



**A COMPARATIVE STUDY- CODE OF ETHICS PROVIDED BY BCI FOR ADVOCATES IN DISTINCTION WITH INTERNATIONAL BAR ASSOCIATION**

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**Abstract**

The code of ethics of Advocates in India have encountered a significant deal of non compliance so to secure better performance of the code of ethics it is an essential to understand and find out about significant arrangements identified with the laws related to ethics for lawyers in India with reference to International Bar Association. The study will assist with dissecting capacity of the law for requirements of advocates for proper conduct and also well being of people around. Thus it also gives details about practical implementation of the ethics in real life. It also explains the reason due to which code of ethics are considered so relevant in an advocates profession. It will likewise give a brief on how important it is for the advocates to meet with all the requirements and what are the different requirements. Code of ethics given by bar council of India in comparison with International Bar Association will be explained. The paper also deals with legal guidelines and the relaxation provided to the advocates under the rules given by BCI. It will therefore also provide the legal ethics which are often ignored by the advocates. An effort has been made to live upon the ideas of proper conduct of an advocate but there are certain short comings. Therefore it can be stated that this paper would additionally gives a detailed investigation about the points on which

improvement of code of ethics are required and what are the drawbacks BCI has in distinction with IBA and how can the improvement be made for the further.

**Keywords:** BCI, code of ethics, International Bar Association, Advocates, distinction

**Introduction**

In simple term an ethical benchmark that is set for a person working in a particular profession is referred as code of ethic. It gives the working professional guidelines on how and what ethics and stance should have in mind while working. However, to understand code of ethics of an advocate it is important to know who is an advocate so in easy language an advocate as someone who pleads for someone else's cause, or we can also say someone who argues and drafts in favor of something. Therefore, A lawyer is refereed as an advocate as in a courtroom as he is representing his client. In this paper we talk about code of ethics for an advocate. Which we can understand from explanation given above means ethics for lawyers are adopted principles that provide guidance to the advocates at their place of work. These principles are hand in hand with the basic codes professional ethics provided by the bar of that state. If there is no compliance of such basic code and rules by a lawyers, then that advocate or lawyers is violating the principle and action can be taken against such person by the bar of that state. Therefore, every advocate has to make sure that he is compiling with the rules set by bar and that bar is also obliged to take care that there is regular and complete application of the code of ethics. In situation when an advocate is representing a client in a foreign court he not only has to follow code of his home country



but also international code that is required for that particular case. In today's time some general code of ethics for advocate includes first confidence between the lawyer and his client, second independence from any outside parties interference, third to make sure that client's interest is maintained, fourth personal advertising should not be done in unprofessional manner, fifth restrain himself from being part of an unlawful profession, and lastly be reliable as an advocate you need to make sure that you do not disclose your clients any personal information or professional information.

### **Importance of Code of Ethics for Advocates**

An Advocate's profession is considered to be profession of great honour. They have to deal with not only their personal good but also for the good of public. Code of ethics reminds an advocate that it is not a money-making job but a profession by which we can provide justice. Also, code of ethics states that because it is not a business, an advocate cannot advertise either directly or indirectly unless provided by the code. An advocate is like an officer of the court therefore they are should maintain some respect and decorum towards the court to show dignity towards the judicial office. As stated by the Apex Court that the lawyers and the judiciary go hand in hand in the administration of justice. As stated above legal profession be it judiciary or advocate a noble profession and not a business. So, the attitude of an advocate towards his clients and maintenance of decorum in court is said to an important element of ethics.<sup>1</sup> Later the ethics change

<sup>1</sup> Peter MacFarlane "The importance of ethics and the application of ethical principles to the legal profession"  
<http://paclii.austlii.edu.au/journals/fJSPL/vol06/8.shtml> (last visited on: Sep. 08, 2020).

into respect for court and the client and acquiescence to the law and the legal authorities. When a law student enters college they have moderately matured beliefs and some they develop during their college life these are referred as legal ethics that they carry on after law school. After the law school and the bar exam, the place they work in and people they work for play a major role in shaping their professional ethics. So, it is important for every individual to have a code of ethics in every profession because it brings moral awareness and duty of that individual person in anything he is going to do in relation to his profession.<sup>2</sup>

### **Code of Ethics provided by BCI**

In India the Code of ethics are observed under section 49(F) (c) of the Advocates Act, 1961. According to this the code of ethics are given under the Bar Council of India Rules in Chapter II, Part VI. These ethics should be maintained for better functioning of the legal system.

The code of ethics under the Bar Council of India Rules is divided into four main point which are as follows:

Rules on an advocate's duty towards the court

Rules on an advocate's duty towards the client

Rules on advocate's duty to opponents

Rules on an advocate's duty towards fellow advocates

<sup>2</sup> Prachi Darji "Code of Conduct for lawyers in India" (Apr. 21, 2018) <https://www.myadvo.in/blog/code-of-conduct-for-lawyers-in-india/> (last visited on: Sep. 09, 2020).



Each point mentioned above consists of various rules the explanation for the same is given below:<sup>3</sup>

### **Advocate's duty towards the court**

Under this the advocate has some duties towards the court which firstly is to make sure that he is presenting himself in a dignified manner and makes sure that he is managing himself with self-respect. Secondly the Advocate has to always manifest respect towards the court. Then the third rule states that an advocate cannot talk to judge in private for a matter that is still pending in the court, advocate cannot influence the judge using illegal means. Forth advocate should not act in an illegal manner towards the opposition parties in any scenario. Fifth advocate can refuse to represent a client on his own judgment if he feels client is forcing him to use unfair means. Sixth advocate has to follow the proper dress code made by the bar council of India. Seventh advocate is not allowed to appear in front of any judge in bench who in any ways is related to the advocate. Eight the advocate should never wear bands or gowns in any public places unless Bar Council of India has allowed. Ninth states that an advocate cannot be representing any establishments if he is a member of the same, although there some expectation to this rule like it does not apply to members who are amicus curiae. Tenth point states that an advocate cannot apply if he has financial interests in the case. Last rule for advocate's duty towards the court talks about the fact that advocate is not allowed to take surety of his client.

### **Advocate's duty towards the client**

Under this the advocate has some duties towards the client the first duty talks about how advocates are bound to accept briefs unless it is a special circumstance. An advocate should not back out from any case that he has already taken unless he has a sufficient ground to do so that to by giving reasonable notice to the client and also refund the fees in certain cases. Third duty is that an advocate cannot appear in cases where he himself is a witness. Forth duty states that advocate should do full disclosure to his client in relation to his connection with the parties that is likely to affect the judgment of the client. Fifth one talks about how interests of his client should be maintained by the advocate with all fair means. The sixth duty states that an advocate should not suppress any material or evidence related to case which may lead to conviction of an innocent person. Seventh is that advocate should never reveal communications between him and the client. Eight advocates should not instigate litigation. Ninth duty of an advocate tells us that he can only work as per the instructions of his client or any other person authorized by the client. Tenth duty states that an advocate cannot charge for his services on the basis of the success of the case. Next duty explains that an advocate cannot receive any share or interest in any actionable claim made for his client. Twelfth one states that an advocate cannot buy or sale any property on his on any other person name when he was part of legal proceedings related to the sale. Next one advocate should not buy in any way, bid in court auction or acquire by way of sale, gift, exchange or any other mode of transfer of property on his on any other person name when he was part of legal proceedings. Fourteenth tell that advocate cannot adjust fee that is to be paid to him by his client

<sup>3</sup> Bar Council of India Rules



against his own personal liability towards the client. The fifteen one talks about the fact that the advocate should not take advantage of client or misuse his trust. Then comes sixteenth point that explains that its duty of advocate to keep account of his clients money that he on trust has assigned him. This is the next duty explaining that advocate will not divert any money that he has received for expenses as fees without written instruction from the client. After, this duty comes where advocate has to intimate the client on any amount he revises on client behalf. Nineteenth duty tell that advocate will adjust the fees after termination of proceedings and refund any extra amount that is left after deducting all expenses and fees. The twentieth one says that advocate should give all the details of client account that he has made if clients asks for it. Next duty is that advocate will not enter into a position where his funds turn into loans. The twenty second one states that advocate should not lead money to his client. Lastly advocate appearing for one party shall not appear for hid opposite party.

#### **Advocate's duty to opponents**

First advocate cannot communicate in any form with the opponent party be it for negotiation or settlement in relation to subject which is going on. Second duty of an advocate shall be to try its level best to fulfill all the legitimate promises made to the opponent party.

#### **Advocate's duty towards fellow advocates**

First duty is to not advertise about him or solicit work in any manner. Second states that advocate shall not use sign-board or name-plate that are not of reasonable size. Third

duty tells that advocate will not allow his services or name to be used for promoting any illegitimate practice of law. Forth one explains that advocate shall not take fees less than what can be taxed by rules unless client can't afford it. Last rule tell that advocate cannot appear in any matter where another advocate has filed a memo for the same party unless they have taken permission from the other advocate or applied for appearance in the court.<sup>4</sup>

#### **Code of Ethics provided by IBA**

The International Bar Association has also given several codes of ethics that an advocate has to maintain. This is a union of national Bar Associations and Law Societies and individual members. There are at present as per 18,000 members which are individual lawyers from 183 countries, also 174 Bar Associations and Law Societies, it helps to provide a worldwide experience and a network of personal contacts at the disposal of its members. There are in total 21 rules given by International Bar Association and some of they are as follows:

First rule states that the advocate who is involved in a professional work where he does not have jurisdiction as he is not a full member of the local bar shall have to follow the standards of code of ethics in the jurisdiction in which he has been admitted. He will follow all the standards mentioned by the country where he is working.

Second rule of an advocate is to maintain the honour and dignity of their profession in both private and public platform.

Third rule of advocate is to be independent while discharging professional duty.

<sup>4</sup> Ibid.



Fourth rule of advocate is to treat their colleague with due courtesy, respect and fairness

Fifth rule of advocate states that any communication between lawyers be it oral or written shall in consider confidential as far as the Court is concerned, unless otherwise provided.

Sixth rule tell that advocate shall have respect towards the Court. An advocate shall always defend his client without any fear also advocate shall not give wrong information to the court knowingly.

Seventh rule of advocate states that it shall be considered unethical for lawyers to communicate directly with person who he knows is represented by another lawyer in relation to a particular case directly, without the latter's consent.

Eight rule tell that advocate shall not advertise or solicit any kind of business in situation where it is permitted by the rules of the jurisdiction to which that lawyer is subject.

Ninth rule of an advocate is to make sure he does not consent to handle any case until the a) direct instructions are given by client, or, b) competent body has assigned the case or forwarded by another lawyer, or c) instructions are made in any form permissible under the relevant local regulations.

Tenth rule states that advocate can give candid advice to client and can also refuse to handle a case at time until it is given by the competent body.

Eleventh rule tell that an advocate shall try and solve dispute outside court and not start a legal proceeding if possible.

Twelfth rule explains that an advocate will never fight a case in which he is getting any direct or indirect financial interest from the legal proceeding.

Thirteenth rule states that advocate in litigation can never ever represent conflicting interests.

Fourteenth rule tell that advocate cannot disclose information, unless it required by Statute or lawfully ordered to do so by the Court.

Fifteenth rule states that advocate should be punctual and diligent and should refund the extra money to the client.

Sixteenth rule tell that advocate should make sure that the adequate deposit is made to cover an advocates expenses which should be reasonable.

Seventeenth rule states that advocate should put interests of their clients before their own right to compensation for their services.

Eighteenth rule tell that a contingent fee charged by advocate should be reasonable as per the rules state by the professional authority.

Nineteenth rule is that when an advocate takes advice from a foreign colleague on a case or to cooperate in handling it, he has to make payment to that colleague except where contrary has been stated in the contract or agreement.

Twentieth rule is that an advocate cannot in any way allow someone else to use his name what allows any other persons to practice law who are not legally authorized to do so.

Last rule of IBA states that it is not unethical for an advocate to limit his professional



liability with the rules of their local Bar Association.<sup>5</sup>

### Conclusion

The Indian legal system provides a proper framework for better working of advocates. The code of ethics as we saw is given under section 49(1) (c) of the Advocates Act, 1961. According to this the code of ethics are provided by Bar Council of India Rules in Chapter II, Part VI and in same manner at International level too code of ethics are provided by International Bar Council which was first adopted in 1956 and last edition came in 1988. After reading about the code of ethics provided by both BCI and IBA we can say that both cover similar rules for advocates. However, there are few differences like the bar council of India divides code of ethics in four main categories which separates advocates duties towards court, client, opponent and fellow advocates which makes it easier to distinguish between the duties although International Bar Council does not categories basis of duties towards court, client, opponent and fellow advocates. Under International Bar Council only 21 rules are provided without any categorization. So, the reader has to distinguish for whom the rule stands. International Bar Council specifies that the rule all the member from different countries working on international platform for better performance of the advocates. On the other hand rules by bar council of India apply for advocates who are in any manner involved in any case of which jurisdiction lies in India. In the end I would like to state that both BCI and IBA have made very similar rules but the problem comes when we talk about knowledge and awareness of these rules. In

specific when we talk about BCI rules for advocates it's framed very beautifully but implementation of these rules is rarely present.

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<sup>5</sup> International Bar Association International Code of Ethics (First adopted 1956; edition 1988).