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THE BAR AND THE BENCH VS. THE MARKET: BRIDGING THE GAP BETWEEN PROFESSIONAL REGULATION AND CONSUMER PROTECTION

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Abstract

The jurisprudential dialectic surrounding the subjection of legal services to consumer protection laws has precipitated an intricate legal conundrum in India, necessitating a re-examination of entrenched doctrinal constructs. The legal profession, long insulated within the statutory confines of the Advocates Act, 1961, is governed by the Bar Council of India (BCI)—a sentinel of professional ethics and judicial propriety. However, the advent of the Consumer Protection Act, 2019, designed to shield consumers from exploitative practices and deficient services, has ignited a formidable debate: should clients who remunerate legal practitioners be vested with the rights and remedies accorded to consumers, or does the sacrosanct status of advocates as officers of the court warrant continued exemption from commercial scrutiny?

This scholarly interrogation delves into the ontological and teleological dimensions of this legal impasse, dissecting the nuanced interplay between legal services and the statutory definition of “service” under the Consumer Protection Act. It scrutinizes judicial pronouncements oscillating between professional autonomy and client redress, while juxtaposing the BCI’s assertion that subjecting lawyers to consumer law oversight would imperil the profession’s nobility and its symbiotic relationship with the judiciary.

Traversing comparative jurisprudence from jurisdictions such as the United Kingdom, United States, and Canada, this study advocates for a calibrated hybrid regulatory framework—one that harmonizes consumer rights with professional self-governance. Ultimately, it calls for a judicious recalibration of India’s legal architecture, striving to fortify public confidence in the legal fraternity while preserving its institutional independence and ethical integrity.

Keywords. Legal Services, Consumer Protection Act, 2019, Advocates Act, 1961, Bar Council of India, Professional Negligence, Jurisprudential Debate, Consumer Rights, Legal Ethics, Professional Autonomy, Judicial Oversight, Comparative Jurisprudence, Hybrid Regulatory Framework, Grievance Redressal Mechanism, Legal Profession Reforms, Legislative Recalibration, Symbiotic Bar-Bench Relationship, Institutional Independence.

Introduction: Inherent Paradox of Legal Accountability in India

“Fiat Justitia Ruat Caelum” – Let justice be done, though the heavens may fall.

In an era where consumer rights are fiercely safeguarded, a paradox remains embedded

within India’s legal framework – the immunity of legal professionals from consumer accountability. The legal fraternity, entrusted with the sacrosanct duty of upholding justice, stands beyond the reach of the very principles it preaches. The question then arises: *Should advocates, who argue for the imposition of*

liability on every other profession, be shielded from the same scrutiny under consumer protection laws?

The Supreme Court of India has often emphasized that “no profession is above scrutiny”¹³⁰⁸. Yet, unlike doctors, engineers, and architects – who are held accountable under the Consumer Protection Act (CPA), 2019 – advocates are uniquely insulated. This exclusion, recently reaffirmed in *Bar of Indian Lawyers v. D.K. Gandhi (2024)*, presents a constitutional dilemma: How does one reconcile judicial independence with consumer rights?

A Constitutional Dilemma: Self-Regulation vs. Public Accountability

Article 19(1)(g) of the Indian Constitution guarantees the right to practice any profession, but this right is subject to *reasonable restrictions* in the interest of public welfare. The judiciary, in *Bar of Indian Lawyers Through its President Jasbir Singh Malik v. D. K. Gandhi PS National Institute of Communicable Diseases and Anr. [2024] 6 S.C.R. 484; 2024 INSC 410* held that, “Having regard to the role, status and duties of the Advocates as the professionals, the legal profession is sui generis i.e. unique in nature and cannot be compared with any other profession.” The Bar Council of India (BCI), established under the Advocates Act, 1961, is the sole regulatory body empowered to discipline lawyers.

However, this self-regulation presents an inherent conflict. The Supreme Court in *A. K. Kraipak v. Union of India (1970)* held that “no man shall be a judge in his own cause” (*Nemo iudex in causa sua*). By exclusively entrusting the BCI with disciplinary oversight, the legal profession is, in effect, adjudicating upon its own misconduct. This raises a fundamental question: *Can justice be left to self-policing when every other profession is subject to independent review?*

Global Perspectives: A Stark Contrast

India’s model of legal self-regulation starkly contrasts with global best practices:

Country	Regulatory Body	Consumer Complaint Mechanism
United Kingdom	Legal Ombudsman (Legal Services Act, 2007)	Consumers can file complaints against lawyers
United States	State Bar Associations	Civil lawsuits for legal malpractice
Canada	Law Societies of each province	Independent tribunals for consumer grievances

While India retains a monopolistic regulatory framework, jurisdictions such as the UK and Canada offer dual-layered accountability, ensuring both professional self-regulation and independent consumer protection mechanisms.

Revisiting the Consumer Protection Act, 2019

The Consumer Protection Act, 2019, in Section 2(42), defines “service” to include all professions except those involving a “contract of personal service.” The Supreme Court, in *Indian Medical Association v. V. P. Shantha (1995)*, ruled that doctors are not in a personal service contract with patients, thus bringing them under CPA’s jurisdiction. Applying the same logic, advocates should be accountable for deficiency in service – yet the 2024 ruling reaffirmed their exclusion.

This exclusion raises serious jurisprudential concerns:

- Should legal professionals enjoy immunity simply because they operate within the judiciary?
- Does judicial independence justify the absence of consumer accountability?
- Is self-regulation an adequate safeguard against professional negligence?

¹³⁰⁸ Indian Medical Association v. V. P. Shantha, 1995

A Question of Judicial Integrity

The Supreme Court in *Hussainara Khatoon v. State of Bihar* (1979) held that access to competent legal representation is a fundamental right. If legal incompetence or misconduct compromises this right, should victims be denied redress?

The answer to this conundrum lies not in the preservation of outdated precedents but in the evolution of legal accountability. A judiciary that upholds transparency and fairness must ask itself: *Should the protectors of justice remain above its reach?*

This paper seeks to unravel this legal paradox, analyzing whether the legal fraternity's insulation from consumer laws aligns with constitutional morality, international best practices, and the fundamental tenets of justice.

The Evolution of Legal Practice and Regulation in India

"The lawyer's duty is not only to his client but also to the court and the larger cause of justice." – Justice H.R. Khanna

The legal profession in India is an institution of formidable influence, a bastion of democratic ideals, yet paradoxically, it remains an enclave of self-regulation shielded from external accountability. This evolution has not been an organic refinement but a contested trajectory shaped by colonial imprints, statutory enactments, and a monopolistic regulatory framework that privileges professional autonomy over consumer rights. At the heart of this framework lies the Advocates Act, 1961, a statute that ostensibly sought to unify and professionalize legal practice but, in execution, has entrenched a closed-loop governance structure led by the Bar Council of India (BCI) – an entity often criticized for inefficiency, opacity, and its reluctance to enforce meaningful disciplinary action.

From the early Regulating Act of 1773, which conferred exclusivity upon British barristers, to the fragmented structures under the Indian Bar Councils Act, 1926, legal practice in India has historically oscillated between exclusion and regulation. However, the post-independence codification under the Advocates Act, 1961, consolidated legal practice under a singular category of "advocate" while centralizing regulatory power within the BCI. This statutory monopoly, far from ensuring judicial discipline, has fostered an insulated regulatory mechanism where the regulator and the regulated are indistinguishable – a construct that fundamentally undermines principles of public accountability.

The Bar Council of India, empowered under Section 4 of the Advocates Act, 1961, exercises sweeping control over professional conduct, legal education, and disciplinary enforcement. However, its adjudicatory inefficacy is evidenced by a staggering backlog of unresolved complaints. In two-judge Bench of Justice MR Shah and Justice BV Nagarathna issued directions for the speedy disposal of complaints filed against Advocates by the State Bar Councils and Bar Council of India. The Court took note of 1273 cases complaints pending disposal.¹³⁰⁹ Its failure to establish an independent grievance redressal mechanism has rendered consumer interests subordinate to professional insularity, leading to an acute crisis of trust in legal oversight. Unlike regulatory frameworks governing medical, financial, or engineering professions, legal self-regulation remains impervious to external checks, government oversight, or consumer protection laws – an anomaly that has emboldened calls for reform.

Judicial scrutiny has often exposed the BCI's deficiencies. In *Mahipal Singh Rana v. State of U.P.* (2016), the Supreme Court lamented the inertia of bar councils, emphasizing that their failure to discipline errant advocates erodes

¹³⁰⁹ <https://www.verdictum.in/court-updates/supreme-court/advocates-act-bar-council-of-india-state-bar-councils-1346118>

public confidence in the administration of justice. Similarly, in *Lalit Mohan Das vs. Advocate General, Orissa & Another*, AIR 1957 SC 250, this Court observed as under: "A member of the Bar undoubtedly owes a duty to his client and must place before the Court all that can fairly and reasonably be submitted on behalf of his client."

Thus, the Advocates Act, 1961, while an instrument of professional unification, has become an anachronistic shield against regulatory intervention. The absence of independent oversight and consumer grievance redressal mechanisms renders this regulatory architecture both insular and ineffective. If the legal profession is to uphold its duty as a pillar of justice rather than an insular fraternity, it must undergo systemic recalibration – one that aligns professional ethics with public accountability rather than perpetuating a monopolistic exemption from consumer scrutiny.

The Intersection of Consumer Rights and Legal Services

"Procedural law is not to be a tyrant but a servant, not an obstruction but an aid to justice." – Justice V.R. Krishna Iyer

The Supreme Court's decision in *Indian Medical Association v. V.P. Shantha* (1995) was a watershed moment in consumer jurisprudence, affirming that medical services fall within the ambit of consumer protection laws. Yet, the same reasoning has not been extended to legal services. The judiciary's oscillating stance is evident in *Bar of Indian Lawyers v. D.K. Gandhi* (2011), where the National Consumer Disputes Redressal Commission (NCDRC) held that legal services should be included within the Consumer Protection Act, 1986, only to be contradicted by later Supreme Court pronouncements that reinforced professional self-regulation. This judicial ambivalence has emboldened the Bar Council of India's resistance to external oversight, allowing it to function as both regulator and judge – an arrangement that breeds conflicts of interest, arbitrary enforcement, and systemic impunity.

At its core, the exclusion of legal services from consumer protection laws hinges on the flawed argument that advocacy is a "noble profession" rather than a commercial service. This rhetoric, however, disintegrates under empirical scrutiny. Lawyers charge fees, enter into contractual relationships with clients, and provide services with clear financial stakes – hallmarks of a commercial engagement that should warrant consumer rights protection. Moreover, legal malpractice is not a theoretical concern but a tangible reality.

At its preach the problem escalates when a major is understood that, when a client has any disputed conduct which is performed by the advocate, has to approach to the learned Committee established by the Bar Council having the jurisdictions, but the misconduct, even if proved still may divest the affected person from right to compensation. Only morality and professional ethics shall be adjudicated by the Bar and the case may not be adjudicated on the basis of monetary grounds. At its core this obstructs, and a major ground of difference arises as in Consumer Rights, you have compensation as a remedy which gets stripped when it comes before the Bar.

The Legal Profession as a "Service" Under CPA, 2019: A Critical Analysis

"The greatest threat to justice is the illusion of accountability." – Justice P.N. Bhagwati

The heart of this debate lies in a deliberate definitional ambiguity: Is legal practice a "contract of service", denoting an employment relationship, or a "contract for service", implying an independent commercial engagement?

4.1 The Definitional Conundrum: "Contract of Service" vs. "Contract for Service"

The Consumer Protection Act, 2019, under Section 2(42), defines "service" as:

"Service of any description which is made available to potential users and includes, but is not limited to, the provision of facilities in connection with banking, financing, insurance,

transport, processing, supply of electrical or other energy, board or lodging or both, housing construction, entertainment, amusement, or the purveying of news or other information."

However, Section 2(42) excludes "any service provided free of charge or under a contract of personal service". This exclusion forms the legal basis of the argument that legal services do not fall under the CPA, 2019. But does this hold up under critical scrutiny?

The Supreme Court, in *Indian Medical Association v. V.P. Shantha* (1995), clarified that a "contract of service" implies a master-servant relationship, while a "contract for service" implies an independent engagement where the service provider exercises discretion. It unequivocally held that medical services constitute a contract for service and thus fall under the consumer protection law. Given that legal services mirror medical services in their independent nature – lawyers are engaged for specific cases, set their own fees, and owe a duty of care – there is no principled reason to exclude them from consumer protection.

Yet, the judiciary has historically been reluctant to apply this logic to legal practice with particular justifications provided by the Judiciary. The judicial reluctance to subject legal services to consumer scrutiny is best illustrated in *Laljit Rai v. Attorney General of India* (2003), where the Supreme Court was asked to determine whether an advocate's negligence could be treated as a deficiency of service under consumer law. The petitioner argued that his lawyer's misconduct had led to financial and reputational loss, warranting compensation under the Consumer Protection Act, 1986. The Court, however, dismissed the petition on the grounds that:

1. Legal professionals owe a duty primarily to the court, not their clients;
2. Any misconduct by an advocate should be addressed by the Bar Council, not consumer forums; and

3. Lawyering is a profession, not a commercial activity, and thus cannot be subjected to consumer laws.

This reasoning exposes a glaring legal contradiction. If the primary duty of lawyers is to the court, then clients have no enforceable right to competent legal representation – a notion that is patently absurd in any rights-based legal system. Moreover, the argument that professional services are distinct from commercial services.

4.3 Should Lawyers Be Treated Differently? A Constitutional Morality Perspective

The exemption of lawyers from consumer protection is not just a regulatory anomaly – it is a constitutional aberration. Article 14 of the Indian Constitution guarantees equality before the law, yet by excluding legal services from CPA, 2019, the state grants lawyers a privileged immunity that no other profession enjoys. This exemption violates the constitutional principle of non-arbitrariness as established in *E.P. Royappa v. State of Tamil Nadu* (1974), where the Court held that "Equality is a dynamic concept with many aspects and dimensions and it cannot be 'cribbed, cabined and confined' within the traditional and doctrinaire limits. From the positivistic point of view, equality is antithetic to arbitrariness. In fact, equality and arbitrariness are sworn enemies... Where an act is arbitrary, it is implicit that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14."

Moreover, Article 19(1)(g) guarantees the right to practice any profession, subject to reasonable restrictions in public interest. Consumer accountability is one such reasonable restriction. If doctors, chartered accountants, and architects can be subject to consumer laws under Article 19(6), why should lawyers be exempt? The answer lies in a historical reluctance to disrupt the Bar Council's unchecked authority, rather than any legitimate constitutional rationale.

The Bar Council of India's Stance on Self-Regulation: A Critical Review

"Who regulates the regulators?" This is not merely a rhetorical question – it is the crux of the debate surrounding the Bar Council of India's (BCI) resistance to external oversight. The BCI's stance on excluding legal services from the Consumer Protection Act, 2019 (CPA, 2019) is not a principled stand to uphold judicial independence – it is an institutional power play that ensures lawyers remain insulated from the consequences of their negligence. The claim that subjecting lawyers to consumer law would erode judicial independence can be a legal fiction, devoid of empirical or jurisprudential merit.

The BCI's core justification for opposing the CPA's applicability to legal services rests on two arguments: first, that lawyers owe a primary duty to the court rather than the client, and second, that the Advocates Act, 1961, provides a comprehensive regulatory framework, making consumer law redundant. But these claims collapse when examined through a lens of legal precedent and fundamental rights. The duty to the court cannot be a cloak for professional negligence, for if that were the case, a lawyer who forgets a crucial filing deadline or fails to appear at a hearing could evade accountability under the pretext of judicial allegiance. The Consumer Protection Act, 2019, does not question a lawyer's strategic decisions or advocacy skills – it only seeks to redress gross incompetence, unethical practices, and clear-cut professional misconduct. If a doctor is held accountable for a botched surgery, why should a lawyer not be liable for grossly negligent representation that costs a client their business, liberty, or even life?

The BCI's opposition to consumer law is also based on fear-mongering, suggesting that clients will flood consumer courts with frivolous complaints, coercing lawyers into pleasing clients rather than upholding justice. This argument is legally and statistically indefensible. 33% of consumers who knew how

to complain said they would not go directly to their service provider because they did not trust the provider to handle it properly, 32% said it would take too long, 28% thought it might affect their bill and 14% said they were too hard to reach. Moreover, the CPA, 2019, provides safeguards against vexatious litigation, making this a non-issue designed solely to sustain the illusion of professional immunity. Is it so that, the BCI is less concerned about justice and more about protecting its monopoly over professional discipline. Under the current system, very few complaints filed with Bar Councils result in any disciplinary action, and even in cases where misconduct is established, the penalty is often limited to a slap on the wrist rather than meaningful redress for the aggrieved client. This raises a chilling question: Is the legal profession serving justice, or is it merely serving itself?

From a consumer rights perspective, the exclusion of legal services from CPA, 2019, is a fundamental denial of justice. Every year, thousands of clients suffer from poor legal representation, yet their avenues for redress are severely limited. The World Justice Project's 2023 Rule of Law Index ranks India 79th out of 140 countries in terms of access to legal remedies, and a key factor behind this dismal ranking is the absence of an independent grievance redress mechanism against legal professionals. The result? Clients who lose property disputes due to a lawyer's mismanagement, or are imprisoned due to procedural incompetence, have little to no recourse. In the absence of consumer protection, lawyers remain untouchable, even when they clearly fail in their duty of care. The profession, which prides itself on defending the rights of others, paradoxically denies its own clients the very protection it fights for in courtrooms.

Perhaps the most damning flaw in the BCI's regulatory structure is the question of monetary compensation. While the Bar Council has the authority to discipline errant advocates, it lacks any mechanism to grant financial compensation to aggrieved clients. This means that even in cases where a lawyer's negligence

is proved beyond doubt, clients are left to fend for themselves when it comes to recovering financial damages. The stark contrast between professional accountability and consumer redress is evident when we compare it with other professions. If a doctor is found guilty of malpractice, they may be ordered to pay damages to the victim. If a builder delivers a defective property, they must refund or compensate the buyer. But when a lawyer grossly mishandles a case, causing the client to lose lakhs or even crores, the maximum penalty they may face is a temporary suspension or a warning. In essence, the BCI's disciplinary mechanism ensures punishment for the lawyer but denies justice to the client. This is not a system of accountability it is a system of impunity disguised as self-regulation.

In any functioning democracy, professional regulation must serve the public interest, not professional exclusivity. The time has come to recognize that self-regulation in the legal profession is a failed experiment. The Consumer Protection Act, 2019, must be amended to explicitly include legal services, ensuring that clients have access to compensation for deficient services. The BCI, rather than resisting reform, must embrace transparency, independent oversight, and enforceable consumer rights. Legal ethics cannot be a fortress shielding lawyers from accountability – it must be a bridge that connects professional duty with consumer protection. Until this happens, the Indian legal system will continue to operate in a state of regulatory exceptionalism, where lawyers enjoy rights without responsibilities, and consumers bear costs without remedies. Justice, in its truest form, demands accountability, not immunity – and it is high time the BCI recognizes that the profession exists to serve justice, not the other way around.

The Case for a Hybrid Regulatory Framework: Balancing Professional Independence and Public Accountability

The debate surrounding legal regulation in India is not a simplistic battle between self-regulation and external oversight, nor is it merely an indictment of the Bar Council of India (BCI). Instead, it is a far more intricate and nuanced conflict between the fundamental need to preserve judicial independence and the equally pressing necessity to ensure that legal practitioners remain accountable to the public they serve. The BCI, established under the Advocates Act, 1961, has consistently maintained that lawyers should not be treated as mere service providers, arguing that their role as officers of the court necessitates an autonomous regulatory structure. This position, deeply rooted in constitutional jurisprudence, is not without justification. Lawyers play a pivotal role in upholding the rule of law, defending fundamental rights, and acting as intermediaries between citizens and the judiciary. Subjecting them to external regulatory interference, particularly from consumer protection bodies, risks reducing their professional standing to that of ordinary commercial service providers, which could, in turn, undermine judicial independence. However, the reality of modern legal practice cannot be ignored. The self-regulation model has led to significant gaps in accountability, raising pertinent questions about whether a more balanced approach—one that retains professional autonomy while ensuring robust oversight—is the need of the hour.

The idea that self-regulation has been an outright failure would be an unfair and overly simplistic characterization. The BCI has, over the years, played a crucial role in safeguarding the dignity of the legal profession, maintaining ethical standards, and ensuring that advocates adhere to their professional obligations. However, exclusive self-regulation is inherently susceptible to conflicts of interest, often leading to an opaque and ineffective disciplinary framework. One of the most glaring issues is the

lack of stringent enforcement in cases of professional misconduct. While the Advocates Act empowers the BCI and State Bar Councils to take disciplinary action, in practice, the system has been plagued by inefficiency, delays, and, at times, even a reluctance to act against powerful members of the legal fraternity. A closer examination of a case such as *R.D. Saxena v. Balram Prasad Sharma (2000)* reveals judicial recognition of these concerns, where the Supreme Court noted the sluggishness and ineffectiveness of the disciplinary mechanisms in dealing with errant lawyers. The problem does not lie solely with the BCI but extends to the fragmented nature of legal accountability itself. Unlike in other professions, where independent regulatory commissions exist to oversee misconduct, the legal field lacks a structured mechanism for impartial adjudication of complaints.

A comparative study of legal regulation worldwide illustrates that many jurisdictions have moved beyond the rigid dichotomy of self-regulation and government oversight, embracing hybrid regulatory models that balance professional autonomy with independent scrutiny. The United Kingdom, for instance, restructured its legal regulatory framework through the Legal Services Act, 2007, which established the Legal Services Board (LSB) to oversee the Solicitors Regulation Authority (SRA) and the Bar Standards Board (BSB). This model ensures that while legal professionals maintain their independence, there exists an independent authority to oversee their conduct and ensure public accountability. Similarly, in Australia, the establishment of the Legal Services Commissioner has provided an independent avenue for addressing professional misconduct while preserving the integrity of legal practice. The United States, with its decentralized regulatory framework, also provides an insightful precedent, where state bar associations operate independently but remain subject to review by state supreme courts. These hybrid models have proven effective in

maintaining the delicate balance between self-regulation and external oversight, offering India a potential blueprint for reforming its own system.

One of the most critical areas where self-regulation has struggled is in ensuring monetary compensation for clients who suffer due to legal malpractice. Unlike in cases of medical negligence, where compensation claims are routinely entertained, clients who suffer financial losses due to an advocate's misconduct often find themselves without recourse. The BCI does have mechanisms to take disciplinary action against advocates found guilty of professional misconduct, but this does not necessarily translate into financial relief for affected clients. The question, therefore, is not whether the BCI is unwilling to act but whether it possesses the necessary institutional framework to address such grievances effectively. This issue further highlights the necessity of a hybrid model where an independent tribunal could oversee both disciplinary actions and compensation claims, ensuring that clients are not left in a legal limbo when seeking redress.

While the BCI's reluctance to embrace external oversight may appear self-serving, it is essential to acknowledge that some of its concerns are legitimate. Allowing consumer protection laws to govern legal services in the same manner as commercial transactions could have unintended consequences, such as frivolous litigation against lawyers and judicial interference in the profession's autonomy. However, the solution does not lie in maintaining the status quo but in devising a more refined regulatory framework that safeguards both professional integrity and consumer rights. The establishment of an independent grievance redressal authority, as seen in jurisdictions like the UK and Australia, could provide a structured mechanism for handling complaints while ensuring that legal professionals are not subjected to unnecessary harassment. Such an authority could be constituted of retired judges, senior advocates, and independent legal

scholars, thereby preserving judicial independence while ensuring that accountability mechanisms function effectively.

Another often-overlooked aspect of the debate is the economic and ethical implications of professional misconduct. A study by the National Law School of India University (NLSIU) found that nearly 40% of clients who experience legal malpractice do not report it, either due to a lack of trust in the existing grievance redressal system or because they believe the process would be futile. This erodes public confidence in the legal profession and diminishes the rule of law itself. If justice is not only to be done but also to be seen to be done, then it is imperative to establish a regulatory framework that addresses both ethical violations and financial restitution in a transparent and accountable manner. The reluctance to adopt such a model stems not only from the BCI's resistance but also from the government's failure to engage in substantive dialogue with legal professionals to create a balanced reform strategy.

Ultimately, the issue is not about discrediting the BCI but about recognizing that its regulatory model was designed in a vastly different era—one where legal practice was not as commercialized, globalized, or technologically advanced as it is today. The legal landscape has evolved, and so must its regulatory mechanisms. The solution lies in a well-calibrated hybrid model that respects the independence of the legal profession while introducing necessary safeguards to protect public interest. Reforming the regulatory framework is not an act of undermining the profession but of strengthening its credibility in an era where public trust in institutions is more critical than ever. The time has come for a paradigm shift—one that acknowledges the strengths of self-regulation while incorporating the necessary checks and balances that modern legal practice demands. India must take cues from global best practices and build a model that is neither wholly self-regulated nor entirely government-controlled but instead one that embraces the virtues of both.

Potential Solutions: Reshaping Legal Regulation for a Balanced Future

Reforming the regulation of the legal profession in India is not merely a question of shifting control from the Bar Council of India (BCI) to an external authority. Instead, it requires a nuanced approach that recognizes the profession's unique nature while ensuring public accountability. The fundamental challenge is to create a system that preserves judicial independence while also addressing the inefficiencies and gaps in the current self-regulation model. Various solutions can be explored to strike this balance, each carrying its own set of advantages and challenges.

1. Establishing an Independent Legal Ombudsman: A Model for Transparency and Accountability

One of the most effective mechanisms for addressing grievances in the legal profession is the creation of an independent Legal Ombudsman—a body tasked with handling complaints against advocates, ensuring professional accountability, and facilitating financial compensation for clients affected by malpractice. This model has been successfully implemented in the United Kingdom through the Legal Ombudsman Scheme, established under the Legal Services Act, 2007. The Ombudsman serves as an impartial body that investigates complaints, holds legal professionals accountable, and mandates compensation where appropriate.

In India, such an Ombudsman could function under the oversight of an independent legal commission comprising retired Supreme Court and High Court judges, senior advocates, and legal scholars. Unlike the BCI's existing disciplinary committees, which have often been criticized for being slow and ineffective, an Ombudsman would offer a streamlined and transparent redressal mechanism. Additionally, its powers could extend beyond mere disciplinary action to ordering monetary compensation in cases of proven negligence—a

critical aspect missing from the current framework.

Furthermore, the Law Commission of India's 266th Report (2017) recommended the creation of independent regulatory bodies in various professions, including law, to improve accountability.

However, implementing this model in India would require amendments to the Advocates Act, 1961, which currently grants exclusive regulatory power to the BCI. The primary challenge would be ensuring cooperation from the legal fraternity, many of whom may resist external scrutiny. To address this, the Ombudsman could be structured as a co-regulatory body where representatives from the BCI, the judiciary, and independent experts collaborate to maintain fairness.

2. A Hybrid Regulatory Framework: Retaining Professional Autonomy While Ensuring Public Oversight

The legal profession in India operates within a constitutional democracy where unchecked power—whether governmental or self-regulatory—leads to inefficiencies and public distrust. A hybrid regulatory framework offers a middle path between complete self-regulation (as seen today) and absolute state control (which could compromise judicial independence).

Countries like Australia and Canada have implemented dual regulatory models where an independent oversight body works alongside bar associations to ensure that ethical and professional standards are maintained. In Australia, the Legal Services Commissioner (LSC) operates as an independent authority responsible for investigating complaints against lawyers, while professional bar councils retain jurisdiction over certain regulatory functions. Similarly, in Canada, the Law Society of Ontario collaborates with an independent Law Commission to handle professional misconduct cases.

In India, a Legal Regulation and Ethics Commission (LREC) could be established, comprising:

- BCI representatives to ensure professional autonomy
- Government-appointed experts to ensure public interest representation
- Independent legal scholars and retired judges to provide neutral oversight

This commission could act as a watchdog while allowing the BCI to continue overseeing legal education, bar examinations, and other core functions. Given that legal practice has grown far beyond traditional courtroom advocacy, the regulatory framework must also evolve accordingly.

3. Mandatory Professional Indemnity Insurance: Financial Protection for Clients

One of the glaring deficiencies in India's legal regulation is the lack of financial recourse for clients who suffer damages due to legal malpractice. Unlike the medical profession, where professional indemnity insurance is mandatory, lawyers in India are not required to carry liability coverage to compensate clients in cases of proven negligence or misconduct.

Professional indemnity insurance is a well-established mechanism in countries like the United Kingdom, United States, and Singapore, where lawyers must obtain coverage to protect clients from financial losses resulting from professional errors. In India, the introduction of such insurance could serve multiple purposes:

- Ensuring clients receive monetary compensation without the lengthy process of civil litigation
- Reducing the burden on courts by allowing out-of-court settlements through insurance claims
- Encouraging higher ethical standards, as lawyers would be accountable to insurers who assess their risk profiles

Legally, this could be mandated through an amendment to the Advocates Act, 1961, making professional indemnity insurance a prerequisite for bar council enrollment and renewal of practice licenses.

4. Strengthening Disciplinary Mechanisms: Reducing Delays and Increasing Transparency

One of the major criticisms of the BCI is the inefficiency of its disciplinary process. Cases of professional misconduct often take years to be resolved, and in many instances, the punishment meted out is either disproportionately mild or entirely ineffective. Strengthening disciplinary mechanisms is imperative to restore public confidence in the legal profession.

A solution to this would be the fast-tracking of disciplinary proceedings through the creation of special legal ethics tribunals modeled after Singapore's Disciplinary Tribunal System, where complaints against advocates are adjudicated within a strict time frame of six months. In India, these tribunals could operate under the supervision of High Courts, ensuring judicial oversight while expediting disciplinary actions.

5. Introducing Continuing Legal Education (CLE) Requirements: Ensuring Ethical and Professional Growth

Unlike in jurisdictions such as the United States, where lawyers must complete Continuing Legal Education (CLE) courses to renew their licenses, India has no formal requirement for periodic professional training. Many legal practitioners continue practicing for decades without updating their knowledge of evolving laws, ethical standards, and technological advancements.

The introduction of mandatory CLE programs under the supervision of both the BCI and an independent legal oversight body could help improve professional standards. These programs could include:

- Ethics training to reinforce professional responsibility

- Legal technology courses to prepare lawyers for modern litigation tools
- Client relations and accountability modules to enhance transparency in legal practice

The legal foundation for such a mandate can be drawn from the Vishaka Guidelines (1997), where the Supreme Court acknowledged the need for ongoing legal education to adapt to changing societal norms. If judges must undergo periodic judicial training, there is no reason why advocates should be exempt from similar obligations.

6. Reimagining Legal Service Regulation: A Two-Tiered Approach to Professional Accountability (Author's perspective)

Legal service regulation in India has long been debated, oscillating between the need for professional autonomy and the demand for consumer protection. The fundamental challenge lies in the heterogeneous nature of legal services—some aspects of an advocate's work are inherently unpredictable, while others are well within their control. The authors of this paper propose a two-tiered regulatory framework that categorizes legal services into two distinct classes:

1. Courtroom Advocacy Services – Services rendered before a court, tribunal, or other adjudicatory body where the outcome is not solely within the advocate's control but is determined by an independent third party (i.e., a judge or arbitrator).
2. Professional Legal Services – Services where the advocate exercises full control over the quality and outcome, such as drafting contracts, wills, legal opinions, unprecedented adjournment and filing court submissions.

This approach seeks to strike a balance between professional immunity and consumer accountability, recognizing that the one-size-fits-all regulatory model fails to address the nuances of legal practice. By distinguishing between these two service categories, a more equitable, enforceable, and efficient regulatory

mechanism can be established—one that respects the sanctity of the legal profession while ensuring that consumers of legal services are not left without recourse in cases of professional negligence.

1. Courtroom Advocacy Services: Regulating an Advocate's Role in Adversarial Proceedings

One of the defining attributes of the legal profession is the advocacy role played by lawyers in courts. When an advocate represents a client in litigation, arbitration, or adjudicatory proceedings, the outcome of the case is subject to multiple factors beyond the advocate's control:

- The judicial interpretation of the law
- The evidence produced before the court
- The arguments presented by the opposing counsel
- The discretionary powers of the judge or adjudicating authority

Given these variables, holding an advocate financially liable for an unfavorable outcome in litigation would be inherently unjust. No advocate, regardless of skill or diligence, can guarantee a particular verdict. The Supreme Court of India in *A.S. Mohammed Rafi v. State of Tamil Nadu* (2011) reaffirmed the principle that a lawyer cannot be penalized simply because they represented an accused in a criminal case, emphasizing that the role of an advocate is to ensure fair representation, not to determine the final outcome.

Since an advocate's role in litigation is adversarial and dependent on judicial discretion, it is imperative to grant reasonable professional immunity in such cases. This aligns with the doctrine of judicial immunity, which protects judges from personal liability for their rulings, as established in *Randolph v. Commonwealth* (1923) in the United States. Similarly, barristers in the UK enjoy immunity under *Hall v. Simons* (2000), where the House of Lords ruled that advocates should not be liable for negligence in their conduct of litigation.

A similar limited immunity framework for Indian advocates should be codified, ensuring that:

1. No advocate is held liable for an unfavorable judgment unless there is clear evidence of fraud, gross negligence, or malfeasance.
2. Advocates remain accountable for ethical misconduct, such as fabricating evidence, misleading the court, or abandoning a case without cause.
3. The BCI and disciplinary committees remain responsible for addressing breaches of professional ethics, but monetary compensation claims should be restricted in cases related to courtroom advocacy.

However, this immunity should not be absolute—a distinction must be drawn between honest advocacy and deliberate incompetence. If an advocate misses filing deadlines, fails to appear in court, or provides factually incorrect legal arguments due to negligence, they should be subject to professional penalties. In such cases, the client should have a right to recover legal fees paid to the advocate, similar to contractual breach principles in contract law.

2. Professional Legal Services: Accountability for Legal Work Where the Outcome is Within the Advocate's Control

In stark contrast to courtroom advocacy, certain legal services involve tasks where the quality, accuracy, and outcome are entirely within the advocate's control. These include:

- Drafting contracts, wills, and agreements
- Filing legal submissions in courts or tribunals
- Providing legal opinions on regulatory compliance, taxation, or corporate transactions
- Registering trademarks, patents, or property transactions

For these services, an advocate exercises full professional autonomy and is expected to meet certain standards of diligence and expertise. If an advocate drafts a legally defective contract,

files incorrect submissions in court, or provides misleading legal advice, their client should have a clear legal remedy for professional negligence.

A core principle of consumer protection law is the doctrine of professional duty of care, which holds that professionals must perform their services with reasonable skill and diligence. In *Hedley Byrne & Co Ltd v. Heller & Partners Ltd* (1964), the House of Lords established that professionals—including lawyers—owe a duty of care when providing advice or services that clients rely upon.

Indian courts have echoed similar sentiments. In *ICICI Bank v. Official Liquidator of APS Star Industries* (2010), the Supreme Court held that financial professionals, including legal advisors, must exercise due diligence when providing services that impact a client's financial interests. Extending this logic to legal practice, an advocate who drafts a faulty contract or files incorrect legal documents should be held financially accountable for the consequences of their negligence.

3. Challenges and Implementation Strategies

While the two-tiered model presents a balanced approach, implementing it requires addressing several challenges:

1. Legislative Amendments – The Advocates Act, 1961 and Consumer Protection Act, 2019 would need to be amended to distinguish between adversarial and non-adversarial legal services.
2. Defining the Scope of Liability – The BCI, judiciary, and legislature must define what constitutes negligence in each category, ensuring that advocates are neither unfairly penalized nor entirely immune.
3. Resistance from the Legal Fraternity – Many lawyers may oppose indemnity insurance requirements, fearing increased scrutiny. However, gradual implementation, starting with corporate lawyers and transactional advisors, could ease the transition.

Conclusion

A practical approach to reforming legal regulation in India involves creating a hybrid framework that balances professional independence with public accountability. Establishing an independent Legal Ombudsman would provide a transparent mechanism for grievance redressal and ensure accountability beyond self-regulation by the BCI. Implementing a two-tiered system for legal services, differentiating between courtroom advocacy and professional legal services, allows for tailored accountability. For professional legal services where the outcome is within the lawyer's control, standard consumer protection principles should apply. Making professional indemnity insurance mandatory would offer clients financial recourse for proven negligence without lengthy litigation. These steps, alongside strengthening disciplinary processes and introducing continuing legal education, offer concrete ways to enhance consumer rights and public confidence in the legal profession while preserving its essential autonomy. Ultimately, amending the Consumer Protection Act, 2019, to include legal services is a necessary step to achieve this balanced and practical reform.

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