



Gatekeeping the professions

Fit-and-proper tests must be principled, proportionate, and fair

In late March, three distinct developments across the legal and financial sectors brought into focus a shared regulatory challenge: Defining who is “fit and proper” to perform roles that carry profound public and fiduciary trust.

On March 20, the Supreme Court issued notice on a plea challenging a 2017 Madras High Court decision that barred the enrolment of law graduates with pending criminal cases, other than bailable offences, as advocates. The Court’s engagement centres on the constitutional limits of exclusion, especially when it lacks statutory backing and risks impinging on the right to practise a profession.

Three days later, the Securities and Exchange Board of India revised the “fit-and-proper person” criteria applicable to market intermediaries and their key personnel. The revised framework retains disqualification upon conviction for offences involving moral turpitude but moves away from automatic exclusion based solely on the pendency of a complaint or FIR, signalling a shift from status-based disqualification to risk-sensitive evaluation.

On the same day, the Corporate Laws (Amendment) Bill, 2026, was introduced in Parliament. While retaining existing disqualifications, it requires company boards to assess whether directors satisfy the prescribed fit and proper criteria. Reflecting proportionality, it contemplates differentiated standards for different classes of companies. These developments raise a common question: How should the law balance the integrity of professions and markets with the right to carry on a business or profession?

The fit-and-proper test is neither novel nor uniquely Indian. When Mahatma Gandhi sought enrolment as an advocate before the High Court of Natal, the Law Society opposed his application on the grounds that he was not a “fit-and-proper” person. The episode underscores the necessity of such standards and highlights the risk of unguided discretion. Properly designed, the test protects the client precisely where she is least equipped to protect herself.

A professional is not an ordinary vendor. Clients

rely on expertise they cannot independently verify. Unlike a consumer inspecting goods, they cannot meaningfully assess the quality of legal or medical judgment. The relationship is inherently fiduciary, grounded in trust. The fit-and-proper requirement ensures that this trust is not misplaced.

What, then, constitutes a “fit-and-proper” person? The concept is multi-dimensional, structured around three broad axes: Integrity (past conduct and character), capacity (competence and mental fitness), and independence (financial soundness and freedom from compromising pressures). The inquiry is evaluative and context-sensitive, not a binary determination. Nor is it a one-time gateway; it is a continuing condition, a breach of which may justify removal.

Indian regulatory frameworks increasingly reflect such scrutiny, evolving from passive disqualification to active oversight. For insolvency professionals and registered valuers, the regulations mandate a multi-layered assessment of integrity, competence, and financial solvency. Regulators routinely deny or withdraw admission where applicants fall short. Similarly, statutes governing chartered accountants, cost accountants, and company secretaries prescribe disqualifications for bankruptcy, unsoundness of mind, or convictions involving moral turpitude.

Most frameworks struggle with pending criminal proceedings. Should one be excluded based on a mere allegation? Such an exclusion would be constitutionally suspect and inconsistent with the presumption of innocence. Criminal proceedings often take decades. The question is not whether pending proceedings matter, but how much weight they should carry, and at what stage. This calls for calibrated gatekeeping through a purposive and proportionate fit-and-proper test, rather than blunt, status-based exclusions.

A common objection draws on an incomplete analogy with electoral politics: If individuals facing serious charges can contest elections, why exclude them from professions? Electoral legitimacy rests on informed

democratic choice: Voters have access to mandatory disclosures. A client, by contrast, has no comparable *ex-ante* means to assess a professional’s character. Regulatory gatekeeping corrects this asymmetry. It is no paradox that a university lecturer must hold a PhD while a minister need not possess formal qualifications. Their legitimacy flows from entirely different sources. Democratic accountability and fiduciary accountability operate on distinct planes.

The framework for advocates is evolving. Section 24A of the Advocates Act, 1961, disqualifies persons convicted of an offence involving moral turpitude, but the bar lapses after two years. The concept has proved an unreliable threshold; its contours remain judicially unsettled, offering little guidance. The Madras High Court attempted to supply a temporary framework in 2017, which is now under constitutional scrutiny.

If anything, the case for a robust fit-and-proper framework is strongest here. Advocates are not only fiduciaries but officers of the court, integral to the administration of justice. If insolvency professionals and valuers, market intermediaries, and company directors are subject to statutory fitness thresholds, the profession that sustains the justice system should not remain behind.

Comparative practice offers useful guidance. In the United Kingdom, the Solicitors Regulation Authority applies its Character and Suitability Rules for solicitors, while the Bar Standards Board Handbook sets out parallel requirements for barristers; both rely on principle-based case-specific assessments. In the United States, state Bar authorities conduct rigorous “Character and Fitness” evaluations, involving honesty, integrity, and financial responsibility. They emphasise relevance, proportionality, and procedural fairness, not automatic exclusion.

The case, therefore, is not for blanket exclusion of persons with pending criminal cases. What a profession needs is an evaluative framework that weighs the nature and gravity of the alleged offence, the stage of proceedings, its relevance to professional duties, and the passage of time. It must ensure procedural fairness through notice, hearing, reasoned orders, and appellate review, and operate as a continuing condition of practice rather than a one-time filter. Institutional design must ensure accountability to guard against arbitrariness or selective enforcement.

Recent developments in securities regulations suggest that such an approach is feasible and normatively sound. But its adoption must remain sensitive to the specific context of each profession, including differences in statutory framework, constitutional protection, and institutional structure. Transplanting models across sectors without adaptation would be as problematic as rigid exclusions.

The “fit-and-proper” standard has become the common grammar of professional regulation. It is time to apply it with precision and restraint. Gandhi’s exclusion in Natal was unjust, but the problem was not the gate itself. Poorly designed gates risk exclusion without justification; well-designed ones enable trust without sacrificing liberty. The challenge is not dismantling the gate, but ensuring that it stands on firm foundations of relevance, proportionality, and the rule of law.

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