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Ethical Lawyering: A Way to Uphold the Nobility of the Legal Profession

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ABSTRACT

The Ethics has to be the way of Life for any individual, especially, Professionals. Professional Misconduct is an act of Advocate which transgresses the boundary of decency and well-established norms laid down by the Bar Council of India. The Civility in the Professional life is unarguably the important trait of any Advocate. Any Act of defiance of rules by the member set up by the Statutory Body is a serious issue for the entire legal Profession. The Standards of Professional Conduct and Etiquette laid down by the Bar Council of India includes various duties which the advocates owe towards the Court, Client, opponents, colleagues and the society. The Advocates Act 1961 has laid down the provisions relating to the disciplinary committees and procedure to be adopted for the disciplinary proceedings against the advocates. The Researcher discusses the contours of the Professional Misconduct as determined from the analysis of the case laws and Reports of Law Commission of India. The Researcher also delves into rules and statutory provisions governing the Standards of Professional Conduct expected from the Advocates. The appropriateness of present procedure and punishment is also discussed. The Researcher concludes the paper with the suggestions so that the incidents of delinquent behavior can be brought down significantly.

Keywords: *Misconduct, Advocate Act, Bar Council of India*

I. INTRODUCTION

The Professional ethics is the standard of conduct set out by any Organization or Professional body for its members. The body of Advocates, which determines the standard of conduct for the members, is the Bar Council of India. The Standards of Professional Conduct and Etiquette are part of Chapter II of the Bar Council of India Rules. The Rules are drafted owing to the powers vested in the Bar Council of India under the section 49(1) (c) of the Advocates Act, 1961. The Rules lay down explicit duties of the Professionals towards Court, Client, Opponents, Colleagues and Society. The rules laid down by the Bar Council are not exhaustive. The Legal Profession is a noble Profession. In this spirit, the specifics left out in the rules

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should be covered. The Ethical Conduct of the lawyer should not be determined solely by his commitment to bring favorable results for the client².

The Professionalism of the lawyer demands him/her to clearly communicate to the client, the commitments, he/she owes towards the Court. The Legal Professionals are the edifice of the justice delivery system. They enable the courts in deciding the matter on merit basis. Clients approach the Advocate with a sense of faith in him/her. The Advocate should display a zealous attitude while defending the client and should be enthused to protect the interest of the client within the four corners of the Law³. The Advocates acts as an important intermediary between different stakeholders of the justice delivery system. It is inevitable that the expected level of ethics among the Legal Professionals is not the same as any other individual. Lawyers, by virtue of being officers of the court, should display a character which should strengthen the belief of the Common Man in the justice delivery system.

The kind of responsibility which an advocate carries on his/her shoulders is not a normal one. The Lawyers are the torch bearer of justice, apart from the judiciary, which has the responsibility of giving the judgment. The sense of responsibility with which lawyers will assist the judiciary in the dispensation of justice will determine the future of the Legal System across all the jurisdiction. The ethics cannot be measured in terms of any numerical manner. The ethical standards can be assessed on the basis of the conduct of the members of the legal fraternity. The harmonious relationship of the Bar and Bench can also be one of the parameters to measure the ethical standards of the members of the Bar.

II. SEVEN LAMPS OF ADVOCACY

The Character is a broader trait. It cannot be only seen within the narrow passage of morality. The spectrum of ethics should be seen in the broader aspect. The Civility displayed in the personality of the Legal Professionals help in upholding the stature of this noble profession⁴. The Characteristics for an ideal Advocate have been proposed by the Judge Abott Parry. Honesty as the Characteristic often appear as a simplistic value to the masses. The credibility of the legal profession gets reinforced by the display of this important virtue. The Trust in Legal system is vital for the strengthening of the democratic values for any Nation. The Gandhian principle of honesty appears to be tough to be followed in its literal sense. However, the honest behavior from the Advocate community towards client and court can go long way in reinstating

² Roger Clifford Clapp, 'Ethics for Advocates: An Overdue Conversation' (2010-2011) 80 *Supra* 9

³ Sharon Dolovich, *Ethical lawyering and the possibility of integrity*, 70 *FORDHAM LAW REV.* 1629-1687 (2002).

⁴ American Bar Association, *Essential Qualities of the Professional Lawyer* (2016) <www.shopABA.org> accessed 2 July 2018.

the lost pride of the common man. Gandhiji was of the firm view that advocates should keep the honest behavior, above all the perks offered by legal profession⁵.

Courage as an attribute is another trait of the advocate. To fight for the Dharma and Righteousness, need courage. The advocate community has to confront the regular threat, just because of pursuing a public cause. Without the correct ethical subset in the Advocate, the profession can have its old sheen lost under the threat of fear. In the pursuit of justice, often there are many roadblocks. In the times, when moral values in the society is somewhere going through its lowest point, it is important that the important stakeholder of the justice delivery system, should try to raise

The hard work is the virtue and must have attribute for the Advocates⁶. In today's era, when technology is making resources available on the desktop/ laptop at the spur of click of the mouse, the requirement of hard work as an attribute doesn't get lesser. The Industry is one of the Lamps or characteristics for the Advocate, proposed by Judge Abott Parry. A Lawyer needs to put in hard work in preparing the well-researched draft before appearing in the Court for the Case. The appearance of the Advocate should be coupled with legal arguments. The Pleadings should be prepared with the usage of technical tools. The use of legal databases provides ease for the research. However, that search of the databases also requires persistence and hard work.

The Wit of the Advocate derives attention of the Court towards the well drafted and prepared arguments. The Legal Proceeding is the serious business. The argument stage see the advocates, at times, carried away, while pursuing the cause of their client. The Wit, at times, enables the stakeholders in the process to be relieved during the high tempered arguments. The contours of the wit, at times, go beyond the discussion at hand. Apart from lightening the tensed environment of the courtroom, the wit has the potential of bringing, the various stakeholders, in the whole process very close to each other. To create the bonhomie within different stakeholders of the legal profession is very important for the society and it is not an exaggeration to say this trait somewhere is helping in bridging the gap.

The Eloquence has been attributed as another important characteristic for the Lawyers. The brevity of expression, capturing the gist of important points in argument, is an art, which an advocate should culture. The Clarity of expression, with a power, to enable others to listen, is a required trait for the legal professional. The Power to fluently put across the views is an

⁵ Ashutosh Sharma, 'Mahatma Gandhi on Law and Lawyers | Perspective - TheLeaflet' (The Leaflet, 2019) <<https://www.theleaflet.in/mahatma-gandhi-on-law-and-lawyers-perspective/>> accessed 4 July 2020.

⁶ Orowhuo WA Okocha, 'Hardwork and Patience : Virtues Every Lawyer Must Possess to Succeed' THISDAY (2018) <<https://www.pressreader.com/nigeria/thisday/20180501/281831464352222>> accessed 4 July 2019.

important trait of the advocate. However, judicious use of the power of eloquence in upholding the truth, should be the motive of the advocate. To use the fluency of the language in camouflaging the lies, will never do good for this noble profession.

Judgment is an important characteristic of the advocate. It is presupposed that the Advocate will exercise his or her own judgment while handling any case, and refrain from blindly follow the footsteps of the other⁷. It enables the advocate to analyze the intricacies of the brief handed over to advocates. The Trait is cultured over the years of experience in handling of different cases. There are different stages of the trial in any case. The ability to take decisions at the critical moments, hones this skill of the advocate further. Providing an estimated picture of the course of trial, after the submission of the brief, is derived from years of experience at the bar. Taking advantage of the fiduciary relationship and promising unachievable results is against the ethical standards of the Profession.

The Advocate community should understand that they are the members of the bar and share a bond of brotherhood among themselves⁸. The feeling of brotherhood should enthuse them to work for the legal profession as a whole, rather than merely servicing their interests. The lamp of fellowship enables the lawyers, not to see the other lawyers, as their adversary, while arguing any case. There may be a situation where the advocates may fiercely contest the arguments of other party and may often be carried away while putting across their point. However, the trait warrants that the feeling of oneness with the other colleagues should never be lost.

III. MISCONDUCT

The definition of misconduct is not provided in the Advocates Act. The Legislation governing the advocates, the Advocates Act, directly provides for the procedure to be adopted in the cases of Professional Misconduct. The Bar Council of India Rules are not of much help, when it comes to the definition of Professional Misconduct. However, Bar Council of India Rules, lay down the norms, which the members of the community, should adhere to. The Law Commission prescribes transgression of the standards laid down by the statutory bodies as the Misconduct by the Advocates. The Chapter XV of the 266th Report of Law Commission of India, discusses the instances of misconduct by the Advocates. It also recommends the laying down of the definition of Misconduct in the Advocates Act. The Advocates indulged in taking money from the client in the name of bribing the judges, soliciting the client, non-appearance

⁷ Bar Council of India, 'Rules on Professional Standards «The Bar Council of India' <<http://www.barcouncilofindia.org/about/professional-standards/rules-on-professional-standards/>> accessed 4 July 2020.

⁸ Hon'ble Mr. Justice F.M. Ibrahim Kalifulla, *Legal profession: challenges and prospects & the art of advocacy* 1–25 (2013).

despite accepting the brief from the client, withdrawal of the case without intimating the client⁹, making open threat to the judges in the court¹⁰, influencing the witnesses, colluding with the prosecution in derailing the trial¹¹, are the instances where advocates have been found responsible for Professional Misconduct. The Advocates are expected to act in a dignified manner¹², and avoid any kind of Private communication with the judges¹³, pertaining to the case, in which the concerned advocate is appearing. An advocate should refrain from attending to the clients, who insists that the advocate should resort to the unfair means. The expected Professional standards from the Advocates goes to the extent that he/ she will represent the client, before the court, in the proper attire and will not wear band and gown, mandated during the court proceeding, at public places other than courts.

The Legal Professionals are expected to adhere to certain standards, while dealing with the client. The Advocate, who is approached with the brief, should not refuse it, unless there are sufficient reasons, not to go further ahead with the brief. After taking up the case, the advocate should not indulge in taking unnecessary advantage of his position. The Advocate, who is approached with the brief, should make full disclosure of any interest, he/ she is having in the matter, taken up by him/her. The Advocate is expected to pursue the case, in such a manner that no innocent should be convicted, by suppressing any material evidence, during the trial.

IV. PROCEDURE FOR DEALING WITH THE COMPLAINTS OF MISCONDUCT

Chapter V of the Advocates Act deals with the conduct of the Advocates. When the State Bar Council receives a complaint against the misconduct of the advocate, and the State Bar Council has the reason to believe about the genuineness of the complaint, it can hand over the complaint, for the further proceeding to the disciplinary committee¹⁴. Section 9 of the Advocates Act, 1961 mentions about the Constitution of the Disciplinary Committee. Section 42 of the Act mentions about the Powers of the Disciplinary Committee. The Powers akin to the Civil Court are vested in the Disciplinary Committee, in order to ensure the presence of the witness, discovery of the documents, to receive the evidence on affidavits and other procedural necessities to arrive at the conclusion regarding the guilt of the advocate.

The disciplinary committee shall fix a date of hearing and shall give the notice to the Advocate,

⁹ An Advocate vs. Bar Council of India 1989 Supp(2) SCC 25

¹⁰ In Re : Vinay Chandra Mishra , (1995) 2 SCC 584

¹¹ R.K. Anand Vs. Registrar, Delhi High Court, (2009) 8 SCC 106

¹² Rule 1 of the Chapter II, Part VI of the Bar Council of India Rules

¹³ Rule 3 of the Chapter II, Part VI of the Bar Council of India Rules

¹⁴ Section 35(1) of the Advocates Act, 1961

who have been charged with the misconduct¹⁵.

The Committee can issue various orders against the advocate, depending upon the seriousness of the charges against the Advocate. The Punishment ranges from the simple order of reprimanding the advocate to Suspension of the practice. In the cases, where the misconduct was found to be serious, the recommended punishment, in the Advocates Act is removing the name of the delinquent advocate from the rolls. The disciplinary action before the Bar Council of India is also on the similar lines as mentioned under section 35 of the Advocates Act, 1961. The State Bar Councils are expected to dispose of the disciplinary proceedings expeditiously, not later than one year¹⁶. The Proceedings get transferred to the Bar Council of India, if the disciplinary committee of the State Bar Council is not able to dispose of the case within the time limit of One year. The Disciplinary Committees have been empowered to review its own orders, either on their own or on any application being made in this regard¹⁷.

The aggrieved party can appeal to Bar Council of India, within 60 days from the date of communication of the order, against the decision of the lower adjudicatory authority¹⁸. The Person aggrieved by the order of Bar Council of India can further appeal to Supreme Court, within the statutory period of 60 days¹⁹. The appeal preferred by the aggrieved person will not serve as the stay for the order of the lower appellate authority²⁰. However, the Bar Council of India and the Supreme Court of

India can order for the stay of the order delivered by the lower adjudicatory authority. Similarly, on application being made by the aggrieved party to the adjudicatory authority, can provide the relief of stay to the aggrieved party.

The nature of the proceedings relating to the Misconduct is Quasi – Criminal. The expected level of proof required to prosecute the accused is beyond reasonable doubt rather than relying on Preponderance of Probabilities as being looked into the Civil Proceedings. The transgression of the thin line from the tolerable negligence to culpable negligence, needs to be looked into, while hearing the matters pertaining to the professional misconduct, under the Advocates Act, 1961. The accused Advocate should be provided the benefit of doubt, in absence of the charges against him/her proved beyond reasonable doubt²¹.

¹⁵ Section 35(2) of the Advocates Act, 1961

¹⁶ Section 36B of the Advocates Act, 1961

¹⁷ Section 44 of the Advocates Act, 1961

¹⁸ Section 37 of the Advocates Act, 1961

¹⁹ Section 38 of the Advocates Act, 1961

²⁰ Section 40 of the Advocates Act, 1961

²¹ An Advocate vs. Bar Council of India, AIR 1989 SC 245

V. CONCLUSION

The Analysis of the judgment and provisions of the Advocates Act 1961 and Bar Council of India Rules, drafted using the powers vested in Bar Council of India, under Section 49(1)(c) of the Advocates Act, 1961, goes on to show, that there is well established procedure laid down by the legislators to deal with the Misconduct of the Advocate. The Legal Profession is a noble profession, as it enables the legal professional to be an enabler, in the justice delivery process.

At times, it is seen that there is a gradual decline in the professional ethical conduct of the Advocates. The unruly behavior towards the presiding officers of the courts, is a matter of great concern. The punishment prescribed in the Advocates Act, 1961, is not being meted out in true spirit. The Disciplinary Committee is empowered to even award the punishment of removal of names of the advocate from the rolls. However, this appear to be a serious punishment, directly affecting the livelihood of the Advocates. It is generally seen that the adjudicatory authority refraining from taking the harsh view of the actions of the delinquent advocate. The constitution of the Disciplinary committee, is also seen as a hindrance, in checking the belligerent advocate. The disciplinary proceeding are often seen as an internal affair of the bar. Though there are appeal provisions available, wherein the final appeal can be to the Supreme Court. However, the role of the disciplinary committee, assumes huge importance, as after all these committees are responsible for the proper investigation and inquiry relating to the matter at hand. The appellate authorities often take up the Question of Law in the matters reaching out in appeal.

The ethical standards of the Lawyers needs to be kept high, due to the nature of profession. The Professional are responsible to enable justice to the masses. It should evoke passion and empathy among the fellow members while taking up any case. The Advocate should not bow down to any threats confronting him/her in pursuance of justice for the client, within the four corners of the law. This is a tough time to uphold the ethics of this noble profession, in light of the challenges confronting the professionals. However, social churning and perseverance should not stop the human trust to better itself.

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