

“LET NO ONE SWERVE OFF THE HIGH ROAD OF TRUTH AND HONOUR.”

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Just as the great Winston Churchill, the former British Prime minister quoted, one must hold on to the truth and their honour as those are the high roads of a man of highest standards. Just as it applies to all mankind, these words pose even more applicability to the role of an attorney-at-law.

Lawyers as guardians of justice play a pivotal role in being true to their profession and keeping their honour. Being a lawyer is an honourable profession which requires an abundance of knowledge and sincerity towards upholding the rights of individuals and ensuring a free and democratic society.

To become an Attorney at law it calls for great knowledge, a strong mind and wide learning culture. However, intellect on its own is not sufficient. Far more important is the moral and ethical character of a man exercising this legal profession.

G.W.Warvelle in his book Legal Ethics, states the following,

“Because of the magnitude of the interests placed in the hands of its members, the responsibilities which they assume and the confidence with which they are entrusted, there is

demanded of them in the exercise of their duties, an exemplification of the highest qualities of moral excellence.¹

John Stuart Blackie, Scottish scholar says: 'A man may be as brilliant, as clever, as strong and as broad as you please and with all these, if he is not good, he may be a paltry fellow; and even the sublime which he seeks to reach in his most splendid achievements, is only a brilliant sort of badness.'

Character is a key necessity in all professions but in the legal profession in particular honesty and moral values when practising the profession and how he carries himself is a matter of great importance and must be enlightened to all lawyers in the profession.

One of the core duties of a lawyer is to maintain the highest standards of moral and ethical conduct. The word ethics would have various meanings. As per Dr A.R.B Amarasinghe, 'professional ethics' is the group of standards relating to the activities of professionals.² A lawyer is a representative of clients who seek to protect their rights and interests. He is an officer of the legal system and has a profound responsibility to maintain and safeguard the interests of justice. Dr ARB Amarasinghe in his book pointed out that a lawyer has many obligations. He has a duty toward the client, to the court and to the tribunals and bodies before whom he pleads his client's case.³

The necessity to ensure high ethical values in the profession is the need of the hour since with years passing by rather disturbing indications provide that the profession is not righteously honoured. Complaints by the general public each day will regrettably bear a position that the legal fraternity is being deteriorated.

¹ Warvelle, G. (1920). *Essays in Legal Ethics*. 2nd ed. Chicago Callaghan & company.

² Dr A.R.B Amarasinghe "book of professional ethics and responsibilities of lawyers" pg. 7

³ Supra 1

This article will further address in detail the profession of an attorney at law and what is expected of him in his profession. Without free and honourable lawyers the world will see little of justice. Thus the role of lawyers is to ensure that justice prevails for centuries to come. To become a lawyer is a gift of justice that must be safeguarded at all costs. And lawyers all alike must be aware of the rules of conduct and moral values expected from them in society.

Regulatory Framework in Sri Lanka

On the 11th of February 1988, the Supreme Court of Sri Lanka under the rulemaking powers vested under S. 136 (1) (g) of the Constitution made the Supreme Court (conduct of and etiquette for Attorney – at – law) Rules 1988. These rules drafted by the Bar Association has the force of written law.⁴ However, the Sri Lankan rules on legal and moral ethics are not exhaustive. And no code of conduct is expected to be exhaustive.

President of the New Zealand Law Society, Graham Cowley observed in 1990 in the preface to the New Zealand Society Rules:

“Our profession has come under attack from a number of directions. It has never been more important to maintain professionalism in its truest sense.”

Chief Justice G.P.S De Silva at the convocation of the Bar association of Sri Lanka in 1993 said the follows:

“It is with great regret that I am constrained to refer to the decline in standards of professional conduct. Complaints concerning misconduct on the part of Attorney at law are not infrequent now. This, in turn, enhances the need to maintain proper ethical standards.”

Mr H.L. De Silva former bar association president quoted the following:

⁴ Per Samarakoon CJ in Land Reform Commission V grand Central Ltd. (1981) 1 Sri LR at 255

“Of all the qualities which are expected of us, the supremely important values are those of moral integrity and fairness conscientious attention to a client’s cause, a never-ending quest for perfection in the exercise of our professional skills, indomitable courage in the face of improper pressures that conflict with our duty.”

These values must at all times be exercised as the supreme duty towards upholding justice. Few of the common unethical practises of an attorney must be addressed below.

Advertising and Touting

One of the most commonly received complaints by the Bar association/Supreme Court is the disapproved practices of touting by the lawyers in Sri Lanka. The practice of touting had been a common occurrence in the legal practise for years and has now become a menace that cannot be simply eradicated.

An attorney’s primary concern must be public service and not the mere making of money. Thus he mustn’t publicize his services or attract any clients through a 3rd party.

Section 39 of the SC rules include the following:

An attorney is not prohibited from advertising. However he may not by himself or through another person, organization directly or indirectly do or permit in the carrying on of his practise...Nor should he obtain work by touting.⁵

Malaysia Rule 45(a) provides that,

‘an advocate and solicitor shall not solicit work or advertise either directly or indirectly, whether by circular, advertisements , touts , personal communications, interviews not warranted by

⁵ Supreme court rules 39

personal relations, furnishing or inspiring newspaper comments or procuring his photographs to be published in connection with cases in which he has been charged or concerned'⁶

New Zealand Rule 4.02 states the following:

“In offering services to members of the public other than by normal advertising channels, a practitioner must ensure that approaches to persons who are not existing clients are made in a manner which does not bring the profession into disrepute”

In **State V Dawson**⁷ the following was stated:

“This court has condemned the practice of ambulance-chasing through the media of runners and touters. In similar fashion we have with equal emphasis condemned the practice of direct solicitation by a lawyer”

Both of these offences are serious breaches of the canons of ethics and must be dealt with seriously.

In **Re A.V.de Silva**⁸, the driver of a lorry had been charged with overloading his vehicle. His wife and mother came to court to retain a certain proctor but they were diverted to another advocate by one Jamaldeen. The advocate gave Jamaldeen Rs.1 out of the fee given by the clients. The advocate was convicted under S.2 (d) of the court's ordinance No.1 of 1889 of the offence of touting.

His defence was that although one time he had a considerable practise he has now lost it and thus he requested support from another to attract clients

Mac Donnell CJ said that such an argument cannot be acceded at any moment. ***The bar and its traditions exist because of the independence of each advocate. He must succeed in accordance***

⁶ Malaysia Legal profession act and Rules 45(a)

⁷ 111 So. 2d 427,431 (fla.1959)

⁸ (1934) 37 NLR 99

with his merits, and it would be subversive of all the traditions of the bar if he were to employ any such assistance as that of a tout to obtain his practice.

Touting has long been an offence even under the Intermeddlers with suitors Act 1894. However prosecutions under this act have been very low. Therefore it is time that all forms of touting and advertising are erased and rooted out from the legal practice.

The subject of ethics cannot be dealt with within a few minutes. However, when considering the incalculable complaints received by the ministry of justice regarding the disapproval and dissatisfaction of the client with their lawyer's professional service and improper conduct, the Supreme Court and the Bar must be stern on such disciplinary matters against lawyers.

The Supreme Court is vested with the power to admit and enrol lawyers or refuse to do so as well as exercise disciplinary control over them. The Bar Association alongside aids the inquiry in determining the conduct of the attorney at the alleged misconduct.

THE PROCEDURE

As the court observed in Attorney General V. Ellawala⁹

The power of the court to investigate charges against members of the legal profession is unfettered but rigid rules of procedure or by any strict definition of or limitations as to the nature of such material upon which alone such proceedings may be founded.

In essence, the procedure is as follows,

⁹ (1926) 29 NLR 13 at 17-18

- Where the chief justice or Supreme Court judge considers it vital to hold proceedings to determine the suspension or removal of an attorney, they shall direct a preliminary inquiry held by the disciplinary committee of the Bar association, Sri Lanka.¹⁰ However this isn't mandatory, the discretion whether to refer to a preliminary inquiry or institute action is vested in the Supreme Court.
- The Chief justice shall appoint 15 members of the BASL for 3 years to constitute the disciplinary committee and when a matter is referred to the disciplinary committee, CJ will appoint 3 members from the disciplinary committee¹¹
- Once the inquiry is concluded the findings shall be reported to the Supreme Court. Even so, the Supreme Court is not bound by those recommendations.
- If further proceedings are necessary against the attorney the CJ will issue a charge and will call him to show cause as to why he should not be removed/suspended from the legal profession. And such notice of such charge is given to the BASL and AG.
- At the hearing before a bench of 3 SC judges, the Attorney General /Solicitor General or any other officer may appear to support with the rule.
- At the hearing evidence will be led, cross-examined and submissions by both parties will be taken.
- If charges are proved the SC will suspend/dismiss the attorney. And if not, may acquit him.

Where an attorney's conduct is criminal in character, whether it was done in pursuit of his profession or not, he may be struck off the roll, suspended from practise, reprimanded, advised, even though he has not been brought by the appropriate legal

¹⁰ S.43(1) Judicature Act No. 02 of 1978

¹¹ S 44, S.44(4) Judicature Act No.02 of 1978

process before a court of competent criminal jurisdiction and convicted, and even though there is nothing to show that a prosecution is pending or contemplated.¹²

Integrity and nobility is the intrinsic quality of any person who seeks to become a member of the legal profession. If such lawyer acts dishonourably and in conduct unworthy of an attorney, and whether such act was done within the sphere of professional or private life, it will undoubtedly reflect adversely on the attorney, the profession and the entire justice system.

The public will consequently look towards this honourable profession as one which does not uphold its core values and it will remain scarred for failing to sustain the rights of the clients. Unfortunately then, It will take a while to regain trusted confidence in the justice system. In this day and age, competition and commercialization of the legal practitioners is high. This will result in lawyers leaning towards the monetary rewards of the profession rather than the core values and standards of the profession.

We must not forget that lawyers and judges and the entire administration of justice are the wheels of the prevailing justice system and it is of prime importance that lawyers must not conduct unjustly for ulterior motives, or conduct themselves in any way that would impair the justice system.

There are several interesting cases where the Supreme Court has issued rules against aberrant lawyers. Few of them must be presented at this stage.

In **Chandratilake V Moonasinghe** ¹³

An attorney found guilty of breach of trust of criminal character and deceit, was struck off roll although he had not been convicted.

¹² Re Edgar Edermal 1877 Ramanathan 380

¹³ Chandratilake V Moonasinghe SCR 2/90SC Minutes of 5/6 1992

As per S.42 (2) of Judicature Act 1978, the SC can suspend/dismiss an Attorney at Law who is found guilty of fraud, wrongful act or criminal offence.

In **Dematagodage Don Harry Wilbert**¹⁴ it was held that this procedure is expected to protect the public welfare and safety of the service of attorney at law. In this case, the facts were such that the advocate had forged the GCE O/L certificate and entered Law College. He was dismissed from the profession for committing deceit within the meaning of S.42 (2)

In **Re Dharmarathne**¹⁵ who had prepared a petition of appeal in false and scandalous terms insulting the judge against whose decision the appeal was made was suspended for a month.

In **Re Batawantudawe**,¹⁶ the court refused to enrol an advocate who was guilty of forgery and cheating and sentenced to imprisonment. Dias SPJ made it clear that a person convicted of that kind cannot be restored to the ranks of an honourable profession, the good name of which he had degraded by his conduct.

In **Re Brito**¹⁷, a proctor convicted under the post office ordinance for sending a postcard with words of indecent and scandalous character was struck off.

Similarly, the court would remove an attorney guilty of criminal misconduct if it was done in function of his professional functions.

¹⁴ Dematagodage Don Harry Wilbert, (1989) 2SriLR 18

¹⁵ 1862 Ramanathan 134

¹⁶ (1950) 51 NLR 513

¹⁷ (1942) 43 NLR 259

In Re Edgar¹⁸ a proctor who misappropriated his clients' money was struck off his roll.

In the matter of a Rule on Proctor Joseph Gerald Fernando¹⁹ a proctor who was convicted of attesting a fraudulent deed and thereby committing an offence punishable under the notaries' ordinance for defrauding the government was struck off his roll.

In Schware V Board of Bar Examiners²⁰ it was expressed that,

It is a fair characterization of the lawyer's responsibility in our society that he stands 'as a shield'.... in defence of right and to ward off wrong. From a profession charged with these responsibilities, there must be exacted those qualities of truth-speaking, of a high sense of honour, of granite discretion..."

Commenting on **Model rule 8.4** The American Bar Association provides that many kinds of illegal conduct reflect adversely on fitness to practise law. Such as offences involving fraud and the offence of willful failure to file an income tax return.

Because of the position of an attorney placed in a society, even minor violations of law will undermine and lesson public confidence in the legal profession. Obedience to law embodies respect for the law. To lawyers especially, respect for the law should be more than a commonplace.

As the Canadian code²¹ states,

"Our justice system is designed to try issues in an impartial manner and decide them upon the merits. Statements or suggestions that the lawyer could or would try to

¹⁸ (1877) Ramanathan 380

¹⁹ (1944) 45 NLR 379

²⁰ 353 U.S. 232, 247 1 L.Ed.2d.796, 806

²¹ ChXIX Commentary 2

circumvent the system should be avoided because they might bring the lawyer, the legal system and the administration of justice to disrepute”

As Dr ARB Amarasinghe addressed in 1992 to the organization of Sri Lanka “Do not violate the law. Do not even sail close to the wind’

Thus as professionals, lawyers must comply with the justice system now more than ever since many lawyers have undermined the justice system by not keeping their expected higher standards.

As Justice Nanayakkara states,

‘We live at a time when the core values of the profession are being threatened. As a result, the whole climate of opinion has become hostile to the legal profession. Decline in competency, efficiency and the standards of the legal profession are bound to bring about the corresponding decline in the standards on the Bench because it is the Bar, which nurtures and fosters those who aspire to a career in the judiciary.’²²

The primary concern in this country is the fact that most lawyers are unaware of these codes of conduct and etiquette or although aware, does not give it the attention that it requires. It must be added, however, that at present, ‘professional legal ethics’ as a subject has been included in the course curriculum in university LLB programs and in the Law College. Such inclusion is necessary since it plays an integral part to prepare a person seeking to join the profession.

²² Justice Chandradasa Nanayakkara, 'Predicament of the Legal Profession' (*Daily Mirror*, 2018) <<http://www.dailymirror.lk/opinion/Predicament-of-the-Legal-Profession/172-152074>> accessed 24 September 2019.

Moreover, the rules in the code may be inadequate since they might be out of date. Indeed, compliance with the provisions of the code which may be inappropriate to time may be seen as disobedience. Thus the rules must be critically evaluated from time to time with the evolving circumstances in law, in the profession and society and in view of the public expectations.

Cheatham²³ observes,

The law and its institutions change as social conditions change. They are to change if they are to preserve, much less advance, the political and social values from which they derive their purposes and life.

CONTEMPT OF COURT

When addressing the subject on professional ethics, contempt of court by lawyers' should be unfailingly voiced. One of the most common forms of professionals degrading their standard is the manner they conduct in court.

Lawyers more than any other must behave respectfully in a manner that is expected by law in courthouses.

Contempt of court is foreseen to be one of the most relevant issues to date for an attorney to be suspended or removed from the bar. A recently concluded case, one which gained much publicity was of the public interest litigation lawyer, Nagananda Kodituwakku who was suspended for 3 years for contempt of court. The gist of the case is below.

IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA
In the matter of a Rule in terms of Section 42(2) of the Judicature Act No. 2 of 1978,
against Nagananda Kodituwakku, Attorney-at-Law

²³ NSW Sol. (5261)

SC/Rule/01/2016

Where

H.N.J. Perera, CJ

Held that the contemptuous submissions that Nagananda Kodituwakku brought to court has ridiculed the court and has caused the erosion of public trust and confidence reposed in the judicial system. By reason of such conduct, he had acted in a manner which would be regarded as disgraceful or dishonourable of an attorney at law of good repute and competency.

Thus he was found guilty of contempt of court and suspended the respondent from practice for 3 years under S.42 (2) of the Judicature Act No. 02 of 1978

As held in one Indian authority **T.N. Godavarman Thirumulpad's case**²⁴ Judiciary is the guardian of the rule of law. If the Judiciary is to perform its duties and functions effectively and remain true to the spirit with which they are sacredly entrusted, the dignity and authority of the courts have to be respected and protected at all costs.

In **Re: Vinay Chandra Mishra**,²⁵ the court found the advocate (contemnor) guilty of committing criminal contempt of court having interfered with and “obstructing the course of justice by trying to threaten, overawe and overbear the court by using insulting, disrespectful and threatening language”

As Master Jacob describes “the authority of the judiciary is to uphold, to protect and to fulfil the judicial function of administering justice according to the law in a regular,

²⁴ [(2006) 5 SCC 1]

²⁵ (1995) 2 SCC 584

orderly and effective manner. Such a power is not derived from statute nor truly from the common law but instead flows from the very concept of a court of law."

This article must end with the profound words of Dr. Wikrama Weerasooriya where at a speech given in 2013 to lawyers in practice, he quotes his late father, Mr N.E Weerasooriya Q.C where he emphasized on a characteristic that a young lawyer must possess, which is "honesty to court".

"At no time as a lawyer must you ever compromise your duty to the court to win your case. A lawyer's duty is paramount. Without it, courts cannot function"

The best judge of a lawyer who is honest and dependable is not only the judge but his fellow brother lawyers. Profession shall remain, individually and as a body, but the assessment of a lawyer by the profession is what matters the most.

However more and more complaints by the general public shows that there are delays in processing the disciplinary inquiry.

The Supreme Court and the bar association must regulate stern disciplinary matters against the lawyer and no matter must be dealt with lightly. Although much has been spoken and written on the deteriorating standards of the legal profession, substantial output expected by all has not been adequate to completely eradicate this trend of malpractice and misconduct. More and more litigants affected by the disapproved conduct of attorneys are left with little to no aid or remedy as there aren't any legitimate efforts to address and mitigate the issues affecting the litigants. There is a large number of questions and issues relating to the legal profession. However unless and until such serious problems are addressed righteously, further deterioration of professional standards must be expected. This will eventually lead to the collapse of the law and justice system in the island.

Oftentimes, lawyers receiving complaints on their conduct would raise objections that since they are not members of the bar association Sri Lanka, they are not duty-bound by the rules pertaining to the conduct of lawyers nor must they adhere to the disciplinary inquiries. However countering such objection, it must be stressed that when an attorney takes his oath in the Supreme Court which has the utmost power to appoint and remove an attorney, they are part of the Supreme Court and is inevitably amenable to the rules of the Supreme Court although such preliminary inquiry is conducted by the bar association of Sri Lanka.

Code of ethics and professional conduct must be adhered to by the lawyers at all times. So long as the lawyers are guided by these principles the law will continue to be a noble profession. It shall offer no compromise.

An attorney at law must strive for greatness both in intellect and character since both necessitate the value of a noble career. The legal profession is claimed to be one of the most supremely noble professions, and it is the duty of the members in it to conduct themselves in a manner which would sustain such nobility.