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SC Ruled Legislators Can Continue Legal Practices

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The Supreme Court has ruled that legislators cannot be barred from working as lawyers.

Background

- Mr. Ashwini Upadhyay in December 2017, addressed a letter to Chairman of Bar Council of India (BCI) seeking debarment of MPs and MLAs from practicing law.
- However, the BCI sub-committee, formed in response to the letter, had ruled that legislators can be allowed to practice.
- Mr. Upadhyay had then petitioned the Supreme Court, challenging the permission to an individual to perform the dual role of a lawyer and a legislator on grounds of conflict of interest and violation of BCI rules.

Arguments Against Legislators as Lawyers

- Rule 49 of the Bar Council of India states that any full-time salaried employee, whether he or she belongs to a corporation, private firm, or the government, cannot practise as a lawyer before a court of law. No public servant can engage in the pursuit of any other vocation and certainly cannot offer his or her services as a lawyer while in service.
- In *Dr. Haniraj L. Chulani v. Bar Council of Maharashtra and Goa (1996)* the Supreme court held that a person qualified to be an advocate would not be admitted as one if he or she is in full-time or part-time service or employment.
- Lawmakers draw their salaries and pensions from the public exchequer and hence could be classified as “employees.”
- The work of a lawyer is a full-time activity. So is the work of MPs and MLAs; they are full-time members of Parliament and Assemblies. They have to take part in the proceedings of the House, meet people in their constituencies and address their issues. To facilitate their work, they are given all the perks like bungalow, car, office, salary. So, they should go and serve the people as India needs dedicated parliamentarians.

- MPs and MLAs who practise as lawyers take a fee from the petitioner and get their salary from the respondent, which is the Central or State government. This is a paradox, as they take public money and argue against the government. It can be also seen as a professional misconduct.
- There is also a conflict of interest as MPs and MLAs have the power to initiate impeachment proceedings against a judge, which means that they can pressurise the judge to give a favourable verdict when they plead before him or her in a case.

Arguments For Legislators as Lawyers

- Lawyers are articulate and known for logical thinking. Training in law helps them understand law and legislation better. Ultimately, the country has to be run in accordance with the rule of law.
- Advocates are governed by the Advocates Act and Bar Council Rules, which seek to impose certain restrictions on practitioners of law. The discrimination also lies in the fact that practitioners of other professions — engineers, doctors, etc. — don't face such restrictions under any legislation similar to the Advocates Act.
- The question that is often raised, specifically in the context of the legal profession, is a conflict of interest which arises when a lawyer accepts a brief from a corporate house and is a member of either House. Here, it is very clear that one cannot be appearing for a particular person and lobby for the person in the House.
 - However, this applies to everyone. Parliament is not the place for lobbying. If one has accepted money, or has benefited in any manner, or has been briefed in a particular matter, and has lobbied for that person in Parliament, that is illegal, immoral and unethical.
 - It applies equally to business entrepreneurs who are members of State Assemblies or Parliament. One can inform the Privileges Committee or Ethics Committee in the event of a transgression.

Supreme Court's Judgement

- Supreme Court said that legislators cannot be characterised as full time salaried employees as there is no relationship of employer and employee.
- It said the mere fact that legislators draw salary under the 1954 Act (The Salary, Allowances and Pension of Members of Parliament Act, 1954), or different allowances under the relevant Rules framed under the said Act, does not create an employer-employee relationship between the government and the legislators.
- The legislators are deemed to be public servants, but their status is "sui generis" (unique or different than the normal) and certainly not one of a full time salaried employee of any person, government, firm, corporation or concern as such.

- They occupy a special position so long as the House is not dissolved. The fact that disciplinary or privilege action can be initiated against them by the Speaker of the House does not mean that they can be treated as employees.
- Similarly, the participation of the legislators in the House for the conduct of its business, by no standards can be considered as service rendered to an employer.

Bar Council of India

- The Bar Council of India is a statutory body created by Parliament under the Advocates Act, 1961 to regulate and represent the Indian bar.
- It performs the regulatory function by prescribing standards of professional conduct and etiquette and by exercising disciplinary jurisdiction over the bar.
- It also sets standards for legal education and grants recognition to Universities whose degree in law will serve as qualification for enrolment as an advocate.
- In addition, it performs certain representative functions by protecting the rights, privileges and interests of advocates and through the creation of funds for providing financial assistance to organise welfare schemes for them.