

Bihar State Advocates Welfare Fund Act, 1983

16 of 1983

[11 August 1983]

CONTENTS

1. Short title, extent and commencement.
2. Definitions
3. Advocates Welfare Fund
4. Section
5. Establishment of Trustee Committee
6. Disqualification and removal of nominated member of Trustee Committee
7. Resignation by nominated members of Trustee Committee and filling up casual vacancies
8. Act of Trustee Committee not to be invalidated by vacancy, defect, etc
9. Vesting and application of Fund
10. Function of Trustee Committee
11. Fund, borrowing and investment
12. Powers and duties of Secretary-cum-Treasurer
13. Transfer of certain money to the Fund
14. Recognition and registration of Bar Association
15. Duties of Bar Association
16. Membership of the Fund
17. Payment from the Fund on cessation of practice
18. Restriction on alienation, attachment, etc. of interest of member in the Fund
19. Group Life Insurance for members and other benefits
20. Meetings of Trustee Committee
21. Travelling and daily allowance to members of Trustee Committee
22. Printing and distribution of Advocates Welfare Stamp by the State
23. Vakalatnama to bear welfare stamps
24. Protection of action taken in good faith
25. Bar of jurisdiction of civil courts
26. Power to summon witnesses and take evidence
27. Power to make rules
28. Repeal and Saving

SCHEDULE 1 :- SCHEDULE-I

Bihar State Advocates Welfare Fund Act, 1983

16 of 1983

[11 August 1983]

An Act to Provide for the Constitution of Welfare Fund of the benefit to Advocates' in the State of Bihar on death, disability, retirement, illness, etc. and for matter connected therewith or incidental thereto.

Be it enacted by the Legislature of the State of Bihar in the Thirty-Fourth Year of Republic of India as follows:-

1. Published in Bihar Gazette (Ext. ord.) dated 13.8.1983.

1. Short title, extent and commencement. :-

(1) This Act may be called" the Bihar State Advocates Welfare Fund Act, 1983".

(2) It extends to the whole of the State of Bihar.

(3) It shall not apply to persons who have retired from service and have been paid or are entitled to payment of retirement benefits from his employer.

2. Definitions :-

In this Act unless the context otherwise requires-

(a) "Advocate" means a person whose name have been entered in the State Roll of Advocates prepared and maintained by the Bihar State Bar Council under Section 17 of the Advocates Act, 1961 (Central Act 25 of 1961).

(b) "Bar Council" means the Bihar State Bar Council constituted under Section 3 of the Act 1961, (Central Act 25 of 1961);

(c) "Cessation of Practice" means removal of the name of an advocate from the State Roll maintained by the Bar Council on account of his retirement or death;

(d) "Court" includes any Tribunal or authority before whom an advocate is by or under any law for the time being in force entitled to practice;

(e) "Dependents" means wife, husband, father, mother and unmarried minor children or such of them as exist;

(f) "Fund" means the Advocates Welfare Fund constituted under Section 3.

(g) "Member of the Fund" means an advocate admitted to the benefit of the Fund and continuing to be a member thereof under

the provisions of this Act;

(h) "Prescribed" means prescribed by the Bar Council by rules made under this Act;

(i) "Retirement" means stoppage of practice as an advocate communicated to and recorded by the Bar Council;

(j) "Stamp" means the stamp printed and distributed under Section 22;

(k) "State" means the State of Bihar;

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

(m) "Trustee Committee" means the committee established under Section 4;

(n) "Vakalatnama" means vakalatnama and includes memorandum of appearance or any other document by which an advocate is empowered to appear or plead before any Court, tribunal or other authority. But it shall not include memorandum of appearance filed on behalf of the State or Officer representing State or Government.

3. Advocates Welfare Fund :-

(1) The Government shall constitute a fund called the Advocates Welfare Fund.

(2) There shall be credited to the Fund-

(a) all amount paid by the Bar Council under Section 13;

(b) any other contribution made by the Bar Council;

(c) any voluntary donation or contribution made to the Fund by the Bar Council of India, any Bar Association, any other association or institution, any advocate or any other person;

(d) any grant made by the State Government to the Fund;

(e) any sum borrowed under Section 11;

(f) all sums received from the Life Insurance Corporation of India on the death of an advocate under the Group Insurance Policy;

(g) any profit or dividend received from the Life Insurance Corporation of India in respect of policies of Group Insurance of the members of the Fund;

(h) any interest or dividend or other return on any Investment made of any part of the Fund;

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

(j) all sums collected under Section 16 by way of application fees and annual subscriptions and interest thereon.

(3) The sums specified in sub-section (2) shall be paid to, or collected by, such agencies, at such intervals and in such manner

and the accounts of the Fund shall be maintained in such manner as may be prescribed:

4. Section :-

The Administrative Department of the Bihar State Advocates Welfare Fund Scheme shall be the Law Department of the Government, which shall have the powers to give instructions from time to time.

5. Establishment of Trustee Committee :-

(1) Government may, by notification in the Gazette, establish with effect from such date as may be specified therein, Committee to be called the Bihar Advocates Welfare Fund Trustee Committee.

(2) The Trustee Committee shall be a body corporate having perpetual succession and common seal with its head office at Patna with power to acquire and hold property and shall, by the said name, sue and be sued.

(3) ¹[(i)] The Trustee Committee shall consist of-

(a) the Advocate General of Bihar who shall be the Chairman of the Trustee Committee, ex officio;

(b) the Law Secretary to Government, ex officio;

(c) a member nominated by the Government;

(d) Chairman of the Bar Council;

(e) two members of the Bar Council nominated by it;

(f) the Secretary-cum-Treasurer appointed by the Trustee Committee, ex officio.

(4) A member nominated by the Government under clause (c) of sub-section (3) shall hold office for a term of four years and must be an advocate on the roll of Bihar State Bar Council.

(5) Member nominated by the Bar Council under Clause (c) of sub-section (3) shall hold office for a term of four years or for the duration of his membership in the Bar Council, whichever is less.

1. Sub-section (3) re-numbered as 3(i) by Bihar Act 5 of 1990.

6. Disqualification and removal of nominated member of Trustee Committee :-

(1) A member nominated under clause (c) or clause (e) of sub section (3) of Section 5 shall be disqualified to be a member of the Trustee Committee if he-

- (a) becomes of unsound mind; or
- (b) is adjudged insolvent; or
- (c) is absent without leave of the Trustee Committee for more than three consecutive meeting of the Committee; or
- (d) is a defaulter to the Fund (in case he is member of the Fund) or has committed breach of trust; or
- (e) is convicted by a criminal court for an offence involving moral turpitude, unless such conviction has been set aside; or
- (f) is debarred from practicing on the ground of misconduct; or
- (g) ceases to be an advocate under the Advocates Act.

(2) The Government may remove any member who is or has become disqualified under sub-section (1) from membership of the Trustee Committee:

Provided that no order removing any member shall be passed unless that member and the Bar Council in the case of a member nominated by it has been given an opportunity of being heard.

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

(1) Any member nominated under clause (c) or clause (d) of sub-section (3) of Section 5 may resign his office by giving three months, notice in writing to the Government or the Bar Council, as the case may be and such resignation being accepted by the Government or the Bar Council shall be deemed to have vacated his office :

Provided that the Bar Council shall consult the Government before accepting the resignation.

(2) A casual vacancy in the office of a member referred to in sub-section (1) may be filled up, as soon as may be and a member so nominated to fill such vacancy shall hold office for the un expired portion of the term of office of the member whose place he fills.

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

No act done or proceeding taken under this Act or the Rules made there under by the Trustee Committee shall be invalidated merely by reason of-

- (a) any vacancy or any defect in the constitution of the committee; or
- (b) any defect or irregularity in the nomination of any person as a member thereof; or

(c) any defect or irregularity in such act or proceeding not affecting the merits of the case.

9. Vesting and application of Fund :-

The Fund shall vest in, and be held and applied by the Trustee Committee subject to the provisions, and for the

10. Function of Trustee Committee :-

(1) The Trustee Committee shall administer the Fund.

(2) In the administration of the Fund, the Trustee Committee shall, subject to the provision of this Act and the Rules made thereunder-

(a) hold the amounts and assets belonging to the Fund in Trust;

(b) receive applications for admission or readmission to the Fund, and dispose of such applications within ninety days from the date of receipt thereof;

(c) receive applications from the members of the Fund, their nominees or legal representatives, as the case may be, for payment out of the Fund, conduct such applications and dispose of the application within three months from the date of receipt thereof.

(d) record in the minutes book of the Trustee Committee its decisions on the applications;

(e) pay to the applicants amounts at the rates specified in the Schedule;

(f) send such periodical and annual reports as may be prescribed to the Government and the Bar Council;

(g) communicate to the applicants by registered post with acknowledge ment due the decisions of the Trustee Committee in respect of applications for admission or readmission to the fund or claims to the benefit of the Fund;

(h) do such other acts as are or may be, required to be done under this Act and the Rules made thereunder.

¹[(i) frame and implement all such welfare schemes which it may deem proper in the larger interest of members and on availability of sufficient fund after approval of the Bar Council and review its all welfare Schemes for requisite enhancement at least once after each five years.]

1. Added by Bihar Act 13 of 2003.

11. Fund, borrowing and investment :-

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

12. Powers and duties of Secretary-cum-Treasurer :-

The Secretary-cum-Treasurer of the Trustee Committee shall-

- (a) be the Chief Executive Authority of the Trustee Committee and responsible for carrying out its decisions;
- (b) represent the Trustee Committee in all suits and proceedings for and against the Committee.
- (c) authenticate by his signature all decisions and instructions of the Trustee Committee;
- (d) operate the bank accounts of the Trustee Committee jointly with the Chairman;
- (e) convene meeting of the Trustee Committee and prepare its minutes;
- (f) attend the meetings of the Trustee Committee with all the necessary records and information;
- (g) maintain such form, registers and other records as may be prescribed from time to time and do all correspondence relating to the Trustee Committee;
- (h) prepare an annual statement of business transaction by the Trustee Committee during each financial year, and

(i) do such other acts as may be directed by the Administrative Department or by the Trustee Committee or its Chairman and the Bar Council.

13. Transfer of certain money to the Fund :-

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

14. Recognition and registration of Bar Association :-

(1) All Associations of Advocates known by any name functioning in any Court, Tribunal or Authorities, etc., may, before a date to be notified by the Bar Council in this behalf, apply to the Bar Council in such form as may be prescribed for recognition and registration.

(2) Every application for recognition and registration shall be accompanied by the Rules or By-laws of the Association, names and addresses of the office bearers of the Association and up-to-date list of the members of the Association showing, the name, address, date of enrolment and the ordinary place of practice of each member.

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

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

15. Duties of Bar Association :-

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

(2) Every Bar Association shall intimate to the Bar Council and Trustee Committee-

(a) any change of the office-bearers of the Association within fifteen days from such change;

(b) any change in the membership including admissions and readmissions within thirty days of such change;

(c) the death, retirement or voluntary suspension of practice of any of its members within thirty days from the date thereof;

(d) such other matters as may be required by the Bar Council or the Trustee Committee from time to time.

16. Membership of the Fund :-

(1) Every advocate practicing in any Court, Tribunal or Authority, and being a member of a Bar Association recognised by the Bar Council in the State may apply to the Trustee Committee for admission as a member of the Fund in such form as may be prescribed.

(2) On receipt of an application under sub-section (1) and on payment of a fee as prescribed in sub-section (3) the Trustee Committee shall make such enquiry as it deems fit and either admit the applicant to the Fund or for reasons to be recorded in writing reject the application :

Provided that no order rejecting an application shall be passed unless the applicant has been given an opportunity of being heard.

(3) Every applicant shall pay an admission fee of two hundred rupees in one lump sum or in the course of one year in four equal installments, in such manner as may be prescribed, the first installment being payable along with the application, to the account of the Trustee Committee.

(4) In the event of rejection of the application, the admission fee paid shall be refunded to the applicant.

(5) Every member shall pay an annual subscription to the Funds on or before the 30th June of every year at the following rates, namely:-

Where the standing of the advocate at the Bar

is five years or more but less than ten years Fifty rupees

Where the standing of the advocate at the Bar is ten years or more.

One hundred rupees

(6) A member shall be entitled to pay the subscription under sub-section (5) in two equal half-yearly instalments at his option.

(7) Any member who fails to remit the annual subscription for an year before the 30th June of that year shall be removed from the membership of the Fund :

(8) A person removed from the membership of the Fund under sub-section (7) shall be readmitted to the Fund on payment of the arrears with interest at twelve percent per annum within six months from the date of such removal.

(9) Every member shall at the time of admission to the membership of the Fund may make a nomination conferring on one or more persons the right to receive the amount which may be due to him from the Fund in the event of his death before the amount has been paid to him.

(10) If a member nominates more than one person under sub-

section (9), he shall specify in the nomination the amount or share payable to each of the nominees in such manner as to cover the whole of the amount that may be due to him.

(11) A member may at any time cancel a nomination by sending a notice in writing to the Trustee Committee provided that a member shall along with such notice send a fresh nomination.

(12) Every member who voluntarily suspends practice or retires shall, within fifteen days of such suspension or retirement, intimate the fact to the Trustee Committee and if any member fails to do so without sufficient reasons, the Trustee Committee shall reduce the amount due to that member as on the date of actual retirement or suspension or practice.

17. Payment from the Fund on cessation of practice :-

(1) A member of the Fund shall, on cessation of practice, be entitled to receive out of the Fund an amount at the rate specified in the Schedule :

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

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

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

(5) In the case of a member who dies or suffers from permanent disablement, the member or his nominee or legal heir, as the case may be, shall be entitled to get a minimum sum of Rs. 5,000.

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

(7) An application received under sub-section (6) shall be disposed of by the Trustee Committee after such enquiry as it deems necessary :

Provided that any person who takes up any job or employment after suspension of practice within ten years shall not be entitled to any of the benefits under the Act except the amount deposited by him under the scheme with interest.

18. Restriction on alienation, attachment, etc. of interest of

member in the Fund :-

(1) The interest of any member in the Fund, or right of a member of his nominee or legal heirs to receive any amount from the Fund, shall not be assigned, alienated, or charged and shall not be liable to attachment under any decree or order of any court, tribunal or other authority.

(2) No creditor shall be entitled to proceed against the Fund or the interest therein of any member or his nominee or legal heirs.

Explanation-For the purposes of this section, "creditor" includes the State, or an official assignee or receiver appointed under the Insolvency Act, 1955 (2 of 1956) or any other law for the time being in force.

19. Group Life Insurance for members and other benefits :-

The Trustee Committee may, for the welfare of the members of the Fund-

(a) obtain from the Life Insurance Corporation of India, policies of Group Insurance for the members of the Fund;

(b) provide for such benefits as may be prescribed;

(c) advance loan at the Bank rate to meet professional necessities, provided that the amount so advanced in no case shall exceed 50 percent of the amount payable to the member if he would have retired on the date of application for loan.

20. Meetings of Trustee Committee :-

(1) The Trustee Committee, shall meet at least in 2[one calendar month] or more often if found necessary at its headquarter at Patna or at any other place in Bihar to transact business under this Act or the rules made thereunder.

(2) One-third members of the Trustee Committee shall form the quorum for the meeting of the Committee.

(3) The Chairman or in his absence 1[Vice-Chairman of the Bar Council] or a member elected shall preside over a meeting of the Trustee Committee.

(4) Any matter coming up before a meeting of the Trustee Committee shall be decided by majority of the members present and voting at the meeting, and in case of equal votes, the Chairman or the member presiding over the meeting shall have a casting vote.

1. Added by Bihar Act 5 of 1990.
2. Substituted by Bihar Act 13 of 2003.

21. Travelling and daily allowance to members of Trustee Committee :-

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

22. Printing and distribution of Advocates Welfare Stamp by the State :-

- (1) The State shall cause to be printed and distributed Advocates Welfare Fund stamps for sale of the value of ¹[five rupees] with the Council Emblem and its value inscribed thereon.
- (2) The welfare stamps shall be the size of 1" x 2".
- (3) The custody of the welfare stamps shall be with the State of Bihar who will maintain separate account and Head for this.
- (4) The State Government shall control the distribution and sale of the Welfare Stamps through the stamp vendors appointed by it for the sale of court-fee stamps, ²[or Bar Council and/or its affiliated Bar/Advocates Association.]
- (5) The State Government at the time of closing of every financial year shall transfer the sale proceeds of the welfare stamps after the payment of commission, etc. to the account of Advocates Welfare Fund.
- (6) The State Government shall also furnish to the Trustee Committee a statement containing the number of Welfare stamps printed, sold and amount so transferred to the Advocates Welfare Fund after deducting commission etc. within three month from such transfer.
- (7) Every welfare stamp affixed on vakalatnama filed before any Court, Tribunal or other Authority be cancelled in the manner as provided in Bihar for the court-fee stamps.

1. Substituted by Bihar Act 13 of 2003.
2. Inserted by Bihar Act 13 of 2003.

23. Vakalatnama to bear welfare stamps :-

(1) No vakalatnama shall be filed before or received by any court, tribunal or other authority unless it has the welfare stamp, as mentioned in Section 22.

24. Protection of action taken in good faith :-

(1) No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done intended to be done in pursuance of this Act or any rule made thereunder.

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

25. Bar of jurisdiction of civil courts :-

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

26. Power to summon witnesses and take evidence :-

The Trustee Committee and the Bar Council shall, for the purposes of any enquiry under this Act have the same power as are vested in a civil court while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters namely:-

- (a) enforcing the attendance of any person or examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavit;
- (d) issuing commissions for the examination of witnesses.

27. Power to make rules :-

The Bar Council may, with the previous approval of the Government by notification in the official Gazette, make Rules for the purposes of carrying into effect the provisions of this Act.

Note: (1) [Word or words added in Hindi is/are added by Act No. 5 of 1990] (2) Amendments by Bihar Act No. 13, 2003 are also incorporated herein.

28. Repeal and Saving :-

(1)The Bihar Advocates Welfare Fund Ordinance,1983 (Bihar Ordinance No. 10 of 1983) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken in exercise of any powers conferred by or under the said Ordinance shall be deemed to have been done or taken in exercise of powers conferred by or under this Act as if this Act were in force on the day on which such thing or action was done or taken.

1. For Schedule of the Bihar State Advocates Welfare Fund Act, 1983. Published and prepared us. 9,16 and 17(1) Given hereunder.

2. The original Schedule has been amended under the power conferred on the Bihar Advocates Welfare Trustee Committee u/s 7(1) of Bihar Act 5 of 1990.

3. The amended Schedule came into force w.e.f. 28.3.2001, the day when it was published in Bihar Gazette.

4. Schedule I(A) & (B) has again been amended by the Trustee Committee with the approval of the Bihar State Bar Council u/s 17(1) of Bihar Act, 5 of 1990 and u/s 10(2) of Bihar Act 13 of 2003.

5. This new Schedule shall come into force with effect from the date of notification in the Bihar Gazette.

SCHEDULE 1

SCHEDULE-I

SCHEDULE I **[See Sections 9,16 and 17 (i)]** **(A)**

Completed years of practice		Existing Slab	
		Death Benefit (in Rs.)	Benefit on Voluntary Retirement
			(in Rs.)
1 Years		5,000	
2 Years		5,000	
3 Years		5,000	
4 Years		5,000	
5 Years		5,000	
6 Years		6,000	6,000
7 Years		7,000	7,000
8 Years		8,000	8,000
9 Years		9,000	9,000

10 Years		10,000	10,000
11 Years		16,500	11,000
12 Years		18,000	12,000
13 Years		19,500	13,000
14 Years		21,000	14,000
15 Years		22,500	15,000
16 Years		24,000	16,000
17 Years		25,500	17,000
18 Years		27,000	18,000
19 Years		28,500	19,000
20 Years		30,000	20,000
21 Years		42,000	31,500
22 Years		44,000	33,000
23 Years		46,000	34,500
24 Years		48,000	36,000
25 Years		50,000	37,500
26 Years		65,000	39,000
27 Years		67,500	40,500
28 Years		70,000	42,000
29 Years		72,500	43,500
30 Years		1,00,000	1,00,000

(B) SCHEDULE FOR EX-GRATIA PAYMENT

SI. No.	Age Group	Ex-gratia Payment (on death only) in Rs	
1.	Upto 30 years of age		60,000
2.	Above 30 years and upto 40 years	irs of age	55,000
3.	Above 40 years and upto 45 years	irs of age	50,000
4.	Above 45 years and upto 50 years	irs of age	45,000
5.	Above 50 years of age		30,000

(N.B.-On publication in Gazette new Schedule will come into force replacing existing Schedule)