

## Moot Problem

In the administration of justice both the Bar and the Bench has complementary role to play. The Bar and the Bench form a noble and dynamic partnership geared to the great social goal of administration of justice, and the mutual respect of the Bar and the Bench is essential for maintaining cordial relations between the two.

The legal profession is a solemn and noble profession. The responsibilities of Bar and Bench puts upon them a duty towards the society. What lawyers do affect not only an individual but the administration of justice which is the foundation of a civilised society.

Being a leading member of intelligentsia of the society as well as a responsible citizen, a lawyer has to conduct himself as a model for others.

History bears the testimony that in India, lawyers community has been on the forefront in the national freedom struggle and nation building. Also the legal stalwarts of the country have set an example of how to pursue and practice this profession with dignity, deference and devotion.

A lawyer while performing his professional responsibilities has a duty to his client, a duty to his opponent, a duty to court, a duty to society at large and a duty to himself. Lapse in performing any of the duties is detrimental to the integrity of the whole institution of justice.

The legal professionals have a code of conduct largely regulated by statutory law. In India, the Parliament has passed the Advocates Act, 1961, a comprehensive legislation that regulates the legal practice and legal education in India. It provides for the establishment of Bar Council of India and State Bar Councils with various disciplinary committees to deal with misconduct of the advocates. It also provides for the provisions relating to the admission and enrolment of advocates and advocates right to practice. Chapter V containing sections 35 to 44

deals with the conduct of the advocates. It provides for punishment for advocates for professional and other misconduct and disciplinary powers of the Bar council of India.

Under the Act, The Bar Council of India has been entrusted, *inter alia*, the function to lay down standards of professional conduct and etiquette for advocates and to lay down procedure to be followed by its disciplinary committee and the disciplinary committees of each State Bar Council.

In the exercise above mentioned power BCI amended the Bar Council of India Rules, 2009 and added, *inter alia*, that **An Advocate who browbeats and/or abuses a Judge or Judicial Officer or uses unbecoming language in the court or refuses to attend the court as a tool of protest shall, on preliminary inquiry, be suspended from practicing for an indefinite period and the decision of the Disciplinary Committee shall be final.**

The lawyers community raised a voice of protest against the rule as being arbitrary, demeaning to the nobility of the profession and against the independence and integrity of the Bar. In the protest of the said Rule the Pashchim Pradesh Bar Association called for a state-wide strike of advocates and to abstain indefinitely from all courts and tribunals demanding the withdrawal of the amended Rule. The protest included demonstrations, TV interviews, *dharnas*, *chakkajaam* of public roads, preventing judges from entering the court premises and boycott of courts. This seriously paralyzed the working of the High Court of Pashchim Pradesh and subordinate courts.

The Bar Council of India, in exercise of its powers under the Advocates Act, 1961 and the Rules thereunder suspended, on preliminary inquiry, 50 advocates involved in the strike on the grounds of professional misconduct.

Meanwhile, in a civil case, the High Court of the state gave ex parte order against the petitioner imposing the cost of 75000 INR, half of which to be paid by the counsel of the petitioner . The order stated that if the advocate holding a *Vakalat* of a client, abstains from attending the Court due to a strike call, he shall be personally liable to pay costs which shall be addition to damages which he might have to pay his client for loss. The Court also ordered the Contempt proceedings against the Counsel.

The aggrieved party filed a writ petition before the Supreme Court for quashing the order of the High Court on following grounds:

1. That there is no breach of contract or breach of trust between the petitioner and his client
2. That to strike is a constitutional right and in consonance with the fundamental right to freedom of speech and expression
3. That right to freedom of profession and occupation includes discontinuing the profession or occupation.

In the same petition, the petitioner also challenged the suspension of 50 advocates of Pashchim Pradesh Bar Association for professional misconduct under the amended Rules of BCI as to professional misconduct stating that the rule and the procedure therein is arbitrary as well as against the principles of natural justice.