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NO ONE
PROFITS
MORE FROM
YOUR BAD
EXPERIENCES
THAN
LAWYERS
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BAR - JUDGE RELATIONSHIP

EXPECTATIONS FROM OUR LEGAL SYSTEM

- Public confidence in the legal system can be measured by the answers to the following questions.

Do people believe that the legal system can:

- Solve disputes quickly and honestly, **provide speedy justice** and thus maintain law and order in civil society?
 - Recognize the voiceless citizen** like the juvenile, prisoner, mentally ill and poor?
 - Facilitate an **environment necessary for economic growth**?
 - Prevent absolute power and corruption** – be an efficient check and balance in governance?
 - Be a watch dog** for this country – as one of the three constitutional limbs of governance?
-
- In order to fulfill the above expectations, We need a good Bar-Bench relationship.

◎ The Indo-Anglican system of Justice is a partnership of the Bench and Bar, modeled on the British paradigm.

- ◉ *Mutual confidence in discharge of duties and cordial relations between Bench and Bar smoothen movement of chariot.*

INTRODUCTION

- ⦿ The aware lawyer, militantly mindful of his tasks knows that even amidst the clash of arms the laws shall not be silent.
- ⦿ The lawyer is the father of the Judge since the source of selection for the Bench is the Bar.
- ⦿ The advocate as a officer of court, soldier of justice and defender of rights with unconcern for the income from the business.

BAR

- ⦿ Bar means a faction or association of Lawyers or Advocates. When used in relation to court, it means lawyers, Advocates, Lawyer or where Lawyers assemble in the court or in court complex.

BAR

- ⦿ The bar is not a private guild, like that of ‘barbers, butchers and candlestick-makers’ but, by bold contrast, a public institution committed to public justice and pro bono publico service.
- ⦿ The central function that the legal profession must perform is nothing less than the administration of justice.

BENCH

- ⦿ Bench signifies Judges, the Judge in the court or where Judge sits in the court or in court complex.

INTER RELATIONSHIP BETWEEN BENCH AND BAR

- “If the independent judiciary is the pillar of democracy, the Bar is the foundation of the independent Judiciary. The Bar is the mother of the Bench and the bright mirror of the Judicial Officers whose image, character and conduct is correctly and visibly reflected therein, and it is for the Bench to nurse and nourish the merits of the Bar.”

- "It has been a saying as old as the profession itself that the court and counsel are two wheels of the chariot of justice.
- In the justice delivery system, members of the Bar are as much a party thereby as the justice and it is the closest possible harmony between the Bar and the Bench that can yield the best results in achieving the objectives enshrined in our Constitutional Document.
- The Bar and the Bench are two sides of a coin. In the administration of justice unless harmony prevails between the Bar and the Bench, no desired results to uphold the majesty of the institution could be achieved.

HUKUMAT RAI V/S THE CROWN, AIR 1943 LAH 14

- ⦿ a lawyer should always conduct himself properly in a court of law and exert his least at all times to maintain the dignity of the Court but the Court has also a reciprocal duty to perform and should not only be discourteous to a lawyer but also should try to maintain the lawyer's respect in the eyes of his clients and the general public with whom he has to deal in his professional capacity.

THE ROLE OF THE LAWYER

- ◉ *R.D. Saxena vs. Balram Prasad Sharma, (2000) 7 SCC 264*
- ◉ "In our country, admittedly, a social duty is cast upon the legal profession to show the people beckon (sic beacon) light by their conduct and actions. The poor, uneducated and exploited mass of the people need a helping hand from the legal profession, admittedly, acknowledged as a most respectable profession. No effort should be made or allowed to be made by which a litigant could be deprived of his rights, statutory as well as constitutional, by an advocate only on account of the exalted position conferred upon him under the judicial system prevalent in the country....."

IN THE WORDS OF V.KRISHNA IYER, DUTIES OF THE LAWYER....

- “.....The lawyer shall be an instrumentality of the Republic in securing to the whole people as promised in the Preamble, Justice, Social Economic and Political and Fundamental freedoms and Rights incorporated in Law India....
- He uses the rule of law and moulds the legal system so as to deliver to every member of the populace, even the humblest have/not and the depressed pariah, his constitutional title to justice...”

*J.S. JADHAV V. MUSTAFA HAJI
MOHAMAD YUSUF, AIR 1993 SC 1535*

- ◉ *“Advocacy is not a craft but a calling; a profession wherein devotion to duty constitutes the hallmark. Sincerity of performance and the earnestness of endeavor are the two wings that will bare aloft the advocate to the tower of success. Given these virtues other qualifications will follow of their own account. This is the reason why the legal profession is regarded as a noble one.”*

SEVEN LAMPS OF ADVOCACY

- Honesty
- Courage
- Industry
- Wit
- **Eloquence**
- Judgment
- Lamp of Fellowship

THE STATUS OF LAWYERS- ANCIENT TIME

- The role and status of lawyers at the beginning of Sovereign and Democratic India is accounted as extremely vital in deciding that the Nation's administration was to be governed by the Rule of Law. They were considered intellectuals amongst the elites of the country and social activists amongst the downtrodden. These include the names of galaxy of lawyers like Mahatma Gandhi, Motilal Nehru, Jawaharlal Nehru, Bhulabhai Desai, C. Rajagopalachari, Dr. Rajendra Prasad and Dr. B.R. Ambedkar, to name a few. The role of lawyers in the framing of the Constitution needs no special mention.

PRESENT

- In a profession with such a vivid history it is regretful, that lawyers stood up violent and unaccountable as if all the ends of indiscipline were closing in fast on this benign structure. The princes of anarchy--this is what the lawyers appear to have become destroyed Court property and disrupted proceedings. Such incidents bring about a third kind of fear to our minds which is more piercing, full of constant apprehensions relating to the practical problems being faced by Courts today and greater in intensity than mere moral revulsions and its social dimensions.

WAYS TO HAVE A CHECK ON THE LAWYER FOR THEIR MISCONDUCT BY THE COURT

- ◉ Initiation Of Contempt Proceedings.
- ◉ Referring To The Bar Council For Disciplinary Proceedings.
- ◉ The Power Of The Court To Debar Or Restrain A Lawyer From Practice.
- ◉ Powers Exercisable On Administrative Side.
- ◉ Framing Of Rules.

DUTIES OF BAR TOWARDS THE BENCH

- ◉ The Bar owes a duty towards Assuring the Confidence in Justice itself.
- ◉ Duty of the bar to the Bench to Maintain its Honour and Dignity
- ◉ An Advocate should extend full co-operation to the bench
- ◉ An Advocate should not inflict imputation against the bench
- ◉ An Advocate should present everything in open court
- ◉ Advocate not to show over reaction against presiding judge
- ◉ An Advocate should be trust worthy and he should not try to mislead the court.
- ◉ An Advocate should avoid any act which lowers confidence in the administration of justice.
- ◉ An Advocate should appear and behave like a thorough gentleman in the court.
- ◉ Respect for address to Judges.

DUTIES OF BENCH TOWARDS THE BAR

- ◉ Duty to allow Arguments Uninterruptedly
- ◉ Judges should extend their helping and Appreciative Hands towards beginners at the Bar
- ◉ Judges should Pay Equal Attention to all Lawyers Irrespective of their Position
- ◉ Bench should support and Ensure the Independence of the Bar.
- ◉ Fairness on the part of Judge

WHAT THE JUDGE REQUIRES FROM THE ADVOCATE

- The effectiveness and usefulness of an Advocate is determined by his capacity to satisfy the needs of the Judge. It is clear that what the Judge requires from an Advocate is assistance in the performance of his own role. It is impossible for an Advocate to give that assistance unless he has probity or all those qualities which are discussed in the chapter on the "Honest Lawyer" in a rather illuminating little book entitled "Road to Justice" containing a series of essays of Lord Denning, at present the Master of Rolls in England.

THE CURRENT STATE OF THE NATION

- ◉ Energy appears to be building up for legal system reforms.
- ◉ The voice of positive change is reflected by the Bar constructively engaging itself in the process of judicial appointments and judges being willing to take a stand against a mutually protective ‘brotherhood’.
- ◉ Better legal education is being imparted to law students. And media is starting to report about the few instances of corruption in the legal system as the civil society seeks better services from its lawyers.
- ◉ This augurs well for the nation.
- ◉ But many more good minds are needed to think on these aspects and catalyse the change that we deserve.

A STRANGE STORY

- A lawyer named Strange died, and his friend asked the tombstone maker to inscribe on his tombstone, "Here lies Strange. an honest man, and a lawyer."

The inscriber insisted that such an inscription would be confusing, for passersby would tend to think that three men were buried under the stone.

However he suggested an alternative: He would inscribe, "Here lies a man who was both honest and a lawyer."

"That way, whenever anyone walked by the tombstone and read it, they would be certain to remark: "That's Strange!"

ON REFERENCE

- ◉ "Lawyers ought to know that at least as long as lawful redress is available to aggrieved lawyers, there is no justification for lawyers to join in an illegal conspiracy to commit a gross, criminal contempt of court, thereby striking at the heart of the liberty conferred on every person by our Constitution. Strike is an attempt to interfere with the administration of justice. The principle is that those who have duties to discharge in a court of justice are protected by the law and are shielded by the law to discharge those duties, the advocates in return have duty to protect the courts. For, once conceded that lawyers are above the law and the law courts, there can be no limit to lawyers taking the law into their hands to paralyse the working of the courts.

It is high time that the Supreme Court and the High Court make it clear beyond the doubt that they will not tolerate any interference from anybody or authority in the daily administration of justice. For in no other way can the Supreme Court and the High Court maintain the high position and exercise the great powers conferred by the Constitution and the law to do justice without fear or favour, affection or ill-will."

(H.M. Seervai, a distinguished jurist-quoted by the Supreme Court in Harish Uppal (Ex. Capt) v. Union of India reported in [MANU/SC/1141/2002 : 2003 (2) SCC 45]

CONCLUSION

- ◉ Justice has been pictured in Roman mythology as a goddess wearing a blindfold and holding scales. The scales connote the weighing and balancing of rights and privileges. The judge and the lawyer should remember, first and foremost, that in weighing and balancing rights and privileges they are building together a monument in the Temple of Justice.
- ◉ This building is never-ending, for the process of justice is never finished. It reproduces itself generation after generation in ever-changing forms. In this perspective, the lawyer and the judge are, together, fashioning for tomorrow's chronicle yesterday's experiences in the law; and their daily labors, though seeming at times tedious, uninteresting, and unimportant, will ultimately play a part in the vast reaches of the future of all mankind.

HAMMER IT

- ◉ Hammer it:- Said the Law Professor: “ if you have the facts on your side, hammer them into the jury, and if you have the law on your side, hammer it into the judge,”
“ But if you have neither the facts nor the law?” asked a student.
“Then hammer on the table.” answered the professor.

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