Integration Of The Bar: A National Imperative Beyond Geographical Boundaries

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Synopsis

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Abstract

The legal profession has indeed played a critical role in protecting the rights of the people. An independent, integrated and a unified Bar is the need of the nation in furtherance of the Rule of Law. The Advocates Act, 1961 ("Act") was enacted with a view to clarify the position with respect to regulation of the practice of advocacy in India in the backdrop of multiple and differing legislations in that respect. However, it was noticed that Section 30 of the Act, which confers the right to practice in courts and tribunals all over India, including the Hon'ble Supreme Court, yet remained as an unborn child of the Act. Seldom did the nation realize that the true object of the Act was not only to clear the position with respect to practice of legal practitioners but was for the establishment of a unified bar across the whole country. Hence, Section 30 of the Act was brought into force on 15th June, 2011 by way of notification by the Union of India.

It is true that the courts have been endowed with the power to frame their independent rules that govern and regulate the practice of advocacy therein. However, post the notification of Section 30, whether the regulatory power of courts would extend to imposition of geographical limitations over advocates, is an issue of contemporary significance. Sustenance of certain restraints requiring establishment of a registered office within a particular radius from the court house, is in need of serious reconsiderations. A comparative analysis brings forth the fact the Section 30 yet remains to be conspicuously acknowledged by a set of judicial precedents. However, revisiting the same in light of the resurrected strength of Section 30 seems to be imperative in furtherance of the equivocal principle of '*One Nation-One Bar*'.

INTRODUCTION:

It is highly unimaginable that the right to practise advocacy or the right to appear before a court of law, can ever be accorded the stature of anything less than a fundamental right under Part III of the Constitution of India, 1950. The Constitution of India enshrines the right to undertake any profession vide Article 19(1)(g) of Part-III of the same. Apart from the Constitution, the said right of an advocate has been tailored by the legislature by introducing the same into the shape of a statutory legislation i.e. the Advocates Act, 1961[2] (to be referred as the 'Act'). The Apex Court has held that the Act, which was enacted in the backdrop of differing legislations on the similar subject matter, was with the intent to promote administration of justice and ensure smooth and effective functioning of the court by fixing accountability on advocates.[3]

The Act, 1961 confers a statutory right to practise law under Section 30 thereof. On the same lines, one should be mindful of the fact that that the said right is subject to the rule-making power of the courts under the Act, for the very reason that the courts remain endowed with the supervisory power over the right of an advocate to appear or practise before it.

The history of legal practitioners in India is deep rooted to the British legacy. Though there were statutes governing the activities of legal practitioners in India, a systematic initiative was given to the same by establishment of the High Courts by the British Crown by virtue of issuance of the letters patent. Consequently, formation of respective Bar Associations took place in the High Courts of Bombay, Madras & Calcutta. In 1879, the Legal Practitioners' Act[4] was enacted. The said Act empowered the High Courts to enrol the Advocates and Vakils on its rule of practise in the High Courts and sub-ordinate Courts. However, it was seen that a separate permission was required for pleading before High Courts, other than the parent High Court. The class of Vakils and Pleaders were confined to sub-ordinate Courts. The control over the Advocates, Vakils and pleaders was given to the High Court

[2]The Advocates Act, 1961, No. 25, Acts of Parliament, 1961 (India).

[3]Jamshed Ansari vs High Court of Judicature at Allahabad & Ors, (2016) 10 SCC 554 (India).

[4]The Legal Practitioners Act, 1879, No. 18, Acts of Parliament, 1879 (India).

including the disciplinary control. Furthermore, in the year 1926, the Indian Bar Council Act[5] was enacted, which provided for establishment of an independent Bar Council for every State High Court.

SECTION 30 & ITS UNSUNG GLORY:

The Act, which was with the intention of bringing about a consolidated legislation, by way of elimination of diversity of laws on the same subject matter yet remains to achieve the inherent purpose the same. It is true that the Act was successful in governing and regulating the practise of legal practitioners all over the nation including the States of Jammu & Kashmir, however, achievement of an integrated bar, yet remains to be an unachieved goal of the said Act.

Seldom did the nation realize that the true object of the Act was not only to clear the position with respect to practise of legal practitioners, but was for the establishment of a unified bar across the whole country. The aforesaid principle is apparent vide Section 30 of the Act, which provides that an Advocate is entitled to practise anywhere throughout the territory of India. It is true that the legislature discharges the backbreaking duty of introducing a comprehensive law, however the task would remain futile if the law or provisions therein are not notified at the appropriate time. Sadly, the legislature, by incorporating Section 1(3) of the Act, empowered the Union of India to give effect to every single provision of the Act by notifying the same at its convenience. For reasons unknown, Section 30 was not notified for substantially long time since the enactment in 1961. After around 50 years of the date of enactment, the government sought to blow life into Section 30 and thus it was notified in June, 2011. Thus, Section 30 of the Act came into force on 15th of June, 2011[6].

[5]The Indian Bar Council Act, 1926, No. 38, Acts of Parliament, 1926 (India).

[6]Legal Correspondent, *Now, lawyers can practise in all courts*, THE HINDU, (June 16, 2011, 01:51 AM), http://www.thehindu.com/news/national/now-lawyers-can-practise-in-all-courts/article2107607.ece.

SECTION 30 – AN UNREALIZED GOAL:

It is trite that courts and tribunals all over the nation, have framed their own and independent rules for the purpose of embodying a procedural framework and with a view to achieve administrative smoothness. On the same basis, the Hon'ble Apex Court of India has framed its independent rules under Article 145 of the Constitution of India, 1950 as regards the practise of advocacy at the Supreme Court of India. It is seen that Order IV (Rule 5) of the Supreme Court Rules, 1966[7] restrict the practise of advocacy in the Supreme Court only to the class which qualifies as the 'Advocates-on-Record'. It is further noted that under Order IV, Rule 5(iii), an additional restriction has been placed on the class of 'Advocates-on-Record' of having an office in Delhi within 16 kilometres radius from the Supreme Court building.

So far as the High Courts are concerned, the Hon'ble High Court of Bombay has also incorporated rules restraining and regulating the practise of advocacy in the Bombay High Court. It is seen that the Original Side Rules, 1980[8]vide Rule 1 contemplates that any legal practitioner alien to the Roll of Bar Council of Maharashtra & Goa, may with the permission of the Hon'ble Chief Justice, can appear and plead in any particular suit or matter on the Original Side of the Bombay High Court. The said rules further mandate for maintenance of a register, in which, every advocate practising on the original side, is required to get registered vide Rule 3. Any advocate failing to register himself shall be prohibited from practise under Rule 5. The said rules further require notification of the registered office to the Prothonotary and Senior Master. Moreover, the said office should be within the limits of the Ordinary Original Side Jurisdiction of the Bombay High Court.

[7] Published in the Gazette of India, Extra, dated 15th Jan., 1966.

[8]Bombay High Court, The Bombay High Court (Original Side) Rules, 1980, BOMBAY HIGH COURTJUDGES' LIBRARY (Oct., 21, 2017, 03.00 PM), http://bombayhighcourt.nic.in/libweb/rules/OSrules/bhcosrules.html.

On the other hand, the Appellate Side Rules[9] framed under section 34(i) of the Act by the Bombay High Court, also seem to impose certain restrictions on the practise of advocacy on the Appellate side. Rule 3 of the said rules, limit the practise of advocacy only to a class of persons who are on the roll of Bar Council of Maharashtra & Goa. However, the said rule also creates an exception, on account of which, an advocate who is not on the roll, may power or act at the Appellate side, provided, he or she files a *vakalatnama* in collaboration with the Advocates who are on the role of Bar Council of Maharashtra& Goa and who have been originally practicing in such Court.

A rational comparative view and technical analysis of the state of affairs as regards the prevailing Rules governing the practise of advocacy in the Supreme Court and the Bombay High Court, one may hold that Section 30 of the Act and its notification[10], yet remains to be conspicuously realised. The language of Section 30 in no ambiguous terms entitles an advocate under the Act to practise in all tribunals and courts throughout the territories to which the Act extends. Thus, it is apparent that section 30 in absolute clarity holds a stand that an advocate whose name has been entered into the State Roll, shall hold the right to practise without any territorial, geographical or topographical limitations.

It is true that the right to practise is subject to the rule making power of the courts. However, at the same time, it is also true that 2011 notification[11] of Section 30 is bound to doubt the validity of the rule making power of the courts as regards the imposition of geographical restraints over practise. Hence, the rule mandating establishment of an office within 16-kilometre radius of the Supreme Court, becomes a matter of questionable validity. Similarly, questions can be posed to original side rules of the Bombay High Court requiring the location of the office to be within the territorial limitations of the Ordinary Original Jurisdiction.

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[9]Bombay High Court, The Bombay High Court (Appellate Side) Rules, 1960, BOMBAY HIGH COURT JUDGES' LIBRARY (Oct., 21, 2017, 03.02 PM), http://bombayhighcourt.nic.in/libweb/rules/OSrules/bhcosrules.html.

[10]*Supra* note 5.

[11]*Supra* note 5.

The noble profession of advocacy has made an unforgettable contribution towards the freedom struggle and nation building. The temples of justice and legislative houses would not have perhaps held such a high stature and esteem without the staunch support, participation and confidence of the legal fraternity in a unified manner. One must be mindful that one of the true objects of the Act was to introduce one, single and an integrated class of advocates, who would hold the entitlement to practise beyond any territorial restraints. Apart from the purposive demand of Section 30, the judicial institutions cannot be unmindful of the fact that a few junior and independent members of the legal fraternity often undergo and have to withstand income hardships at the initial stages, which goes with the practical impossibilities in establishing an independent office or chambers of his own. Thus, probably more often, independent practise in the higher judiciary becomes a distant goal for the junior bar on the account of the aforementioned restraints.

THE RIGHT TO PRACTISE AND JUDICIAL PRONOUNCEMENTS:

Section 30, which provides with the right to practise anywhere throughout the nation to which the Act extends, has several times acted as a base parameter for multiple challenges to rules and provisions restraining the right to practise or appear. The country has witnessed numerous comparative analytic tests which were undertaken by the judiciary for examining the validity of rules restraining practise in some or the other manner. In other words, Section 30 of the Act has indeed acted as an 'acid test' for scrutinising the validity of such rules or provisions. It is observed that the Hon'ble Supreme Court in the case of **Paradip Port Trust vs Its Workmen**[12], ruled that Section 36 of the Industrial Disputes Act, 1947[13], prohibiting an advocate from representing the parties in a conciliation proceeding and furthermore requiring the parties to obtain a consent from the opposite party to be legally represented, was held to be valid over Section 30 of the Act. Furthermore, in the case of

[12] (1976) 2 LLJ 409 (India).

[13]The Industrial Disputes Act, 1947, No. 14, Acts of Parliament, 1947 (India).

VithaldasJagannath Khatri vs. State of Maharashtra[14], the Hon'ble Bombay High Court ruled that Section 44B of the Maharashtra Agriculture Land (Ceiling on Holdings) Act, 1961[15], which disallows a legal practitioner to represent the parties in any proceedings before the Authorised Officer, Tribunal, Collector, etc., was held to be valid over Section 30 of the Act. Similarly, the Kerala High Court in the case of **Jose vs Debt Relief Appellate Authority**[16], ruled that Section 8 of Kerala Debt Relief Act, 1977[17], prohibiting legal practitioners from appearing before Tribunal and Appellate Authority, was held to prevail over Section 30 of the Act and therefore intra vires. A similar challenge was withstood by Section 9(2) of the Andhra Pradesh Debt Relief Act, 1977[18] in the case of **Md.AbdulAjij vs. GollaBhumawa**[19], in which the High Court of Andhra Pradesh had upheld its validity.

Thus, from a series of judicial pronouncements of the 20th century, which have evaluated the validity of restraints and regulations over the right to practise, it can be inferred that the courts have taken an inclination opposite to the magnitude of Section 30. Perhaps, the reason being that all the afore-mentioned pronouncements were made before the official notification date of Section 30 by the Union of India, i.e. 15th June, 2011[20]. Thus, a revisit to these precedents seems to be an imperative measure in light of the enforcement of Section 30 of the Act.

CONCLUSION:

The legal profession if one of the most revered and highly esteemed professions. It is has indeed played a critical role in promoting and protecting legal rights of the people. An integrated, unified, independent and fearless Bar is vital and

[14] (1991) Mh.L.J. 608 (India).

[15]The Maharashtra Agriculture Land (Ceiling on Holdings) Act, 1961, No. 26, Acts of the Maharashtra Legislature, 1961 (India).

[16](1994) 2 KLT 35 (India).

[17]The Kerala Debt Relief Act, 1977, No. 17, Acts of the Kerala Legislature, 1977 (India).

[18]The Andhra Pradesh Debt Relief Act, 1977, No. 7, Acts of the Andhra Pradesh Legislature, 1977 (India).

[19] AIR 1982 AP 349 (India).

[20]*Supra* Note 5.

essential for sustaining the true flavour of democracy. The Bar which is subject to geographical or topographical restraints, howsoever qualified it may be, cannot do a wholesome justice to the concept of Rule of Law. Hence, oneness or unity of the bar seems to be the need of the nation for tackling challenges which posterity may have to face. It is high time that Section 30, which desires to resurrect the buried national integration and uniformity of the bar, is conferred its due regard and wide acknowledgment in the best possible terms. Therefore, revisiting the restrains and regulations over the practise of advocacy as regards the geographical limitations, seems to be the ardent need in enabling our country to achieve the equivocal principle of 'One Nation-One Bar'.