

UNIT-IV

LEGAL ETHICS

Introduction: The word ethics is derived from the Greek word 'ethos' (character) and from the Latin word 'mores' (customs). Together they combine to define how individuals choose to interact with one another. In philosophy, ethics defines what is good for the individual and for society and establishes the nature of duties that people owe to themselves and to one another.

Ethics and legal profession often work hand in hand. Legal profession is a noble profession. The nobility of the legal profession is maintained by the adherence and observance of a set of professional norms by those who adopt this profession. It is known as legal ethics or the ethics of the legal profession. The fundamentals of the legal ethics, may be defined as code of conduct written or unwritten for regulating the behaviour of a practising lawyer towards himself, his client his adversary in law and towards the court.

Object of the Professional Ethics: The main object of the professional ethics of advocacy is to maintain the dignity of the legal profession. *Chief Justice Marshall* has observed in this respect, "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 with his client, opponent and witness, to establish a spirit of brotherhood with bar itself and to secure that lawyers discharge their responsibilities to the community generally".

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

Need for Professional Ethics:

The American Bar Association Committee has well explained the need of the code of legal ethics. It has observed that the legal profession is necessarily the keystone of the arch of Government. If it is weakened, and allowed to be a subject of the corroding and demoralising influence of those, who are controlled by craft, greed or gain or other unworthy motive, sooner or later the arch, must fall. The future of the country depends upon the maintenance of the shrine of the justice, pure and unrolled by the advocates. Thus, it cannot be so maintained, unless the conduct and motives of the members of the legal profession are what they object to be. Therefore, it becomes the plain and simple duty of the lawyers to use their influence in every legitimate way to help and make the Bar what it is ought to be. A code of ethics is one method of furtherance of this end. The committee has further observed that members of Bar, like Judges, are officers of the court and like judges, they should hold office only during good behaviour and this good behaviour should be defined and measured by ethical standards, however high, as necessary to keep the administration of justice, pure and unsullied. Such standard may be crystallized into a written code of professional ethics and the lawyer failing to conform thereto, should not be permitted to practise or retain membership in professional organisation.

Nature of Professional Ethics:

A code of ethics is developed for each profession. Suppose you write articles in a newspaper. Professional ethics require that you verify facts

before you write that article. Similarly, in India for lawyer also a set of guidelines have been laid down so far as professional ethics are concerned, which defines their conduct in the profession that is highly competitive and dynamic. Indian law requires lawyers to observe professional ethics to uphold the dignity of the profession. Lawyers are expected to follow professional ethics and that they are accountable for dishonest, irresponsible and unprofessional behaviour. Further, lawyers can lose the license to practice if they are found guilty of unethical practices that tarnish the dignity of their profession. A lawyer must adhere to the professional norms, for fair dealing with his client and to maintain the dignity of the profession.

Sir Sivaswamy has rightly observed that, *“it is of course true that men are not necessarily made moral by courses of lectures on ethics but it must be remembered that lapses from the traditional standard are often due to ignorance and that the diffusion of knowledge of rules applicable to the professions must contribute to the maintenance of a high standard of integrity. The observation of the canons of legal profession will, no doubt, raise the profession in the publication estimation”.*

Many professions in India, such as legal and medical professions have codes of practice that members of the profession must follow. For advocates it is the Advocates Act and Bar Councils Act, whereas for doctors it's the Indian Medical Councils Act, 1956 and Indian Medical Council (Professional conduct, Etiquette and Ethics) Regulations, 2002. These legislations aim at preventing exploitation of clients and patients; and at the same maintaining the integrity of the profession. The Bar Council of India is a statutory body that regulates and represents the Indian bar. It was created by Parliament under the Advocates Act, 1961. It prescribes standards of professional conduct and etiquette and exercises disciplinary jurisdiction. Section 49(1)(c) of the Advocates Act, 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 standards 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 provisions 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*". Chapter II of part VI of the Rules framed by the Bar Council of India deals with the standards of professional Conduct and Etiquette. These rules specify the duties of an advocate to the Court, client, opponent and colleagues, etc. It's Preamble states that, "An advocate shall, at all times, comport himself in a manner befitting his status as an officer of the Court, a privileged member of the community, and a gentleman, bearing in mind that what may be lawful and moral for a person who is not a member of the Bar, or for a member of the Bar in his non-professional capacity may still be improper for an advocate. Without prejudice to the generality of the foregoing obligation, an advocate shall fearlessly uphold the interests of his client and in his conduct conform to the rules hereinafter mentioned both in letter and in spirit."

The rules hereinafter mentioned contain canons of conduct and etiquette adopted as general guides; yet the specific mention thereof shall not be construed as a denial of the existence of others equally imperative though not specifically mentioned. The rules mentioned in chapter II of part VI of the rules of Bar Council of India maybe discussed as follow: -

1. Rules on Advocates Duty towards Court: The Bar Council of India has made certain rules so as to prescribe duties of an advocate towards the court. Such duties may be explained as follow:

- i. Act in a dignified manner:** During the presentation the case and while acting otherwise as an advocate before the court is required to conduct himself with dignity and self respect. An advocate shall not be 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. *In re D.C. Saxena, AIR 1966 SC 2481* - The rule empowers the advocate to make complaint against judicial officer but it should be submitted to proper authority.
- ii.** An advocate is required to maintain towards the court respectful attitude bearing in mind that the dignity of the judicial office is essential for survival of free community. In *U.P. Sales Tax Service Association v Taxation Bar Association, AIR 1996 SC 1384* – *This rule makes it clear that the lowering the dignity of the judicial officer will be a serious danger to the survival of a free community..*
- iii. Not communicate in private:** An advocate shall not influence the decision of the court by any illegal or improper means. It prohibits the private communication with the judge relating to pending case. If an advocate does so it amounts to professional misconduct – *Rizwan-UI-Hassan v. State of U.P. AIR 1953 SC 250.*
- iv. Refuse to act in an illegal manner towards the opposition:** The rule requires the advocate to use his best effort to restrain and prevent his client from resorting to sharp or unfair practice opposite or from doing anything in relation to the in court, opposing council or parties which the advocate himself ought not to do. It also requires the advocate to refuse to represent the client who persists in such improper conduct.

The Rule makes it clear that the advocate shall not consider himself mere mouthpiece of the client and shall exercise his own judgement in the use of restrained language in correspondence, avoiding scurrilous attacks in pleadings and using intemperate language during arguments in the court - ***M.Y. Shareef & Anothers. V. Hon'ble Judges of Nagpur High Court & Ors., (1955) 1 SCR 757.***

- v. Appear in proper dress code:** An advocate shall appear in court at all times only in the prescribe dress and his appearance shall always be presentable.
- vi. Refuse to appear in front of relations:** An advocate shall not enter appearance, act, plead, or practice in any way before a court, tribunal, or authority mentioned in section 30 of the Advocates Act, 1961 if the sole or any member thereof is related to the advocate as father, nephew, grand-father, son, grand-son, uncle, brother, nephew, first cousin, husband, mother, wife, daughter, sister, niece, aunt, sister-in-law, mother-in-law, and father-in-law, son-in-law, daughter-in-law.

For this purpose of this rule, court shall mean a court, Bench or tribunal in which abovementioned relation of the advocate is a judge, member or the presiding officer.

- vii. Not to wear bands or gowns in public places:** The rule requires the advocate not to wear bands or gowns in public place other than in court except on such ceremonial occasions and at such places as the Bar Council of India and the court may prescribe.
- viii. Not to represent establishments of which he is a member:** The rule provides that an advocate shall not appear in or before any court or tribunal or any other authority for or against an organization, institution, society, or corporation if he is a member of executive committee of such organization, institution, society, or corporation.

However, it has been made clear that this rule shall not apply to such a member appearing as 'amicus curiae' or without a fee on behalf of a Bar Council, Incorporated Law Society or a Bar Association.

- ix. Not appear in matters of pecuniary interest:** An advocate shall not act or plead in any matter in which he himself has some pecuniary interest.

Illustrations:

- (a) *He should not act in a bankruptcy petition when he himself is also a creditor of the bank.*
- (b) *He should not accept a brief from a company of which he is a director.*

- x. Not stand as surety for client:** *An advocate shall not stand as a surety, or certify that soundness of a surety for his client required for the purpose of any legal proceedings.*

2. Rules on Advocates Duty towards Client: Rule 11 to 33 deal with the duties of an advocate to his client. These rules may be explained as follow:

- i. Bound to accept briefs:** Rule 11 provides that an advocate is bound to accept any brief in the court or tribunal or before any authority which he proposes to practice at fee consistent with his standing at bar and also nature of case.

In **S.J. Chaudhary v. State, AIR 1884 SC 1755**, the Supreme Court has made it clear that if an advocate accepts the brief of a criminal case, he must attend the case day to day and if he does not do so, he will be held liable for breach of professional duty.

- ii. Not to withdraw from service:** Rule 12 provides that an advocate shall not ordinarily withdraw from engagements once accepted without sufficient cause and unless reasonable and sufficient notice given to the client.

In case he withdraws himself from the case, he is bound to refund such part of the fee as has not been earned.

- iii. Not to appear in matters where he himself is a witness:** Rule 13 provides that an advocate should not accept the brief or appear in a case in which he has reason to believe that he will be a witness.

In *Kokkanda B. Poondacha v. K.D. Ganpathi, AIR 2011 SC 1353*, the Court has held that one party to proceedings cannot cite advocate representing the other side as witness without disclosing as to how testimony is relevant as it will result in depriving the other side of services of the advocate.

- iv. Full and frank disclosure to client:** Rule 14 provides that an advocate shall at the commencement of his engagement and during the continuance thereof make all such full and frank disclosure 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.
- v. Uphold interest of the client:** Rule 15 provides that it is the duty of an advocate to uphold the interest of his client fearlessly by all fair and honourable means without regard to any unpleasant consequences to himself or to any other.

It is the duty of an advocate to defend a person accused of crime regardless of his personal opinion as to the guilty of the accused and in the discharge of this duty he should always bear in mind

that his loyalty is to the law which requires that no man should be convicted without adequate evidence.

- vi. Not to suppress material or evidence:** Rule 16 provides that an advocate appearing for the prosecution of criminal trial shall so conduct the prosecution that it does not lead to conviction of an innocent.

The rule makes it clear that the suppression of material capable of establishing the innocence of the accused must be scrupulously avoided.

- vii. Not to disclose the communications between client and himself:** Rule 17 provides that an advocate shall not commit directly or indirectly any breach of the obligation imposed by section 126 of Indian Evidence Act.

- viii. An advocate should not be a party to stir up or instigate litigation:** Rule 18 provides that an advocate shall not at any time be a party to the fomenting litigation.

- ix.** Rule 19 makes it clear that an advocate shall not act on the instruction of any person other than his client or his authorized agent.

- x. Not charge depending on success of matters:** Rule 20 provides that the fee of an advocate depending upon the success of the suit is considered as oppose to public policy. Contract for contingent fee is also hit by section 23 of the Indian Contract Act.

Agreement to share the proceeds of the litigation may amount to champerty. In such conditions the advocate has direct interest in the subject-matter and cannot act with the sense of detachment or with the attitude of objectivity. Such agreement degrades the honourable profession. To prevent such an agreement rule 20

provides that an advocate shall not stipulate for free contingent on the results of litigation or agrees to share the proceeds thereof.

- xi. Not receive interest in actionable claim:** Rule 21 provides that an advocate shall not buy or traffic in or stipulate for or agree to receive any share or interest in any actionable claim.

However, it has been made clear that nothing in this rule shall apply to stocks, shares, and debentures or government securities or any instruments which are, for the time being, by law or custom negotiable or to any mercantile document of title to goods.

- xii. Not to bid or purchase property arising of legal proceeding:** Rule 22 provides that an advocate shall not directly or indirectly bid for or purchase either in his own name or any other name for his own benefit or benefit of any other person, any property sold in execution of decree or other proceeding in which he was professionally engaged.

The rule makes it clear that this prohibition does not prevent an advocate from bidding for or purchasing for his client any property which his client may himself legally bid for or purchase, provided the advocate is expressly authorised in writing in this behalf.

- xiii. Not to adjust fees against personal liability:** Rule 23 provides 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 course of his employment as an advocate.

- xiv.** Rule 24 provides that an advocate shall not do anything whereby he abuses or take advantage of the confidence repose in him by his client.
- xv. Keep proper accounts:** Rule 25 provides that an advocate should keep accounts of the clients 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.
- xvi. Divert money from accounts:** Rule 26 provides that where money are received from or on account of client, the entries in the account should contain a reference as to whether the amounts have been received for fees or expenses and during the course of the proceeding, no advocate shall, accept with the consent in writing of the client concerned, be at liberty to divert any portion of the expenses towards fees.
- xvii. Intimate the client on amounts:** Rule 27 provides that 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. If the client demands the payment of such money and in spite of such demand the advocate does not pay him, he will be guilty of professional misconduct – *In the matter of P.J. Ratnam, AIR 1962 AP 201.*
- xviii. Adjust fees after termination of proceedings:** Rule 28 provides that after termination of the proceeding the advocate shall be at liberty to appropriate towards the settled fee due to him any sum remaining unexpanded out of the amount paid or sent to him for expenses or any amount that has come into his hands in that proceeding.
- xix.** Rule 29 provides that if the fee has been left unsettled the advocate can deduct out of any moneys of the client remaining in his hand at the termination of the proceeding for which he had

been engaged, the fee payable under the rules of the court in force for the time being or by then settled and the balance shall be refunded to the client.

- xx. Provide copy of accounts:** Rule 30 provides that the copy of clients account shall be furnish to him on demand provided the necessary charges are paid.
- xxi.** Rule 31 requires an advocate not to enter into arrangements whereby funds in his hands are converted into loans.
- xxii. Not lend money to his client:** Rule 32 prohibits an advocate to lend money to his client for the purpose of any action or legal proceeding in which he is engaged by such client. It provides that an advocate shall not lend money to his client for the purpose of any action or legal proceeding in which he is engaged by such client.
- xxiii. Not appear for opposite parties:** Rule 33 provides that an advocate who has, at any time, advice in connection with the institution of the suit appeal or matter has drawn pleading or acted for party, shall not act appear or plead for the opposite party.

In ***Chandra Shekhar Soni v. Bar Council of Rajasthan and Ors.***, an advocate who was representing one party in a criminal case switched sides and began representing the opposite party. It was held by the Supreme Court that "...it is not in accordance with professional etiquette for an advocate while retained by one party to accept the brief of the other. It is unprofessional to represent conflicting interests except by express consent given by all concerned after a full disclosure of the facts.... Counsel's paramount duty is to the client, and where he finds that there is conflict of interests, he should refrain from doing anything which would harm any interests of his client. A lawyer when entrusted with a brief is expected to follow the norms of professional ethics and try to protect the interests of his client in relation to whom he occupies a

position of trust." The Supreme Court upheld his being found guilty of malpractice by the Bar Council of India in disciplinary proceedings, and he was suspended from practise for the period of one year.

The consequences of a conflict of interest situation for the lawyer can be severe and costly. For example, acting with a conflict of interest can result in civil liability for professional malpractice as well as disciplinary action. Some very serious consequences also flow from a proven claim in contract, tort or equity, including:

- disqualification from representation of one or more clients;
- forfeiture of fees charged; the inability to charge for work in progress and other time invested;
- embarrassment, inconvenience and aggravation of defending a malpractice claim or investigation;
- lost time spent on defending a malpractice claim or investigation.

Thus, it is clear that lawyers have to be very careful while dealing with potential and current clients, so as to ensure that a conflict of interest situation does not arise. When such a situation does arise, the best plan of action is to request the new client to seek other representation so that the interests of the current client are not adversely affected. However, if a lawyer is already representing two different clients, and a potential conflict of interest situation arises, he may choose to disclose the relevant non-confidential aspects of the potential conflict to both of them and seek their express written consent to his continued representation of them, provided that it is clear that he can represent the interests of one client without adversely affecting the interests of the other. If, however, the two interests are directly conflicting ones, the advocate will have to remove himself from the matter rather than face action for professional negligence or malpractice, the consequences of which have already been outlined above.

In India, the counsel's relation with his client is primarily a matter of contract. The relation is in the nature of agent and principal. The agreement determines to what extent the counsel can bind his clients by his acts and statements; what shall be its remuneration, whether he will have a lien on his client's property, etc. It is evident, however, that as counsel is also conform to the ethical code prescribed for him by law and usage, he cannot be a mere agent or mouthpiece of his clients to carry out his biddings.

The relationship is personal and fiduciary:

It is a relation of trust and confidence. It is confidential requiring a high degree of fidelity and good faith. In ***V.C. Rangadurai V. D. Gopalan, AIR 1979 SC 281***, Justice Sen has observed that the relation between the advocate and his client is purely personal involving a highest personal trust and confidence.

Advocate's fee- fixation of fees:

In an ancient book called *Mirror des justices*, written by Andrew Horne, laid down that a lawyer in fixing his fees should take four things into consideration:

- i. The value of the cause;
- ii. The pains of the sergeant;
- iii. The worth of pleader on point of skill;
- iv. The usage of the court.

By the present day usages of the Bar, the following elements usually enter into consideration in fixing the amount of fee:

- a) The qualifications and standing of advocates who is asked to render professional service. It is evident that service rendered by the person of superior education and rich experience is likely to be

- more valuable and of better quality than the advice given by a person who is less qualified;
- b) The difficulty in the problem involve in the case. The more intricate the case the greater will be the degree of skill and amount of labour required;
 - c) The amount of time required to render professional service;
 - d) The amount involved in the suit;
 - e) The result expected to be accomplished as a consequence of the lawyer's exertion;
 - f) The customary charges of the Bar for such services.

Contingent fee and right of lien:

The fee depending upon the success of the suit or proceeding is regarded as against the public policy. The agreement for Contingent fee is hit by section 23 of the Indian Contract Act. Rule 9 framed by the Bar council of India expressly provide that an advocate should not act or plead in any matter in which he is himself be pecuniary interested. The agreement for the contingent fee is looked upon with disfavour, and later as inconsistent with the high ideals of the Bar.

In the case of **R.D. Saxena V. Balram Prasad Sharma; AIR 2000 SC 2912**; The Supreme Court has held that an advocate cannot claim a lien over a litigation file entrusted to him for his fees. The court has held that no professional can be given the right to withhold the returnable records relating to the work done by him with his clients matter on the strength of any claim for unpaid remuneration. The alternative is the professional concerned can resort to other legal remedies for such unpaid remuneration. The same ruling is given by Apex Court in the matter of, **New India Insurance Company Ltd V. A.K. Saxena; AIR 2004 SC 311**.

It is permissible for an advocate to sue for his fees:

In India, law allows it. However, according to general practise of the profession, it is dignified that the counsel should sue for his fee. The rule exists to maintain prestige of the profession and the public confidence in the Bar. His fee should therefore, be both fixed and paid beforehand.

3. Rules on Advocate's Duty to Opponents:

i. Not to negotiate directly with opposing party: An advocate shall not in any way communicate or negotiate or call for settlement upon the subject matter of controversy with any party represented by an advocate except through that advocate representing the parties.

ii. Carry out legitimate promises made: An advocate shall do his best to carry out all legitimate promises made to the opposite party even though not reduced to writing or enforceable under the rules of the Court.

4. Rules on Advocate's Duty towards Fellow Advocates:

i. Not advertise or solicit work: An advocate shall not solicit work or advertise in any manner. He shall not promote himself by circulars, advertisements, touts, personal communications, and interviews other than through personal relations, furnishing or inspiring newspaper comments or producing his photographs to be published in connection with cases in which he has been engaged or concerned.

ii. Sign-board and Name-plate: An advocate's sign-board or name-plate should be of a reasonable size. The sign-board or name-plate or stationery should not indicate that he is or has been President or Member of a Bar Council or of any Association or that he has been associated with any person or organisation or with any particular cause or matter or that he specialises in any particular type of work or that he has been a Judge or an Advocate General.

iii. Not promote unauthorized practice of law: An advocate shall not permit his professional services or his name to be used for promoting or starting any unauthorised practice of law.

iv. An advocate shall not accept a fee less than the fee, which can be taxed under rules when the client is able to pay more.

v. Consent of fellow advocate to appear: An advocate should not appear in any matter where another advocate has filed a vakalt nama or memo for the same party. However, the advocate can take the consent of the other advocate for appearing.

In case, an advocate is not able to present the consent of the advocate who has filed the matter for the same party, then he should apply to the court for appearance. He shall in such application mention the reason as to why he could not obtain such consent. He shall appear only after obtaining the permission of the Court.

Other Duties:

(a) Rule 40 requires every advocate on the rolls of the State Bar Council to pay a certain sum to the state bar council.

(b) Rule 41 provides that all the sums so collected by the state bar council shall be credited in a separate fund to be known as "Bar Council of India Advocates welfare fund for the State" and shall be deposited in the bank as provided there under.

(b) (i) According to rule 41(2) the Bar Council of India Advocates Welfare fund Committee for the State shall remit 20% of the total amount collected and credited to its account, to the bar council of India by the end of every month which shall be credited by the Bar council of India and the Bar council of India shall deposit the said amount in a separate fund to be known as "Bar Council of India Advocates Welfare fund."

(b) (ii) According to rule 41(3) the rest 80% of the total sum so collected by the Bar Council of India Advocate Welfare Fund Committee for the state shall be utilized for the welfare of the advocates in respect of welfare schemes sponsored by the respective State Bar Council.

(c) Rule 42 deals with the consequences of non payment of the said amount by the advocate. It provides that if an advocate fails to pay the aforesaid sum within the prescribed time, the secretary of the State Bar Council shall issue to him a notice to show cause within a month why his right to practice be not suspended. In case the advocate pays the amount together with late fee within the period specified in notice, the proceeding shall be dropped. If the advocate does not pay the amount or fails to show sufficient cause, a committee of three members constituted by the state bar council in this behalf may pass an order suspending the right of the advocate to practice.

(d) Rule 43 provides that an advocate who has been convicted of an offence mentioned under section 24-A of the Advocates Act or has been declared insolvent or has taken full time service or part time service or engages in business or any avocation inconsistent with his practicing as an advocate or has incurred any disqualification mentioned in the Advocates Act or the rules made there under, shall send a declaration to the effect to the respective state bar council in which the advocate is enrolled, within 90 days from the date of such disqualification.

(e) Rule 44 provides, an appeal shall lie to the bar council of India at the instance of an aggrieved advocate within a period of 30 days from the date of the order passed under rule 42 and 43.

(e)(i) Rule 44-A provides that there shall be a Bar council of India Advocates Welfare Committee consisting of five members elected from amongst the members of the council. The term of the members of the

committee shall be co-extensive with their term in the Bar Council of India. Rule 44-b makes it clear that the Bar Council of India shall utilise the funds received under rule 41(2), stated above, in accordance with the scheme which may be framed from time to time.

5. Rules on Advocate's Duty in Imparting Training:

Rule 45 framed by the Bar Council of India makes it clear that it is improper for an advocate to demand or accept fees or any premium from any person as a consideration for imparting training in law under the rules prescribed by the State Bar Council to enable such person to qualify for enrolment under the Advocates Act, 1961.

6. Rules on Advocates Duty to render legal aid:

The preamble of the Constitution of India assures justice, social, economic and political to all citizens of the country. Articles 14 & 16 of the Constitution of India impose an implicit responsibility on the State to ensure that none is deprived of legal assistance for reasons of economic or other disabilities so that equal justice is provided to all citizens of the country. Further, the principle contained in Article 39-A are fundamental and cast duty on the State to secure that the operation of the legal system promotes justice to all citizens and particularly the poor and the marginalized. However, despite this Constitutional mandate, poor remain deprived of appropriate legal assistance for a long time even after independence.

In this situation advocates have a role to play. Legal profession is monopolistic in character and this monopoly itself inheres certain high traditions, which its members are expected to upkeep and uphold. Law is an Hon'ble profession and an Advocate is an Officer of justice and friend of the Court. He is an integral part for the administration of justice. From the ancient times, the legal obligations of the Advocates to conduct the case of a poor litigant without reward when so required by the Court has

been recognized not only in our country, but also in England, US and other Countries. However, in practice, Counsels have been assigned only in criminal cases of serious nature and a few civil cases.

The critical position enjoyed by an Advocate in administration of justice in fact imposes a responsibility upon him to ensure that justice is made available to all. Rule 46 of Bar Council of India Rules in part-VI relating to a standard professional conduct and etiquette reminds Advocates of the obligation they owe to the society. The Rule reads as under:

"Every Advocate shall in the practice of the profession of law bear in mind that any one genuinely in need of a lawyer is entitled to legal assistance even though he cannot pay for it fully or adequately and that within the limits of an Advocate's economic condition, free legal assistance to the indigent and oppressed is one of the highest obligations an Advocate owes to society."

Thus, to ensure justice to poor and marginalized sections of the society, an Advocate is required to provide them legal assistance even when they are not in position either to pay him at all or adequately pay him for his services. In fact the least duty expected of an Advocate is to play his role sincerely in implementing the various legal aid schemes available under the Legal Services Authorities Act, 1987 - be it legal aid to poor and other marginalized sections of the society or promotion of legal literacy or facilitating resolution of disputes through Lok Adalat's. The role of the Advocates in implementation of these schemes becomes pivotal due to the fact that legal profession being monopolistic, the various schemes of legal aid under the Act can only be put into operation through Advocates.

7. Rules on Advocate's Restriction on other employment:

i. Rule 47 provides that an advocate shall not personally engage in any business but he may be a sleeping partner in a firm doing business provided that in the opinion of the appropriate state bar council the

nature of the business is not inconsistent with the dignity of the profession.

ii. Rule 48 makes it clear that an advocate may be director or chairman of the board of directors of a company with or without any ordinary sitting fees, provided none of his duties are of executive character. An advocate shall not be a managing director or a secretary of any company.

iii. Rule 49 provides that an advocate shall not be a full time salaried employee of any person, government, firm, corporation or concern, so long as he continues to practice and shall taking up any such employment intimate the fact to the bar council on whose roll his name appears and shall thereupon cease to practice as an advocate so long as he continues in such employment.

iv. Rule 50 provides that an advocate who has inherited or succeeded by survivorship, to a family business may continue it, but may not personally participate in the management thereof.

v. Rule 51 an advocate may review parliamentary bills for a remuneration, edit legal text books at a salary, coach pupils for legal examination, set and examine question papers and subject to the rules against advertising and full time employment, engage in broadcasting, journalism, lecturing and teaching subject both legal and non legal.

vi. Rule 52 makes it clear that nothing in these rules shall prevent an advocate from accepting after obtaining the consent of the state bar council, part-time employment provided that in the opinion of the state bar council, the nature of the employment does not conflict with his professional work and is not inconsistent with the dignity of the profession.

Advantages of Having Codified Professional Ethics:

Firstly, codes of ethics are important means of social control. It will keep new corner to the profession aware and old members in line according to the social requirement and expectations.

Secondly, Professional ethical codes prevent control or interference by the government or by society though some one of its agencies. If a degree of standardization is needed and that is done by the profession itself, it will keep outside interference away. Governmental regulations through law tend to be negative while ethics points to the goal desired.

Thirdly, ethical codes are important, in developing higher standards of conduct. The codes crystallize best Judgment about the profession.

Fourthly, the existence of code will have great educative, corrective and appreciable value for both the lawyers and the laymen.

Professional conduct & Professional ethics:

Most people think that professional conduct and professional ethics are one and the same. However, there is a slight difference between the two. In professional conduct the member of the profession acts under some statutory or contractual powers i.e. legal obligation, whereas in professional ethics a member of profession is expected to follow i.e. moral obligation. Professional ethics is noble and those who remain within it are considered divine.