# right of lawyer to refuse representation[[1]](#footnote-1)

# Abstract

# As of late, the Supreme Court Roster seat heard a matter where the Jabalpur District Bar Association by a goals limited every one of the advocates from showing up and speaking to a particular disputant spouse. The court, talking through Justice Abdul Nazeer and Justice Indu Malhotra saw that "if such a goals has been passed, it will be pulled back", in this manner invalidating the overextend by Bar Association. Surveying the circumstance from another point of view, think about that whether if the Rule forced by the Bar Association is a sensible one or not.

# The reason given by the Association in the goals is that the outstation advocates cause burden to the individuals from the FDBA as the issues go clueless and it results in the loss of work of the individual advocates. It tends to be seen that the control is prohibitory and not administrative in nature as it represents a total restriction on outside advocates. The direction does not give a choice of portrayal by outside advocates with the leave of the court. In Jamshed Ansari this alternative was given to alternate advocates. It was one of the components that at last prompted maintaining of the vires of the Rules.

# Besides, the control represents a danger to the idea of equity at the entryway step and at a reasonable cost which is cherished in the Constitution under Article 39A. In a given case, a gathering will be unable to stand to draw in another advocate at Faridabad court or he may be of the view that his outstation advocate is in finished control of the whole concise. Since the standard constrains the gatherings to connect with another local direction it will additionally put weight on the shoulders of poor disputants.

# Chapter i – introduction of the terms, phrases and concepts

Professional Ethics (Professional Conduct) for advocates characterizes the rules of advocates' lead and standards of upholding morals. The method of disciplinary continuing against a supporter is endorsed by the law and the "Technique of Initiating Disciplinary Proceedings against an Advocate" joined to the accompanying Code.

## About legal ethics

Legal ethics is the base guidelines of fitting behavior inside the legitimate calling. It is the social standards and ethics which administer judges and legal counselors. It includes obligations that the individuals owe each other, their customers, and the courts. Regard of customer confidences, realism toward the court, honesty in articulations to other people, and expert autonomy are a portion of the characterizing highlights of legitimate morals. Lawful morals can likewise allude to the investigation or recognition of those obligations or the composed directions overseeing those obligations.[[2]](#footnote-2)

In the U.S. each state or region has a code of expert direct which manages the standards of morals. The state bar affiliations, regularly in conference with the court, embrace a lot of standards that put forward the appropriate moral obligations. The American Bar Association has declared the Model Rules of Professional Conduct which, addresses numerous points like the customer legal advisor relationship, obligations of an attorney, dealings with people other than customers, law offices and affiliations, open administration, promoting, and keeping up the trustworthiness of the calling. Legal advisors who neglect to conform to nearby principles of morals might be exposed to disciplinary activities. Graduate schools in the U.S. are additionally required to offer a course in expert duty, which incorporates both lawful morals and general issues of polished skill that don't present moral concerns.[[3]](#footnote-3)

## Who is an advocate?

The term ‘advocate’ has been defined in various dictionaries. The Cambridge University Dictionary defines an advocate as, *“a*[*lawyer*](https://dictionary.cambridge.org/dictionary/english/lawyer)*who*[*defends*](https://dictionary.cambridge.org/dictionary/english/defend)*someone in a*[*law*](https://dictionary.cambridge.org/dictionary/english/law)[*court*](https://dictionary.cambridge.org/dictionary/english/court)*”[[4]](#footnote-4).* The Oxford Dictionary defines an advocate as, “*a professional pleader in a court of justice*”.[[5]](#footnote-5)

*Advocate under the advocates act, 1961-*

Section 2 (a) of The Advocates Act, 1961 defines the term ‘advocate’ as, *“advocate means an advocate entered in any roll under the provisions of this Act.”[[6]](#footnote-6)*

*Legal practitioner under the advocates act, 1961-*

Section 2 (i) of The Advocates Act, 1961 defines the term *“legal practitioner means an advocate (or vakil) of any High court, a pleader, mukhtar or revenue agent.”[[7]](#footnote-7)*

## Who is a law graduate?

Section 2 (h) of The Advocates Act, 1961 defines the term ‘law graduate’ as, *“law graduate means a person who has obtained a bachelor’s degree in law from any university established by law in India.”[[8]](#footnote-8)*

## The bar council of india

The Bar Council of India is a statutory body created by Parliament to regulate and represent the Indian bar. The council performs the regulatory function by prescribing standards of professional conduct and etiquette and by exercising disciplinary jurisdiction over the bar. It also sets standards for legal education and grants recognition to Universities whose degree in law will serve as qualification for enrolment as an advocate.

In addition, they perform certain representative functions by protecting the rights, privileges and interests of advocates and through the creation of funds for providing financial assistance to organise welfare schemes for them.[[9]](#footnote-9)

The Bar Council of India was established by Parliament under the Advocates Act, 1961[[10]](#footnote-10).

In a general public which depends on the regard towards the standard of law, a supporter attempts an exceptional job. Promoter's obligations don't simply begin from and end in reliable execution of assignments. Backer is called to serve both the interests of equity and those rights and benefits that are depended to him/her to protect the privileges of his/her customer.

Regard towards the expert exercises of the promoter is an essential for the standard of law and majority rule government inside the general public.

Along these lines, the promoter's capacities put on him/her different lawful and moral commitments (now and again clashing):

- Towards the customer;

- In front of courts and other law authorization bodies, where advocate argues one's cases and follows up for the benefit of one's customers;

- Towards the promoter calling by and large and every one of individual individuals, specifically;

- Towards open, for which the nearness of free and autonomous calling, joined with the regard towards the standards worried that calling, is an imperative way to secure human rights to serve the RA may and different premiums of the general public.

# Chapter ii – the bar council of india – professional standards

## Professional standards by bar council of india

## Advocates have the double duty of maintaining the interests of the customer bravely while acting as officers of the court. In like manner, they are relied upon to hold fast to the most astounding norms of honesty and respect. An advocate's direct ought to mirror their advantaged position in the public eye which gets from the respectability of this calling. Basically, on the off chance that you are a promoter your support of the basic man ought to be humane, moral and legal.

## The principles referenced in the Chapter II, Part IV of the Bar Council of India Rules on norms of expert direct and decorum will be embraced as a guide for all advocates in leading issues identified with law.

## Rules on professional standards

## Advocates, notwithstanding being experts, are additionally officers of the courts and assume an indispensable job in the organization of equity. In like manner, the arrangement of principles that administer their expert direct emerge out of the obligation that they owe the court, the customer, their adversaries and different advocates.

## Guidelines on the expert benchmarks that an advocate needs to keep up are referenced in Chapter II, Part VI of the Bar Council of India Rules. These tenets have been set there under segment 49(1)(c) of the Advocates Act, 1961.

### *Advocates duty towards the client[[11]](#footnote-11)*

1. Bound to accept briefs

An advocate is bound to accept any brief in the courts or tribunals or before any other authority in or before which he proposes to practise. He should levy fees which is at par with the fees collected by fellow advocates of his standing at the Bar and the nature of the case. Special circumstances may justify his refusal to accept a particular brief.

2. Not withdraw from service

An advocate should not ordinarily withdraw from serving a client once he has agreed to serve them. He can withdraw only if he has a sufficient cause and by giving reasonable and sufficient notice to the client. Upon withdrawal, he shall refund such part of the fee that has not accrued to the client.

3. Not appear in matters where he himself is a witness

An advocate should not accept a brief or appear in a case in which he himself is a witness. If he has a reason to believe that in due course of events he will be a witness, then he should not continue to appear for the client. He should retire from the case without jeopardising his client’s interests.

4. Full and frank disclosure to client

An advocate should, at the commencement of his engagement and during the continuance thereof, make all such full and frank disclosure to his client relating to his connection with the parties and any interest in or about the controversy as are likely to affect his client’s judgement in either engaging him or continuing the engagement.

5. Uphold interest of the client

It shall be the duty of an advocate fearlessly to uphold the interests of his client by all fair and honourable means. An advocate shall do so without regard to any unpleasant consequences to himself or any other.

He shall defend a person accused of a crime regardless of his personal opinion as to the guilt of the accused. An advocate should always remember that his loyalty is to the law, which requires that no man should be punished without adequate evidence.

6. Not suppress material or evidence

An advocate appearing for the prosecution of a criminal trial should conduct the proceedings in a manner that it does not lead to conviction of the innocent. An advocate shall by no means suppress any material or evidence, which shall prove the innocence of the accused.

7. Not disclose the communications between client and himself

An advocate should not by any means, directly or indirectly, disclose the communications made by his client to him. He also shall not disclose the advice given by him in the proceedings. However, he is liable to disclose if it violates Section 126 of the Indian Evidence Act, 1872.

8. An advocate should not be a party to stir up or instigate litigation.

9. An advocate should not act on the instructions of any person other than his client or the client’s authorised agent.

10. Not charge depending on success of matters

An advocate should not charge for his services depending on the success of the matter undertaken. He also shall not charge for his services as a percentage of the amount or property received after the success of the matter.

11. Not receive interest in actionable claim

An advocate should not trade or agree to receive any share or interest in any actionable claim. Nothing in this rule shall apply to stock, shares and debentures of government securities, or to any instruments, which are, for the time being, by law or custom, negotiable or to any mercantile document of title to goods.

12. Not bid or purchase property arising of legal proceeding

An advocate should not by any means bid for, or purchase, either in his own name or in any other name, for his own benefit or for the benefit of any other person, any property sold in any legal proceeding in which he was in any way professionally engaged. However, it does not prevent an advocate from bidding for or purchasing for his client any property on behalf of the client provided the Advocate is expressly authorised in writing in this behalf.

13. Not bid or transfer property arising of legal proceeding

An advocate should not by any means bid in court auction or acquire by way of sale, gift, exchange or any other mode of transfer (either in his own name or in any other name for his own benefit or for the benefit of any other person), any property which is the subject matter of any suit, appeal or other proceedings in which he is in any way professionally engaged.

14. Not adjust fees against personal liability

An advocate should not adjust fee payable to him by his client against his own personal liability to the client, which does not arise in the course of his employment as an advocate.

15.An advocate should not misuse or takes advantage of the confidence reposed in him by his client.

16.Keep proper accounts

An advocate should always keep accounts of the clients’ money entrusted to him. The accounts should show the amounts received from the client or on his behalf. The account should show along with the expenses incurred for him and the deductions made on account of fees with respective dates and all other necessary particulars.

17. Divert money from accounts

An advocate should mention in his accounts whether any monies received by him from the client are on account of fees or expenses during the course of any proceeding or opinion. He shall not divert any part of the amounts received for expenses as fees without written instruction from the client.

18. Intimate the client on amounts

Where any amount is received or given to him on behalf of his client, the advocate must without any delay intimate the client of the fact of such receipt.

19. Adjust fees after termination of proceedings

An advocate shall after the termination of proceedings, be at liberty to adjust the fees due to him from the account of the client. The balance in the account can be the amount paid by the client or an amount that has come in that proceeding. Any amount left after the deduction of the fees and expenses from the account must be returned to the client.

20. Provide copy of accounts

An advocate must provide the client with the copy of the client’s account maintained by him on demand, provided that the necessary copying charge is paid.

21. An advocate shall not enter into arrangements whereby funds in his hands are converted into loans.

22. Not lend money to his client

An advocate shall not lend money to his client for the purpose of any action or legal proceedings in which he is engaged by such client.

An advocate cannot be held guilty for a breach of this rule, if in the course of a pending suit or proceeding, and without any arrangement with the client in respect of the same, the advocate feels compelled by reason of the rule of the Court to make a payment to the Court on account of the client for the progress of the suit or proceeding.

23. Not appear for opposite parties

An advocate who has advised a party in connection with the institution of a suit, appeal or other matter or has drawn pleadings, or acted for a party, shall not act, appear or plead for the opposite party in the same matter.

### *Advocate’s duty to opponents*

1. Not to negotiate directly with opposing party

An advocate shall not in any way communicate or negotiate or call for settlement upon the subject matter of controversy with any party represented by an advocate except through the advocate representing the parties.

2. Carry out legitimate promises made

An advocate shall do his best to carry out all legitimate promises made to the opposite party even though not reduced to writing or enforceable under the rules of the Court.

# Chapter iii – right to practice and conducts of an advocate under advocates act 1961.

## Right to practice

### *Section 29- Advocates to be the only recognised class of persons entitled to practise law.—*

## Subject to the provisions of this Act and any rules made thereunder, there shall, as from the appointed day, be only one class of persons entitled to practise the profession of law, namely, advocates.

### *Section 30- Right of advocates to practise.—*

## Subject to provisions of this Act, every advocate whose name is entered in the State roll shall be entitled as of right to practise throughout the territories to which this Act extends,—

## (i) in all courts including the Supreme Court;

## (ii) before any tribunal or person legally authorised to take evidence; and

## (iii) before any other authority or person before whom such advocate is by or under any law for the time being in force entitled to practise.

### *Section 32- Power of court to permit appearances in particular cases.—*

## Notwithstanding anything contained in this Chapter, any court, authority, or person may permit any person, not enrolled as an advocate under this Act, to appear before it or him in any particular case.

### *Section 33- Advocates alone entitled to practise.—*

## Except as otherwise provided in this Act or in any other law for the time being in force, no person shall, on or after the appointed day, be entitled to practise in any court or before any authority or person unless he is enrolled as an advocate under this Act.

### *Section 34- Power of high courts to make rules.—*

## (1) The High Court may make rules laying down the conditions subject to which an advocate shall be permitted to practise in the High Court and the courts subordinate thereto.

## 1(1A) The High Court shall make rules for fixing and regulating by taxation or otherwise the fees payable as costs by any party in respect of the fees of his adversary’s advocate upon all proceedings in the High Court or in any Court subordinate thereto.

## 2(2) Without prejudice to the provisions contained in sub-section (1), the High Court at Calcutta may make rules providing for the holding of the Intermediate and the Final examinations for articled clerks to be passed by the persons referred to in section 58AG for the purpose of being admitted as advocates on the State roll and any other matter connected therewith.

# Chapter v – case laws

## *A.s. Mohammed rafi vs state of tamil nadu[[12]](#footnote-12)*

In the present case Justice Katju of Supreme Court held,

"*Professional Ethics necessitates that a legal counselor can't reject a brief, gave a client is eager to pay his expense, and the attorney isn't generally locked in. Thus, the activity of any Bar Association in passing such a goals, to the point that none of its individuals will show up for a specific charged, regardless of whether on the ground that he is a policeman or on the ground that he is a presumed psychological militant, attacker, mass killer, and so on is against all standards of the Constitution, the Statute and expert morals. It is against the extraordinary conventions of the Bar which has dependably supported shielding people blamed for a wrongdoing. Such a goals is, truth be told, a disrespect to the legitimate network. We pronounce that every single such goals of Bar Associations in India are invalid and void and the privilege disapproved of legal advisors ought to disregard and resist such goals on the off chance that they need majority rules system and standard of law to be maintained in this nation. It is the obligation of a legal advisor to shield regardless of what the outcomes, and a legal counselor who declines to do as such isn't following the message of the Gita*."

## *Deepak kalra vs state of m.p. & ors.[[13]](#footnote-13)*

The vacation bench of Justices Abdul Nazeer and Indu Malhotra was hearing a writ petition filed by one Deepak Kalra, who is contesting several matters against his estranged wife, and is aggrieved of the Jabalpur District Bar Association passing a resolution prohibiting advocates fromrepresentinghim.

On June 13, the apex court had issued notice to the state of Madhya Pradesh and the Bar Council of India on the petition. “*You have nothing to worry about...if such a resolution has been passed, it will be withdrawn*”, observed Justice Nazeer. “*One thing is clear, if the district bar association has passed any such resolution, it could not have done so...no one can be denied the right to legal representation*”, concurred the Counsel appearing for BCI.  
In Mohd Akhtar v. State of Jammu and Kashmir (2018), wherein the bench headed by Chief Justice Dipak Misra had noted that a free and fair trial is the fundamental right of an accused and the right to an attorney has to be read as an integral part of the said right.  
  
*Ryan international school case[[14]](#footnote-14)*

An accused should not be denied access to a lawyer, the Supreme Court said on Monday, while disciplining the Gurgaon Bar Association for passing a resolution banning any of its lawyers from representing a senior official of the Ryan Group of schools in the Pradyuman Thakur [murder](https://www.thehindu.com/tag/614-608-600/murder/?utm=bodytag)case.

Even as the Bar Association lawyer assured the court that better sense had prevailed on them and they had withdrawn the resolution, a Bench led by Chief Justice of India Dipak Misra did not drop its stern countenance. Chief Justice Misra said it was not in the tradition of the profession to stop an accused, whatever his crime, from being legally represented in a court of law. The case concerns the brutal murder of seven-year-old Pradyuman inside his school’s bathroom in Gurgaon on September 8.

## chapter vi – conclusion

## An advocate, as indicated by Black's Law Dictionary, is "an individual learned in the law; as a lawyer, advice or specialist; an individual authorized to specialize in legal matters." The calling of law is known as a respectable calling. It doesn't stay honorable simply by calling it in that capacity except if there is a kept, relating and anticipated execution of a respectable calling. Its honorability must be saved, secured and advanced. An organization can't make due in its name or on its past brilliance alone. The magnificence and enormity of an organization relies upon its proceeded and important execution with elegance and nobility.

## The calling of law being respectable and noteworthy one, it needs to proceed with its important, helpful and intentional execution propelled by and keeping in view the high and rich customs predictable with its effortlessness, nobility, utility and renown. Thus the arrangements of the Advocates Act and Rules made there under bury alia went for to accomplish the equivalent should be offered impact to in their actual soul and letter to keep up spotless and effective Bar in the nation to serve reason for equity which again is honorable one.

## The Supreme court while managing the legitimacy of Rule 1 of the Maharashtra and Goa Bar Council Rules identifying with enrolment of Advocates qualification conditions, in para 20 has seen that 'lawful calling requires full time consideration and would not face an Advocate riding two steeds or more at once'. The Bar Council has encircled explicit guidelines in this in regards to putting confinement on different vocations by the Advocates.

1. *Animesh Pandey, B.A.LL.B, VII Semester, Indore Institute of Law* [↑](#footnote-ref-1)
2. G.B. Reddy, “*Constitution of India and Professional Ethics”,* 144-45, I.K. International Publishing House Pvt. Ltd., (2013) [↑](#footnote-ref-2)
3. Satya Sundar Sethy, “*Higher Education and Professional Ethics”,* 94, Routledge (Maiden Ed., 2018) [↑](#footnote-ref-3)
4. Dictionary, The Cambridge University, (https://dictionary.cambridge.org/dictionary/english/advocate) last visited on December 27th, 2018. [↑](#footnote-ref-4)
5. Dictionary, Oxford University, (https://en.oxforddictionaries.com/definition/advocate) last visited on December 27th, 2018. [↑](#footnote-ref-5)
6. The Advocates Act, 1961, No. 25, Acts of Parliament, 1961. [↑](#footnote-ref-6)
7. Ibid [↑](#footnote-ref-7)
8. Ibid [↑](#footnote-ref-8)
9. The Bar Council of India, (http://www.barcouncilofindia.org/about/about-the-bar-council-of-india/) last visited on December 26th, 2018. [↑](#footnote-ref-9)
10. Supra 5. [↑](#footnote-ref-10)
11. Gazette of India, Part III, Sec 4, dated 13th October, 2001 [↑](#footnote-ref-11)
12. Criminal Appeal No. 2310 of 2010 (arising out of S.L.P.(Crl.) No.6820 of 2008) [↑](#footnote-ref-12)
13. Writ Petition(s) Criminal No(s).144/2018 [↑](#footnote-ref-13)
14. Cr. Misc. No.M-35002 of 2017 (O&M) [↑](#footnote-ref-14)