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No. 08, Arul Nagar, Seera Thoppu,

Maudhanda Kurichi, Srirangam,

Tiruchirappalli – 620102

Phone : +91 94896 71437 - info@iledu.in / Chairman@iledu.in



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Ethical Standards for Lawyers in India: Legislative Counsel *versus* Advocate

Authors: Devika Gulati, Alumni of LLM in Drafting Legislation, Regulation, and Policy at the Institute of Advanced Legal Studies, University of London

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Abstract:

The aim of this article is to start a dialogue on the idea of an independent ethics' code in a written form for the Indian legislative drafting community. For this purpose, I have compared the Advocates' ethics enumerated in the Bar Council of India Rules, with the Legislative Counsel's ethics, most of which are reflected in Indian academic writings and some find a general mention in the CCS Rules. This comparative analysis is done on the basis of the five dimensions introduced by Anne Seidman, Robert B Seidman and Nalin Abeysekere, namely, I. Scope of Duties, II. Duty of Loyalty, III. Competence, IV. Confidentiality, and V. Terminating or Declining Instructions. It is observed that their ethical duties are glaringly similar.

The similarity in ethics between the two professions aids the readers to imagine a separate written code for the Legislative Counsels, just like the one for Advocates, to help drafters solve several drafting dilemmas that may come their way.

Introduction

In India, the rules of professional standards of an Advocate are codified in Bar Council of India Rules, 1975¹⁰¹⁵ ("BCI Rules") and often extrapolated by the courts, whereas the ethics

exclusive to the Legislative Counsel are rarely discussed. This article is an attempt to start a discussion and set the ground for the potential codification of ethics for the Indian drafting community. As of now, some ethics of a Legislative Counsel are covered under the Central Civil Service (Conduct) Rules, 1964¹⁰¹⁶ ("CCS Rules") applicable to every public servant but owing to the unique nature of a drafter's job, there are certain ethics exclusive to this occupation. In my view, a code of ethical standards for Legislative Counsels, similar to the Advocates', may be helpful in making drafting decisions.

The need for a separate code has been felt in the past. McNair prefers an ethics' code for all salaried and non-salaried lawyers, especially for those in the highly compartmentalized field of legislative drafting¹⁰¹⁷ as little is known about them.¹⁰¹⁸ Marcello admits there is not much awareness about the drafting process.¹⁰¹⁹ Purdy comments that though the drafters may be in minority as opposed to the advocates but the impact of their work is disproportionate.¹⁰²⁰

Drawing out resemblance in both the professions, Brown believes that the Advocates' code often consists of several insights and principles which are useful to the drafters in solving ethical conundrums.¹⁰²¹ Broad readings may be helpful.¹⁰²²

The hypothesis of my article is that the ethical standards of a Legislative Counsel are similar to that of an Advocate in India. I will prove this statement by comparing and analyzing the

¹⁰¹⁶ 'Central Civil Service (Conduct) Rules, 1964' <https://dopt.gov.in/sites/default/files/CCS_Conduct_Rules_1964_Updated_27Feb15_0.pdf> accessed 23 January 2023.

¹⁰¹⁷ Deborah Macnair, 'Ethics and Drafting' (8 June 2004) 4-5 <<https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKFwig1PKog87xAhUXQkEAHcSaAtEQFnoECAMQAA&url=https%3A%2F%2Fciaj-icaj.ca%2Fwp-content%2Fuploads%2Fdocuments%2Fimport%2FLD%2FLD2004%2FLD97.pdf%3Fid%3D944%261520920891&usg=AOvVaw3WqAAIr1vLBBEjrvL-iQkf>> accessed 23 January 2023.

¹⁰¹⁸ Deborah Macnair, 'Legislative Drafters: A Discussion of Ethical Standards from a Canadian Perspective' (2003) 24(2) Stat.L.Rev 125, 126.

¹⁰¹⁹ David A Marcello, 'The Ethics and Politics of Legislative Drafting' (1996) 70 Tulane Law Review 2437, 2439.

¹⁰²⁰ Roger Purdy, 'Professional Responsibility for Legislative Drafters: Suggested Guidelines and Discussion of Ethics and Role Problems' (1987) 11 Seton Hall Legislative Journal 67, 68.

¹⁰²¹ Ian Brown, 'Sleeping Better: Ethics for Drafters' (May 2016) The Loophole 4, 5.

¹⁰²² Purdy (n 6) 67.

¹⁰¹⁵ 'Bar Council of India Rules, 1975' <www.barcouncilofindia.org/wp-content/uploads/2010/05/BCIRulesPartVonwards.pdf> accessed 23 January 2023.

ethical responsibilities of both kinds of lawyers in the Indian context on the basis of the five dimensions laid down by the Anne Seidman, Robert B Seidman and Nalin Abeysekere, namely, I. Scope of Duties, II. Duty of Loyalty, III. Competence, IV. Confidentiality, and V. Terminating or Declining Instructions.¹⁰²³

The reason for the selection of the two professions for a comparative analysis is that both are groups of lawyers specially trained in law, skilled for law's application as a public service usually for a reward.¹⁰²⁴ Ethics for one group is largely codified, while for other it is not, hence, I apply the straight two-way comparison.

I. Scope of Duties

A. Legislative Counsel

The drafter's primary duty is to the client.¹⁰²⁵ In India, Nampoorthy states that the primary duty of a Legislative Counsel is to establish and accommodate the wishes of the client.¹⁰²⁶

The drafters' duty to uphold the rule of law.¹⁰²⁷ In India, the Legislative Counsel as public servant is obligated to maintain the rule of law by creating a legislative draft that notifies the legislative audience of what the law demands of them, grants to them and the behaviour they can expect from the public officials, thereby, fixing a responsibility on the Counsel to make the draft that is clear, precise and unambiguous.¹⁰²⁸

The scope of duty is beyond the strict legal realm¹⁰²⁹ for which the drafter must develop a vocabulary.¹⁰³⁰ In India, the Legislative Counsels give effect to the economic, social and political policies¹⁰³¹ so, a certain level of understanding of

these areas is called for. The Counsel suggests on the proposal's extra-legal elements like the desirability, practicability¹⁰³² and implementability.¹⁰³³ A rough scheme is prepared before the actual drafting takes place.¹⁰³⁴

In India, Vishwanathan states that the Legislative Counsel has no power over the end result.¹⁰³⁵ Atre does not doubt that the Parliament takes over the responsibility for the Counsel's language used in the Act but the Counsel's duty is not to leave the parliamentarians uncertain as to what they are taking the responsibility for.¹⁰³⁶

B. Advocate

In India, the advocates are duty-bound to fearlessly uphold the client's interests.¹⁰³⁷ Such duties are covered under Rules 11 to 33 under Chapter II, Part VI BCI Rules, formed under section 49(1)(c) of the Advocates Act, 1961.

Rule of law is achieved through independence in judiciary and legal profession.¹⁰³⁸ The same applies to the Indian context where these dual components of rule of law support the judicial institution.¹⁰³⁹ Nariman sees an independent legal profession as a catalyst to help an independent judiciary achieve the rule of law¹⁰⁴⁰ and the court upholds the same.¹⁰⁴¹

An Advocate also advises the client about the likely consequences of a proposed action¹⁰⁴² In India, the advocates render service to their clients in both litigious and non-litigious matters.¹⁰⁴³ They must anticipate the possible

¹⁰²³ Ann Seidman, Robert B. Seidman and Nalin Abeysekere, *Legislative Drafting for Democratic Social Change: A Manual for Drafters* (Kluwer Law International 2001) 42-46.

¹⁰²⁴ Beverly G Smith, 'Legal Ethics and the Legislative Drafter' 3 <<https://ciaj-icaj.ca/fr/?s=legal+ethics+and+the+legislative+drafter>> accessed 23 January 2023.

¹⁰²⁵ Seidman, B. Seidman and Abeysekere (n 9) 42.

¹⁰²⁶ NK Nampoorthy, 'The Role of Parliamentary Counsel in Legislative Drafting' (2010) 36(1) Commonwealth Law Bulletin 57, 64.

¹⁰²⁷ Macnair (n 4) 133.

¹⁰²⁸ Usama Mubarak, 'Role of Legislative Drafting in Victimization of Citizens' (Dissertation, Galgotias University 2020) 3.

¹⁰²⁹ Seidman, B. Seidman and Abeysekere (n 9) 42.

¹⁰³⁰ Robert B Seidman, 'Why Do People Obey the Law? The Case of Corruption in Developing Countries' (1978) 5(1) British Journal of Law and Society 45, 46.

¹⁰³¹ Nampoorthy (n 12) 57.

¹⁰³² *ibid* 64.

¹⁰³³ TK Vishwanathan, *Legislative Drafting-Shaping the Law for the New Millennium* (Indian Law Institute 2007) 194.

¹⁰³⁴ SK Hiranandani, 'Legislative Drafting: An Indian View' (1964) 27 Modern Law Review 1, 4.

¹⁰³⁵ Vishwanathan (n 19) 91.

¹⁰³⁶ BR Atre, *Legislative Drafting Principles and Techniques* (Universal LexisNexis 2017) 368.

¹⁰³⁷ BCI Rules, r 15.

¹⁰³⁸ Adama Dieng, 'Role of Judges and Lawyers in Defending the Rule of Law' (1997) 21(2) Fordham International Law Journal 550, 552.

¹⁰³⁹ R.Venkataramani, 'Lecture regarding Professional Ethics' 2 <<https://main.sci.gov.in/pdf/aorexam/Lecture%20regarding%20Profession%20Ethics%20-%20Mr.%20R.Venkataramani,%20Senior%20Advocate-%20Supreme%20Court.pdf>> accessed 23 January 2023.

¹⁰⁴⁰ Dieng (n 24) 550.

¹⁰⁴¹ *O.P.Sharma v. High Court of Punjab and Haryana* AIR 2011 SC 2101.

¹⁰⁴² Seidman, B. Seidman and Abeysekere (n 9) 42.

¹⁰⁴³ Venugopal BS, 'Civil Liability of Lawyers for Deficiency in Services: A Critical Analysis' (2011) JILL 275, 275.

outcomes of the case¹⁰⁴⁴ and avoid fomenting the litigation.¹⁰⁴⁵

The supreme court also noted that though the final decision-making power does not vest with the advocate yet the advocate cannot be a mere mouthpiece of the client.¹⁰⁴⁶

II. Duty of Loyalty

A. Legislative Counsel

The drafter should keep out of the political fray.¹⁰⁴⁷ Dickerson calls the drafter an “emotional oyster.”¹⁰⁴⁸ The requirement for a non-partisan and apolitical approach of the Legislative Counsel is reaffirmed by Vishwanathan.¹⁰⁴⁹ Rule 3(1)(vii) of the CCS Rules binds the drafter as a public servant to maintain political neutrality.

Considering the impartiality, it is significant to note that the primary duty of a Legislative Counsel is towards the client¹⁰⁵⁰ but there are multiple clients, starting with the organizational client,¹⁰⁵¹ that is, the Ministry or the Department,¹⁰⁵² as pointed out by Atre. The Counsel is also loyal to the parliament for which he or she draft laws.¹⁰⁵³ The Counsel fulfils certain procedural and substantive tasks in the legislative process giving due consideration to the legislative competence.¹⁰⁵⁴ The idea of a proposal may be Minister’s.¹⁰⁵⁵ Whoever the drafter is dealing with, he or she should be transparent to benefit the legal system as it enables both parties to work towards achieving the common objective.¹⁰⁵⁶ This is reiterated by Atre.¹⁰⁵⁷ This instills a sense of trust towards the drafter. Ideally, interests of all the clients should be aligned, but quite often they are not and that’s when the Counsel faces a dilemma in choosing whose idea to express in legislation.¹⁰⁵⁸

Drafters are required to resolve conflicting attitudes which cannot always be reconciled.¹⁰⁵⁹

Overall, a greater duty that lies in securing the public interest. The drafter should avoid clearing proposals that are against morality or public good.¹⁰⁶⁰ As Sudha Rani points out, legislation should be people-oriented and should always rescue those directly affected by the statute.¹⁰⁶¹ Rule 3(a)(ii) of the CCS Rules casts a duty on the public servants to take decisions in public interest.

B. Advocate

Advocates influenced by politicians cannot sustain the independence of the administration of justice.¹⁰⁶² In India, the advocate is encouraged to put their personal beliefs aside while dealing with a matter. Rule 15 of BCI Rules obligates the advocate to always uphold the client’s interests fearlessly, fairly and honourably, despite any personal opinion or any unpleasant consequences, thereby maintaining their loyalty to the law.

Advocate-client enjoy a fiduciary relationship, which requires a high degree of fidelity,¹⁰⁶³ so, such a position must not be abused.¹⁰⁶⁴ The advocate must act only on the instructions of the client.¹⁰⁶⁵ Such duties of the advocates are enumerated in BCI Rules which evidence the advocate’s loyalty towards the client.

Further, the advocate must hold the dignity of the court¹⁰⁶⁶ as an officer of the court, which acts on the statements of the advocate, so he or she must assist in administration of justice by being fair and not influence it by any wrongful means,¹⁰⁶⁷ which may amount to professional misconduct.¹⁰⁶⁸ Antagonizing the court may be

¹⁰⁴⁴ Akanksha Singh, ‘What makes a great lawyer?’ <<https://blog.ipleaders.in/makes-great-lawyer/>> accessed 23 January 2023.

¹⁰⁴⁵ BCI Rules, r 18.

¹⁰⁴⁶ *Lal Bahadur Shastri v. State of U.P.* AIR 1951 SC 3157.

¹⁰⁴⁷ Macnair (n 4) 131.

¹⁰⁴⁸ Reed Dickerson, *The Fundamentals of Legal Drafting* (Little, Brown & Co. 1986) 10-11.

¹⁰⁴⁹ Vishwanathan (n 19) 91.

¹⁰⁵⁰ Nampoothiry (n 12) 64.

¹⁰⁵¹ Macnair (n 3) 7.

¹⁰⁵² Atre (n 22) 366.

¹⁰⁵³ Nampoothiry (n 12) 57.

¹⁰⁵⁴ Vishwanathan (n 19) 95.

¹⁰⁵⁵ Hiranandani (n 20) 1.

¹⁰⁵⁶ Macnair (n 4) 132.

¹⁰⁵⁷ Atre (n 22) 366.

¹⁰⁵⁸ Hiranandani (n 20) 1.

¹⁰⁵⁹ Vishwanathan (n 19) 482.

¹⁰⁶⁰ Nampoothiry (n 12) 64-65.

¹⁰⁶¹ Sudha Rani, ‘The Role and Efficacy of Legislation’ (November 2011) *The Loophole* 73, 75-78.

¹⁰⁶² Lord Barnett, ‘The Legal Profession and the International Administration of Justice’ (The Independence of Judges and Lawyers in the COMMONWEALTH CARIBBEAN, Geneva, September 1988) 46 <<https://www.icj.org/wp-content/uploads/1988/09/Commonwealth-Caribbean-independence-of-judges-and-lawyers-seminar-report-1988-eng.pdf>> accessed 23 January 2023.

¹⁰⁶³ Kailash Rai, *Legal Ethics Accountability for Lawyers and Bench-Bar Relations* (Central Law Publications 2015) 77.

¹⁰⁶⁴ BCI Rules, r 24.

¹⁰⁶⁵ *ibid* r 19.

¹⁰⁶⁶ *ibid*.

¹⁰⁶⁷ *ibid* r 3.

¹⁰⁶⁸ *Chandrika Prasad v. State of MP* AIR 1985 MP 254.

harmful for the client's case¹⁰⁶⁹ as it may result in rejection of the petition.¹⁰⁷⁰ Such duties towards the court are enlisted in the BCI Rules. Additionally, there are some loyalties amongst the advocates' fraternity including duties towards the opponents of communication with their client only via the opponent advocate, and carrying out legitimate promises.¹⁰⁷¹ Restriction against solicitation and advertisement of work,¹⁰⁷² not appearing on behalf of the colleagues without their consent¹⁰⁷³ count as a duty towards the colleagues set out in BCI Rules. Anand terms an advocate as a "public functionary"¹⁰⁷⁴ as his or her job is not a business but a profession created by the state for the public good and it is the advocate's responsibility to maintain the faith of the public in the legal profession.¹⁰⁷⁵ A balance between conflicting claims should be maintained.¹⁰⁷⁶

III. Competence

A. Legislative Counsel

Derived from the latin word "competere", competence means "sufficient to deal with what is at hand" and a competent drafter is someone who has the adequate skill, experience and wisdom to handle the drafting instructions.¹⁰⁷⁷

In India, the Legislative Counsel should be familiar with the technical skills of drafting and language, Indian constitution, statute book including the General Clauses Act, 1897, judicial and drafting precedents, rules of construction adopted by the courts, parliamentary procedure and legislative competence, allocation of executive functions and the administrative machinery.¹⁰⁷⁸ The Counsels must be able to foresee proposal's consequences, implementability and fitness in the statute

book.¹⁰⁷⁹ Hiranandani calls it as their "divine prescience."¹⁰⁸⁰

A drafter reaches different levels of the office hierarchy with experience, by way of promotion, deputation or direct recruitment.¹⁰⁸¹ Special drafting courses are also run for the officials by the Institute of Legislative Drafting and Research.¹⁰⁸²

B. Advocate

A competent advocate requires to know the latest judicial precedents, rules of interpretation, statutory amendments.¹⁰⁸³ The advocate should have a good command over the language, power of expression, knowledge of law, common sense, presence of mind¹⁰⁸⁴ along with the capacity to analyse and sift facts.¹⁰⁸⁵ The advocate must inculcate some of the advocacy skills like presentation before the court, cross-examination, drafting of pleadings, etc.¹⁰⁸⁶ They should be able to anticipate the possible judicial outcomes.¹⁰⁸⁷

A law graduate becomes an advocate and gains a right to practice once registered on the state roll and the All India Bar Examination is cleared¹⁰⁸⁸ and may be elevated to become a senior advocate by the Supreme Court or the High Court on the basis of their ability, standing at the Bar, special knowledge and experience in law.¹⁰⁸⁹ Chapter I, Part IV of BCI Rules governs the senior advocates.

IV. Confidentiality

A. Legislative Counsel

The phrase suggested by Smith, that is, "Loose Lips Sink Lawyer-Client Relationships"¹⁰⁹⁰ is

¹⁰⁶⁹ CL Anand, *General Principles of Legal Ethics* (Allahabad Law Book Co. 1965) 175.

¹⁰⁷⁰ *Smt Poonam v. Sumit Tanwar* AIR 1996 SC 98.

¹⁰⁷¹ BCI Rules, rr 34-35.

¹⁰⁷² *ibid* r 36.

¹⁰⁷³ *ibid* r 39.

¹⁰⁷⁴ Anand (n 55) 69.

¹⁰⁷⁵ Rai (n 49) 65-66.

¹⁰⁷⁶ *D.P. Chadha vs. Triyugi Narain Mishra and others* (2001) 2 SCC 221.

¹⁰⁷⁷ Brown (n 7) 7.

¹⁰⁷⁸ Vishwanathan (n 19) 91-98.

¹⁰⁷⁹ Nampoothiry (n 12) 59.

¹⁰⁸⁰ Hiranandani (n 20) 5.

¹⁰⁸¹ 'Indian Legal Service Rules, 1957' <https://legalaffairs.gov.in/sites/default/files/ILS_RULES_0.pdf> accessed 23 January 2023.

¹⁰⁸² 'Institute of Legislative Drafting and Research' <<https://legislative.gov.in/ildr>> accessed 23 January 2023.

¹⁰⁸³ B Malik, *The Art of a Lawyer: Cross Examination Advocacy-courtmanship* (Universal Law Publishing 2009) 234.

¹⁰⁸⁴ *ibid* 420.

¹⁰⁸⁵ FMI Kalifulla, 'LEGAL PROFESSION: CHALLENGES AND PROSPECTS THE ART OF ADVOCACY' 2 <<http://tnsja.tn.gov.in/article/Legal%20Profession%20Challenges-FMIKJ.pdf>> accessed 23 January 2023.

¹⁰⁸⁶ Rai (n 49) 327-340.

¹⁰⁸⁷ Singh (n 30).

¹⁰⁸⁸ BCI Rules, rr 9-11.

¹⁰⁸⁹ *The Advocates Act 1961*, s 16(1).

¹⁰⁹⁰ Smith (n 10) 10.

rephrased and applied in Indian context as, “Loose Lips Sink Drafter-Client Relationships”. In India, the cabinet note may be graded as “Top Secret” depending on its contents, however, all notes are termed as “Secret” by the administrative ministry¹⁰⁹¹ and are received in the same form by the Legislative Counsel, who being a public servant, is governed by the CCS Rules so the government can entrust him or her with confidential proposals like the ones pertaining to enhancement of certain taxes, duties etc.¹⁰⁹² As a public servant, the Legislative Counsel must maintain confidentiality in the performance of his or her official duties to protect India’s sovereignty, integrity, security, interests that are strategic, scientific and economic, international friendly relations, and to prevent an offence or unlawful gain to anyone.¹⁰⁹³ Information, except classified, may be furnished under the Right to Information Act, 2005.¹⁰⁹⁴ The ethical standards to be observed specifically by the Legislative Counsel while communicating with the administrative Ministry, the Minister, and Parliament do not find a mention anywhere.

B. Advocate

Advocates’ code that protects the confidentiality of information revealed by the client to the advocate enables a free discussion between the two.¹⁰⁹⁵ Rule 17 of the BCI Rules prohibits a breach of obligations under Section 126 of the Indian Evidence Act¹⁰⁹⁶, where the advocate is obliged not to disclose case-related confidential communications with the client except with client’s express consent or when the purpose is illegal or on commission of an offence after the commencement of their relationship. Additionally, Rule 24 discourages the advocate from abusing the confidence that is entrusted in him or her by the client.

V. Terminating or Declining Instructions

¹⁰⁹¹ Government of India, ‘Cabinet Secretariat Handbook on writing Cabinet Notes’ 11

https://cabsec.gov.in/writereaddata/handbook/english/1_Upload_1409.pdf accessed 23 January 2023.

¹⁰⁹² Nampoothiry (n 12) 58.

¹⁰⁹³ CCS Rules, r 3(1)(xx).

¹⁰⁹⁴ *ibid* r 11.

¹⁰⁹⁵ Purdy (n 6) 105.

¹⁰⁹⁶ The Indian Evidence Act, 1872

A. Legislative Counsel

In India, as of now, there is no clear list of criteria based on which the Legislative Counsel may decline drafting the Bill or terminate drafting instructions. An official, on the condition of anonymity, shares that one cannot recuse from drafting a statutory instrument but can officially note objections, be it legal or constitutional, and return the file to the administrative ministry, which may then divert the file to the Department of Legal Affairs for a re-assessment of the legality and constitutionality. If the file is cleared by them then the drafter has no option but to officially note the comments and make whatever changes in the draft as he or she deems fit. There have been incidents of termination of instructions on the transfer of files from one counsel to another, without putting the underlying reasons on record. This is done at the discretion of the Law Secretary of the Legislative Department, who is in-charge of the administration. One can possibly take a cue from the CCS Rules, where conflict of interest is reported to a senior official.¹⁰⁹⁷

B. Advocate

In India, an Advocate is bound to take up a brief except under certain conditions where he or she may terminate the instructions from the client or decline to take up the matter. The Advocate may withdraw from the case after a sufficient notice to the client.¹⁰⁹⁸ This may be due to the improper conduct of the client towards the court or opponent parties.¹⁰⁹⁹

The Advocate should make a full and frank disclosure regarding any connections, interests or controversies that may affect the client’s judgement in engaging the advocate.¹¹⁰⁰ He or she may decline to take up the case where he or she is a witness,¹¹⁰¹ or under special circumstances¹¹⁰² including advocate’s physical disability, non-availability, non-specialization in the matter, or client’s inability to pay, or when the advocate has been consulted by the

¹⁰⁹⁷ CCS Rules, r 3(1)(xiii).

¹⁰⁹⁸ BCI Rules, r 12.

¹⁰⁹⁹ *ibid* r 4

¹¹⁰⁰ *ibid* r 14.

¹¹⁰¹ *ibid* r 13.

¹¹⁰² *ibid* r 11

opposite side,¹¹⁰³ or in case of conflict of interest.¹¹⁰⁴ The advocate may be discharged by the client, which may be without any reason.¹¹⁰⁵

Comparative Analysis

Under the scope of ethical duties, both the professions hold their clients high in priority. Though, the duties of a Legislative Counsel towards the client are mostly implied and unwritten, the duties of an Advocate towards his or her client are direct and in a written form.

Both have an obligation to uphold the rule of law. The Counsel does it by making the legislative draft accessible, clear and intelligible. On the other hand, the advocate does it by maintaining the independence of the profession to ensure that the justice-dispensing machinery functions with its maximum potential.

Both step outside their respective legal realms by advising their clients on the possible consequences of their individual proposed actions. They may not have the ultimate decision-making power regarding the proposed action but at the same time, they cannot be absolved of their responsibilities.

Thus, the scope of the ethical duties peculiar to both the professions are quite alike.

Viewing both through the lens of loyalty, it is seen that though they are encouraged to maintain a neutral outlook while keeping their personal and political opinions at bay, yet their fidelity lies in several places. The Legislative Counsel is expected to be loyal to the administrative department, the Minister, the Parliament and the legislative process. On the other hand, the Advocate should remain loyal to the private client, the opponent, the colleagues, the court and the judicial process. Such loyalties of the Advocates can be seen in a codified form, unlike in the case of a Legislative Counsel. Overall, it is observed that both the professions owe a significant duty towards the general public to promote public good, while carrying out their respective professional responsibilities.

Thus, with multiple loyalties, both must strike a balance in case conflict arises.

As competent lawyers, both should be familiar with the Indian statute book, judicial precedents, language, the factual situation, and should have a foresight but the Legislative Counsel is expected to be adept in the technical skills of drafting legislation, whereas the advocate should be good at the advocacy skills like cross-examination, presentation before the court, drafting of pleadings, etc.

Both may progress in their respective fields by climbing the professional ladder based on their experience. It is seen that the ILS Rules and BCI Rules alongwith the Advocates' Act prescribe the number of years of experience required for both lawyers to go ahead in their respective professions but they do not codify the specific skills or knowledge required for the job except their educational qualification in law.

It is observed that both must maintain confidentiality of the information they are entrusted with. This duty is codified in the CCS Rules in a fairly general language for the public servants which includes the Legislative Counsel, whereas for the Advocate, there are specific provisions in the BCI Rules and the Indian Evidence Act. There is no provision on the disclosure of classified information given to the Legislative Counsel, whereas advocate may disclose the confidential information with client's due consent, or when the purpose is illegal, or on commission of an offence in the course of advocate's employment.

Regarding termination or decline, both are bound to take up their respective matters. The Legislative Counsel can decline or terminate the instructions only the discretion and approval of the Secretary based on reasons that are not officially on record but may include conflicting interests. Such reasons are not clearly laid out anywhere. On the other hand, the advocate may decline or terminate instructions unilaterally under a special and non-exhaustive

¹¹⁰³ *Muralidharan Nair v. N.J. Antony* 1985 KLT 1.

¹¹⁰⁴ *V C Rangadurai v. D Gopalan* AIR 1979 SC 281.

¹¹⁰⁵ *R.D. Saxena v. Balaram Prasad Sharma* (2000)7 SCC 264.

list of circumstances laid down by the Bar Council of India and interpreted by the courts which include conflicting interests amongst others.

Conclusion

The aim of this article to start a discussion on the idea of an independent ethics' code in a written form for the Indian drafting community. For this purpose, I have drawn a parallel between the Advocates' ethics enumerated in

the BCI Rules which are interpreted by the courts, and Legislative Counsel's ethics, most of which are reflected in Indian academic writings and some find a general mention in the CCS Rules. This is done on the basis of the five dimensions laid down by Seidman *et al* and it is observed that their ethical duties are glaringly similar. The following table sums up the ethics for both on the given criteria:

Dimension	Legislative Counsel	Advocate
Scope of Duties	<ul style="list-style-type: none"> Primary duty to the client Maintenance of Rule of Law Extra-legal responsibilities No authority over the final decision 	<ul style="list-style-type: none"> Primary duty to the client Maintenance of Rule of Law Extra-legal responsibilities No authority over the final decision
Duty of Loyalty	Loyal towards multiple parties, namely- <ul style="list-style-type: none"> administrative Ministry, the Minister; the Parliament and the legislative process, and the public 	Loyal towards multiple parties, namely- <ul style="list-style-type: none"> the private client; the Court and the judicial process, opponents, colleagues, and the public
Competence	Knowledge of: <ul style="list-style-type: none"> Indian statute book Facts of the proposal Judicial and legislative precedents Rule of interpretation Language Technical skills of legislative drafting Requirement for the knowledge and skills are not codified.	Knowledge of: <ul style="list-style-type: none"> Indian statute book Facts of the case Judicial precedents Rule of interpretation Language Technical skills of advocacy Requirement for the knowledge and skills are not codified.
Confidentiality	<ul style="list-style-type: none"> Duty to not disclose classified information No exception 	<ul style="list-style-type: none"> Duty to not disclose Advocate-client communication Exceptions are client's express consent, illegal purpose or on commission of offence
Terminating/Declining Instructions	<ul style="list-style-type: none"> Can decline or terminate on Secretary's approval. Reasons not officially on record but conflict of interest may be one. 	<ul style="list-style-type: none"> Can decline or terminate unilaterally Reasons laid down by BCI and courts which include conflict of interest as one.

In my opinion, the similarity in ethics between the two professions aids the readers to imagine a separate written code for the Legislative Counsels, just like the one for Advocates, to help drafters solve several drafting dilemmas that may come their way.

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