



## Role of Advocates in Administration of Justice

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Legal profession has always been treated as one of the noblest professions of the civilized societies across the globe. No ordained society can exist without regulations or accepted code of conduct by masses for themselves. Societal values and commonly shared Code of Conducts of people are later converted into laws for governance of the people. In a civilized society governed by rule of law, unrests and termoils do hardly take place. In all systems of governance world over, besides the various law enforcing agencies and judicial arbiters like courts, legal professionals do also play equally important role in ensuring maintenance and majesty of law through the adjudicatory fora. If one compares the legal profession with those like the medical, architecture, science & technology, management and other branches of learnings like astrology, literature or philosophy etc., one finds that there is hardly any frequent or rapid change in these fields as it occurs in the field of law. Law remains ever evolving, non-static and non-stagnant. To keep pace with the latest developments in the field of law, a law practitioner, adjudicator and also the law enforcer has always to keep him updated and familiar with the latest developments in the field of law. In our system of enforcement of law and administration of justice, as is well known, the ultimate law is not what the legislature has enacted but what the courts of record like the Supreme Court of India and the High Courts have interpreted and propounded. This is what Articles 141 & 144 of the Constitution of India mandate. Even the Constitution of India is what the Judges say it is as has been declared by a Nine-Judge Constitution Bench of the Supreme Court of India in Supreme Court Advocates-on-Record Association Vs. Union of India, AIR 1994 SC 268 (para 292). A lawyer, a Judge and a jurist has to remain student of law throughout his life. The day a law practitioner or adjudicator develops a notion that he has reached perfection and there is no further necessity for reading and updating him with the laws, he ceases to grow and evolve. During the last and the current century, no other field as that of the law and the legal profession has seen so much ups and downs. For a new entrant in the legal profession, life is not comfort yielding but akin to struggle to overcome wants and ignorance so as to find a place to stand in the institution of the legal professionals. Many people sitting in comfort zones and ivory castles often question the conduct, caliber and competence of few among the legal practitioners and forget the struggling conditions of career of a lawyer. It is not that the judges and the jurists do not recognize the struggle which a budding lawyer has to face. In the words of the Hon'ble Judges of the Allahabad High Court in their recent judgment reported in *Abhishek Shukla Vs. High Court of Judicature, Allahabad*, AIR 2018 Allahabad 32, a lawyer is like a *pujari* in temple, *maulavi* in mosque, *granthi* in gurudwara and *clergyman* in church and performs '*nyaydharmah*' in the temple of justice (court) where the invisible deity i.e. the goddess of justice, expresses through Judges (spokespersons) of the deity. Certain important aspects relating to the role and responsibility of legal professionals in the administration of justice are being discussed here as under :

**1. Laws applicable to Advocates :** The main laws applicable to the advocates are as under :

- (1) Advocates Act, 1961
- (2) Advocates' Welfare Fund Act, 2001
- (3) Bar Council of India Rules, 1975
- (4) Advocates (Right to Take up Law Teaching) Rules, 1979

- (5) Model Schemes for Welfare of Advocates Framed by Bar Council of India
- (6) Bar Council of India Advocates Welfare Scheme, 1998
- (7) The Bar Council (Validation of State Laws) Act, 1956
- (8) The Bar Council of India Certificate and Place of Practice (Verification) Rules, 2015
- (9) Special Provisions Relating to the Bar Council and Advocates in the North-Eastern Areas (Reorganization) and Other Related Laws (Amendment) Act, 2012 (26 of 2012 (w.e.f. 23-3-2013)
- (10) Provisions in the CPC
- (11) Provisions in the CrPC
- (12) Provisions in the G.R. Civil
- (13) Provision in the G.R. Criminal
- (14) Circular Orders issued by the High Court
- (15) Allahabad High Court Rules, 1952
- (16) Judicial pronouncements
- (17) Govt. Notifications & G.Os. etc.
- (18) Bar Council of India Training Rules, 1995 (declared ultra vires by the Supreme Court in *V. Sudeer Vs. Bar Council of India*, (1999) 3 SCC 176).

2. **Role of lawyers in administration of justice :** Lawyers play an important part in the administration of justice. The profession itself requires the safeguarding of high moral standards. As an officer of the Court the overriding duty of a lawyer is to the Court, the standards of his profession and to the public. Since the main job of a lawyer is to assist the Court in dispensing justice, the members of the Bar cannot behave with doubtful scruples or strive to thrive on litigation. Lawyers must remember that they are equal partners with Judges in the administration of justice. If lawyers do not perform their function properly, it would be destructive of democracy and the rule of law. "Law is no trade, briefs no merchandise". An advocate being an officer of the Court has a duty to ensure smooth functioning of the Court. He has to revive the person in distress and cannot exploit the helplessness of innocent litigants. A willful and callous disregard for the interests to the client may in a proper case be characterized as conduct unbefitting an advocate. When we talk of sound and stable system of administration of justice, all the stakeholders in the said legal system need to be taken care of. Legal community and advocates are inseparable and important part of robust legal system and they not only aid in seeking access to justice but also promote justice. Judges cannot perform their task of dispensing justice effectively without the able support of advocates. In that sense, advocates play an important role in the administration of justice. It is wisely said that for any society governed by rule of law, effective judicial system is a necessary concomitant. The rule of law reflects man's sense of order and justice. There can be no Government without order, there can be no order without law, and there can be no administration of law without lawyers. It is no small service to be called upon to prosecute and enforce the rights of a litigant through the court of law and in that sense the legal profession is treated as service to the justice seekers. It is, therefore, by contributing an essential aid to the process of the administration of justice that the advocate discharges a public duty of the highest utility. See : (i) *In Re : Rameshwar Prasad Goyal, Advocate*, AIR 2014 SC 850 and (ii) *Cardamom Marketing Corporation Vs. State of Kerala*, (2017) 5 SCC 255.
3. **Legal Profession and Lawyer-Client Relationship and Duties of Lawyers :** The relationship between the lawyer and his client is one of trust and confidence. The client engages a lawyer for personal reasons and is at liberty to leave him also for the same reasons. He is under no obligation to give reasons for withdrawing his brief from his lawyer. The lawyer is not an agent of his client but he is dignified and responsible spokesman. He is not bound to tell the court every fact or urge every proposition of law which his client wants him to do, however relevant it may be. He is essentially an advisor to his client and is rightly called a counsel in some jurisdictions. Legal profession is essentially a service-oriented profession. The lawyer of the Govt. or a public body is not

its employee but is a professional practitioner to do the specified work, though the lawyers on the full time rolls of the Govt. and the public bodies, are described as their law officers. It is precisely for this reason that in the case of such law officers, the saving clause of rule 49 of the Bar Council of India Rules waives the prohibition imposed by the said rule against the acceptance by a lawyer of a full time employment. The Supreme Court has quite elaborately discussed in this case the role and powers of legal professionals, lawyers-client relationship, position and powers of Legal Remembrancer in the context of U.P. Legal Remembrance Manual. See : *State of U.P. vs. U.P. State Law Officers Association, (1994) 2 SCC 204*

4. **Advocates as officers of courts** : An Advocate being an officer of the Court has a duty to ensure smooth functioning of the Court. See : *In Re : Rameshwar Prasad Goyal, Advocate, AIR 2014 SC 850*
5. **Lawyers are equal partners with the Judges in the administration of justice** : Lawyers are equal partners with the Judges in the administration of justice. See : *In Re : Rameshwar Prasad Goyal, Advocate, AIR 2014 SC 850.*

**5.01. No FIR against lawyers, doctors or other professionals if their advice goes wrong**: No FIR can be lodged against lawyers, doctors or other professionals for the offences like 420, 109 IPC or for any other penal offences if their advice goes wrong. See: *CBI, Hyderabad Vs. K. Narayana Rao, (2012) 9 SCC 512.*

6. **Pre-conditions for practicing as an advocate before the Allahabad High Court** : Provisions under Rules 3 and 3-A of Chapter XXIV of the Allahabad High Court Rules, 1952 do not permit an advocate who is not enrolled with the Bar Council of State of UP and is not on the roll of advocates maintained by the Allahabad High Court, to appear, act or plead in the High Court unless he files his Vakalatnama alongwith a local advocate i.e. advocate registered with the Bar Council of UP and on roll of advocates of the Allahabad High Court. See : *Jamshed Ansari Vs. High Court of Judicature at Allahabad & Others, (2016) 10 SCC 554.*
7. **Right to practice as an advocate is not an absolute right** : Right of advocates u/s 30 & 34 of the Advocates Act, 1961 is not an absolute right but is subject to the rule-making power of the High Court u/s 34 of the Advocates Act, 1961 and Article 225 of the Constitution of India. High Court by framing the said rules can regulate appearance of advocates in courts. Right to appear and conduct cases in court is a matter on which court must and does have major supervisory and controlling power. See : *Jamshed Ansari Vs. High Court of Judicature at Allahabad & Others, (2016) 10 SCC 554.*
8. **Lack of proper knowledge of an advocate is bound to adversely affect the rights of litigants and also the administration of justice** : The administration of justice is a sacrosanct function of the judicial institutions or the persons entrusted with that onerous responsibility and principle of judicial review has now been declared as a part of the basic structure of the Constitution. Therefore, if anything has the effect of impairing or hampering the quality of administration of justice either due to lack of knowledge or proper qualification on the part of the persons involved in the process of justice dispensation or they being not properly certified by the Bar Council as provided under the Advocates Act, 1961 and the Rules made thereunder, it will surely affect the administration of justice and thereby affect the rights of litigants who are before the courts seeking justice. See : *Jamshed Ansari Vs. High Court of Judicature at Allahabad & Others, (2016) 10 SCC 554 (para 19).*
9. **Vakalatnama when not required ?** : Vakalatnama is not required for performance of legal work such as giving opinion, sending notices, drafting petitions or other documents. There is no need for a lawyer to obtain a signed Vakalatnama from his client for such

works. But signed Vakalatnama under Order 3, rule 4 CPC is required to be obtained when it is filed in law courts or tribunals to enable the lawyer to plead cases on behalf of clients. See : *Baru Singh vs. Babu Ram Sharma*, AIR 1997 All 185

10. **Advocate bound to return papers to his client even in the event of non-payment of fee :** At any rate if the litigation is pending the party has the right to get the papers from his advocate whom he has changed so that the new counsel can be briefed by him effectively. In either case it is impermissible for the former counsel to retain the case bundle on the premise that fees is yet to be paid. This right of the litigant is to be read as the corresponding counterpart of the professional duty of the advocate. Therefore the refusal to return the file to the client when he demands the same amounts to misconduct of the advocate u/s. 35 of the Advocates Act, 1961. Even if the advocate feels that he has any genuine claim or grievance against his client, the appropriate course is to return the brief with endorsement of no objection and agitate such right in an appropriate forum in accordance with law and not indulge in arm twisting methods by holding on to the brief. See : (i) *R.D. Saxena Vs. Balram Prasad Sharma*, AIR 2000 SC 2912 and (ii) *New India Assurance Co. Ltd. Vs. A.K.Saxena*, AIR 2004 SC 311
11. **Change of counsel and payment of fees to former counsel :** After change of counsel by the party, previous counsel cannot insist upon fees till conclusion of proceedings. But where the former counsel had worked till the stage of settlement of issues and leading evidence on behalf of the party partly, the trial of suit had thus partly concluded and therefore one fourth of the scheduled fee was directed by the court to be paid to the counsel by the party and the counsel was directed to give unconditional consent to engage another advocate. See : *C.S. Venkatasu-bramanian Vs. State Bank of India*, AIR 1997 SC 2329.
12. **Writ petition by the counsel maintainable under Article 226 of the Constitution to recover the remaining fees :** A writ petition by the counsel seeking a claim of his fees may be entertained and considered by the High Court and the request by counsel for directions in the matter relating to counsel fees ought to be examined by the High Court. Upholding counsel's claim of fees, the Supreme Court also gave directions that the fees due would be paid to counsel with interest at the rate of 12 %. See : (i) *Govt. of Tamil Nadu Vs. R. Thillaibillalan*, AIR 1991 SC 1231 and (ii) *Dr. Hari Nandan Singh Vs. UP Higher Education Services Commission, Allahabad*, 1992 ESC 311 (All)(DB)
13. **Statement or concession made by Advocate General should be accepted but not the statements/concession etc. made by the Govt. pleaders:** A statement or concession made by a Government pleader before the courts under Order 27, Rule 2 & 8-B of the Code of Civil Procedure, 1908 cannot bind the Government as it is obviously always unsafe to rely on the wrong or erroneous or wanton concession made by the counsel appearing for the State unless it is in writing on instructions from the responsible officer. Otherwise it would place undue and needless heavy burden on the public exchequer. But the same yard stick cannot be applied when the Advocate General has made a statement across the Bar since the Advocate General makes the statement with all responsibility. See: *Periyar & Pareekanni Rubbers Ltd. Vs. State of Kerala*, AIR 1990 SC 2192 (para 9)
14. **Concession given by counsel to opposite party by "not pressing" the petition should be normally verified by the Court before acting upon it :** Where wife was granted maintenance by the lower court under the Protection of Women from Domestic Violence Act, 2005 and in appeal filed by the husband, the counsel engaged by the wife made an endorsement to the effect "not pressed" and the High Court had then dismissed the appeal but the wife had stated that she had never instructed her counsel not to press her claim for maintenance, the Hon'ble Supreme Court has held that before acting upon the said concession or endorsement of the counsel, the High Court should have got the concession verified and ought not to have accepted the statement of the counsel of the wife without verification. See : *Shalu Ojha Vs. Prashant Ojha*, (2015) 2 SCC 99.

15. **Advocate not to substitute his name for the name of party :** An advocate cannot maintain a petition on behalf of his clients (accused persons). In view of Sec. 30 of the Advocates Act, 1961, an advocate cannot file a writ petition in his own name to pursue the cause of his clients. See : *Vinoy Kumar Vs. State of U.P., (2001) 4 SCC 734*
16. **Advocate has duty to represent an arrested/detained person :** Where the Advocate husband of a selected Civil Judge (Junior Division) was practicing as an Advocate in the courts at Markapur (Andhra Pradesh) and the said Advocate was engaged and representing certain accused persons allegedly belonging to CPI (Maoist) Party, a prohibited organization, and on receiving a verification report from police to that effect, the selected female Civil Judge (Junior Division) was not issued appointment letter on the ground that her Advocate husband was representing the said accused persons belonging to a prohibited organization like CPI (Maoist) Party, setting aside the said decision of the Government of Andhra Pradesh regarding not issuing appointment letter to the said selectee on the ground aforesaid, it has been held by the Hon'ble Supreme Court that in view of the provisions of the Article 22(1) of the Constitution of India, Section 49 of the Advocates Act, 1961 and Rules 11 & 15 of the Bar Council of India Rules, 1975, an Advocate representing an arrested or detained person cannot be criticized and every arrested/detained person has constitutional right to be defended lawfully and an Advocate has corresponding duty to represent him. See : *Smt. K. Vijaya Lakshmi Vs. Govt. of AP, AIR 2013 SC 3589.*
17. **Death of the party and the duty of counsel (Order 22, rule 10-A CPC) :** Whenever a pleader appearing for a party to the suit comes to know of the death of that party, he shall inform the Court about it, and the Court shall thereupon give notice of such death to the other party, and, for this purpose, the contract between the pleader and the deceased party shall be deemed to subsist.
18. **Supreme Court advocate entitled to appear and plead in all High Courts :** An advocate of the Supreme Court becomes entitled as of right to appear and plead as well as to act in all the High Courts including the High Court in which he was already enrolled, without any differentiation being made for this purpose between the various jurisdictions exercised by those courts. See : *Aswini Kumar Vs. Arabinda Bose, AIR 1952 SC 369*
19. **Duty of junior counsel appearing with senior advocate :** Ordinarily, when a junior counsel and senior advocate appear in a case, it would be an adventurist act exposing himself to great risk on the part of the junior to report a compromise without consulting his senior, even assuming that the party was not available. It is right to stress that counsel should not rush in with a razi where due care will make them fear to treat, that a junior should rarely consent on his own when there is a senior in the brief, that a party may validly impugn an act of compromise by his pleader if he is available for consultation but is by-passed. The lawyer must be above board, specially if he is to agree to an adverse verdict. See : *Smt. Jamilabai Abdul Kadar Vs. Shankarlal Gulabchand, AIR 1975 SC 2202*
20. **Debarring advocate from practice found having indulged in winning over prosecution witness / role of electronic media / sting operation / power of courts in such matters.** See : *R.K Anand Vs. Registrar Delhi High Court, (2009) 8 SCC 106.*
21. **Refusal to grant time to engage a new lawyer of choice of accused when proper ? :** Where the accused wanted to delay framing of charges against him and his prayer to engage a new lawyer of his choice was refused by the Magistrate on the ground that some advocate had already appeared for him, it has been held by the Hon'ble Supreme Court that it cannot be concluded that the accused was not given chance to engaged counsel of his/her choice. See : *Ashish Chadha Vs. Smt. Asha Kumari & another, AIR 2012 SC 431.*

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