ASSAM ACT NO. XVIII OF 1999

(Received the Assent of the President on 1st June, 1999)

THE ASSAM ADVOCATES' WELFARE FUND ACT, 1998

AN

ACT

to provide for constitution of a Welfare Fund for the benefit of Advocates in the State of Assam and for matters connected therewith or incidental thereto.

It is hereby enacted in the Forty-ninth Year of the Republic of India, as follows :-

CHAPTER –I

Preliminary

Short title, extent and commencement.

1. (1)This Act may he called the Assam Advocates' Welfare Fund Act, 1998.

(2) It extends to the whole of Assam.

Definitions.

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

(a)"Advocate" means a person whose name has been entered in the State roll of advocates prepared and maintained by the Bar Council of Assam, Nagaland, Meghalaya, Manipur, Tripura, Mizoram and Central

Arunachal Pradesh under section 17 of the Advocates' Act 25 of Act, 1961 and who is practising as an Advocate in 1961 in the State of Assam; **Central Act 25 1961**

(b)"Bar Association" means an Association of Advocates recognised by the Bar Council under section 13;

(c)"Bar Council" means the Bar Council of Assam Nagaland, Meghalaya, Manipur, Tripura, Mizoram and Arunachal Pradesh constituted under section 3 of the Advocates' Act, 1961 ; **Central Act 25 of 1961**

(d)"cessation of practice" means removal of the name of an Advocate from the State roll maintained by the Bar Council on account of his retirement or on death or on grounds of professional misconduct;

(e)"Committee" means the Assam Advocates' Welfare Fund Committee constituted under section 4 ;

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

(g)"Fund" means the Assam Advocates' Welfare Fund constituted under section 3;

(h)"State Government" means the Government of Assam;

(i)"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 ;

(j)"notification" means the notification published in the Assam Gazette, and the word "notified" shall be construed accordingly ;

(k)"prescribed" means prescribed by rules made under this Act ;

(l)"retirement" means stoppage of practice as an Advocate for reasons other than joining service or for carrying on any other gainful occupation, communicated to and recorded by the Bar Council ;

(m)"Fund Stamp" means the Assam Advocates' Welfare Fund Stamp printed and distributed under section 18 ;

(n)"suspension of practice" means voluntary suspension of practice as an Advocate or suspension by the Bar Council for misconduct ;

(o)"Vakalatnama" means a Valakatnama, memorandum of appearance or by any other document by which an Advocate or any other legal practitioner is empowered to appear and plead before any court, tribunal, authority or person.

CHAPTER – II

CONSTITUTE OF ADVOCATES WELFARE FUND:

Assam Advocates' Welfare Fund :

3. (1)With effect from the commencement of this Act the State Government shall, by notification, constitute a Fund to be called the Assam Advocates' Welfare Fund.

(2) There shall be credited to the Fund -

(a)all amounts collected under section 19;

(b) any 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)grant, if any, made by the Central Government or the State Government or other authority to the Fund ;

(e)any sum borrowed under section 10 ;

(f)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 ;

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

(h)all sums collected under section 15 by way of application fees, membership fee or other 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.

CHAPTER – III

ESTABLISHMENT OF THE ASSAM ADVOCATES WELFARE FUND COMMITTEE

Constitution of the Assam Advocates' Welfare Fund Committee.

4. (1)The State Government may, by notification, constitute with effect from such date as may be specified therein a Committee to be called the Assam Advocates' Welfare Fund Committee.

(2)The Committee shall be a body corporate having perpetual succession and a common seal with power to acquire, hold and dispose of property and shall by the said name, sue and be sued.

(3)The Committee shall consist of –

(a)The Chairman of the Bar Council -Ex-officio Chairman;

(b)The Advocate-General of Assam, -Ex-officio member ;

(c)The Secretary to the Government of Assam, Legislative Department, -Ex-officio member

(d)The Secretary to the Government of Assam, Judicial Department -Ex-Officio member.

(e)the Commissioner and Secretary to the Government of Assam, Finance Department - Ex-officio member;

(f)three other members of the Bar Council nominated by the Bar Council from amongst its members other than ex-officio members of the said Council - members;

(g)the Secretary to the Bar Council- Ex-officio Secretary of the committee without having voting right ;

(h)a practising Advocate of the State to be co-opted by the other members of the Committee for a period of five years and his term shall be co-terminus with the term of the Bar Council-member.

(4)A member nominated from the Bar Council under clause (f) of sub-section (3) shall hold office for a term of five years or for the term of his membership in the Bar Council, whichever is less.

Disqualification and removal or nominated member.

5. No person shall be nominated and continue as a member of the Committee under clause (f) of sub-section (3) of section 4 if he -

(a)is, of unsound mind and stands so declared by a competent Court; or

(b) is, or at any time has been, adjudicated insolvent ; or

(c)is or has been convicted by a Criminal Court for an offence involving moral turpitude, unless such conviction has been set aside ; or

(d)is a defaulter to the Fund ; or

(e) is debarred from practising on the ground of professional or other misconduct; or

(f)ceases to be an Advocate under the Advocates Act, **Central** 1961. Central **Act 25 of** **1961**

Resignation and casual vacancy.

6. (1)Any member nominated under clause (f) of sub-section (3) of section 4 by the Bar Council may resign his office by giving three months notice in writing to the Chairman of the committee and on such resignation being accepted by the Chairman, the said member shall be deemed to have vacated his office.

(2) If any member nominated under clause (f) of sub-section (3) of section 4,

(a)becomes subject to any of the disqualifications mentioned in section 5 ; or

(b)is absent without leave from the Committee for more than three consecutive meetings of Committee, his seat shall thereupon become vacant.

(3)A casual vacancy of a nominated member arising under sub-section (1) or sub-section (2) shall be filled in as soon as possible in the same manner and for the same term or duration as is mentioned in section 4.

Act of Committee not to be invalidated by vacancy, defect or

7. No act done or proceedings taken, under this Act or the rules made thereunder, by the Committee shall be invalid merely by reason of –

irregularity.

(a)any vacancy or defect in the constitution of 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 proceedings not affecting the merit of the case.

Vesting and application of Fund.

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

Functions of Committee.

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

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

(a)collect, preserve, manage and utilise the Fund:

(b) hold the amounts and assets belonging to the Fund in trust;

(c)receive applications for admission or re-admission to the Fund and dispose of such applications within ninety days from the date of receipt thereof;

(d)receive applications from the members of the Fund, their nominee, dependents or legal representatives, as the case may be, for payment out of the Fund, and conduct such enquiry as it deems necessary for the disposal of such applications and shall dispose of the applications within ninety days from the date of receipt thereof;

(e)record in the minutes book of the Committee its decision on the applications received under clause (c) and (d) ;

(f)pay to the applicant amount at the rate specified in the Schedule ;

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

(h)communicate to the applicant by registered post with acknowledgement due its decision on the application for admission or readmission to the Fund or claims to the benefit of the Fund ;

(i)appoint such officers and servants as it may think necessary for carrying out the purposes of this Act on such terms and conditions as may prescribed ; and

(j)do such other acts as are, or may be, required to be done by it under this Act and the rules made thereunder.

(3)The Bar Council or the Committee may give to the Advocates Association or Bar Association such direction as, in its opinion are necessary or expedient for carrying out the purposes of the Act.

Borrowing and investment.

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

forming part of the Fund in any Schedule Bank or invest the same in loan to any corporation owned or controlled by the Central Government or the State Government or in loan floated by the Central Government or the State Government or in any other manner as the Committee may, from time to time decide with the approval of the State Government.

(3)All amounts due and payable under this Act and all expenditure reiating to the management _and administration of the Fund shall be paid out of the Fund.

Accounts and Audit.

11. (1)The Committee shall keep and maintain books of accounts and other books in such form and in such manner as may be prescribed.

(2)The accounts of the Committee shall be audited annually by a Chartered Accountant by the Bar Council.

(3)The Accounts of the Committee as audited by the Chartered Accountant together with his audit report shall be forwarded to the Bar Council by the Committee and the Bar Council may issue such directions, as it deems fit, to the Committee in respect thereof.

(4)The Committee shall comply with the directions issued by the Bar Council under sub-section (3).

(5)The Committee shall pay from the Fund the charges for the audit.

Powers and duties of Secretary.

12. The Secretary of the Committee shall, -

(a)be the Chief Executive Authority of the Committee and responsible for carrying out its decisions ;

(b)represent the Committee in all suits and proceedings for and against the Committee ;

(c)authonticate by his signatures all decisions and instructions of the Committee ;

(d)operate the bank accounts of the Committee jointly with the Chairman of the Committee or his nominee ;

(e)convene meetings of the Committee and record its minutes;

(f)attend the meetings of the Committee with all necessary records and information ;

(g)maintain such forms, registers and other records as may be prescribed from time to time and do all correspondence relating to the Committee ;

(h)prepare an annual statement of business transacted by the Committee during each financial year; and

(i)do such other acts as may be directed by the Committee and the Bar Council.

CHAPTER – IV

RECOGNITION AND REGISTRATION OF BAR ASSOCIATIONS

Recognition and registration of Bar Association.

13. (1)All Associations of Advocates known by any name functioning in any court headquarter shall, 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 as a Bar Association under this Act.

(2)Every application for recognition and registration shall be accompanied by the rules or bye-laws of the Association of Advocates, names and addresses of the office bearers of the said Association and alongwith an up-to-date list of its members showing the names, ages, dates of enrolment and the ordinary place of practice of such members.

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

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

Duties of Bar Association.

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

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

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

(b)any change in the membership including admission and re-admission within thirty days of such change;

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

(d)such other matter as may be required by the Bar Council from time to time.

(3)Every Bar Association shall carry out the directions given by the Bar Council or the Committee, as the case may be.

MEMBERSHIP OF FUND AND PAYMENT THEREFROM

Membership of the Fund and payment therefrom.

15. (1)Every Advocate practising in any court, tribunal or other authority in the State of Assam may apply to the Committee for admission as member of the Fund, in such form as may be prescribed.

(2)On receipt of any application under sub-section (1), the Committee shall make such enquiry as it deems fit and either admit the applicant to the Fund or, for reasons to be recorded in writing, reject the application :

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

(3)Every applicant shall pay an application fee of one hundred rupees to the account of the Committee alongwith the application.

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

(5)Where an Advocate is admitted as a member of the Fund, he shall pay to the Fund an amount of rupees 1[two thousand] as membership fee either in one instalment or two half yearly instalments of rupees 2[one thousand] each within one year from the date of admission and on such payment the membership of the Advocate concerned shall, subject to the provisions of sub-section (7), be for his life. The membership fee shall be non-refundable.

1. Subs. by Assam Act No. XXX of 2010.
2. Subs. by Assam Act No. XXX of 2010.

(6)Every member shall, at the time of admission to the membership of the Fund, make a nomination conferring on one or more dependents 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. If a member nominates more than one nominee, he shall specify in the nomication the share payable to each of the nominees :

Provided that a members may at any time cancel a nomination by sending a notice in writing to the committee alongwith a fresh nomination.

(7)Every member who voluntarily suspends practice or retires, shall, within three months of such suspension or retirement, intimate that fact to the Committee, and if any member fails to do so without sufficient reason, the Committee, may reduce, in accordance with such principles as may be prescribed, the amount due to that member.

Payment from the Fund on cessation of practice.

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

(2)In the event of death of a member, a consolidated amount as determined by the Committee in the manner prescribed, may also be paid to the nominee or where there is no nominee, to his dependents in addition to payment under sub-section (1).

Explanation :- For the purpose of this sub-section the word "dependent" means any of the following relatives of a deceased member, namely-

(i)a widow, a minor legitimate son, and unmarried legitimate daughter or a widowed mother; and

(ii)if wholly dependent on the earnings of the member at the time of his death, a son or a daughter who has attained the age of 18 years and who is infirm.

(3)A member of the Fund may, opt for retirement benefits as enumerated in sub-section (I) at any time after ten years of his admission as a member of .the Fund; but he shall be eligible for re-admission as a new member to the Fund subject to such conditions as may be prescribed :

Provided that a member suffering from parmanent disablement shall be allowed to retire within ten years of his admission to the Fund.

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

(5)In the case of a member who dies within five years of his admission to the Fund, his nominee or legal heirs, as the case may be, shall be eligible to get an amount at the rate of one thousand rupees per year of practice.

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

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

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

17. (1)The interest of any member in the Fund, or the right of a member or his nominee or legal heirs to receive any amount from the Fund, shall not be assigned, alienated or charged and shall not be liable to attachment under any degree or order of any court, tribunal, financial institutions 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 Government or an official assignee or **Central** receiver appointed under the Provincial Insolvency **Act 15** Act, 1920 or any other law for the time being in force. **of 1920.**

CHAPTER – VI

PRINTING AND DISTRIBUTION OF STAMPS

Printing and distribution or stamps by the Committee.

18. (1)The Committee shall cause to be printed and distributed the stamps of the value of rupees 1[six and twelve] respectively with the Bar Council emblem and its value inscribed thereon.

(2)The Fund Stamps shall be of the size 1" x 2" and shall be sold by the Committee.

(3)The custody of the Fund Stamps shall be with the Committee.

(4)The Committee shall control the distribution and sale of the Fund Stamps through Bar Associations in such manner and procedure as may be prescribed.

(5)The Committee shall keep proper accounts of the Fund Stamps in such form and in such manner as may be prescribed.

(6)The Bar Associations shall purchase the Fund Stamps from the Committee after paying the value thereof less ten per cent of such value towards incidental expenses.

Affixation or Fund Stamp.

19. (1)Every vakalatnama filed shall be affixed with one Fund Stamp of the value of 2[twelve] rupees in case of vakalatnama filed in the High Court or a Tribunal, the Assam Board of Revenue or any other quasi judicial Authority and rupees 3[six] in all other cases in addition to the required Court fee stamp and no vakalattfiuna shall be filed before or received by any Court, Tribunal or other authority or person unless it is so stamped :

Provided that the provision of this sub-section shall not apply to any vakalatnama filed by or on behalf of the Central or the State Government.

1. Subs. by Assam Act No. XXX of 2010.
2. Subs. by Assam Act No. XXX of 2010.
3. Subs. by Assam Act No. XXX of 2010.

(2)The value of the Stamp shall neither be the cost in the case nor be received or collected in any event from the client.

(3)Any contravention of the provisions of sub-section (1) or (2) by any member of the Fund shall disentitle him either in whole or in part to the benefits of the fund and the Committee shall report such instances to the Bar Council for appropriate action.

Cancellation or Fund Stamps.

20. Every Fund Stamp affixed on vakalatnama under section 19 filed in any Court or Tribunal or before any other

Central Act 7 of

authority shall be cancelled in the manner provided under section 20 of the Court Fees Act, 1870. **1870.**

CHAPTER – VII
MISCELLANEOUS

Meeting of the Committee.

21. The Committee shall meet, at least once in three calender months or more often if found made necessary, to transact business under this Act or the rules made thereunder.

Manner of holding meeting.

22. (1)One third members of the Committee shall form the meeting of the Committee.

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

(3)The meetings of the Committee shall ordinarily be held at the office of the Bar Council.

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

(5)The Secretary of the Committee shall not have a voting right in the meeting.

Travelling and daily allowances to the members or the Committee.

23. The members of the Committee shall be eligible to get such travelling allowances and daily allowances as are admissible to the members of the Bar Council.

Ex-gratia grant to a member of the Fund.

24. The Committee, on an application submitted to it, and after being satisfied about the genuineness of the claim, may allow ex-gratia grant to a member from the Fund-

(a)in the case of hospitalisation or involving major surgical operation ; or

(b) if he is suffering from tuberculosis, leprosy, paralysis, cancer, unsoundness of mind or from such other serious diseases or disabilities.

Review.

25. (1)The Committee may **suo moto** at any time or on an application received from any person interested, within ninety days of the passing of any order under the provisions of this Act, review any such order, if it was passed by them under any mistake, whether of fact or of law or in ignorance of any material fact :

Provided that the Committee shall not pass any order adversely affecting any person unless such person has been given an opportunity of making his representation.

Group-life

26. The Committee may, for the welfare of the members of the

Insurance for members and other benefits.

Fund-

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

(b)provide for educational facilities for the members of the Fund and their dependents including an insurance for that purpose ; or

(c)provide for such other benefits and amenities as may be prescribed.

Protection of action taken in good faith.

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

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

Bar of Jurisdiction of Civil Courts.

28. 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 require to be settled, decided or dealt with or to be determined by the Committee or the Bar Council.

Power to summon witness and to take evidences.

29. The Committee and the Bar Council shall for the purpose of any enquiry under this Act, have the same powers as are vested in a Civil Court while trying a suit under the Code of Civil Procedure 1908 in respect of the following matters, namely:- **Central Act 5 of 1908.**

(a)enforcing the attendance of any person or examining him on oath ;

(b)requiring the discovery and production of documents;

(c)receiving evidence on oath by affidavit; and

(d) issuing Commission for the examination of withensses.

Appeal against decision of the Committee.

30. (1)An appeal against any decision or order of the Committee shall lie to the Bar Council. The appeal shall be in the prescribed form and shall be accompanied with Copy of decision appealed against. The appeal shall be filed, within thirty days from the date of the receipt of the order appealed against.

(2)Any appeal preferred under sub-section (1) shall be heard and disposed of in such manner and procedure as may be prescribed.

(3)The decision of the Bar Council on appeal shall be final.

Power to amend

31. (1)The State Government may, by notification, on the

the Schedule.

recommendation of the Committee and having due regard to the availability of the amount in the Fund, amend the rates specified in the schedule.

(2)Every notification issued under this section shall, as soon as possible after it is issued, be placed on the Table of the Legislative Assembly and if before the expiry of the session in which it is so placed or the next session the Assembly makes any modification in any such notification or the Assembly decides that the notification should not be issued the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be, so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification.

Power to make rules.

32. (1)The State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2)All rules made by the State Government under this Act shall, as soon as may be after they are made, be laid before the State Legislature, while it is in session, for a total period of not less than fourteen days which may be comprised in one session or two or more successive sessions, and shall, unless some later date is appointed take effect from the date of their publication in the Official Gazette subject to such modifications or annulments as the Legislature may, during the said period agree to make, so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done thereunder.

SCHEDULE (See section 16)

5. Years: Standing	Rs.15,000.00
6. Years: Standing	Rs.16,000.00
7. Years: Standing	Rs.17,000.00
8. Years: Standing	Rs.18,000.00
9. Years: Standing	Rs.19,000.00
10. Years: Standing	Rs.20,000.00
11. Years: Standing	Rs.21,000.00
12. Years: Standing	Rs.22,000.00
13. Years: Standing	Rs.23,000.00
14. Years: Standing	Rs.24,000.00
15. Years: Standing	Rs.25,000.00
16. Years: Standing	Rs.26,000.00
17. Years: Standing	Rs.27,000.00
18. Years: Standing	Rs.28,000.00
19. Years: Standing	Rs.29,000.00
20. Years: Standing	Rs.30,000.00
21. Years: Standing	Rs.32,000.00
22. Years: Standing	Rs.34,000.00
23. Years: Standing	Rs.36,000.00
24. Years: Standing	Rs.38,000.00
25. Years: Standing	Rs.40,000.00
26. Years: Standing	Rs.42,000.00
27. Years: Standing	Rs.44,000.00
28. Years: Standing	Rs.46,000.00
29. Years: Standing	Rs.48,000.00
30. Years: Standing or above	Rs.50,000.00

M. K. DEKA,
Secretary to the Govt. of Assam
Legislative Department.