**“Bar Bench Relationship”**

**Palash Vijayvargiya,**

**B.A.LL.B, Indore Institute of Law, Indore**

# ABSTRACT

The researcher is been given an opportunity to research on the following topic“Bar Bench Relationship**”**

In this paper the author will critically analyze the Bar Bench Relationship through courts. Firstly , the researcher has gone through the general introduction of Bar & Bench. Secondly, the researcher gives a brief about the Importance of Bar & Bench. At last, the researcher throws light on the relationship between the Bar & Bench examining how the bar and bench are related to each other to run the system.

 The role of judiciary has been taken in concern by the researcher. In the past years, several laws, cases, acts and amendments have been made.

 In this project both primary and secondary resources have been used i.e. books and websites, etc.

**Keywords**: Bar Council, Bar, Bench, Court, Duties, Relationship, Advocate, Judges, etc.

## INTROUCTION

Bar-Bench Relation in law refers to the cordial relationship between the Advocates and the Judges. The Bar (Advocates) and Bench (Judges) play an important role in the administration of justice. The judges administer the law with the assistance of the lawyers. The lawyers are the officers of the court. They are expected to assist the court in the administration of justice. As the officers of the court the lawyers are required to maintain respectful attitude toward the court bearing in mind that the dignity of the judicial office is essential for the survival of the society. Mutual respect is necessary for the maintenance of the cordial relations between the Bench and the Bar[[1]](#footnote-1).

 Administration of Justice is not something which concerns the Bench only. It concerns the Bar also. Mutual respect is necessary for the maintenance of the cordial relations between the Bar and Bench. Advocates and Judges are complementary to each other. Bar is the Principal ground for recruiting Judges. So they both belong to the same community. Bar and Bench should maintain cordial relations with each other. But on account of nature of duties to be discharged by advocates and judges, they may get into dialogues sometimes humorous, sometimes heated and sometimes harsh.

### What is BAR?

Bar is a collective term for the attorneys who are licensed to practice in the Courts, or a particular court, of any state. The term  **'Bar'** was originated in England with the partition of Bar fixed for dividing the court hall into two parts for the purpose of separating lawyers and officers of the court from suitors and other general public. ***Black's Law dictionary*** defines '**Bar**' as the railing that separates the front area where the judge, court personnel, lawyers and witness conduct court business, from the back area which provides seats for observers. The same dictionary has also defined the ‘Bar’ as the whole body of lawyers qualified to practice in a given court or jurisdiction; the legal profession or an organized sub-set of it. ***“Encyclopaedia of American*** explains that the term ‘**Bar**’ as a court room applied to the area impliedly reserved for the principals of the court. I.e. the judge, the attorneys, the court officer and members of the jury. At present Bar means a particular part of court room where lawyers sit.[[2]](#footnote-2)

The **Bar Council of India** is a [statutory body](https://en.wikipedia.org/wiki/Statutory_body) established under the[***Section 4 of advocates Act,1961***](https://en.wikipedia.org/wiki/Legal_practice_laws_in_India) that regulates the legal practice and legal education in India. Its members are elected from amongst the lawyers in India and as such represents the Indian bar. It prescribes standards of [professional conduct](https://en.wikipedia.org/wiki/Professional_conduct), [etiquettes](https://en.wikipedia.org/wiki/Etiquette) and exercises disciplinary jurisdiction over the bar. It also sets standards for [legal education](https://en.wikipedia.org/wiki/Legal_education) and grants recognition to Universities whose degree in law will serve as a qualification for students to enrol themselves as advocates upon graduation.

**History**

In March 1953, the Bar 'All India Committee', headed by [S. R. Das](https://en.wikipedia.org/wiki/S._R._Das), submitted a report which proposed the creation of a bar council for each state and an all-India bar council as an apex body. It was suggested that the all India bar council should regulate the legal profession and set the standard of legal education. The [Law Commission of India](https://en.wikipedia.org/wiki/Law_Commission_of_India) was assigned the job of assembling a report on judicial administration reforms. In 1961, the Advocates Act was introduced to implement the recommendations made by the 'All India Bar Committee' and 'Law Commission'. [M. C. Setalvad](https://en.wikipedia.org/wiki/M._C._Setalvad) and [C. K. Daphtary](https://en.wikipedia.org/wiki/C._K._Daphtary) were the first chairman and vice chairman respectively. In 1963, C. K. Daphtary became the Chairman and S. K. Ghose became the Vice Chairman.

**Constitution**

As per the ***u/s 3 &4 of Advocates Act 1961***, the Bar Council of India consists of members elected from each state bar council, and the [Attorney General of India](https://en.wikipedia.org/wiki/Attorney_General_of_India) and the [Solicitor General of India](https://en.wikipedia.org/wiki/Solicitor_General_of_India) who are [*ex officio*](https://en.wikipedia.org/wiki/Ex_officio_member) members. The members from the state bar councils are elected for a period of five years.

The council elects its own Chairman and Vice-Chairman for a period of two years from amongst its members. Assisted by the various committees of the Council, the chairman acts as the chief executive and director of the Council.

**Functions Of Bar Council Of India**

***Section 7 of the Advocates Act, 1961*** provides for the following statutory functions of the Bar Council of India:

1. To lay down standards of professional conduct and etiquette for advocates;
2. To lay down the procedure to be followed by its disciplinary committee and the disciplinary committees of each State Bar Council;
3. To safeguard the rights, privileges and interests of advocates;
4. To promote and support law reform;
5. To deal with and dispose of any matter which may be referred to it by a State Bar Council;
6. To exercise general supervision and control over the state bar council;
7. To promote legal education and to lay down standards of legal education in consultation with the Universities in India imparting legal education and the State Bar Councils, With respect to this point, the Supreme Court has made it clear that the question of importing legal education is entrusted to the Universities in India and not to the Bar Council of India. All that the Bar Council can do is to suggest ways and means to promote suck legal education to be imparted by the Universities and for that purpose it may lay down the standards of education. Sections 7 do not entitle the Bar Council itself to frame rules laying down pre-enrolment as Advocate;
8. To recognize Universities whose degree in law shall be a qualification for enrolment for an advocate for that purpose to visit and inspects Universities, or direct the State Bar Councils to visit and inspect Universities for this purpose;
9. To conduct seminars and organise talks on legal topics by eminent jurists and publish journals and papers of legal interest;
10. To organize legal aid to the poor;
11. To recognize on a reciprocal basis foreign qualifications in law obtained outside India for the purpose of admission as an advocate in India;
12. To manage and invest the funds of the Bar Council;
13. To provide for the election of its members who shall run the Bar Councils.
14. To perform all other functions conferred on it or under this Act;
15. To do all other things necessary for discharging the aforesaid functions;
16. The Bar Council of India may constitute one or more funds in the prescribed manner –
	1. Giving financial assistance to organise welfare schemes for indigents, disabled or other advocates;
	2. Giving legal aid or advise in accordance with the rule made in this behalf;
	3. Establishing law libraries.
17. The Bar Council of India can also receive grants, donations, and gifts for any of these purposes mentioned under point no 16[[3]](#footnote-3).

**Role of the Bar to Strengthen Bar-Bench Relation**

To strengthen the Bar-Bench relation, an Advocates must take the following steps.

1. They should give  due respect to the judges and they must avoid speaking ill of the judges and the judiciary.
2. They should help the judges in the trial of the cases by presenting the relevant law in the correct and clear manner. They should never act in such away to irritate the judges.
3. If the judges pronounces a wrong order, they should not criticize the judges. They should try to set right the wrong order through appeal.
4. For getting favourable order they should not give pressure or influence the judges.
5. If the judges behavior is irritating and disrespect to the Advocates should not enter in to a direct confrontation with the judge. Through the Bar Association the matter should be discussed with the judge in his chamber and shall request to avoid such misbehaviour.[[4]](#footnote-4)

#### WHAT IS BENCH?

**Bench** means the members of the judiciary. Bench in legal terms means the location identified in the courtroom, where judges usually sit and hear the cases. In other words, it is a general term used to designate the associates of the judiciary together[[5]](#footnote-5).

**Role of the Bench to Strengthen Bar –Bench Relation**

To strengthen Bar-Bench relation the Judges should follow and practice the following.

**1. *Judicial Respect:*** Just like the Advocates are giving respect to the Judges the Judges should also give respect to the Advocates and the brethren Judges.

**2. *Patient Hearing:*** Judges should hear the case with open and respective mind without any prejudice or bias. They should act only to the interest of justice. They should give sufficient opportunity for the Advocates to present the case in full.

**3. *Impartiality:***Judges should act impartially. They should not act in favour  of any Advocate or a party to the dispute.

**4. *Avoidance of Interruptions:***  As far a possible, Judges must avoid interruptions while the Advocate is examining witnesses and arguing the case. Unwarranted interference and adverse comments by the Judges may upset the Advocates and thereby he may not be able to present the case properly. Interference of a Judge may be limited to the following circumstances

(i) To prevent repetition and waste of time

(ii) To check the relevancy

(iii) To get clarifications

(iv) To express courts view on a point and

(v) To promote speedy disposal of the case.

***5. Proper Interpretation:***During the process of administration of justice, often the courts have to interpret the Act, Rules, Codes, Regulations, Orders, Notifications, Circulars, Byelaws etc. in order to ascertain the actual meaning of the provisions or  to remove the ambiguity or inconsistency. In such cases proper interpretation should be given with the object of rendering complete justice to the parties.

***6. Avoidance of Unreasonable Adjournments:***Adjournments are given to afford reasonable opportunity to the parties to present the case. As far as possible cases shall not be adjourned without reasonable and sufficient grounds. Unreasonable adjournment is the main reason for the mounting arrears of cases causing hardship to the parties.

***7. Speedy Disposal:***`Justice delayed is justice denied’, hence cases should be disposed off as quickly as possible. When preference is given for disposal of old cases, new cases should not get into arrears.

***8. Avoiding Unwarranted comments:***Judges should not make any unwarranted comments in the open court about the Advocate’s lack of knowledge in the law. They should not ask any Advocate to leave the court, without sufficient reasons. Similarly, they should not ask any Advocate not to come to his court hereafter.

***9. Knowing in Law:*** Judges should possess deep knowledge in law. They should have the ability to apply the proper law to the disputed facts and to take the right decision.

***10. Independence:*** Judges have the primary responsibility to protect and preserve the independence of judiciary.

***11. Integrity:*** A Judge should be honest and morally upright. He should have personal and intellectual integrity. His character and conduct should be praise worthy.

***12. Industriousness:*** It means regular and systematic hard work and study. A Judge should get acquainted with the latest developments and changes in the law by regular updating of the knowledge.

***13. Meeting of Judges and Lawyers:*** To strengthen Bar-Bench relation, at regular intervals meeting of judges and the Advocates shall be arranged. In such meetings the respective sides difficulties can be discussed and the differences can be sorted out.

#####

##### **BAR - BENCH RELATION**

The whole purpose of adjudication in our adversary system is for a party to explicitly put his case across the table which will enable the opponent to respond appropriately to that case he has fielded, and then the Judge, as an impartial umpire will adjudicate on the issues in controversy. That and nothing more is the epitome of what justice or fair trial is all about. But the persons playing different roles in this due discharge of Justice is never regarded as equals in judicial proceedings. The Judges shall always be superior most, officers of the court such as persons appointed for examination, commission, receiver etc. come next, the prosecutor and the advocates are the intermediary, the Police and other investigation and executing branch form the next group, the witnesses and those who give evidence are regarded next, the petitioner respondent complainant etc. lower still, and the defendant respondent accused etc. are the least regarded. Persons appointed for examination, commission, receiver etc. are usually advocates. Thus Bar Bench Relations relate to the power equations between the top most layers of the functionaries of the judicial process.

**Importance of Bar & Bench Relationship**

A Bar & Bench relation in law refers to the cordial relationship between Advocates (Bar) and Judges (Bench). Bar and Bench plays an important role in the administration of justice. Bench administer the justice with the help of the Bar.

The *Judicial Process* in today’s world includes that task of *Social Engineering*. Concepts of justice, however, have changed vastly in the course of time. And, as between different States in modern times too, Justice, as embodied in the law, has different contents and connotations.Such differences as we find between different States as regards the functions of the Bar and Bench are, mainly due to the somewhat differing basic concepts of justice found in the laws of different States. These concepts have been produced and moulded by the operations of complex and interconnected, constantly acting and counter-acting, sets of factors in the course of our histories.

As the officers of the Court, lawyers are expected to assist the Bench in administering justice. They are expected to maintain respectful attitude, towards the Bench keeping in mind that, the dignity of judicial office is an essential for the survival of the society. Thus, mutual respect is necessary among the lawyers and judges to maintain the harmony between the Bar and Bench.

**Changing Bar and Bench**

**1. Broad purpose of Bench and Bar**

The primary duty of Judges and the Advocates is to provide "Justice” according to the law which has to be administered in the existing society. Justice, as embodied in the law, has different contents and connotations. The functions of the Bench and Bar, due to the somewhat differing basic concepts of justice seems different in different States. These concepts have been produced and moulded by the operations of complex and interconnected, constantly acting and counter-acting, sets of factors in the course of our histories.

**2. Shrunk and organically interlinked modern world**

Distances have vanished in the various parts of the modern shrinking world. Space time relationships have altered vastly. Speedy and easy communication facilities have produced a uniformity in patterns of thinking, behaving, and living, cutting across all barriers of political organisation and ideology, culture, race, creed, and colour, resulting in a progressive development of uniform basic notions of justice as well as common patterns of law in various parts of the world. In this modern age of science, the problems of justice cannot be dogmatic.

**3. Changing Concepts**

Our concepts of Justice consist of the products of an interchange of shifting pulls and forces. New moral values, ultimately translated into law, emerge in the process. Our notions of Justice are relative and results of empirical knowledge of what satisfies certain needs believed to be basic.

**4. Sense of Dedication**

The spirit of consecration and dedication which impels human beings towards what they believe to be 'Justice' certainly appears to be a part of the eternal and the unchanging human nature. The urge to see justice done to others, viewed as reflections and even as parts of one's own self, is often submerged by other powerful drives and passions. The effort of the members of both the Bench and the Bar will be to overcome the passions and prejudices which interfere with such a disinterested pursuit of justice. Justice, in a sense, may be conceived of as an eternal quest of every being who deserves to be called human.

**5. The Specialist's approach**

The quest of the Judge and of the Advocate must be dedicated to the pursuit of justice and seeks it scientifically by employing ordered knowledge contained in the form of law and by scientific and legal tools.

**6. The Judge's Persona**

The persona of the Judge today in India is the ability to detach themselves from the pursuit of private gain and selfishness and rise above all pettiness, passions, prejudices, obsessions and complexes and preserve an unruffled temper even when faced with the most trying of situations.

**7. What the Judge requires from the Advocate**

What the Judge requires from an Advocate is assistance in the performance of his own role. The effectiveness and usefulness of an Advocate is determined by his capacity to satisfy the needs of the Judge. It is impossible for an Advocate to give that assistance unless he is equipped with required learning.

**8. Power of Judge and Advocate over the Judicial Process**

The power exercised by the Judge in India over the fate of a criminal or civil litigation is really enormous. The power of the advocate is rather prodigious in determining whether justice will hit or miss its mark. But Rules of professional ethics and etiquette can be violated both by advocates and judges in India without being properly punished.

**9. A Source of Miscarriages of Justice**

The best of institutions can be misused and human frailties cannot be entirely eliminated anywhere and judicial proceedings is no exception. Bar and Bench should be vigilant about that.

**10. A Source of Legitimate Pride to Indian Citizens**

Even though the present pronunciations of the Bench and the irresponsible behavior of the advocates are very often subjected to public criticism, the People of India have not started to disbelieve the judicial process in India. However Judiciary is now frequently using its contempt jurisdiction, as if fearing that it may happen in near future.

**11. The responsibility of the Constitutional role**

The Constitution places a very heavy responsibility on the part of the Judges as well as the Advocates who assist them, of propounding solutions which are in harmony with "Justice: social, economic, and political." The "Judicial Process" in our country includes the task of "Social Engineering too." Isolationism of Judges from the rest of society invites the criticism that they live in "ivory towers”.  As the officers of the Court, lawyers are expected to assist the Bench in administering justice. They are expected to maintain respectful attitude, towards the Bench keeping in mind that, the dignity of judicial office is essential for the survival of the society.

**Legacy of Bar and Bench Relationship**

**1. The power relation in Courts**

The conflict-co-operation relationship in between Bar and Bench cannot be properly evaluated without going into its history. Before enactment of Advocates Act, 1961, it was the Court itself which was giving licence and taking it away under the Acts/Rules framed therefore.  The conduct and behaviour of lawyers were under direct supervision of the Court.  During the freedom struggle, lawyers played important part and they suffered much for their independent view against the government policy and even courts did not recognise their right to dissent with the government policy.  The colonial concept of the existence of lawyer is best described in which reads:  “Without failing in respect to Bench, it is the duty of the members of the Bar to assert their just right to be heard by the Tribunal before which they practising.  They should be fearless and independent in the discharge of their duties, and would be perfectly right in protesting against irregular procedure on the part of any judge; and if the advocate is improperly checked or found fault with, he should vindicate the independence of the Bar.  He would be perfectly justified in insisting on getting a proper hearing and he would be perfectly right to object to any interruption with the course of his argument such as to disturb him in doing his duty to his client.  Plenary powers vested in the Presiding Officer of the Court, apart from the fact that they have rarely been used against members of the legal profession so far, should only be used to vindicate the honour of the court or to satisfy the necessities of public justice and not as a matter of course.[[6]](#footnote-6)”   The creation of courts and inner partitioning of the court’s room with high pedestal for the seat of judges, lower sitting arrangement of lawyers on chairs/benches, rear dock for the accused and similar small dock for witness smacks the colonial values and not the constitutional values of equality and human dignity.

**2. Strike by Lawyers**

Strike by lawyers are normally not for gaining something for them from governments or courts, rather it aims at either for dignity of the lawyers as a class/individual or for some other cause deeply related to public justice, rule of law and factors affecting public justice.   In Supreme Court held that lawyers have no right to go on strike or give a call for boycott, not even on a token strike.  The protest if any is required can only be by giving press statement.  T.V. interviews carrying out of Court premises banners or placards, wearing black or white or any colour arm bands, peaceful protest marches outside and away from the Court premises, going on dharnas or relay facts etc[[7]](#footnote-7).

**3. Mutuality of Bar and Bench**

Division Bench of Allahabad High Court in *Yash Pal Singh v. State of U.P. and Ors* *Writ Petition No. 1160 (S/B) of 2002* has held, “This institution can function best when both Bar and Bench respect each other’s purpose and responsibilities. A Bar functions best when its speech is untrammelled but guided by deep scholarship. A counsel serves the institution best when knows that it is not his job to win cases by all means but to assist the Court with all his mastery of facts and law. A Judge serves the institution best when he does not fear to hear but does not decide out of fear, when he fears with compassion, but does not decide out of favour.”

##### **Duty to the Court (Rule 1-10)**

In the administration of the justice, the role of the advocate is to help the court to take a right decision in the dispute.

1. An Advocate shall show the due respect to the court and shall never act in any manner to undermine the confidence in the judiciary.

2. He shall not exert or attempt to exert any personal influence on the decision of the court, nor shall give any impression that he possesses personal influence with the judge before whom he normally practices.

3. He shall be always punctual in attending courts in the prescribed dress.

4. He shall be fair and frank in the court proceedings.

5. He shall not include any fact which he knows to be false in the pleadings, petitions or affidavits.

6. He shall not ask for any adjournment of a case without genuine reasons.

7. He shall not communicate privately with the judges to influence them relating to any pending case.

8. He shall not speak ill of judges or use abusive remarks about them. But, if the judge behaves improperly, it is not only the right but also his duty to report it to the proper authorities.

9. He shall not interrupt when the counsel for the otherside or the judge is speaking.

10. He shall appear in the court in the prescribed dress and his appearances shall always be presentable. He shall not wear bands or gown in the public places.

11. He shall not practice before a judge if he is related to him.

12. He shall not act or plead in any matter in which he has pecuniary (monetary) interest.

13. He shall not appear for any organization, institution, society or corporation if he is the member of the executive committee of such organization, institution, society or corporation[[8]](#footnote-8).

###### **Conclusion**

The Colonial Institution of Judicial Courts have not completely evolved into a democratic constitutional set up. Thus it is evident that the values and thus relationships between the Bar and the Bench have not fully evolved as equally responsibly functionaries for the due discharge of legal justice. What the time being in force requires is a cordial and mutually respected Bar and Bench with the high aspirations of the welfare of the people and the furtherance of the statutory, fundamental and human rights of the aggrieved individuals, citizens and other persons.

During the course of the interaction between the Bar and the Bench, they should not forget their own long lasting dignity as well as the dignity of the least man whom you can imagine. Our Father of the Nation was also an advocate and his vision was so. He too was both respected and tried for contempt by the Judges of then Indian Judiciary.

**BIBLOGARPHY**

* Professional Ethics, Accountancy Of Lawyers And Bar-Bench Relationship
* The Law, Principles, and Practice of Legal Ethics
* Advocate act ,1961 bare act
* w.uok.edu.in/Files/5ce6c765-c013-446c-b6ac-b9de496f8751
* <http://lawsofland.blogspot.in/2017/09/bar-bench-relation>.
* http://www.barcouncilofindia.org/about/about-the-bar-council-of-india/
1. http://law.uok.edu.in/Files/5ce6c765-c013-446c-b6ac-b9de496f8751/Custom/P.E.%20UNIT\_3.pdf [↑](#footnote-ref-1)
2. http://www.barcouncilofindia.org/about/about-the-bar-council-of-india/ [↑](#footnote-ref-2)
3. w.uok.edu.in/Files/5ce6c765-c013-446c-b6ac-b9de496f8751/Custom/P.E.%20UNIT\_3.pdf [↑](#footnote-ref-3)
4. http://lawsofland.blogspot.in/2017/09/bar-bench-relation.html [↑](#footnote-ref-4)
5. http://www.learningthelaw.in/2017/02/difference-between-bar-and-bench.html [↑](#footnote-ref-5)
6. *Mahant Hakumat Rai v. Emperor, the Lahore High Court AIR 1943 Lahore 14* [↑](#footnote-ref-6)
7. *Harish Uppal Ex. Captain v. Union of India A.I.R. 2003 SC 739* [↑](#footnote-ref-7)
8. Sasi K.G. [↑](#footnote-ref-8)