



# Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2024 – ISSN 2582-7820  
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

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## Legal Profession: Rights, Duties, and Whether it is a Business or Trend

Rohan Dey<sup>a</sup>

<sup>a</sup>St. Xavier's University, New Town, West Bengal, India

*Received 29 February 2024; Accepted 30 March 2024; Published 04 April 2024*

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*The legal profession is the most noble profession out of all the professions, solely dedicated to the rule of law and justice. But with time, the profession changed, and law firms showed up. Lawyers started running businesses on the side while practising, and then there was a shift in the profession, with people taking up law as a societal trend while their main goal was to run businesses. Then became the question. Is the profession of law still a profession? Or advocates pursue law as a trend, with their business being the primary job. This paper will talk about the legal profession, what it stands for, why it is a noble profession compared to other professions, the duties and limitations when one practices this profession, and most importantly, whether it has become a trend or a business in the recent generation. Additionally, we will also look into the lamps of advocacy, and the rules advocates follow, to know what makes the profession of law different from other professions.*

**Keywords:** *legal profession, business, trend, professional ethics, advocacy.*

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### INTRODUCTION

The legal profession has undergone significant changes in recent decades, with an increasing emphasis on commercialization and market-driven approaches. This shift raises questions about the nature of legal practice and its role in society. But before going deeper into this topic, let us

first learn more about this profession, the duties of an advocate, and the limitations of an advocate when practising the profession of law. As per Section 2(a)<sup>1</sup> an advocate is a law graduate who entered in any role under the provisions of The Advocates Act 1961. As per Section 2 (h) of The Advocates Act, 1961<sup>2</sup>, a law graduate is a person who obtained a bachelor's degree in law from any law school or law university, which was established by law in India and was signified as a Law school by The Bar Council. And when a person becomes an advocate, he needs to follow and have some ethics, called legal ethics.

As given by Justice Marshall, "The fundamental aim of legal ethics is to maintain the honour and dignity of the law profession, to secure a spirit of friendly compensation between the Bar and the Bench in the promotion of highest standards of justice, to establish honourable and fair dealings of the council with his client, opponent, and witnesses, to establish a spirit of brotherhood in the Bar itself and to secure that Lawyers discharge their responsibilities to the community generally."<sup>3</sup> Legal Ethics is nothing, but merely a code of conduct or a body of principles that advocates and other legal professionals follow to maintain the dignity and honour of the legal profession, as law is a noble profession.

## LAMPS OF ADVOCACY

There is a popular saying, that goes 'A Lawyer must live like a hermit and work like a horse'<sup>4</sup>. But then, what are the qualities a lawyer must have? Even though it has not been defined in any law, there are qualities an advocate should have, like honesty, courage, wit, industry, judgment, fellowship, and eloquence, which have been elaborated by Justice Parry in '7 Lamps of Advocacy'<sup>5</sup>. Let us talk about these qualities one by one:

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<sup>1</sup> The Advocates Act, s 2 (a)

<sup>2</sup> The Advocates Act, s 2 (h)

<sup>3</sup> William W. Fisher III, 'The Jurisprudence of Justice Marshall' (1989) 6 Harvard BlackLetter Law Journal 131 <<http://www.tfisher.org/JurisprudenceMarshall.pdf>> accessed 22 February 2024

<sup>4</sup> Clark, C., 1939. The Country Lawyer Vindicated (Forty-Eight Years Ago). *USL Rev.*, 73, p.520.

<sup>5</sup> Edward Abbott Parry, *The Seven Lamps of Advocacy (Classic Reprint)* (Forgotten Books 2018)

**Honesty:** The first quality is honesty. As the legal profession is a noble profession, honesty is a must. Every person in the law profession needs to be honest with every person they interact with. This honesty should be seen in the thoughts of an advocate, and through their words and behaviour. Honesty is the most important quality, as it increases the reputation of the advocate as a person and it also increases the reputation of the advocate as a professional, reputation matters a lot in the current society as reputation is what attracts clients, connections, and other prospects that are needed by an advocate to thrive in the legal profession. An advocate's reputation includes the advocate's fame and trust with the bar and his clients.

While dealing with a case and making arguments, producing documentary evidence and oral evidence in a court of law, an advocate is expected to be honest, based on the arguments and evidence produced by the advocate on behalf of the client he is representing, the judge decides the case.

When dealing with his client, the advocate must tell the client about the merits of the case and he must also tell about the demerits of the case, along with the consequences which would lead to the loss of his client, even if the advocate is going to lose the case.

While dealing with the opposition party, the advocate should not give false facts to take the case in his direction, and in the eyes of the law, the advocate should tell the truth in front of the judge and not give any false statements, as honesty is the best practice.

**Courage:** In the 7 Lamps of Advocacy, courage is also an important attribute. Courage means the ability to stand in front of any court of law without any fear or paranoia.<sup>6</sup> When arguing a case in a court of law, the advocate should feel confident and also proud, because courage would help the advocate in convincing the judge that the facts he is giving on behalf of his client are true.

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<sup>6</sup> John McDill Fox, 'The Law of Unincorporated Associations and Business Trusts' (1924) 8(4) Marquette Law Review <<https://scholarship.law.marquette.edu/cgi/viewcontent.cgi?article=4694&context=mulr>> accessed 25 February 2024

When dealing with a case, whether the case is related to civil litigation or criminal litigation, the lawyer would need to face many problems which is why, he must have the courage to remove these problems with courage and fearlessness. To fight social evils and all these problems, the advocate should use courage as his weapon, for which they must have deep knowledge of the law.<sup>7</sup>

**Industry:** Ignorance of the law is not an excuse.<sup>8</sup> The advocate needs to know the law for which he is dealing in a case, and as we all know, there is no end to the law. Law is like an ocean, one law gets repealed, another law gets added, and hence no one can be the master of law, or know the entire law as a whole, which is why an advocate must keep himself updated with the recent developments and he should know the law which is to be used in the case in which he is dealing for.

‘An advocate must live like a hermit and work like a horse’<sup>9</sup>. An advocate, without any sufficient knowledge of the law, can never win his case. Advocates must have the skill, the attitude, and the knowledge while dealing with a case, and to get this knowledge, the advocate needs to be given sufficient time to understand the law, so that he can perfectly deal with the case and increase his chance to win the case.<sup>10</sup> Law is not static, which is why it keeps changing from time to time with the changing needs of society so that when a new problem comes up, the law can change to solve the problem. Even if a lawyer had the knowledge to deal with a case in the past, if he does not stay up to date with the current laws and recent developments, he will face difficulties while dealing with a case in the present time, which might lead to him losing the case.

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<sup>7</sup> Nessa Coyle and Timothy W. Kirk, ‘Navigating Ethical Dilemmas’ in Constance Dahlin and Patrick Coyne (eds), *ADVANCED PRACTICE PALLIATIVE NURSING* (2nd edn, OUP 2021) 691-703

<sup>8</sup> Paul Matthews, ‘Ignorance of the law is no excuse?’ (1983) 3(2) *Legal Studies* 174-192  
<<https://doi.org/10.1111/j.1748-121X.1983.tb00314.x>> accessed 25 February 2024

<sup>9</sup> Brampton Henry Hawkins 1817-1907 Baro, *The Reminiscences of Sir Henry Hawkins, Baron Brampton* (Hardpress Publishing 2013)

<sup>10</sup> William M. Sullivan et al., *Educating Lawyers: Preparation for the Profession of Law* (Jossey-Bass/Carnegie Foundation for the Advancement of Teaching) (Jossey Bass 2007)

**Wit:** In the darkness of advocacy, it is a necessary lamp to lighten it up. Wit is how you should present yourself or how good your orator skills are, as it is what helps the advocate to stay focused on the work he is doing, and also helps him reduce the workload he has so that he can remain calm and relaxed. An advocate, along with being intelligent and having an understanding of the law, must also be clever enough to understand things quickly as with this, he will be able to answer any question with a humorous expression of ideas.<sup>11</sup> Being witty helps the advocate answer points quickly, effectively, and properly as having a well-prepared speech and giving it in front of a judge would not always work for the advocate. Being witty also helps an advocate get relief from the mental strain they get from their heavy working hour.

**Eloquence:** ‘The Lamp of Eloquence is the Art of Speaking’.<sup>12</sup> The oral art of the advocate which he uses for skilful and fluent communication with the judge which would touch their soul is eloquence. Every advocate has to deliver his argument in front of the judge, but how the advocate gives his arguments which results in a long-lasting effect on the judge, clients, and the listeners present in the courtroom is what eloquence is all about.

To be eloquent, an advocate should be fluent while giving his speech and arguments, for which he needs to be a skilled speaker and should stay confident while giving the speech in front of the opponent party and the judge. The language the advocate would be using should be free of errors, like stopping at the right moments, using the right phrases and maxims of law, and should be free of drama, and should be effective. The language should also influence all the people present in the courtroom toward the point of discussion and should be easy enough to help the judge write his judgment.

**Judgement:** The lamp of Judgement means to take a deep study of the case at hand and then to make an informed opinion of the same case. An advocate must be prudent and reasonable. When an advocate starts thinking from both sides of the case, it helps the advocate to understand the consequences of winning or losing the case, the merits and the demerits of the case, which would later help him anticipate and understand the problems and later solve those problems

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<sup>11</sup> Peter A. Facione, ‘Critical thinking: What it is and why it counts’ (2015) 1(1) *Insight Assessment* 1-23

<sup>12</sup> Peter Elbow, *Vernacular eloquence: What speech can bring to writing* (1st edn, OUP 2012)

with other lamps of advocacy. The judgment includes the ability of the advocate to understand what questions he should ask the judges and the opponent party, what would happen if he represents a witness in the court of law, and the ability of the advocate to counter any arguments given by the opposite party in the case and the judges as well.

**Fellowship:** In an association, the membership is a fellowship. An advocate must carry fellowship with his colleagues. When an advocate takes a case, and then argues in the court of law, he would have to argue against an opposite advocate. But because they are arguing does not make them the opposite, as they are doing what they need to do for the sake of justice. Even while doing arguments in a court of law, the advocate should be respectful towards the opposite lawyer, as it is a fight for justice and not a fight between them.

After the judgment is given by the judge, even if the advocate loses the case, he should respect the other advocate who won the case, as if he starts fighting with every advocate who is an opponent advocate in the case in which he chooses to represent, he would end up making everyone his enemy which would not an ideal scenario in a noble profession like that of law. The advocate should always refer to the opposite advocate by using the terms learned friend or learned counsel, irrespective of the friendly relationship he has with them. Advocates must also use the fellowship for judges, as through the arguments the advocate gives, he respects the judge. Even if the judge gives an opposite decision, he should use terms like a learned judge, your honour, your lordship, or my lord.

**Tact:** Not originally a part of the 7 lamps of advocacy, the lamp of tactfulness was added by a former judge of Madras High Court and an Indian Lawyer V Krishnaswamy Iyer<sup>13</sup> in his book called Professional Conduct and Advocacy. Sometimes during heavy and serious arguments, the courtroom becomes a mess and, in these circumstances, the advocate should know how to handle the situation. The advocate should be able to control his client in that situation, should

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<sup>13</sup> Kumar Rajiv Ranjan, *Moral, Ethics, Conduct, Misconduct, and Professional Misconduct For An Advocate (With Case Laws)* (BFC Publications 2023)

be able to persuade the judge, and should be able to get control over the opponent advocate in the case.

Many clever and intelligent advocates did not survive in the legal profession only due to their lack of tact in convincing the court on any point, and while dealing with their clients. Those who do not have tact end up losing their temper and start to quarrel with the opponent parties and their advocates, and sometimes even with the officers of the court. This eventually leads to him losing important points to use in a case, which later leads to him losing the case.

### **RULES OF PROFESSIONAL CONDUCT AND LIMITATIONS OF ADVOCATES-**

Although not written in any law specifically, an advocate has various fundamental rules of professional conduct that he/she should maintain due to customary practice in the profession.<sup>141516</sup>

#### **Some of them are:**

- An advocate should maintain high morals and must keep on enhancing his learning, as the legal profession is vast, and with time laws will keep changing, so he must keep himself updated with the recent laws passed or repealed. Honesty is the best friend of an advocate, so he must be honest at all times.
- The law being a noble profession, an advocate must at all costs maintain a minimum standard of good behaviour.
- As an advocate, he must not indulge in any publicity of his practice, as law is a noble profession and no advocate publicizes his or her profession in any form, that be a billboard or an advertisement in the newspaper. Any person who does not follow this

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<sup>14</sup> E Wayne Thode, 'Ethical Standard for the Advocate' (1960) 39 Texas Law Review 575

<sup>15</sup> Sarthak Chauhan and Anmol Kaushik, 'Advocate and His Duties towards the Court and Client' (2022) 4(6) Indian Journal of Law and Legal Research 1 <<https://www.ijlr.com/post/advocate-and-his-duties-towards-the-court-and-client>> accessed 25 February 2024

<sup>16</sup> Abdullah Emile Oemar Alamudy et al., 'LEGAL RESPONSIBILITIES OF THE ADVOCATE PROFESSIONAL ORGANIZATION FOR MEMBERS WHO CONFRONT THE LAW IN CARRYING OUT THEIR PROFESSION' (2023) 11(11s) Russian Law Journal

rule<sup>17</sup> can be held liable and will be punished accordingly under Section 35 of the Advocates Act for professional misconduct.<sup>18</sup>

- An advocate when in the court of law, should be fair towards the Court as well as the opponent.
- He should not mislead his client by giving any unfair or false advice and should give the proper advice that is needed in that situation.<sup>19</sup>
- When there is litigation, the advocate must only represent one party in that suit and he cannot accept the briefs of both the parties in the suit.
- If the advocate is a witness in any case, then he should not conduct the trial in that same case.
- He should give his best and do as much as possible, which is best for his client through fair means, and he should not act as a mere puppet in his hand.<sup>20</sup>
- When representing a case, the advocate should inform all the weak points of the case to his client, if any, and he should not encourage the client for any litigation in any matter where no remedy can be sought, or where a loss is assured.

**Along with these rights, there are some restrictions on an advocate as well. Some of these are:**<sup>21</sup>

**Business:** A practising advocate cannot run a business at the same time.<sup>22</sup>

**Sharing of Profits:** An advocate cannot share the profits he has made in a case with his client.

**Soliciting Business:** No advocate cannot solicit or publicize his business or profession in any way or manner.

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<sup>17</sup> Bar Council Rules, r 36

<sup>18</sup> The Advocates Act 1961, s 35

<sup>19</sup> Thode (n 14)

<sup>20</sup> *Ibid*

<sup>21</sup> Amanda Frost, 'The Limits of Advocacy' (2009) 59(3) Duke Law Journal 447

<sup>22</sup> Bar Council of India Rules, r 47



**Dress Code:** An advocate must adhere to the dress code and wear what is prescribed under the law.<sup>23</sup>

**Fees:** An advocate must take normal fees from his client, and he cannot ask for fees higher than the normal rate or take fees saying that he would win the case if he is paid extra.<sup>24</sup>

**Personal Security (Surety):** An advocate cannot stand as personal surety for the client during any legal proceedings.<sup>25</sup>

**Examination of Witness:** When an examination takes place during a case, neither the Advocate nor his client can ask derogatory questions to the witness during the examination.

**Personal Witness:** When representing a client in a case, an advocate cannot be a witness to his client in that case, but if the client gives permission to the advocate and allows him to do so, then he can.

## IS IT A TREND OR A BUSINESS?

Now that we have some idea about the legal profession, let us come to the topic at hand, is the legal profession a trend or a business? We have seen practising advocates run businesses on the side, sometimes even making their practice a side job, and there are cases where advocates are practising more than one profession at a time, for example, a practising advocate cannot also practice as a medical practitioner, or as some other professional, and this right to practice has been discussed upon in the case of *Dr Haniraj L. Chulani v Bar Council of Maharashtra & Goa*<sup>26</sup> where a medical practitioner wanted to enroll as an advocate but it was not allowed. The Bar Council of India held that once a person gets into any profession, and is practising in that profession while practising he cannot take up and practice the legal profession, as the legal profession is a noble profession and requires hard work and diligence and thus, the right to

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<sup>23</sup> Bar Council of India Rules, ch IV pt 6

<sup>24</sup> Owen Rogers and Cape Bar, 'High fees and questionable practices' (2012) 25(1) Advocate 41  
<<https://www.gcbsa.co.za/law-journals/2012/april/2012-april-vol025-no1-pp40-42.pdf>> accessed 25 February 2024

<sup>25</sup> Bar Council of India Rules, r 10, ch I pt 6

<sup>26</sup> *Dr. Haniraj L. Chulani v Bar Council of Maharashtra & Goa* 1996 SCC (3) 342

practice the legal profession is not absolute. A person cannot do legal profession and medical profession at the same time.

So, has the legal profession become a trend? Or a business? Let us look into a few cases to understand this.

In the case of *Pravin C. Shah v K.A. Mohammad Ali*<sup>27</sup>, the respondent who was an advocate was found guilty in two cases, of criminal contempt by the Kerala High Court. He started to appear in other courts as he was not allowed to appear in the Kerala High Court, and when the advocate gave an apology before the Supreme Court of India, the Court did not accept it. Later after various proceedings, the Supreme Court held that in the impugned order by the Disciplinary Committee of the Bar Council of India, the Committee rightly stated that the right to exercise the disciplinary powers over advocates is vested with the Bar Council exclusively and that this power cannot be taken away either by a judicial order, a rule, or by the High Court. The power of supervision and control in the contempt of the Court cannot be divested from the Court when it is regarding the conduct of advocates. Unless the advocate has not rectified himself, he cannot practice the profession of law.

The case of *Bhupinder Kumar Sharma v Bar Association of Pathankot*<sup>28</sup> is another important case. In this case. The appellant was an advocate who was enrolled with the State Bar Council, where a written complaint was filed to the State Bar Council alleging that the appellant was carrying on a business while practising as an advocate in the Court of Law. Recognizing this complaint, the State Bar Council referred the complaint to its disciplinary committee. After investigation, it was found that he was running a photocopy documentation centre in Pathankot Court's Compound. The place where the business was taking place was given to the appellant on account of being handicapped, and along with this, the advocate was also running a PCO/STD Booth. He was also the proprietor and the General Manager of Punjab Coal Briquettes Pathankot, and he was running the business well. So, the question was, can a practising advocate run a business while his name is enrolled in the State Rolls of Advocates and he is a practising

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<sup>27</sup> *Pravin C. Shah v K.A. Md Ali* (2001) 8 SCC 650

<sup>28</sup> *Bhupinder Kumar Sharma v Bar Association of Pathankot* AIR 2002 SC 41

advocate? The Supreme Court of India held that when it comes to carrying a business, any advocate who has in name enrolled in the Bar or is practising law cannot carry a business, and if he does, the advocate will be held liable for professional misconduct under the Advocate Act 1961.

Another case is the case of *Shambhu Ram Yadav v Hanuman Das Khatri*<sup>29</sup>, an advocate influenced the client and told him that if he gave money to the advocate, the advocate could bribe a Judge he knew, and the Judge would then give an order favourable to the client. The client filed a complaint to the Bar Council where after investigation the advocate's license got snatched away.

So, to the question as to whether the Legal profession is a trend that people can just follow, it is not. When a person goes into the Legal profession, the person should be hard working and diligent and must give his best. When in this profession, he cannot continue any other profession. And whether the Legal profession is a business, is not. It is a profession, and no advocate who is enrolled and practising cannot have a business or carry a business and should focus on the profession.

## CONCLUSION

The Legal profession at this moment is standing at a crossroads, as there are questions of purpose and identity as to what the Legal Profession stands for right now with the profession getting commercialized and seen as a societal trend at this age. After looking into whether it is a business or a trend, examining the rights duties, and limitations of a practicing advocate, and looking into all the ethical principles that are in this profession, we can get a clear understanding of the current emerging legal landscape.

The qualities given in the 7 Lamps of Advocacy serve as guiding beacons for practising advocates and practitioners, emphasizing important virtues like honesty, courage, industry, wit, eloquence, fellowship, judgment, and tact. These qualities show the nobility of the legal

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<sup>29</sup> *Shambhu Ram Yadav v Hanuman Das Khatri* AIR (2001) SC 2509

profession and also set high standards that are expected from those who are in the Legal Profession. Along with this, the rules of professional conduct and the limitations placed on advocates put a clear boundary, within which professionals who are in the field of law must operate so that the integrity and dignity of the law profession can be protected.

While there may be many instances where individuals and practising advocates viewed the legal profession as a mere trend or a business to be exploited, stringent standards were set by regulatory bodies and the legal system to preserve the sanctity of the legal profession. Cases such as *Pravin C. Shah v K.A. Mohammad Ali*<sup>30</sup> and *Bhupinder Kumar Sharma v Bar Association of Pathankot*<sup>31</sup> act as reminders of the consequences when someone deviates from these standards, reaffirming the commitment of the profession to upholding ethical principles, and at the same time maintaining the public trust.

In conclusion, the legal profession is way beyond a mere commercial endeavour and a societal trend. It is a noble calling rooted in the principles of service, justice, and integrity. While this profession may be shaped by economic forces and societal dynamics, the essence of the legal profession remains the same in its dedication to protecting the rights and liberties of individuals and to uphold the rule of law. Advocates must remain diligent and vigilant in upholding the highest standards of ethical conduct and professionalism as advocates are the guardians of justice, and it is up to the advocate to ensure that the legal profession continues to serve as a bastion of justice and a beacon of hope in society.

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<sup>30</sup> *Pravin C. Shah v K.A. Md Ali* (2001) 8 SCC 650

<sup>31</sup> *Bhupinder Kumar Sharma v Bar Association of Pathankot* AIR 2002 SC 41