



People's Watch

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Press release

People's Watch call for immediate withdrawal of the recommendations of the Madras High Court to the Advocates Act since they are contradictory to UN Basic Principles on the role of Lawyers

People's Watch strongly calls upon the Hon'ble Chief Justice and Judges of the Madras High Court to reconsider in public spirit its recommended changes to Section 34 of the Advocates Act. While at the outset reiterating that there is an urgent need for greater decorum and decency in the conduct of business within courts – both by the higher and subordinate judiciary as well as lawyers – this cannot and should not try to be achieved through such harsh amendments that are now being proposed.

The misconducts enumerated in the amended rules are :

- (i) an advocate who is found to have accepted money in the name of a judge or on the pretext of influencing him;
- (ii) an advocate who browbeats and/or abuses a judge or judicial officer;
- (iii) an advocate who is found to have sent or spread unfounded and unsubstantiated allegations / petitions against a judicial officer or a

- (iv) an advocate who actively participates in a procession inside the court campus and/or is involved in *gherao* inside the court hall or holds placard inside the court hall;
- (v) an advocate who appears in the court under the influence of liquor.

People's Watch would agree that it is extremely serious that one of the misconducts proposed deals with advocates who appear in the court under the influence of liquor. Yet another that it would agree to is the gheraoing of judges inside the court. It is a pity that this is the situation of courts in the state and that the judiciary has allowed it this to continue in the manner in which it has. But it is pertinent that the judiciary first responds to the following questions to justify its proposed unilateral process and amendments.

- how many occasions can the judiciary – high and subordinate in the state – indicate when advocates had come to court under the influence of liquor in the state ?
- have there been any such complaints made of advocates coming drunk to the court by the judiciary to the Bar Council of Tamilnadu and any action been denied by the Bar Council ?

The solution however to such issues even if they exist cannot be by the Higher Judiciary doing exactly what it condemns everyday through its various judgements about the arbitrary exercise of power by the executive. Principles of natural justice have also to be followed by the higher judiciary in its efforts to cleanse the system. The solution is only through a process of consultations with the Bar Council, the State Federation of Bar Associations of Tamilnadu, the

different High Court associations both in the Principal seat and in Madurai and ofcourse by ensuring that the Associations of women lawyers are adequately represented as well. In this case it has not been done at all and hence People's Watch considers it urgent and necessary for the proposed amendments to be withdrawn and discussed with the associations of lawyers from across the state before they are finalised.

These amendments, even according to the Chief Justice's statement are long delayed .

The amendments also refer to penalising lawyers for attempting to 'browbeat' judges or giving complaints to superiors about judges, leading to lifelong debarment from legal practice and proposing that as an interim measure courts can debar lawyers even before an inquiry. This is totally uncalled for.

The UDHR of 1948 recognizes as fundamental the principle that everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of rights and obligations and of any criminal charge. The ICCPR further guarantees that all persons shall be equal before the courts, and that in the determination of any criminal charge or of rights and obligations in a suit at law, everyone shall be entitled, without undue delay, to a fair and public hearing by a competent, independent and impartial tribunal established by law. A competent, independent and impartial judiciary is likewise essential if the courts are to fulfil their role in upholding constitutionalism and the rule of law. Public confidence in the judicial system and in the moral authority and integrity of the judiciary is of the utmost importance in a modern

democratic society. Hence it is essential that judges, individually and collectively, respect and honour judicial office as a public trust and strive to enhance and maintain confidence in the judicial system.

The Bangalore Draft Code of Judicial Conduct 2001 adopted by the Judicial Group on Strengthening Judicial Integrity, as revised at the Round Table Meeting of Chief Justices held at the Peace Palace, The Hague, November 25-26, 2002 reads as follows :

Judicial independence is a pre-requisite to the rule of law and a fundamental guarantee of a fair trial. A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects.

Application:

1.1. A judge shall exercise the judicial function independently on the basis of the judge's assessment of the facts and in accordance with a conscientious understanding of the law, free of any extraneous influences, inducements, pressures, threats or interference, direct or indirect, from any quarter or for any reason.

1.2. A judge shall be independent in relation to society in general and in relation to the particular parties to a dispute which the judge has to adjudicate.

1.3. A judge shall not only be free from inappropriate connections with, and influence by, the executive and legislative branches of government, but must also appear to a reasonable observer to be free therefrom.

1.4. In performing judicial duties, a judge shall be independent of judicial colleagues in respect of decisions which the judge is obliged to make independently.

1.5 . A judge shall encourage and uphold safeguards for the discharge of judicial duties in order to maintain and enhance the institutional and operational independence of the judiciary.

1.6. A judge shall exhibit and promote high standards of judicial conduct in order to reinforce public confidence in the judiciary which is fundamental to the maintenance of judicial independence.

While the primary responsibility for the promotion and maintenance of high standards of judicial conduct lies with the judiciary, it is common knowledge that we do not have such an assurance that the Chief Justice of Madras High Court can provide openly to the citizens of Tamilnadu. That unfortunately is the situation that prevails as of today. It is in this context of the inability of the Madras High Court to be able to publicly reassure the citizens of the state that they are in fact providing – all of them in the judiciary – high and subordinate - a competent, independent, impartial judiciary, that it becomes open to lawyers who are important partners in the court system to prefer complaints about judicial officers who are known to be indulging in corrupt practices. How can therefore preferring of complaints against the judges to their own superiors – in the absence of any meaningful redress system against corruption in the judiciary, be ever construed as a ‘misconduct’ ?

The advocates function individually and their associations are legal entities that also enjoy a right to association and assembly. Advocates have on the one hand a responsibility to their profession and to the country, its Constitution and to ensuring that the rule of law and the sovereign, socialist, secular democratic fabric of our republic is maintained and guarded. This is what we are told when judges address us reminding us of our role to provide legal aid to the poor. Earning our bread by appearing in court is therefore just one of the roles we have to perform in our profession. Lawyers do also have a social role that very often is forgotten but in Tamilnadu the situation is not so at all.

The right to association of bodies that have lawyers as its members and functions within court premises with its registered offices largely located in the court buildings , has a duty to respond to matters that it feels fall within its ambit. Lawyers have a duty to express and make known their opinion publicly to ensure adherence to the Constitution and its Preamble without hindering the proceedings in the Courts. It will therefore have to enjoy – like every other association its own right to associate, protest, dissent and criticize which also includes the right to take out processions within the court campus from where they function without disturbing the proceedings in court.

Doctors express their protest in the hospital premises. Students express their protest in the university premises. Government employees express their protest in the premises of their respective offices. Workers and trade unions express their protest inside and outside their place of employment Why then does it become illegal for lawyers functioning in courts throughout the year to express their

protest on matters of human rights violations happening in the country and that deal with their tasks as respectable citizens of the country within court premises through meetings, seminars, silent protests, fastings, dharnas etc. as long as it does not disturb the work in courts ?? India is a democratic country and lawyers are an important part of this vibrant democracy.

This construed 'mis-conduct' therefore has also to go. The UN Basic Principles on the Role of lawyers states that Governments shall ensure that lawyers

(a) Press release - People's Watch call for withdrawal of the recommendations of the Madras High Court to the Advocates Act'.) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference;

(b) are able to travel and to consult with their clients freely both within their own country and abroad; and

(c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics”.”

The Basic Principles stipulate that “Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities”. States shall also take measures to ensure that lawyers involved in the complaint or in the investigation of human rights violations are protected against ill-treatment, intimidations or reprisals.

The proposals of the Madras High court clearly amount to such a threat, intimidation, hindrance, harassment or improper interference in the functioning of lawyers and hence has to go. The Madras High Court will do better to paying attention to improving the standard of teaching in our Government law schools in Tamilandu on par with those in National Law Schools so that the quality of our lawyering and the competence of our judiciary will gradually change.

Henri Tiphagne
Executive Director.

Madurai 5th June 2016