

JOURNAL FOR LAW STUDENTS AND RESEARCHERS**LEGAL PROFESSION AND ART OF ADVOCACY**

Author- Rahul Jain
Co-Author- Gaurav Sethi

ABSTRACT

The profession of advocacy in India traces back its history from the colonial period where initially non-qualified people were allowed to act as advocates this condition changed in the post-independence era where there were legislations in place regarding the legal profession as to who were allowed to practice the profession of law. It is seen that advocacy is a profession of respect and high dignity and the person in this profession must ensure that they follow a proper code of conduct or else he can face the disciplinary committee as per section 35 of The Advocates Act. An advocate should be a very good orator who should ace the skills of Examination in chief, cross examination and re-examination in order to gather evidence for the court and make his case stronger. Along with the aforesaid skills an advocate should also have the qualities of honesty, courage, fluency, good orator, hard worker, integrity. He should also be courageous in nature working with full dedication without any worries regarding the outcome. He should be capable of giving correct advise to his clients regarding their legal position. And finally he is morally obligated to live in peace and harmony with his brother advocates and give valuable service to the society in form of his legal advice.

“AN ADVOCATE MUST LIVE LIKE A HERMIT AND WORK LIKE A HORSE”

Since the inception of the mankind people have engaged into various types of profession to earn their living. In the ancient times in India there was profession of handicraft and agriculture as there was no proper education for engaging into any specialised profession or providing a service for which any special knowledge is required. But today the scenario is in total contrast as there is improvement in the literacy rate and people are engaging in tertiary sectors for providing services or engaging in a profession of their choice. There is no end to the types of profession one can practice in India ,some examples are C.A., banking, management, finance, architecture, and law.

There is a lot of demand for well educated lawyers in the economy in the recent times. Legal profession is the most brilliant and attractive one as an advocate can practise freely he need not have a superior over him. He can express his rights in a more elaborate way and fight for the rights of others. The profession of the law is the noblest and oldest profession an advocate also fights for the rights of the common men without any concerns for his fees and he may also spent out of his pocket for getting the justice to needy. Rule 468 of 'Standards Of Professional Conduct And Etiquette' states that any one genuinely in need of a lawyer must be given legal assistance even though he cannot afford a lawyer.

Legal profession is different from all the other professions in the world the lawyer must respect the bench giving decision irrespective of the fact that it might go against his client. A lawyer should not make any promises from his client and should not give him the 'moon and stars' because a case is not in the hands of the lawyer to decide. A lawyer should be honest and straightforward about the facts of the case and the position his client is in.

Although character is the essence of every profession but it is the top most priority for the legal profession. An advocate must abide by the Code Of Conduct as may be prescribed by the bar from time to time like appear in proper dress, appear in court on time and not to contempt the decision of the court, not to mislead court etc.

The need for ensuring proper code of conduct amongst advocates is that the profession of law is highly dignified and people speak of him as very highly and only an honest lawyer with integrity can be a true friend of court and can bring justice to the society. If a lawyer is dishonest or low ethical standards who will do whatever he can to win then he will mislead the court as a result the court might give wrong judgements which will result in public's distrust in the judicial system of the country.

A professional misconduct on the part of an advocate can be a very serious, this can be seen from the fact that an advocate can be disbarred for such professional misconduct i.e. his license for practicing law can be seized for lifetime.

Section 35 of the Advocates Act states that there should be a Disciplinary Committee under the State Bar Council if after giving a chance of hearing this committee finds any legal practitioner of any professional misconduct it can take any of the following actions-

- It can dismiss the complaint if it thinks that it is a petty offence
- It can reprimand the Advocate, scold him and warn him to never engage in any sort of misconduct again

- It can suspend an Advocate for a temporary period of time at its own discretion
- Remove the name of the advocate from the State roll which will render him unable to practise law.

Breach Of Trust-*P.D. Gupta V. Ram Murti and others*¹ in this case Shri Ram Murti, Vidayati and two others claimed for the property of the deceased Krishna Das. P.D. Gupta was the advocate of Vidayati. P.D. Gupta and his son in law Kumar Gupta intentionally purchased some of the property and sold the said property to some third property and made some profit. A complaint of the same was made to the disciplinary Committee of Delhi Bar Council which was later transferred to the Bar Council Of India.

The Disciplinary Committee of the Bar Council Of India observed that P.D. Gupta knew that the property sold by him was subject of litigation and it was purchased at a throw away price of Rs 180000.

In the end P.D. Gupta was held guilty for professional misconduct and suspended from practice for a period of one year. An advocate has many duties, an advocate should work with social welfare communities to promote social justice. He should take pro bono cases and provide his services majorly in backward areas where people are illiterate. He should keep the points in favour of his client precisely in front of the court. He at the same time cannot take a case in which he is an interested party in any manner.

He is duty bound to present all the facts in front of court, concealing an fact which may be material enough to influence the decision of the court can smear the reputation of a lawyer. A lawyer cannot negotiate with the opposite party without the other lawyer being present as there is a chance that he can influence the other party in such a way that he may not be able to think rationally.

An advocate is legally bound to maintain the attorney-client privilege i.e. he cannot disclose the communication between him and his clients as regards to the case even after the case is over. Breaking the aforesaid privilege is a serious offence which would render the advocate without his license. Also as per Section 126 of the Indian Evidence Act no advocate can disclose any communication between his client and himself except by the express consent of the client.

Contempt pf court means any wilful disobedience of any court order or publication of any matter which can lower the reputation of court, interferes with the due course of any judicial proceedings or obstruct the administration of justice.

¹ A.I.R 1998 SC 283

Contempt Of Court Under Suo Motu Proceedings-Pritampal V. High Court Of Madhya Pradesh

Jabalpur² an advocate filed a writ petition in the High Court for his employment and resignation from the army service. He pleaded that his application for resignation may be treated as voluntary retirement from service and consequent benefits be given to him, but court rejected his application and he made serious allegations against Himachal Pradesh High Court Judge. The high court held that contemnor is guilty of criminal contempt of not only of scandalising the court and lowering it's authority but also substantially interfering with the due course of justice and convict the person for two months of imprisonment.

In theory right conduct by an advocate is defined by the legislature through various enactments but the sad reality is that legal profession is generally associated with dishonesty because there are people in this profession that will compromise morality just for the sake of win and money. Advocates which are supposed to show the right path to the society are seen prostituting their legal knowledge and skills for those who should be convicted by court of law.

Advocacy is an art because certain set of skills are to be applied by an advocate as per facts and circumstances of the case in order to achieve the desired results. Advocacy cannot be termed as a science because there is no fix phenomena, observations, and there cannot be established a cause and effect relationship.

In order to be a successful advocate a person should have a deep knowledge of the law which his case relates to, which evidence can the court use or not use against his concepts regarding the Evidence Act must be clear. An advocate should also have quick wits and good sense of humour in order to present his case more efficiently and tip the scales in his favour.

Some important skills that the advocate must possess are as follows-

Examination in Chief- when the advocate calls a witness to a stand for him to speak under oath in order for the court to gather the evidences which may be required for the proceedings. The advocate must be smart enough with his choice of words as to what he wants the person on the stand to tell the court, and the way in which he needs to ask the question so that he gets the reply that he requires. The advocate can only put relevant and legitimate questions to the witness asking irrelevant or inadmissible questions to the witness can put a case in danger. In examination in chief only questions of facts can be asked. Advocate cannot ask any leading questions i.e. which may force the witness to conclude something.

² A I R 1992 SC 904

Thus it can be said that Examination In Chief has the following objectives-

- It is done to meet the burden of proof
- It is to get the facts from the witness which he understood and remembered
- To convince the court that their case is strong
- It can be used to quash any evidence that the opposition might present.

Cross Examination- cross examination is done by the lawyer of the opposite party, it is done in order to strengthen your case as the questioning cannot go beyond the evidence given by the witness in examination in chief. A brilliant advocate can take advantage of this point and make exploits on any point which may have been omitted by the witness in examination in chief. The advocate should not lose temper at all times if the witness is avoiding the question or giving an answer which is not relevant for the case.

Advocate is never to ask any offensive questions from the witness and asking questions which are unnecessarily too long, ambiguous, improper, aimless, and uncertain. Questions which may attack the credibility of a witness by attacking his character should not be asked.

As in the case of **P.P Selvarajan V. Madras Bar Council**³ an advocate was examining a rape victim and he put questions which exceeded the legitimate bounds of privilege conferred on an advocate and hence such cross examination was denied by the court. On a complaint the advocate was found guilty of misconduct and was suspended from practice for 6 months.

Re-Examination- re-examination is done after cross-examination in order to explain the points arising out of cross examination any ambiguous point arising out of cross examination must be cleared by the advocate of the witness. Thus a damage control is done by restoring the credibility which the witness might have lost during cross examination.

In re-examination new a new matter can be introduced with the permission of the court and again cross-examination can be done on the same point.

The aforesaid are certain techniques the advocate should always have up hi sleeve but there are some essential qualities or characteristics a lawyer should posses in discharge of his professional duties, these qualities are also known as the 'Seven Lamps Of Advocacy' which are as follows-

³ A.I.R 1954 Mad. 400

1. **Honesty-** legal profession is a noble one and hence it must be practiced with utmost integrity. The advocate should be honest and straightforward to his client about his opinion on the case and should not make any promises regarding winning a case. Advocate is also bound to be honest to the court and bench in front of him he should present precise facts without concealing anything to the best of his knowledge. He should not think about himself and do what is best for the court of law.
2. **Courage-** an advocate should always be courageous i.e. he should remain calm, peaceful, and neutral in the situations of pain, misfortune and danger. An advocate is most likely to face pressure situations from the client or from the opposing counsel or from the court but he must keep his cool and think on his feet to give precise reply in the court with confidence. He should not fear from the fact that he may have to fight a case against some big gun party which is powerful either economically or politically he should only focus towards what his duties are.
3. **Industry-** profession of advocacy is like an industry because the whole body of lawyers are supposed to be always employed successfully in order to gather and maintain clients they must study the briefs given to them properly to find out as to what kind of strategy they need to employ to win the case in favour of their client. Life of an advocate comprises of continuous and rigorous hard work because a client or a new case can approach them any second of the day.

It is rightly pointed out by Lord Eldon “An advocate must live like a hermit and work like a horse”. It means that a lawyer should be very hard working willing to work round the clock without procrastinating his work. At the same time he must also not cross any sort of legal, ethical, or moral boundaries in order to get his work done.

4. **Wit-** an advocate should possess quick wits and he should be able to catch any loopholes, in the defence or attack of the opposite counsel or to quash the testimony of the witness in order to make his case.
5. **Eloquence-** it means the skill to speak effectively and use the right terminologies. This skill is indispensable for the art of advocacy as an advocate should be a fluent speaker and a good orator in order to influence the judge. This skill cannot be imparted in law schools but can only be achieved with time and practice.
6. **Judgement-** an advocate should form an opinion about the legal issue which is brought to him by his client and judge the merits and demerits of a case and he should communicate the same to his client honestly.

7. Fellowship- it is believed that there should be no rivalry or competition amongst the fellow advocates and they should live in brotherhood. There is no discrimination of advocates on basis of age, ability, experiences or background and courts give them equal respect. A fellow advocate should help the other by giving him advise on his case. Advocates arguing in front of a bench are competitors who become friends as soon as they step outside the court room.

Justice V.K. Krishnaswamy Ayer talks about the 8th lamp that is 'tact'. It is a skill of handling people and situations intelligently without causing any offence. An advocate has to deal with a variety of people, he must have the analyse a human mind and to question him accordingly to gather his source of actions and motives accurately.

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