

The Advocates' Welfare Fund: Lawyers' Fund or Lawyers' Loot?

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Introduction

The Advocates' Welfare Fund Act, 2001 is yet another central legislation added to the multitude of acts, rules and regulations that confound us and complicate the legal scenario in India. This paper attempts to analyse the framework of the Act, the need for such a central legislation, the purpose it intends to serve and a critical evaluation of the concept.

Frame work of the Act

The Advocates' Welfare Fund Act, 2001 is an Act to provide for the constitution of a Welfare Fund for the benefit of advocates and for matters connected therewith and incidental thereto. It came into being on 14 September, 2001 and extends to the whole of India except in those states which already have a state Welfare Fund Act functioning (the list of such Acts is given in the Schedule II of this Act).

Constitution of Advocates' Welfare Fund

There shall be credited to the Welfare Fund:

- an amount equal to twenty per cent of the enrolment fee received by the state Bar Council shall be annually paid to the fund under clause (f) of Section 24 of the Advocates Act, 1961 (Section 15);
- any other contribution made by the state Bar Council under [Section 3(2)(b)];
- any voluntary donation or contribution made to the fund by the Bar Council of India, any state Bar Association, any state Advocates' Association or other association or institution, or any advocate or other person under [Section 3 (2)(C)];
- any grant which may be made by the central government or a state government to the fund after due appropriation made in this behalf under [Section 3(2)(d)];
- the Trustee Committee may, with prior approval of the appropriate government and the state Bar Council borrow, from time to time, any sum required for carrying out the purposes of this Act under [Section 12(1)];
- an application fee of Rs 200 collected from every applicant at the time of application for membership to the fund under [Section 18(4)];
- an annual subscription of Rs 50 collected from every member who is not a senior advocate under [Section 18(5)];
- an annual subscription of Rs 1,000 collected from every member who is a senior advocate under [Section 18(5)(Proviso)];
- any sums received from the Life Insurance Corporation of India or any other insurer on the death of any member of the fund under any Group Insurance of the members of the fund under [Section 3(2)(g)];
- any profit or dividend or refund received from the Life Insurance Corporation of India or any other insurer in respect of policies of Group Insurance of the members of the fund;
- any interest or dividend or other return on any investment made out of any part of the fund;
- all sums collected by way of sale of Advocates' Welfare Fund stamps under Section 26.

Establishment of a Trustee committee [Section 4]

The Act provides for the establishment of a Advocates' Welfare Fund Trustee Committee which shall be a body corporate having perpetual succession and a common seal with power to acquire, hold and dispose of property and shall, by the said name, sue and be sued.

The Trustee Committee shall consist of:

- (a) the Advocate General of a stateChairperson, *ex officio*;
 Provided where there is no
 Advocate General of a state, the
 appropriate government shall nominate
 a senior advocate to be the Chairperson;
- (b) the Secretary to the appropriateMember, *ex officio*;
 government in its Law Department
 Or Ministry
- (c) the Secretary to the appropriateMember, *ex officio*;
 government in its Home Department or
 Ministry
- (d) the Chairman of the state Bar CouncilMember, *ex officio*;
- (e) the government Pleader or the PublicMember;
 Prosecutor, as may be nominated by
 the appropriate government
- (f) two advocates to be nominated by theMembers;
 state Bar Council
- (g) the Secretary of the state Bar CouncilSecretary, *ex officio*.

Other features of the Trustee Committee are:

- The Chairperson nominated under the proviso shall hold office for a period not exceeding three years from the date on which he enters upon his office.
- Every member of the Trustee Committee shall hold office for a period not exceeding three years from the date on which he enters upon office.
- The Trustee Committee shall meet at least once in every calendar month and at least four such meetings shall be held in every year to transact business under this Act and the rules made thereunder.[Section 8]

The functions of the Trustee Committee include the following:

- hold the amounts and assets belonging to the fund in trust;
- receive applications for admission or readmission as the members to the fund, and dispose off such applications within ninety days from the date of receipt thereof;
- receive applications from the members of the fund, their nominees or legal heirs, as the case may be, for payment out of the fund, conduct such inquiry as it deems necessary and dispose of applications within five months from the date of receipt thereof;
- record in the minutes book of Trustee Committee, its decisions on the applications;

- pay to the members of the fund or their nominees or legal heirs, as the case may be, amounts at the rates specified in the Schedule I;
- send such periodical or annual reports as may be prescribed, to the appropriate government and the state Bar Council;
- communicate to the applicants, by registered post with acknowledgment due or through electronic mode, the decisions of the Trustee committee in respect of applications for admission or re-admission as members to the fund or claims to the benefit of the fund;
- do such other acts as are, or may be, required to be done under this Act and the rules made thereunder.

Welfare Fund Stamps

Sections 26 and 27 of the Act deal with the various provisions regarding the Advocates' Welfare Fund Stamp. Section 27 of the Act requires every advocate to affix stamp of a value ranging from Rs 5 to Rs 25 on every *Vakalatnama* filed by him. The value of the stamp to be affixed would depend on the nature of the court where the *Vakalatnama* has been filed. According to Section 2(u) of the Act, *Vakalatnama* includes memorandum of appearance or any other document by which an advocate is empowered to appear or plead before any court, tribunal or other authority.

Other notable provisions of the Act include:

- Every advocate who has been the member of the fund for a period not less than five years shall, shall on the cession of his practice, be paid an amount at the rate specified in Schedule I. If in case the member dies before receiving such amount payable to him, his nominee or legal heir shall be entitled to receive the same under [Section 21].
- The interest of any member in the fund, or the right of the member in the fund or the nominee or legal heir to receive any amount from the fund, shall not be assigned, alienated or charged and shall not be liable to attachment under any decree or order of any court, tribunal or other authority and further it has been stated that, no creditor shall be entitled to proceed against the fund or the interest therein of any member or legal heir under [Section 22].
- All income, profits and gains accruing to the fund shall be exempt from income tax under [Section 23].
- Appropriate government reserves the right to supersede the Trustee Committee for a period not exceeding six months in case it is of the opinion that the committee has become incapable to perform the functions assigned to it under the Act under [Section 34].
- The central government being the appropriate government, may, by notification, make rules for carrying out the provisions of the Act under [Section 35].
- The state government, being the appropriate government, may, by notification, make rules for carrying out the provisions of this Act and not consistent with the rules, if any, made by the central government.

The Delhi Advocates' Welfare Fund

As the Advocates' Welfare Fund Act, 2001 was a result of lobbying done by the Delhi State Bar Council, the present effort would be directed at examining the functioning of the Delhi Advocates' Welfare Fund. An explicit evaluation is not possible as it is still in a stage of infancy. However, the following account attempts to give an account of the working of the fund at its incipient stage. The Delhi Advocates' Welfare Fund has come into existence under the provisions of this Act since November 2001.

The Trustee Committee is constituted of the following members:

- Mukul Rahtogi, Chairman, Solicitor General nominated by the central government.
- Surya Prakash Khathri, Secretary, Honourable Section of Delhi Bar Council
- K C Mitthal, Member, Chairman of Delhi Bar Council)

- Hansraj Banga, Member, (Nominated by the state Bar Council)

- Jathan Singh, Member, Secretary, Legal affairs Government of India; Secretary, Ministry of Home affairs, Government of India, (Nominated by the state Bar Council)

Till date the Trustee Committee has deliberated on the applications of three advocates suffering from cancer, bypass heart surgery and kidney failure respectively. And a decision has been taken to bestow an amount of Rs 50,000 each, which is actually more than what the Act provides for. It is heartening to hear that the Trustee Committee is already looking at amending the schedule regarding the amount of money payable as it felt that the amount prescribed there in is inadequate. With regard to this, Mitthal said that on enrolment of all the advocates, plans are on the anvil to avail of a group insurance scheme and provide for a compensation of at least of Rs 5,00,000 to the dependents of every member in the event of his death and similar substantial compensation amount in case of other disabilities not amounting to death.

The state government has allocated an amount of Rs 1 crore to the fund and a similar amount is also being considered by the central government. Around Rs 20 lac have been collected by way of sale of the Welfare Fund stamps and also around Rs 30 lac have been collected by virtue of donations from senior advocates. The money allocated by the fund has been used to extend and air-condition the library at the Tiz Hazari court. Presently, the fund money has not been invested but kept in the nationalised banks.

At present there are around 3,000 members and it is hoped that by the end of this year all the advocates in the Delhi Bar would become members of the fund. Although there are two members of the Trustee Committee from the central government, yet there is not much government interference with the daily activity concerning the fund.

The Necessity of a Central Legislation

The need for a central legislation regarding the Advocates' Welfare Fund was what perplexed me. The only source where I could find the answer was the Trustee Committee Chairman himself. And the insight given by K C Mitthal in reply to my queries is worth a mention. He said that the Act was not an act of affection by the government for the advocates but was the consequence of a longstanding demand by the lawyers to render themselves unto a law. The reason can be traced to the previous attempts of constituting a voluntary welfare fund, which were a failure due to lack of compulsion in effecting membership. Hence the main purpose of the legislation was to effectuate compulsory membership to the fund.

Though the lawyers' plea of a need for the legislation comes across as absolutely justifiable, a diligent analysis of the underlying motivation behind the Act raises a few thought-provoking issues.

Points to Ponder

- Was the need for compulsory membership the only cause that made the advocates persuade the government to pass the legislation?
- What does the Advocates' Act, 1961 have to say about this?
- Is the levy of the Welfare stamp justified?

- What is the logic of particularised welfare entitlements to lawyers? Is this not “clientelism”—vote bank politics—at work?
- If lawyers, a self-regulating profession, need state welfare, then what about other professional bodies like doctors and chartered accountants?
- Is not this another plot for a free lunch that most organised special sections in a statist regime avail at the cost of the rest of the people?

Whose Fund Is It Anyway?

A superficial analysis of the lawyers’ reasoning of the need for a Welfare Fund Act would make it seem absolutely justified. However, an insight into the motive and claim for the legislation unveils another of the absolute state conspiracies that often go unnoticed. Do the lawyers have a genuine plea when they say that they wanted the Act only to effect compulsory membership?

No, it cannot be a genuine reason as advocacy in India has always been a completely self-governed body. The Advocates’ Act, 1961 has conferred such inalienable powers on the Bar Council to govern the profession that it does not need any state intervention or state regulation to effect compulsion within the profession. The state Bar Council can frame rules with consummate ease within the ambit of its power to compel membership to the fund and also levy a mandatory periodical fee. In view of this, what was the need for a central legislation? The hunger for the Act lies in the free lunch, which is in the contribution of the government to the fund. Why? Whose fund is it anyway?

What does the Advocates’ Act, 1961 have to say about this?

As mentioned earlier the Advocates’ Act, 1961 is an Act to consolidate and regulate the legal profession in India. It provides for the constitution of central and state Bar Council to regulate the profession. And the Advocates’ Act, 1961, confers power upon the state Bar Councils as well as the Bar Council of India, inter alia, to constitute through their rules one or more funds for the purpose of “giving financial assistance to organise welfare schemes for the indigent, disabled or other advocates.” The Act further provides that a state Bar Council and the Bar Council of India may receive grants, donations, gifts or benefactions for the said purpose which shall be credited to the appropriate fund or funds constituted under the Act. Moreover, the Advocates’ Act, 1961, does not authorise levy of any welfare fund stamp on *Vakalatnama*. So if the Advocates’ Act lays down all the provisions required for constituting a Welfare Fund then what was the necessity for a separate legislation? Whose fund is it anyway?

Is the levy of the Welfare Fund Stamp justified?

The Advocates’ Welfare Fund Act, 2001 requires every advocate to attach a Welfare Fund stamp on the *Vakalatnama*. For the very purpose of this Act the definition of a *Vakalatnama* has been expanded so that even a letter of authority that goes through the court requires a Welfare Fund stamp attached to it. This results in the coercion of the client to contribute to a fund of which he is neither a member nor is going to benefit from it. Moreover, as mentioned earlier, the Advocates’ Act, 1961 does not authorise the levy of welfare stamp on *Vakalatnama*. The Advocates’ Act, which laid down the laws governing the legal profession in our country, did not authorise the levy of any kind of welfare stamp. The intention was to protect the clients from paying for an Advocates’ Welfare Fund under compulsion. The noteworthy point here is that the Advocates’ Act does not prohibit the Bar Council from receiving gifts, donations, grants or benefactions for the purpose of the fund. Hence the guiding motivation was that all contributions to the fund should be voluntary and not forceful. There is a provision in the Act Section 27(2)—“The value of the stamp shall neither be the cost in a case nor be collected in any event from the client.” But this is such a ridiculous section, as any layman or client knows that it is absurd to say that the cost of the aforesaid stamp would not arise from his pocket. So why should we pay for the Advocates’ Welfare Fund? Whose fund is it anyway?

Is this another ploy for a free lunch?

Now if we ponder about “whose fund is it anyway?” we realise that this is another example of how a political market works contrary to public good. It is here that some of the special interest groups make the most of government funding at the cost of the others. Where did the Rs 1 crore given to the fund by the Delhi Government come from? And where will a similar sum of money being considered by the central government come from? Does the government create any wealth? NO, it is all our tax money. Then why are we paying for a welfare fund? Whose fund is it anyway?

What is the logic of particularised welfare entitlements to lawyers? Is this not “clientelism” – vote bank politics – at work?

What is the logic behind the government having exclusive welfare schemes for an organised self-governing body of the advocates? What is the justification for an Advocates’ Welfare Fund when the government has miserably failed to provide welfare to the needy people?

This case provides a perfect example of “clientelism” by the state. It seeks legitimacy by pacifying those groups of society who could raise questions about its legitimacy. This has happened for ages and has happened yet again. The point to be noted here is that the government is the biggest litigant in this country and being in the good books of the judiciary does help. So, whose fund is it anyway?