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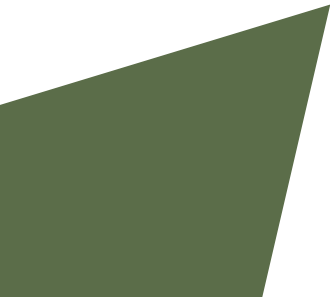
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**The Importance of Legal Ethics in Upholding the Dignity of Judicial  
Institutions**

**Apoorva Chandrachur**

## INTRODUCTION

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The expression ethics is derivative of the word 'ethos' which means character in Greek and 'mores' which means customs in the Latin language. Collectively the amalgamation of these two is used to describe how individuals choose to interact with one another. Professional Ethics and legal profession frequently work hand in hand. The legal profession is an honorable occupation. The dignity of the law as a profession is preserved by the devotion to the set professional norms by those who adopt this profession. The fundamentals of legal ethics are defined as a basic code of conduct that may be written or unwritten for regulating the behavior of a practicing lawyer towards himself, the client, adversary in law, and towards the honorable court. This is where legal ethics play an important role.

**The object of the Professional Ethics:** The foremost aim of the professional ethics of advocacy aims to preserve the pride of the legal fraternity. **Chief Justice Marshall** was of opinion, "The significant aim of legal ethics is to uphold the honor and pride of the law profession to secure a spirit of friendly co-operation between the bench and bar in the advancement of the sophisticated standard of justice, to create honorable and reasonable dealings of the counsel with his client, opponent, and witness, to establish a spirit of brotherhood with the bar itself and to protect that lawyers keep up with their responsibilities to the community generally". The honorable profession is not a commercial activity but a vocation. It is shaped by the state for public welfare. Thus, the spirit of the profession is defined by these three aspects:

1. Proper organization of the members of the fraternity for the performance of their role;
2. Conservation of certain standards, ethical and intellectual for maintaining the dignity of the profession;
3. Utilizing the monetary gains for effectual services.

Professionals of the legal and medical fraternity have basic codes of conduct that they have to follow. Lawyers and ethics go hand in hand. For advocates, it is the Advocates Act, 1961, and the Bar Councils of India Rules, 1975. The primary objective of these legislations' is to stop the abuse of innocent clients; and at the same upholding the integrity of the legal fraternity. The Bar Council of India is a statutory body that is the face of the bar of India and monitors the working

to the bar. It was formed by Parliament under the Advocates Act, 1961. It gives out basic ideals of conduct of professionals and exercises disciplinary jurisdiction. Section 49(1)(c) of the Advocates Act, 1961 authorizes the Bar Council of India to set basic guidelines to advise the ethics and etiquette of professional comport that should be observed by the advocates of this Act. On codification of ethics law, **Justice P.B. Majmudar** said, "I feel the rules governing ethics of lawyers should never have had to be codified but there are black sheep in every profession".<sup>1</sup> Chapter 2 of part 4 of the Rules framed by the Bar Council of India talks about the basic standards of professional comport and etiquette. These guidelines specify the duties of an advocate to the Court, colleagues, client, opponent, etc. Its Preamble states that "An advocate must, conduct himself in a way that is suitable to his status as an officer of the honorable Court, an honored member of the Fraternity, and a nobleman, keeping in mind that what may be genuine and ethical for a person who is associated to the Bar, or for a member of the Bar in his non-professional capacity may still be inappropriate for an advocate. Without predisposition to the overview of the foregoing obligation, an advocate shall courageously uphold the welfare of his client and in his conduct obey the instructions hereinafter mentioned both in letter and in spirit."

## **KEY ETHICAL STANDARDS FOR ADVOCATES**

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The following is an overview of key legal ethics that a lawyer should keep in mind while practicing law and it shall be spoken by code of professional ethics or code of conduct.

### **INDEPENDENCE, HONESTY, AND INTEGRITY**

One of the major challenges for an advocate to safeguard the primary interest of the client, if the client is exposed to intrusion from outsiders (not related to the matter), particularly those in power. Thus, individuality is crucial to provide impartial guidance and representation to his client. Advocates should uphold the usual standard of morality, truthfulness, and equality towards his client, the court, other lawyers, and the public at large.<sup>2</sup>

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<sup>1</sup> Daryl Koehn, *The ground for professional ethics*, Routledge, 1994

<sup>2</sup> Soli J. Sorabjee, —*Lawyers as Professionals*, AIR 2002 Jour 4.



## LAWYER AND CLIENT RELATIONSHIP

The lawyer-client relation has numerous characteristics. Here, is an overview of a few areas it incorporates.

- a. **Legal Competence- Professionalism:** Skilled representation necessitates the legal familiarity, expertise, meticulousness, and preparation that seems reasonable and essential to represent his client. Advocates must conduct themselves assiduously and promptly. An advocate must not agree to take a work that he or she will not be able to deliver in an experienced and punctual manner.<sup>3</sup>
- b. **Care towards Client:** The relation of an advocate and client is one based on a contract. Advocates should comport themselves ethically towards their clients as they have legal duties with regard to the client.<sup>4</sup> The ensuing are a few values that should be followed by advocates:
  1. Treating his client justly, in a way that guards the client's aim.
  2. Guarantee there is proper resources and aptitude to represent the client and to advise the client in a manner that is competent and judicious.
  3. Ensure there is an efficient process of grievance redressal, notify his client at the beginning regarding the right to file a complaint, and handle the said grievances punctually.
  4. Decide the process in which the matter or case of the client will progress, for example, timely updates, a primary person of contact, duration the matter may last, and approximate cost that would be incurred.
  5. Confirm that the client is well versed with the advice given to him and is in the state where he can make well-informed choices.<sup>5</sup>

## CONFIDENTIALITY

The deep-rooted belief of legal ethics is that of client-attorney privilege. Advocates owe a responsibility to preserve matters of the client in a confidential manner and the situations that they can reveal the information provided by the client are stringently limited. All the

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<sup>3</sup> Greenough v. Gaskell, (1824-34) All ER(Rep) 767.

<sup>4</sup> K. Gururaja Chari, Advocacy and Professional Ethics, (Allahbad: Wadhwa and Co., 2000), at p. 143.

<sup>5</sup> P. Ramanatha Aiyer, Legal and Professional Ethics: Legal Ethics, Duties and Privileges of a Lawyer, (3rd edn., Nagpur: Wadhwa and Co., 2003).

communications between an advocate and client are bound by attorney client's privilege, thus it is confidential. For example, notes of open court proceedings, or minutes of meetings, or correspondence with opposing lawyers are not sub within the ambit of legal professional privilege. This obligation does not extend to where there is a criminal or fraudulent act or communications that have taken place to seek guidance with a malafide intention of carrying out the offense. In **V.C. Rangadurai V. D. Gopalan**<sup>6</sup>, Justice Sen opined that the connection between the attorney and the client is purely private involving the upmost personal trust and confidence.<sup>7</sup>

### **AVOIDING A CONFLICT OF INTEREST**

“Lawyers shall always loyally respect the interests of their clients.” - Principle 15 of the UN Basic Principles on the Role of Lawyers. To act for maintaining the interests of his client practically involves that the advocate averts conflicting interests. There are various situations where a conflicting interest may arise:

1. The advocate owes distinct obligations to 2 or more of his clients pertaining to similar or connected cases, and such duties are conflicting, or there is a substantial risk involved that such duties may conflict. This might include a client on whose behalf the advocate has acted in the past. The advocate's duties towards his client remain, even if the case has been accomplished.<sup>8</sup>
2. The advocate's obligation is to fulfill the best interests of the client in regards to the conflicting matter, or there might be a presumed risk it might conflict, with the advocate's interests pertaining to that or any connected matter.<sup>9</sup>

In such circumstances, an advocate should make the client, aware of the conflict or possible conflict of interest. Generally, it is a sound decision to decline to act on the behalf of such client where there is prima facie conflict of interest.

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<sup>6</sup> AIR 1979 SC 281.

<sup>7</sup> Clark D. Cunningham, “How to Explain Confidentiality”, 9 Clinical Law Review 579 (2003).

<sup>8</sup> Gurunanak Provisions Stores v. Dulhonumal Savanmal and Ors., AIR 1994 Guj 31.

<sup>9</sup> Southwark and Vauxhall Water Company, (1978) 3 QBD 315 (CA).

## **FEES**

The principle of fairness administers the fees that an advocate charges from the client. The advocate must tell his client of the tentative fee arrangements. The tentative fees must stay undoubtedly clear and if and when it may change. The client would be given a bill and such an invoice must include proper disbursements of fees. If an advocate takes monetary benefit on behalf of his client, he must check that the money is given or set-off against fees. If it is the latter situation, the advocate should make sure the invoice has been sent to the client and that his client is well informed of the money that is used to pay fees.<sup>10</sup>

## **IMPORTANT RULES AND DUTIES FOR ADVOCATES FOLLOWED IN INDIA**

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### **RULES AN ADVOCATES SHOULD FOLLOW TOWARDS HONORABLE COURT:**

The BCI has set basic guidelines to regulate the duties an advocate should follow towards the court. Important duties are as follow:

1. **Act in a dignified manner:** A lawyer is obligated to act with dignity and respect while presenting the case and while acting otherwise as an advocate before the court. He should not be submissive and in any case, which involves a grave complaint against a judicial officer based on the substantial ground, it is his right and duty to submit his complaints to the competent authority. In re **D.C. Saxena**<sup>11</sup> - The advocates can make a complaint against judicial officer but the same should be submitted to the appropriate authority.
2. An advocate must preserve the court reverential attitude keeping in mind that the dignity of the judicial office is vital for the existence of a free community. In **U.P. Sales Tax Service**

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<sup>10</sup> 185th Law Commission Report, available at [lawcommissionofindia.nic.in/reports/185thReport PartV.pdf](http://lawcommissionofindia.nic.in/reports/185thReport%20PartV.pdf), last visited on 24.12.2009. This is the same recommendation as was made in the 69th report, but was not acted upon. See 69th Law Commission Report, available at [lawcommissionofindia.nic.in/reports](http://lawcommissionofindia.nic.in/reports).

<sup>11</sup> AIR 1966 SC 2481.

**Association v Taxation Bar Association**<sup>12</sup>– The judgment laid down the rule that the officers of court should make sure they do not harm the dignity of the justice system as it will be a serious peril to the existence of an unrestricted community.

3. **Refuse to act illegally towards the opposition:** The regulation necessitates the lawyer to utilize his best knowledge to avert the client to take a sharp turn or prejudicial practice or from doing anything in association to the court, opposing counsel, or parties which the advocate himself would not do. The advocate should also refuse to act on the behalf of the client who continues in such an indecorous comport.

### **RULES ON ADVOCATES DUTY TOWARDS THEIR CLIENT:**

1. **Not to withdraw from service:** Rule 12 talks about how a lawyer should not abruptly deny from any arrangements that were once accepted without giving satisfactory notice which includes the substantial reason for the same.
2. **Full and frank disclosure to the client:** Rule 14 provides that a lawyer should at the beginning of any meeting and even while continuation makes absolute disclosure to the client in relation to the connection he has with the parties and any such interest or about any issue that is likely to affect the client. In case he recuses himself from the case, he has to refund such part of the fee as the amount has not been earned.
3. **Uphold interest of the client:** Rule 15 instructs that an advocate is duty-bound to uphold the primary interest of his client courageously with all reasonable and honorable ways by dodging any hostile consequences to himself or any related person. The advocate is responsible for protecting a person accused of any crime regardless of what he opines as to the guilty of the accused and while discharging his duty he must always bear in his mind that the faithfulness he has towards the law which requires that no man should be sentenced without satisfactory evidence.
4. **Not appear for opposite parties:** Rule 33 states that a lawyer who has agreed to act or has acted for any party, should not represent, appear or plead for the opposite party. In **Chandra**

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<sup>12</sup> AIR 1996 SC 1384,

**Shekhar Soni v. Bar Council of Rajasthan and Ors.**<sup>13</sup>, the lawyer agreed to represent one party in a criminal matter and later swapped sides and started representing the opposite party. The Supreme Court said that “...it is not following professional etiquette for an advocate while reserved by one party to accept the brief of the other. It is unethical to represent contradictory interests except by unambiguous consent given by all concerned after full revelation of the facts.... Counsel’s paramount duty is to the client, and where he finds that there is a conflict of interests, he should refrain from doing anything which would affect the interests of the client.” The Supreme Court upheld that he was appropriately found guilty of misconduct by the Bar Council of India in the disciplinary proceedings. Thus, he was suspended from practicing for one year.

### **RULES ON ADVOCATE’S RESPONSIBILITY TO OPPONENTS AND OTHER ADVOCATES:**

1. **Fulfill the promises made:** A lawyer should thrive to fulfill the sincere promises that he made to the other party even if it is not condensed in the form of writing or enforceable in Court.
2. **Solicit work:** A lawyer should not solicit his work or advertise himself in any manner. He should not indorse by the way of circulars, advertisements, touts, personal communications, and interviews other than through personal links, furnishing, or inspirational newspaper comments or constructing the photographs that need to be printed pertaining to cases in which he has been involved or concerned.

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<sup>13</sup> AIR 1983 SC 1012.

## CONCLUSION

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Law is a noble profession and lawyers also called officers of the court, have certain responsibilities towards their clients and the honorable court. The Advocates Act, 1961, and Bar Council Rules, 1975 have articulated the mandatory practices and obligations. This is formulated to ensure that public confidence in the honorable legal profession and the administration of justice should be preserved at all the cost. In any given situation where advocates are not willingly accepting the importance of regulation in the public interest then it will be enforced - either by the courts or by government. The mischievous activity of the subordination of service and professionalism to profit, personal aims, and ambitions are gaining momentum. The members of legal fraternity must repetitively remind themselves of the honorable nature of the legal profession otherwise there would be no point in professional ethics rules. It is the substance and not the form that matters here. Comprehensive Codes of Ethics does not assure ethical practice; rather, this lies in the fundamental nature of being 'called to the Bar'.

In the case of *in re John Cameron Foster*, Street<sup>14</sup> CJ observed: “It is to be borne in mind that all barristers are members of a profession as distinct from being engaged in a trade. A trade or business is an occupation or calling in which the primary object is the pursuit of pecuniary gain. Honesty and honorable dealing are, of course, expected from every man, whether he be engaged in professional practice or any other gainful occupation. But in a profession, pecuniary success is not the only goal. Service is ideal, and the earning of remuneration must always be subservient to this main purpose.”

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<sup>14</sup> (1950) 50 SR NSW 149.