



THE
LAW SOCIETY
OF HONG KONG
香港律師會

34th POLA SUMMIT

6 - 8 JUNE 2024 | HONG KONG

SUSTAINABILITY OF THE LEGAL PROFESSION GLOBALLY



Self-Regulatory Function of the Profession : Indian overview



- Dr. Adv. Uday Prakash Warunjikar
Vice-President, Bar Association of India



Existing Legal Framework

Advocates Act, 1961 –

- Regulation of this noble profession
- Maintaining Independence of the Bar
- Ensure the autonomy of the Bar Council (S.7)
- Lay down code of ethics (S.49)
- Bar Council of India Rules, 2009 (Part I, II, III, IV, V, VI, VII, VIII, IX)

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Power to make Rules (S.49)

- Qualifications for membership
- Qualification & Disqualification of voters in State Bar Council Election
- Conditions required for admission to a course of degree in law
- **Standards of Professional Conduct & Etiquette**
- Standards & Conditions of Foreign Legal Education
- Procedure to be followed by the Disciplinary Committee

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Code of Professional Ethics

- Areas covered by Ethical Standards –
 1. Independence, honesty & Integrity
 2. Client-care, conflict of interest, confidentiality, fees
 3. Duty to court, lawyers, clients, opponents
 4. Academic Competence – For Eg. License to practice
- Chapter II of Part VI, Bar Council of India Rules, 2009 – framework for **Code of Conduct & Etiquette of Advocates**

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Types of Duties

1. Duty towards the Court
2. Duty towards the Clients
3. Duty towards Opponents
4. Duty towards Colleagues

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Duty towards Court

- Act in dignified manner
- Respect the Court proceedings
- No influencing the decision of the court by illegal means
- Not consider himself a mere mouth-piece of the Client
- Wear the dress code appropriately and shall not wear band & gown in public places
- Deny to represent clients insisting on unfair methods of Practice

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Duty towards the Clients

- Quote fees consistent with his standing at the Bar & the Nature of the case
- Shall not withdraw from engagements unless sufficient & reasonable cause shown
- Make full & frank disclosure with respect to the case
- Uphold the interest of the client
- Keep accounts of the client's money appropriately

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Duty towards Opponent

- Shall not communicate or negotiate upon the subject matter of the case
- Shall do his best to carry out all legitimate promises made to the opponent

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Duty towards Colleagues

- Shall **not solicit or advertise** work (Complete Ban)
- Sign-board or name plate shall be of reasonable size
- No sign-board should indicate anything about designation in bar council or any association or specialization in any specific work or being a judge or Advocate General

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Regulation of Foreign Lawyers after entry in India

- No registration of foreign lawyers or law firms if it is for **giving legal advice** on a **Fly In & Fly Out** basis, provided it lasts for 60 days within a period of 12 months (Rule 3)
- Registration process - Filling **Form A** along with prescribed fees. Validity of registration – **5 Years** (Can be renewed)
- BCI can refuse registration if there is **disproportionate ratio** with the number of Indian lawyers

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- A foreign lawyer registered under these rules, he/she shall be deemed to be an Advocate under the definition of the Advocates Act, 1961
- In case of misconduct, BCI may cancel the registration
- Foreign lawyers or Law firms shall not be allowed to appear before any court, tribunal, or any statutory or regulatory authority
- Foreign lawyers or Law firms are allowed to **practice any transactional, corporate work, giving advice or opinion**

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Application Procedure

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Examine the
Application

Check the
reciprocity
Rules with the
foreign
country

Hold inquiry
relating to the
genuineness of
the application

Application
is Granted

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Need for Self-Regulation

- Self-Regulation of the profession helps to regulate the quality of legal services in a market
- Collective reputation of the profession jointly with the individual reputation of lawyers will ensure a better and higher quality of the legal profession
- Vasudhaiva Kutumbakam – Self-regulation of the legal profession throughout the world is the need of the hour

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Supreme Court of India on Applicability of Consumer Protection Act on Advocates

- The Supreme Court of India in its recent judgment has held that : **Advocates can't be held liable for deficiency under Consumer Protection Act.**
- A Division Bench of Justice Bela M Trivedi and Justice Pankaj Mithal of the Supreme Court of India further stated that : We do not propose to say that Lawyers cannot be sued in the Ordinary Course of law for negligence but lawyers are not covered under Consumer Protection Act.

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Thank You

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