



THE ACCOUNTABILITY OF THE BAR AND PROFESSIONAL CONDUCT OF ADVOCATES IN INDIA

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Abstract: While the Bar Council of India and State Bar Councils prescribe standards of professional conduct, etiquettes and exercise disciplinary jurisdiction over the Bar, an unignorable number of advocates fail to conform to the prescribed professional standards and norms, jeopardizing the sanctity of the Bar. This research paper discusses in-depth the lacunae in the contemporary legal practice. The paper further discusses how duties stipulated with the legal practice, every so often, contradicts each other and how it is precarious to the accountability of the Bar.

Key words: Advocate Act 1961, Bar Council, Duties of Advocates, Professional Conduct.

The Bar Council of India is a statutory body established under Advocates Act¹ that regulates the legal practice and legal education in India. It also prescribes standards of professional conduct, etiquettes and exercises disciplinary jurisdiction over the Bar.

Principles of professional conduct of the Bar developed parallel to the Indian Judiciary. In 1791, Judges felt the need of experience, and thus the role of an attorney to protect the rights of his client was upheld in each of the Mayor's Courts in spite of opposition from Council members and the Governor. A second principle was also established during the period of the Mayor's Courts, this was the right to dismiss an attorney guilty of misconduct. The first example of dismissal was recorded by the Mayor's Court at Madras which dismissed attorney Jones. The Indian Bar Councils Act, 1926 was passed to unify the various grades of legal practice and to provide self-governance to the Bars attached to various Courts. In March 1953, the All India Bar Committee, headed by S. R. Das, submitted a report which proposed the creation of a Bar Council for each state and an all-India Bar Council as an apex body. In 1961, the Advocates Act 1961 was introduced to implement the recommendations made by the 'All

¹ Section 4; Advocates Act 1961.



India Bar Committee' and 'Law Commission'. Subsequently, the first Bar Council of India was established with M. C. Setalvad and C. K. Daphtary as the first chairman and vice chairman respectively. Thereafter in 1963, C. K. Daphtary became the Chairman and S. K. Ghose became the Vice Chairman.

Advocates Act 1961 lays down the Bar Council's regulatory and representative mandate. The functions of the Bar Council are : Lay down standards of professional conduct and etiquette for advocates; Lay down procedure to be followed by disciplinary committees; Safeguard the rights, privileges and interests of advocates; Promote and support law reform; Deal with and dispose of any matter which may be referred by a State Bar Council; Conduct seminars on legal topics by eminent jurists and publish journals and papers of legal interest; Organize and provide legal aid to the poor; Recognize foreign qualifications in law obtained outside India for admission as an advocate; Manage and invest funds of the Bar Council; Provide for the election of its members who shall run the Bar Councils; Organize and provide legal aid to the scheduled caste.² It sets standards for legal education along with mandatory subjects counting the Constitution of India, Criminal Procedure Code, Civil Procedure Code, Professional Ethics covering the Advocates Act 1961 and the Bar Council of India Rules etcetera, so as to ensure students are equipped with resources to become responsible and professional advocates and grants recognition to Universities whose degree in law will serve as a qualification for students to enroll themselves as advocates upon graduation so as to ensure the professional and educational standard of all enrolled advocates.³

In the past few years, the Bar Council of India (BCI) has been suggesting strong measures to tackle indiscipline and other forms of irresponsible conduct by practicing advocates. The Supreme Court discussed at length and has laid down several principles and guidelines in regard to Bar-Bench relations.⁴The BCI is unambiguous in its recommendation, saying, for instance, that no association of advocates or any member of the association, either individually or

² Section 7; Advocates Act 1961.

³Bar Council of India Rules, 1975, Chapter-III Constitution, Functions and Procedure of Committees of the Bar Council of India (Rules under Section 9, 9A, 10 and 15 (2)(i) and (j) of the Act).

⁴C Ravichandran Iyer Vs. Justice AM Bhattacharjee (1995) 5 SCC 457.



collectively, shall boycott or abstain from court work or cause obstruction in any form in the court's functioning, nor shall individually or collectively give a call for such boycott or abstinence from work during court hours. This statement came after many advocates had been conducting themselves in a fashion detrimental to litigants and orderly behavior. Another such suggestion is that advocates found to be guilty of professional misconduct in misleading their clients or giving wrong advice in the full knowledge that they are making an error, or indulging in other forms of professional wrongdoing, should be heavily fined and be made to pay a hefty compensation to the litigant. These are welcome steps that should be incorporated in the Advocates Act 1961.

Advocates form the backbone of the country's legal process and their attitude determines both the quality of service they provide as well as swiftness in the justice delivery system. Advocates alone are not responsible for delays in the justice system but they certainly play a major role in the dynamics. The penchant to strike work, to delay hearing by seeking needless adjournments, to advise clients to exploit legal mechanisms to avoid as far as possible the delivery of justice, harm not only the victims and adversaries but also the legal system as a whole. Such have been the extent of disruptions and irregularities on account of advocates' behavior that the Bar Council of India had to study the matter and file a comprehensive report with the Law Commission of India. The BCI's input should help the Law Commission, which is in the process of drafting amendments to the Advocates Act 1961.

There have been cases where 'advocates' with no license to practice has come to light. Some 'advocates' have been disbarred for ethical violations or for committing crimes that disqualify for a person to practice and have been found to continue imparting legal advice to unwitting clients, illegally. The Law Commission's chairman, Balbir Singh Chauhan claims that although the number of fake lawyers is very high, the figures might not be as high as 40 percent as claimed by the Bar Council of India but the widespread problem is alarming for jurists throughout the country.



There is no denying that many advocates are committed to the cause of justice and have been working diligently, those who are into positive activism, often taking up cases of the marginalized and the deprived for free. On the other hand, it's very unfortunate that there are also so-called advocates who do not deserve to be practicing. Another problem is politicization of the lawyer fraternity. "Political inclinations are understandable but they cannot be used to obstruct the justice delivery system".⁵

The Bar Council of India has framed a code of conduct to be followed by all advocates.⁶ As per Bar Council of India Rules, there are duties an advocate owes to the client, to the opponent, to colleagues and to the Court.⁷ There are other duties such as the duty towards the profession, towards society, towards one's own conscience, that are considered important and sanctimonious for an advocate. Recently, the emphasis has shifted to the advocate's duty to Society. Though one cannot ignore this duty, a duty towards society is subordinate to advocate's primary duties of accountability to the client, to the Court, to the opponents and the colleagues. The accountability there for is challenging due to conflicts which arise in discharging the separate and distinct duties.

An advocate's duty to the client⁸ encompasses proper legal counsel to the best of advocate's abilities. If the client says he has done something, the advocate, is justified in taking the stand that it is for the other side to prove that his client had indeed done the act as alleged by the other side and if enough evidence is not available, the client be acquitted of the accusations. The advocate cannot, however, simply urge that the client has not done it. Many people take the view that this is a facetious distinction which advocates draw.⁹ Except with the client's consent, an advocate cannot disclose any communication made to him by the client or to reveal the contents of any document to which he has become privy in the course of his professional

⁵Jurist Soli Dastur.

⁶ Bar Council of India Rules, 1975.

⁷ Bar Council of India Rules, 1975, Chapter II Standards of Professional Conduct and Etiquette (Rules under Section 49(1)(c) of the Act read with the Proviso thereto).

⁸ Bar Council of India Rules, 1975, Chapter II Standards of Professional Conduct and Etiquette, Section II: Duty to the Client.

⁹Sohrab Erach Dastur, Senior Advocate.



employment or disclose the advice tendered by him to his client.¹⁰The adversary judicial system and the rule of law requires that it is for the plaintiff or the prosecutor to establish his case with acceptable evidence and if the advocate does not take this stand he would be cutting at the root of the rule of law. An advocate's loyalty is to the law and the law requires that no man should be punished without adequate evidence.¹¹In actuality, justification of finding 'loopholes' by suggesting it is imperative to the client's best interests and for the fulfilment of the duty to the client is a breach of duty to the opponents, to the court and to the society. It is urged that an advocate's duty to society requires that he should not defend someone who he believes to be guilty of what is alleged against him. This creates a conflict between distinct duties of the advocate.

One of the duties of an advocate is to accept a brief in the Courts before which he practices. If, however, his brief necessitates him to argue contrary to his principles, his duty to his own conscience may rationalize his returning the brief. But it is not for him to choose which a good case is and which isn't and to do so is a direct contradiction with the principle of presumption of innocence and the right of the accused/client to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of his right; and to have legal assistance¹². The central function of an advocate is to represent his client and to say in legal parlance what the client would have said if he was to argue his own case and had the required legal acumen. Simply put, what an advocate believes and what he argues are not the same and shouldn't be as well. Yet, that does not imply that the advocate does not have a right to reject any case or client they find unaligned to their conscience. James Boswell records having asked, "What do you think of supporting a cause which is known to be bad?" Dr. Johnson's reply was to the effect: "Sir, you do not know it to be good or bad till the judge determines it. You are to state facts clearly, so that your thinking or

¹⁰Section 126; Indian Evidence Act.

¹¹R Vs. Special Commissioner of Income Tax and another (Respondents) [2013] UKSC 1, UK Supreme Court, January 2013.

¹² Article 14(3) of the International Covenant on Civil and Political Rights



what you call knowing a cause to be bad must be from reasoning, must be from supposing your arguments to be weak and inconclusive.”¹³

There are a number of instances where an advocate refuses to represent a client accused of committing a heinous crime and while it stands correct from the point of view of the advocate’s duty to his own conscience, the advocate is breaching his duty to the society and to the profession as the principle of presumption of innocence is one of the defining characteristic features of justice. It is beyond doubt that an advocate owes an ‘unremitting loyalty’ to the interests of the client and it is the advocate’s responsibility to act in a manner that would best advance the interest of the client. Merely because his(the accused’s) opinion may not be acceptable, he cannot be mulcted with the criminal prosecution, particularly, in the absence of tangible evidence against the accused.¹⁴

The advocate’s duty to the client does not extend to carrying out all his instructions.¹⁵ For example, it is not his duty to oppose the grant of an adjournment sought by the other side because his client says so or to urge an argument the client insists on even though the advocate feels it would be counterproductive or not ethical to do so, then, the advocate’s duty to himself, to the Court and to the profession must prevail. However, he should communicate his decision to the client in good time and he should give the client the option to brief another Counsel.

Lord Macmillan has said that the advocate by the rules of his profession has, theoretically at least no choice in the selection of the cases he takes up. He quotes Erskine saying that if an advocate is permitted to say that he will not stand between the Crown and the subject arraigned in the Court on the basis of his opinion above the correctness of his client’s stand “from that moment the liberties of England are at an end”.¹⁶

¹³Life of Samuel Johnson by James Boswell.

¹⁴Central Bureau of Investigation, Hyderabad Vs. K Narayana Rao.

¹⁵P G Gupta Vs. Ram Murti (1997) 7 SCC 147.

¹⁶Law and Other Things by Lord Macmillan.



Advocates are agents, not of their Client who pay them, but are acting in the administration of Justice.¹⁷ An interesting issue arises when a client wants to know the consequences of his acting in a manner which is contrary to the law. It would appear that it is the advocate's duty to explain what would be the decision in law if the misdeed is discovered but he should in no way be a party to facilitate on such misdeed. It would appear that it is not for the advocate to be a moralist but leave it to the client to decide whether knowing the consequences ethical and otherwise, of what he proposes to do, he should still go through with his earlier scheme. Here, also the duty to Society is gainsaid while the duty to client and to the legal profession is fulfilled. Advocates and pleaders are enrolled not only for the purpose of rendering assistance to the Courts in the administration of Justice but also for giving Professional Advice to their Clients for which they are paid by those members of the public who require their services.¹⁸

Counsel owes a duty to his client and to the Court for attending the hearing of an appeal from the beginning to the end. He should choose which case he will attend to and return the other briefs in good time or have the other hearing adjourned. The financial difficulties an advocate might be facing does not justify taking more cases than one can, in good conscience, work on, yet the Bar Councils often overlook the client's grievance regarding deficient work and not count it as misconduct on advocate's part whatsoever in light of that advocate's inability to make a living. Though, missing court dates without a proxy due to over schedule is a disservice not just to the client but also to the court. It is important to note that, a professional may be held liable for negligence on one of the two findings: either he did not possess the requisite skill which he professed to have possessed or he did not exercise, with reasonable competence in the given case, the skill which he did possess.¹⁹

The duty to court²⁰ isn't confined to following the law and being respectful to the judicial process and judges. For instance, when a case of an Advocate son came before a Judge father,

¹⁷Babu Diwakar Prasad Mithal, AIR 1924 All 253.

¹⁸Madhav Singh, AIR 1923 Pat 185.

¹⁹S.K.Jhunjhunwala vs Mrs. Dhanwanti Kumar 2018 CIVIL APPEAL No.3971 OF 2011

²⁰ Bar Council of India Rules, 1975, Chapter II Standards of Professional Conduct and Etiquette, Section I: Duty to the Court



the Advocate son withdrew from the case; the Advocate son, rather than the judge father should withdraw from the case so as to fulfil his duty to the court.²¹Duty to the legal community comprises of upholding its sanctity while behaving as a respectable member of the Bar. For instance, the appearance of an Advocate before a tribunal carrying his licensed revolver is condemned by the Supreme Court. The act is considered inconsistent with dignity of the Court. The Supreme Court advised Advocates to be equipped with law and precedents but not with firearms.²²

Further, it is unprofessional on the part of an advocate to demand preferential treatment while availing facilities in the court premises. It would be a matter of discretion of the Principal Judge of the Court to decide to whom and to what extent that facility should be extended when the same is available. It would be for him to decide when, to whom, to what extent and on what terms and conditions he should allot Chambers.²³ The licensed firearm can be carried as a matter of right but it shouldn't be, so as to honor the dignity of the Court.

A conflict can arise when a judge seeks the opinion of the advocate on a particular matter which is in issue between the contesting parties. If the advocate was to express his opinion or what he believes to be the right position in law he may be acting adversely to his client's interest, thus, he would be justified in courteously declining the judge's request to give his opinion. Some classicists may contend that in taking this stand the advocate is not discharging his duty to the Court. The advocate's duty to the client is certainly not more important than his duty to the Court, nevertheless the judge, ideally, should have realized that the duty of the advocate is to argue his case and not to express his opinion on the issue involved. It is, undoubtedly, the duty of the advocate to the Court always to be courteous and deferential to the judge, but that does not mean he has to be obsequious. If, for any reason, it appears that the judge is acting unreasonably, it is his duty to stand up to the judge and as respectfully as possible, to correct him.

²¹Satyendra Narain Singh and others Vs. Ram Nath Singh and others, AIR 1984 SC 1755.

²²UP Sales Tax Service Association Vs. Taxation Bar Association (1995) 5 SCC 716.

²³Deepak Aggarwal Vs. Keshav Kaushik and Others, Civil Appeal No. 469 OF 2013; Vinay Balachandra Joshi Vs. Registrar General, Supreme Court of India (1998) 7 SCC 461.



Duty to the colleagues consists of not soliciting work or advertising whether by circulars, advertisements, touts, personal communications, interviews not warranted by personal relations, furnishing or inspiring newspaper comments or producing his photograph to be published in connection with cases in which he has been engaged or concerned. His sign-board or name plate should be of a reasonable size and the sign-board or name-plate or stationery should not indicate that he is or has been President or Member of a Bar Council or of any Association or that he has been a Judge or an Advocate General.²⁴

The duty to the opponent²⁵ comprises of the respect for the right of the opposing professional to have full uninterrupted opportunity to express his views. While discharging his duties to his client the advocate often is faced with matching the same to his duty to the profession and to his co-professional. Though it may be in the interest of his client for the advocate to interrupt the other side's Counsel so as to distract him from his trend of thought or interfere with the flow of his arguments, it would be a breach of his duty to the opponent and he should not indulge in it.

Concluding my arguments, I can safely say that even though the lacunae in legal practice is concerning, the Bar Councils and the legal community are working tirelessly to improve the conduct of advocates, ensuring that every advocate always tries to desist from action which can conflict with an accused's/litigant's right to a free and impartial trial/case and a fair judgment. Furthermore, there are times in every advocate's career where he faces an ethical dilemma and one should try to reconcile one's duties to law and to society and if the conflict remains, the advocate must choose the fulfilment of his primary duties, that is upholding the law and impartment of justice, morals, howsoever strong comes second to the rule of law and human rights. Circumstances of such clashes are always different; undoubtedly, tact of a high degree is required in meeting such situations. There cannot be a one size fits all solution, just the confidence that the Bar is equipped with wisdom and knowledge to tackle these problems so as to uphold its ultimate duty to law and justice. The duties of an advocate are as multifaceted as

²⁴ Bar Council of India Rules, 1975, Chapter II Standards of Professional Conduct and Etiquette, Section IV: Duty to the Colleagues

²⁵ Bar Council of India Rules, 1975, Chapter II Standards of Professional Conduct and Etiquette, Section III: Duty to the Opponent



the legal profession's impact on everyone's life. Bar is a means of actualizing human rights for all and preventing/remedying breaches of legal rights, this responsibility comes with an accountability of maintaining a delicate balance between all the duties and every member of the bar, at all times, should try to maintain the same.

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