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REIMAGINING LEGAL PRACTICE UNDER THE ADVOCATES ACT 1961

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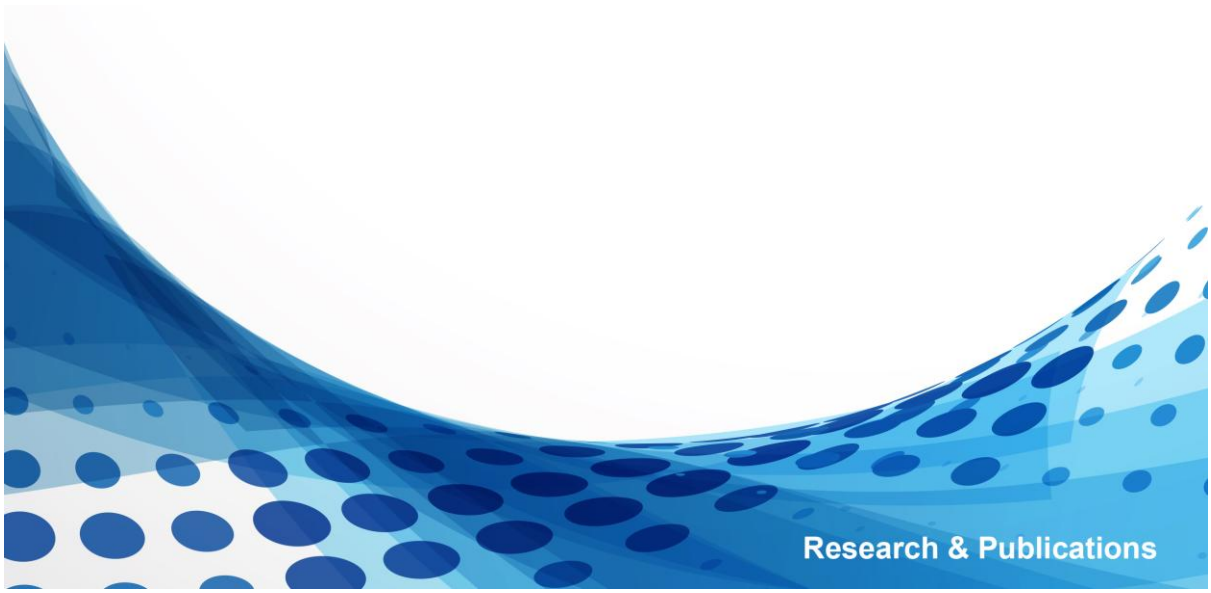

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REIMAGINING LEGAL PRACTICE UNDER THE ADVOCATES ACT 1961

A Consultation Paper

M P Ram Mohan,* Sidharth Sharma** and Prem Vinod Parwani***

CONTEXT

Who is called an 'advocate' in India – and on what terms is a deeply contested question. This question is tightly regulated by the Bar Council and the Advocates Act 1961, which together reserve the 'practice of law' exclusively for those enrolled as 'advocates.' This paper interrogates the normative and legal assumptions underlying this exclusion. In doing so, it contrasts India's framework for legal professionals across different professions, and with those in the UK and US. By tracing the colonial history of the Act alongside its judicial interpretations, we argue that the Act creates a rigid, exclusive regime that is ill-suited to the contemporary realities of the Indian legal profession. The paper concludes by proposing legislative and regulatory reforms to align Indian legal practice with contemporary realities and global best practices.

Keywords: Advocate, Practice of Law, Advocates Act 1961, Bar Council of India

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The contents of the paper are attributable to authors alone and not to the institutions. The views are entirely personal. We have benefited from a few conversations with academics and lawyers. We will be happy to engage with anyone. Please write your constructive comments to <mprmohan@iima.ac.in>

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I. Introduction

1. Much attention has been drawn to the recent amendments to the Bar Council Rules, which permitted the conditional entry of foreign law firms in India.[1] However, more profound, seismic movements in the Indian framework for legal professionals has been brewing for a while now. In early 2025, the Ministry of Law and Justice introduced the draft Advocates (Amendment) Bill, 2025, aiming to 'modernize' the Advocates Act, 1961.[2] After backlash for its potential to undermine the autonomy of the legal profession, the Bill was withdrawn.[3] However, it left several pressing questions for contemporary realities that a 1961 legislation has been unable to answer.

2. Soon after the amendments, retired Justices A K Sikri and Hima Kohli called for the 'mainstreaming' of in-house counsels, such that they are treated on par with practicing advocates.[4] This is part of a larger push for equal rights of representation under the Indian legal framework in the in-house counsel movement.[5]

3. Similar calls have been made to expand representation from academic spaces in the bar. In 2019, Professor Shamnad Basheer wrote to the BCI, asking it to relax the rule on barring legal academics. This was supported by several veterans of Indian legal academia – including Prof. Madhava Menon and Faizan Mustafa, among others.[6] The executive committee of the National Law Universities even asked for permission from the BCI to allow full-time faculty to practice law.[7] It was argued that Indian academics were

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[1] 'Press Release Dated 14.05.2025 | Bar Council of India' <https://www.barcouncilofindia.org/info/press-rele-1bcbwy> accessed 15 May 2025; Pallavi Saluja, 'BREAKING: BCI Notifies Amended Rules Allowing Entry of Foreign Lawyers and Law Firms' (*Bar and Bench - Indian Legal news*, 14 May 2025) <https://www.barandbench.com/news/breaking-bci-notifies-amended-rules-allowing-entry-of-foreign-lawyers-and-law-firms> accessed 15 May 2025.

[2] 'Law Ministry Withdraws Advocates Amendment Bill: The Key Objections from Lawyers, Bar Council' (*The Indian Express*, 28 February 2025) <https://indianexpress.com/article/explained/explained-law/advocates-amendment-bill-objections-9861843/> accessed 15 May 2025.

[3] ibid; Jan, 'Shattered Dreams' (*Law.asia*, 25 March 2025) <https://law.asia/independence-bar-council-india/> accessed 15 May 2025.

[4] 'General Counsels Must Be Mainstreamed and Rub Shoulders with Litigation Practitioners as Co-Equals': Justice Hima Kohli at GCAI Conference, 2025' (*SCC Times*, 4 February 2025) <https://www.scconline.com/blog/post/2025/02/04/general-counsels-mainstreamed-rub-shoulders-litigation-practioners-co-equals-justice-hima-kohli-gcai-conference-2025/> accessed 23 April 2025.

[5] David B Wilkins and Vikramaditya S Khanna, 'Globalization and the Rise of the In-House Counsel Movement in India' in David B Wilkins, Vikramaditya S Khanna and David M Trubek (eds), The Indian Legal Profession in the Age of Globalization: The Rise of the Corporate Legal Sector and Its Impact on Lawyers and Society (Cambridge University Press 2017) ch 4.

[6] Aditya AK, 'Active Engagement with Practice Enables Legal Academics to Be Better Teachers: Prof Shamnad Basheer's Petition to BCI' (*Bar and Bench - Indian Legal news*, 22 February 2019) <https://www.barandbench.com/Law-School/active-engagement-with-practice-enables-legal-academics-to-be-better-teachers-prof-shamnad-basheers-petition-to-bci> accessed 3 June 2025.

[7] India Today Web Desk, 'NLU Seeks Permission from BCI to Allow Full-Time Law Faculty to Practice in Court' (*India Today*, 22 February 2019) <https://www.indiatoday.in/education-today/news/story/nlu-seeks-permission-from-bci-to-allow-full-time-law-faculty-to-practice-in-court-1462680-2019-02-22> accessed 3 June 2025.

sufficiently independent, and barring them would prevent the integration of practice and theory.[8]

4. At the heart of these issues is the question – who is an advocate? As this paper will show, the Advocates Act, 1961, and the Bar Council Rules traditionally reserve the 'practice of law' exclusively for enrolled advocates – those who appear in courtrooms. Not only does this adversely affect lawyers in diverse legal roles, but it also deprives the bar of an ocean of legal talent. This paper aims to show that this is an overly rigid and narrow regulatory approach – one that is neither justified by reference to history or global best practices.

5. This consultation paper makes a case for re-imagining the restrictive contours of those who can practice of law in India. It argues that the binary between 'advocates' and other legal professionals is historically flawed, and normatively unjustified in the larger framework of the legal profession.

6. **Structure of the Report: Part II** of this paper traces the existing statutory and regulatory framework, demonstrating how the Advocates Act and the Bar Council rules together define and reserve the 'practice of law' only for the category of 'advocates'. **Part III** identifies the policy issues with this regime for non-advocates, such as a lack of confidentiality privileges, inability to appear before Courts, among others. **Part IV** traces the colonial roots of the legislative framework, while also examining the Western influence on our conception of the law – as a 'jealous mistress' or as a 'noble profession.' **Part V** offers comparative perspectives – the framework for legal professionals in the US and UK are compared with India's, and the India's legal profession is also compared with regulation in other professions – namely accountancy and medicine. **Part VI** evaluates the impact and efficacy of the 2025 draft Amendment to the Advocates Act, and the 2023 overhauling of the Evidence Act on the privileges held by advocates vis-à-vis non-advocates. **Part VII** sets out a reform agenda, proposing jurisprudential bases for reform in the Advocates Act and the Evidence Act to do away with the existing regime of exclusivity.

[8] Bar and Bench (n 6).

II. Existing Framework of the Legal Profession

7. The primary legislation governing the legal profession in India is the Advocates Act, 1961 ('**Act**').[9] The Act covers the powers and constitution of the Bar Council, and the terms conduct and enrollment of advocates. It is supplemented by specific rules and regulations framed by the High Court[10] and the Bar Council of India ('**BCI**'), which possesses regulatory and disciplinary powers over the legal profession at large.[11]

8. To understand the restrictions on non-litigating professionals, it is important to unpack two questions: i) Who is entitled to 'practice'? and ii) What is the scope of 'practice' in the legal profession?

Who is Entitled to 'Practice'?

9. The Act prohibits anyone who is not an 'advocate' from 'practising law'.[12] An advocate is defined as one whose name is on 'any roll under the provisions of this Act.'[13] An advocate may enroll themselves before the Bar Council of any State, after which their name will be maintained on such roll.[14]

10. There is a distinction between an 'advocate' and a 'legal practitioner.'[15] While an advocate is simply defined as one enrolled in the rolls of the bar, a legal practitioner is defined more broadly – it also encompasses a 'vakil, pleader, mukhtar and revenue agent.' (reference)

11. These categories find their roots in archaic and racial British developments in the Indian legal profession. As such, they were being done away with by the new Amendments to the Act, after which a 'legal practitioner' is defined functionally, as one who is 'engaged in the practice of law before courts, tribunals or quasi-judicial forums.'[16] However, the Amendments have been retracted for now.

12. It is not possible for all legal practitioners to enroll themselves as advocates due to restrictions on the employment of advocates. According to the Bar Council Rules, an advocate is barred from being a '**full-time salaried employee** of any person, government, firm, corporation or concern.'[17]

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[9] The Advocates Act, 1961 (India).
[10] *See* ibid, s.34.
[11] *See* Supreme Court Bar Association v Union of India (1998) 4 SCC 409.
[12] The Advocates Act 1961, ss. 29 and 33.
[13] ibid, s.2(a).
[14] ibid, s.17.
[15] ibid, s.2(i).
[16] The Advocates (Amendment) Bill 2025, s.2(i). However, Part VII of this brief shows – this amendment contradicts the Act, as a result of which there is a lack of clarity on who is entitled to practice law.
[17] Bar Council of India Rules of Professional Conduct, ch V, r.49.

13. To determine whether an employee is a 'full-time salaried employee,' courts have examined the conditions of employment contracts with a fine-toothed comb. While there are no straightforward rules on what constitutes 'full-time salaried employment', case law shows us that a motley of factors is relevant for this determination.

14. At its core, the test in question is a functional one. Courts scrutinize the terms of employment and ask on a principled level, whether the person is "a lawyer in the sense that he regularly practices before a Court or tribunal, who appears for his clients before the Court or Tribunal."[18] If the lawyer is functionally an advocate, he is allowed to practice under the BCI Rules – but if not, he is not allowed to. The lodestar for this determination is whether the nature of functions to be exercised is similar to what an advocate would do during their legal profession.[19]

15. Broadly, the substance of the function discharged by the individual in question is relevant. While an 'advocate' would typically practice before Courts, be bound by duties to his client and the Court, an 'employee' is conceived not to be so. For instance, a contract's features of service – such as standard working hours and fixed monthly payments are indicative of full-time salaried employment.[20]

16. On the other hand, where an employee continues to plead before the Court and make appearances on behalf of the employer, Courts have held that they would continue to be an advocate.[21] These imply duties that an advocate appearing before the Court would have – "to protect the interest of his client and pursue the case brief to him with the best of his ability, and as an officer of the court."[22] If this is not the case, then the individual is likely to fall outside the definition of an advocate.

17. Since the test is the functional similarity with the work of advocates, Courts have allowed Law Clerks and employees of the Department of Legal Affairs to enroll as advocates

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[18] *Sushma Suri v Government of the National Capital Territory of Delhi* [1998] SUPP. 2 SCR 187, 192; *All India Judges' Association v Union of India, I A No 32 of 1995 in RP No 248 of 1994 in WP (C) No. 1022 of 1989*.
[19] *Ashish Rastogi v Hon'ble High Court of Delhi* (2023) SCC OnLine Del 1626 [29].
[20] *Bar Council of Gujarat v Jalpa Pradeepbhai Desai* (2017) AIR Guj 134 [5.1]. Also *see Mary Tresa P.J. v Bar Council of Kerala* (2006) 42 KLT 210. By examining the judicial decisions from the preceding section, it can be determined that the concept of employment extends beyond considerations of salary and subsistence. This position was further reiterated by the Kerala High Court in Mary Teresa P.J., when the question of whether priests and nuns can enroll as advocates was considered by the Court. While suggesting how can the SBC determine if Parish Priests can be enrolled, the Court held that if the duties of the Priest are part-time and voluntary in nature, they can be enrolled. However, if such responsibilities would affect the functioning of the priest as a full-time advocate, she can be asked to quit the post of the Priest. Thus, the Court argued that the meaning of the term 'employment' has to be understood co-mutually with the term 'full-time'.
[21] *See Sushma Suri v Government of the National Capital Territory of Delhi* [1998] SUPP. 2 SCR 187, 193. "The test, therefore is not whether such person is engaged on terms of salary of payment by remuneration, but whether he is engaged to act or please on its behalf in a court of law as an advocate. In that event the terms of engagement will not matter at all. What is of essence is as to what such Law Officer engaged by the Government does- whether he acts of pleads in court on behalf of employer or otherwise".
[22] *Deepak Aggarwal v Keshav Kaushik* (2013) 5 SCC 277 [100].

despite being 'employed' elsewhere.[23] Such lawyers would functionally resemble the Court's conception of an advocate and their duties, rather than an employee bound by the terms of his agreement with his employer. This is done by advancing a "purposive interpretation" of Rule 49,[24] according to which the prohibition on practice must cover those whose independence is compromised. A counter-illustration is given below:

> The Bombay High Court in 2012 considered whether Additional Public Prosecutors were eligible to be appointed as District Judges, which in turn required them to have practiced as advocates.[25] It held that they were not eligible, since Public Prosecutors were not 'advocates' – rather, they were the full-time employees of the State. They were obligated to represent the interests of the State, and were maintained on a salary determined by the pay scale.[26] In this light, they were "*subject to the discipline of the service*"– which would lead to a lack of professional independence in the discharge of their duties.[27] This is unlike the employees of the Department of Legal Affairs, who were employed in an advisory/consultancy capacity, while also maintaining a full-time practice of their own. Unlike Public Prosecutors, the employees of the Department retained their independence in practice. Thus, Public Prosecutors did not meet the functional test of 'advocates', while the employees of the Department of Legal Affairs did.

18. This effectively bars nearly all forms of non-litigating lawyers from 'practicing' the law, except for those who undertake other pursuits under retainerships or part-time employment contracts – such as consultants, law firm associates, or part-time academicians.

Scope of 'Practice' Under the Act

19. Unpacking the scope of 'practice' is crucial for determining which functions lie exclusively within the domain of advocates. The broader the ambit of 'practice', the more activities that legal practitioners are prohibited from undertaking.

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[23] *Sudeep Raj Saini v High Court of Delhi* (2023) SCCOnline Del 4049 [102] – [107]. The Court reasons: "Clearly, the object of Rule 49 of the Bar Council of India Rule is to ensure that an Advocate is a professional, whose independence is not compromised by an employee-employer relationship and he is engaged in the practice of law." The Court was of the view that the nature of functions of these persons did not impinge upon this boundary: "They are no different than the work done by young advocates. They are required to draft pleadings, research law, brief senior advocates and also render advice on legal matters".
[24] ibid [45].
[25] *Sunanda Bhimrao Chaware v The High Court Of Judicature at Bombay* (2012) SCCOnline Bom 1563.
[26] ibid [47].
[27] ibid [39].

20. On several occasions, the constitutionality of the restrictions of the employment of advocates has been challenged.[28] However, the Supreme Court has held that the right to practice, while a fundamental right, is subject to reasonable restrictions – and as such, cannot be extended to non-advocates.[29]

21. The Bar Council Rules define the 'practice of law' as 'meaning and including':

    - *practicing before the Court, Tribunal, Authority, Regulator, Administrative Body or Officer and any Quasi-Judicial and Administrative Body*
    - *giving legal advice either individually or from a law firm either orally or in writing*
    - *giving legal advice to any government, international body or representing any international dispute resolution bodies*.[30]

22. Since this is an inclusive definition, it encompasses a wide range of activities that are not specified in the Rules. It has been held that an advocate's right to practice further envelopes the following activities:[31]

    - Consultations
    - Providing legal opinions
    - Drafting affidavits and other documents
    - Participating in conferences involving the law
    - The right to appear[32]
    - Rendering professional advice outside Courts[33]

23. The above-list covers a wide array of activities – restricting a significant chunk of independent legal work to advocates. Such work would not be available to those who are

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[28] *See for instance,* Bar Council of India vs Mary Tresa (2006) 2 KLT 210, where the constitutionality of the Kerala Bar Council Rules' restrictions on employment was unsuccessfully challenged.

[29] *NK Bajpai v Union of India* (2012) 2 SCR 433 [43]. In this case, the vires of s.129(6) of the Customs Act was challenged, according to which a member of the Customs and Excise Appellate Tribunal could not practice before the same forum after demitting office. It was held that the restriction is a limited and reasonable one.

[30] Bar Council of India Rules of Professional Conduct, r. 2(xx).

[31] *Pravin C. Shah v K.A. Mohd. Ali* (2001) 8 SCC 650. Note however, that this case was in the context of whether the Court has disciplinary jurisdiction over the Acts of an advocate done in Court, by virtue of Rule 11 of the Bar Council Rules. It is not directly interpreting the phrase 'practice of law'.

[32] *See* ibid. "The right to practise, no doubt, is the genus of which the right to appear and conduct cases in the court may be a specie." Note however, that a distinction is made between the right to appear and practice for disciplinary purposes; the former is regulated by the High Court under s.34 of the Advocates Act 1961, while the latter may be regulated by the BCI under s.49 of the Act.

[33] Bar Council of India Rules of Legal Education (Part – IV) r 2(xx); *See* Opinion of Justice BN Srikrishna in *Shire Development LLC v Cadila Healthcare Ltd* (Fed Cir, 2017-1048); "In my opinion, the phrase 'practice of law' under Rule 2(xx) is very wide and includes giving of legal advice and contemplates a degree of independence and neutrality in the legal advice given and does not appear to include legal advice given by in-house counsel (that is, a salaried employee of a Company etc.) to their employer. Thus, in-house counsel cannot be considered to be into 'practice of law' or a 'legal professional legal adviser' within the meaning of section 129 of the Evidence act. Nor, are they advocates within the meaning of Section 2(a) of the Act of 1961".

in ‘full-time employment’, since the Supreme Court has held that activities covered in the ‘practice of law’ cannot be undertaken by those who are not advocates.[34]

24. The scope of ‘practice’ was most clearly delineated by the Bombay High Court in *Lawyers Collective*.[35] It was tasked with determining whether foreign law firms could be allowed to practice law in India. In doing so, it had to demarcate what the ‘practice of law’ constituted. In this context, Bombay High Court held that the domain of ‘practice’ would encompass both litigious and non-litigious matters. On the distinction, it held:

    - “*A person can be said to be practising in litigious matters when he renders legal assistance by acting, appearing and pleading on behalf of another person before any Court or authority. Similarly, a person can be said to be practising in non litigious matters, when he represents to be an expert in the field of law and renders legal assistance to another person by drafting documents, advising clients, giving opinions, etc.*”[36]

25. Two key facts concerning the existing legal framework emerge –

    - *First*, the practice of law is an exclusive one, restricted only to advocates, and,
    - *Second*, the Supreme Court has tended to interpret the scope of this practice fairly broadly, effectively narrowing the ambit of work that non-advocates are permitted to undertake.

III. Problem Statement

26. It is clear from the framework of the Act and the Bar Council Rules that the ‘practice of law’ covers a wide range of activities, which are restricted to the class of persons defined as ‘advocates’. However, industry bodies have expressed much consternation with this framework, arguing that it is outdated and unsuitable to the modern legal profession’s needs. This was the reason that the new amendments to the Act were championed – under the impression that the scope of ‘practice’ would be expanded.[37]

27. By excluding non-advocates from the ‘practice of law’, the Act’s framework has created an exclusive, privileged class. In doing so, several benefits are denied to those legal

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[34] *Supreme Court Bar Association v Union of India* (1998) 4 SCC 409 [58].
[35] *Lawyers Collective v Bar Council of India* (2010) 2 Comp LJ 108 (Bom) [55].
[36] ibid [3].
[37] Economic Times, ‘Corporate Lawyers and In-House Counsels to Be “Legal Practitioners” under the Advocate Act - ET LegalWorld’ (*ETLegalWorld.com*) <https://legal.economictimes.indiatimes.com/news/law-policy/corporate-lawyers-and-in-house-counsels-to-be-legal-practitioners-under-the-advocate-act/118325897> accessed 14 May 2025; Jan, ‘GCs Fight for Access’ (*Law.asia*, 21 December 2022) <https://law.asia/indian-in-house-counsels/> accessed 14 May 2025; ‘Law Ministry Withdraws Advocates Amendment Bill: The Key Objections from Lawyers, Bar Council’ (*The Indian Express*, 28 February 2025) <https://indianexpress.com/article/explained/explained-law/advocates-amendment-bill-objections-9861843/> accessed 14 May 2025.

practitioners who are not 'advocates'. This includes professionals such as in-house counsels, full-time academicians, and employees at research think-tanks. The following benefits are denied to them by virtue of the prohibition in the Act and Rules:

A. Inability to Appear Before Courts

28. By virtue of s.29 and 33 of the Advocates Act, lawyers such as in-house counsels (who are in full-time employment) are unable to appear for their respective companies, despite having extensive expertise and subject-matter knowledge. This also leads to the hassle of having to brief and engage a practicing advocate, driving up cost and time inefficiencies.[38]

29. Studies point out, for instance, Indian general counsel offices spend a sizeable part of their budgets for external counsel representation.[39]

B. Lack of Confidentiality Privileges

30. The principle that privileges information disclosed by a client is found in Sections 126 and 129 of the Indian Evidence Act ('**IEA**'). Section 126 privileges 'professional communications' by barrister, attorney, pleader or vakils in 'employment', while Section 129 privileges communications by 'legal professional advisers'. Neither of these terms are defined in the Act. (*IEA has now been replaced with a new law, The Bharatiya Sakshya Adhiniyam, 2023. But the content of provisions relating to legal privilege remain almost the same. Therefore, how the erstwhile provisions under Section 126 and 129 have been interpreted continues to be relevant. More details are given in Paras 89-93 of this paper*)

31. The text of Section 126 of IEA (enacted in the year 1872) uses expressions such as 'barrister, attorney, pleader or vakil' which were in vogue in India in those days, much before the Advocates Act came into force (enacted in the year 1961). Therefore, IEA had no mention of 'advocates' as understood in the Advocates Act. But it cannot be gainsaid that advocates are indeed entitled to the confidentiality privilege in the legal advice they render. Likewise, if the sections do not expressly refer to salaried lawyers working in full time employment (commonly referred to as 'inhouse' lawyers), can the entitlement to privilege be denied to them? This brings to the fore the question of whether either of the sections applies only to 'advocates' or also applies to those legal practitioners who are not advocates or barristers, pleaders, vakils and so on – the lawyers which are the subject of this paper. It can be reasonably argued that Section 126 of IEA enumerates different kinds of legal practitioner, reflecting what law practice was understood to mean in those days;

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[38] ibid.
[39] Wilkins and Khanna (n 5) 134.

however, it was not intended to be an exhaustive list and can be expanded since the nature of law practice has evolved with the changing times. It is the nature of the job that matters.

32. While there is at least one High Court decision which has clearly held in favour of extending the privilege under section 126 and 129 to salaried legal advisers on par with advocates practising in courts, the matter is not conclusively settled. Subsequent judgments and some juristic opinions seem to suggest that non-advocates are not entitled to confidentiality privileges in dealings with their clients.

33. In 1981, the Bombay High Court had to decide whether the Law Officer of the Bombay Municipal Corporation would be protected by confidentiality privilege under Sections 126 and 129.[40] A single judge bench of the High Court held that a paid or salaried legal adviser who provides legal advice to his employer on questions of law and relating to any litigation has the same protection as a professional lawyer and therefore any such communication made in confidence by his employer to him for the purpose of seeking legal advice or vice versa is entitled to protection of sections 126 and 129 of the Evidence Act. The Court took note of the growing practice of retaining legal advisers in full-time employment. The nature of their job is to advise their employers on questions which are of legal character, and on all matters of law and litigation. If that is so, the court held, there was no reason why the legal advisers in full time employment should not get the same protection as those advisers who appear in court. This judgment has not been expressly overruled in any subsequent decision.

34. However, it was argued in another case, *Larsen & Toubro Ltd. vs. Prime Displays* (2002) SccOnline Bom 267, that the judgment in Vijay Metal Works was not a good law since it did not go into the meaning of "legal professional adviser" as appearing in Section 129 and did not consider the provisions under the Advocates Act and the Bar Council of India Rules made thereunder. A subsequent decision of the Supreme Court, in the Satish Kumar Sharma case which is cited subsequently in this paper (supra note 79), was used to question the correctness of the Bombay High Court's judgment in Vijay Metal Works. The Bombay High Court in Larsen & Toubro (supra), however, did not rule on this argument. It only held that a document which came into existence in anticipation of litigation either for seeking legal advice or for being used for the purpose of defence or prosecution of the legal proceedings, was eligible for protection under Section 126 and 129.

35. The authors of this paper are of the view that the Bombay High Court in Vijay Metal Works was correct in its approach and rightly granted the protection of privilege communication under sections 126 and 129 to legal advisers in full time employment, taking into account the nature and character of their role rather than their employment status. At the same time

[40] *See Municipal Corporation of Greater Bombay v Vijay Metal Works* AIR 1982 Bom 6.

the authoritative and conclusive binding force of the judgment in Vijay Metal Works is questionable and leaves the issue open to debate.

36. In 2017, Justice B N Srikrishna read the Advocates Act and the Indian Evidence Act side by side – he opined that 'legal professional adviser' in Section 129 contemplates someone who 'practices law' in the meaning of the Advocates Act and Bar Council Rules.[41] As such, lawyers such as in-house counsel and academics when acting as advisers would be unable to avail confidentiality privileges.[42]

37. The above inability of non-advocates such as in-house lawyers to enroll and "practice law", has real disadvantages. It has been suggested that US multinationals prefer GCs who are dually qualified as American lawyers since they have the full professional standing of lawyers and in-house counsel and are thus naturally bound by client confidentiality.[43]

38. While the IEA itself does not clearly mandate that confidentiality obligations extend to advocates, Rules 15 and 17 of the BCI Rules explicitly incorporate these confidentiality provisions.[44] This, however, does not have the effect of extending it to non-advocates as well. Thus, it emerges that there is a great deal of doubt on whether the law, as interpreted under the IEA, can be used to conclusively say that the benefit of confidentiality privileges applies to non-advocates like in-house lawyers.

C. *Denial of Transition Opportunities*

39. Eligibility criteria for appointments to administrative and constitutional posts, such as Tribunals and High Courts and the Supreme Court typically stipulate that the individual be experienced for a certain number of years in 'practicing' before Courts.[45]

40. A constitutional provision allows the President to appoint any 'eminent jurist' he thinks fit to constitutional posts such as judges of the Supreme Court and High Court. While jurists such as Professors Upendra Baxi and Madhava Menon were considered for appointment, this provision has never been invoked.[46]

41. Non-advocates lose access to such opportunities despite having relevant experience in procedural and substantive law.

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[41] Opinion of Justice BN Srikrishna in *Shire Development LLC v Cadila Healthcare Ltd* (Fed Cir, 2017-1048).
[42] Note that this opinion has no precedential value since it was written for the US Court of Appeals for the Federal Circuit to be able to decide a point of Indian law.
[43] Wilkins and Khanna (n 5) 153.
[44] Bar Council of India Rules, ch II, rr.7, 15 and 17.
[45] *See* Constitution of India, arts 124(3)(b) and 217(2)(b); Companies Act 2013, s 409(3)(a); Income-tax Act 1961, s 252(3)(b).
[46] The Constitution of India 1950, arts 124(3) and 217(2)(c); Apoorva Mandhani, 'No "Distinguished Jurist" in Sight?' (17 May 2016) <https://www.livelaw.in/no-distinguished-jurist-sight> accessed 15 May 2025..

42. Even where such lawyers quit their full-time employment and enroll as advocates, they effectively start out fresh at the bar – and are at a significant disadvantage compared to those who have already been practicing for years.

    - An empirical survey of general counsel offices in India found that only roughly half of those surveyed were currently or formerly enrolled at the bar.[47]

IV. Background and History

A. The Colonial Roots of Restricting the 'Practice of Law'

43. The earliest instance of the British legal system making inroads into the India was when James I by Charter in 1662 granted the East India Company the power to correct misdemeanors of English persons residing in the East Indies.[48] Courts backed by English authority gradually expanded throughout Indian territory after this, but no qualifications were prescribed as to who could appear before them.[49]

44. The Regulating Act of 1773 authorized the establishment of a Supreme Court of judicature in Bengal.[50] This marked the first expansive reach into regulating the procedure and administration of justice. Pursuant to this, a Charter was enacted in 1774, Clause 11 of which prescribed qualifications for who could practice:

    - This was restricted to 'advocates' – which meant only English, Irish and Scottish barristers and attorneys – which meant only the British attorney solicitors.[51]

45. As new High Courts were established throughout the country, their Letters Patents allowed the enrollment of different classes of practitioners and authorized them to appear/plead for these Courts.[52] However, it is notable that some High Courts classified lawyers into two categories – vakils and advocates. Vakils could be Indian, and were entitled to appear before High Courts only after obtaining a degree from universities and several years of practice in subordinate Courts.[53]

46. However, advocates only referred to 'barristers' from Ireland, England or Scotland. These advocates were admitted only if they had read law in the Chambers of a practicing barrister

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[47] Wilkins and Khanna (n 5) 152.
[48] Sanjiva Row's The Advocates Act 1961 (6th edn.,1997, The Law Book Company Allahabad) Preamble 2.
[49] ibid 3.
[50] ibid.
[51] ibid 4.
[52] *See* CS Lal, Subramanyam's Commentaries on Advocates Act, 1961 and Bar Council of India Rules (2nd edn, 2004) xxxi; Gitanjali Shankar and Amba Uttara Kak, 'Litigation versus Non-Litigation: 'Practice of Law' under the Advocates Act' (2010) 3 NUJS Law Review 299, 303.
[53] Justice SR Das, *Report of the All-India Bar Committee* (1953, President's Press Manager of Publications) [33].

in England.[54] This was the case for instance, for the Calcutta High Court. Most importantly, in the Supreme Court – only British barristers and advocates could be enrolled as advocates. Thus, Indians began going to England to qualify for the English bar.[55] English barristers had formed a monopoly over the bar.

47. At this time, there were six different grades of legal practice: advocates, attorneys (solicitors), and vakils of the High Courts; and pleaders, mukhtars and revenue agents in the lower courts.[56]

48. The Legal Practitioners Act 1879 intended to bring all the grades under the jurisdiction of the High Courts.[57] In doing so, it did not separately define an 'advocate'. It only defined a legal practitioner as an 'advocate' or a 'pleader'.[58] However, there was no provision in the Act which dealt with the practice of law *outside a Court*.[59]

49. Gradually, a demand arose for an All-India bar owing to the resentment of these hierarchically organized layers of advocates, in which vakils were the lowest. A call to abolish the distinction between barristers and vakils went hand in hand with this.[60] In response to this, the Government of India set up the Indian Bar Committee (also known as the Chamier Committee) in 1923.[61]

50. The Chamier Committee then recommended that there be a single grade of practitioners called advocates, and the classes of vakils and pleaders be abolished.[62] This was given effect to in the Indian Bar Council Act, 1926.

51. The Indian Bar Councils Act, 1926 introduced the definition of an 'advocate' for the first time. It was defined as those enrolled in the roll of advocates before High Courts.[63] Notably, it eliminated the categories of vakils, barristers and pleaders as distinct legal categories.[64] However, it did not fulfill the longstanding demand of an all-India bar – each High Court continued to have its own Bar Council.[65]

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[54] ibid [32].
[55] ibid.
[56] Samuel W Schmitthener, 'A Sketch of the Development of the Legal Profession in India' (1969) 3 Law & Society Review 337, 358.
[57] ibid.
[58] The Legal Practitioners Act 1879 (India Act XVIII,1879), s.3.
[59] Shankar and Kak (n 53) 304.
[60] ibid.
[61] ibid [43].
[62] Sir Edward Chamier, *Recommendations of the Indian Bar Committee Report* (1924) [19].
[63] Indian Bar Councils Act 1926, s.2(1)(a).
[64] ibid; *See* also Indian Bar Councils Act 1926, s.8(1), which encompasses these different categories within the larger definition of advocates.
[65] ibid s.3; SR Das Committee Report (n 54) [53].

52. To execute the plan to have an all-India bar, a committee was appointed in 1951, which recommended that all grades be done away with, and one integrated and autonomous all-India bar be formed.[66] And thus, the Advocates Act 1961 was formed.

53. Given this history, one can appreciate the context in which the definition of advocate in s.2(a) is limited, and why s.29 and 33 bar anyone else from appearing before Courts. This prohibition was not new; it was a reproduction of all the legislations that came before it; going all the way back to the 1774 Charter issued under the Regulating Act of 1773.

54. Thus, the bar against non-advocates appearing in Courts is deeply rooted in the colonial era, where English barristers monopolized the Indian bar. While we have succeeded in consolidating the different grades of lawyers (vakils, pleaders, mukhtars, etc.), we have retained the colonial-era exclusivity of advocates' practicing before Courts.

B. The (Outdated) Conception of the Law as a 'Jealous Mistress'

55. A common aphorism permeating the trend of judicial decisions of the Act is that the 'law is a jealous mistress' – she calls for 'undivided loyalty and unflinching attention from her devotees.'[67]

56. While the phrase did not originate within the Indian legal milieu, its origins remain contested.[68] The most compelling claim for authorship is directed towards the American jurist and scholar, Justice Joseph Story.[69] On August 25, 1829, while inaugurating a professorship at the Harvard Law School, Justice Story is recorded to have uttered the phrase. Since then, the phrase has permeated judicial thought in both England and India.

57. The common usage of the phrase in the context of judicial decisions on the Advocates Act is telling, since it reveals the rationales behind the prohibitions in Rule 49 of the Bar Council of India Rules. These are culled out as follows:

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[66] Schmitthener (n 57) 360; *See* Ministry of Law, *Report of the All-India Bar Committee* (1953, Ministry of Law).
[67] *Haniraj Chulani v Bar Council of Maharashtra* (1996) 3 SCC 342 [16].
[68] For alternate attributions regarding the authorship of the phrase see: Denver Bar Association Record, In Re the Law Is a Jealous Mistress Note, 4 Denv. B.A. Rec. 9 (1927); The Jealous Mistress Note, 2 Denver B.A. Rec. 3 (1925).
[69] M. Eugene Culver, The Jealous Mistress, 22 Dicta 258 (1945); John H. Wigmore, Diversities De La Ley, 27 Ill. L. Rev. 329 (1932); Even after the Colorado Bar Association invited comments to trace the authorship of the phrase, they admitted that while many claims were submitted, the only serious claim to authorship was made to Justice Story Denver Bar Association Record, supra note 2 at 9; For a review of Justice Story's legal philosophy, see generally: Gerald T. Dunne, Joseph Story: The Great Term, 79 Harv. L. Rev. 877 (1965); MacCormac Snow, Joseph Story, 5 Or. L. Rev. 169 (1925).

Compromising Independence

58. Courts across the country have held that employment restrictions adversely impact the impartiality and independence of the profession.

59. In *Sudeep Saini,* the relevant question before the Court, was whether an advocate who was engaged as a 'legal consultant' by the Department of Legal Affairs on a contractual basis and a consolidated fee, ceases to be an advocate during the term of his contact.[70] The Court held that this was not the case, since he continued to perform the functions of an advocate – he was not a salaried employee, and was paid only for his professional services – which were advisory and consultative in nature.[71] He continued to remain in full-time practice.[72] Because of this, his "independence [was] not compromised by an employee-employer relationship".[73]

60. This is the driving force behind the Bombay High Court's prohibition on Public Prosecutors practice as 'advocates'. In another context, the Supreme Court has articulated this concern about Government counsels' practice: "They are supposed to render independent, fearless and non-partisan views before the court irrespective of the result of litigation which may ensue."[74]

61. In the EU, the European Commission has expressed the concern that in-house lawyers may be influenced by the 'commercial strategies' of their employer – because of which they cannot be said to exercise professional independence.[75]

A 'Noble' Profession

62. Another justification for the clamp-down regulation on advocates and their practice is the 'nobility' of the profession. While defending the constitutionality of the Bar Council Rules, the Supreme Court invoked the English-rooted high-towering notions of the profession's nobility:

    - "*It cannot be gainsaid that law is universally described as an honorable profession. An advocate is an officer of justice and friend of the court. Legal profession is monopolistic in character and this monopoly itself inheres certain high traditions*

[70] *Sudeep Raj Saini v High Court of Delhi* (2023) SCC Online Del 4049.
[71] ibid [92] – [96].
[72] ibid [88]. Note here that in the facts of this case, he did not represent the Government in Court proceedings as an advocate. If he did so, this would buttress his case of functionally performing an advocate's functions. Nevertheless, the Court held that he was still functionally an advocate – merely because he did not represent the Government in that period would not disentitle him from being enrolled as an advocate.
[73] ibid [102].
[74] *State of UP v Johri Mal* (2004) 4 SCC 714 [71].
[75] Akzo Nobel Chemicals Ltd v. European Commission (C-550/07 P) [47].

which its members are expected to upkeep and uphold. Members of the profession claimed that they are the leaders of thought and society."[76]

63. More recently, similar justifications were advanced to insulate advocates from the consumer protection framework. In *Bar of Indian Lawyers v DK Gandhi*,[77] the Supreme Court held that lawyers would not be subject to the consumer protection framework. It reasons:

    - "*It is well recognized that the profession of law is a noble profession having an element of duty towards the court. Lawyers perform multi-faceted duties. They not only have a duty towards the client or their opponents but they have a paramount duty to assist the court as well. In a way, they are officers as well as ambassadors of the court*."[78]

64. In delineating the relevance of Rule 49 of the Bar Council Rules, the Supreme Court held that, "*the profession of law is a noble one*" and it is directed to maintain a *"clean and efficient bar in the country to serve the cause of justice which is again a noble one."*[79] It has even gone so far as to paint one of the objects of the Advocates Act as "*fructify[ing] the purpose of having efficient members of the Bar who can stand up to the expiation of the noble and learned profession*."[80]

65. Even before 'advocates,' as a class of professionals was created, the Bombay High Court suggested that "*there can be no doubt that the legal profession is a great and noble profession and for that very reason the Advocate owes a bundle of duties, duty to his client, duty to his opponent, duty to the Court, duty to the profession and duty to the public and the State.*"[81]

66. It is unclear what it is about the 'nobility' of the profession disables non-advocates or full-time employees from practicing the law. At best, it has been suggested that given the nobility of the profession, an advocate is expected to devote their entire time and energy to

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[76] *Haniraj Chulani v Bar Council of Maharashtra* (1996) 3 SCC 342 [17].
[77] (2024) INSC 410 [27] (Pankaj Mithal J).
[78] ibid [2] (Bela Trivedi J).
[79] *Satish Kumar Sharma v Bar Council of H.P* (2001) 2 SCC 365 [10].
[80] *Haniraj Chulani v Bar Council of Maharashtra* (1996) 3 SCC 342. Notably, this was in the context of adjudging whether Rules made by the Bar Council would constitute excessive delegation. In answering this question, the Court framed the objects of the Act as above.
[81] G. Vasantha Pai, In Re., AIR 1960 Mad 73; Veerappa Chettiar v. Sundaresa Sastrigal, ILR (1925) 48 Mad 676 Even before the Bom HC decision, the Madras High Court had commented on the nobility of the legal profession as early as 1925, "The legal profession is a very noble one, and no pleader should by his conduct consciously or unconsciously do anything to lower its high standard of morality, probity and honesty. The pleaders would do well to avoid any conduct on their part which is reasonably capable of being misunderstood….On the other hand, the pleaders who are guided and governed by the etiquette of the profession are not likely to do anything which would incur the censure of the profession."

the law.[82] Even so, this prohibition is rooted in antediluvian ideas of the legal profession – which as Part VII demonstrates, is flawed and outdated to suit the modern Indian requirements.

V. Comparative Perspectives

A. Legal Professionals in the UK

67. The UK distinguishes between barristers (who handle courtroom advocacy) and solicitors (who perform drafting, transactional and advisory work) – the former are regulated by the Bar Standards Board, and the latter by the Solicitors Regulation Authority.[83]

68. Historically, only barristers had the right of audience before Courts. Crucially however, this 'monopoly' over the bar was broken by the Courts and Legal Services Act 1990, by which even Solicitors could gain the right of audience before Courts by being qualified as 'Solicitor Advocates.'[84] Thus, the barriers between those who can and cannot practice are not rigid.

69. The same trend is observed across other legal occupations in the UK - it is not unusual for other legal professionals such as academicians to dip their hands into core advocacy – for instance, Professor Phillipe Sands KC is a barrister at 11KBW and a Professor of Law at the University College of London.[85] Professor Vaughan Lower KC at the University of Oxford, and Professor Phillip Johnson at Cardiff University are other such examples.[86] Besides practice, there are several notable examples of judicial appointments from academia – Lord Burrows was famously appointed directly to the UK Supreme Court from a career in academia.[87] At the tribunal level, Nicholas Wikeley was appointed directly to an administrative tribunal from a Professorship.[88] The Crown also routinely nominates

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[82] Fist Donald H., Lex 'Concubina Invidia Est.,' 23 Case and Comment 28 (1916) The author of the poem attributes the authorship of the phrase to Justice Blackstone. The poem goes: ""She's jealous of the wine you drink; She's jealous of the friends you keep; She's jealous of your waking hours; She's jealous of the time you sleep."

[83] BSB, 'Information about Barristers' <https://www.barstandardsboard.org.uk/for-the-public/about-barristers.html> accessed 17 May 2025.

[84] Roger Kerridge and Gwynn Davis, 'Reform of the Legal Profession: An Alternative "Way Ahead"' (1999) 62 The Modern Law Review 807, 810.

[85] 'Prof. Philippe Sands' (*11KBW*) <https://www.11kbw.com/barristers/prof-philippe-sands-kc/> accessed 25 April 2025.

[86] 'Prof Vaughan Lowe KC' (*Essex Court Chambers*) <https://essexcourt.com/barrister/professor-vaughan-lowe-kc/> accessed 4 June 2025; 'Professor Phillip Johnson - People' (*Cardiff University*) <https://profiles.cardiff.ac.uk/staff/johnsonp5> accessed 4 June 2025.

[87] 'Professor Andrew Burrows Appointed to the Supreme Court | University of Oxford' (24 July 2019) <https://www.ox.ac.uk/news/2019-07-24-professor-andrew-burrows-appointed-supreme-court> accessed 4 June 2025.

[88] 'Emeritus Professor Nicholas Wikeley | University of Southampton' <https://www.southampton.ac.uk/people/5wyxvp/emeritus-professor-nicholas-wikeley> accessed 4 June 2025.

'Honorary Kings Counsel', a title given to anyone who makes a major contribution to the law in England and Wales without practicing in courts.[89] Examples are so many.

70. Importantly, in the UK legal advice privilege extends to all lawyers. The House of Lords has clarified that legal advice privilege extends to communications between clients and in-house lawyers – even full-time employment does not extinguish this privilege.[90] All that is required for a communication or document to be privileged is that it must have been prepared for the 'dominant purpose of obtaining advice or evidence in relation to litigation that is reasonably in contemplation.' As long as such advice is tendered by a lawyer, it is privileged.[91]

71. Thus, the UK diverges from India in nearly all significant respects – by broadening its rights of audience and its confidentiality privileges.

B. Legal Professionals in the USA

72. Unlike the UK, the US does not maintain a formal distinction between courtroom advocates and transactional lawyers. All that one requires to practice law is to be licensed by the state bar.[92]

73. The US recognizes in-house counsel as full members of the legal profession. They hold bar memberships and privileges associated with practicing law under Federal and State rules, including the privilege of client-confidentiality.[93] All that the claimant must demonstrate is that the communications were made between a lawyer and her client in confidence, for the purpose of securing legal advice.[94]

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[89] 'New Honorary King's Counsel Welcomed by Lord Chancellor' (*GOV.UK*) <https://www.gov.uk/government/news/new-honorary-kings-counsel-welcomed-by-lord-chancellor> accessed 17 May 2025.
[90] *Three Rivers District Council and others v The Governor and Company of the Bank of England* (Three Rivers 5) [2003] QB 1556 (CA).
[91] *The Financial Reporting Council Ltd v Frasers Group PLC* (2020) EWHC 2607 Ch [26] – [28].
[92] 'Model Rules of Professional Conduct: Preamble & Scope' <https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_preamble_scope/> accessed 17 May 2025. "In addition to these representational functions, a lawyer may serve as a third-party neutral, a nonrepresentational role helping the parties to resolve a dispute or other matter. Some of these Rules apply directly to lawyers who are or have served as third-party neutrals. See, e.g., Rules 1.12 and 2.4. In addition, there are Rules that apply to lawyers who are not active in the practice of law or to practicing lawyers even when they are acting in a nonprofessional capacity. For example, a lawyer who commits fraud in the conduct of a business is subject to discipline for engaging in conduct involving dishonesty, fraud, deceit or misrepresentation."
[93] *See Upjohn Co. v United States*, (1981) 449 U.S. 383.
[94] *See Weil v. Investment/Indicators Research & Management* (9th Cir.1981) 647 F.2d 18, 25.

74. Law school professors also, as part of academic activities, head research centres and legal clinics that deal with 'real clients' in 'real situations'.[95] In other instances, they even act as arbitrators and advise on disputes. For instance, Professor George A Bermann (a reputed international arbitration scholar) is a Professor at Colombia, while also being an active international arbitrator.[96] Similarly, some English barristers are Professors at reputed institutes, while also maintaining an active Court-cum-advisory practice.[97] Many famed Apex Court judges known for their intellectual force were also academic appointees – Oliver Wendell Holmes, Harlan Fiske Stone, Anton Scalia and Ruth Ginsburg being a few among them.[98]

75. In this sense, the US is far more liberal with the cross-pollination of legal professionals across pursuits. There is no evidence that this framework has adversely affected the standing, nobility or independence of the profession – all of which continue to be regulated by States.[99] In contrast, India's framework is far more rigid, with no room for an advocate's privileges outside courtroom practice.

C. Cross-Industry Transferability in other Professional Practices in India

76. Before we compare the legal profession with other professions in India, it may be useful to ask of the utility of this comparison. The jury is out on the issue. However, some judicial perspectives can be gathered from the *DK Gandhi* case (once again, in the context of whether the legal profession would be subject to consumer law).

77. In *DK Gandhi*, Bela Trivedi J interestingly held that the profession was "sui generis" in nature.[100] This suggests that Trivedi J believed that the legal profession was unlike others in the nature of its activities – which thereby merited its exclusion from consumer law. If this line of argument echoing the ideas on the legal profession as 'noble' were to be followed, cross-industry comparisons are of little help.

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[95] Centre for Research and Planning*, Supreme Court of India, Legal Aid through Law Schools: A Report on Working of Legal Aid Cells in India* (October 2024) (released 5 November 2024 at Rashtrapati Bhavan) 34; *See* 'Center for Immigration Law and Policy | UCLA Law' <https://law.ucla.edu/academics/centers/center-immigration-law-and-policy> accessed 15 May 2025.
[96] 'George A. Bermann | Columbia Law School' <https://www.law.columbia.edu/faculty/george-bermann> accessed 15 May 2025.
[97] *See* generally 'Prof. Zachary Douglas KC' (*3VB*) <https://3vb.com/barrister/prof-zachary-douglas-kc/> accessed 19 May 2025; 'Professor Marko Milanovic (Academic Expert) | Doughty Street Chambers' (17 March 2025) <https://www.doughtystreet.co.uk/barristers/professor-marko-milanovic-academic-expert> accessed 15 May 2025.
[98] *See* Lokendra Malik, 'Appointment of "Distinguished Jurists" as Judges in the Supreme Court of India: A Critical Analysis' in Lokendra Malik and others (eds), *Judicial Review: Process, Powers, and Problems (Essays in Honour of Upendra Baxi)* (Cambridge University Press 2020) 238.
[99] *See* the American Bar Association Model Rules of Professional Conduct 1983, rr 5.4, 8.1 and 8.4. While these rules are not themselves binding, they are a model for State bar associates to adopt.
[100] *DK Gandhi* (n 78) [3] (Bela Trivedi J).

78. However, in the same judgement, Pankaj Mithal J (concurring) seemed to have the opposite idea. He expressed doubts as to whether even medical professionals ought to be subject to consumer law. In doing so, he observed that the Supreme Court's 1995 decision in *Indian Medical Association v V.P Shantha* deserved reconsideration, since it included medical professionals in the ambit of consumer law.[101] This view suggests that the special treatment given to advocates is a result of them being *a* profession – just like other professions. In other words, that professions as a whole are on similar footing. In this case, cross-industry comparisons may be fruitful.

79. In any case, examining the other two classes of professionals – accountants and medical professionals can give us practical insights into whether concerns of independence or dedicating time to one pursuit hold up in practice.

Chartered Accountants in India

80. Chartered Accountants are regulated by the Institute of Chartered Accountants of India (**'ICAI'**), established under the Chartered Accountants Act, 1949.[102] Unlike the Bar Council Rules, the ICAI does not prescribe any restrictions on full-time employment. Those in employment at any firm can continue using the designation of 'Chartered Accountants.'

81. Under Section 288 of the Income Tax Act,[103] Chartered Accountants (**'CAs'**) are entitled to appear before income tax authorities – right from the level of the Assessing Officer (the income authority of first instance) up to the Income Tax Appellate Tribunal. Their employment status does not affect this right.

82. Several legislations allow for 'authorized representatives' to be non-legal,[104] while some legislations provide chartered accountants with an explicit right of appearance.[105] Through these provisions, chartered accountants continue to hold the right to practice before several judicial bodies, regardless of their employment status.

83. While there is no binding legal obligation for an accountant to maintain confidentiality, the ICAI Code of Ethics prescribes that an accountant must comply with the principles of confidentiality "*as a result of professional and employment relationships*" unless disclosure is required by law.[106] Non-compliance with the code of action can subject one to

[101] ibid [24] (Pankaj Mithal J).
[102] Chartered Accountants Act 1949, ch I.
[103] Income-tax Act 1961, s 288.
[104] Central Excise Act, 1944, s. 35Q; Customs Act, 1962, s.146A.
[105] The Depositories Act 1996, s.23C; The Real Estate (Regulation and Development) Act, 2016, s.56.
[106] Institute of Chartered Accountants of India Code of Ethics 2020, Volume I, cl 114.

disciplinary action. Thus, CAs have both – the non-exclusivity and the confidentiality privileges that lawyers lack under the Advocates Act.

Medical Professionals in India

84. Medical profession is governed by the National Medical Commission Act 2019. Unless a person is registered with the State or National Registrar for Medicine, they shall not be allowed to practice medicine as a qualified medical practitioner, or hold office as a physician or surgeon.[107] However, this bar is not similar to that in the Advocates Act, since there is no distinction between different types of medical practitioners – the Act does not venture to define or restrict the scope of these definitions. Furthermore, unlike the Advocates Act, there are no restrictions on the scope of medical practice under the Act or Regulations. In effect, there is no bar on medical professionals in employment or research to be able to transition between vocations freely.

85. The Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations 2002 prescribe rules for medical professionals. Just as it is for CAs, the Regulations provide for non-binding ethical obligations to maintain the confidentiality of their clients.[108] Disclosure is allowed only in exceptional circumstances, where there is a threat to larger public interest.[109] Thus, *all* medical professionals have (limited) confidentiality privileges with their clients.

VI. The Potential Implications of the 2025 Amendments

A. Proposed Amendment to the Advocates Act

86. The purported reason for the 2025 amendment is to 'modernize' and 'align' the Indian legal profession with 'global best practices'.[110] Despite this, it does not make any changes to the operative provisions barring non-advocates from 'practicing' law – Sections 29 and 33 remain intact.

87. However, the proposed amendment notably modifies the definition of a legal practitioner in s.2(i).[111] It changes the definition of a legal practitioner to do away with the outdated grades of 'vakil, pleaders etc.' While this is fairly non-controversial, it also expands the

[107] National Medical Commission Act 2019, ss.34(1)(a) and s.34(1)(b).
[108] The Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations 2002, r.2.2.
[109] ibid r 7.14.
[110] Invitation for Comments on the Draft Advocates Amendment Bill (2025)
[111] See the Annexure in Part VIII (D).

definition to include 'law graduate engaged in the practice of law before courts.' There is a two-fold problem with this:

- First, it now allows legal practitioners to 'practice law'. However, now that the outdated categories are removed, it is unclear how these practitioners are different from 'advocates' defined in s.2(a).
- Second, under the scheme of ss.29 and 33, only 'advocates' as defined in s.2(a) are entitled to 'practice law'. By extending the definition of legal practitioners to those who 'practice law', the Amendment contradicts the scheme of the Act.

88. In sum, the Amendment does not advance the cause of liberalizing or modernizing the profession in any manner. In fact, its introduction of prohibitions on strikes by advocates has been heavily critiqued as regressive.[112] If anything, the definitional changes in s.2(i) only serve to complicate what is already complicated. It is thus no surprise that for the time being, the Bill has been withdrawn.

B. Amendment to the Indian Evidence Act (Bharatiya Sakshya Adhiniyam)

89. With the Bharatiya Sakshya Adhiniyam 2023 having replaced the IEA, a few potentially significant changes to Sections 126 and 129 have gone unnoticed.

- First, Section 126 initially gave the benefit of confidentiality privileges to the now-outdated grades of lawyers – vakils, pleaders etc. This has now been replaced with 'advocates'.
- Second, the words 'professional employment' in Section 126 have been replaced with 'professional service'.
- Third, the words 'legal professional adviser' in Section 129 have been replaced with 'legal adviser'.

90. The rationale for the changes to Section 126 is clear – Parliament took the new evidence law as an opportunity to harmonise the Advocates Act with the IEA. This is evident in its repealing of the outdated grades of lawyers such as pleaders, vakils, and so on. While this consultation paper will later show that the drafting intent of the IEA's confidentiality provisions did not envisage its application to the Advocates Act,[113] the new evidence law seems to attempt to harmonise Section 126 of the IEA with the Advocates Act.

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[112] The Advocates (Amendment) Bill 2025, s.35A; 'Law Ministry Withdraws Advocates Amendment Bill: The Key Objections from Lawyers, Bar Council' (*The Indian Express*, 28 February 2025) <https://indianexpress.com/article/explained/explained-law/advocates-amendment-bill-objections-9861843/> accessed 24 April 2025.

[113] *See* Part VII(B) of this brief.

91. However, the change to Section 129 is trickier – the Parliament eliminated the word 'professional' from the service. While seemingly trivial, this may be of jurisprudential significance. It may allow us to conclude that the confidentiality in Section 129 could extend to all forms of legal advice – not only that which is tendered 'professionally'.

92. To illustrate this point, Justice Srikrishna's opinion in *Shire Dev* used the word 'professional' in Section 129 as a launchpad to bridge the framework of 'practice' in the Advocates Act with the IEA.[114] Thus, the very basis of his rejection of the applicability of Section 129 to in-house counsels is eroded by the Amendment.

93. From this, it emerges that the Parliament has definitively excluded non-advocates from the purview of Section 126 but potentially opened the door for them via Section 129. However, a Court is yet to review these changes. As such, there is no certainty on the matter yet.

VII. Way Forward

94. Based on these issues, we advance two suggestions for jurisprudential reform. First, in abolishing the prohibition on non-advocates practicing law, and second, amending the Indian Evidence Act to bring non-advocates' confidentiality privileges on par with those of advocates.

A. The Need to Open the Doors to Non-Advocates

Evolving Roles of Legal Professionals

95. It has been argued that the roles of non-litigating legal professionals such as in-house counsels were not as relevant during the enactment of the Act as they are today.[115]

96. Today, the size and sophistication of several general counsel offices rival those of law firms.[116] Importantly, lawyers such as general counsels are likely to play an increasing role in India's legal profession, and broadly in its political economy.[117]

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[114] *See Opinion of Justice BN Srikrishna in Shire Development LLC v Cadila Healthcare Ltd* (Fed Cir, 2017-1048). *"*In my opinion, the phrase 'practice of law' under Rule 2(xx) is very wide and includes giving of legal advice and contemplates a degree of independence and neutrality in the legal advice given and does not appear to include legal advice given by in-house counsel (that is, a salaried employee of a Company etc.) to their employer. Thus, in-house counsel cannot be considered to be into 'practice of law' or a 'legal professional legal adviser' within the meaning of section 129 of the Evidence act. Nor are they advocates within the meaning of Section 2(a) of the Act of 1961."
[115] Umakanth Varottil, 'Delaware Ruling on Indian In-House Counsel and Legal Privilege' (*Indiacorplaw,* 17 October 2021) <https://indiacorplaw.in/2012/12/delaware-ruling-on-indian-in-house.html> accessed April 23 2025.
[116] Wilkins and Khanna (n 5) 116.
[117] ibid 162.

97. As we saw in the US and UK, academicians and transactional lawyers move from academia to policy to judgeship and back, and are not barred from an audience before Courts. Rather, their parallel practices enrich and complement each other. Globally, it suggests that sharp walls between conventionally 'academic' roles and 'practitioner' oriented roles are gradually breaking down.

98. While this scale, autonomy and diversity in roles have not emerged in India, it suggests a global shift in the nature of 'legal' work – that 'practice' need not involve foregoing other (academic or otherwise) legal pursuits. If anything – other such pursuits could enrich the bar. Indeed, this is the intent of the Constituent Assembly – the category of 'distinguished jurist' was added with the understanding that individuals with diverse professional backgrounds would act as judges of the Supreme Court.[118]

99. In this context, it is crucial to note H V Kamath's statement in the constituent assembly on the introduction of this constitutional door of appointment: "The object of this little amendment of mine is to open a wider field of choice for the President in the matter of appointment of judges of the Supreme Court.... I am sure that the House will realize that it is desirable, may [be] it is essential, to have men—or for the matter of that, women—who are possessed of outstanding legal and juristic learning. In my humble judgment, such are not necessarily confined to judges or advocates."[119]

100. It is thus an anomaly that the Advocates Act prohibits this cross-profession pollination indirectly. This reasoning has also been the driving force behind the arguments that support the appointment of an 'eminent' jurist to constitutional posts in India.[120]

101. Furthermore, several legal professionals in different fields already perform roles that are *functionally* similar to those of advocates. For instance, in-house counsel research, draft, and assist counsel in Court – performing all advocates' functions except appearance (non-litigation work as framed by the Lawyers Collective judgment). Thus, denying them the benefit of the designation of 'advocates' is a formal barrier that ignores the practical realities of their day-to-day work. There is already precedent that recognizes this reality – Tejas Karia , a lawyer working full time with a law firm was recently appointed as a judge of the Dehi High Court.[121] Even though, now J. Tejas Karia was then an arbitration domain specialist, the Supreme Court justified the appointment by emphasizing that his "appearance in matters of significance in arbitration tribunals make up for that."[122]

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[118] ibid 240.
[119] Constituent Assembly Debates, India, vol XI (24 May 1949) <https://cadindia.clpr.org.in/constitution_assembly_debates/volume/11/1949-05-24> accessed 4 June 2025.
[120] Wilkins and Khanna (n 5) 239.
[121] Supreme Court of India, Recommendation for Appointment of Shri Tejas Dhirenbhai Karia as Judge of the High Court of Delhi (25 October 2023) <https://main.sci.gov.in/pdf/collegium/25102023_100438.pdf> accessed 5 June 2025.
[122] ibid.

Elevating Tejas Karia, was a progressive step by the High Court and Supreme Court collegium - to broad base the expertise on the bench and enrich the judiciary by making it a bouquet of experience from different fields of law, rather than restricting the choice to conventional notion of law practice (of litigation in courts).

102. In fact, it is odd that so many in-house lawyers are doing legal work of considerable consequence without being enrolled. It is important to note that there's no bar against in-house lawyers appearing before arbitral tribunals. All lawyers who are in the profession and practicing law (in the broader sense as framed in the Lawyers Collective judgment) must enroll and BCI should insist that they enroll. Which path each individual chooses (litigation, non-litigation advisory, academia, law firm or in-house) is a different matter. The regulatory regime ought to facilitate seamless movement of legal professionals from courtroom and law firms to in-house and to public service (judiciary and other similar roles) and vice versa, including academia to public service positions. This is already happening like there are several examples of lawyers moving from courtroom practice to senior law firm and in-house roles, but the other way around doesn't happen much due to the regulatory restrictions.

103. An in-house lawyer has no incentive to go back to court practice or to aspire to join the judiciary because the years spent in in-house role will not be counted as years of law practice notwithstanding the rich and serious legal work the individual would have done in the in-house role. There should be a high threshold for quality but a threshold bar (to keep a large section of in-house lawyers outside of the legal profession when in reality they actually are a part of it) has no reasonable justification. Despite having practically significant relevant experience, the benefit of the 'advocate' designation and associated benefits and privileges that comes with it is denied to such professionals by virtue of their employment.

Tapping into India's pool of unutilized expertise

104. Restricting the definition of advocates has the effect of insulating the bar from the rest of the legal profession. This has manifold effects — lawyers working in corporates, academia, policy-making organisations, human rights organisations,[123] have a swathe of expertise that can scarcely interact with the bar.

105. Indian Courts have had highly successful experiments in interactions with those professions outside the bar. Professors around the country have contributed crucial insights to landmark litigation on several occasions.[124] In deeply complex and contested issues, an

[123] ibid 249.

[124] Earlier, many stalwarts from the Delhi University law faculty and other universities use to assist the courts in various capacities, including representing in international courts. Recently, the Delhi High Court recently appointed

academician's theoretical and doctrinal foregrounding can be essential to developments at the bar and overall legal system.

106. Much like academia, senior in-house counsel possess a wealth of sector-specific legal expertise – whether in data protection, corporate and economic law, environmental compliance, or trade regulation that is currently underutilized. Not only can their experiences as advocates assist in Courts, but they can also contribute as technical experts and consultants. However, the existing monopoly on the wide-ranging activities classified as 'practice of law' prevents this from bearing fruit.

Outdated Legislations and Notions of Advocates

107. Eugene Angert penned a satire of the notion of the law as a jealous mistress – he recounts the story of several distinguished American jurists such as CJ Marshall, William Pinckney and Joseph Choate who engaged in literature, politics and diplomacy – all while maintaining their professional standing.[125] His satire reveals how the metaphor of law as a 'jealous mistress' was used to justify professional overwork and exclusivity. In other words – there is little justification for restricting the lawyers pursuit.

108. The idea of the law being a 'noble profession' has come to mean far more than ethical and impartial conduct.[126] Even if the argument is accepted that the law's nobility is accepted – it does not justify a complete prohibition on non-advocates' practice of the law.

    - The dichotomy between law as a "calling" and law as a "business" is false; the role today requires navigating both service and commerce with integrity.[127]

    - One can conduct oneself ethically and independently without having to submit to absolute prohibitions on the scope of their practice. Independence is preserved

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Dr. Arul Scaria, a Professor of Law at the National Law University Bangalore as an amicus in the case concerning the emerging tussle between artificial intelligence and intellectual property. Professor Shamnad Basheer is fondly remembered for his formative interventions in the Novartis case. Professor Aparna Chandra of NLSUI has also assisted the Delhi High Court in matters at the intersection of constitutional and criminal law. *See* Bhavini Srivastava, 'Delhi High Court Appoints Two Law Experts to Assist It in ANI's Copyright Case against ChatGPT' (*Bar and Bench - Indian Legal news*, 25 November 2024) <https://www.barandbench.com/news/litigation/delhi-high-court-appoints-two-law-experts-assist-anis-copyright-case-chatgpt> accessed 16 May 2025; National Law School of India University, 'Dr. Aparna Chandra' (NLSIU, Bengaluru) https://www.nls.ac.in/faculty/aparna-chandra/ accessed 4 June 2025; SpicyIP, 'Shamnad Basheer (1976–2019): The Man, the Academic and the Friend' (SpicyIP, 11 August 2019) https://spicyip.com/2019/08/shamnad-basheer-1976-2019-the-man-the-academic-and-the-friend.html accessed 4 June 2025.

[125] *See* Eugene H Angert, 'The Law Is Not a Jealous Mistress' (1927) 12 The Virginia Law Register 577.

[126] 'Professionalism in the 21st Century' (*Harvard Law School Center on the Legal Profession*) <https://clp.law.harvard.edu/article/professionalism-in-the-21st-century/> accessed 15 May 2025.

[127] ibid.

proportionately through fine touches of policy and practice, rather than blanket prohibitions on the practice of law itself.

109. We saw how these notions of the law found their roots in American and English developments, which found their way into the codification of Advocates in the Indian Bar Councils Act 1926 – when English barristers maintained their monopoly over Indian Courts. As such, it is submitted that the notions of law as a 'noble profession' and a 'jealous mistress' are stretched far beyond their history, context and utility. Although Courts have reiterated these aphorisms aplenty,[128] there is little historical or policy-based justification underlying the prohibitions found in the Advocates Act.

How this Amendment Could be Effectuated

110. Some stakeholders have suggested that all that needs to be done is that the Bar Council must do away with Rule 49 of the Bar Council Rules, along with its accompanying rules.[129] On the other hand, some have suggested that there must be an amendment to Chapter IV of the Advocates Act as well (on the 'Right to Practice').[130]

111. It is submitted that both are necessary – the effect of Rule 49 is to prohibit full-time employees from practice. However, this is only complementary to (and flows from) the prohibitions in the Advocates Act, which allow only advocates to practice law. Unless both are done away with (which even the new Amendments failed to do), this monopoly will continue to prevail.

B. <u>The Need to Amend the Indian Evidence Act</u>

112. It is submitted that the judicial interpretations on Sections 126 and 129 (dealt with above) are makeshift attempts to reconcile evidently anachronistic provisions with the Advocates Act. There are historical and textual reasons for this:

113. Historical material suggests that the drafter of the IEA (JF Stephen) framed these provisions without regard to the framework of the Indian legal profession – while dealing with the

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[128] *See* generally *G. Vasantha Pai, In Re*, AIR 1960 Mad 73; *Veerappa Chettiar v Sundaresa Sastrigal,* ILR (1925) 48 Mad 676.
[129] 'General Counsels Must Be Mainstreamed and Rub Shoulders with Litigation Practitioners as Co-Equals': Justice Hima Kohli at GCAI Conference, 2025' (SCC Times, 4 February 2025) <https://www.scconline.com/blog/post/2025/02/04/general-counsels-mainstreamed-rub-shoulders-litigation-practioners-co-equals-justice-hima-kohli-gcai-conference-2025/> accessed 23 April 2025.
[130] Jan, 'GCs Fight for Access' (Law.asia, 21 December 2022) <https://law.asia/indian-in-house-counsels/> accessed 23 April 2025.

provision, he merely noted that it was 'plain in itself', citing the United States case of *Greenough v Gaskell* to buttress his point.[131]

114. Even the illustrations accompanying the IEA provision suggest that Stephen had the functions of the typical English attorney in mind.[132]

115. In any case, the word 'advocate' was first only penned into statute in the Indian Bar Council Act, 1926[133] – much after the drafting of the Indian Evidence Act in 1872. At the time of the IEA's drafting, the conception of an 'advocate' as is defined today was non-existent at the time. Thus, judicial interpretations which attempt to read the word 'advocate' into the scheme of the IEA (as Justice Srikrishna did in *Shire Dev*) are an attempt to squeeze a square peg into a round hole.

116. Given these circumstances, a clarificatory amendment to Sections 126 and 129 may provide that they apply to anyone who practices law – whether in the capacity of a litigating advocate or otherwise. As it stands, the application of Section 129 is uncertain, and Section 126 only includes advocates.

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[131] James Fitzjames Stephen, A Digest of the Law of Evidence (5th edn, Macmillan and Co 1887) 274.
[132] *See* Illustrations to the Indian Evidence Act 1872, s.126: "(a) A, a client, says to B, an attorney — "I have committed forgery, and I wish you to defend me."
As the defence of a man known to be guilty is not a criminal purpose, this communication is protected from disclosure.
(b) A, a client, says to B, an attorney — "I wish to obtain possession of property by the use of a forged deed on which I request you to sue."
This communication, being made in furtherance of a criminal purpose, is not protected from disclosure."
[133] *See* Part IV of this paper for more on the history of the Indian legal profession.

VIII. Annexures

A. Relevant Provisions of the Advocates Act 1961

s.2(a) “advocate” means an advocate entered in any roll under the provisions of this Act;

s.2(k) “roll” means a roll of advocates prepared and maintained under this Act;

s.2(i) “legal practitioner” means an advocate 5 [or vakil] of any High Court, a pleader, mukhtar or revenue agent;

s.29. Advocates to be the only recognised class of persons entitled to practise law ―Subject to the provisions of this Act and any rules made thereunder, there shall, as from the appointed day, be only one class of persons entitled to practise the profession of law, namely, advocates.

s.30. Right of advocates to practise.―Subject to the provisions of this Act, every advocate whose name is entered in the 3 [State roll] shall be entitled as of right to practise throughout the territories to which this Act extends,― (i) in all courts including the Supreme Court; (ii) before any tribunal or person legally authorised to take evidence; and (iii) before any other authority or person before whom such advocate is by or under any law for the time being in force entitled to practise

32. Power of court to permit appearances in particular cases.―Notwithstanding anything contained in this Chapter, any court, authority, or person may permit any person, not enrolled as an advocate under this Act, to appear before it or him in any particular case.

33. Advocates alone entitled to practise.―Except as otherwise provided in this Act or in any other law for the time being in force, no person shall, on or after the appointed day, be entitled to practise in any court or before any authority or person unless he is enrolled as an advocate under this Act.

49. General power of the Bar Council of India to make rules.―

(1) The Bar Council of India may make rules for discharging its functions under this Act. In particular, such rules may prescribe:

> (a) The conditions subject to which an advocate may be entitled to vote at an election to the State Bar Council, including:
> The qualifications or disqualifications of voters, and
>
> The manner in which an electoral roll of voters may be prepared and revised by a State Bar Council.
>
> (ab) Qualifications for membership of a Bar Council and disqualifications for such membership.

(ac) The time within which and the manner in which effect may be given to the proviso to sub-section (2) of section 3.

(ad) The manner in which the name of any advocate may be prevented from being entered in more than one State roll.

(ae) The manner in which seniority among advocates may be determined.

(af) The minimum qualifications required for admission to a course of degree in law in any recognised University.

(ag) The class or category of persons entitled to be enrolled as advocates.

(ah) The conditions subject to which an advocate shall have the right to practise, and the circumstances under which a person shall be deemed to practise as an advocate in a court.

(b) The form in which an application shall be made for the transfer of the name of an advocate from one State roll to another.

(c) The standards of professional conduct and etiquette to be observed by advocates.

(d) The standards of legal education to be observed by Universities in India and the inspection of Universities for that purpose.

(e) The foreign qualifications in law obtained by persons other than citizens of India which shall be recognised for the purpose of admission as an advocate under this Act.

(f) The procedure to be followed by the disciplinary committee of a State Bar Council and by the Bar Council of India's own disciplinary committee.

(g) The restrictions in the matter of practice to which senior advocates shall be subject.

(gg) The form of dresses or robes to be worn by advocates, having regard to the climatic conditions, appearing before any court or tribunal.

(h) The fees which may be levied in respect of any matter under this Act.

(i) General principles for the guidance of State Bar Councils and the manner in which directions issued or orders made by the Bar Council of India may be enforced.

(j) Any other matter which may be prescribed.

Provided that no rules made with reference to clause (c) or clause (gg) shall have effect unless they have been approved by the Chief Justice of India.

Provided further that no rules made with reference to clause (e) shall have effect unless they have been approved by the Central Government.

(2) Notwithstanding anything contained in the first proviso to sub-section (1), any rules made with reference to clause (c) or clause (gg) and in force immediately before the commencement of the Advocates (Amendment) Act, 1973 (60 of 1973), shall continue in force until altered, repealed, or amended in accordance with the provisions of this Act.

B. **Relevant Rules of the Bar Council of India Rules (Standards of Professional Conduct, Chapter V)**

47. An advocate shall not personally engage in any business; but he may be a sleeping partner in a firm doing business provided that in the opinion of the appropriate State Bar Council, the nature of the business is not inconsistent with the dignity of the profession.

48. An advocate may be Director or Chairman of the Board of Directors of a Company with or without any ordinarily sitting fee, provided none of his duties are of an executive character. An advocate shall not be a Managing Director or a Secretary of any Company.

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

* "That as Supreme Court has struck down the appearance by Law Officers in Court even on behalf of their employers the Judgement will operate in the case of all Law Officers. Even if they were allowed to appear on behalf of their employers all such Law Officers who are till now appearing on behalf of their employers shall not be allowed to appear as advocates. The State Bar Council should also ensure that those Law Officers who have been allowed to practice on behalf of their employers will cease to practice. It is made clear that those Law Officers who after joining services obtained enrolment by reason of the enabling provision cannot practice even on behalf their employers."

* "That the Bar Council of India is of the view that if the said officer is a whole time employee drawing regular salary, he will not be entitled to be enrolled as an advocate. If the terms of employment show that he is not in full time employment he can be enrolled."

C. **Provisions of the Indian Evidence Act 1872 and the Bharatiya Sakshya Adhiniyam 2023 on Confidentiality**

Indian Evidence Act, 1872	**Bharatiya Sakshya Adhiniyam, 2023**
126. Professional communications. — No **barrister, attorney, pleader or vakil**, shall at any time be permitted, unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his employment as such barrister, pleader, attorney or vakil, by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the **purpose of his professional employment,** or to disclose any advice given by him to his	132. Professional communications. — (1) No **advocate**, shall at any time be permitted, unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his service as such advocate, by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his **professional service**, or to disclose any advice given by him to his client in the course and for the purpose of **such service**:

client in the course and for the purpose of **such employment:** Provided that nothing in this section shall protect from disclosure — (1) any such communication made in furtherance of any [illegal] purpose, (2) any fact observed by any barrister, pleader, attorney or vakil, in the course of his employment as such, showing that any crime or fraud has been committed since the commencement of his employment. It is immaterial whether the attention of such barrister, [pleader], attorney or vakil was or was not directed to such fact by or on behalf of his client. Explanation. — The obligation stated in this section continues after the **employment** has ceased.	Provided that nothing in this section shall protect from disclosure of— (a) any such communication made in furtherance of any illegal purpose; (b) any fact observed by any advocate, in the course of his service as such, showing that any crime or fraud has been committed since the commencement of his service. (2) It is immaterial whether the attention of such advocate referred to in the proviso to sub-section (1), was or was not directed to such fact by or on behalf of his client. Explanation.—The obligation stated in this section continues after the **professional service** has ceased.
129. Confidential communications with legal advisers. — No one shall be compelled to disclose to the Court any confidential communication which has taken place between him and his **legal professional adviser**, unless he offers himself as a witness, in which case he may be compelled to disclose any such communications as may appear to the Court necessary to be known in order to explain any evidence which he has given, but no others.	134. Confidential communication with legal advisers.—No one shall be compelled to disclose to the Court any confidential communication which has taken place between him and his **legal adviser**, unless he offers himself as a witness, in which case he may be compelled to disclose any such communications as may appear to the Court necessary to be known in order to explain any evidence which he has given, but no others.

D. **Proposed Draft Amendments in the Advocates Amendment Bill (2025)**

Unamended Section	**Proposed Amendment**
Section 2(l) (i) "legal practitioner" means an advocate [or vakil] of any High Court, a pleader, mukhtar or revenue agent.	**Section 2(i) - "Legal Practitioner" means** any **Advocate or law graduate** engaged in **the practice of law before courts**, tribunals or quasi-judicial forums or doing legal work in any private or public organization including but not limited to statutory and autonomous bodies, domestic and **foreign law firms and corporate entities**

	Provided that for the removal of doubt, an experience certificate as legal practitioner issued by the respective State Bar Councils and Bar Associations, Courts/Tribunals/Quasi-judicial forums or issued by any private or public organization including but not limited to domestic and foreign law firms and corporate entities, shall be prima facie a proof of such legal practice. The Bar Council/s shall be at liberty to verify the authenticity of the same in either case upon receipt of any complaint regarding the same.
Section 2 (1) (h) "Law Graduate means a person who has obtained a bachelor's degree in law from any university established by Law in India affiliated to any university and recognized by Bar Council of India.	Section 2 (1) (h) "Law Graduate means a person who has obtained a bachelor's degree in law **of three or five years or such other duration as prescribed, from any Center of Legal Education or University established by Law or a college**

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