIBE)**.
- Organise **legal aid**.
- Provide for the **election of its members**.

## Appellate Powers (Section 37 & 38):

- Hears appeals from orders of State Bar Council Disciplinary Committees.
  - Further appeal lies to the **Supreme Court** under Section 38.
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## 8. State Bar Council (SBC)

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**Section 3** — Establishment of State Bar Councils.

### Composition (Section 3):

- **Advocate-General** of the State (ex-officio).
- **Elected members** — 15 to 25 (depending on State's advocate population).
- Members elected by advocates on the State Roll for a term of 5 years.

### Powers & Functions (Section 6):

- Admit persons as advocates on its **Roll**.
- Prepare and **maintain the Roll** of advocates.
- Entertain and **determine cases of misconduct** through its Disciplinary Committee.
- **Safeguard rights** and interests of advocates.
- Promote **welfare of advocates** (Advocates' Welfare Fund Act, 2001).
- Conduct **elections** of its members.
- Provide for **legal aid**.

### Certificate of Enrolment (Section 22):

- Issued in the prescribed form once a person is enrolled.
  - Mentions name, address, registration number, and date.
  - Acts as **proof** of being an advocate.
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## 9. Senior Advocates

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**Section 16 of the Advocates Act, 1961** — "(1) There shall be two classes of advocates, namely, senior advocates and other advocates. (2) An advocate may, with his consent, be designated as senior advocate if the Supreme Court or a High Court is of opinion that by virtue of his ability, standing at the Bar or special knowledge or experience in law he is deserving of such distinction."

**In Simple Terms:** A Senior Advocate is the top rank — given by the Supreme Court or High Court to lawyers who are exceptionally skilled and experienced.

### Restrictions on Senior Advocates (BCI Rules):

- **Cannot file Vakalatnama** or act in any court (cannot directly appear without an instructing advocate).
- **Cannot accept** instructions to draft pleadings or affidavits, draft conveyances, etc.
- **Cannot directly accept a brief** from a client; must appear with an Advocate-on-Record or junior.
- **No partnership** with a non-senior advocate to share fees.

### Privileges:

- Higher rank in **pre-audience**.
- More fees (custom).
- Wear a distinctive **gown** (with flaps).
- Prestige and recognition.

Procedure now follows the guidelines laid down in *Indira Jaising v. Supreme Court of India (2017)* — a Permanent Committee evaluates candidates on a 100-point scale.

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## 10. Restrictions on Other Employment

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**BCI Rules, Chapter II, Part VI, Section VII (Rule 47-52):**

Rule	Restriction
47	An advocate shall <b>not personally engage in any business</b> .
48	He <b>may be a sleeping partner</b> in a firm only with BCI's permission.
49	An advocate <b>shall not be a full-time salaried employee</b> of any person, government, firm, corporation, or concern while practising. He must cease to practise if he takes such employment.
50	He shall not enter appearance in any case in which he has financial interest.
51	He shall not act/plead in any matter in which he is pecuniarily interested.
52	An advocate may, after obtaining BCI consent, be a Director or Chairman of a Board of Directors of a Company <b>without being a Managing Director</b> or whole-time employee, but his duties shall not be of an executive nature.

**In Simple Terms:** -  Allowed: Teaching part-time, writing books, sleeping partner with permission, non-executive director. -  Not Allowed: Full-time job, running a shop personally, working as bank's salaried legal advisor while practising.

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## 11. Training Grounds for Young Lawyers

A young advocate must be groomed before flying solo. Traditional training grounds include:

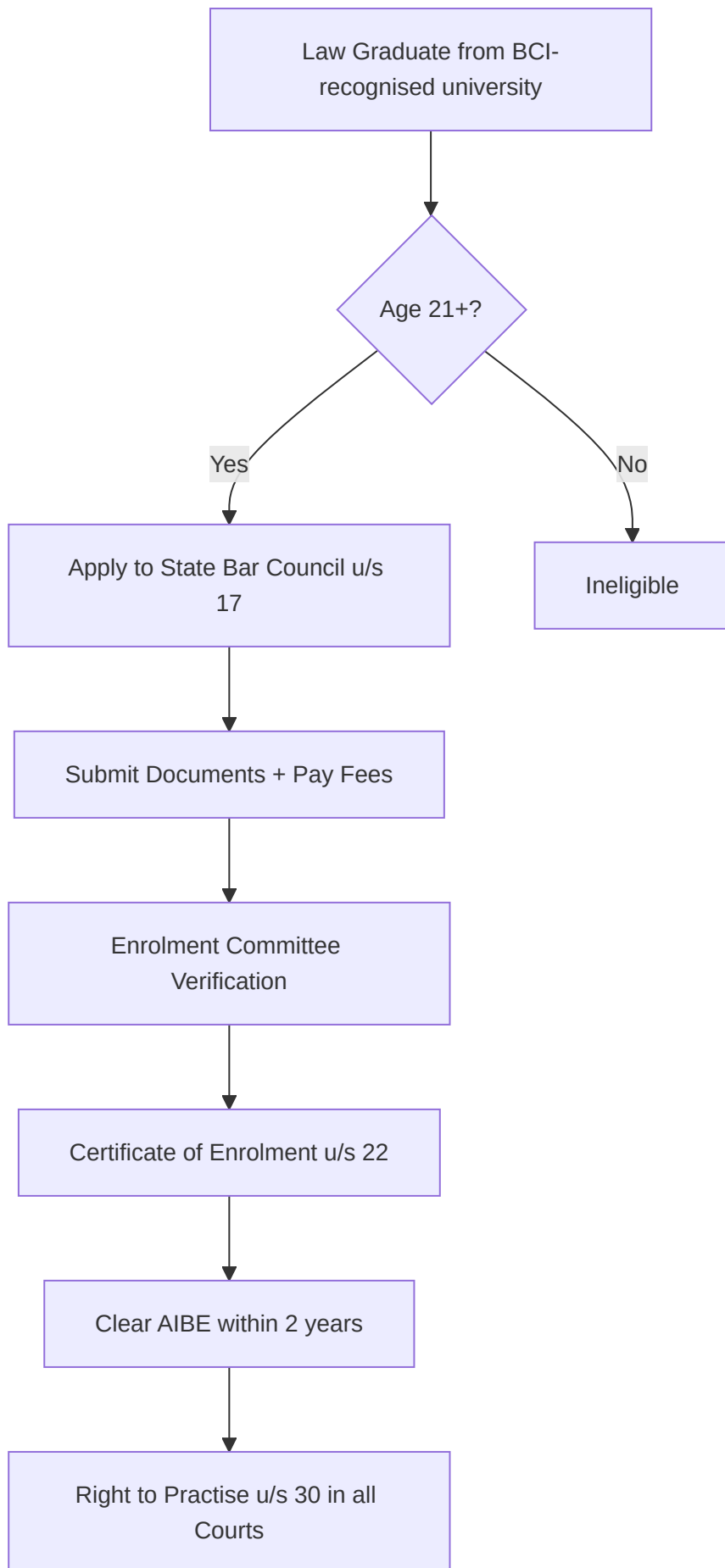
- **Senior's Chambers** — assisting in research, drafting, court visits.
- **Munsif & Magistrate Courts** — handling small cases to build confidence.
- **Legal Aid Clinics** — pro bono service and exposure to social justice.
- **Mock Trials, Moot Courts** — academic but excellent for skill-building.
- **Bar Council Training Programmes** — Continuing Legal Education (CLE).
- **All India Bar Examination** — minimum competency check.

**In Simple Terms:** A young lawyer is like a pilot — needs many hours of supervised flight before solo journey.

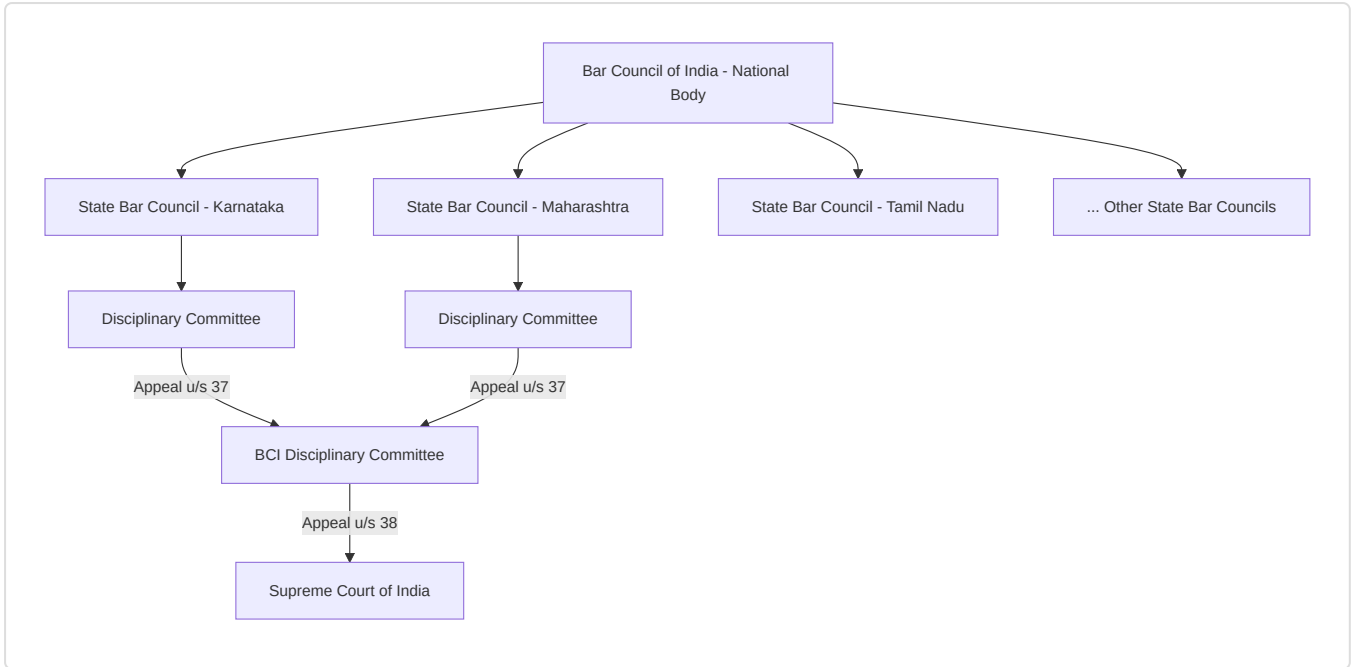
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## 12. Mermaid Charts (Visual Summary)

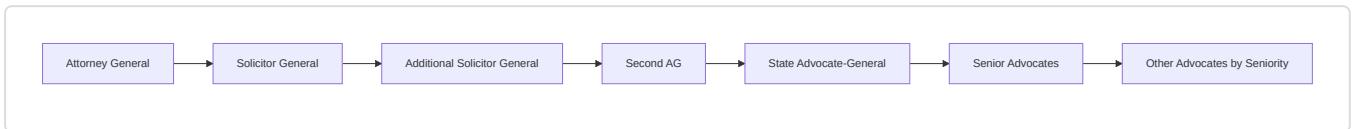
### A. Enrolment Process



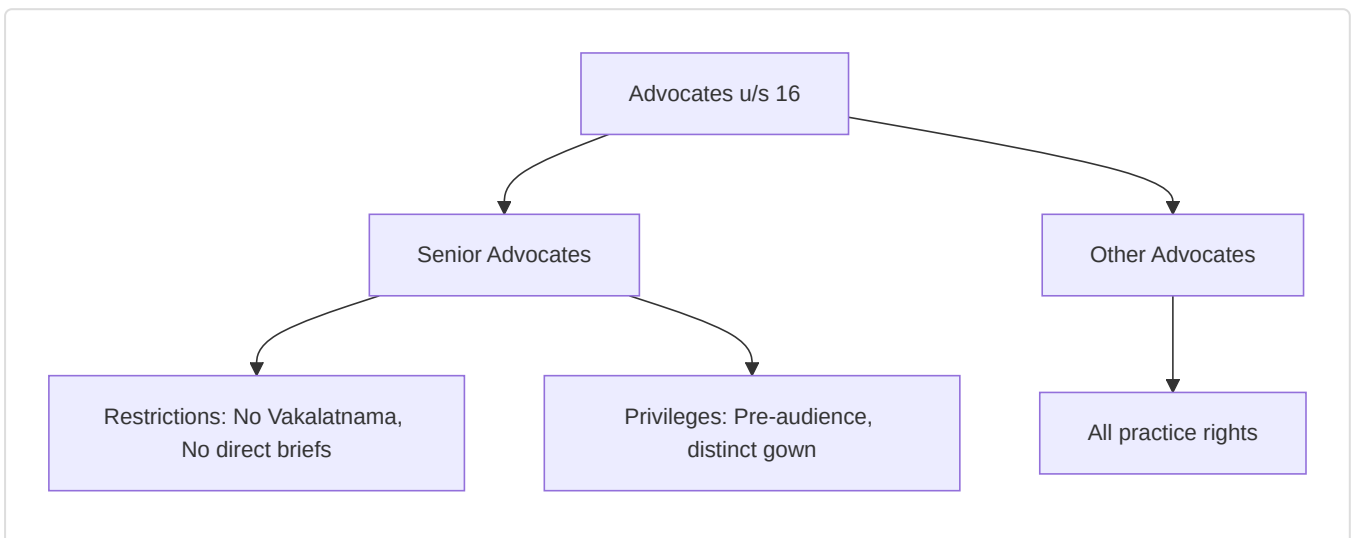
## B. Bar Council Hierarchy



## C. Pre-Audience Order (Section 23)



## D. Two Classes of Advocates



END OF UNIT I — VISUAL NOTES

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# SECTION — Answer Bank

**Exam Pattern Used (Standard 7-Step):** Synopsis → Statutory Provision → Essential Ingredients → Landmark Case Law → Critical Analysis → Conclusion

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- Q1. Discuss the salient features, reasons & objects of the Advocates Act, 1961
  - Q2. Explain the importance & responsibilities of the legal profession in administration of justice
  - Q3. Explain the seven/eight Lamps of Advocacy and Equipments of a Lawyer
  - Q4. Discuss admission, qualification, disqualification & enrolment of an advocate
  - Q5. Explain rights, privileges & disabilities of an advocate. "Advocacy is not a craft but a calling"
  - Q6. Composition, powers, functions & appellate power of the Bar Council of India
  - Q7. Powers & functions of the State Bar Council; Certificate of Enrolment
  - Q8. Restrictions on alternative employment under BCI Rules
  - Q9. Short note on Senior Advocates — privileges and restrictions
  - Q10. Short note on Training Grounds for young lawyers
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## Q1. Discuss the salient features, reasons & objects of the Advocates Act, 1961

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### Synopsis

The Advocates Act, 1961 is a Central legislation that consolidates the law relating to legal practitioners in India. It abolished the historical confusion of multiple categories (Vakil, Pleader, Mukhtar, Attorney, Barrister) and created a unified Bar with autonomous self-regulation through Bar Councils.

## Statutory Provision

- **Advocates Act, 1961** (Act No. 25 of 1961) — came into force on 19 May 1961.
- **Section 16** — Two classes of advocates (Senior & Others).
- **Section 17** — Single State Roll.
- **Section 29** — Only advocates entitled to practise law.
- **Section 30** — Right to practise in any court including Supreme Court.

## Essential Ingredients (Salient Features)

- **Unification of the Bar** — single class called "Advocate"; abolition of older categories.
- **Autonomy** — Bar Councils run by elected advocates without Government interference.
- **All-India Practice** — One enrolment, all-India right to appear.
- **Standardisation of Legal Education** — BCI prescribes minimum standards.
- **Two-Tier Council Structure** — State Bar Councils at base, BCI at apex.
- **Disciplinary Mechanism** — Sections 35-44 deal with misconduct.
- **All India Bar Examination** — minimum competency check (via 2010 BCI Rules).
- **Welfare provisions** — Advocates' Welfare Fund Act, 2001.

## Reasons & Objects of Passing the Act

- To **consolidate** earlier statutes: Legal Practitioners Act 1879, Bombay Pleaders Act, Indian Bar Councils Act 1926.
- To **unify** Indian Bar into single profession.
- To act on **All India Bar Committee Report (1953)** under Justice S.R. Das.
- To act on the **Fourteenth Report of the Law Commission (1958)**.
- To grant **autonomy** to the profession.
- To **raise standards** of legal education and practice.

## Landmark Case Law

- *O.N. Mohindroo v. Bar Council of Delhi*, AIR 1968 SC 888 — Right to practise is a statutory right under the Act, not a fundamental right.
- *Indian Council of Legal Aid & Advice v. BCI*, (1995) 1 SCC 732 — BCI has wide powers to regulate the profession including age limits for enrolment.
- *V. Sudeer v. BCI*, (1999) 3 SCC 176 — BCI cannot prescribe additional qualifications (like one-year training) beyond Section 24.

## Critical Analysis

The Act revolutionised the Indian Bar. By creating uniformity and autonomy, it placed the profession on par with developed jurisdictions. However, concerns persist: poor enforcement of misconduct procedures, lack of mandatory CLE, and rising commercialisation. The 2010 reintroduction of AIBE addressed competency concerns post-Sudeer. The Act ensures that lawyers — being officers of the court — police themselves rather than be policed by the State.

## Conclusion

The Advocates Act, 1961 is the **constitution of the Indian Bar**. It transformed a fragmented colonial structure into a unified, self-regulated profession with national standards. Its features make the Bar a partner — not a servant — of the State in dispensing justice.

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## Q2. Explain the importance & responsibilities of the legal profession in administration of justice

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### Synopsis

The legal profession is the foundation of any democratic society. Without lawyers, courts cannot operate, citizens cannot enforce their rights, and the Constitution itself remains paper words.

### Statutory Provision

- **Article 22(1) of the Constitution** — Right to legal representation.
- **Article 39A** — State to provide free legal aid (45th Amendment).
- **Section 30 of Advocates Act** — Right to practise in any Court.

### Essential Importance

- **Handmaid of Justice** — courts cannot function without lawyers presenting facts & arguments.
- **Protector of Rights** — fundamental rights need a lawyer to enforce them.
- **Builder of Jurisprudence** — every case argued shapes the law.
- **Social Reformer** — through PIL, lawyers brought reforms (Vishakha, Hussainara Khaton).
- **Educator of Public** — legal literacy programmes.
- **Watchdog on State Power** — preventing arbitrary State action.
- **Counsel to Government** — drafting laws and treaties.

### Responsibilities

- **To the Court** — assist with truth, never mislead.
- **To Client** — fiduciary duty, full disclosure.

- **To the Public** — provide legal aid, do PIL work.
- **To the State** — uphold the Constitution.
- **To the Profession** — maintain dignity, no advertising.
- **To Himself** — continuous study, integrity, health.

## Landmark Case Law

- *Hussainara Khatoon v. State of Bihar, AIR 1979 SC 1369* — Recognised free legal aid as fundamental right under Article 21.
- *State of Maharashtra v. Manubhai Pragaji Vashi, (1995) 5 SCC 730* — Legal education is necessary to fulfil Article 39A.
- *Indian Council of Legal Aid v. BCI, (1995) 1 SCC 732* — Lawyer is partner with judiciary in administration of justice.

## Critical Analysis

After independence the legal profession has done immense good — PIL movement, environmental jurisprudence, gender equality. But commercialisation, advertising attempts, and ethics violations have tarnished its image. A return to first principles — that **advocacy is a calling, not a craft** — is needed.

## Conclusion

The legal profession holds the keys to the temple of justice. Its responsibilities therefore extend far beyond winning cases — it must educate the citizen, restrain the State, and guard the Constitution. As Justice Krishna Iyer said, "*Advocacy is a noble profession and the lawyer is a soldier of justice.*"

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## Q3. Explain the seven/eight Lamps of Advocacy and Equipments of a Lawyer

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### Synopsis

**Justice Edward Abbot Parry**, an English Judge, in his book *The Seven Lamps of Advocacy* (1923) identified seven essential qualities every advocate must possess. **Justice K.V. Krishnaswamy Iyer**, an Indian jurist, added an eighth lamp.

### The Seven Lamps (Justice Abbot Parry)

1. **Honesty** — Truthfulness in dealings with the Court, client, and opponent. An advocate must never lie or mislead.
2. **Courage** — Boldness to argue unpopular cases; never to be cowed by judges, opponents, or public opinion.

3. **Industry** — Hard work, study, preparation. Without industry, brilliance is wasted.
4. **Wit** — A light touch of humour to ease tense moments and disarm hostility.
5. **Eloquence** — Persuasive speech that moves the listener to action.
6. **Judgment** — Sound legal judgment in selecting strategy, pleading, and arguments.
7. **Fellowship** — Brotherhood with fellow advocates; no personal enmity in court.

## The Eighth Lamp (Justice K.V. Krishnaswamy Iyer)

1. **Tact** — The ability to handle judges, clients, and witnesses with sensitivity and grace.

## Equipments of a Lawyer

- **Bare Acts and a Law Library** — primary source material.
- **General Knowledge** — economics, science, history.
- **Communication Skills** — drafting, oral advocacy.
- **An Office** — for client meetings and file management.
- **A Clerk / Junior** — administrative support.
- **Good Health** — for long hours.
- **Strong Memory** — for cases, sections, judgments.
- **Integrity & Conscience** — the most powerful tool.
- **Court Dress** — black coat, white bands, gown.

## Landmark Case Law

- *Bar Council of Maharashtra v. M.V. Dabholkar, AIR 1976 SC 242* — Krishna Iyer, J. observed that advocacy demands the lamps of dignity, integrity, and honour.

## Critical Analysis

The Lamps are not historical curiosities — they remain the practical ethics of advocacy. The recent decline in court etiquette, the rise of "media lawyers," and aggressive cross-examinations have caused the Lamps to flicker. Reviving the Lamps in legal education is essential.

## Conclusion

The Seven Lamps + Tact give us the **moral architecture** of advocacy. They are the eternal qualities that distinguish a lawyer from a mere legal technician.

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## Q4. Discuss admission, qualification, disqualification & enrolment of an advocate

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## Synopsis

Sections 16 to 28 of the Advocates Act, 1961 lay down the complete code for admission and enrolment.

## Statutory Provision

**Section 24 of the Advocates Act, 1961** — "Subject to the provisions of this Act and the rules made thereunder, a person shall be qualified to be admitted as an advocate on a State roll if he fulfils the following conditions— (a) he is a citizen of India; (b) he has completed the age of 21 years; (c) he has obtained a degree in law; (d) he fulfils such other conditions as may be specified; (e) he has paid... enrolment fee."

**In Simple Terms:** To become an advocate you need to be Indian, 21+, a law graduate from a BCI-recognised university, and pay enrolment fees.

## Essential Ingredients

**(A) Qualifications (Section 24):** - Indian citizenship - 21 years of age completed - LL.B. from BCI-recognised institution - Payment of enrolment fees - Such other conditions as prescribed by BCI

**(B) Disqualifications (Section 24A):** - Conviction for an offence involving **moral turpitude**. - Conviction under **Untouchability (Offences) Act, 1955**. - Dismissal/removal from employment on charges involving moral turpitude.

**(C) Procedure for Enrolment (Sections 16-28):**

Step	Action	Section
1	Apply to State Bar Council where intended to practice	Sec 17
2	Documents verified by Enrolment Committee	Sec 25
3	Payment of fees	Sec 24(1)(f)
4	Issue of <b>Certificate of Enrolment</b>	Sec 22
5	Name entered on State Roll	Sec 17
6	Clear <b>AIBE</b> within 2 years to practise	BCI Rules 2010
7	Acquire right to practise in any Court	Sec 30

**(D) Persons Admitted on State Rolls (Section 17):** - The State Roll contains: (i) Senior Advocates; (ii) Other Advocates. - A person can be enrolled on only **one** State Roll at a time. - Transfer between rolls under **Section 18**.

## Landmark Case Law

- *Indian Council of Legal Aid v. BCI, (1995) 1 SCC 732* — Rule barring persons above 45 from enrolment held VALID.
- *V. Sudeer v. BCI, (1999) 3 SCC 176* — BCI's rule requiring pre-enrolment training held ULTRA VIRES Section 24. (Note: AIBE was reintroduced post-enrolment in 2010.)
- *Bar Council of India v. Aparna Basu Mallick, (1994) 2 SCC 102* — BCI's power to prescribe educational standards upheld.

## Critical Analysis

The qualification framework balances accessibility (just LL.B. + age) with quality (AIBE). The disqualification of moral turpitude offenders protects public trust. However, the 2-year window for AIBE has caused delays. The provision allowing only one State Roll at a time prevents forum-shopping.

## Conclusion

Sections 16-28 create a transparent, merit-based pathway into the legal profession. They safeguard standards while keeping the profession accessible to all qualified citizens.

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## Q5. Explain rights, privileges & disabilities of an advocate.

### "Advocacy is not a craft but a calling"

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#### Synopsis

An advocate, on enrolment, gains both rights/privileges and corresponding disabilities. The famous dictum "*Advocacy is not a craft but a calling*" emphasises that law is a vocation — not a trade.

#### Statutory Provision

- **Section 30** — Right to practise.
- **Section 23** — Right of pre-audience.
- **Section 126, Indian Evidence Act** — Privileged communication.

#### Rights of an Advocate

- **Right to Practise (Sec 30)** — in any court including Supreme Court, before any tribunal or authority.
- **Right of Pre-Audience (Sec 23)** — order of being heard:
  - Attorney-General of India
  - Solicitor-General of India
  - Additional Solicitor-General
  - Advocate-General of the State

- Senior Advocates
- Other Advocates by seniority of enrolment
- **Right to Privileged Communication** — confidentiality of client communications (Sec 126 Evidence Act).
- **Right to Freedom from Arrest** — in civil cases, while going to / returning from court (Sec 135 CPC).
- **Right to Enter Any Court** — even when not engaged in any case.
- **Right to Wear Lawyer's Robe** — black coat, white bands.

## Privileges

- Access to law libraries.
- Travel concessions (some States).
- Welfare fund benefits.
- Higher pre-audience for Seniors.

## Disabilities / Restrictions (BCI Rules)

- **Cannot do business personally** (Rule 47).
- **Cannot be full-time salaried employee** (Rule 49).
- **No solicitation/advertising** (Rule 36).
- **No contingency fee** (Rule 20).
- **No appearance in family member's court** (Rule 6).
- **No private communication with judge** (Rule 3 Sec I).
- **No financial dealings with client** (Rules 25-32).

## "Advocacy is Not a Craft but a Calling"

- A **craft** is a manual skill sold for money (e.g., carpentry).
- A **calling** is a vocation that demands sacrifice and high ethics.
- Krishna Iyer J. in *Bar Council of Maharashtra v. M.V. Dabholkar (1976)* held: "*The legal profession is essentially a service-oriented profession. The ancestor of today's lawyer was the bar council... The pioneer in legal profession had to be a man of high moral integrity.*"
- The advocate's job is not merely to win cases but to advance justice.

## "Opportunity of Advocate to Practise is a Right, not a Privilege"

- A right is **enforceable**; a privilege is **discretionary**.
- *O.N. Mohindroo v. BCI, AIR 1968 SC 888* — Right to practise is a statutory right, not fundamental, but cannot be arbitrarily denied.

## Right of Pre-Audience (Short Note)

- Codified in **Section 23 of the Advocates Act, 1961**.
- Determines the order in which advocates are heard in court.

- AG → SG → ASG → State AG → Senior Advocates → Other Advocates.
- Equal-rank advocates are heard in order of enrolment seniority.

## Landmark Case Law

- *Bar Council of Maharashtra v. M.V. Dabholkar*, AIR 1976 SC 242 — Calling, not craft.
- *O.N. Mohindroo v. BCI* — Right to practise is statutory.
- *Supreme Court Bar Association v. Uoi*, AIR 1998 SC 1895 — Only BCI can suspend right to practise.

## Critical Analysis

The Act balances rights (freedom to practise) with disabilities (no commercial conduct) — preserving the **noble character** of the profession. However, advances in technology, online legal services, and competition from "legal-tech" challenge the no-advertising rule. Several reforms have been proposed (e.g., allowing limited advertising of "areas of practice").

## Conclusion

The rights, privileges, and disabilities create the **moral economy** of the Bar — a profession trusted because it is restrained. "*Advocacy is not a craft but a calling*" — and pre-audience is the recognition that justice has a hierarchy of service.

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## Q6. Composition, powers, functions & appellate power of the Bar Council of India

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### Synopsis

The Bar Council of India (BCI) is the **apex statutory body** governing the legal profession in India. Established under Section 4 of the Advocates Act, 1961.

### Statutory Provision

**Section 4** — "There shall be a Bar Council for the territories to which this Act extends to be known as the Bar Council of India which shall consist of the following members..."

### Composition (Section 4)

- **Attorney-General of India** — ex-officio
- **Solicitor-General of India** — ex-officio

- **One member elected by each State Bar Council** from amongst its own members.
- **Chairman & Vice-Chairman** — elected from the members (Sec 4(1A)).

## Term of Office

- Each member holds office for **5 years**.

## Powers & Functions (Section 7)

- Lay down **standards of professional conduct & etiquette** for advocates.
- Lay down **procedure** for disciplinary committees.
- **Safeguard** rights, privileges & interests of advocates.
- Promote and support **law reform**.
- Conduct **All India Bar Examination (AIBE)**.
- Recognise **universities** whose law degrees qualify for enrolment.
- Promote **legal education** standards.
- Organise **legal aid** to poor.
- Manage **Bar Council of India funds**.
- Provide for the **election** of its members.

## Appellate Power (Sections 37 & 38)

- **Section 37** — Any person aggrieved by an order of a State Bar Council Disciplinary Committee may appeal to the BCI within 60 days.
- The BCI Disciplinary Committee may pass any order (confirm, modify, set aside).
- **Section 38** — Further appeal lies to the **Supreme Court** within 60 days from BCI's order.

## Disciplinary Committee of BCI (Section 9 & 36)

- Three members — two from BCI + one co-opted advocate of 10+ years standing.
- Hears appeals from State DC + matters transferred under Section 36-B (where SBC doesn't decide within 1 year).

## Other Committees

- Legal Education Committee
- Legal Aid Committee
- Disciplinary Committees
- Executive Committee
- Welfare Committee

## Landmark Case Law

- *Bar Council of India v. Aparna Basu Mallick*, (1994) 2 SCC 102 — BCI's standards of legal education upheld.
- *Indian Council of Legal Aid v. BCI*, (1995) 1 SCC 732 — BCI can fix upper age limit.
- *V. Sudeer v. BCI*, (1999) 3 SCC 176 — BCI cannot add to qualifications under Sec 24.

## Critical Analysis

The BCI is **autonomous yet accountable** through judicial review. Its dual role — regulator and representative — creates tension. Recent controversies over fees, election irregularities, and slow disciplinary action have raised reform demands. Suggestions: separate regulatory body from representative body (like the UK Legal Services Board model).

## Conclusion

The BCI is the **apex guardian** of the Indian Bar. Its composition, powers, and appellate role demonstrate the legislative trust in lawyer-led self-regulation.

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## Q7. Powers & functions of the State Bar Council; Certificate of Enrolment

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### Synopsis

The State Bar Council is the **regional regulatory body** under Section 3 of the Advocates Act, 1961. Every State has one; some States share one (e.g., Bihar & Jharkhand had common SBC initially).

### Statutory Provision

**Section 6 of Advocates Act, 1961** — "The functions of a State Bar Council shall be — (a) to admit persons as advocates on its roll; (b) to prepare and maintain such roll; (c) to entertain and determine cases of misconduct against advocates on its roll; (d) to safeguard the rights, privileges and interests of advocates on its roll..."

### Composition (Section 3)

- **Advocate-General** of the State (ex-officio)
- **Elected members:** 15 (if advocates < 5000), 20 (if 5000-10000), 25 (if > 10000)
- Elected by advocates on the State Roll for **5 years**.

### Powers & Functions (Section 6)

- **Admit advocates** on the State Roll.
- **Prepare and maintain** the State Roll.
- **Entertain & decide** cases of misconduct.
- **Safeguard rights** of advocates on its roll.
- **Promote welfare** of advocates (Welfare Fund).
- **Conduct elections** of its members.
- Organise **legal aid**.
- Promote **law reform** within the State.
- Maintain a library and **support legal education**.

## Other Statutory Powers

- **Section 19** — Send a copy of the roll to BCI annually.
- **Section 26** — Power to remove names from the roll.
- **Section 35** — Disciplinary Committee to inquire into misconduct.

## Certificate of Enrolment (Short Note — Section 22)

**Section 22** — "(1) There shall be issued a certificate of enrolment in the prescribed form by the State Bar Council to every person whose name is entered in the roll of advocates maintained by it under this Act."

**In Simple Terms:** Once you are added to the State Roll, you are given a certificate that officially proves you are an advocate.

**Features:** - Form prescribed by BCI. - Contains name, address, registration number, date. - Issued by the SBC. - Acts as **proof of being an advocate** in any court. - Mandatory before commencing practice.

## Landmark Case Law

- *Bar Council of A.P. v. Kurapati Satyanarayana, AIR 2003 SC 178* — SBC's disciplinary order upheld.
- *Pandurang Dattatreya Khandekar v. BCM, AIR 1984 SC 110* — SBC's procedure must follow natural justice.

## Critical Analysis

SBCs are the **frontline regulator** — first to handle complaints, first to enrol. Their effectiveness varies by State; many face backlog of misconduct cases. Section 36-B's 1-year deadline (with auto-transfer to BCI) addresses delay but is rarely enforced.

## Conclusion

The State Bar Council is the **gateway to the profession**. Through enrolment, regulation, and welfare, it shapes the daily life of the practising advocate. The Certificate of Enrolment under Section 22 is the most important document an advocate possesses.

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## Q8. Restrictions on alternative employment under BCI Rules

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### Synopsis

Section 49(1)(c) of the Advocates Act empowers the BCI to prescribe standards of conduct. **BCI Rules, Chapter II, Part VI, Section VII (Rules 47-52)** restrict an advocate from undertaking other employment.

### Statutory Provision

**Rule 49, BCI Rules** — "An advocate shall not be a full-time salaried employee of any person, government, firm, corporation or concern, so long as he continues to practise, and shall, on taking up any such employment, intimate the fact to the Bar Council on whose roll his name appears and shall thereupon cease to practise as an advocate so long as he continues in such employment."

**In Simple Terms:** Choose one — either be a full-time salaried employee OR a practising advocate. You cannot be both.

### Essential Restrictions

Rule	Activity	Allowed?
47	Personal engagement in business	<input type="checkbox"/> Not allowed
48	Sleeping partner in firm	<input type="checkbox"/> Only with BCI permission
49	Full-time salaried employment	<input type="checkbox"/> Must cease practice
50	Appearance where financial interest	<input type="checkbox"/> Not allowed
51	Pleading where pecuniary interest	<input type="checkbox"/> Not allowed
52	Director / Chairman (non-executive)	<input type="checkbox"/> With BCI consent

### Allowed Activities (Permissible)

- Teaching law part-time (after court hours).
- Authoring legal books/articles.
- Examining boards / arbitration tribunals.

- Being a sleeping partner with BCI nod.
- Becoming a non-executive Director (with consent).

## Not Allowed

- Running a petrol bunk personally.
- Working as LIC/UTI agent (commercial activity).
- Running an arrack/liquor shop.
- Working as a full-time legal advisor of a bank/company.
- Engaging in any business as proprietor.

## Landmark Case Law

- *Sushma Suri v. Government of NCT of Delhi (1999) 1 SCC 330* — Lawyer-employee of statutory body considered "advocate" for promotion purposes.
- *Dr. Haniraj L. Chulani v. BCM & Goa (1996) 3 SCC 342* — Rule 49 upheld; doctor wanting to also practise law refused.
- *Satish Kumar Sharma v. BCH (2001) 2 SCC 365* — Rule 49 protects independence of advocates.

## Critical Analysis

The rule rests on the principle that an advocate must be **independent**. A salaried employee owes loyalty to his employer — but an advocate's first duty is to the **court**. The two are inconsistent.

The rule has been criticised as too rigid in the modern economy. Many young lawyers do "in-house counsel" roles. The BCI now allows enrolment without immediate practice — those who don't practise can take employment without being struck off (provided they intimate the SBC).

## Conclusion

Rules 47-52 protect the **independence** of the advocate. They embody the principle that "*You cannot serve two masters.*" An advocate must choose between commerce and the calling — but not both.

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## Q9. Short note on Senior Advocates — privileges and restrictions

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### Synopsis

Section 16 of the Advocates Act, 1961 creates **two classes** of advocates — Senior Advocates and Other Advocates. Senior designation is a recognition of merit by the Supreme Court or High Court.

### Statutory Provision

**Section 16(2)** — "An advocate may, with his consent, be designated as senior advocate if the Supreme Court or a High Court is of opinion that by virtue of his ability, standing at the Bar or special knowledge or experience in law he is deserving of such distinction."

## Privileges of Senior Advocates

- Higher rank in **pre-audience** (Sec 23).
- Distinctive **gown with flaps**.
- Higher prestige and (custom) higher fees.
- Direct **letters patent** appearance permitted.
- Listed separately in **Cause Lists**.

## Restrictions on Senior Advocates (BCI Rules, Sec III, Rule 8)

- **Cannot file Vakalatnama** or act in any court.
- **Cannot directly accept** instructions from a client.
- **Cannot draft** pleadings, affidavits, agreements.
- Must appear with an **Advocate-on-Record (SC)** or junior (HC).
- **No partnership** with non-senior advocates.
- **Cannot accept conveyancing** work.

## Designation Procedure

- Old practice: discretionary, often opaque.
- **Indira Jaising v. Supreme Court of India (2017) 9 SCC 766** — SC laid down a **100-point grading system**:
  - 10 pts for years of practice
  - 25 pts for reported and unreported judgments
  - 25 pts for publications, teaching
  - 40 pts for personality, test, and interview by Permanent Committee
- A **Permanent Committee** headed by the CJI now evaluates candidates.

## Landmark Case Law

- *Indira Jaising v. Supreme Court of India, (2017) 9 SCC 766* — Designation guidelines.
- *S.C. Gupta v. Union of India, AIR 1982 SC 149* — Importance of independence of senior advocates.

## Critical Analysis

The Senior Advocate system fosters **expertise specialisation** but has been criticised as elitist — only a few hundred designations in a 1.5 million Bar. Post-Jaising, the process is more transparent. The restriction on direct briefs ensures Seniors focus on advocacy, not paperwork — but it also increases costs for clients.

## Conclusion

Senior Advocates are the **doyens of the Bar** — recognised for excellence, restricted to oral advocacy, and bound by stricter etiquette. The 2017 guidelines have democratised the process while preserving the dignity of the designation.

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## Q10. Short note on Training Grounds for young lawyers

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### Synopsis

The training of a young lawyer is critical to the future of the Bar. The transition from law student to courtroom advocate requires structured exposure.

### Traditional Training Grounds

- **Senior's Chambers** — Joining a Senior Advocate for 2-5 years; learning drafting, research, court craft. *The most traditional training ground.*
- **Lower / Trial Courts** (Munsiff, Magistrate) — Handling small civil/criminal cases; developing courtroom confidence.
- **Legal Aid Clinics** — pro bono service; understanding marginalised litigants.
- **Public Prosecutor's Office** — Criminal practice exposure.
- **Government Pleader's Chambers** — Civil litigation involving State.
- **Mooting & Internships** (during law school) — academic preparation.

### Modern Training Grounds

- **AIBE (All India Bar Examination)** — minimum competency check.
- **NLSAT (Bridge Course)** — proposed by some State Bars.
- **Continuing Legal Education (CLE)** — short courses by BCI.
- **In-house counsel programmes.**
- **Mediation & Arbitration training** centres.

### Legislative & Policy Support

- *V. Sudeer v. BCI (1999)* — Held: Pre-enrolment training cannot be imposed beyond Section 24.
- *Bar Council of India v. Bonnie Foi Law College (2023)* — BCI's AIBE upheld; bridge courses encouraged.
- BCI Rule on **AIBE post-enrolment** — 2010.

### Importance

- Develops **court craft** — eloquence, decorum, presence.

- Inculcates **professional ethics** by example.
- Builds **client network**.
- Sharpens **drafting and research** skills.

## Critical Analysis

The Indian Bar lacks a **mandatory structured training programme** unlike the UK pupillage or US bar fellowships. Most learning is informal. Reforms have been proposed: mandatory 1-year apprenticeship, CLE credits, mentorship schemes.

## Conclusion

Training grounds are the **nursery of the Bar**. Senior chambers, lower courts, and legal aid clinics remain the most fertile grounds. Without quality training, the future of the profession is at risk.

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**END OF UNIT I — ANSWER BANK**

# SECTION — Problem Solver

Methodology Used: IRAC I — Issue • R — Rule • A — Analysis • C — Conclusion

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## Clickable Index

- [Problem 1: Alternative Employment/Business \(LIC/UTI/Sleeping Partner/Teaching/Petrol Bunk/Arrack Shop\)](#)
- [Problem 2: Full-time Legal Advisor wants to Represent Employer](#)
- [Problem 13: Enrollment Refused in One State, Wants to Apply Elsewhere; Welfare Funds on Shifting Residence](#)

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## Problem 1: Alternative Employment/Business

**Fact Pattern:** Mr. X intends to engage in alternative business or employment — such as working as an LIC/UTI agent, acting as a sleeping partner in a firm, teaching in law/management colleges, running a petrol bunk, running an arrack shop, or doing part-time jobs — while practising as an advocate. Does this amount to professional misconduct, or can the State Bar Council reject his enrolment? (*Years asked: Jan 2011, Dec 2013, June 2014, June 2016, June 2018, June 2019*)

### I — Issue

- Whether engaging in (a) LIC/UTI agency, (b) sleeping partnership, (c) teaching, (d) petrol bunk, (e) arrack shop, or (f) part-time jobs while practising as an advocate amounts to **professional misconduct** under Section 35 of the Advocates Act, 1961?
- Whether the State Bar Council can **reject enrolment** on the ground of such intended employment?

## R — Rule

**Rule 47, BCI Rules (Chapter II, Part VI, Section VII)** — "An advocate shall not personally engage in any business; but he may be a sleeping partner in a firm doing business provided that in the opinion of the appropriate State Bar Council, the nature of the business is not inconsistent with the dignity of the profession."

**Rule 49** — "An advocate shall not be a full-time salaried employee of any person, government, firm, corporation or concern, so long as he continues to practise..."

**Rule 52** — "Nothing in these rules shall prevent an advocate from accepting after obtaining the consent of the State Bar Council, part-time employment provided that in the opinion of the State Bar Council, the nature of the employment does not conflict with his professional work."

**In Simple Terms:** An advocate cannot personally run a business or take a full-time salaried job. He can do limited part-time work (like teaching) only with BCI/SBC permission. Sleeping partner = allowed with consent.

## A — Analysis (Activity by Activity)

Activity	Permissibility	Why?
LIC/UTI Agent	<input type="checkbox"/> Not allowed	Commercial agency = "engaged in business" (Rule 47). It also requires constant soliciting, which is contrary to the dignity of the profession.
Sleeping Partner in a Firm	<input type="checkbox"/> Allowed <i>with consent</i> of SBC (Rule 47 proviso)	Sleeping partner is a passive investor — not personally running the business.
Teaching in Law/Management College (Part-time)	<input type="checkbox"/> Allowed <i>with consent</i> of BCI/SBC (Rule 52)	Teaching is intellectually consistent with the profession; widely permitted.
Teaching Full-time / Whole-time Lecturer	<input type="checkbox"/> Not allowed	Becomes full-time salaried employment (Rule 49). Must cease practice.
Running a Petrol Bunk (Personally)	<input type="checkbox"/> Not allowed	Direct involvement in business (Rule 47).
Running an Arrack Shop	<input type="checkbox"/> Not allowed	Apart from being a "business" under Rule 47, it is <b>inconsistent with the dignity</b> of the profession (and may even attract Rule 7(1) on moral character).
Part-time Jobs (general)	Depends — allowed only with BCI/SBC consent and only if not conflicting with profession (Rule 52).	

## Landmark Cases

- *Dr. Haniraj L. Chulani v. Bar Council of Maharashtra & Goa, (1996) 3 SCC 342* — A medical doctor wanting to enrol as advocate while continuing his practice was refused. Rule 49 upheld. SBC has power to refuse enrolment under Section 24.
- *Sushma Suri v. Government of NCT of Delhi, (1999) 1 SCC 330* — Lawyers employed in government can be "advocates" for promotion purposes only if they perform legal work.
- *Satish Kumar Sharma v. Bar Council of HP, (2001) 2 SCC 365* — Rule 49 protects the independence of the legal profession.

## Can SBC Reject Enrolment?

- Yes. Under **Section 24(1)(e)** read with **Section 26**, the SBC can refuse enrolment if the applicant is engaged in any avocation inconsistent with the dignity of the profession.
- However, mere *intention* to take up such work is rarely a ground for refusal — the SBC typically enrolls first and disciplines later if the lawyer breaches the rules.
- For full-time employment (Rule 49), the SBC may refuse enrolment if the applicant insists on continuing the employment.

## C — Conclusion

Activity	Verdict
LIC/UTI Agent	<input type="checkbox"/> Misconduct under Rule 47. SBC can take disciplinary action.
Sleeping Partner	<input type="checkbox"/> Permissible with SBC consent. Not misconduct.
Part-time Teaching	<input type="checkbox"/> Permissible with BCI/SBC consent. Not misconduct.
Petrol Bunk (personal)	<input type="checkbox"/> Misconduct under Rule 47.
Arrack Shop	<input type="checkbox"/> Misconduct — both business + dignity violation.
Full-time Job	<input type="checkbox"/> Must cease practice under Rule 49.

**Final Verdict:** Mr. X must choose wisely. He should: 1. **Take SBC consent** before any side engagement. 2. **Avoid all direct business activities.** 3. **Restrict employment to non-conflicting part-time work** (teaching, writing). 4. If insisting on full-time employment → must surrender right to practice till employment continues. Failure to comply will invite disciplinary action under Section 35 leading to suspension or removal from rolls.

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## Problem 2: Full-time Legal Advisor

**Fact Pattern:** Mr. X joins a bank or company as a full-time legal advisor and subsequently wants to represent his employer in court as an advocate. Advise. (*Years asked: Dec 2014, June 2019*)

### I — Issue

- Can a person who is a **full-time salaried legal advisor** of a bank/company simultaneously practise as an **advocate** and represent the same employer in court?

### R — Rule

**Rule 49, BCI Rules** — "An advocate shall not be a full-time salaried employee of any person, government, firm, corporation or concern, so long as he continues to practise, and shall, on taking up any such employment, intimate the fact to the Bar Council on whose roll his name appears and shall thereupon cease to practise as an advocate so long as he continues in such employment. Nothing in this rule shall apply to a Law Officer of the Central Government or a State or of any public corporation or body constituted by statute who is entitled to be enrolled under the rules of his State Bar Council made under section 28(2)(d) read with section 24(1)(e) of the Act despite his being a full-time salaried employee."

**In Simple Terms:** A full-time salaried employee CANNOT be a practising advocate — except for "Law Officers" who are entitled to enrol under SBC rules (this exception covers government law officers like Standing Counsel).

**Section 24(1)(e), Advocates Act, 1961** — Allows enrolment of "Law Officers" of governments and public corporations subject to SBC rules.

## A — Analysis

**Step 1 — Nature of Employment Matters:** - A **private bank or company's** in-house "legal advisor" who is full-time salaried = NOT permitted under Rule 49. - He must cease practice as an advocate; his name should be suspended from rolls during such employment.

**Step 2 — Exception for Law Officers:** - The exception in Rule 49 covers **Government Law Officers** and law officers of "public corporation or body constituted by statute" who are entitled to enrol. - A private bank/company does NOT fall under this exception.

**Step 3 — Can He Represent His Employer?** - Since he must cease practice, he is not an advocate and cannot appear in court at all. - If he insists on appearing for his employer, he is practising without being an active advocate = unauthorised practice.

**Step 4 — Even if Employer is Public Sector:** - For PSUs (public corporations), if SBC rules under Section 24(1)(e) permit, he can both be a Law Officer AND a practising advocate. But the rule applies strictly only to those bodies created by statute.

## Landmark Cases

- *Sushma Suri v. Govt. of NCT of Delhi, (1999) 1 SCC 330* — Held: Lawyer-employee of a statutory body can be "advocate" for promotion purposes only if his work is legal in nature.
- *Satish Kumar Sharma v. BCH, (2001) 2 SCC 365* — Reaffirmed that Rule 49 ensures independence; a full-time employee cannot also be a practising advocate.
- *Deepak Aggarwal v. Keshav Kaushik, (2013) 5 SCC 277* — Distinguished Law Officers from in-house counsel.

- *Mallaraddi H. Itagi v. High Court of Karnataka, (2015) 11 SCC 466* — Even retired Law Officers' rights re-examined.

## C — Conclusion

### Advice to Mr. X:

1. **If he joins a private bank/company** as full-time legal advisor:
2. He must **intimate the SBC** under Rule 49.
3. His name will be **removed/suspended** from the active roll.
4. He **cannot appear in court** for his employer (or anyone else).
5. The bank/company must hire a different practising advocate to appear.
6. **If he becomes a Law Officer of a government or statutory body:**
7. He may, with SBC permission, continue to practise.
8. He can appear for his employer in court.
9. **If he wishes to both continue full-time employment AND practise:**
10. Not permissible (except in the statutory law officer exception above).
11. Doing both = professional misconduct under Section 35.

**Final Verdict:** Mr. X cannot represent his bank/company as an advocate while drawing a full-time salary. He must choose — either resign and re-activate practice OR continue employment and surrender practice rights.

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## Problem 13: Enrollment Across States & Welfare Funds

**Fact Pattern:** Mr. X applies for enrolment in one State Bar Council but is refused; he wishes to know if he can apply elsewhere. Alternatively, he wishes to shift his residence to another state and claim welfare funds. Advise him. (*Years asked: Jan 2011, Dec 2015*)

### I — Issue

- (a) If an applicant is **refused enrolment** by one State Bar Council, can he apply to another SBC?
- (b) If an enrolled advocate shifts residence to another State, can he **transfer** his name and claim welfare benefits?

### R — Rule

**Section 17(4) of Advocates Act, 1961** — "No person shall be enrolled as an advocate on the rolls of more than one State Bar Council."

**Section 18 of Advocates Act, 1961** — Transfer from one State Roll to another: "(1) Notwithstanding anything contained in section 17, any person whose name is entered as an advocate on the roll of any State Bar Council may make an application in the prescribed form to the Bar Council of India for the transfer of his name from the roll of that State Bar Council to the roll of any other State Bar Council and, on receipt of any such application the Bar Council of India shall direct that the name of such person shall, without the payment of any fee, be removed from the roll of the first mentioned State Bar Council and entered in the roll of the other State Bar Council and the State Bar Councils concerned shall comply with such direction."

**Section 26A** — Power to remove names; **Section 26** — Removal from roll on certain grounds.

**Advocates' Welfare Fund Act, 2001** — Each State has its own fund; advocates registered with that SBC are entitled.

**In Simple Terms:** - One advocate = one State Roll at a time. - If refused, he can re-apply or apply elsewhere (no statutory bar). - If shifting States, he must apply to **BCI** for transfer under Section 18.

## A — Analysis

### (A) Refused Enrolment by One SBC — Can He Apply Elsewhere?

- **Yes**, there is no statutory bar.
- However, the second SBC may verify why the first refused. If refusal was due to disqualification under Section 24A (moral turpitude conviction), the second SBC will also refuse.
- If refusal was due to procedural reason (incomplete documents, residence), correction may allow re-application.
- He may also **appeal under Section 26(3)** to the BCI against the SBC's refusal.

### (B) Shifting Residence to Another State — Transfer Procedure

- Apply to **BCI** under **Section 18(1)**.
- BCI directs removal from old SBC and entry in new SBC roll.
- **No fee** payable for the transfer.
- Application opposed only on certain grounds (e.g., disciplinary proceedings pending) under Section 18(2).

### (C) Welfare Fund Claim

- Each State has its own Welfare Fund under the Welfare Fund Act, 2001 (or State Act).
- On transfer, the advocate becomes a member of the new SBC's fund.
- Contributions in the old SBC may or may not be transferable — depends on the inter-State arrangement.
- He must apply afresh to the new SBC for membership of the new Welfare Fund.

## Landmark Cases

- *Bar Council of India v. Surya Narayan, AIR 1985 AP 244* — Transfer procedure under Section 18 explained.
- *Praveen Pandey v. State of UP* — Court held that an advocate seeking transfer must show genuine relocation.
- *Vijay Pratap Singh v. Dukh Haran Nath Singh, AIR 1962 SC 941* — Procedural fairness in enrolment refusal cases.

## C — Conclusion

### Advice to Mr. X:

**Scenario A — Refused Enrolment:** 1. **Appeal to BCI** within 30 days under Section 26(3) against the refusal. 2. If grounds were technical (e.g., missing certificate) — rectify and re-apply. 3. He may apply to **another SBC** (no bar), but disqualifications attach to the person, not the SBC. If under Section 24A disqualification, the second SBC will also refuse.

**Scenario B — Shifting Residence:** 1. Apply to **BCI under Section 18** for transfer. 2. **No fee** is payable. 3. On approval, his name is removed from old SBC and entered in new SBC roll. 4. He retains his **seniority** of original enrolment date. 5. He must **separately apply** to the new SBC's Welfare Fund for membership/benefits.

**Final Verdict:** Refusal by one SBC does NOT permanently bar enrolment. The applicant has appeal rights to BCI and can also re-apply. For shifting residence, Section 18 provides a smooth fee-free transfer process. Welfare benefits accrue with the SBC of current registration.

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**END OF UNIT I — PROBLEM SOLVER**