



Role of lawyer in the society : a critical analysis

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Abstract

Lawyers in our country have historically contributed handsomely to each of these areas of justice -- whether it was the struggle for Independence, the framing of our Constitution or just governance. Even today, in the Cabinet, we have outstanding lawyers some of whom have been members of this illustrious association. The role of lawyers is not confined to courts alone or advising clients in business deals. It extends to being an integral part of our system of administration of justice, and justice not just in the legal sense but justice that's social, economic and political as set out in the preamble of our Constitution.

Keywords : Lawyer, Constitution, freedom struggle, justice, client

1. Introduction

This paper will explore how the practice of law has evolved over time and its interplay with political, social and economic developments, the socio-legal processes that deter or provide access to justice and, above all, the necessary legal pre-requisites of good governance. I am told that one of the important sessions is devoted to law and separation of powers. The doctrine of 'separation of powers' is acknowledged as one of the basic features of our Constitution.

It is also commonly agreed that all the three organs of the state, ie, the Legislature, the Judiciary, and the Executive, are bound by and subject to the provisions of the Constitution, which demarcates their respective powers, jurisdictions, responsibilities and relationship with one another. I hope there will be meaningful discussions in the conference on this and other important subjects like funding of elections and law and education.

A lawyer, according to Black's Law Dictionary, is "a person learned in the law; as an attorney, counsel or solicitor; a person who is practicing law." Law is the system of rules of conduct established by the sovereign government of a society to correct wrongs, maintain the stability of political and social authority, and deliver justice. Working as a lawyer involves the practical application of abstract legal theories and knowledge to solve specific individualized problems, or to advance the interests of those who retain (i.e., hire) lawyers to perform legal services. The role of the lawyer varies significantly across legal jurisdictions, and so it can be treated here in only the most general terms.

2. Analysis of Legal profession

In practice, legal jurisdictions exercise their right to determine who is recognized as being a lawyer; as a result, the meaning of the term "lawyer" may vary from place to place.

In Australia the word "lawyer" is used to refer

to both barristers and solicitors (whether in private practice or practising as corporate in-house counsel). In Canada, the word "lawyer" only refers to individuals who have been called to the bar or have qualified as civil law notaries in the province of Quebec. Common law lawyers in Canada may also be known as "barristers and solicitors", but should not be referred to as "attorneys", since that term has a different meaning in Canadian usage. However, in Quebec, civil law advocates (or *avocats* in French) often call themselves "attorney" and sometimes "barrister and solicitor".

In England and Wales, "lawyer" is used loosely to refer to a broad variety of law-trained persons. It includes practitioners such as barristers, solicitors, legal executives and licensed conveyancers, ; and people who are involved with the law but do not practise it on behalf of individual clients, such as judges, court clerks, and drafters of legislation.

In India, the term "lawyer" is often colloquially used, but the official term is "advocate" as prescribed under the Advocates Act, 1961.

In Scotland, the word "lawyer" refers to a more specific group of legally trained people. It specifically includes advocates and solicitors. In a generic sense, it may also include judges and law-trained support staff.

In the United States, the term generally refers to attorneys who may practice law; it is never used to refer to patent agents or paralegals.

Other nations tend to have comparable terms for the analogous concept.

2.1 Responsibilities

In most countries, particularly civil law countries, there has been a tradition of giving many legal tasks to a variety of civil law notaries, clerks, and scribes.^{[8][9]} These countries do not have "lawyers" in the American sense, insofar as that term refers to a single type of general-purpose legal services provider; rather, their legal professions consist of a large number of different kinds of law-trained persons, known as jurists, of which only some are advocates who are licensed to practice in the courts. It is difficult to formulate accurate generalizations that cover all the countries with multiple legal professions, because each country has traditionally had its own peculiar method of dividing up legal work among all its different types of legal professionals.

Notably, England, the mother of the common law jurisdictions, emerged from the Dark Ages with similar complexity in its legal professions, but then evolved by the 19th century to a single dichotomy between barristers and solicitors. An equivalent dichotomy developed between advocates and

procurators in some civil law countries, though these two types did not always monopolize the practice of law as much as barristers and solicitors, in that they always coexisted with civil law notaries.

2.2 Cultural perception of lawyers

Hostility towards the legal profession is a widespread phenomenon. The legal profession was abolished in Prussia in 1780 and in France in 1789, though both countries eventually realized that their judicial systems could not function efficiently without lawyers. Complaints about too many lawyers were common in both England and the United States in the 1840s, Germany in the 1910s, and in Australia,] Canada, the United States, and Scotland in the 1980s.

Public distrust of lawyers reached record heights in the United States after the Watergate scandal. In the aftermath of Watergate, legal self-help books became popular among those who wished to solve their legal problems without having to deal with lawyers. Lawyer jokes (already a perennial favorite) also soared in popularity in English-speaking North America as a result of Watergate.[In 1989, American legal self-help publisher Nolo Press published a 171-page compilation of negative anecdotes about lawyers from throughout human history.

In *Adventures in Law and Justice* (2003), legal researcher Bryan Horrigan dedicated a chapter to "Myths, Fictions, and Realities" about law and illustrated the perennial criticism of lawyers as "amoral guns for hire" with a quote from Ambrose Bierce's satirical *The Devil's Dictionary* (1911) that summarized the noun as: "LAWYER, n. One skilled in circumvention of the law."

More generally, in *Legal Ethics: A Comparative Study* (2004), law professor Geoffrey C. Hazard, Jr. with Angelo Dondi briefly examined the "regulations attempting to suppress lawyer misconduct" and noted that their similarity around the world was paralleled by a "remarkable consistency" in certain "persistent grievances" about lawyers that transcends both time and locale, from the Bible to medieval England to dynastic China. The authors then generalized these common complaints about lawyers as being classified into five "general categories" as follows: "abuse of litigation in various ways, including using dilatory tactics and false evidence and making frivolous arguments to the courts; preparation of false documentation, such as false deeds, contracts, or wills; deceiving clients and other persons and misappropriating property; procrastination in dealings with clients; and charging excessive fees."

2.3 What traits an individual must have to be an effective lawyer

In order for an individual to be an effective

lawyer, he/she must have certain traits and attributes in order to excel in this occupation. One important trait which lawyers should have is that of articulation. A lawyer who can articulate effectively is one who will be more likely to succeed, not only against opposition parties in the court but also to impress and put their client at ease as well. An articulate lawyer is one who will see result.

Another trait which lawyers should have is intelligence, having this positive attribute will ensure that the person representing the client is one who is smart enough to know what to do, when to do it and how to go about getting the results which are necessary to win the case.

Good comprehension skills are another favourable trait which all lawyers should have. Although one who likes to read may be a candidate for the legal profession, this in and of itself means nothing if the person reading does not comprehend that which they just read. Statutes and procedural rules are difficult to understand at times and those who have good comprehension skills may prosper at being a lawyer as they will have to read the pertinent documentation much less than those without good comprehension skills.

A good personality and willingness to work well with others are two additional positive traits which all lawyers should possess. Some people may think that lawyers have to be tough as nails in order to excel in the legal profession, but this is not entirely true. The saying that one catch more flies with honey than vinegar is relevant with regard to being a lawyer. Negotiations go much better when the lawyers put their best foot forward and are willing to come to an amicable solution.

Lastly, persuasiveness is an additional trait which all lawyers should possess. Since, the legal profession is based around lawyers persuading individuals to see the point of view, a lawyer must be persuasive in their speech and tactics.

2.4 The Indian Context

In India, the law relating to the Advocates is the Advocates Act, 1961 introduced and thought up by Ashoke Kumar Sen, the then law minister of India, which is a law passed by the Parliament and is administered and enforced by the Bar Council of India. Under the Act, the Bar Council of India is the supreme regulatory body to regulate the legal profession in India and also to ensure the compliance of the laws and maintenance of professional standards by the legal profession in the country. For this purpose, the Bar Council of India is authorized to pass regulations and make orders in individual cases and also generally.

Each State has a Bar Council of its own whose function is to enroll the Advocates willing to practice predominately within the territorial confines of that State and to perform the functions of the Bar Council of India within the territory assigned to them. Therefore each law degree holder must be enrolled with a (single) State Bar Council to practice in India. However, enrollment with any State Bar Council does not restrict the Advocate from appearing before any court in India, even though it is beyond the territorial jurisdiction of the State Bar Council with he is enrolled in.

The advantage with having the State Bar Councils is that the work load of the Bar Council of India can be divided into these various State Bar Councils and also that matters can be dealt with locally and in an expedited manner. However for all practical and legal purposes, the Bar Council of India retains with it the final power to take decisions in any and all matters related to the legal profession on the whole or with respect to any Advocate individually, as so provided under the Advocates Act, 1961.

The process for being entitled to practice in India is twofold. First, the applicant must be a holder of a law degree from a recognized institution in India (or from one of the four recognised Universities in the United Kingdom) and second, must pass the enrollment qualifications of the Bar Council of the state where he/she seeks to be enrolled. For this purpose, the Bar Council of India has an internal Committee whose function is to supervise and examine the various institutions conferring law degrees and to grant recognition to these institutions once they meet the required standards. In this manner the Bar Council of India also ensures the standard of education required for practicing in India are met with. As regards the qualification for enrollment with the State Bar Council, while the actual formalities may vary from one State to another, yet predominately they ensure that the application has not been a bankrupt /criminal and is generally fit to practice before courts of India.

Enrollment with a Bar Council also means that the law degree holder is recognized as an Advocate and is required to maintain a standards of conduct and professional demeanor at all times, both on and off the profession. The Bar Council of India also prescribes "Rules of Conduct" to be observed the Advocates in the courts, while interacting with clients and even otherwise.

All Advocates in India are at the same level and are recognized as such. Any distinction, if any, is made only on the basis of seniority, which implies the length of practice at the Bar. As a recognition of law practice and specialization in an area of law, there is a concept

of conferral of Senior Advocate status. An Advocate may be recognized by the Judges of the High Court (in case of an Advocate practicing before that High Court) or by the Supreme Court (in case of the Advocate practicing before the Supreme Court). While the conferral of Senior Advocate status not only implies distinction and fame of the Advocate, it also requires the Senior Advocate to follow higher standards of conduct and some distinct rules. Also, a Senior Advocate is not allowed to interact directly with the clients. He can only take briefs from other Advocates and argue on the basis of the details given by them. From the year 2010 onwards a mandatory rule is made for lawyers passing out from the year 2009-10 to sit for a evaluation test named AIBE (All India Bar Exam) for one to qualify as an advocate and practice in the courts

Further, under the Constitutional structure, there is a provision for elevation of Advocates as judges of High Courts and Supreme Court. The only requirement is the Advocate must have a ten years standing before the High Court(/s) or before the Supreme Court to be eligible for such. (Article 217 and 124 of the Constitution of India for High Courts and Supreme Court respectively)

3. Discussion

It is possible to have different views of what a lawyer does. Some may say that a lawyer is a business person, not unlike the barber, the doctor or the shop owner, providing a service to paying customers. Others will see a more public-abiding role for the lawyer, providing a service to paying clients but also maintaining an eye on the public interest, justice, and fairness of society. This difference in view will account for differing opinions about what a lawyer should do in a morally difficult position. In democratic societies, lawyers surely fill an important role that no other professional fills: the lawyer is the guardian of the rule of law, the ideal that all people stand equally before the law and neither expect nor receive special treatment from it. In emerging democracies, this role is especially important for lawyers, who have the potential to become the great levelers between the powerful and the less so. To be sure, the market for lawyer services, even in the most well-established democracies, is tilted sharply toward the corporate world and toward those with means. But guarantees of the right to counsel in criminal matters, government funded legal aid for the poor (limited as it is), and pro bono activities of private lawyers, all combine to create some promise that the most important matters affecting the poor and the powerless will also be

served by lawyers and the legal profession.

A common law system relies on court decisions as a source of law while a civil law system relies solely on statutes created by the legislature or administrative bodies. In a civil law system, therefore, the judge applies the law but does not create it. In a common law system, however, judges and lawyers must employ a more casuistic approach to legal thinking. Judges create a common law system gradually by deciding one case at a time building a body of law based on the collective wisdom of other judicial decisions. This different approach may lead legal professionals in a common law system to concern themselves more with the practical administration of the law while legal professionals in a civil law system may find themselves more concerned with theory and preserving the statutory framework as a coherent whole. The differences between the civil and common law systems also manifest themselves through dispute resolution procedure. Disputes in a common law system are resolved through an adversarial system. The two opposing parties investigate, collect and present the evidence and arguments before a passive factfinder. Judges typically only intervene to guarantee that the adversaries have equal opportunities to present their evidence and arguments to the factfinder. On the other hand, in a civil law system, judges exercise much more control over the scope and direction of the litigation. The dispute resolution process becomes more inquisitorial than adversarial. The lawyers in civil law systems proffer lines of inquiry and make legal arguments rather than collecting evidence and presenting it as common law parties do. Also, civil law trials do not follow the point-counterpoint format that common law trials do. Rather, the trials are more fluid, often becoming a series of hearings instead of one ultimate trial.

4. Conclusion

Lawyers are individuals who have a wide range of responsibilities and duties when it comes to their profession. Their role in society is even more important as they are acting as a voice for others. A lawyer's function therefore lays on him a variety of legal and moral obligations toward: the client; the courts and other authorities before whom the lawyer pleads the client's cause or acts on his behalf; the legal profession in general and each fellow member of it in particular; the public for whom the existence of a free and independent profession itself is an essential means of safeguarding human rights in face of the power of the state and other interests in society.

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