

Essentials Characteristics of Advocacy

Abstract

The fundamental aim of legal ethics is to maintain the honour and dignity of the law profession to secure a spirit of friendly co-operation between the bench and bar in the promotion of higher standard of justice, to establish honourable and fair dealings of the counsel the client, opponent and witnesses, to establish a spirit of brotherhood in the bar itself and secure that lawyers discharge their responsibilities to the community general.

Keywords: Profession, Command, Commonsense, Successful, Popular Statute Acquaint, Amendment Essential Perquisite Chronological Argument, Authority Interpret Relevant, Assimilate Aspersion, Dignity, Derogatory Impeaching, Distinguish, Confidence Decent, Eloquence, Incumbent, Cogently, Enunciate, Expound, Oppressive, Controversy, Snub Declamation Superfluous Chronological, Discrepancies, Penalty Forfeiture, Inducement Imputation & Scandalous.

Introduction

According to see 2 (a) of Advocate Act 1961. Advocate means an advocate entered in any roll under the provisions of Advocate. An advocate is an officer of the Court and being so the Court generally acts on the statements of advocates. Thus, it is so 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 the suppression of facts by an advocate is tantamount to professional misconduct.

"The understanding of the judge is itself a part of advocacy. A judge is a human being and every judge has his own individual approach to a case. An experienced lawyer understands him and that understanding can be acquired by a junior only by experience and constant effort."¹

Aim of the Study

1. The fundamental aim of legal ethics is to maintain the honour and dignity of the law profession to secure a spirit of friendly co-operation between the bench and bar in the promotion of higher standards of justice, to establish honourable and fair dealing of the counsel in the bar itself and secure that lawyers discharge their responsibilities to the community generally.
2. To safeguard the rights, privileges and interests of advocates.
3. To promote and support law reform.
4. To lay down standards of professionals conduct and etiquettes for advocates.
5. To promote legal education and to lay down standards of such education in consultation with the universities in India imparting such education and the state bar council.
6. The standard of professional conduct and etiquettes to be observed by advocates.

Review of Literature

Prof. J.P.S. Sirohi, professional ethics, accountancy for lawyer & bench bar relation, Dr. Basantilal Babel in professional ethics, Dr. Murlidhar Chaturvedi in professional ethics, lawyer's accountability & bench bar relationship and advocate S. Vaidya in professional ethics.

Qualities of an Advocate

Actually good command over the language, good voice good power of expression, good knowledge of law; good common-sense, good presence of mind and good health all help a lawyer to become a successful lawyer. In addition to that control over the temper also necessary for becoming a popular and successful lawyer.²

Hon'ble Chief justice V.G. oak has said that having mastered the facts, the advocate has to address himself to question of law. Not only the



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advocate has to keep ready the decisions which support him but he has to study the authorities that his adversary is likely to cite.³

Many statute have been amended from time to time the lawyer must be aquatinted with the latest amendment. It is risky to refer to old editions of books or statute law. The advocate has to present the case of his client in the light and thereby help the court to arrive at the correct decision. The advocate has absolute right in stressing the points. Which are in his client's favour. But the advocate must not mislead the Court on questions of fact.

"The Art of Wining Cases"⁴ justice Ram Labhaya has stated that methodical preparation of the case is the most essential perquisite for success. It is indispensable for the proper presentation of the case. Facts have to be mastered knowledge of facts generates confidence which is of great assistance in carrying conviction. After a clear, chronological precise and brief statement of facts, the next important step in presentation is a clear statement of the points in controversy in logical sequence, so that it is possible to proceed from step, each step forming a link in the chain of argument.⁵ Reference to the relevant provisions of the statute must necessarily precede the discussion of authorities and precedents.⁶ It has been made clear that the Courts generally do not feel satisfied with the decisions in interpreting the statute till the relevant provisions of the statute are fully and properly examined. It is best to begin with them, to interpret the language of the statute as it stands, giving all reasons including those gathered from decided cases in support of interpretation sought to be placed on them. Resort to case law should normally be the last step in the process of argument. One necessary condition of the use of precedent is that before they are cited, they should be digested.⁷

Citation of cases is also an art and plays important role in winning the case. A lawyer should know all the relevant cases on the points involved in the case. He must keep in mind the past decisions, the law laid down in the cases and also the facts on which the law has been laid down. A lawyer should always keep in mind that his opponent way cite the precedent in favour of his client and therefore he should always be prepared to face such a situation and he can meet such a situation successfully, if he himself knows fully the precedent on the issues involved in the case.

Citing the minimum but relevant cases is considered better than citing a large number of cases containing the same or similar principles of law or containing the principles of law not relevant for the issues involved in the case. A good lawyer should avoid the citation of many cases on the same cases. The best and most relevant case should be selected. As far as possible the cases decided by the highest court should be cited. If the decisions of the highest Court are not available on the point, then, the lawyer should select a decision of the Court higher than the court before which the lawyer is arguing the case. If this is not possible, then the decision of the courts of co-ordinate jurisdiction with the Court before which he

is arguing the case. If there are several decisions of the Courts of co-ordinate jurisdiction, the lawyer should cite the case which gives the best reasons for the decision that the lawyer wish his Court to adopt.⁸

"The best manner of citing a case in Court is for the advocate to read the case first outside the Court, to digest it and then to pick out the most relevant and essential passages from that report and finally to place the selected passages before the judge that procedure not only avoids unnecessary waste of time but also heightens the effect of the citation. It is best for the advocate to assimilate the precedents in this own chambers first before citing them in Court."⁹

If a judgment in a case cited is criticized, the advocate must remember that the criticism should be of judgment or reasons for the decisions and it should not be of the judge conduct or it should not amount for casting aspersions on the integrity, fairness or ability of the judge. An advocate is required to know not only as to how a case should be cited but also as to how a case should be criticized. In the words of Justice P.B. Mukharji¹⁰

"Criticism of the judgment in a reported case always acquires greater dignity when such criticism is not personal and derogatory to the Court which decided it. Such criticism should always be based on the merit of the decision quoted, by impeaching its reasons, by assailing its logic and by distinguishing its facts and law."

The precedent, thus, no doubt, play important role in winning the case but it should be cited after stating and explaining the relevant statutory provisions. It is better to state and explain the relevant statutory provisions and thereafter give reasons including the judicial decisions in support of the interpretation adopted. The full report of the case should be thoroughly studied to get the principles of law laid down in the case.

For success in the legal profession an advocate should have acquaintance with the human nature, human motives and human mind. He should be able to understand the judge and his nature. He should try to win the confidence of the judge. For this purpose, he should behave decently and should never attempt to misguide the Court. He should create an impression in the mind of the judge that he is assisting the Court in arriving at the correct decision and not merely trying to win the case in any manner and at any cost.

*Judge Abbot Parry*¹¹ has mentioned seven lamps of advocacy—honesty, courage, industry, wit, eloquence, judgment and fellowship.

Mr. Justice Raj Kishore Prasad¹² has added one more to these seven lamps of advocacy and that is tact. He has observed that many people of unquestioned ability have failed to achieve a fair measure of success in life for want of tact. It does not pay at all to an advocate to quarrel with the Court or to lose temper over trifle thing.¹³

According to Justice Raj Kishore Prasad¹⁴ an advocate should be honest and a man of integrity and character. An advocate who is straightforward and is possessed of these three jewels is appreciated by the

Court and the client alike.¹⁵ An advocate should have patience and presence of mind. These are included in the equipment of an advocate. Besides, an advocate should be well equipped in legal bearing.¹⁶ An advocate should never take anything for granted but examine it and satisfy himself what is or is not. He should study the law and not merely read it.¹⁷ An advocate should have general education. He should have full acquaintance with history, with economics and with other sociological sciences. His general ability and knowledge of international law also should be up to date.¹⁸ In addition to these, an advocate should possess tenacious memory;¹⁹ keep himself in touch with the growth of the law by reading the current law reports and use legal phraseology in legal parlance.²⁰

Mannerism also plays important role in success in the legal profession. On this point Mr. Justice Raj Kishore Prasad²¹ has observed—

More important than intellectual equipment is moral equipment. An advocate is always expected to maintain calm and self-possession and pleasant humor. He should be respectful to the Court. He owes this duty not for the sake of the temporary in office but for the maintenance of its' supreme importance."

He should never interrupt the judge when he speaks but should wait for the judge to complete his statement. He should take time to consider the question put by the judge to him in all aspects and then give reply. A hurried reply may lead him into a trap.

An advocate should neither argue when he is not called upon to argue, nor continue his arguments when the Judge is in his favors and is not anxious to hear move from him.

An advocate should not lose balance of temper, if the judge does not react as he expects.²²

The presentation of case also plays important role in winning the case. According to Justice Raj Kishore Prasad an advocate should first present his best point. In presenting arguments it is always expected that an advocate should quote chapter and verse in support of his admission.²³

As regards citation of authorities Justice Raj Kishore Prasad has stated that an advocate should always take care of citing the latest authority on the particular point he wants to press.²⁴ It is always advisable to cite the best case, instead of a number of cases which only create complications. If the Supreme Court or Privy Council decision or a decision of his own Court is available, such cases should be placed first.²⁵ An advocate is expected that he should cogently and correctly enunciate and expound the law and refer to the volume; number and page on which he wants to rely for his proposition of law.²⁶

An advocate is expected to maintain his manly independence and courteous dignity.²⁷

For success in the legal profession an advocate must be fully aware of drafting the plaint and written statements and also of the art of arguing the case. He should have thorough knowledge of the provisions of the CPC and Cr.PC. For this purpose the good books on and Cr.PC should be thoroughly studied.

Dealings with the clients play important role in the success of a lawyer. Soft, decent and fair dealings with the clients make a lawyer popular amongst the clients. If the lawyer takes advantages of the ignorance and illiteracy of his client, it will not pay him in the future. It will soon make him unpopular amongst the client and also among the members of Bar and Bench. Losing the faith of the clients will prove injurious to his practice as a lawyer. In dealings with their clients the lawyers must be fair and honest. He must furnish true and correct account of all the moneys that he receives on behalf of his client. A lawyer must be prompt in his correspondence to his clients. He should try to have contact with his clients and inform them about the developments in their cases. He should make honest and fair appraisal of the chances of success of a case and advise the client accordingly. He should not advise the client that he will succeed while in fact he is fully aware that the client has no chance to win. The adverse opinion given by him may displease the client but his appraisal of the chances of success will enhance his reputation as a lawyer in the long run. On this issue learned *K.V. Krishnaswami Aiyar*²⁸ has said that if, as a result of the examination, an advocate finds that his client's case is hopeless it is far better that he makes him understand this at once without allowing him to be fed with delusive hope for a while, at last to be taxed with fees and costs which he cannot but feel heavy, oppressive and unjust, particularly when he loses the matter in controversy.

As regards the conduct of an advocate towards his client he has observed²⁹—

"Let me refer to your conduct towards a client who comes to you for help. Receive him with kindness and listen with sympathy to all that he has to say. He may repeat himself, but do not snub him. Allow him to have his say in full. It may be declamation, it may be inactive and abuse of the other side. He may speak, not as if he were addressing a jury on whom he desires to impress the strength and truth of his case. But it is well that you should hear the whole tale; for it is desirable that you should not miss even one relevant fact, though you may have to get it by a process of sifting many irrelevant ones. It is less inconvenient to listen to superfluous facts than to stand the chance of missing what may be essential. Do not interrupt your client in his narration, but reserve your questions to the end when he makes a pause."

In dealings with the client an advocate must have in mind the rules of the Bar Council of India dealing with his duties towards his client. The Rule makes it clear that an advocate is bound to accept any brief in the Courts or tribunals or before any other authority in or before which he proposes to practice at fee consistent with his standing at the Bar and the nature of the case. An advocate is required, at the commencement of his engagement and during the continuance thereof to make all such full and frank disclosures to his client relating to his connection with the parties and any interest in or about the controversy as are likely to affect his client's judgment in either engaging him or continuing the engagement.

Besides, the rule provides that 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 agree to share the proceeds thereof. The Rule makes it clear that an advocate shall not adjust fee payable to him by his client against his own personal liability to the client which liability does not arise in the course of his employment as an advocate. An advocate shall not do anything whereby he abuses or takes advantage of the confidence reposed in him by his client. The Rule provides that an advocate should keep accounts of the client's money entrusted to him and the accounts should show the amounts received from the client or on his behalf, the expenses incurred for him and the debits made on account of fees with respective dates and all other necessary particulars.' Where moneys are received from the client, the entries in the accounts should contain a reference as to whether the amounts have been received for fees or expenses and during the course of the proceedings, no advocate shall, except with the consent in writing of the client concerned, be at liberty to divert any portion of the expenses towards fees. Where any amount is received or given to him on behalf of his client, the fact of such receipt must be intimated to the client as early as possible. The Rule also, provides that a copy of the clients account shall be furnished to him on demand provided the necessary copying charges are paid. An advocate is required by the Rule not to lend money to his client for the purpose of any action or legal proceedings in which he is engaged by such client. However, it has been made clear that an advocate shall be held guilty for breach of this Rule if, in the course of a pending suit or proceeding and without any arrangement with the client in respect of the same the advocate fees compelled by reason of the Rule of the consent to make a payment of the court on account of the client for the progress of the suit or proceedings. These are some of the rules made by the Bar Council of India.

Mr. Justice R.C. Lahoti has given the following tips to the law students³⁰:

Work Hard

There is no royal road to success in profession. In law, to earn success, one has to live like a hermit and work like a horse.

Be Physically Fit

The law graduates who join the legal profession must have a sound physique and healthy body to bear the burden of higher responsibilities and facing the challenges of the strenuous profession.

Value The Time

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.

Knowledge of English Language

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. English has become the Chief Global language. The only language known to computers in the world around is English.

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.

Knowledge of Computers

Computer is indispensable and therefore the students must learn computer.

Develop a Hobby

Every professional must have a hobby to divert and entertain himself and get rid of monotony.

Look Smart

A professional should try to look as attractive as he can. "Always bear a smile on your face and try to look as attractive as you can. An astute client would assess your worth in the first meeting and decide upon retaining you as his lawyer feeling impressed initially by your appearance and the impact of your personality."

Aim High

One who aims high should not feel diffident by the crowd in profession.

Argument: During the argument, advocate has to use his knowledge, reasoning including experience however following points to be kept in mind while arguing in court.

1. Use of specific and controlled parliamentary language.
2. Accurate Expression
3. Eloquent and fluent expression
4. Representation of fact to be interpreted and in arranged manners.
5. Emphasis on specific points.
6. Maintain the Tranquility during in the Court.
7. Feeling of self-respect and enthusiasm, courage.

The characteristics of good argument are that which change the mindset of the court and compel to think on the fact presented by advocate during the argument.

Conclusion

The fundamental are of legal Ethic is to maintain the honor and dignity of law profession, to secure a spirit of friendly cooperation between the bench and the Bar in the promotion of highest standard of justice; to establish honorable and fair dealing of the counsel with the client, opponent and witness, to establish a spirit of brother -hood in the bar itself and secure that lawyers discharge their responsibility to the community generally.

To maintain the honor of the legal profession, the Advocate Act has been introduced and the Bar council has been established. The State Bar councils and the bar council of India can punish the advocate for professional and other Misconduct the breach of the advocate's duties codified by the Bar council of India in the exercise of its power under

section 49 (1) (c) of the Advocates is taken as the Professional or other Misconduct.

An Advocate is required to maintain toward the courts a respectful attitude, however an advocate is not servile and in case of proper ground for serious complaint against a judicial officer it is his right and duty to submit his grievances to the proper authority It is the duty of an advocate not to influence the decision of the Court by any illegal or improper means. An advocate shall not solicit work or advertise whether by circular, advertisements touts, personal communication etc.

An advocate shall not in any way communicated or negotiate upon the subject, matter controversy with any party Presented by an advocate accept through that advocate.

Suggestion

An advocate must be fully aware of drafting the plant and written statement and crass examination of the witness and arguing the case. Besides that Advocate is should maintain a good chamber and office and must be good versed with computer knowledge. However following points should also be suggested for a good advocate-

1. Good command over language
2. Strict compliance of fundament rules of pleading and drafting
3. Knowledge of the provisions of advocate act 1961 and bar council act 1971
4. Thorough knowledge of procedural as well as substantive law.

Reference

1. *Holland Avrom Shree Advocacy 1994, universal Delhi.*
2. *Keith Euam, the Golden Rules of Advocacy 1994 universal, Delhi.*
3. *Sandeep Bhalla, Advocates Act & Professional Misconduct Nasik Law House.*
4. *JPS Sirohi, Professional Ethics Lawyer, Accountability, ench Bar relationship, Allahabad Laws agencies.*
5. *Mr. Krishna Murthy Iyers Book on advocacy.*
6. *Dr. Kailash Rai Legal Ethics Accountability for Lawyers and Bench bar relations.*
7. *Dr. Murlidhar Chaturvedi Professional Ethics, Lawyer accountability & Bar Bench relationship.*

8. *Dr. Basanti Lal Babel; professional Ethics.*

Footnotes

1. *By Hon'ble gopaiji Mehrotra C.J. Retired*
2. *Advice to young advocates published in Art of a lawyer; edited to or B. Malik C.J. P. 420*
3. *What do I expect from an advocate published in Ast oof a laywer. Edited by or B.Malik C.J. P. 130*
4. *ibid., p. 234*
5. *Ibid.*
6. *Ibid.*
7. *Ibid.*
8. *See Justice P.B. Mukharji, Manner of Citing cases, Published in Art of a Lawyer, Edited by Dr. B. Malik, C.J., p. 195.*
9. *Ibid.*
10. *Ibid., at p. 199.*
11. *Quoted in the article, What do I expect from an Advocate' by Justice Raj Kishore Prasad, published in Art of a Lawyer. Edited by Dr. B. Malik, C.J., pp. 318, 319.*
12. *'What do I expect from an Advocate', published in Art of a Lawyer, Edited by Dr. B. Malik, C.J.*
13. *Ibid.*
14. *Ibid.*
15. *Ibid.*
16. *Ibid., p. 320.*
17. *Ibid.*
18. *Ibid.*
19. *Ibid.*
20. *Ibid.*
21. *Ibid. p. 321.*
22. *Ibid.*
23. *'What do I expect from an Advocate', published in Art of a Lawyer, Edited by Dr. B. Malik, C.J.*
24. *Ibid.*
25. *Ibid. at p. 323.*
26. *Ibid.*
27. *Ibid.*
28. *Meeting Clients, published in Art of a Lawyer, Edited by Dr. B. Malik, p. 269.*
29. *Ibid, p. 268.*
30. *Legal Education and Legal profession, AIR 200*