BAR-BENCH RELATION

By- Divyansh Lunia

## ABSTRACT

According to Black’s law dictionary, a lawyer means a person learned in the law; as an attorney, counsel, or solicitor. Any person who, for fee or reward, prosecutes or defends causes in courts of record or other judicial tribunals of the United States, or of any of the states, or whose business it is to give legal advice in relation to any cause or matter whatever. According to same dictionary judge means a seat of judgment or tribunal for the administration of justice; the seat occupied by judges in courts; also the court itself, as the “King’s Bench,” or the aggregate of the judges composing a court, as in the phrase “before the full bench.

The Bar and the Bench are considered to be the two main parts of courts, which has to work harmoniously for administration of justice. The lawyers are considered as the officers of the court and they are responsible to assist the judge in a case by briefing the facts of the case and evidences thereafter. The judges based on the submissions of the advocates delivers the judgement.

The lawyers are considered as medium to provide invaluable aid to the judges in discharging their judicial function.The relation between bar and bench is very important for the welfare of the society. The bar and bench play a very important role in administration of justice as the judges administer the law with the assistance of lawyers.

For maintaining dignity and decorum of Judicial Office an efficient relation between lawyers and judges is very vital and for providing justice to the society the maintenance of cordial relation between bar and bench is considered very essential.

The people in the society comes to court for seeking justice and the security of life, liberty, reputation and property is depended on the court therefore a decision by the court is vital as it may affect any of the above mentioned thing. Therefore a healthy relation between bar and bench is very important for effective of judgement.

The independent judiciary is very important as it is considered to be the pillar of democracy. The bar is considered as foundation of independent judiciary and the independent judiciary, is the way to achievement of democracy.

The certain obligation which the judges owe are consideration and courtesy towards the bench. They should not desire for servile and the judges should respect the rights of the counsel and should provide fair chance to counsel to put their arguments. The duties of lawyers are mention under Bar Counsel of India rules, 1975. The rules oblige the lawyers to respect the court and maintain dignity of the same.

**Keywords:***Administration of Justice, Judicial function, Foundation of Independent Judiciary, Cordial Relation*

# Introduction

**Bar**- Bar means a group (association) of Lawyers. When used in relation to court, it means lawyers, lawyer or where lawyers sit in court.

According to **Black’s Law dictionary** bar means-

# “*A person learned in the law; as an attorney, counsel, or solicitor. Any person who, for fee or reward, prosecutes or defends causes in courts of record or other judicial tribunals of the United States, or of any of the states, or whose business it is to give legal advice in relation to any cause or matter whatever*”

**Bench**- Bench mean judges, the judge in court or where in court or where the judge sits in court. For our purposes, it means the judge in court.

According to **Black’s Law dictionary** bench means-

“*A seat of judgment or tribunal for the* [*administration*](https://thelawdictionary.org/administration/) *of justice; the seat occupied by judges in courts; also the court itself, as the “King’s Bench,” or the aggregate of the judges composing a court, as in the phrase “before the full bench.” The collective body of the judges, in a state or nation, as distinguished from the body of attorneys and advocates, who are called the “bar*”.”

## Bar-bench relation

The bar and bench both are considered to be part of legal profession. The court room where cases are conducted consists of 2 parts namely;

1. The place where the judges sit is called as bench
2. The place where advocates sit is called as bar

Therefore the term ‘bench’ refers to the judge and the term ‘bar’ refers to the advocate. So, the bar-bench relation is relation between judge and the advocate.[[1]](#footnote-2)

The bar and bench are considered to be the 2 main parts of court, which has to work harmoniously for administration of justice. The lawyers are considered as officers of the court and they are responsible for delivering of details related to a particular case in front of the judge. They are responsible to assist the judge in a case by delivering every single fact and evidence if available of any case so that a judge can understand the case and deliver the judgement.

It is a true fact that without the work of lawyers an efficient and right judgement by the judge is not possible and could be considered as a super-human task for judge to deliver the judgement without the proper knowledge of the case. Therefore it is the lawyers who present the case and then the judge delivers the judgement based on lawyer’s argument and in the same way justice is administered. With the same argument it can be said that there must be cordial relation between bar and bench as both can perform their work only in the presence of the other.

In context to the bar-bench relation the advocates are considered as a medium to provide invaluable aid to the judges in discharging their judicial functions and therefore the judges should be considerate and courteous towards the member of bar. They should avoid interruption in the counsel’s arguments.[[2]](#footnote-3)

Justice R.J. Koacher has observed:[[3]](#footnote-4)

“*If the independent judiciary is the pillar of democracy, the bar is the foundation of the independent judiciary. The bar is the mother of the bench and the bright mirror of the judicial officers whose image, character and conduct is correctly and visibly reflected therein, and it is for the bench to nurse and nourish the merits of the bar*.”

In the context of bar-bench relation the Supreme Court in *P.D. Gupta v. Ram Murati*[[4]](#footnote-5)observed that- Administration of Justice is stream which has to be kept pure and clean. It has to be kept unpolluted. Administration of justice is not something which concerns the Bench only. It concerns the Bar as well, Bar is the principal ground for recruiting Judges. No one should be able to raise a finger about the conduct of a lawyer. While conducting the case he functions as officer of the court. Actually judges and lawyers are complementary to each-other. The primary duty of the lawyer is to inform the court as to the law and facts of the case and to aid the court to do justice by arriving at the correct conclusions. Good and strong advocacy by the counsel is necessary for the good administration of justice.[[5]](#footnote-6)

Further it can be noted that primary objective of the judicial system is to attain justice for the parties involved in any case in the society. The Bar and the Bench can be considered as partners in the achievement of this objective under which the judiciary is superior and bar is the one assisting it.

For delivering the justice there must be mutual understanding and healthy relation between the partners. Each partner has its own duties which are to be followed by them with all their efforts. Failure by one partner to perform its duty will directly affect the working of other. Thus the duty of both the Bench and the Bar to work together in delivering the justice.[[6]](#footnote-7)

The relationship between bar and bench is very important as many members of the bench are only drawn from the bar and therefore they carry an important relation between them. In the same context with bar-bench relation, the court in *R.K. Garg* case[[7]](#footnote-8) observed that, “*the Bar and the Bench are an integral part of the same mechanism which administers justice to the people. Many members of the Bench are drawn from the Bar and their past association is a source of inspiration and pride to them. It ought to be a matter of equal pride to the Bar*”.

## Importance of bar bench relation

Administration of Justice- The bar and bench play a very important role in administration of justice. The judges administer the law with the assistance of lawyers. The lawyers are officers of the court.[[8]](#footnote-9) They are expected to assist the court in administration of justice.[[9]](#footnote-10)In point of fact,lawyers accumulate facts relating to the case and thereby assist the court in attaining anappropriatejudgment. The legal profession has been formednot for private gain but for public good and the lawyerassociatewith the judiciary in the administration of justice[[10]](#footnote-11).[[11]](#footnote-12)

Administration of Justice is stream which has to be maintained pure and clean. It has to be kept unpolluted. Administration of Justice something which not only concerns the bench but bar as well. Bar is considered to be foremostground for recruiting Judges. It is not allowed to raise a finger about the conduct of a lawyer. While conducting the case he functions as officer of the court. Actually judges and lawyers are complementary to each-other.[[12]](#footnote-13)

To Maintain Dignity and Decorum of Judicial Office- The lawyers are considered as officers of the court, they are required to maintain towards the court, respectful attitude bearing in mind that the dignity of the judicial office is essential for survival of society.[[13]](#footnote-14) Therefore the relation between bar and bench is important for maintaining dignity and decorum of judicial office for societies survival.

In the case of *HukumatRai*[[14]](#footnote-15) the court has observed that a lawyer should always conduct himself properly in the court and exert his least at all times to maintain the dignity of the court but the court also has a mutualduty to perform and should not be disrespectfulto a lawyer but also should attemptto maintain the lawyer’s admirationin the eyes of his clients and the general public with whom he has to deal in his professionalcompetence.

In a case that court observed that, it is the duty of a lawyer to uphold the dignity and decorum of the court and must not do anything which bring the Court itself in to disrepute.[[15]](#footnote-16)

Maintenance of Cordial Relation between Bar and Bench*-* The behaviour of the judge towards the lawyers also plays an important role in in delivering outstanding judgments. The behaviour of the judge with the lawyers is a very important part for administration of justice. The judge’s behaviour in the court is responsible for the maintaining cordial atmosphere in the court. It is considered that a judge should be impartial and free from biasness in dealings different cases with the advocates. There should not be any personal interest of the judge in any case.

For security of citizens Life, Liberty, Reputation and Property**-** The judge is expected to be impartial and free from any biasness because the life, liberty, reputation and property of the people in the court can be highly affected by the judgment of the court.[[16]](#footnote-17) The relation of Bar and bench is expected to be well andgood as the lawyers help in making a judgment by proving facts related to a particular case and judge on the same basis delivers the judgement, they both carry a relation in administration of judgement and any sort of problem in relation of bar and bench may result in wrong judgement which can affect the life, liberty, reputation or property of a general person seeking for justice.

As stated by Mr. C.L. Anand[[17]](#footnote-18) that the citizen’s life and liberty, reputation and property, Personal and domestic happiness are all subject to the wisdom of the judges and hang on their decisions. Where judicial power becomes corrupt, liberty expires, no security is left of life, reputation and property and no guarantee is left of personal and domestic happiness. A strong impartial and capable, judiciary is the greatest need of a state.

## Duties of bench to bar

Some of the obligations which the judges owe to the bar have been well stated by Justice C.L. Anand[[18]](#footnote-19). They may be summed up as follows-

Consideration, Courtesy and no desire for servile**-** The first duty which the Judges owe to the Bar is of consideration and courtesy. If the advocate is upset by discourteous treatment, this will prevent him from doing full justice to the client in arguing the case.[[19]](#footnote-20) No judge should desire that bar should be servile.[[20]](#footnote-21)

Rights of the Counsel should be respected*-* Another duty which a judge owes to the bar is to respect its privileges.[[21]](#footnote-22) It is the right of the counsel to insist that he shall be given a patient and courteous hearing so long as he is respectful and relevant in his arguments. The right of the lawyer should be respected by the judge.[[22]](#footnote-23)

No Pre-Determined Opinion**-** Another duty which a judge owes to the bar is to sit with respective mind. No Judge should form opinion regarding merit of the case till he has heard the parties.[[23]](#footnote-24)

Avoid Interruption of the Counsel*-* Another duty of the Judge is to avoid interruption of the counsel in their arguments and in the examination of witnesses.[[24]](#footnote-25) There should be no interruption of the counsel 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.[[25]](#footnote-26)

The above mentioned are duties of Judge to the bar. There are certain more duties of bench toward the bar which are mentioned as follows-

Impartiality*-*The Judge should not act in favour of any advocate or party in dispute.[[26]](#footnote-27) The judge should be impartial and should deliver the judgement on basis of facts and laws in question and not on the basis of any personal relation with any party of dispute

Proper Interpretation[[27]](#footnote-28)- In the process of administration of justice many acts, rules or statutes are to be considered and it is considered to be the duty of the court to interpret the same properly so that effective and correct judgements can be granted.

Speedy Disposal[[28]](#footnote-29)- It is the duty of the judge to provide judgment as soon as possible as it is rightly said that “Justice delayed is justice denied”. It is expected from the bench to dispose the cases as soon as possible for granting the justice.

*-*During the presentation of the case and while acting otherwise before the court an advocate is required to conduct himself with dignity and self-respect. He should not influence the decision of the court by any illegal or improper means.

Besides, he is prohibited the private communication with a judge relating to a pending case. He should use his best effort to restrain and prevent his client from resorting to unfair practices in relation to the court. An advocate should not consider himself mere mouthpiece of the client and should exercise his own judgment in the use of restrained language in dealing with the court. He should not use intemperate language during arguments in the court. He should avoid scurrilous attacks in pleadings.[[29]](#footnote-30) The mentioned things are to be followed by the advocate so that an impartial and strong judiciary can be achieved.

The advocates provides invaluable aid to the judges in discharging their judicial functions and therefore the judges should be considerate and courteous towards the members of the bar. They should avoid interruption in the Counsel’s arguments.[[30]](#footnote-31)

A judge must be impartial and must do everything for justice and nothing for himself or his friend or his sovereign. A judge must not allow himself to be subjected to any influence other than the influence of the law and justice of the cause.[[31]](#footnote-32)

For establishment of rule of law*-*TheJudges play important role in the maintenance of rule of law which is essential for the existence of the orderly society. It has rightly been stated by Mr. C.L. Anand[[32]](#footnote-33) that there is no office in the state of such power as that of the judge. Judges hold the power which is immensely greater than that of any other functionary.

**Justice R.J. Kocher has observed:**[[33]](#footnote-34)

*“If the independent judiciary is the pillar of democracy, the bar is the foundation of the independent judiciary. The bar is the mother of the bench and the bright mirror of the judicial officers whose image, character and conduct is correctly and visibly reflected therein, and it is for the bench to nurse and nourish the merits of the bar.”*

## Duties of lawyers

There are certain rules made by bar council of India under the power empowered under section 49(1) (c) of the Advocates Act, 1961. Also it has been clearly mentioned that such rules can only be enforceable if it is approved by Chief Justice of India.[[34]](#footnote-35)

In the exercise of rule-making power under section 49(1) (c) of the Advocates Act, 1961, the bar counsel of India have made several rules. The duties of the lawyers are also the part of the same and are well mentioned under Bar Council of India Rules, 1975. The Part VI Chapter 2 of the Bar Council of India Rules, 1975 provides standards of professional conduct and etiquette.

The preamble of the above mentioned reads as:[[35]](#footnote-36)

“*An Advocate shall, at all times, comport himself in a manner befitting his status as an officer of the Court, a privileged member of the community, and a gentleman, bearing in mind that what may be lawful and moral for a person who is not a member of the Bar, or for a member of the Bar in his non-professional capacity may still be improper for an Advocate. Without prejudice to the generality of the foregoing obligation, an Advocate shall fearlessly uphold the interests of his client, and in his conduct conform to the rules hereinafter mentioned both in letter and in spirit. The rules hereinafter mentioned contain canons of conduct and etiquette adopted as general guides; yet the specific mention thereof shall not be construed as a denial of the existence of other equally imperative though not specifically mentioned.*”

 According to **Part VI - Chapter II – Section I of Bar Council of India Rules, 1975**, it provides certain guidelines of the duties of the advocates to the court. The same duties as mentioned as follows-

Act in a dignified manner*-*An advocate shall during the presentation of his case before a Court or otherwise within the court should present himself with dignity and self-respect.[[36]](#footnote-37)However, when there is proper ground for serious complaint against a judicial officer, the advocate has a right and duty to submit his grievance to proper authorities.[[37]](#footnote-38)

Respect the court*-*An advocate shall maintain towards the Courts a respectful attitude, bearing in mind that the dignity of the judicial office is essential for the survival of a free community.[[38]](#footnote-39)

*No communication with judge in private-*An advocate shall not influence the decision of a Court by any illegal or improper means. Communications with a judge relating to a case isoutlawed outside the court.[[39]](#footnote-40)

Refuse to act in illegal manner towards the opposition[[40]](#footnote-41)- An advocate should refuse to act in illegal manner towards the opposition counsel or opposition parties. He should also make the best efforts to restrict his client from involvement in any sort of unfair or illegal practice.

Not to wear band or gowns in public places*-*An advocate shall not wear bands or gown in public places other than in Courts except on ceremonial occasions and at such places as the Bar Council of India or the court of lawmayspecify.[[41]](#footnote-42)

Refuse to represent clients insists on unfair means*-*An advocate shall refuse to represent the client who persists in such improper conduct. He shall not contemplatehimself a mere mouth-piece of the client, and shall exercise his own judgement in the use of restrained language in correspondence, avoiding defamatoryattacks in pleadings and lacking self-control during arguments in Court.[[42]](#footnote-43)

Not stand as surety of clients*-*An advocate shall not stand as a surety, or certify the soundness of a surety for his client required for the purpose of any legal proceedings.[[43]](#footnote-44)

Not represent an organisation of which he is a member**-**An advocate shall not appear before any court or tribunal or any other authorityfor or against an organization, an institution, society or corporation, if he is a member of the executive committee of such organization or institution or society or corporation. Executive committee shall include any committee or body of persons which are responsible for the general management of the issues of the organization, institution, society or corporation.[[44]](#footnote-45)

Appear in proper dress code*-*An advocate should always appear in the court in the dress prescribed under the Bar Council of India Rules, 1975 and his lookshould always be reasonable, satisfactory and acceptable.[[45]](#footnote-46)

# CONCLUSION

The basic reason and need for relationship between Bar and the Bench is for Administration of Justice. But it can be further noted that relationships between Bar and the Bench have not fully evolved as functionaries for the discharge of legal justice. There is requirement of cordial relation of bar and bench with the objective of the welfare of the people and further of the safeguard of fundamental and human rights of the citizens is not completely fulfilled. It is expected that they should not forget their dignity and should work with dignity for achievement of legal justice.

The Bar and the Bench both should fulfil their duties as laid down under the bar council of India act, 1975 for the advocates and duties as laid down by Justice C.L. Anand for the Judges. The importance of Bar and Bench relation has a very wider scope and can only be achieved if the duties of both i.e. the Bar and the Bench are fulfilled by them consequently.

1. ChinwaeIyizoba, The bar Bench Relationship, Nji (December 26, 2019, 9:30) http://nji.gov.ng/images/Workshop\_Papers/2016/Refresher\_Magistrates/s01a.pdf [↑](#footnote-ref-2)
2. Dr.KailashRai, Legal Ethics Accountability for lawyers and Bench-Bar Relations 156 (2013) [↑](#footnote-ref-3)
3. Role of Bar in Process of Elevation, AIR 2003 Journal 357 [↑](#footnote-ref-4)
4. P.D. Gupta v. Ram Murti, AIR 1998 SC 283 [↑](#footnote-ref-5)
5. Dr.KailashRai, Legal Ethics Accountability for lawyers and Bench-Bar Relations 157 (2013) [↑](#footnote-ref-6)
6. ChinwaeIyizoba, The bar Bench Relationship, Nji (December 26, 2019, 9:30) http://nji.gov.ng/images/Workshop\_Papers/2016/Refresher\_Magistrates/s01a.pdf [↑](#footnote-ref-7)
7. R.K. Garg Advocate v. State of Himanchal Pradesh, AIR 1981 SC 1382 [↑](#footnote-ref-8)
8. P.D. Gupta v. Ram Murti, AIR 1998 SC 283 [↑](#footnote-ref-9)
9. Advocate –General v. Amanullah, AIR 1967 Mad 162 [↑](#footnote-ref-10)
10. Haniraj L. Chulani v. Bar Council of Maharashtra and Goa, AIR 1996 SC 1708 [↑](#footnote-ref-11)
11. Dr.KailashRai, Legal Ethics Accountability for lawyers and Bench-Bar Relations 154 (2013) [↑](#footnote-ref-12)
12. P.D. Gupta v. Ram Murti, AIR 1998 SC 283 [↑](#footnote-ref-13)
13. ibid [↑](#footnote-ref-14)
14. HukumatRai v. The Crown, AIR 1943 Lah. 14 [↑](#footnote-ref-15)
15. L.M. Das v. Advocate-General, Orissa, AIR 1957 SC 250 [↑](#footnote-ref-16)
16. Dr.KailashRai, Legal Ethics Accountability for lawyers and Bench-Bar Relations 156 (2013) [↑](#footnote-ref-17)
17. C.L. Anand, General Principles of Legal Ethics,214 [↑](#footnote-ref-18)
18. C.L. Anand, General Principles of Legal Ethics, 226 [↑](#footnote-ref-19)
19. ibid [↑](#footnote-ref-20)
20. ibid [↑](#footnote-ref-21)
21. C.L. Anand, General Principles of Legal Ethics, 227 [↑](#footnote-ref-22)
22. ibid [↑](#footnote-ref-23)
23. ibid [↑](#footnote-ref-24)
24. ibid [↑](#footnote-ref-25)
25. The Bench and the Bar, Legally India (December 30, 2018, 6:25 PM),https://www.legallyindia.com/the-bench-and-the-bar/the-bar-and-bench [↑](#footnote-ref-26)
26. ibid [↑](#footnote-ref-27)
27. ibid [↑](#footnote-ref-28)
28. The Bench and the Bar, Legally India (December 30, 2018, 6:25 PM),https://www.legallyindia.com/the-bench-and-the-bar/the-bar-and-bench [↑](#footnote-ref-29)
29. Dr.KailashRai, Legal Ethics Accountability for lawyers and Bench-Bar Relations 154 (2013) [↑](#footnote-ref-30)
30. ibid [↑](#footnote-ref-31)
31. C.L. Anand, General Principles of Legal Ethics,215 [↑](#footnote-ref-32)
32. C.L. Anand, General Principles of Legal Ethics,214 [↑](#footnote-ref-33)
33. Role of Bar in Process of Elevation, AIR 2003 Journal 357 [↑](#footnote-ref-34)
34. Dr.KailashRai, Legal Ethics Accountability for lawyers and Bench-Bar Relations 68 (2013) [↑](#footnote-ref-35)
35. Bar Council of India Rules (1975) [↑](#footnote-ref-36)
36. Bar Council of India Rules (1975) [↑](#footnote-ref-37)
37. Rules of Professional Standards, Bar Council of India (January 1, 2019, 7:15 PM) http://www.barcouncilofindia.org/about/professional-standards/rules-on-professional-standards/ [↑](#footnote-ref-38)
38. Bar Council of India Rules (1975) [↑](#footnote-ref-39)
39. ibid [↑](#footnote-ref-40)
40. Rules of Professional Standards, Bar Council of India (January 1, 2019, 7:30 PM) http://www.barcouncilofindia.org/about/professional-standards/rules-on-professional-standards/ [↑](#footnote-ref-41)
41. Bar Council of India Rules (1975) [↑](#footnote-ref-42)
42. Bar Council of India Rules (1975) [↑](#footnote-ref-43)
43. ibid [↑](#footnote-ref-44)
44. ibid [↑](#footnote-ref-45)
45. Rules of Professional Standards, Bar Council of India (January 1, 2019, 8:00 PM) http://www.barcouncilofindia.org/about/professional-standards/rules-on-professional-standards/ [↑](#footnote-ref-46)