

## ROLE OF LAWYER IN LEGAL EDUCATION FOR GOOD GOVERNANCE

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### ABSTRACT

**"Good governance is perhaps the single most important factor in eradicating poverty and promoting development."**

**- UN Secretary - General Kofi Annan**

Good governance is associated with efficient and effective administration in a democratic framework. It is considered as citizen-friendly, citizen caring and responsive administration. In general, good governance is perceived as a normative principle of administrative law, which obliges the State to perform its functions in a manner that promotes the values of efficiency, non-corruptibility, and responsiveness to civil society.

The UHCHR identifies five key attributes of good governance as follows:

- 1) Transparency
- 2) Responsibility
- 3) Accountability
- 4) Participation
- 5) Responsiveness

A lawyer is an individual who defends a person or entity in various legal proceedings. The Legal proceedings may fall in to a variety of different categories yet most are either considered criminal litigation or civil litigation. The Lawyer is a person who acts on behalf of another and voices the opinion of their client in a manner which is in their best interest.

An obligation to his clients to be faithful to them till the last and an obligation to the court to be and to remain a dependable part of the machinery through which justice is administered. It is beyond the scope of treatise on legal ethics to describe the aims and uses of examinations of witnesses or to state the rules as to how evidence shall be recorded.

An Advocate has various duties towards the Court, Clients, Colleagues and his opponent etc. An Advocate has all these duties as well as he or she has some moral responsibilities towards the society. The profession of law is honourable and its members are expected to act in an honest and upright manner and any deviation from these elementary principles is liable to be dealt with severely.

In good governance, the role of an Advocate is very important because an Advocate has the capability to change the pathetic norms of the society in a legal way.

**Key Words:** UHCHR - United Nations High Commissioner for Human Right

## **INTRODUCTION:**

"Good governance is perhaps the single most important factor in eradicating poverty and promoting development."

- UN Secretary - General Kofi Annan

### **A. Meaning of Good Governance:**

Good governance is associated with efficient and effective administration in a democratic framework. It is considered as citizen-friendly, citizen caring and responsive administration. In general, good governance is perceived as a normative principle of administrative law, which obliges the State to perform its functions in a manner that promotes the values of efficiency, non-corruptibility, and responsiveness to civil society. According to the World Bank, governance is "the manner in which power is exercised in the management of a country's economic and social resources for development. "United Nation Development programme while defining concept of good governance placed greater emphasis on sustainable human development. The UNDP emphasizes the human development, the elimination of poverty and public administration.

#### **➤ Govern or Governance means:**

Rule or control with authority.

Conduct the policy and affairs of government and organizations.

Influence or determine a course of action.

Be the predominating influence.

Be a standard or principle for; constitute a law for; serve to decide.

Check or control {especially passions}. Adding "effective or good" makes them better.

The United Nations High Commissioner for Human Rights (UHCHR) identifies five key attributes of good governance as follows:

- 1) Transparency;
- 2) Responsibility;
- 3) Accountability;
- 4) Participation and;
- 5) Responsiveness

The concept of governance is as old as human civilization. What is "Governance"? It simply means the process of decision making and the process by which decisions are implemented.

### **Good Governance and Fundamental Rights:**

The Karnataka Lokayukta Hon'ble Mr. Justice N. Santosh Hegde in the first CIPS Foundation Day Lecture said that Good governance is a fundamental right of a citizen and democracy. Such governance includes factors such as transparency and accountability. It also includes values such as justice and equity. It must ensure that the citizens', especially the poorest, basic needs are met and they have a life with dignity. Good governance implies an administration that is sensitive and responsive to the needs of the people and is effective in coping with emerging challenges in society by framing and implementing appropriate laws and measures. It includes strict rules of accountability.

Good governance must be made a fundamental right and justiciable there was scope for corruption within the Constitutional framework as well as outside it. Therefore, good governance must be made a fundamental right under the Constitution.

The Directive Principles have been used as fundamental principles of governance tempered by the Fundamental Rights. From Article 37 time to time, adjustments have been made in the Fundamental Rights -- through legislative measures, executive action or judicial Pronouncements so as to further the object sought to be achieved by the Directive Principles. After all, the purpose of the Fundamental Rights on the one hand and the Directive Principles on the other is common; viz., to provide for an environment that can ensure dignified growth & development of each individual as a useful human being.

### **Role of Indian Judiciary:**

There is no area where the judgments of Supreme Court have not played a significant contribution in the governance - good governance - whether it be - environment, human rights, gender justice, education, minorities, police reforms, elections and limits on constituent powers of Parliament to amend the Constitution.

In **Prem Shankar Shukla**, the Supreme Court found the practice of using handcuffs and fetters on prisoners violating the guarantee of basic human dignity, which is part of the constitutional culture in India and thus not standing the test of equality before law (Article 14), fundamental freedoms (Article 19) and the right to life and personal liberty (Article 21).

In **Nilabati Behera case**, the Supreme Court asserted the jurisdiction of the judiciary as "protector of civil liberties" under the obligation "to repair damage caused by officers of the State to fundamental rights of the citizens", holding the State responsible to pay compensation to the near and dear ones of a person who has been deprived of life by their wrongful action, reading into Article 21 the "duty of care" which could not be denied to anyone.

In **Vishaka case** Supreme Court said that "gender equality includes protection from sexual harassment and right to work with dignity, which is a universally recognized basic human right. The common minimum requirement of this right has received global acceptance.

### **Core Characteristics of Good Governance:**

- **Participation** - All men and women should have a voice in decision-making, either directly or through legitimate intermediate institutions that represent their interests.

Such broad participation is built on freedom of association and speech, as well as capacities to participate constructively

- **Rule of law** - Legal frameworks should be fair and enforced impartially, particularly the laws on human rights
- **Transparency** - Transparency is built on the free flow of information. Processes, institutions and information are directly accessible to those concerned with them, and enough information is provided to understand and monitor them
- **Responsiveness** - Institutions and processes try to serve all stakeholders
- **Consensus orientation** - Good governance mediates differing interests to reach a broad consensus on what is in the best interest of the group and, where possible, on policies and procedures
- **Equity** - All men and women have opportunities to improve or maintain their well being
- **Effectiveness and efficiency** - Processes and institutions produce results that meet needs while making the best use of resources
- **Accountability** - Decision-makers in government, the private sector and civil society organizations are accountable to the public, as well as to institutional stakeholders. This accountability differs depending on the organization and whether the decision is internal or external to an organization.
- **Strategic vision** - Leaders and the public have a broad and long-term perspective on good governance and human development, along with a sense of what is needed for such development. There is also an understanding of the historical, cultural and social complexities in which that perspective is grounded.

## **B. The Role of a Lawyer in good governance**

When people hear the word lawyer being spoken, they usually think of an individual who goes to court everyday and stands before a judge defending the freedom of another individual. This is true in some cases; however, there are many different types of lawyers with a variety of job responsibilities and duties. No matter what type of lawyer one may be they ultimately have an extremely important role in the lives of others.

### **Who is a Lawyer?**

A lawyer is an individual who defends a person or entity in various legal proceedings. The legal proceedings may fall into a variety of different categories yet most are either considered criminal litigation or civil litigation. The lawyer is a person who acts on behalf of another and voices the opinion of their client in a manner which is in their best interest.

### **What are the General Responsibilities of Lawyers?**



There are many different general responsibilities of a lawyer. This individual will represent clients in court, mediations, business transactions and other important legal proceedings or arrangements where the law will be discussed. The lawyer meets with the clients before, during and after legal proceedings to ensure that the client fully understands all aspects of their case. In general, the lawyer is the individual who represents another in all issues where legal representation is advised and deemed necessary.

### **What are the Specific Duties of Lawyers?**

A lawyer has many duties relevant to their occupation. One important duty that the lawyer must perform in their profession is maintaining client contact. Lawyers always represent someone, whether it be an individual or entity, and therefore it is important that the lawyer report all progress and pertinent information to their client in order to keep them well informed.

Another specific duty of lawyers is to provide in-person representation at court hearings and other legal proceedings. Whether the lawyer is involved with criminal litigation or civil litigation, there is most likely going to be some form of legal proceeding that they must attend on behalf of their client. The lawyer in this duty will speak on behalf of the client.

As stated earlier, the role of a lawyer is not simply to appear in court and argue passionately on behalf of the client. There is a multitude of background work which lawyers must do in order to adequately prepare a case or pursue a legal matter. There are many legal documents that need to be drafted and although paralegals and legal secretaries can draft some of these documents, there are still many lawyers who choose to do so themselves.

Contact with clients is not the only type of conversation which lawyers must have with individuals. Lawyers spend a great deal of time talking on the phone, negotiating, sending email and mail correspondence and faxing pertinent documents to and from involved parties. Again, paralegals and legal secretaries can help with this voluminous task but lawyers should try to do as much as they can themselves whenever possible and be sure to review all documents before they leave their office. There are certain duties which must be performed by the lawyers themselves, such as negotiating with opposing parties.

Another important duty which lawyers engage in on a frequent basis is research. There are many different forms of research which lawyers can do such as researching statutes, procedural rules, evidence, pertinent documentation and more. A large portion of a lawyer's time is spent reviewing and compiling research to aid them in the representation of a client.

### **C. Professional Ethics as per the Advocates Act, 1961 in India**

The profession of law is honourable, and its members are expected to act in an honest and upright manner, and any deviation from these elementary principles is liable to be dealt with severely.

### **Triple obligation of practicing advocates :**

An obligation to his clients to be faithful to them till the last, an obligation to the profession not to besmirch its name by anything done by him, and an obligation to the court to be and to remain a dependable part of the machinery through which justice is administered. It is beyond the scope of treatise on legal ethics to describe the aims and uses of examinations of witnesses or to state the rules as to how evidence shall be recorded. In examining witnesses the advocate should not forget that he is not merely the counsel of client but also an officer of the Court to further the ends of justice. Similarly, the advocate should maintain towards his opponent utmost cordiality. Clients and not counsels are litigants. The ill-feelings between clients should not be allowed to influence the conduct of their counsel. Says **Daniel Webster**: "*lawyers on opposite sides of a case are like the two parts of shears, they cut what comes between them, but not each other*"

Legal profession is not a business but a profession. It has been created by the state for the public good. Consequently, the essence of the profession lies in the three things-

1. Organisation of its members for the performance of their function ;
2. Maintenance of certain standards, intellectual and ethical for the dignity of the profession;
3. Subordination of pecuniary gains to efficient services.

### **Professional Ethics for Advocates**

Section 49(1)(c) of The Advocates Act of 1961, empowers the Bar council of India to make rules so as to prescribe the standards of professional conduct and etiquette to be observed by the advocates. It has been made clear that such rules shall have effect only when they are approved by the Chief Justice of India. It has also been made clear that any rules made in relation to the standard of professional conduct and etiquette to be observed by the advocates and in force before the commencement of the Advocates (Amendment) Act, 1973, shall continue in force, until altered or repealed or amended in accordance with the provision of the Act.

### **Advocates Duty towards Court**

*Advocate is an officer of justice and friend of the Court:*

The cardinal principle which determines the privileges and responsibilities of advocate in relation to the court is that he is an officer to justice and friend of the court. This is the primary position. A conduct therefore which is unworthy of him as an officer of justice cannot be justified by stating that he did it as the agent of his client. His status as an officer of justice does not mean he is subordinate to the judge. It only means that he is an integral part of the machinery for the administration of justice.

It is difficult to lay down any hard and fast rule as to what expressions a lawyer can use, with impunity, while addressing a court and what should ordinarily be tolerated by the court. Where an advocate receive an application or petition for correction or for removing objections, it is the duty of the advocate to return it and he has no authority to retain it. It is misconduct on his part if he retains it as held in; *Punjab National Bank v. FM Gold Head Ltd.* AIR 1993 HP 79.

It is true that lawyer should always conduct himself properly in court of law, and exert his best at all times to maintain dignity of the court, but court has also a reciprocal duty to perform and should not only be discourteous to the lawyer but should also try to maintain his respect in the eyes of his clients and the general public with whom he has to deal in professional capacity.

By accepting the brief of his client, the advocate does not cease to be an officer of justice. If that were so, the high and honourable office of counsel would be degraded to that of mercenary. It is the function of advocate not merely to speak for the client, whom he represents but also to act officer of justice and friend of the court. As friend or *amicus curiae* he has a privilege to offer suggestion to the court, with its consent, as aids to justice in a controversy that he does not appear for either side.

A famous case on the point is the trial of Algernon Sidney, for high treason in 1683. By the law of England, as it then stood, a man accused of high Treason could not have the aid of counsel. There was a technical defect in the indictment. A barrister rose, as *amicus curiae*, and brought it to the attention of the court. Chief Justice Jeffreys remarked at this, "We thank you for your friendship". The Court itself sometime appoints an advocate as *amicus curiae* if there is a question of law to be considered and his court thinks it advisable that someone should help it in arriving at a just decision.

Advocate should be bold, fearless and independent in the court at the same time he must not be disrespectful to the court & the judge .If an advocate cannot be present personally to receive the judgment when it is being pronounced, he must at least arrange his representative in the court. A legal practitioner should attend the hearing of the case throughout. He should not leave the court without the permission of the court to do so. An advocate must not forget that his main duty to assist the court in the right direction and to assist it to come to a right finding. Lawyer should win the confidence of the court and be trusted by the judge. A lawyer should never lose his temper inside or outside the court. It is lawyer duty not to interrupt the judge unless it becomes necessary to interrupt in the interest of justice. It is very bad of a lawyer to say to his client that the judge is his friend and he will give weight to his argument. Such acts not only bring discredit to the lawyer, but impair the dignity and impartiality of the judge. It is his duty not to include a false pleading and file an affidavit which he knows to be false. It is his duty not to influence the decision of the court by any illegal or improper means. An advocate shall use his best effort to restrain and prevent his client from resorting to sharp or unfair practices or from doing anything in relation to the court, opposing council or parties which the advocate himself ought not to do. An advocate shall appear in the court at all times only in the prescribed dress, and his appearance shall always be presentable. An advocate shall not wear bands in public or gown in the public places other than in court except on such ceremonial

occasions. An advocate should not act or plead in any matter in which he was pecuniary interested.

An advocate shall maintain towards the court a respectful attitude bearing in mind the dignity of the judicial officer is essential for the survival of free community.

***Co-operation between the bench and the Bar is a necessity:***

The first duty which advocates and judges owe to each other is of co-operation. Co-operation between the bench and the Bar is not a mere conventional statement. It is a fundamental necessity. Without it, there can be no orderly administration of justice. *The Advocate:*

*"Nothing is more calculated to promote the smooth and satisfactorily administration of justice than complete confidence and sympathy between Bench and the Bar".*

An intelligent knowledge of their respective positions should make both advocates and judges realise that though their functions may be different, their aims are identical. Both are equipments of the same machinery designs for administration of justice. Both are equally necessary in a free country.

***What the counsel owes to the court:***

*The first duty which the counsel owes to the court is to maintain its honour and dignity—this is the cardinal principle determining the advocate relation in court.*

An Advocate should behave himself in a manner befitting his status as an officer of the court, a privileged member of the community, a hon'ble member of an exalted profession and a fine gentlemen. It is in recognition of this evolution in professional & ethical standard within the legal community that the Bar Council of India wishes to set out the present set of ethical standard of the Indian Bar

***Advocate's duty to his clients:***

A special responsibility rests on the members of the Bar to see that the parties do not misled the courts by false and reckless statements on material matters. As was observed in that an advocate stands as a loco parentis towards litigants. A member of a Bar undoubtedly owes a duty to his clients and must place before a court all that can be fairly and reasonably be submitted on behalf of his clients. Advocate is not a mere a mouthpiece of client but he is an officer of the court. It is the duty of the court to help bringing down arrears and to prevent the abuse of the process of the abuse of the court. Their duty to client should persuade them to advise their clients not to go in futile litigation.

It is expected that an advocate for a party would conduct a case with all its sense of responsibility which he is expected to have in discharge of his duty to his client. It is the duty of every advocate who accepts the brief in a criminal case to attend the trial from day to day. He would be committing the breach of his professional duty if he fails to attend.



A client is entitled to be protected from an advocate who is likely to betray them; the profession cannot afford to have a member who fails in keeping to the required standard of conduct. It is the duty of an advocate who has accepted the vakalatnama and filed it in the court to go to court on the day fixed for the hearing of the case even if he has not received his fees unless the client terminates the contract. Moreover, the payment of commission to procure client is unprofessional.

(a) The first obligation which the advocate owes to his client is to prepare his brief with care, skill and thoroughness,

In India, not only presents his client's case in court, but also prepares it. For this purpose he should make a thorough grasp of facts of the case. In order to get acquaintance with facts, he should thoroughly listen to the client's story. It is the duty of advocate to examine him to get all relevant and material facts. A thorough cross examination of witnesses is necessary, to enable the counsel to get at all real facts and to chalk out his line of defence. If after investigation, the counsel thinks that his client's case is weak and untenable, he should tell him so. One of the special dangers which threaten the professional ideals in the present life is the tendency to assimilate the practise of law to the conduct of business and commercial standards. Once the advocate has accepted the brief, the etiquette requires that he should be grudge no time or toil, however great, needful to the thorough mystery of his case in its facts and legal rules irrespective of the amount of fees paid to him.

It has been held by the High Courts of India that a pleader is guilty of misconduct if after receipt of full fees he neglects to appear and conduct the case.

(b) Secondly, in giving advice to his client for or against litigation, he should give his candid opinion. On this point Sharswood says in his Legal Ethics:

"It is nothing but selfishness that can operate upon a lawyer when consulted, to conceal from the party his candid opinion of the merits, and the probable results. It is fair that he should know it; for he may not choose to employ a man whose views may operate to check his resorting to all lawful means to effect success. Besides, most men when they consult attorney, wish a candid opinion; it is what they ask and pay for." Counsel also owes duty of continuous service to his clients. When the counsel after he has begun the case leaves the court to attend another case, it amounts to professional misconduct.

#### **D. Advocates duty toward his colleagues**

Rule 36, 37, 38, and 39 framed by the Bar council of India deal with the duties of an advocate to the colleagues. Rule 36 provides that an advocate shall not solicit work of advertise (either directly or indirectly) whether by circulars, advertisements, touts, personal communications interview not unwarranted by personal relations, furnishing or inspiring newspaper, comments or producing his photograph to be published in connection with case in which he has been engaged or concerned. The sign-board or name plate should be of reasonable size. The sign-board or stationary should not indicate that he is the President or member of the Bar council or of any Association.

The advertising is prohibited because it may lead to unhealthy competition among the advocates. Advertisement can be allowed only for proper guidance so that it may not lead to unhealthy competition and may not result in lowering dignity of the legal profession.

Rule 37 provides that an advocate shall not permit his name to be used in aid of or to make possible the unauthorised practise of law by any agency.

Rule 38 makes it clear that an advocate shall not accept a fee less than the fee taxable under the rules when the client is able to pay the same.

According to rule 39 an advocate shall not enter appearance in any case in which there is already a Vakalatnama or memo of appearance filed by an advocate engaged for a party except with his consent; in the case such consent is not produced he shall apply to the court stating the reasons why the consent should not be produced and he shall appear only after obtaining the permission of the court. The object of this rule is to secure goodwill among the advocates. It prevents the temptation of seducing client from counsel who have already been engaged. Besides, it is one of the professional obligations, of an advocate to dissuade client from charging his counsel unless he has a strong reason for it and to satisfy himself that the reason is proper and adequate. The ill feeling of client should not affect their cordial relations.

All lawyers are brothers at the bar. An advocate should be courteous to the other advocates.

### **Conclusion:**

To conclude our whole discussion on the ethics of legal profession or the duties of an advocate, one can fairly summarize that basically the duties which an advocate has to follow is of moral character, what he owes to his clients or opponent or colleagues or towards court is not only determined by the rules framed by the Bar council of India in this behalf but all the more, it also depends on one etiquette manners. In what way and in what manner an advocate has to conduct himself is determined by his loyalty towards his profession. The profession of law is honourable and its members are expected to act in an honest and upright manner. And any deviation from these elementary principles is liable to be dealt with severely. An advocate practising a law is under many fold obligations like certain obligation towards court, client, witnesses, opponent, colleagues and general duties as a member legal profession. When advocate do not follow any of such obligation imposed on him by law, then he can be guilty of professional misconduct. Misconduct can be defined as dereliction of or dereliction from duty. An advocate is answerable for dereliction of duty. In order to avoid misconduct every legal practitioner should understand his duties. When lawyer is guilty of any professional misconduct, then only any action can be taken.

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, to establish honourable and fair dealings of the counsel with his client, opponent and witnesses, to establish the spirit of brotherhood in the Bar itself; and to secure that lawyers discharge their responsibilities to the community generally. Legal profession is necessarily the keystone of the arch of government. Legal profession is not a business but a profession. It has been created by the state for the public good. Consequently, the essence of profession lies in two things:

- Organisation of its members for the performance of their function.
- Maintenance of certain standards, intellectual and ethical, for the dignity of the profession

