

SOCIAL RESPONSIBILITY OF ADVOCATES

Mrs. Barkha Dwivedi

Research Scholar (Law), LNCT University, Bhopal, Madhya Pradesh (M.P), India

Dr. Sudeepa Jaiswal

Assistant Professor of Law, LNCT University Bhopal, Madhya Pradesh (M.P), India

Abstract

An Advocacy is an honorable, noble and dignified profession in present time. The legal profession is one of the most brilliant, learned and challenging profession. In advocates stands for justice more than a judge, as he pleads for it. The profession of law needs not only high depth of knowledge of law and other social sciences but also sense of social responsibilities who calls for high and noble conduct. It has been universally understood, whenever there is an organized Bar assisting in administering justice the learned profession is not a money-making trade are scramble for porter age but a branch of the administration of justice.

Keywords

Legal Profession; Professional Ethics; Social Responsibility; Advocacy; Administration of Justice.

1. Introduction

The legal profession is a different from other profession in that what the lawyer do, affects not only an individual but the administration of justice. Which is the foundation of civilized society both as a leading member of the intelligential of the society and as a responsible citizen, the advocates have to conduct himself as a model for other both in his profession and in his private public life. The society has a right to expect of him such ideal behavior it must not be forgotten that the legal profession has always been held in high esteem and its members have played an enviable role in public life. The regard for the legal and judicial system in this country is in no small measure due to the tiredness role played by the stalwarts in the profession to strengthen.

Advocates took their profession seriously and practiced it with dignity, difference and devotion. If the profession is to survive, the judicial system has vitalized. No service will be too small in making the system efficient, effective and credible. The present trend unless checked is likely to lead to a stage when the system will be found wrecked from within before it is wrecked from outside. It is for the members of the profession to inspect and to take the corrective steps in the time and also spare the courts the unpleasant duty.

In **Preeti Gupta and another v/s state of Jharkhand and another case**¹ the Supreme Court observed that learned members of the Bar have enormous social responsibilities and obligation to ensure that social fiber family life is not ruined or demolished. The member of Bar who belong to a noble profession must maintain its noble traditions and should treat every complaint under section 498 A as a basic human problem and must make serious endeavor to help the parties arriving amicable resolution of that human problem. Advocates must discharge their duties to the best of their abilities to ensure that social fiber, peace and tranquility of the society remain intact.

Advocate allows our professionals not only to grow as individuals and collectively but also the chance to take an active role in the advancement of society. Social responsibility is essentially an argument about the limits that apply to the fundamental moral obligation that lawyers have to faithfully play their role in larger legal system.

¹Preeti Gupta and another v/s state of Jharkhand and another, AIR 2010 SC 3363

Advocacy: Skill and Acts 533 itself has certain high traditions which its members are expected to upkeep and uphold. In the words of **Justice Krishna Iyer in Bar Council of Maharashtra v. M.V. Dabholakar**², the role of advocate has been appreciated as under: The Bar is not a private guild, like that of barbers, butchers and candlestick makers but, by bold contrast, a public institution committed to public justice and pro bono public service. The grant of a monopoly license to practice law is based on three assumptions: -

- a) There is a socially useful function for the lawyer to perform,
- b) The lawyer is a professional person who will perform that function, and
- c) His performance as a professional person is regulated by himself and more formally, by the profession as a whole. The central function that the legal profession must perform is nothing less than the administration of justice. ('The Practice of Law is a Public Utility'. The Lawyer, the Public and Professional Responsibility', by F. Raymond Marks et al Chicago American Bar Foundation, 1972 pp. 288-289).

A glance at the functions of the Bar Council, and it will be apparent that a rainbow of public utility duties, including legal aid to the poor is cast upon these bodies in that national hope that the members of this monopoly will serve society and keep to canons of ethics befitting an honorable order... If these are the high expectations of what is described as noble profession of advocates, they should set an example of conduct worthy of emulation. Since the duty of an advocate is to assist the Court in the administration of justice, the practice of law has a public utility flavour and, therefore, he must strictly and scrupulously abide by the code of conduct behaving the noble profession and must not indulge in any activity which may tend to lower the image of the legal profession in society.

Provisions contained in Chapter II in Part VI of the Bar Council of India Rules, 1975 prescribe 'Standards of Professional Conduct and Etiquette'. In the Preamble to this part, it is stated that 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 society, and a gentleman, bearing in mind that what may be lawful and moral 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. An advocate is an officer of the Court and being so, the Court generally acts on the statements of advocates.

Thus, it is the duty of an advocate to assist the Court in due administration of justice. Consequently, an advocate is required to be absolutely fair to the Court. He should make accurate statements of facts and should not twist the facts. He should not misguide the Court by suppressing the relevant facts. If an advocate suppresses the facts that earlier an identical petition has been dismissed by another Bench of the High Court, it would amount to professional misconduct. Feeling about the prospects of legal bright future as it is overcrowded and usually those persons join the legal General profession is that it has no profession, who do not secure entry in service or other profession/business. However, this feeling should be discarded by those legal persons who can devote their whole time to this profession with devotion and act with tact and full preparation of the case on grounds of facts and law.

2. Other Fundamental Values

Studying Law for A Career³ A few issues emphasized is as under: Law as profession in the 21st century and with a march in the field of globalization has ceased to be a traditional profession. The days are gone when taking instructions in law could be an evening pastime. There were part-time teachers. Attendance could be by proxy and learning by heart a few questions and answers from guides or solved papers, for a month or two before taking examination, could suffice for passing. Mostly practice in law was considered to be hereditary where son having got a degree in law would inherit his father's lucrative practice and continue the same for

²Bar Council of Maharashtra v. M.V. Dabholakar, AIR 1987 S.C. 242

³Legal Education and Legal Profession-An Introspection, Shri B.R. Nahata Memorial Lecture Delivered by Justice R.C. Lahoti, Judge Supreme Court of India (As he then was), AIR Journal 2002, 83.

good or bad. Now, with the introduction of National Law Schools and five-year full-time law courses, law is a specialized field of education.

All good law schools and colleges have introduced entrance examinations where students are admitted by competitive test and on merit. Clinical education having been imbibed into course of study, a degree in law dispenses with need for practical training afterwards. A degree holder in law is almost equipped to embark into practice just as his counterparts in medical profession, engineering or chartered accountancy. With the indulgence shown by the Bar Council of India, armed with statutory power given to it by the Advocates Act, 1961, course of study in law is so designed as to meet the requirement of those who wish to take profession seriously by aiming at becoming lawyers and not by chance. Education in law is no more an option of last resort. It is now a coveted course of professional education.

A conventional lawyer used to develop more or less personal relationship with the client. He would be engaged by client to draft a plaint or a written statement and to act or plead for him only in Court of law. There were trial and appellate lawyers. In any case, their activities were confined to Court room preceded or followed by consultation and study in chambers or residential office. Now the role which a lawyer assumes is of a policy planner, a business advisor, a negotiator between groups having common interests, an expert in articulation and communication of ideas, a mediator, a lobbyist, a law reformer. With the widening horizons in the field of litigation and hitherto unknown fields entered into by lawyers and Courts of law such as sustainable development, environment sciences, cyber space law, genetic engineering professional negligence, international legal disputes and intellectual property matters, one cannot think of becoming a successful lawyer solely by learning the law. He has to learn allied sciences and sources of knowledge. To defend a doctor in the case of professional negligence, the lawyer ought to know something about medical science. To settle environmental disputes knowledge of bio-diversity and biotechnology is a must.

To draft documents and treaties with international ramifications, the lawyer ought to have a command over language and learn the art of articulation. All this requires a wide range of learning, continuing specialize. Education and choosing the field of practice wherein one would like to I would like to give a few tips to my young friends, the law students: -

- a) **Work Hard:** - The saying, as old as the legal profession itself, is that there is no roval road to success in profession. In law, to aim success, one has to live like a hermit and work like a horse. If you propose to choose law as a career, be prepared for incessant hard work for all times to come. Remember nobody has felt tired or worn out by work. Rather, more you do, the more it adds to your capacity to work.
- b) **Be Physically Fit:** - Vivekanand said a healthy mind lives in healthy body. To copy with ever mounting pressure of work which the success in profession would tell upon you, prepare for that tomorrow from today only. You must have a sound physique and healthy body to bear the burden of higher responsibilities and facing the challenges of the strenuous profession.
- c) **Value the Time:** - The most precious thing of the world is time. It is said: time and tide wait for none. Advancements in the field of science and teratology have converted time into a commodity. You pay our telephone charges by time. You can purchase hours on Internet. In the big cities the lawyers charge their fees at a certain amount per hour or even per minute. In legal profession time, talent and wisdom are marketable commodities. They are displayed in the showcase and purchased by one who can afford to pay the price. Just as raw material has to be preserved and can be available for producing the finished product, so in legal profession time has to be saved for utilization in delivering the finished product.
- d) **Knowledge of English Language:** - My mother tongue is Hindi and an Advocate spreading the knowledge and recognition of Hindi. But the fact cannot be denied that English has become the chief global language. The world over it has been accepted as the link language. The only language known to computers, in the world around, is English. Lucrative job opportunities in foreign countries or the multinationals arriving

in India are open to young boys and girls. The Indians are preferred for their characteristic qualities and capacity to work hard. However, such opportunities cannot be availed by those who do not have a good command of spoken and written English. While the students should enrich themselves in their mother tongue they should not lag behind in learning English and should rather acquire good command over it which holds so much of promise for them.

e) **Read Literature:** - Reading literature gives width to vision. There is so much to read in law that one life may not be enough to complete reading the available literature in law. The books available in law consist of fundamentals of law, jurisprudential thoughts, legal research and biographies and autobiographies of eminent judges and lawyers. It is inspiring to read them.

3. Competent Representation

An advocate should attain a level of competence in his own field of law practice, including: -

- a) With regard to lawyering skills, developing a degree of proficiency that is sufficient to enable the lawyering skills, developing a degree of proficiency that is sufficient to enable the lawyer to represent the client competently or to acquire whatever additional degree of proficiency is needed within the time available for doing so and without inappropriately burdening the client's resources.
- b) With regard to substantive knowledge, including knowledge of the law and familiarity with the fields and disciplines other than law, and acquiring sufficient knowledge to enable him to represent the client competently;
- c) Developing practices that will enable him (advocate) representing clients consistently with the ethical rules of the legal profession, including the rules that require that a lawyer: -
 - 1) Work diligently and zealously on a client's behalf;
 - 2) Avoid conflicts of interest that undermine or appear to undermine the lawyer's loyalty to client;
 - 3) Preserve a client's confidence and secrets; and
 - 4) Refrain from handling matters that are beyond the range of competence. Hon'ble Chief Justice V. G. Oak has opined that having mastered the facts, the advocate has to address himself to question of law. Not only the advocate has to keep ready the decisions which support him, but he has also to study the authorities that his adversary is likely to cite. Many statutes have been amended from time to time. The lawyers must be acquainted with the latest amendments. It is risky to refer to old edition of law books.

The advocate has to present the case of his client in the best light and thereby help the Court to arrive at correct decision. He should stress the points which are in favour of his client. But he should not mislead the Court either on question of fact or question of law. For practicing advocates, the need for training and acquiring skills in oral and written communication, in reasoning and persuasion, mediation and counselling, drafting and conveyancing, etc. cannot be over emphasized. The role of an advocate in adversary litigation is now being transformed, though almost imperceptibly, with consequent changes in duties of advocate.

Legal aid to the poor, and public interest litigation force the advocate, whether for the government or other litigant, to assume roles in adjudication and administration, which has adverted to close to policy making, policy evaluation and value-based decision making. The value free, partisan posture of a lawyer in adversary litigation appears to militate against this new ethics of the legal profession.

The former Chief Justice of India, Mr. Y. V. Chandrachud, in his address to a Bar conference in February, 1984 at Bombay gave expression to possible changes in the lawyer's role particularly in criminal proceedings where, according to him, the public interest is "least protected". He felt that: Profit motive should not govern

the examination of issues in criminal proceedings and attack on police should not form the easy and automatic strategy of every defense lawyer.

Professor Kenneth L. Penegar in his address to the Annual Meeting of the Association of American Law Schools in 1981 recommended some steps to facilitate the transition of legal services. He observed: Expand the profession's reach for clients beyond Environmental law, Poverty law, Tax law, Women's rights, etc. to venture to expand professional service to public agencies dealing with welfare, prisons, social services, etc. where the authorities may be well disposed to receive fresh ideas, critiques and evaluations.

He also opined that "future challenge of legal profession and legal education is not just an integration of theory with practice, as important as that idea is, it is not just service to the poor and others ill served by lawyers and legal institutions, as important as that practice and professionalism in which new definitions and conceptions is: rather it is to find and develop new definitions, new conceptions of give proper scope, proper reflection to the complexities of our age. To put the idea differently, it seems to me the clinical educator is in a unique position and because of that position has a unique responsibility to bridge the gap between the law and its traditional conservatism on the one hand and the frankly pragmatic, spiritual idealism of many of its practitioners including the future lawyers who sit at your feet through several years of law school⁴.

Today is the age of globalization. The field of commercial transactions is developing at a global level. In this process, the economic considerations of mixed economy doctrine by Pt. Jawaharlal Nehru and followed thereafter till now has taken a shape of new economic policy of disinvestment and developing a free and private economy with the support of foreign direct investment, NRI's and private industrialists of the country having a capacity to invest in the economic field.

One can think of the new subject matters of study of law and its practice like contracts, now being taught in terms of new title such as "Law and Economic Development" or "Law and Industrial Development". Today doctrines cannot be taught only with statutes and judicial decisions, as much of law is being administered and adjudicated outside the Courts and Tribunals through Arbitration and Conciliation and in this sense in our country the old law of Arbitration has been drastically amended as Law of Arbitration and Conciliation in 1996 giving special emphasis on international commercial disputes and transactions of commercial nature.

Now the lawyers have to study and understand the legal dimensions of poverty, urban problems, industrialization, pollution of the environment, bonded labour, atrocities against Harijans, child exploitation, gender injustice, violation of human rights by authorities of government such as police, jail, army and other institutions.

4. Learning Process and Motivation

The learning does not stop with the enrolment as an advocate. The young lawyer, on enrolment is exposed to real life situations, but the learning continues. The academic knowledge is converted into professional knowledge. The young lawyer has to draw lessons from witnessing the skill in action and has to find time to watch the seniors in profession, cross-examine witnesses or argue a case. Such practical use of the lawyer skills brings home to the learner how the veterans tackle the problems that arise in the exercise of these skills. The rule of best evidence, relevancy, admissibility, fairness and the rules of professional etiquette and decorum and many others have to be balanced before achieving success in the profession.

The legal discipline has evolved a particular way according to a body of accepted principles. Observance of these has become skills. Take, for instance, the way in which a lawyer uses his professional time a lawyer's skill. Such observance has a bearing on the lawyer's professional This is a basic skill called time management.

⁴Kenneth L. Penegar, "Clinical Education in its Prime", Alumari Head Notes (AALS), Vol. 10, Issue 1(1981).

Time management is one of the lawyer's skills. If properly utilized it will endear the lawyer to his client, colleagues, lawyers on the other side and the Court.

5. Team Work

A lawyer's work is often a team work. For instance, the relevant documents have to be studied and notes prepared on them as a preliminary task before he settles the pleadings. This task may be delegated to a competent junior. The junior should be motivated by appreciation and reward to ensure repetition of good performance. Every hour of performance in Court has to be backed by two or three hours of preparatory chamber work. The briefer the presentation, the longer the preparation. While delegating the work, he has to assess the capacity of junior for given legal work.

Advocate may be able to save a lot of time and ensure better quality of work, if he shapes and promotes the expertise of his juniors in particular areas, like preparatory study of documents, preparation of notes, case study, drafting a note on the points that are to be met, etc. An advocate has to take care to see that delegation does not become an abdication of duties on his part, as the client seeks his service and skills for reasons of his own. Client pays for it.

6. Identifying and Diagnosing the Legal Issues

A lawyer should be well versed with the skills and concepts involved in obtaining an accurate and complete understanding of the case of the client. The information available from the client and others includes economic, technological and other factors relating to the problem such as nature of the client's business operations which create or constrain possible solutions or are relevant to the prediction of the consequences of action or inaction.

A lawyer should be familiar with the skills and concepts involved in developing a plan of action with the client and the extent to which each plan of action is consistent with the financial resources which the client is able and willing to devote. The lawyer sometimes has to assess while making action plan whether the matter should be referred, in whole or part, to another lawyer because it requires a degree of experience, knowledge or skill greater than the lawyer personally possesses. This assessment should take into account a realistic appraisal of the degree of experience, knowledge or skill required for each of the aspects of the plan that should be handled by a lawyer.

Further, another realistic appraisal of one's own ability to competently carry out each of the aspects of the plan that should be handled by a lawyer. It may also be realistically assessed that whether it is feasible and appropriate to compensate for any such limitations by seeking advice or assistance from more experienced lawyers or whether the professional obligation to provide competent representation requires that the matter be referred in whole or part to another lawyer having a good skill in the matter.

Plan requires expertise in fields other than the law, and if so, then further There may be cases which require assessing whether some aspects of the assessing whether it is desirable to retain or consult with experts in the pertinent non-legal fields, taking into account the potential value of expert assistance, the cost of retaining or consulting an expert, and the extent of the client's financial resources. After such assessment, counselling the client is useful about the judgment of the lawyer, including the reasons why the lawyer believes that the potential advantage of retaining or consulting with an expert either justify the expense or not.

Sometimes a lawyer has to monitor and evaluate his own performance and consider whether it is appropriate to seek advice or assistance from more experienced lawyers or to refer the matter to a more experienced lawyer because the implementation of plan/case in hand or some particular issue or problem that has arisen during the course of legal proceedings requires a degree of experience, knowledge or skill greater than his own.

7. Legal Reasoning

In order to effectively analyze the application of legal rules and principles to a client's problem, a lawyer should be familiar with the skills and concepts involved in identifying legal issues, formulating legal theories, elaborating and enhancing the theories, and evaluating and criticizing the theories. A lawyer should identify and accurately formulate pertinent rules or principles of law bearing on the factual situation. This will typically require legal research, with its specialized techniques for reading and analyzing Court decisions, statutes and other commentaries to supplement or refine the lawyer's pre-existing knowledge of law and Court decisions.

A lawyer may argue the case in different dimensions when his study is all-round pertaining to the case in hand, such as, for example, on the basis of doctrine of law, history, practicality, justice, good conscience and equity. That can be brought to bear to support or oppose the legal theories that have been so far formulated. He can also analyze the extent to which each of these arguments can be used to enhance the effectiveness of each of the theories that has been formulated. The lawyer has to further analyses as to whether the arguments will be more persuasive if presented cumulatively, individually or in various combinations.

In order to evaluate the likely efficacy of a legal theory or theories in persuading the Court to make a particular decision, or to reach a particular result, a lawyer should be familiar with the skills and concepts involved in identifying and assessing considerations that are likely to bear on the Court to a legal theory, including as to whether a legal theory requires an extension of a legal rule or principle beyond its previously recognized applications and if so: -

- a) The potential implication of the extension;
- b) The likely reactions of the Court to the extension and its potential implications; and
- c) The feasibility of avoiding a negative reaction on the part of the Court by articulating a basis for limiting the extension so as to avoid untoward results. The lawyer can judge the likely predispositions of the Court or particular judge (s) by taking into consideration patterns of previous decision making. The reasons articulated for previous decisions, institutional considerations that tend to produce a particular mind set or perspective and personal biases as revealed in prior decisions and statements.

In *M. P. Electricity Board Vs. Shiv Narayan*⁵ the Supreme Court of India pointed out the difference between legal profession and commercial activity. The former is carried on by an individual by a trading activity involving buying and selling. It was further classified that in legal profession, there is no such kind of buying or selling or any trading of any kind whatsoever.

Justice Krishna Iyer in the landmark decision of *Bar Council of Maharashtra Vs. M. V. Dhabolkar and Others*⁶ spoke that "law is not trade, not briefs, not merchandise and so the leaven of commercial competition or procurement should not vulgarize the legal profession."⁷ In *Ex. Capt. Harish Uppal Vs. Union of India*,⁸ the Supreme Court says --- that Advocates have no right to strike as workman of industries or business-man. It is completely prohibited. It is necessary to keep in mind the role of lawyers in the administration of justice and also their duties and obligations as officers of this Court.⁹ Supreme Court has categorically held that if a lawyer

⁵Anderson Vs. Humble Oil & Refining Co., 226 Ga. 252, 174 S.E. 2d 415, 416.

⁶(2005) 7 SCC 283; *Sajjan Raj Surana Vs. Jaipur Vidyut Nigam Ltd.*, AIR 2002 Raj 109, 2002 (2) WLC 182; *Shiv Narayan and Another Vs. M.P. Electricity Board and Others*, AIR 1999 MP 246; *V. Sasidharan Vs. Peter and Karunakar*, AIR 1984 SC 1700.

⁷AIR 1976 SC 242.

⁸Rameshwar Prasad Goyal, In Re, (2014) 1 SCC 572; In the matter of Mr. 'P', an Advocate, AIR 1963 SC 1313; *T. C. Mathai & Another Vs. District & Sessions Judge, Thiruvananthapuram*, AIR 1999 SC 1385; *D. P. Chadha Vs. Triyugi Narain Mishra & Others*, AIR 2001 SC 457; and *Smt. Poonam Vs. Sumit Tanwar*, AIR 2010 SC 1384.

⁹Lt. Col. S. J. Chaudhary Vs. State, (1984) 1 SCC 722; *K. John Koshy & Others Vs. Dr. Tarakeshwar Prasad Shaw*, (1998) 8 SCC 624.

refuses to attend the court, it is not only unprofessional but also unbecoming of a lawyer disintitling him to continue to appear in Court.

".....The very sight of an advocate, who is guilty of contempt of court or of unbecoming or unprofessional conduct, standing in the court would erode the dignity of the court and even corrode its majesty besides impairing the confidence of the public in the efficacy of the institution of the courts."¹⁰

8. Conclusion

On the above discussion I can conclude that the advocates are intellectual and have knowledge of critical laws. They work in common society and pursue common men's matter in the court. They also provide free legal aid to poor person of the society. They lead the society. His profession ins a noble profession and is one of the most brilliant learned and challenging profession. It is different from other professions in that what the lawyers do, affects not only an individual but the administration of justice which is the foundation of civilized society. The dignity of the judicial office is essential for the survival of the society. Their participation elements and keep the stream of the society clean and ever flowing.

9. Suggestions

The following suggestions are put forward for strengthening the legal profession, protecting advocates, and enhancing their role in the effective administration of justice: -

- a) Advocates are an integral part of the justice system. Without the protection of advocates, the justice system cannot be strengthened, and advocates are officers of the court.
- b) Strict action should be taken against those accused and their associates who commit crimes against advocates.
- c) Every advocate should be provided a pension after a certain age, i.e., after 60 years or after 62 years.
- d) The central and state governments should enact the Advocates Protection Act to protect the interests and protection of advocates and to control the incidents that occur against them on a daily basis.
- e) To fulfill social responsibilities, to work fearlessly in the social sector, and to play an active role in the administration of justice, the immediate passage of a separate law, the Advocates Protection Act, is a major demand of advocates, on which the government should take a decision.
- f) To benefit lawyers in fulfilling their social responsibilities, the government should ensure that insurance and medical facilities are mandatory.
- g) The age limit for legal education should be set to become a lawyer so that retired government employees do not take up this sacred profession as a hobby, creating unnecessary congestion in courts. This will ensure that only genuine lawyers can represent the court.
- h) Every citizen over the age of 30 should be educated about the law. Because ignorance of the law is inexcusable, the State Bar Council or the National Bar Council should conduct a "Law Awareness Campaign" through camps as part of their social responsibility.
- i) State governments or bar associations should provide new lawyers with an "incentive amount" as remuneration for five years so that they can successfully run their legal practice within five years.
- j) For the training of lawyers, advocate training centers should be opened in every state. Governments should ensure that these training centers are conducted on the same lines as judicial training centers.

¹⁰Ibidem. Lt. Col. S. J. Chaudhary Vs. State (Delhi Admn.), AIR 1984 SC 618; Tahil Ram Issardas Sadarangani & Others Vs. Ramchand Issardas Sadarangani & Another, AIR 1993 SC 1182.

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