

The Jammu and Kashmir Advocates Welfare Fund Act, 1997

JAMMU & KASHMIR

India

The Jammu and Kashmir Advocates Welfare Fund Act, 1997

Act 26 of 1997

- Published on 29 September 1997
- Commenced on 29 September 1997
- [This is the version of this document from 29 September 1997.]
- [Note: The original publication document is not available and this content could not be verified.]

The Jammu and Kashmir Advocates Welfare Fund Act, 1997 Act No. 26 of 1997 [Dated 29th September, 1997] An Act to provide for conduct of Constitution of a Welfare Fund for the benefits to Advocates in the State of Jammu and Kashmir on death, disability, retirement, illness etc. and for matters connected therewith or incidental thereto. Be enacted by the State Legislature in the Forty-eighth Year of the Republic of India as follows :-

1. Short title, extent and commencement.

(1) This Act may be called the Jammu and Kashmir Advocates Welfare Fund Act, 1997. (2) It extends to the whole of the Jammu and Kashmir State. (3) It shall come into force on such date as the State Government may, by notification in the Government Gazette, appoint.

2. Definitions.

- In this Act, unless the context otherwise requires, - (a) "Advocate" means a person whose name has been entered in the State Roll of Advocates prepared and maintained by a State Bar Council under section 17 of the Advocates Act, in (Central Act 25 of 1961) and who is a member of any Bar Association ; (b) "Bar Association" means an association of Advocates attached to any court or any Tribunal or judiciary authority discharging functions of judicial or quasi-judicial nature and recognised by Bar Council under section 14 ; (c) "Bar Council" means the Bar Council of Jammu and Kashmir constituted under section 3 of the Advocates Act 1961 (Central Act 25 of 1961) ; (d) "Cessation of practice" means removal of the name of an Advocate from the State Roll and maintained by the Bar Council on account of his retirement or death ; (e) "Court" means includes any tribunal or authority before whom ; (f) "Dependents" means wife, husband, father, mother and unmarried minor children or such of them as exist ; (g) "Fund" means the Advocate's Welfare Fund constituted under section 3 of this Act ; (h) "Government" means the Government of the State of

Jammu and Kashmir ;(i)"Member of the Fund" means an Advocate admitted to the benefits of the Fund and continuing to be a member thereof under the provision of this Act ;(j)"Prescribed" means prescribed by the Bar Council by rules made under this Act ;(k)"Retirement" means stoppage of practice as an Advocate communicated to and recorded by the Bar Council ;(l)"Stamp" means, the stamp printed and distributed under section 22 of this Act ;(m)"State" means the State of Jammu and Kashmir ;(n)"Suspension of practice" means voluntary suspension of practice as an Advocate or suspension by the Bar Council for misconduct, under the Advocate's Act, 1961 (Central Act 25 of 1961) ;(o)"Trustee Committee" means the Committee established under section 5 of this Act ;(p)"Vakalatnama" means vakalatnama and 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.

3. Advocate's Welfare Fund.

(1)The Government shall constitute a fund called Advocate's Welfare Fund.(2)These shall be credited to the Fund,-(a)all amounts paid by the Bar Council under section 13 ;(b)any other contribution made by the Bar Council ;(c)any voluntary donation or contribution made to the Fund by the Bar Council of India, any Bar Association or any other association or institution, any Advocate or any other persons ;(d)any grant made by the government to the Fund ;(e)any sum borrowed under sub-section (1) of section 11.(f)all sums received from the Life Insurance Corporation of India on the death of an Advocate under the Group Insurance Policy ;(g)any profit or dividend received from the Life Insurance Corporation of India in respect of policies of Group Insurance of members of the Fund ;(h)any interest or dividend or other return on any investment made of any part of the Fund ;(i)any grants, donations, gifts, benefaction received from any institution or person and credited to the fund, from time to time ;(j)all sums collected by way of sale of stamps under section 22 ;(k)All sums collected under section 16 by way of application fees and annual subscription and interest thereon.(3)The sums specified in sub-section (2) shall be paid to, or collected by, such agencies, at such intervals and in such manner, as may be prescribed.

4. Administrative Department of Welfare Fund.

- The Administrative Department of the State Advocate's Welfare Fund Scheme shall be the Law Department of the Government, which shall have the powers to give instructions from time to time.

5. Establishment of Trustee Committee.

(1)The Government may, by notification in the official Gazette, establish with effect from such date as may be specified therein, a committee to be called the State Advocate's Welfare Fund Trustee Committee.(2)The Trustee Committee shall be a body corporate having personal succession and common seal with power to acquire and hold property and shall, by the said name, sue and be sued.(3)The Trustee Committee shall consist of-(a)the Advocate General of the State, who shall be the Chairman of the Trustee Committee, ex-officio ;(b)Secretary to the Government, Law and Parliamentary Advise Department of the State, ex-officio ;(c)two members nominated by the Government:(d)two members of the Bar Council to be nominated by it ;(e)accountant of the Bar

Council who shall be the treasurer of the Trustee Committee, ex-officio ;(f)the Secretary of the Bar Council, who shall be the Secretary of the Trustee Committee, ex-officio ;(4)A member nominated by the Government under clause (c) of sub-section (3) shall hold office for the term of four years unless he resigns or the Government terminates his nomination or he removed under sub-section (2) of section 6.(5)A member nominated by the Council under clause (d) of sub-section (3), shall hold office for a term of four years or for the duration of his membership in the Bar Council, whichever is less.

6. Disqualification and removal of nominated members of Trustee Committee.

(1)A member nominated under clause (c) or clause (d) of sub-section (3) of section 5 shall be disqualified to be a member of the Trustee Committee, if he-(a)becomes of unsound mind ; or(b)is adjudged involvement ; or(c)is absent without leave of the Trustee Committee for more than three consecutive meetings of the Committee ; or(d)is a defaulter to the Fund (in case he is member of the Fund) or has committed breach of trust ; or(e)is convicted by a criminal court for an offence involving moral turpitude ; unless such conviction has been set aside ; or(f)is debarred from practising on the ground or misconduct ; or(g)ceases to be an Advocate under the Advocate's Act.(2)The Government may remove any member who is or has become disqualified under sub-section (1) from, membership of the Trustee Committee :Provided that no order removing any member shall be passed unless that member and the Bar Council in the case of a member nominated by it has been given an opportunity of being heard.

7. Resignation by nominated members of the Trustee Committee and filling up of casual vacancies.

(1)Any member nominated under clause (c) or clause (d) of sub-section (3) of section 5 may resign his office by giving one month's notice in writing to the Government or the Bar Council, as the case may be and such resignation being accepted by the Government or the Bar Council shall be deemed to have vacated his office :Provided that the Bar Council shall consult the Government before accepting the resignation.(2)A casual vacancy in the office of a member referred to in sub-section (1) occurring on account of death, resignation, termination or removal, may be filled up, as soon as may be, and a member so nominated to fill such vacancy shall hold office for the unexpired portion of the term of office of the member whose place he fills.

8. Act of Trustee Committee not to be invalidated by vacancy, defect etc.

- No act done or proceeding taken under this Act or rule made thereunder by the Trustee Committee shall be invalidated merely by reason of-(a)any vacancy or any defect in the constitution of the Committee ; or(b)any defect or irregularity in the nomination of any person as a member thereof ; or(c)any defect or irregularity in such act or proceeding not effecting the merit of the case.

9. Vesting and application of Fund.

- The Fund shall vest in, and be held and applied by the Trustee Committee subject to the provisions and for the purposes of this Act.

10. Functions of Trustee Committee.

(1)The Trustee Committee shall administrator the Fund.(2)In the administration of Fund, the Trustee Committee shall, subject to the provisions of this Act and rules made thereunder,-(a)hold the amounts and assets belonging to the Fund in trust ;(b)receive applications for admission or re-admission to the Fund, and dispose of such applications within sixty days from the date of receipt thereof ;(c)receive applications from the members of the Fund their nominees or legal representatives, as the case may be, for payment out of the Fund, conduct such enquiry as it deems necessary for the disposal of such applications and dispose of the applications within three months from the date of receipt thereof ;(d)record in the minutes book of the Trustee Committee its decisions on the applications ;(e)pay to the applicant amounts at the rates specified in the schedule ;(f)send such periodicals and annual reports as may be prescribed to the Government and the Bar council ;(g)communicate to the applicants by registered post with acknowledgement due, the decision of the Trustee Committee is respect of applications for admission or re-admission to the fund or claims to the benefit of the Fund ;(h)sanction employment of such officers and servants as it may think necessary for performance of its duties and functions under this Act and determine their condition of services;(i)do other acts as are or may be, required to be done under this Act and the rules made thereunder.

11. Funds borrowing and investment.

(1)The Trustee Committee may, with the prior approval of the Government and the Bar Council, borrow, from time to time, any sum required for crying out the purposes of the Act.(2)The Trustee Committee shall deposit all moneys and receipts forming part of the Fund in any Scheduled Bank or invest the same in loan to any corporation owned and controlled by the Government or in loans floated by the Government or any other manner as the Trustee Committee may, from time to time, decide with the prior approval of the Government.(3)All amounts due and payable under this Act and all expenditure relating to the management and, administration of the Fund shall be paid out of the Fund.(4)The accounts of the Trustee Committee shall be audited annually by a Chartered Accountant appointed by the Bar Council.(5)The accounts of the Trustee Committee as certified by the audit together with the audit report thereon, shall be forwarded to the Bar Council which may issue such directions as it deems fit to the Trustee Committee in respect thereof.(6)The Trustee Committee shall comply with the directions issued by the Bar Council under sub-section (5).

12. Powers and duties of Secretary.

- The Secretary of the Trustee Committee shall-(a)be the Chief Executive Authority of the Trustee Committee and responsible for carrying out its decisions ;(b)represent the Trustee Committee in all

suits and proceedings for and against the Committee ;(c)authenticate by his signature all decisions and instructions of the Trustee Committee ;(d)operate the Bank accounts of the Trustee Committee jointly with the Treasurer ;(e)convene meetings of the Trustee Committee and prepare its minutes ;(f)attend the meetings of the Trustee Committee with all the necessary records and information ;(g)maintain such forms, registers and other record as may be prescribed from time to time and do all correspondence relating to the Trustee Committee ;(h)inspect and verify periodically the accounts and registers of the Bar Association regarding the stamps ;(i)prepare an annual statement of business transacted by the Trustee Committee during each financial year ; Advocate is by or under any law for the time being in force entitled to practise ;(j)make appointments of the officers and servants of the Trustee committee as sanctioned by the Committee and have power to take disciplinary action against any such officer or servant ;(k)do such other acts as may be directed by the State Government, the Trustee Committee or the Bar Council, as the case may be.

13. Transfer of certain moneys to the fund.

- The Bar Council shall pay in the Fund annually an amount equal to twenty-five percent of the enrolment fees realised by it.

14. Recognition and registration of Bar Association.

(1)All association of the Advocates known by any name functioning in any court, may before a date to be notified by the Bar Council in this behalf, apply to the Bar Council in such form as may be prescribed for recognition and registration.(2)Every application for recognition and registration shall be accompanied by the rules or bye-laws of association, names and addresses of the association and an up-to date list of the members of the association showing the name, address, age, date of enrolment and the ordinary place of practise of each member.(3)The Bar Council may after such enquiry as it deems necessary, recognise the association and issue a certificate of registration in such form as may be prescribed.(4)The decision of the Bar council regarding the recognition and registration of Bar association shall, be final.

15. Duties of Bar Association.

- Every Bar Association shall, on or before the 15th April every year, intimate to the Bar Council and the Trustee Committee, a list of its members as on the 31st March of the year.(2)Every Bar Association shall intimate to the Bar council and the Trustee Committee-(a)any change of the office bearer of the association within fifteen days from such change ;(b)any change in the membership including admissions and re-admissions within thirty days of such change ;(c)the death, retirement or voluntary suspension of practise of any of its members within thirty days from the date thereof ;(d)such other matters as may be required by the Bar Council or the Trustee Committee from time to time.

16. Membership in the Fund.

(1) Every Advocate practising in any court in the State and being a member of a Bar Association recognised by the Bar Council may apply to the Trustee Committee for admission as a member of the Fund in such form as may be prescribed. (2) On receipt of an application under sub-section (1) the Trustee Committee shall make such enquiry as it deems fit and either admit the applicant to the Fund or, for reasons to be recorded in writing reject the application : Provided that no order rejecting an application shall be passed unless the application has been given an opportunity of being heard. (3) Every applicant shall pay an admission fee of three hundred rupees in the course of one year in four equal instalments, in such manner as may be prescribed, the first instalment being payable along with the application, the account of the Trustee Committee. (4) In the event of rejection of the application the admission fee paid shall be refunded to the applicant. (5) Every member shall pay an annual subscription to the Fund on or before the 30th June of every year at the following rates, namely :-

When the standing of the Advocate at the Bar is less than five years.	... One hundred rupees
---	------------------------

Where the standing of the Advocate at the Bar is five years or more, but less than fifteen years	... Two hundred and fifty rupees
--	----------------------------------

Where the standing of the Advocate at the Bar is fifteen years or more,	... Five hundred rupees
---	-------------------------

(6) A member shall be entitled to pay the subscription under sub-section (5) in two equal half-yearly instalments at his discretion. (7) Any member who fails to remit the annual subscription for any year before the 30th June of that year shall, after giving fifteen days notice, be removed from the membership of the Fund. (8) A person removed from the membership of the fund under sub-section (7) shall be re-admitted to the fund on payment of the arrears with interest at twelve per cent, per annum within six months from the date of such removal. (9) Every member shall at the time of admission to the membership of the Fund make a nomination conferring on one or more persons the right to receive the amount which may be due to him from the Fund in the event of his death before the amount has been paid to him. (10) If a member nominates more than one person under sub-section (9), he shall specify in the nomination the amount of share payable to each of the nominees in such manner as to cover the whole of the amount that may be due to him. (11) A member may at any time cancel a nomination by sending a notice in writing to the Trustee Committee, provided that a member shall along with such notice send a fresh nomination. (12) Every member who voluntarily suspends practice or retires shall within fifteen days of such suspension or retirement, intimate that fact to the Trustee Committee and if any member fails to do so without sufficient reasons the Trustee Committee shall reduce the amount due to that member as on the date of actual retirement or suspension of practice.

17. Payment from the Fund on cessation of practice.

(1) A member of the Fund shall on cessation of practice be entitled to receive out of the Fund an amount at the rate specified in the Schedule. (2) In the event of death of a member the amount shall be paid to his nominee or, where there is no nominee, to his dependents. (3) A member of the Fund may opt retirement benefits at any time after the years of his admission as a member of the Fund,

but he shall be eligible for re-admission to the fund, as a new member subject to such conditions as may be prescribed :Provided that a member suffering from permanent disablement shall be allowed to retire within five years of his admission to the Fund.(4)For calculating the period of completed years of practise for the purpose of payment under this Act, every four years of practise at the Bar, if any, before the admission of a member to the Fund shall be computed as one year of practise and added on to the number of years of practise after -such admission.(5)In case of a member, who dies or suffers from permanent disablement within five years of his admission to the Fund, he or his nominee or legal heir, as the case may be, shall be eligible to get an amount at the rate of one thousand rupees per year of practise.(6)An application for payment from the Fund shall be preferred to the Trustee Committee in such form as may be prescribed.(7)In the case of a member who voluntarily ceases to be practise (otherwise than on account of his death or permanent disablement) within ten years of his admission to the Fund, he shall be entitled to get the annual subscription paid by him under sub-section (5) of section 16 with interest.(8)An application received under sub-section (6) or (7) shall be disposed of by the Trustee Committee after such enquiry as it deems necessary.

18. Restriction on alienation, attachment etc. of interest of member in the Fund.

(1)The interest of any member in the Fund, or the right of a member or his nominee or legal heirs to receive right of a member of his nominee or legal heirs 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.(2)No creditor shall be entitled to proceed against the Fund or the interest therein of any member or his nominee or legal heirs.Explanation. - For purposes of this section creditor includes the State or an official assignee or receiver appointed under any law for the time being in force.

19. Group Life Insurance for members and other benefits.

(1)The Trustee Committee may, for the welfare of the members of the Fund,-(a)obtain from the Life Insurance Corporation of India, policies of group Insurance for the members of the Fund ;(b)provided for medical and educational facilities for the members of the Fund and their dependents ;(c)provide for such other benefits as may be prescribed.

20. Meeting of the Trustee Committee.

(1)The Trustee Committee, shall meet at least once in three calendar months or more often if found necessary to transact its business under this Act or the rules made thereunder.(2)Three members of the Trustee Committee, shall form the quorum in a meeting of the Committee.(3)The Chairman or in his absence, a member elected shall preside over a meeting of the Trustee Committee.(4)Any matter coming up before a meeting of the Trustee Committee shall be decided by a majority of the members present and voting at the meeting and in the case of an equality of votes, the Chairman or the member presiding over the meeting shall have a costing vote.

21. Travelling and daily allowance to member of Trustee Committee.

- The non-official members of the Trustee Committee shall be eligible to get such travelling allowance and daily allowance as are admissible to the members of the Bar Council or as may be decided by the trustee Committee.

22. Printing and distribution of stamps by Bar Council.

(1)The Bar Council shall cause to be printed and distributed Welfare Fund Stamp of the value of two rupees with the Bar Council Emblem and its value inscribed thereon.(2)The stamps shall be of the size 1x2 and be sold only to members of the Fund.(3)The custody of the stamps shall be with the Bar Council.(4)The Bar Council shall control the distribution and sale of the stamps through Bar Associations.(5)The Bar Council and Bar Association shall keep proper accounts of the stamps in such form and in such manner as may be prescribed.(6)The Bar Association shall purchase the stamps from the Bar Council after paying the value thereof less ten per cent of such value towards incidental expenses.(7)The Bar Council shall, after deducting from the sale proceeds of stamps the actual cost of printing and distribution of stamps, pay the amount realised by sale of stamps to the Trustee Committee within 15 days after the end of every quarter.

23. Vakalatnama to bear Welfare Stamps.

(1)Every member of the Fund shall affix one Welfare Fund Stamps referred to in sub-section (1) of section 22 on every vakalatnama to be filed by him and to vakalatnama shall be filed before or received by any court, Tribunal or other authority unless it is so stamped.(2)The value of the stamps shall neither be cost in the case nor be collected in any event from the client.(3)Any contravention of the provisions of sub-section (2) by any member shall disentitle him to the benefits of the Fund and the Trustee Committee shall report such instance to the Bar Council for appropriate action.(4)Every such vakalatnama filed or received under sub-section (1) shall be cancelled in the manner provided in the Jammu and Kashmir Court Fees Act, Samvat 1977 and the Jammu and Kashmir Suits Valuation Act, Samvat 1977.

24. Protection of action taken in good faith.

(1)No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Act or any rule made thereunder.(2)No suit or other legal proceeding shall lie against the (2) No suit or other legal proceeding shall lie against the Trustee Committee or the Bar Council for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of this Act or any rule made thereunder.

25. Bar of jurisdiction of Civil Courts.

- No civil court shall have jurisdiction to settle decide or deal with any question or to determine any matter which is by or under this Act required to be settled, decided or dealt with or to be determined by the Trustee Committee or the Bar Council.

26. Power to summon witnesses and take evidence.

- The Trustee Committee and Bar Council shall, for the purpose of any enquiry under this Act, have the same power as are vested in a civil court while trying civil suit under the Code of Civil Procedure, Samvat 1977, in respect of the following matters, namely :-(a)enforcing the attendance of any person or examining him on oath ;(b)requiring the discovery and production of documents ;(c)receiving evidence on affidavit ;(d)issuing commissions for the examination of witnesses.

27. Application.

- The provisions of this Act shall not apply to persons who have retired from service and have been paid or are entitled to payment of retirement benefits from their employer.

28. Power to make rules.

- The Bar Council may, with the previous approval of the Government, by notification in the Government Gazette, make rule for the purpose of carrying into effect the provisions of this Act and for matters which are to be or may be prescribed under this Act.

Schedule

(See sections 10 and 17)

30 Completed years of practise.	Rs. 30,000.00
29 do.	Rs. 29,000.00
28 do.	Rs. 28,000.00
27 do.	Rs. 27,000.00
26 do.	Rs. 26,000.00
25 do.	Rs. 25,000.00
24 do.	Rs. 24,000.00
23 do.	Rs. 23,000.00
22 do.	Rs. 22,000.00
21 do.	Rs. 21,000.00
20 do.	Rs. 20,000.00
19 do.	Rs. 19,000.00

18 do.	Rs. 18,000.00
17 do.	Rs. 17,000.00
16 do.	Rs. 16,000.00
15 do.	Rs. 15,000.00
14 do.	Rs. 14,000.00
13 do.	Rs. 13,000.00
12 do.	Rs. 12,000.00
11 do.	Rs. 11,000.00
10 do.	Rs. 10,000.00
9 do.	Rs. 9,000.00
8 do.	Rs. 8,000.00
7 do.	Rs. 7,000.00
6 do.	Rs. 6,000.00
5 do.	Rs. 5,000.00