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Employment and Advertising Restrictions on Advocates in light of COVID-19: An Analysis

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ABSTRACT

The Bar Council of India Rules places dual restrictions on practicing advocates by way of restriction on employment and restriction on advertisement and solicitation by practicing advocates. These restrictions hinder the growth of lawyers and limit their earning capacity. The World Health Organisation declared COVID-19 virus as a global pandemic in the month of March, 2020. Due to this, Central Government imposed a nation-wide lockdown from 24th March 2020 onwards to curb the spread of COVID-19 virus in India. Since then, the courts and tribunals throughout the country have remained closed or are functioning at their minimum strength. Due to this, the advocates throughout the country, especially the first-generation lawyers, are finding it extremely difficult to earn their livelihood. Few advocates have even committed suicide as they could not earn enough to feed themselves and their families. The legal fraternity has also raised its voice against these restrictions and has come forward to help the advocates in need. This paper analyses the impact of these restrictions in light of COVID-19 as being violative of Advocates' Right to Life under Article 21 as well as Right to Profession under Article 19(1)(g) of the Constitution of India while also highlighting the need to relax these restrictions as a progressive society.

I. INTRODUCTION

After declaration of COVID-19 as a world-wide pandemic, the Central Government imposed a nation-wide lockdown from 24th March 2020 onwards to curb the spread of COVID-19 virus in India. The lockdown meant that the courts all over the country including the Supreme Court would remain closed for an indefinite period. Since then the Courts, Tribunals and other Judicial Offices continue to remain close or are functioning at their minimum strength. Due to this, many practicing advocates especially the budding young lawyers have been left without any brief for more than four months now and are finding it extremely difficult to earn their bread and butter. This is primarily due to the dual restrictions placed on practicing advocates

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by Bar Council of India Rules by way of restriction on employment of practicing advocates and restriction on advertisement and solicitation by an advocate. During these tough times, advocates, State Bar Associations and the Bar Council of India have been constantly raising their voices against these unjust restrictions placed on practicing advocates and the matter has been brought before the Supreme Court for grant of relief to the advocates. This paper analyses these restrictions in light of COVID-19.

II. RESTRICTION ON OTHER EMPLOYMENTS (SECTION VII OF BAR COUNCIL OF INDIA RULES)

Rule 47 restricts an advocate to personally engage in any business although he may be allowed to act as a sleeping partner in a firm engaged in such business which in the opinion of the appropriate State Bar Council is not inconsistent with the dignity of the legal profession.³

Rule 48 restricts an advocate to be a Managing Director or a Secretary of any Company although he may be a Director or Chairman of the Board of Directors of a Company without duties of executive nature.⁴

Rule 49 restricts an advocate to be a full-time salaried employee of any person, government, firm, corporation or concern, so long as he continues to practise. Upon taking up any such employment, he is duty bound to intimate the fact to the Bar Council on whose roll his name appears and thereupon he would be ceased to practise as an advocate so long as he continues in such employment.⁵

It also restricts a Law Officer who is a whole time employee drawing regular salary who appears on behalf of their employers to appear as advocates.

Rule 50 restricts an advocate to personally participate in the management of a family business which he has inherited, or succeeded by survivorship although he may continue to hold a share with others in any such business.⁶

Rule 51 permits an advocate to review Parliamentary Bills for a remuneration, edit legal text books at a salary, do press-vetting for newspapers, coach pupils for legal examination, set and examine question papers, and subject to the rules against advertising and full-time employment, engage in broadcasting, journalism, lecturing and teaching subjects, both legal and non-legal.⁷

³ Bar Council of India Rules [Rules made by the Bar Council of India in exercise of its rule making powers under the Advocates Act, 1961], § 7, Rule 47

⁴ Id. § 7, Rule 48

⁵ Id. § 7, Rule 49

⁶ Id. § 7, Rule 50

⁷ Id. § 7, Rule 51

Rule 52 permits an advocate from accepting, after obtaining the consent of the State Bar Council, part-time employment provided that in the opinion of the State Bar Council, the nature of the employment does not conflict with his professional work and is not inconsistent with the dignity of the profession.⁸

Violation of these rules is treated as misconduct and made punishable under Section 35 of the Advocates Act, 1961.

Background

The legislators found that an independent and integrated bar plays pivotal role in strengthening the system of administrative justice in any country. Therefore, it was decided to incorporate such restrictions in order to maintain and uphold the nobility and dignity of legal profession. These rules are also based on the premise that an advocate must devote all of his time and attention to the legal profession and therefore must not engage himself in any other full-time employment.

The Supreme Court while upholding the constitutional validity of the said rules in the case of **Dr. Haniraj L. Chulani v. Bar Council of Maharashtra & Goa**⁹, held that the rules restricting a practicing advocate to take up any other profession, carry out any business simultaneously are not violative of Article 14, Article 19(1)(g), Article 21 of the Constitution of India. The court further held that the legal profession requires full time and dedication and an advocate cannot be allowed to ride on two horses simultaneously while quoting “law is a jealous mistress that calls for undivided loyalty and unflinching attention from her devotees”. The court also held that allowing an advocate to take up another job simultaneously will compromise on the nobility of legal profession and the quality of legal services. The court explained that when a person is able to earn livelihood through other profession and merely wants to earn an additional income through legal profession, then such employment restrictions placed on practicing advocates is not violative of Article 21.

Updating this archaic law- A Necessity

Article 19(1)(g) guarantees all citizens the right to carry on any business, occupation or trade or to practice any profession of his/her own choice.¹⁰ Moreover, the constitution of our country guarantees Right to life and personal liberty to every person. **Article 21** lays down that no person shall be deprived of his life or personal liberty except according to procedure established

⁸ Id. § 7, Rule 52

⁹ Dr. Haniraj L. Chulani v. Bar Council of Maharashtra & Goa, 1996 SCC (3) 342

¹⁰ The Constitution of India 1950, Article 19(1)(g)

by law.¹¹

The Supreme Court in the case of **Olga Tellis & Ors. v. Bombay Municipal Corporation & Ors**¹² held that Right to Life under **Article 21** includes **Right to livelihood** as no person can live without securing adequate means of livelihood to sustain his/her life.

It is practicing advocates' right to livelihood which has come into question during this difficult time of an ongoing global pandemic. A significant section of affected lawyers are first generation lawyers who are entirely dependent on appearances before tribunals and courts. This pandemic and closure of courts is a huge blow to the livelihood of these lawyers who do not even have enough savings to fall back on.

It is true that the legal profession has been considered noble and ethical in India since decades. But the changing face of legal profession demands a change in these outdated restrictions for the professionals to thrive. In the case of **Bangalore Water Supply and Sewerage Board v. A. Rajappa & Ors.**¹³, it was held by the Hon'ble Supreme Court that legal profession comes within the meaning of the term Industry under the Industrial Disputes Act, 1947. Thus, just like other industries, the advocates should be allowed to exercise their free will to engage in multiple occupations.

These archaic rules impose an unreasonable restriction on the lawyers. The legal profession has evolved over the years and demands a progressive and liberal approach rather than the existing conservative and regressive approach. Thus, the Lawyers Right to Livelihood enshrined under Article 21 and Right to carry on any business, occupation or profess any profession of their choice enshrined under article 19(1)(g) should be protected and they should be allowed to take up alternative employment and carry on other businesses during this pandemic to be able to earn their livelihood and sustain themselves and their families.

III. RESTRICTIONS ON ADVERTISEMENT (SECTION IV OF BAR COUNCIL OF INDIA RULES)

Rule 36 mandates that an advocate shall not solicit work or advertise, either directly or indirectly, whether by circulars, advertisements, touts, personal communications, interviews not warranted by personal relations, furnishing or inspiring newspaper comments or producing his photographs 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 should not indicate

¹¹ The Constitution of India 1950, Article 21

¹² Olga Tellis & Ors. v. Bombay Municipal Corporation & Ors , 985 SCR Supl. (2) 51

¹³ Bangalore Water Supply & Sewerage Board, etc. v. R. Rajappa & Ors, 1978 SCR (3) 207

that he is or has been President or Member of a Bar Council or of any Association or that he has been associated with any person or organisation or with any particular cause or matter or that he specialises in any particular type of work or that he has been a Judge or an Advocate General.¹⁴

However it allows advocates to furnish such information on websites which is prescribed in the scheduled approved by the Bar Council of India. Violation of this rule is treated as misconduct under Section 35 of the Advocates Act, 1961.

Background

This rule has been framed as such to uphold the nobility and integrity of the legal profession. The roots of this law are based in the age old Victorian notions of British Common law. The conception of legal services as a ‘noble profession’, rather than services has resulted in the formulation of such a restraint. This law justifies itself under the garb of ‘public policy’ and ‘dignity of profession’. Allowing the advocates to advertise would not only pave way to potentially misleading the public, but also to ‘degrade the dignity’ of the honourable profession.¹⁵

In **Bar Council of Maharashtra v. M. V. Dabholkar**,¹⁶ Justice Krishna Iyer in favour of this law stated that “the canon of ethics and propriety for the legal profession totally taboo conduct by way of soliciting, advertising, scrambling and other obnoxious practices, subtle or clumsy, for betterment of legal business. Law is not a trade, briefs no merchandise and to the heaven of commercial competition or procurement should not vulgarise the legal profession”.

Updating this archaic law- A Necessity

In **Hamdard Dawakhana (WAKF) Lal Kuan, Delhi v. Union of India**¹⁷, with respect to commercial advertisement, the Supreme Court held that an advertisement is no doubt a form of speech but it’s true character is reflected by the object for the promotion of which it is employed.

After considering the above case, Supreme Court in **Indian Express Newspapers (Bombay) Private Ltd. & Ors. vs. Union of India**¹⁸ finally opined that all commercial advertisements cannot be denied the protection of Article 19(1) (a) of the Constitution merely because they are

¹⁴ Bar Council of India Rules [Rules made by the Bar Council of India in exercise of its rule making powers under the Advocates Act, 1961], § 4, Rule 36

¹⁵ Advocates Barred from Advertising their Services, Nov. 2018, <https://www.lawteacher.net/free-law-essays/public-law/advocates-barred-from-advertising-their-services-law-essay.php?vref=1>

¹⁶ Bar Council of Maharashtra v. M. V. Dabholkar, 1976 SCR (2) 48

¹⁷ Hamdard Dawakhana (WAKF) Lal Kuan, Delhi v. Union of India, SCR 1960 (2) 671

¹⁸ Indian Express Newspapers (Bombay) Private Ltd. & Ors. vs. Union of India, 1985(2) SCR 287

issued by businessmen. The judgment acknowledged that advertisements acquire some elements of speech or expression intended for protection by Art 19(1)(a) by bringing to the notice of the public.

The Supreme Court in **Tata Press Limited vs Mahanagar Telephone-Nigam Limited & Ors.**¹⁹ asserted that '*Advertising is considered to be the cornerstone of our economic system*'.

A reading of the above judgements clearly show that the Supreme Court recognises Right to Advertisement as a part and parcel of Freedom of speech and expression that flows from the Constitution of India itself. The legal profession should be no exception when it comes to fair advertising practice.

In the case of **V.B. Joshi v. Union of India**,²⁰ Supreme Court directed an amendment to be made in Rule 36, Section IV of the Bar Council of India Rules. *The said amendment allows 5 pieces of information to be advertised on the internet i.e. (1) name of the firm, (2) address, telephone numbers and email id, (3) (a) enrolment number, (b) date of enrolment, (c) name of State Bar Council where originally enrolled, (d) name of the State Bar Council on whose roll name stands currently and (e) name of the Bar Association of which the advocate is a member, (4) professional qualifications and academic qualifications and (5) areas of practice.* Thus, the Supreme Court while taking a progressive approach allowed certain information to be advertised on online platforms.

Legal advertisement has both pros and cons just like any other commercial advertisement. There is no doubt that the legal profession is considered a noble and respectable profession. However, the need of the day is that the practicing advocates must be allowed to engage in fair advertisement and solicitation. On one hand, it would benefit the advocates to reach out to general public and make a name for themselves while on the other hand, it would also make general public aware and mindful of current legal scenario and would assure them that there are advocates who are willing to help them.

To regulate legal advertisement, special laws can be passed and regulatory authorities be set up in the same manner as in other sectors. For example, the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (CTPA) governs advertisement related to cigarette and other tobacco products. The Drugs and Magic Remedies (Objectionable Advertisements) Act prohibits advertisements of drugs for certain purposes and of treatment of certain diseases

¹⁹ Tata Press Limited vs Mahanagar Telephone-Nigam Limited & Ors., 1995 SCC (5) 139

²⁰ V.B. Joshi v. Union of India, W.P.(C) 532/200

and disorders. It also prohibits misleading advertisements relating to drugs and advertisements of magical remedies for the treatment of certain diseases and disorders. Strict punishments must be laid down for false, fraudulent and misleading advertisements and solicitation. Complete prohibition of an act just because a few may indulge in notoriety is not a solution in today's time which demands a progressive approach.

Lockdowns and closure of courts throughout the country has only aggravated the plight of advocates to reach out to prospective clients and earn a livelihood by making a name for themselves in an over-competitive space. Even if these rules are not struck down completely, these rules should be relaxed during this Pandemic being violative of Advocates' Right to Life and Livelihood.

IV. LEGAL FRATERNITY DURING COVID-19 PANDEMIC

- **Public Interest Litigation By Advocates of Rajasthan High Court**

The advocates of Rajasthan High Court have collectively filed a PIL to bring the attention of the court towards the financial hardship being faced by the members of the Bar due to the disruption in the functioning of the courts because of COVID-19 pandemic. The petitioners contended that the advocates are deprived of their only source of income due to the imposition of lockdown. The petitioners further contended that rules 40,41,42,43,44,44-A and 44-B of Bar Council of India Rules provide for creation of corpus of funds which have to be distributed when need arises. The PIL sought direction to release welfare funds to provide financial assistance to the advocates during this tough time.²¹

- **Public Interest Litigation by Sr. Advocate Chandarjeet Chandarpal**

A PIL has been filed in the Supreme Court by Sr. Advocate Chandarjeet Chandarpal demanding that those advocates belonging to middle or lower middle class should be allowed to advertise and solicit work so that they can engage in other employments like para-legal jobs, taxation or registration work. This would allow them to earn their livelihood and sustain themselves during the time of pandemic. The plea also seeks directions to the Bar Council of India i.e. BCI to issue a clarification as regards a practising lawyer's position as a "sleeping partner" or "sleeping director" in an organization so that advocates may be employed as legal advisors on a retainer basis and permit advocates to take up alternative sources of livelihood and income to sustain themselves, along with an undertaking that the same shall not continue beyond March

²¹ Right to Life: PIL in High Court for release of welfare funds to advocates in need in wake of COVID-19, April 20, 2020, <https://www.latestlaws.com/latest-news/right-to-life-pil-in-high-court-for-release-of-welfare-funds-to-advocates-in-need-in-wake-of-covid-19/>

of 2021.²² The Supreme Court bench comprising of Chief Justice SA Bobde, Justice AS Bopanna and Justice R. Subhash Reddy has directed the BCI to file its reply within 2 weeks and the matter is sub judice.

- **Petition filed by BCI in Hon'ble Supreme court**

The BCI has also filed a petition in Supreme Court to arrange for financial assistance to be provided by the Central and State Governments to advocates enrolled with the State Bar Councils by way of interest-free loan upto Rs. 3 Lakhs each to be repayable in reasonable monthly instalments at least 12 months after normal court functioning commences.²³ The BCI relied upon Section 13 of the Disaster Management Act, 2005 which provides for grant of financial relief including loans on concessional terms to persons affected by the disaster.²⁴ The BCI stressed on the fact that the proceeds of the Advocates Welfare Stamp Duty goes to the respective State Governments and therefore the States have an unwavering duty to provide financial assistance to the advocates in such difficult times.

- **Suo Moto cognizance by Supreme Court**

The Supreme Court bench comprising of Chief Justice SA Bobde, Justice AS Bopanna and Justice V. Ramasubramanian while hearing the petition filed by BCI, took suo moto cognizance of the misery of the advocates due to COVID-19 and said “Unprecedented crisis demands unprecedented resolution” while issuing notice to BCI, the Central Government, all state bar councils and bar associations across the country to explore the possibility of setting up a relief fund for deserving and eligible advocates.²⁵ The bench remarked, “pandemic has taken a heavy toll on the lives of citizens and particularly the legal fraternity” and “In such a circumstance the closure of courts has deprived a sizeable section of the legal profession of their income and therefore livelihood” while noting that the lawyers are bound by the rules to restrict their income only to the profession.²⁶

- **Bar Council of Gujarat allows engagement in other dignified employments**

On 21st June 2020, in the wake of COVID-19 pandemic, the Bar Council of Gujarat has

²² Relaxation sought in Act, so starving lawyers can solicit work, find other jobs; SC gives notice to BCI, July 14, 2020, <https://www.indialegallive.com/top-news-of-the-day/top-story/relaxation-sought-in-act-so-starving-lawyers-can-solicit-work-find-other-jobs-sc-gives-notice-to-bci>

²³ SC takes Suo Moto cognizance of financial difficulties of advocates amid COVID-19; issues notice to BCI, State Bar Councils, July 22, 2020, <https://www.livelaw.in/top-stories/sc-takes-suo-moto-cognizance-of-financial-difficulties-of-advocates-amid-covid-19-issues-notice-to-bci-state-bar-councils-160290>

²⁴ The Disaster Management Act, 2005, §13

²⁵ In Re : Financial Aid For Members Of Bar Affected By Pandemic, Suo Moto WP(C) No.8/2020

²⁶ SC takes cognizance of lawyers' financial woes, proposes setting up fund for donations, July 22, 2020, <https://theprint.in/judiciary/sc-takes-cognizance-of-lawyers-financial-woes-proposes-setting-up-fund-for-donations/466102/>

temporarily relaxed the application of Section 35 of Advocates Act, 1961 which prescribes punishment for professional and other misconducts including engagement in other employments. In effect, the Bar council temporarily uplifted the bar on practising advocates which prohibits them from engaging in other employments for such advocates who are finding it difficult to sustain themselves and their families due to COVID-19. The Bar Council thereby allowed the advocates to undertake any dignified job, business or profession till the year end as more than 75,000 members of Bar Council of Gujarat are deprived of legal practice as courts remain close during this COVID-19 pandemic. The Bar Council has also provided aid for Rs. 5000 for needy lawyers and facilitated 8,500 lawyers for a 4.2 crore aid. The liability for late payment in respect of renewal payments for its welfare fund has also been suspended.²⁷ The said resolution is pending approval from the Bar Council of India.

- **Bar Council of Maharashtra and Goa waives off re-admission fee**

Upon representation made by several practicing advocates, the Bar Council of Maharashtra and Goa (BCMG) has allowed the advocates enrolled in the State Bar Council to surrender their 'sanad' (licence to practice) to take up any other alternative job/work in these difficult times when courts remain close and has passed a resolution that waives off the Re-admission fee of approx. Rs. 25,000 payable on resuming practice.²⁸

V. CONCLUSION

In these difficult times when the entire economy of the country has come at a halt, the legal profession is one of the hardest hit sectors. Since incorporation of these old age regulations, legal profession has grown manifolds and has become a challenging and competitive space wherein young lawyers finds it very difficult to make a name for themselves. Restrictions on advertisement and alternate employment makes it even more difficult for the advocates to survive, let alone compete in such a robust environment.

Since the outbreak of the COVID-19 pandemic, the courts have not been functioning for the past four months and the advocates are finding it extremely difficult to sustain themselves. Many advocates have been left without any brief for the past four months. Looking at the constant surge in the number of persons affected by the virus, the courts should temporarily relax these restrictions and allow the advocates to earn livelihood through alternate means as

²⁷ Gujarat Bar Council Allows Lawyers to Do Alternative Jobs / Business Until 31st December 2020 In Wake Of The Pandemic, June 22, 2020, <https://lawstreet.co/legal-insiders/gujarat-bar-council-allows-lawyersto-do-alternative-jobs>

²⁸ Sharmeen Hakim, *Lawyers can take up other jobs, but will have to give up licences*, July 10, 2020, <https://mumbaimirror.indiatimes.com/coronavirus/news/lawyers-can-take-up-other-jobs-but-will-have-to-give-up-licences/articleshow/76883821.cms>

well as advertise and solicit work in a fair manner.

There have been various pleas before the Supreme Court and High courts to come forward and issue directions for the economic welfare of the legal fraternity by allowing advocates to take up alternative employment and solicit work by indulging in fair advertising practices, grant of interest-free loan, setting up of welfare funds, etc. However, there has been no direct benefit delivered in the hands of advocates in spite of the fact that the courts have been non-functional for more than past 4 months. The situation demands an immediate implementation of these welfare measures.

Protection of rights and interests of advocates is equally important for the efficient functioning of justice delivery system as it is of citizens. Advocates' livelihood has been put at stake due to this global pandemic. Even if these rules are not struck down completely, these rules should be relaxed during this Pandemic being violative of Advocates' Right to Life and Livelihood. This would give a fair chance to advocates to earn their livelihood and sustain their family during these unprecedented times.
