

Professional Ethics in legal practice

An eye opener to commoners on the principles of Ethics that a legal practitioner has to follow

V. S. Biju*

The Profession of Law is a noble calling. It is one of the most brilliant learned and attractive professions. It needs not only high depth of learning but also a sense of social responsibilities which calls for the high and noble conduct. The Legal profession is the most independent profession. A member of the Legal profession never hesitates to condemn tyranny or injustice. A Lawyer stands for justice as he pleads for it. It is the equality of a Lawyer that he has the capacity to discover the true motives of his actions, and to present them in an accurate and forceful form. There he has to perceive not only head but heart too. These qualities which a Lawyer has to acquire by learning and training make him leader of the society.

Legal ethics is that branch of moral science which lays down duties for the observance of its members which he owes to the society, to the court, to the profession, to his brethren, to his client, to himself etc. The aim of Legal Ethics is to maintain the honor and dignity of the Law Profession.

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In India no statutory codification has yet been made on the point of professional ethics but some of the State Bar councils and the Bar Council of India have framed their own rules of professional conduct and etiquette which a Lawyer has to observe in his every day life.

A Lawyer should be jack of all trades but master of none, except the case which he is pleading in the court of Law. "A Lawyer must know everything about something and something about everything." (Lord Brougham). The Lawyer has to know about the human psychology. He has to act as a Psychologist

* The author, a practicing advocate of Karnataka High Court with a teaching background of law, explains in details the gamut of legal profession and the responsibility bestowed on various stakeholders in order to achieve the objective of the State to provide justice to all concerned. - Email: advocatebiju@yahoo.com

and has to watch constantly the mental behavior of the presiding officer and accordingly to adopt a line of action for the prosecution or for defense.

A Lawyer should continue to enjoy the confidence of his client, court and the Bar by his moral excellence. He should not betray the confidence and the interest of his client, of which he is the trustee. There are pitfalls of temptations at every step in the legal profession but it is only one's moral excellence which acts like a torch in darkness. We often talk of professional ethics which is nothing but an honest and truthful life. The character of a Lawyer should be beyond suspicion. It is therefore, necessary for a Lawyer, to cultivate truth, honesty and moral excellence above all things. Though morality does not pay in the beginning for his sustenance, ultimately it brings reputation which is highly paying to the profession. Judge Abbot Parry in his book "The Seven Lamps of Advocacy" mentions the qualities of an advocate which bring him success at the Bar. They are - Honesty, Courage, Industry, Wit, Eloquence, Judgment & Fellowship.

Indian Judicial system is partly the legacy of the British Rule in India. The best thing which the Britishers gave to this country is the Judicial System. The British Parliament passed the Indian High Courts Act 1861 (commonly known as the Charter Act), which enabled the Crown to establish High Courts in India by Letters Patent. These Letters Patent empowered and authorized the High Courts to make rules for enrolment of Advocates, Legal Practitioners and Attorneys (commonly known as Solicitors).

Systematic recruitment to the Bar started after the establishment of High Court of India. In 1865 under Letter Patent of High Court, the High Courts were given authority to make rules of qualification for admission to the Bar of Advocates, Vakils and Attorneys and they were also given power to suspend or remove any of them found guilty of professional misconduct. First three High Courts were

established in three Presidency towns of Calcutta, Bombay & Madras and they were given powers under Letters Patent. The Law relating to legal practitioner can be found in the Legal Practitioners Act 1879 (18 of 1879) The Bombay Pleaders Act, 1920 (17 of 1920) and the Indian Bar Councils Act 1926 (38 of 1926).

The Advocates Act, 1961 provides for an autonomous Bar Council in each State and an All India Bar Council (consisting mainly of the representatives of the State Bar Councils). Under the Act, a State Bar Council is to enroll qualified persons as advocates and prepare a roll of advocates practicing in the State, and thereafter a common roll of advocates for the whole of India is to be prepared by the Bar Council of India. The Advocates whose names are entered in the common roll would be entitled as of right, to practice in all the courts in India including the Supreme Court.

Section 49(1)(c) of the Advocates Act, 1961 empowers the Bar Council of India to make rules so as to prescribe the standards of professional conduct and etiquette to be observed by the advocates. Accordingly, the Bar Council included the rules regarding the standard of professional conduct and etiquette to be observed by advocates, in Chapter II of the Part VI of the Bar Council of India Rules.

These rules contain the duties of an advocate to the court, client, opponent and colleagues. The preamble of Chapter II of Part VI of the Bar Council of India Rules says. "An advocate shall, at all times, comport himself in a manner befitting his status as an officer of the Court, a privileged member of the Community, and a gentleman, bearing in mind that what may be lawful and more for a person who is not a member of the Bar, or for a member of the Bar in his non-professional capacity, may still be improper for an Advocate".

Fundamental duties of an Advocate towards Court, Clients, Opponents and colleagues

Duty to the Court:

- The Bar Council of India has made certain rules so as to prescribe duties of an advocate to the court in Section I of Chapter II of Part IV of rules of Bar Council of India.
- An advocate shall conduct himself with dignity and self respect at the time of presentation of his case and while otherwise acting before a court.
- An advocate shall maintain towards the courts a respectful attitude, bearing in mind that the dignity of the judicial officer is essential for the survival of free community.
- An advocate shall not influence the decision of the court by any illegal or improper means, private communications with a judge relating to a pending case are forbidden.
- An advocate shall use his best efforts to restrain and prevent his client from resorting to sharp or unfair practices or from doing anything in relation to the court, opposing counsel or parties which the advocate himself ought not to do.
- An advocate shall appear in court at all times only in the prescribed dress (uniform) and his appearance shall always be presentable.
- An advocate shall not enter appearance, act, plead or practice in any way before a court, tribunal or authority mentioned in Section 30 of Advocates Act 1961, if the sole or any member thereof is related to the Advocate (as father, grand father, etc). For the purposes of this rule, court shall ban a court, bench, tribunal in which above mentioned relation of an advocate is a Judge, member or presiding officer.

- An advocate shall not wear bands or gown in public places other than in courts except on such ceremonial occasions and at such places as the Bar council of India or the court may prescribe.
- An advocate shall not appear in or before any court or tribunal or any other authority for or against an organization or an institution or society or corporation, if he is a member of the executive committee of such organization or institution or society or corporation.
- An advocate should not act or plead in any matter in which he is himself pecuniarily interested.
- An advocate shall not stand as a surety or certify the soundness of the surety for his client required for the purpose of any Legal proceedings.

Duty to Clients:

- An advocate is duty bound to accept any brief in the courts or tribunals or before any authority in or before which he professes to practice at a fee consistent with his standing at the Bar and the nature of the case (special circumstances may justify his refusal to accept a particular brief).
- An advocate shall not ordinarily withdraw from any engagements once accepted, without sufficient cause or unless reasonable and sufficient notice is given to the client.
- An advocate shall not accept a brief or appear in a case in which he has reason to believe that he will be a witness and if being engaged in a case, it become apparent that he is a witness on material question of fact, he should not continue to appear as an advocate, if he can retire without jeopardizing his client's interest's.
- An advocate at the commencement of his engagement and during the continuance thereof should make all, full and frank disclosures to his client relating to his connection with the parties.

- An advocate shall fearlessly uphold the interest of his client by all fair and honorable means without regard to any unpleasant consequences to himself or to any other.
- An advocate appearing for a prosecution in a criminal trial shall so conduct the prosecution that it does not lead to conviction of the innocent. The suppression of material capable of establishing the innocence of the accused shall be scrupulously avoided.
- An advocate shall not directly or indirectly, commit a breach of obligations imposed by Section 126 of The Indian Evidence Act.
- An advocate shall not at any time be a party to fomenting of litigation.
- An advocate shall not act on the instructions of any person other than his client or his authorized agent.
- An advocate shall not stipulate for a fee contingent on the results of litigation or agreed to share the proceeds thereof.
- An advocate shall not buy or traffic in or stipulate for or agree to receive any share or interest in any actionable claim.
- An advocate shall not directly or indirectly, bid for or purchase either in his own name or in any other name, for his own benefit or for the benefit of any other person, any property sold in the execution of a decree or order in any suit, appeal or other proceedings in which he was in any way professionally engaged.

Duty to Opponent:

- An advocate shall not in any way communicate or negotiate the subject matter of controversy with any party represented by an advocate except through that advocate.
- An advocate shall do his best to carry out all legitimate promises made to the opposite party even though not reduced to writing or enforceable under the rules of court.

Duty to Colleagues (other advocates):

- An advocate shall not solicit work or advertise either directly or indirectly, whether by circulars, advertisement, touts, personnel communications, interviews etc.
- An advocate shall not permit his professional services or his name to be used in aid of, or to make possible, to the unauthorized practice of Law by any agency.
- An advocate shall not accept a fee less than the fee taxable under the rules, when the client is able to pay the same.
- An advocate will not enter appearance in any case in which there is already a vakalatnama or memo of appearance filed by an advocate engaged for a party, except with his consent; incase such consent is not produced he shall apply to the court stating reasons why the said consent could not be produced and he shall appear on after obtaining the same.

From power of love to spirituality

When the power of love is greater than love for power; the word shall know peace / Bring happiness to every encounter in life / Allow life and all its abundance to come to you / Take pleasure from what you possess without being attached to these things / Extend your perspective beyond just your senses / Live in a conscious and continuous state of gratitude and bliss / Train your mind and body to live without suffering / Awaken to new possibilities and your Divine magnificence! / Worries are new interludes in happiness!!! / The **Thoughts** thinking the **Thinker** cause suffering / "True spirituality is a mental attitude you can practice at any time."

Dalai Lama