

IMPORTANCE OF LEGAL ETHICS

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Ethics may be defined as the study of what is right or good in human conduct. It is the general theory of conduct and considers the actions of human beings with reference to their rightness or wrongness and their tendency towards good or evil.

Meaning of Ethics :

According to *Philology* (Philology means the branch of knowledge that deals with the structure, historical development, and relationship of a language or languages.) the word 'ethics' is derived from the Latin word *Ethos*, which means character, habits, activity or behavior of human beings. Ethics is also called moral philosophy. The word moral is a derivative of the Latin word 'Mores' meaning conventions or practice. In this way 'Ethics' literally means 'the Science Of Convention or Practice'. Ethics is the science of human conduct. Habits and behavior are related to the permanent specialty of human character. Conduct is the mirror of character. Thus ethics is the science of character or habit. It evaluates human habits, character and voluntary determinations and discusses their propriety or otherwise.

It studies the ideals of human life. It shows what ought to be done and what ought not to be done. In the words of James Seth, "As the science of the Good, it is the science excellence of the ideal and the ought."¹ According to Mackenzie, ethics can be defined as, "The study of what is right or good in conduct."²

Legal Ethics :

There is observance of ethics for an advocate, pleader or barrister-at-law in the professional matters. He must not take up a doubtful case simply for the sake of fee, even when he feels that he cannot succeed.

He must not coach up false witnesses. Coaching up of false witnesses itself a crime. It is a heinous sin. An advocate who coaches up false witness kills his conscience and soul also. In addition, he corrupts others also. He can't have any progress in the spiritual path. He cannot argue forcibly, because falsehood has no strength. He cannot stand up with a majestic attitude as his moral backbone is fragile. He cannot be sure of success though he may twist and distort in diverse ways. Truth alone will triumph in the end. When he takes up a case he must work sincerely for it even though there is some delay in getting his fee from his client. He must take up the cases from poor people without charging any fee. He must work for the public good also without expecting any rewards.³

Importance of Legal Ethics :

Section 49(1)(c) of the advocate Act, 1961, empowers the bar council of India to make rules so as to prescribe the standards of professional conduct and etiquettes to be observed by the advocate. In the exercise of the rule-making power under section 49(1)(c) of the advocate Act, 1961, the bar council of India has made several rules so as to prescribe the standards of professional conduct and etiquette. Chapter II of part VI of the rules framed by the BCI, deals with the standards of professional conduct and etiquette.

Social Role of Lawyers:

Lawyer's ethics are governed by role as an advocate in adversarial legal process and complex legal. This advocacy combines the principle of partisanship and the BCI, rule 15, 1961 (Bar council of India) Provision that it is the duty of advocate to uphold the interest of his client fearlessly without regard to any unpleasant consequence to himself or to any other. The responsible lawyering approach focuses on lawyer's role as an officer of the court and guardian of the legal system. Lawyer's ethics governed by role of facilitating the public administration of justice according to law.⁴

General ethics particularly social and political conceptions of justice, moral philosophy, and promotion of substantive justice defines lawyer's responsibilities. Social role of lawyers is irrelevant responsibilities to people, communities and relationship should guide lawyers and client as everybody.⁵

Relationship to client and lawyer :

Duties of advocacy are tempered by duty to ensure integrity of and compliance spirit of the law; to ensure that issues are not decided on purely procedural or formal grounds but substantive. The lawyer is responsible for making law work as fairly and justly as possible. He may need to act as a gatekeeper of law and advocate of legal system against client.⁶

Lawyering:

Lawyers may set fees for their representation of clients, but may not set "minimum" fee. Fee must be reasonable, a subjective term that is related to the lawyer's experience, ability and reputation, the skills necessary to perform the legal service, and the usual fee in the lawyer's locality for similar works. Contingency fee, where the lawyers receive a set percentage of the client's recovery, must be in writing and this is not permitted in matrimonial and criminal cases.⁷

Once Pandit Motilal Nehru wanted to take fees even from the congress people. Jawaharal Nehru said, "Venerable father, for whose sake are you accumulating money?" Motilal Ji said, "It is for you . You are my beloved son". Jawaharlal Nehru said, "Beloved father , I don't want even a single rupee from your earnings, I will maintain myself independently. Kindly take up the case without fees. This is Public Sewa". This opened the eyes of Motilal ji. He said , "Jawahar Lal call, those people. I sent them away with an unsympathetic heart. I

will work in this case without fees. The words of Jawahar Lal changed the life of his father. He abandoned his legal profession and became a sincere fiery congress worker.⁸

(i) Advertising:

Lawyers are permitted to advertise, but are prohibited from making false or misleading communications, e.g. misstating or omitting material information; creating unjustified expectations; and making unverifiable comparisons. See model rules 7.1(a), (b) and (c). Lawyers may not advertise that they are “specialists” in an area of law, unless they are certified as such, see model rules 7.4(c) and (d).

The giving of undertaking:

Undertakings given by practitioners are taken seriously and a practitioner will generally be held personally liable for any undertaking given on behalf of a client. If the client subsequently they breaches that undertaking.

Personal liability will only be avoided if such avoidance is expressly disclaimed in the undertaking itself. This is because the undertaking is construed as a binding promise, a breach of which can sound in costs or in discipline. An undertaking against a client is only enforceable if it is given with the client’s express authority. The consequences for a client breaching an undertaking are not as severe as for a solicitor, due to the duty to the court, owed by the lawyers.

Conclusion:

Thus a conclusion can be drawn that Advocacy is a profession, not a business. A professional’s aim should be providing services to the people and not to indulge in the fraudulent activities to earn money. Thus, the main object of the ethics of the legal profession is to maintain the dignity of legal profession and the friendly relation between the Bench and Bar. Law is a profession and lawyers have certain obligations to their clients and to the court. These obligations are generally articulated in a Code of Ethics or Rules of practice. The public must be able to have confidence in the legal profession and the administration of justice. To this end it is desirable that clearly articulated rules of conduct are introduced- not only so that the profession is aware of their ethical obligations but also because this is in the public interest. In the present time it would be exceedingly difficult and most unlikely for a lawyer who is abusing their position of trust or who is breach of their ethical obligations of their client to be disciplined. In most cases the client will be unaware that what has happened is a breach of professional ethics. In other cases, without clear Rules or guidelines, misconduct, unless gross and obvious, will go unnoticed and unpunished. Professional Codes of Ethics are one of the most important characteristics of a profession. Justice Abbot Parry has mentioned several lamps of advocacy, honesty, courage, industry, wit, eloquence, judgment and fellowship. An advocate should be honest and man of integrity and character. An advocate who is straight forward and⁹ possesses these three jewels is appreciated by the court and the client alike. Mannerism also plays important role in getting success in the legal profession. He should be respectful to the court and try to win the confidence of the judge. He should not interrupt the principles of natural justice. The principle of natural Justice work as is the guarantee of equality.

REFERENCES

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- [1.] Seth James, A Study of Ethical Principles, Charles Scribner's Sons New York 1905, p37
 - [2.] Mackenze.S.John, Amanual of Ethics, Delhi Oxford University Press Bombay, Calcutta, Madras, 1883, p 1
 - [3.] Sivananda Swami, Ethical Teaching, The Yoga-Vedanta Forest Academy The Divine Life Society, P.O.Sivanandanagar(via. Rishikesh)Dt. Tehri-Garhwal U.P India 1962, p118
 - [4.] Christine packer and Adrian Evans,Inside lawyer ethics, Cambridge University Press, 2007 p24
 - [5.] Christine packer and Adrian Evans,Inside lawyer ethics Cambridge University Press, 2007 p 31
 - [6.] Christine packer and Adrian Evans, Inside lawyers ethics Cambridge University Press, 2007 p15
 - [7.] Israel Susan, An Overview of Legal Ethics, National Juris University.

 - [8.] Sivananda Swami, Ethical Teaching, The Yoga-Vedanta Forest Academy The Divine Life Society, P.O.Sivanandanagar(via. Rishikesh)Dt. Tehri-Garhwal U.P India 1962, p119