



AN ANALYSIS OF THE JUDICIAL INTERPRETATION OF THE CODE OF CONDUCT OF ADVOCATES IN PAKISTAN

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Abstract

This paper emphasizes on the remarks of the judges of the Supreme Court of Pakistan and different High courts given in the landmark cases on the disciplinary issues against the advocates. These verdicts cover all significant spheres from the meaning and duties of the advocate to the functions, canons of professional conduct and etiquette of advocate, misconduct, confidentiality, breach of promise, honesty and integrity of the advocates, concealment of facts, fee, fraud, contempt of court, professional requirements for practicing license to the trust, fiduciary relationship and respect of the advocates. Code of conduct of advocates is covered by the umbrella of legal ethics in Pakistan. All disciplinary issues against the advocates are adjudicated in the light of legal ethics which provide a sound basis for the understanding and enforceability of the code of conduct of the advocates.

Key words: Advocate, Legal Profession, Legal Ethics, Pakistan Bar Council, Provincial Bar Councils, Professional Misconduct, Supreme Court of Pakistan

1. Advocacy as a profession: Historical and Modern perspectives

The practice of law is recognized by most people in the community and by every country in civilized world to be a “Profession.” Lawyers think of themselves and speak of themselves as belonging to a profession. This is the reason that just like most of other professions the



institutions like the Bar councils and different regulations organize the professional aspect of law practice. Despite variations in the specific standards and provisions, across states, one requirement remains constant the candidate must demonstrate that he or she has “Good moral character”. In effect to be admitted to the bar a lawyer must pass an ethics test (Kemp, 2002).

There is a famous principle that ethics is neither an incidental adjunct to the curriculum, nor merely a way for lawyers to stay out of trouble. Rather ethics is treated as central to the practice of law and so, to the understanding of that practice. But what is ethics? Legal ethics has a strong and venerable history in America dating back to Judge Sharwood’s essay in the mid nineteenth century. Passing through the different stages of evolution still it is growing consistently (Krauss, 2001).

The English legal historians are agreed on the uncertainty of the date when professional lawyers first appeared in the English common law system but it has been said that by the thirteenth century a group of professional pleaders had become known in England. They were called the narrators, as the name implies they used to narrate the pleadings and questions of law on behalf of the litigants. That is the time when the concept of legal ethics started growing and flourishing in the United Kingdom (Marchetti and Ransley, 2014).

2. Appraisal of Legal Ethics and Code of conduct for advocates in Pakistan

Most writings on legal ethics have a cautionary tone. As a largely self-regulating profession, the organized bars have, over the years, promulgated a series of codes of ethics and has participated as well in their enforcement. The practicing lawyers are more commonly called as the “Advocates” in Pakistan. Just like any other country in world Pakistan has also adopted such laws which can define, govern and regulate the behavior of the advocates. Lawyers and judges go side by side for promotion and maintenance of rule of law and upheld justice. Lawyers do not make law but they provide legal assistance, likewise judges practice that law while disposing off the disputes before them (Luban, 2007).

In Pakistan, like most of the other states, in the case of lawyers two mechanisms exist for regulating their conduct. First is the fitness test whereby a candidate who is otherwise competent to practice law can be denied admission to the bar and second is the method of disciplinary proceeding through which a lawyer who has already been admitted to the bar can be disbarred. There are two types of remedies available to a person aggrieved by a negligent, mischievous, careless, and criminal or any other type of misconduct by an advocate. The persons aggrieved by the misconduct by the advocates of High courts and lower courts can apply to the respective provincial Bar councils under the Legal Practitioners and Bar Councils Act, 1973. Whereas the Supreme court of Pakistan deals with the misconduct of advocates of the supreme courts. Before 1973 only HC used to deal with the misconduct cases. According to section 9 of the Legal Practitioners And Bar Councils Act, 1973, the primary functions of every provincial bar council in Pakistan include: admitting persons as advocates on its roll, to holding examinations for



purposes of such admission, to preparing and maintaining a roll of such advocates and removing advocates from such roll. Moreover, their functions extend to include entertaining and adjudicating cases of misconduct against advocates on its rolls and to order punishment in such cases. This primary document to regulate the conduct of advocates further specifies the disqualifications for membership from different bar councils (Section 09, the Legal Practitioners And Bar Councils Act, 1973).

Then, Canons of Professional Conduct and Etiquettes of Advocates with regard to other advocates, clients, court and to the public generally are mentioned under Chapter XII of the Pakistan Legal Practitioners and Bar Councils Rules, 1976.

While beginning with the judicial Interpretation of the Code of conduct of advocates in Pakistan, the analysis of the meaning of the word “Advocate” is conducted. Advocates are the officers of the court. Their duty to the Court has precedence over their duty to the client. It is the duty of the counsel to advise the clients honestly after conducting a thorough research to the cases. When a counsel signs, files or submits to the Court any application it is assumed that the application is not being presented for any improper purpose, such as to harass or to cause unnecessary delay, that the legal contentions therein are warranted by existing law and practice (Section 09, the Legal Practitioners And Bar Councils Act, 1973).

Provision of access to justice and its delivery is the primary purpose of formation of bar. The bar members can only uphold the Rule of law if they properly observe professional conduct and follow the canons of professional conduct (2014 SCMR 747 Supreme Court). The advocates are required to act with a greater amount of responsibility and to take consistent position instead of unnecessary wasting court's time. Stricter adherence to etiquette at the bar is required by the advocates (2004 MLD1659 Karachi High Court, Sindh).

The advocate must follow his own conscience and this impression must not be deduced from his manners and dealings that he is a mere puppet in his client's hands (2015 SCMR 882 Supreme Court). The advocate is the not only the representative of his client but he has to perform every act to help the judge for disposal of a case while observing the notion of a speedy justice. Any act violating such a notion would automatically amount to misconduct on the advocate's part (2008 YLR 812 Peshawar High Court).

An advocate is not the slave to his client but he is officer of the court supposed to help for the speedy justice and rule of law. An advocate observes the professional code of conduct and attiquates while discharging his professional duties (2018 CLC 664 Karachi High Court, Sindh). It is duty of the advocate to maintain the decorum of the court and use careful and polite language while representing his client. No gesture of the advocate can amount to lower the dignity and respect of the court (2016 PLD 618 Karachi High Court, Sindh).



An advocate must behave with due diligence and care while addressing the court/judge. It was observed by the court that the use of contemptuous language by the advocate in any application or affidavit etc amounts to misconduct and in such a case the court had forwarded the matter to the Bar council to take proceedings against the respective advocate who was found guilty of using contemptuous language against the judge (2016 PLD 288 Karachi High Court, Sindh).

Advocates are required to provide unbiased, fair and independent assistance to the Courts of law in order to enable them to arrive at just, proper and legally valid conclusion, as the paramount consideration before the Courts and the lawyers is and should be to administer, even handed justice (2004 YLR 2442 Karachi High Court, Sindh).

Promissory and contractual obligations raise many issues of interest to the advocates. The contractual liability of the advocate is continuing with respect to its nature and extent. The advocates are meant to look into the personal life of their client; which is a necessary part of their work but this necessity does not evade them from the burden of liability (Atiyah, 1983).

Advocate owes an overriding duty to the Court, to the standards of his profession and to the public, to ensure that the administration of justice is achieved. Where the advocate does not prepare his brief properly and does not place the relevant law before the Court, such counsel is considered fail in his duty by not maintaining the standards expected of an advocate. Where counsel does not come to the Court ready with the facts and law on the legal propositions, such lapse on his part would show disrespect to the standards of the profession and would be considered as breach of the promise to his client (2001 CLC 1559 Karachi High Court, Sindh).

Likewise, when progress of the case is obstructed by the counsel, this conduct of the counsel amounts to "Misconduct" which hinders the administration of justice (2014 SCMR 743, Supreme Court). Concealment of any material fact and case history amounts to professional misconduct on an advocate's part. The court declared such an act as misconduct where the advocate concealed the fact that his client had filed a writ petition against the same respondent and that petition was dismissed by the respective high court(2006 CLC 40 Lahore High Court, Lahore).

In one of the instance the tribunal held that the onus to prove the misconduct against any advocate lies upon the complainant who needs to prove it beyond reasonable doubt. Mere allegation does not hold the advocate liable to any punishment. It was also established in the case that only that act would amount to a misconduct which involves any kind of moral turpitude (2017 CLC 1070 Sindh Bar Council, Disciplinary Tribunal).

Duty of legal practitioners is to avoid even the suspicion that they might possibly use information which they received in their professional capacity against the clients from whom



they received them. Where two advocates appearing for different parties having conflicting interest, share the same premises or same law firm, neither such confidence can be achieved nor confidentiality of information given by the clients can be guaranteed, such sharing of law firm must be avoided (2000 YLR 1102 Karachi High Court, Sindh).

Clients need to have the fullest confidence in their legal advisors. This confidence should be at such an extent that it does not deter or hamper the client from disclosing the strength and weakness of his case with the fear that his instructions might at some future time be used against him by his legal Advisor. But, when such a situation was again observed in the case cited below, the court was of the opinion that as no specific rule existed in Legal Practitioners and Bar Councils Rules, 1976 in describing conduct of partners of same law firm, or of Advocates sharing the same office, it was the high time that there should be such rules governing the conduct of such Advocates in such a situation. High Court desired that the Provincial Bar Council and Pakistan Bar Council should make serious and genuine efforts to update the cannon of professional conduct and etiquette of Advocates and to bring within its scope such conduct of Advocates (2000 YLR 1102 Karachi High Court, Sindh).

The advocate has complete authority to act on behalf of his client but if due to the negligence of the advocate his client suffers a loss that aggrieved party has a right to file suit for damages against that advocate or to approach the concerned Bar council in this regard. The advocate can not be given an authority to maltreat his clients and without observing due care and professional sense of responsibility (2010 MLD 58 Lahore High Court, Lahore).

Advocate enjoys a very high position in society and he should conduct himself in such a way so as to give least suspicion to his client regarding his honesty and not to betray trust reposed in him by his client and he is always expected to uphold dignity of his profession and its high standard both outside and in the Court. If an advocate is entrusted with huge sum of amount he is bound to keep it in safe custody. If he does not do so he will be considered as guilty of professional misconduct subject to suspension from practice for a period of three years minimum (2000 YLR 2924, Bar Council Tribunal, NWFP).

Money of clients is always sacred trust with their counsel and any betrayal of such trust would definitely amount to professional misconduct. Where the counsel had admitted receipt of amount from complainants but failed to pay back the same in spite of his undertaking before Bar Council Tribunal that he would pay back the same by specified date. Advocate was found guilty of professional misconduct resulting in cancellation of his license to practice legal profession and his immediate removal from legal profession (1996 MLD 516 Bar Council Tribunal, NWFP).

In another case, where, the advocate committed Concealment of fact for his personal gain through concealment of pendency of a petition and filed a fresh petition on the same subject. His conduct was deprecated by High Court as being a member of the Bar, it was not fit for him and



contrary to all norms of morality, good conduct and fair practice. Matter was, however, dropped by High Court on tendering apology by counsel with undertaking that he would not repeat such conduct again (1999 CLC 105 Lahore High Court, Lahore).

Precedents are a strong support for the advocates. Precedents are presented with cases all over world. Advocates can not use precedents fraudulently or with undue modifications and changes. Where an Advocate of many years standing got the appeal admitted on basis of overruled judgment, such a conduct of him was regretted and he was warned to be careful in future(1980 CLC 1561 Quetta High Court, Balochistan).

Advocates are bound to appear on every hearing unless there is reasonable ground for non appearance. Disregard of rule of practice and rule of courtesy, on account of failing to give any intimation to Court of his inability to appear before the court would be justified for ordering removal of advocates name from Roll of advocate for such act of discourtesy(1971 SCMR 776 Supreme Court). When an advocate undertakes to represent a client he can not send any other advocate to represent him in the court of law. Also, where advocate receives instructions from attorney to represent client. Then advocate does not possess this power to ask another advocate to appear on his behalf at hearing of the case(1963 PLD 23 Supreme Court). But more than one advocates are allowed to address on behalf of same party in circumstances of case(1961 PLD 78 Lahore High Court, Lahore). Advocates are considered the custodian of the rights of the people. It makes them to conduct themselves in such a way so as to uphold the dignity, high standard and respect of the profession both within and outside the Court (2001 MLD 876).

No other profession or business can be carried on by the advocates while they are in legal profession. Any violation of this rule would amount to professional misconduct. On complaint of professional misconduct against Advocate providing documentary evidence on record which clearly established that concerned Advocate was posted in local Government High School and was drawing his salary regularly and he had also received G.P. Fund and Advance Scooter Allowance from Education Department, such conduct of Advocate in suppressing such material facts from Enrolment Committee was considered highly deplorable and unbecoming of Advocate who enjoys very high and esteemed position in society. Such an act is fit for the strict penalty such as removal from practice under S.41, Legal Practitioners and Bar Councils Act, 1973(1996 MLD 513 Bar Council Tribunal, NWFP).

In a similar case where precise charge against advocate was that he was running a private school and thus, had committed professional misconduct. The advocate also admitted the fact of having pioneered the school in question by raising funds and was its patron, he also admitting that he was sharing profits from the school income according to his investment but later undertook that he would not indulge in any activity which was prohibited by rules of conduct prescribed for the advocates, although Evidence on record suggested that advocate had actively participated in the management of school and also the sharing of profits, which was against



cannons of professional conduct and ethics violation whereof would amount to professional misconduct but on his written undertaking and apology tendered by him, Tribunal took a lenient view and reprimanded him to be careful to maintain honour and dignity of legal profession in future (1995 CLC 2012 Peshawar High Court).

It is not necessary that Member must continue to hold the office of profit at the time of the proceedings, Appointment to an office of profit was the triggering event for the cessation of his membership but it mattered less if the Member resigned later on (2014 PLD 591 Lahore High Court, Lahore).

In a case of same nature where an advocate was guilty of such a professional misconduct by so doing he had violated provisions of Legal Practitioners and Bar Councils Act, 1973 and Rules framed there under, the Disciplinary Committee initiated proceedings against Advocate who submitted written statement refuting allegations contained in complaint against him, the advocate in his application raised preliminary objection that Bar Council had no inherent jurisdiction to probe into allegations of complainant. The Disciplinary Committee after hearing the parties and considering data available on record, overruled that objection and proceeded with trial of case. Allegations leveled against Advocate in complaint merited deep probe by Bar Council as Advocate was duly enrolled with Bar Council which was the Institution to which Advocate owed his existence. Averments were such which had attracted provisions of Legal Practitioners and Bar Councils Act, 1973 and Rules framed there under. Under S.41 of Legal Practitioners and Bar Councils Act, 1973, it was not only professional misconduct of Advocate, but also his other conduct which could be looked into by the Bar Council. Bar Council, in circumstances, had plenary jurisdiction to entertain complaint against Advocate. The order passed by members of Disciplinary Committee of Bar Council whereby objection of Advocate was overruled, was perfectly sound, legal and in consonance with established principles of justice which called for no interference (2002 YLR 3944 Bar Council Tribunal, NWFP).

The legal profession is an imperative branch of administration of justice. The job of an advocate is much more than merely a money-making trade where a monetary amount is charged from his clients. The advocate must apply his prudent and smart mind to weigh his services against the amount of fee in a way that this amount must not over-estimate his professional services and advice nor undervalue them. If the client is capable of paying in excess of the value of the service yet it does not justify demanding more fee but his poverty may justify a lesser or even no charge at all. This is one of the important canons of professional ethics (1992 CLC 1556 Lahore High Court, Lahore).

In a case where a constitutional petition was filed against the stipulation of mandatory minimum length of practice for eligibility to contest elections of Bar Associations. The contention of the petitioner was that Pakistan Bar Council was not competent to insert such a Rule in Pakistan Legal Practitioners and Bar Councils Rules, 1976 and that the same was also



discriminatory in terms of Art.25 of the Constitution. It was held that the Pakistan Bar Council is competent to make Rules regulating the functioning of a Bar Association, and it could not be therefore contended that the Pakistan Bar Council lacked jurisdiction to make Rules or amendments therein. Moreover the intention behind insertion of the provision of minimum length/tenure of practice to be eligible to contest elections for different offices of the Bar Association is to enhance the professional status of the legal fraternity and its elected bodies. This rule can not be held discriminatory in nature for the reason that equal protection of law was available to similarly placed persons, and petitioners had failed to point out as to whether any person or class of persons on basis of discriminatory attitude were being deprived from contesting election of any Bar Association or that a similarly placed person or class of persons at the same time was being permitted to participate in the elections. As far as violation of the fundamental Rights provided in the Constitution is concerned, those rights are always enforceable subject to reasonable restrictions of law and when a competent body had introduced certain conditions for persons aspiring for different offices of the Bar Association, it could not be said that same were violative of any fundamental right. Consequently the High Court observed that the Bar Council had taken a positive and healthy step in order to maintain discipline and dignity in Bar Association, and the same should not be discouraged(2014 PLD 324 Lahore High Court, Lahore).

3. The Bench and Bar

The advocates and judges go side by side for administration of justice. Both are the pillars of a judicious legal system and deserve mutual respect and honour. Contempt of Court is one of the most heinous misconduct by the advocates. In a case where an Advocate of the High Court tore up the cause list and caused injuries to the Reader of the Court, he was held to be the contemner. Such act by the advocate amounts to interference and obstruction in the dispensation of justice. In such a situation when the advocate admitted his guilt and tendered his unqualified apology, the court convicted the contemner and sentenced him till the rising of the Court. High Court also suspended the license of the contemner advocate from practice and referred his case to the Provincial Bar Council to be dealt with (2000 PLD 623 Lahore High Court, Lahore).

In a case where a constitutional petitions was filed challenging the constitutionality of the Contempt of Court Act, 2012 contending that it was not the function and role of Bar Councils to file petitions and challenge the vires of any law. The Pakistan Bar Council and Provincial Bar Councils, under the Legal Practitioners and Bar Councils Act, 1973 enjoy statutory status as the highest bodies representing the legal fraternity in the Federation and the Provinces respectively only. Active interest of Bar Councils in the in the matters presented is considered to be a sign of vibrancy and vitality in society and rule of law and the Constitution. Article 5 of the Constitution of Pakistan, 1973 provides that the obedience to the Constitution and law is the inviolable obligation of every citizen. The said Article casted an obligation on all persons to work for the supremacy of the Constitution and the rule of law, therefore, like all other natural persons, the



legal entities also have a bounden duty to see that the Constitution is being implemented upon and enforced(2012 PLD 923 Supreme Court).

4. The imperative Role of Law Schools

The institutions providing legal education are supposed to observe a specific code of conduct comprising of legal values. While adjudicating over a constitutional petition concerning the recognition/affiliations of law colleges and universities and raising of standard of legal education in the country, improving and updating legal education and examining existing courses of law prescribed by universities and to suggest suitable proposals the Supreme court of Pakistan gave the verdict that Pakistan Bar Council might reconsider all the relevant rules on the present matters and promulgate uniform rules under the relevant provisions of the Legal Practitioners and Bar Councils Act, 1973 for effective supervision relating to recognition of university and law colleges and also for raising standard of education(2013 SCMR 1651 Supreme Court).

5. Conclusion

Like every decent and respectable profession, the legal practitioners are also obliged to observe certain code of conduct and professional etiquettes. Non compliance to this duty renders the remedies and consequences against them. Complaints made against them held them responsible for acts of professional misconduct. The advocates and judges go side by side for administration of justice. Both are the pillars of any legal system. Judicial interpretation of the code of conduct of advocates is not an interference to the duties of the advocates but it smoothes the road to the judicious and cautious legal system.

The Legal Practitioners and Bar Councils Act, 1973 and the Legal Practitioners and Bar Councils Rules, 1976 are the basic documents to provide the code of conduct for professional advocates in Pakistan and all important issues related to the Bar councils and their relation with the advocates. The superior judiciary of Pakistan tends to refer the cases of professional misconduct against the advocates to the concerned/local Bar Councils for most of the times but whenever the superior judiciary has no other option than to adjudicate on such issues it not only provides justice to the aggrieved party but sets forth the remarkable insight for understanding the very rationale and wisdom of this noble profession. The Supreme Court of Pakistan along with the High Courts of the respective provinces adjudicate the matters related to the professional conduct of the advocates according to the basic principles set forth in the above mentioned primary documents for the regulation of the advocates professional conduct. No doubt the judiciary has played a vital role in establishment of the rule of law while disposing off such matters and spreading the true spirit of the advocacy as one of the noblest professions in world.

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1971 SCMR 776 Supreme Court
1963 PLD 23 Supreme Court
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