

ORISSA ACT 18 OF 1987

THE ORISSA ADVOCATES' WELFARE FUND ACT, 1987

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ORISSA ACT 18 OF 1987

[THE ORISSA ADVOCATES' WELFARE FUND ACT, 1987]

[Received the assent of the President on the 20th October 1987, first published in an extraordinary issue of the Orissa Gazette, dated the 3rd November 1987]

AN ACT TO PROVIDE FOR THE CONSTITUTION OF A WELFARE FUND FOR PAYMENT OF RETIREMENT BENEFITS TO ADVOCATES IN THE STATE OF ORISSA AND FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO

WHEREAS it is expedient to provide for the Constitution of a Welfare Fund for the payment of retirement and other benefits to Advocates in the State of Orissa and for matters connected therewith or incidental thereto.

Be it enacted by the Legislature of the State of Orissa in the Thirty-eighth Year of the Republic of India, as follows:—

1. (1) This Act may be called the Orissa Advocates' Welfare Fund Act, 1987.
- (2) It extends to the whole of the State of Orissa.

(3) It shall come into force on such date as the State Government may, by notification, appoint in that behalf.

2. In this Act, unless the context otherwise requires,—

- (a) 'Advocate' means a person whose name continue in the State roll of Advocates prepared and maintained by the Bar Council of Orissa under section 17 of the Advocates' Act, 1961 and who is also a member of a Bar Association, or a Society of Advocates registered under the Societies Registration Act, 1860;
- (b) 'Bar Association' means an association of Advocates either recognised by the Bar Council under Section 14 or registered under the Societies Registration Act, 1860;
- (c) 'Bar Council' means the Bar Council of Orissa constituted under Section 3 of the Advocates' Act, 1961;
- (d) 'Cessation of practice' means removal of the name of an advocate from the State roll maintained by the Bar Council on account of his death or retirement, or on account of his voluntary cessation on the ground of permanent physical or mental disability;
- (e) 'Fund' means the Advocates' Welfare Fund constituted under Section 3;
- (f) 'Member of the Fund' means an advocate admitted to the benefit of the Fund and continuing to be a member thereof under the provisions of this Act;
- (g) 'Prescribe' means prescribed by rules made under this Act;
- (h) 'retirement' means stoppage of practice as an Advocate, communicated to and recognised by the Trust Committee;
- (i) 'Stamp' means the Advocates' Welfare Fund stamp printed and distributed under section 22;

1. For Statement of object and reasons see *Orissa Gazette*, Extraordinary, dated the 3rd March 1987 (No. 325)

2. Came into force, w. e. f. 1-1-1988, vide *Orissa Gazette*, Extraordinary No. 1841, dated the 31st December 1987.

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(Secs. 3-4)

(j) 'Society' means an association of Advocates registered under the Societies Registration Act, 1860 other than Bar Association and includes the All Orissa Lawyers' Association;

(k) 'State' means the State of Orissa;

(l) 'Suspension of practice' means voluntary suspension of practice as an advocate or suspension by the Bar Council for misconduct;

(m) 'Committee' means the Trust Committee established under Section 4 ;

(n) 'Vaklat' 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.

Advocates'
Welfare
Fund.

3. (1) With effect from the date of establishment of the Committee under sub-section (1) of Section 4 there shall be constituted a Fund called the Advocates' Welfare Fund.

(2) There shall be credited to this Fund —

(a) all amounts that may be paid by the Bar Council of Orissa under Section 12;

(b) any voluntary donations or contribution made to the Fund by the Bar Council of India, any Bar Association, any other Association, or Institution, any advocate, or any other person;

(c) any sum borrowed under Section 10 ;

(d) any interest or dividend or other return on any investment made out of any part of the Fund;

(e) all sums collected by way of sale of stamps under Section 22; and

(f) all sums collected under Section 16 by way of application fees and annual subscription and interest thereof.

(3) The sums specified in sub-section (2) shall be paid to or collected by the Committee and the accounts of the fund shall be maintained and operated in such manner, as may be prescribed.

Establish-
ment of
Trust
Committee.

4. (1) There shall be a Trust Committee consisting of the following members:—

(i) Advocate-General of Orissa, *Ex officio* Member and Chairman ;

(ii) Secretary, Law Department, *Ex officio* Member ;

(iii) Chairman, State Bar Council, *Ex officio* Member ;

(iv) ¹ [* * *]

(v) ² [Three] eminent Advocates to be nominated by the State Government Members;

(vi) ³ [Vice-Chairman, Bar Council] *Ex officio* Member and Treasurer.

1. Omitted by the Orissa Advocates, Welfare Fund (Amendment) Act, 1991 (Orissa Act 10 of 1991) s. 2 (i).

2. Substituted by *ibid.* s. 2. (ii)

3. Substituted by the Orissa Advocates' Welfare Fund (Amendment) Act, 1989 (Orissa Act 10 of 1989) s. 2.

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[Orissa Act 18 of 1987]

(Secs. 5-8)

(2) The Secretary, Bar Council shall be the *Ex officio* Secretary of the Committee.

(3) The Committee shall be a body corporate with a common seal and perpetual succession with its Head Office at Cuttack having power to acquire and hold property and shall, by the said name, sue or be sued.

(4) The nominated members shall hold office for a period of four years.

5. (1) A person shall be disqualified for being nominated or appointed as and for being a member of the Committee, if he—

(a) becomes unsound mind, or

(b) is adjudged insolvent, or

(c) is absent without leave of the Committee for more than three consecutive meetings of the Committee, or

(d) is a defaulter to the Fund (in case he is a 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) in case of an advocate removed from the roll of the State Bar Council for whatsoever reason.

(2) On a member being disqualified as per sub-section (1) a vacancy arises from the date on which the Committee declare him to be so disqualified.

Vacancy due to resignation.

6. (1) Any member nominated under clause (v) of sub-section (1) of Section 4 may resign from his office by giving notice in writing to the Chairman of the Committee and on acceptance of his resignation he shall be deemed to have vacated his Office.

(2) Any casual vacancy in the office of a member may be filled up, as soon as may be, by the Government 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.

(3) Whenever a casual or temporary vacancy occurs in the office of the Chairman of the Committee whoever is in charge of the office of the Advocate-General for the time being shall function as the Chairman of the Committee.

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

7. No Act done or proceeding taken under this Act or the rules made thereunder by the Committee shall be invalidated merely by reason of—

(a) any vacancy or 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 affecting the merits of the case.

Vesting and application of Fund.

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

THE ORISSA ADVOCATS' WELFARE FUND ACT, 1987

[Orissa Act 18 of 1987]

(Secs. 9—11)

Functions
of the
Committee.

9. (1) The Committee shall administer the Fund.

(2) In the administration of the Fund, the Committee shall, subject to the provisions of this Act and the rules made thereunder—

- (a) hold the amounts and assets belonging to the Fund in trust ;
- (b) receive application for admission or readmission to the Fund, and dispose of such applications within ninety days from the date of receipt thereof ;
- (c) receive application from the members of the Fund their nominees or legal representatives, as the case may be, for payments 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 Committee decision on the applications ;
- (e) pay to the applicants amount at the rates specified in the schedule ;
- (f) send such periodicals and annual reports to the State Government and the Bar Council in the prescribed manner ;
- (g) communicate to the applicants by registered post with acknowledgement due, the decisions of the Committee in respect of applications for admission or readmission to the Fund or claims to the benefit of the Fund ;
- (h) do such other acts as are, or may be, required to be done under this Act and the rules made thereunder.

Funds,
Borrowing
and Invest-
ment.

10. (1) The Committee may, with the prior approval of the State Government borrow from time to time, any sum required for carrying out the purposes of this Act.

(2) The Committee shall deposit all moneys and receipts forming part of the Fund in any scheduled bank or invest the same in loans in any corporation owned or controlled by the Central Government or the State Government or in loans floated by the Central Government or the State 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 Committee shall be audited annually by a Chartered Accountant appointed by the State Government.

(5) The accounts of the Committee, as certified by the auditor, together with the audit report thereon, shall be forwarded to the State Government by the Committee, and the State Government may issue such directions as it deems fit to the Committee in respect thereof.

(6) The Committee shall comply with the directions issued by the State Government under sub-section (5).

Explanation—For all purposes of this act the State Government in the Law Department shall be the Administrative Department.Powers and
Duties of
Secretary.

11. The Secretary of the Committee shall—

- (a) be the chief executive authority of the Committee and is responsible for carrying out its decisions ;
- (b) represent the Committee in all suits and proceedings for and against the Committee ;

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(Secs. 12—14)

- (c) authenticate by his signature all decisions and instructions of the Committee;
- (d) operate the Bank accounts of the Committee jointly with the Treasurer;
- (e) convene meeting of the Committee and prepare its minutes ;
- (f) attend the meetings of the Committee with all the necessary records and information ;
- (g) maintain such forms, registers and other records as may be prescribed from time to time and do all correspondence relating to the Committee ;
- (h) prepare an annual statement of business transacted by the Committee during each financial year ; and
- (i) do such other acts as may be directed by the Committee.

Contribution
by the Bar
Council.

12. The Bar Council may contribute to the fund annually an amount equal to twenty per centum of the enrolment fee realised by it every year.

Recognition
and
registration
of Bar
Association.

13. (1) All Associations of 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) The Provisions of clause (a) of sub-section (1) shall apply *mutatis mutandis* to Societies of Advocates registered under the Societies Registration Act, 1860.

21 of 1860

(3) Every application for recognition and registration shall be accompanied by the rules or bye-laws of the Association, names and addresses of the office bearers of the Association with 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.

(4) The Bar Council may, after such enquiry, as it deems necessary, recognise the Bar Association and issue a certificate of registration in such form as may be prescribed.

(5) The decision of the Bar Council regarding the recognition and registration of the Bar Association shall be final.

Duties of
the Associa-
tion.

14. (1) Every Bar Association shall, on or before the 15th April every year, furnish to the Bar Council a list of its members as on the 31st March of that year.

(2) Every Bar Association shall intimate to the Bar Council:—

- (a) any change of the office bearers of the Association within fifteen days from such change;
- (b) any change in the membership including admission and readmission within thirty days of such change;
- (c) the death, retirement or voluntary suspension of practice of any of its members within thirty days from the date of occurrence thereof; and
- (d) such other matters as may be required by the Bar Council from time to time.

(3) The provisions of sub-section (2) shall apply *mutatis mutandis* to the Societies registered under the Societies Registration Act, 1860.

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[Orissa Act 18 of 1987]

(Sec. 15)

Membership
in the Fund.

15.(1) Every Advocate practising in any Court, in the State and being a member of a Bar Association, or a Society recognised by the Bar Council may apply to the 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 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 applicant has been given an opportunity of being heard.

(3) Every applicant shall pay an application fee of ¹[two hundred] rupees being payable alongwith the application to the account of the Committee:

Provided that Advocates having less than five years standing practice of the Bar will pay only rupees ²[one hundred].

(4) In the event of rejection of the application the fee paid alongwith the application 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:—

(a) where the standing of the advocate at the Bar is five years, ³[fifty rupees]

(b) where the standing of the Advocate at the Bar is more than five years but less than fifteen years, ³[one hundred rupees].

(c) where the standing of the Advocate at the Bar is fifteen years or more ³[two hundred rupees].

(6) A member may pay the subscription under sub-section (5) in two equal instalments at his option.

(7) Any member who fails to remit the annual subscription for any year before the 30th June of the year shall be liable to 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 removal subject to payment of twenty-five percentum of the annual subscription as renewal fee.

(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 had 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 or share payable to each of the nominee 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 Committee, provided that he shall along with such notice send a fresh nomination. No cancellation shall be effective unless fresh nominations are made by the member cancelling earlier nomination.

(12) A member who received any other pensionary benefits or has suspended his practice voluntarily or otherwise before attaining his 60th year not being permanently disabled, shall not be permitted to the benefit under the Act, however at the discretion of the Committee he may be paid the total annual membership subscription paid by him.

1. Substituted by Orissa Act 7 of 2001, s. 2 (i)

2. Substituted by *ibid*

3. Substituted by *ibid* s. 2 (ii)

THE ORISSA ADVOCATES' WELFARE FUND ACT, 1987

[Orissa Act 18 of 1987]

(Secs. 16—18)

(13) Subject to the provisions made above the annual subscription is non-refundable.

(14) A member of the Fund shall have the obligation of appearing and conducting such cases which may be entrusted to him by the State Legal Aid and Advice Committee and similar Committees functioning in different districts and subdivisions of the State unless there are reasonable excuses for his non-appearance.

16.(1) A member of the Fund shall, on cessation of practice, be entitled to receive from and out of the Fund an amount at the rates specified in the Schedule subject to other provisions of this Act.

(2) In the event of the death of a member, the amount shall be paid to his nominees or, where there is no nominee, to his legal heirs.

(3) A member of the Fund may opt retirement benefits at any time after five years of his admission as a member of the Fund, but he shall be eligible for readmission to the Fund as a new member subject to such conditions, as may be prescribed :

Provided that a member suffering from permanent disability shall be allowed to retire within five years of his admission to the Fund.

(4) For calculating the period of completed years of practice for the purpose of payment under this Act every four years of practice at the Bar, if any, before the admission of a member to the Fund, shall be computed as one year of practice after such admission.

(5) An application for payment from the Fund shall be preferred to the Committee in such form as may be prescribed.

(6) An application received under sub-section (5) shall be disposed of by the Committee after such enquiry as it may deem necessary.

17. (1) The interest of any member in the Fund or the right of a member or 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 the purposes of this section, creditor includes the State or an official assignee or receiver appointed under the Insolvency Act, 1955 or any other law for the time being in force.

18. (1) A member of the fund may suspend his membership for any reason what so ever and on his suspension, he shall cease to be a member of the fund and become disentitled to the benefits under this Act.

(2) On his resumption of practice, he may apply for readmission on making the following payments to entitle him to the benefits under this Act:—

(a) 50% of the admission fee; and

(b) an amount equal to the total annual subscriptions that he would have paid, had he not discontinued his membership.

Payment from the fund on cessation of practice.

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

Cessation and re-admission.

THE ORISSA ADVOCATES' WELFARE FUND ACT, 1987

[Orissa Act 8 of 1987]

(Secs. 19—23)

Meetings of the Committee. 19. (1) The Committee shall meet atleast once in three calendar months of more often, if found necessary, to transact business under this Act or the rules made thereunder.

(2) Five members of the Committee shall form the quorum for any meeting of the Committee.

(3) The Chairman or in his absence, a member elected by the members present shall preside over a meeting of the Committee.

(4) Any matter coming up before a meeting of the 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 casting vote.

Travelling and daily allowance to Member of Committee. 20. The non-official members of the Committee shall be eligible to get such travelling allowance and daily allowance as are admissible to the members of the State Bar Council.

Appeal against decision of Committee. 21. (1) An appeal against any decision of the Committee shall lie to the State Government.

(2) The appeal shall be in the prescribed form and shall be accompanied by—

(a) a copy of the order appealed against; and

(b) a receipt evidencing payment of one hundred rupees to the credit of the fund in any of the branches of the State Bank of India in Orissa.

(3) The appeal shall be filed within thirty days from the date of receipt of the order appealed against.

(4) The decision of the State Government on appeal shall be final.

Printing and distribution of stamps by the State Government 22. (1) The State Government shall cause to be printed and distributed the stamp of the value of ¹[five rupees and, for the purpose of utilisation of the stamps printed prior to the commencement of section 3 of the Orissa Advocates' Welfare Fund (Amendment) Act, 2002 and in stock, if any, one rupee, and their value respectively inscribed thereon.]

(2) The stamps shall be of the size 1"×2".

(3) The custody of the stamps shall be with the State Government who will maintain separate account and head for this.

²(4) The State Government shall control the distribution and sale of stamps through the Bar Council in the prescribed manner.

(5) The State Government, at the end of every financial year, shall—

(i) transfer the sale proceeds of the stamps to the Fund after deducting the cost of printing thereof and other incidental charges, if any, and

(ii) furnish the Committee a statement containing the number of stamps printed, sold and amount transferred to the Fund].

Vakalat to bear stamp. 23. (1) ³[On and after such date as the State Government may, by notification, specify, every Advocate] shall affix one stamp ⁴[or, in case of stamps of the value of two rupees printed prior to the date of commencement of the Orissa Advocates, Welfare Fund (Amendment) Act, 1997 and in stock, if any, two stamps] on every vakalat, memorandum of appearance filed by him and no vakalat or memorandum shall be filed before or received by any Court, tribunal or other authority unless it is so stamped.

1. Substituted by the Orissa Act 12 of 2002 s. 2
2. Substituted by the Orissa Addvocates' Welfare Fund (Amendment) Act, 1991 (Orissa Act 10 of 1991) s. 3.
3. Substituted by *ibids*.
4. Inserted by the Orissa Act of 1998 s. 3 (e)

*Wang
pointing*

*one stamp of the value
of five rupees*

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[Orissa Act 18 of 1987]

(Secs. 23—27)

(2) Every stamp affixed on vakalats filed before any court, tribunal or other authority shall be cancelled in the manner provided for court fee stamps.

(3) The value of the stamp shall neither be costs in the suit or case nor be collected in any event from the client.

(4) Any contravention of the provisions of sub-section (3), [by an advocate] shall disentitle him to the benefits of the fund and the Committee shall report such instances to the Bar Council for appropriate action.

(5) No court, tribunal or authority shall accept any Vakalatnama or memorandum of appearance filed [unless it is Stamped as aforesaid] except when filed by an Advocate appearing—

- (a) for an indigent person, or
- (b) for any person receiving legal aid, or
- (c) as amicus curiae.

Protection of
action taken
in good
faith.

24. (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 Committee 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.

Bar of
jurisdiction
of Civil
Courts.

25. No Civil Court, shall have jurisdiction to settle, decide or deal with any question or determine any matter which is required to be settled, decided or dealt with or to be determined by the Committee or any other authority under this Act,

Powers to
summon
witnesses
and take
evidence.

26. The Committee shall for the purpose of any enquiry under this Act have the same powers as are vested in a Civil Court while trying a suit under the Code of Civil Procedure, 1908 in respect of the following matters, namely:—

5 of 1908

- (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.

Power to
make Rules.

27. The State Government may, in consultation with the Committee make rules³ for the purpose of carrying into effect the provisions of this Act.

1. Substituted by the Orissa Act 10 of 1989, s. 3 (b)
2. Substituted by the Orissa Act of 1 of 1998, s. (b)
3. For Rule see *Orissa Gazette*, Extraordinary, dated the 10th January 1990 (No. 43)

[SCHEDULE]

(See Sections 9 & 16)

Period of completed years of practice (1)	Amount to be received (in rupees) (2)
Rs.	
30 years' standing	90,000
29 years' standing	87,000
28 years' standing	84,000
27 years' standing	81,000
26 years' standing	78,000
25 years' standing	75,000
24 years' standing	72,000
23 years' standing	69,000
22 years' standing	66,000
21 years' standing	63,000
20 years' standing	60,000
19 years' standing	57,000
18 years' standing	54,000
17 years' standing	51,000
16 years' standing	48,000
15 years' standing	45,000
14 years' standing	42,000
13 years' standing	39,000
12 years' standing	36,000
11 years' standing	33,000
10 years' standing	30,000
9 years' standing	27,000
8 years' standing	24,000
7 years' standing	21,000
6 years' standing	18,000
5 years' standing	15,000
Less than 5 years' standing (only on death.)	15,000

ANNEXURE

[PROVISION OF THE ORISSA ADVOCATES' WELFARE
FUND (AMENDMENT) ACT, 1991 (ORISSA ACT 10
OF 1991), NOT INCORPORATED IN THE
ORIGINAL ACT]

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Validation

5. Notwithstanding anything to the contrary in the principal Act, —

- (i) no vakalat or memorandum of appearance filed by any Advocate or received by any Court, tribunal or other authority without the Advocates' Welfare Fund Stamp affixed to it, before the date of publication of the Orissa Advocates' Welfare Fund (Amendment) Act, 1991, shall be deemed to be invalid merely on the ground that such vakalat or memorandum of appearance was filed or received, as the case may be, without being so stamped; and
- (ii) the omission on the part of any Advocate to affix the Advocates' Welfare Fund Stamp on any vakalat or memorandum of appearance filed by him or the receipt of any such vakalat or memorandum without such stamp by any Court, Tribunal or other authority, before the date specified in clause (i) shall not be challenged in any Court, Tribunal or other authority merely on the ground mentioned in that clause.