

PROFESSIONAL ETHICS FOR LAWYERS: “THE DRESS CODE”

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PRINCIPLE OF LAW:

High Courts of concerned States in India have power to regulate appearance of advocates before them and also before courts within their jurisdiction and subordinate to them.

PRECEDENTS:

- i. In the matter of: *Dr. Vincent Panikulangara V/s Union of India & Ors*, W.P. (C) No. 10994/ 2010, High Court of Kerala, Date of Decision: 07.12.2015, Coram: A.M. Shaffique, J., it was held that:
 - a. Advocates are persons who are supposed to be guardians of rule of law, as they have to advice the public at large in regard to the legal rights and obligations, maintenance of law and order, and rule of law. The public at large views advocates as men of knowledge, integrity and persons upholding the rule of law. The society has always viewed the profession of advocacy as eminent and dignified.
 - b. In Para 13 of the report, in the matter of *Dr. Vincent Panikulangara* (Supra) deliberating upon the power of the High Court to frame rules to regulate the conduct of the advocates practising before it and courts subordinate to it, it was observed that:

“... Therefore, it could be seen that Advocates alone are permitted to practise the profession of law and the Advocates forms [form] a class of persons by itself, and only those persons who are enrolled has the right to practise throughout the territories where the Act [The Advocates Act, 1961] extends, as mentioned under Section 30 of the Act. Section 34 gives power to the High Courts to make rules laying down the conditions subject to which an Advocate shall be permitted to practice in the High Court and Courts subordinate thereto. Section 49 gives power to the Bar Council of

India to make rules. It is pursuant to the power that is vested in the High Court in terms of Section 34 and the Bar Council of India in terms of Section 49 (1) (gg) that the dress codes have been provided. Therefore, the competence of the High Court as well as the Bar Council of India to frame rules cannot be questioned.”

- ii. In the matter of: **Prayag Das V/s Civil Judge (Bulandshahr)**, AIR 1974 All 133, it was held that:
- a. The High Courts of concerned States have power to regulate the appearance of advocates in courts of that State. The right to practise and the right to appear in courts are not synonymous. An advocate may carry chamber practise and/or practise in the court of law by drafting and filing of pleadings and *vakalatnama*. For the latter purpose his appearance in court is necessary, and the High Court of a concerned State is the appropriate authority to make relevant rules for regulating the appearance of advocates before the concerned courts of that State.
 - b. On a proper construction of Section 34 (1) of the Advocates Act, 1961, it must be inferred that the High Court has the power to make rules for regulating the appearance of advocates, and proceedings inside the courts falling within the jurisdiction of the High Court of the concerned State.
 - c. So far as the basic qualification of an advocate entitling him to practise without physically appearing in court, or disentitling him from doing so are concerned, the determination of such conditions is within the exclusive province of the Bar Council of India.
 - d. Whereas Section 49 (1) (ab) of the Advocates Act, 1961 refers to the conditions subject to which an advocate shall have the right to practise; Section 34 (1) of the Advocates Act, 1961 deals with the conditions subject to which an advocate shall be permitted to practise. The expression “*permitted to practise*” means the right of physical appearance in court. The word “*permitted*” refers to a particular occasion when an advocate wants to appear in a court and not to his general right to practice which is solely determined by the Bar Council of India.

- e. Refusal by a court to permit an advocate to appear before it does not amount to extinction of the advocate's legal entity as an advocate; it merely bars his physical appearance in a particular court on a definite occasion.
- f. Rules framed by High Courts prescribing dress code for advocates serve a very useful purpose. In the first place, they distinguish an advocate from a litigant (and other members of the public) who may be jostling with him in a court room. They literally reinforce the *Shakespearian* aphorism that *the apparel oft proclaims the man*. When a lawyer is in prescribed dress his identity can never be mistaken. In the second place, a uniform prescribed dress worn by the members of the Bar induces a seriousness of purpose and a sense of decorum which are highly conducive to the dispensation of justice.
- iii. In the matter of: ***J.R. Parashar V/s Bar Council of India***, AIR 2002 Del 482, the challenge in the writ petition was in respect of non-compliance of Section 49 (1) (gg) of the Advocates Act, 1961 and it was contended that the *Senior Advocates* cannot wear the Queen's Counsel Gown as Section 49 (1) (gg) of the Advocates Act, 1961 does not create any distinction between *Senior* and *Non-Senior Advocates*. That turning down the contentions of the petitioner it was held that:
- "... While it is true that the rule framed by the Bar Council of India does not make out any distinction in dress or prescribe the design of a different gown or coat for a senior advocate, yet the distinction has been maintained and followed by a practice of long-standing, even prior to the Advocates Act of 1961. The Advocates Act, 1961 itself has recognized a distinction in Section 16 of the Advocates Act, 1961 between the senior advocates and advocates. Section 23 of the Act provides for right of pre-audience for Senior Advocates among others. The senior advocates constitute a different class within the advocates. Based on the ability, knowledge, experience, expertise and standing at the bar, an advocate is designated as a senior advocate. It is an honour and distinction conferred by the court in recognition of the ability and standing of*

the concerned advocate. Once the distinction between an advocate and a senior advocate is accepted and accorded statutory recognition, the wearing of a distinct gown or a coat by a senior advocate, which is different from the one worn by advocates, cannot be questioned or assailed as discriminatory or violative of Article 14 of the Constitution of India. The plea of the petitioner that a bias is created in favour of a senior advocate, who wears a gown with frills or overflowing arms or on account of the design of the coat, in the mind of a judge is without any supporting evidence or factual foundation and deserves to be outrightly rejected.”

- iv. In the matter of: **Satish Kumar Sharma V/s Bar Council of Himachal Pradesh**, (2001) 2 SCC 365, it was observed that provisions contained in the Advocates Act, 1961 and the rules contained in the Bar Council of India Rules should be read and interpreted in the light of each other, and further, it was observed that:

“... The profession of law is called a noble profession. It does not remain noble merely by calling it as such, unless there is a continued, corresponding and expected performance of a noble profession. Its nobility has to be preserved, protected and promoted. An institution cannot survive on its name or on its past glory alone. The glory and greatness of an institution depends on its continued and meaningful performance with grace and dignity. The profession of law being noble and an honourable one, it has to continue its meaningful, useful and purposeful performance inspired by and keeping in view the high and rich traditions consistent with its grace, dignity, utility and prestige. Hence the provisions of the Act [The Advocates Act, 1961] and the Rules [The Bar Council of India Rules] made thereunder inter alia aimed to achieve the same ought to be given effect to in their true letter and spirit to maintain clean and efficient Bar in the country to serve the cause of justice which again is a noble one.”

Further, in the matter of *Satish Kumar Sharma* (Supra), the Hon’ble Supreme Court was pleased to observe that it is settled position of law that, to practise as an advocate is a statutory as well as a fundamental right, and therefore

reasonable restrictions can be imposed on such right. Providing a dress code for those practising in various courts can only be termed as a reasonable restriction and cannot be termed as either arbitrary or excessive.

v. **Dress Code for Government Officers appearing in Court:** That the High Court of Himachal Pradesh in CWP No. 1043/ 2017 (Date of Decision: 17.07.2017) observed that:

a. In Para 3 of the report, it was observed that:

“... Dispensation of justice is inevitable feature in any civilized society. Judiciary is the backbone of democracy. In a democratic polity, the role of the judiciary is to maintain and stabilize the rule of law, which is essential in successful functioning of the democracy. The Judges and Magistrates play a pivotal role in the administration of justice and that is why they wear specific dress prescribed by the Rules framed by the High Court. This dress is worn compulsorily in order to maintain the dignity and decorum of the Court and, therefore, we see no reason why any litigant, more particularly, Government officers and officials should be improperly or inappropriately dressed while appearing before the Court. After all being appropriately dressed only induces a seriousness of purpose and a sense of decorum which is highly conducive for the dispensation of justice.”

b. Every litigant appearing before the court of law is expected and/ or is required to be dressed in a modest manner so as to maintain decorum of the court; and Government officers/ officials are required to be dressed if not formally then at least appropriately and discreetly while appearing before the court of law.

UPSHOT:

1. The right to practise and the right to appear in courts are not synonymous.
2. Whereas Section 49 (1) (ab) of the Advocates Act, 1961 refers to the conditions subject to which an advocate shall have the right to practise; Section 34 (1) of the Advocates Act, 1961 deals with the conditions subject to which an advocate shall be permitted to practise.

3. The High Courts of concerned States have the power:
 - a. To make rules for regulating the *appearance of advocates* before it and before the courts subordinate to it; and,
 - b. To regulate the *proceedings inside the courts* falling within the jurisdiction of the High Court of the concerned State.
4. To practise as an advocate is a statutory as well as a fundamental right, and therefore reasonable restrictions (dress code) can be imposed on the advocates by the High Courts of the concerned States in India.
5. That providing a dress code for advocates practising in various courts can only be termed as a reasonable restriction and cannot be termed as either arbitrary or excessive.