

The Gujarat Advocates Welfare Fund Act, 1991

GUJARAT

India

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Act 14 of 1991

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The Gujarat Advocates Welfare Fund Act, 1991 Gujarat Act No. 14 of 1991 [Dated 31st August, 1991] For Statement of Objects and Reasons, see Gujarat Government Gazette, Extraordinary, Part V, dated the 19th February, 1991, pp. 19-12 to 19-14. This Act was assented to by the President on the 31st August, 1991. An Act to provide for the constitution of an Advocates Welfare Fund and utilisation thereof for payment of certain retirement and other benefits to the advocates in the State of Gujarat. It is hereby enacted in the Forty-second Year of the Republic of India as follows:-

Chapter I Preliminary

1. Short title, extent and commencement.

(1) This Act may be called the Gujarat Advocates Welfare Fund Act, 1991. (2) It extends to the whole of the State of Gujarat. (3) It shall come into force on such date as the State Government may, by notification in the Official Gazette appoint.

2. Definitions.

- In this Act, unless the context otherwise requires, - (a) "Administrative Committee" means the Administrative Committee constituted under Section 5; (b) "advocate" means a person whose name has been enrolled on the roll of advocates prepared and maintained by the Bar Council under Section 17 of the advocates Act; (c) "Advocates Act" means the Advocates Act, 1961 (XXV of 1961); (d) "Advocates Welfare Fund" or "Fund" means the fund constituted under Section 3 and maintained under the provisions of this Act; (e) "Bar Association" means an association of advocates attached to any Court or any tribunal or such other authority or person as is legally authorised to take evidence or to adjudicate or to decide any dispute in the State of Gujarat and recognised by the Bar Council under Section 14; (f) "Bar Council" means the Bar Council of Gujarat constituted under

Section 3 of the Advocates Act;(g)"cessation of practice" in relation to an advocate means discontinuance of practice by the advocate by taking up any employment trade calling or other similar engagement or discontinuance of practice on account of death;(h)"dependants" means wife, husband, father mother, unmarried daughter and minor child or such of them as exist;(i)"member of the Fund" means an advocate who is admitted to the benefit of the Fund and who continues to be a member thereof under the provisions of this Act;(j)"nominee" means a person nominated in the prescribed manner by a member of the Fund to receive the amount which may be due to the member from the Fund in the event of his death before the amounts is paid to him:(k)"prescribed" means prescribed by regulations;(l)"regulations" means regulations made by the Bar Council under this Act;(m)"retirement" means giving up of practice as an advocate which is communicated to and recorded by the Bar Council;(n)"stamp" means the Gujarat Advocates Welfare Fund Stamp printed and distributed by the Bar Council under Section 20;(o)"standing" means the period of actual practice after the commencement of this Act;(p)"suspension of practice" means suspension of practice as an. advocate voluntarily or otherwise.

Chapter II

Constitution and Management of Advocates Welfare Fund

3. Constitution of Fund.

(1)The State Government shall constitute a fund called the Gujarat Advocates Welfare Fund.(2)There shall be credited to the Fund-(a)an initial amount of rupees one lakh to be contributed by the Bar Council to the Fund;(b)all the amounts to be contributed by the Bar Council annually from the year 1991 onwards under sub-section (3);(c)any other contribution made by the Bar Council;(d)any voluntary donation or contribution to the Fund made by the Bar Council of India or any other Bar Council or any Bar Association [or any other association or institution or any other person] [Inserted by the Gujarat Advocate Welfare Fund (Amendment) Act, 2003 (Gujarat 19 of 2003), dated 5th April 2003, section 2(a).];(e)any voluntary donation made to the Fund by any advocate or his relatives;(f)contributions paid by members of the Fund to the Fund under Section 19;(g)all sums received from the Life Insurance Corporation of India on the death of any member of the Fund under any Group Insurance Policy;(h)any profit or dividend from the Life Insurance Corporation of India in respect of policies of Group Insurance of the members of the Fund;(i)any interest or dividend or other return on any investment made of any part of the Fund.(j)[any amount by way of award of cost directed to be deposited in the Fund by the Bar Council of Gujarat, Bar Council of India, High Court of Gujarat or any other Court, Tribunal or Authority.] [Clause added by the Gujarat Advocate Welfare Fund (Amendment) Act, 2003 (Gujarat 19 of 2003), dated 5th April 2003, section 2(b).](3)The Bar Council shall contribute to the Fund annually an amount at such rate not exceeding thirty per cent of the enrolment fees realised by it as the Bar Council may from time to time think fit.

4. Bar Council to manage fund.

- For the purpose of management and utilisation of the Fund under this Act the Fund shall vest in the Bar Council and the Fund shall be held and applied by the Bar Council in accordance with the provisions of this Act and the regulations.

5. Constitution of administrative committee.

(1) There shall be an administrative committee, consisting of the following members namely:-

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| (a) The Advocate-General, Gujarat State. | Ex-Officio |
| (b) The Secretary and Remembrancer of Legal Affairs to Government of Gujarat Legal Department. | Ex-Officio |
| (c) The Chairman of the Bar Council of Gujarat. | Ex-Officio |
| (d) The Chairman of the Executive Committee of the Bar Council. | Ex-Officio |
| (e) Three members to be nominated by the Bar Council from amongst its members. | |

(2) The powers, functions and duties of the Administrative Committee shall be as provided by this Act and by regulations.

6. Term of office of nominated members of Administrative Committee.

- A person nominated as a member of an Administrative Committee under clause (e) of sub-section (1) of Section 5 (hereinafter in Sections 7, 8 and 9 referred to as "the nominated member") shall hold office for such period as may be prescribed or for the duration of his membership in the Bar Council whichever is less, unless he is [disqualified under subsection (1)] [Substituted for 'removed under sub-section (2)' by the Gujarat Advocate Welfare Fund (Amendment) Act, 2003 (Gujarat 19 of 2003), dated 5th April 2003, section 3.] of Section 7 or resigns his office and his resignation is accepted by the Bar Council under Section 8.

7. Disqualification and removal of nominated members.

(1) A person shall be disqualified to be a [nominated or for being a] [Substituted for 'nominated' by the Gujarat Advocate Welfare Fund (Amendment) Act, 2003 (Gujarat 19 of 2003), dated 5th April 2003.] member if he-(a) is adjudged by a competent Court to be of unsound mind; or (b) is adjudicated an insolvent and has not obtained his discharge or (c) is convicted of an offence which in the opinion of the State Government involves moral turpitude; or (d) has in the opinion of the State Government committed a breach of trust or where he is a member of the Fund committed persistent default in payment of his contribution to the Fund under Section 19. [***] [Sub-section (2) deleted by the Gujarat Advocate Welfare Fund (Amendment) Act, 2003 (Gujarat 19 of 2003), dated 5th April 2003. Prior to its deletion it was read as: '(2) The State Government may remove any nominated member who is or has become disqualified under sub-section (1) from his office as a member of the administrative Committee: Provided that no order removing any member shall be

made unless that member and the Bar Council have been given an opportunity of being heard.']

8. Resignation by nominated members.

- A nominated member may resign his office by giving one month's notice in writing to the Bar Council and on such resignation being accepted by the Bar Council the nominated member shall be deemed to have vacated his office.

9. Filling up of casual vacancies.

- A casual vacancy in the office of a nominated member occurring on account of death, resignation or [disqualification] [Substituted for 'removal' by the Gujarat Advocate Welfare Fund (Amendment) Act, 2003 (Gujarat 19 of 2003), dated 5, h April 2003.] of the member shall be filled up as soon as may be, by nomination of a person by the Bar Council under clause (e) of sub-section (1) of Section 5 and the person so nominated shall hold office so long as the member in whose place he is nominated would have been entitled to hold office, if the vacancy had not occurred.

10. Appointment of officers and servants.

- For carrying out the provisions of this Act the Bar Council may appoint such officers and servants on such terms and conditions as may be prescribed.

11. Amounts to be paid out of the Fund.

- 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.

12. Periodical and annual reports to be sent to Government.

- The Bar Council shall send to the State Government such periodical and annual reports as may be prescribed.

13. Maintenance of accounts and audit.

(1)The Bar Council shall cause to be maintained such books of account and other books in such form and in such manner as may be prescribed.(2)[The accounts of the Fund shall be audited annually by the Auditors duly qualified to Act as Auditor under sub-section (1) of section 226 of the Companies Act, 1956 (1 of 1956) who shall be appointed by the Bar Council of Gujarat.] [Sub-section (2) substituted by the Gujarat Advocate Welfare Fund (Amendment) Act, 2003 (Gujarat 19 of 2003), dated 5th April 2003.](3)After the account of the Fund is so audited, the Bar Council shall send a copy of the auditor's report and balance sheet to the State Government.(4)The Bar Council shall comply with the report of the auditor and may issue such direction in that behalf to the Administrative Committee as it may think fit.

Chapter III

Recognition and Registration of Bar Associations

14. Recognition and registration of Bar Association.

(1) Any association of advocates known by any name functioning in any Court or before any tribunal or before any other authority or person legally authorised to take evidence or to adjudicate or decide any disputes may apply to the Administrative Committee in the prescribed form for recognition and registration. (2) Every application for recognition and registration shall be accompanied by the rules or by-laws of the Association, the names and addresses of the office bearers 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 practice of each member. (3) The Administrative Committee may after such enquiry as it deems necessary recognise or refuse to recognise the association. (4) On recognition of such an association, Administrative Committee shall issue a certificate of registration in the prescribed form. (5) Any association aggrieved by the decision of the Administrative Committee under sub-section (3), may prefer an appeal against the said decision to the Bar Council. (6) The appeal shall be accompanied by-(a) the order appealed against; (b) a fee of one hundred rupees which shall not be refunded. (7) The appeal shall be filed within thirty days from the date of receipt of the order appealed against. (8) The decision of the Bar Council on the appeal shall be final.

15. Duties of the Bar Association.

(1) Every Bar Association shall on or before the 31st January, every year intimate to the Bar Council a list of its members as on the 31st December, of the previous year. (2) Every Bar Association shall intimate to the Bar Council-(a) any change of the office bearers of the Association within thirty days from such change; (b) any change in the membership, including admissions and re-admissions in sixty days of such change; (c) the death, retirement suspension cessation of practice of any of its members within ninety days from the date of occurrence thereof; and (d) such other matter as may be prescribed or required by the Bar Council from time to time.

Chapter IV

Membership in the Fund and Payment therefrom

16. Membership of Fund.

(1) Any Advocate who permanently resides in the State of Gujarat and practices before any Court or any Tribunal or any other authority or person legally authorised to take evidence or to adjudicate or decide any disputes in the State of Gujarat and is a member of the Bar Association recognised under Section 14 [shall required to be a member of the Fund and shall apply in such form, in such manner and on payment of such fee as may be prescribed] [Substituted for 'may apply in the prescribed form' by the Gujarat Advocate Welfare Fund (Amendment) Act, 2003 (Gujarat 19 of 2003), dated

5, h April 2003.] to the Administrative Committee for admission as a member of the Fund. (2) On receipt of an application under sub-section (1) the Administrative Committee shall make such inquiries 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 the application shall be passed unless the applicant has been given an opportunity of being heard. (3) The applicant whose application is rejected under sub-section (2) may prefer an appeal to the Bar Council. (4) The appeal shall be accompanied by the order appealed against. (5) The Appeal shall be filed within thirty days from the date of receipt of the order appealed against. (6) The decision of the Bar Council on the appeal shall be final.

16A. [Membership, subscription and cessation of membership. [Section 16A inserted by the Gujarat Advocate Welfare Fund (Amendment) Act, 2003 (Gujarat 19 of 2003), dated 5th April 2003.]

(1) Every member admitted to the fund shall pay such subscription to the Fund as may be prescribed, at the end of block period of five years. (2) The block period of five years shall commence from such date as may be specified by the Bar Council. (3) Where any advocate fails to pay the subscription, as provided under sub-section (1), the Secretary of the Bar Council shall issue a notice for payment of subscription and after giving him a reasonable opportunity of being heard may pass such order regarding cessation of his membership or otherwise as he deems proper.]

17. Member to appoint nominee and to give notification of cessation of practice, etc.

(1) Every member of the Fund shall, at the time of admission to the membership of the Fund, make a nomination appointing a nominee in the prescribed manner. (2) A member may at any time cancel such nomination by sending a notice in writing to the Administrative Committee, provided that a member shall along with such notice send a fresh nomination. (3) Every member who voluntarily suspends practice or ceases to practice or retires shall within sixty days of such suspension, cessation or retirement, intimate that fact to the Administrative Committee.

18. Payment of retiring benefit from Fund.

(1) A member of the Fund shall on cessation of practice, be entitled to receive from out of the Fund an amount at the rate specified in sub-section (4). (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 dependants; Provided that Administrative Committee may call for succession certificate if circumstances so demand. (3) A member of the Fund may opt for retirement benefits at any time after five 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. (4) Payments shall be made under this section at the rate specified in the Schedule. (5) An application for payment from the Fund shall be preferred to the Administrative Committee in the prescribed form. (6) An application received under sub-section (5) shall be disposed of by the Administrative Committee after such inquiry as it deems necessary. (7) [

The amounts becoming payable to the member under section 24 shall be paid in such manner as may be prescribed.] [Sub-section (7) inserted by the Gujarat Advocate Welfare Fund (Amendment) Act, 2003 (Gujarat 19 of 2003), dated 5th April 2003.]

Chapter V

Contribution by Members to the Fund and the mode of Payment thereof

19. [Vakalatnama to Bar Stamps. [Section 19 substituted by the Gujarat Advocate Welfare Fund (Amendment) Act, 2003 (Gujarat 19 of 2003), dated 5th April 2003.]

(1)Every Advocate shall affix a stamp of value of-(a)five rupees on every Vakalatnama filed by him in a District Court or a court subordinate to the District Court;(b)ten rupees on every Vakalatnama filed by him in a Tribunal or other authority or High Court.Provided that the Bar Council may prescribed the value or the Stamps to be affixed under this sub-section:Provided further that the Bar Council may prescribe different value of stamps to be affixed on every Vakalatnama to be filed in a District Court or a court subordinate to the District Court or a Tribunal or other authority or High Court.(2)The value of the Stamp shall neither be the cost in a case nor be collected in any event from the client.(3)Any contravention of the provisions of sub-section (1) or (2), by any Advocate, shall disentitle him either in whole or in part to the benefits of the Fund and the Administrative Committee shall report such contravention to the Bar Council for appropriate action.(4)Every stamp affixed on every Vakalatnama filed before a District Court or a court subordinate to the District Court or a Tribunal or other authority or High Court shall be cancelled in such manner as may be prescribed.]

20. Printing and sale of stamps.

(1)The Bar Council shall cause to be printed and distributed the Gujarat Advocate Welfare Fund Stamps each of the value [prescribed in section 19 with the Emblem of Bar Council] [Substituted for 'of four rupees with the Bar Council Emblem and its value inscribed thereon' by the Gujarat Advocate Welfare Fund (Amendment) Act, 2003 (Gujarat 19 of 2003), dated 5' April 2003.].(2)The stamps shall be of the size 2 c.m x 4 c.m. and be sold only to the 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 the Bar Associations.(5)The Bar Council and Bar Associations shall keep proper accounts of the stamps in such form and in such manner as may be prescribed.(6)The Bar Associations 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 Administrative Committee within fifteen days after the end of every quarter.[21, 22 and 23. ***] [Sections 21, 22 and 23 deleted by the Gujarat Advocate Welfare Fund (Amendment) Act, 2003 (Gujarat 19 of 2003), dated 5th April 2003.]

Chapter VI

Miscellaneous

24. Group Life Insurance for members and giving of her benefits.

- The Administrative Committee may for the welfare of the members of the Fund-(a)obtain from the Life Insurance Corporation of India policies of Group Life Insurance for the members of the Fund;(b)provide for medical and educational facilities for the member of the Fund and their dependents including an insurance for that purpose.(bb)[to organise workshops, seminars, conferences and such other programmes for the benefit of the junior members of the Bar.] [Clause (bb) added by the Gujarat Advocate Welfare Fund (Amendment) Act, 2003 (Gujarat 19 of 2003), dated 5th April 2003.]

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

(1)Notwithstanding anything contained in any other law for the time being in force the interest of any member in the Fund, or the right of a member of the Fund or his nominee dependents 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 or person.(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 the purpose of this section `creditor' includes the State or any official assignee or receiver appointed under any law for the time being in force.

26. Vacancy in Administrative Committee not to invalidate acts or proceedings.

- No act or proceeding of the Administrative Committee shall be called in question on the ground merely of the existence of any vacancy in or any defect in the constitution of the Committee.

27. 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 regulation.(2)No suit or other legal proceeding shall lie against the Administrative 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 regulation.

28. Bar of Jurisdiction of Civil Court.

- 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 Administrative Committee or the Bar Council.

29. Administrative Committee and Bar Council to have powers of Civil Courts.

- The Administrative Committee and the Bar Council shall be competent to take evidence on oath and shall exercise all power of a Civil Court in the summoning of witnesses and the production of documents.

30. Power to make regulations.

(1)The Bar Council may with the previous approval of the State Government by notification in the Official Gazette make regulations for carrying out the purpose of this Act.(2)In particular and without prejudice to the generality of the for going power such regulation may be made to provide for all matters expressly required or allowed by this Act to be prescribed by the regulations.(3)All regulation made under section shall be laid for not less than thirty days before the State Legislature as soon as possible after they are made and shall be subject to rescission by the State Legislature or to such modifications as the State Legislature may make during the session in which they are so laid or the session immediately following.(4)Any rescission or modification so made by the State Legislature shall be published in the Official Gazette and shall there upon take effect.

31. Powers to amend Schedule in certain circumstances.

(1)If the Bar Council recommends to the State Government to increase the rate of benefit specified in the Schedule the State Government may, by notification in the Official Gazette amend the said Schedule so as to increase the rate of benefit as recommended and on the issue of such notification the said Schedule shall be deemed to be amended accordingly.(2)Every such notification shall as soon as possible after it is issued be laid before the State Legislature.

Schedule

(See Sub-Section (4) of Section 18)

Period of Standing	Rate of benefit
1	2
30 Years' standing	Rs. 45000/
29 Years' standing	Rs. 43500/

28 Years' standing	Rs. 42000/
27 Years' standing	Rs. 40500/
26 Years' standing	Rs. 39000/
25 Years' standing	Rs. 37500/
24 Years' standing	Rs. 36000/
23 Years' standing	Rs. 34500/
22 Years' standing	Rs.33000/
21 Years' standing	Rs. 31500/
20 Years' standing	Rs. 30000/
19 Years' standing	Rs. 28500/
18 Years' standing	Rs. 27000/
17 Years' standing	Rs. 25500/
16 Years' standing	Rs. 24000/
15 Years' standing	Rs. 22500/
14 Years' standing	Rs. 21000/
13 Years' standing	Rs. 19500/
12 Years' standing	Rs. 18000/
11 Years' standing	Rs. 16500/
10 Years' standing	Rs. 15000/
9 Years' standing	Rs. 13500/
8 Years' standing	Rs. 12000/
7 Years' standing	Rs. 10500/
6 Years' standing	Rs. 9000/
5 Years' standing	Rs. 7500/