

The Story behind high Advocates' Fee

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Much has been mooted in the society about the high fee charged by the Advocates towards their professional services. Though the issue is not directly related, it has come up for discussion with termination of Advocate Gandhi das of Puducherry from the rolls of Bar Council of Tamil Nadu and Puducherry following a direction from the Madras High Court over his '*professional misconduct*' having nexus with the manner in which he sought to collect fee from his client. This is also paralleled by the increasing number Suits filed by the Advocates to recover their pending dues from the clients.

Recently, the Supreme Court also took the legal fraternity by storm by observing that '*the Government ... take cognizance of the issue of introducing requisite legislative changes for an effective regulatory mechanism to check violation of professional ethics and also to ensure access to legal services which is major component of access to justice mandated under Article 39-A of the Constitution.*' **B. Sunitha v. State of Telengana & anr.**, Crl.A. No.2067 of 2017. The mooted point was not whether there should, in fact, be a mechanism to check violation of Professional ethics or if access to justice is not an integral Constitutional right. It was only with respect to the factual background in which the observation was made by the Court.

The Court made these observations in an Appeal preferred by a 'client' against the Order of Hyderabad High Court which had dismissed her Petition to quash a Complaint filed against her by her 'Advocate' under Section 138 of the Negotiable Instruments Act. The principal issue was whether the Advocate was right in quoting a fee to the tune of 16% of the monetary relief

awarded in a Motor Accident Claim in his client's favour towards which the cheque in question was issued.

Since under the Standard of Professional Conduct and Etiquette, 'An Advocate shall not stipulate for a fee contingent on the results of litigation or agree to share the proceeds thereof' the Court concluded that the Complaint under Section 138 of NI Act, could not be sustained as the Cheque issued to the Advocate by his client was not towards a 'legally enforceable debt' and the transaction itself was void as the claim for fee based on percentage of the decretal claim was unethical.

Though I subscribe to most of the views taken by the Court with respect to 'ethics to be followed by Advocates', the nature of 'fiduciary relationship between an Advocate and his/her client', etc., I am quite surprised that the discussion throughout the Judgment was only about the 'unbecoming of an Advocate' and is totally silent about the difficulties and hardships an Advocate faces in the profession and the society.

True that it is totally unethical to collect a percentage of proceeds of the decretal amount as professional fee but in making the above observations, the point which the Court had stressed was not about such collection but about the 'exorbitant quantum'. In order to substantiate the point, the Court has highlighted at several places that the Appellant had already paid Rupees Ten Lakhs to her Advocate on various dates. What the Court has not highlighted enough is that admittedly the Advocate had engaged other Advocates in other Courts including the Supreme Court and hence it was not with respect to one Motor Accident Claim in one Tribunal alone for which the cheque was issued by the Appellant as a Professional fee.

Moreover, the Court has also reproduced the words of Justice Banumathi (as a Madras High Court Judge), in which her ladyship had stated that '*Legal profession is essentially service oriented. Ancestor of today's lawyers was no more than a spokesperson, who rendered his services to the needy members of the society, by putting forth their case before the authorities. Their services were rendered without regard to remuneration received or to be received. With the growth of litigation, legal profession became a full time occupation. The trend of the legal profession has changed ... profession has almost become a trade. There is no more service orientation.*'

However, it is to be seen that the nature of work of yesteryear's 'spokesperson' and today's Advocate are totally different and beyond any comparison. The Spokespersons were skilled speakers who spoke on logic and morals in putting forth cases before the authorities. Today's advocates need to be acquainted with thousands of statutes, understanding of several principles of Constitution, Jurisprudence and International laws. The advocates should also acquire knowledge on society, economics and history

and have holistic approach in conducting cases before various Courts, institutions and Tribunals in today's complex world for which they have to shell out substantial money. An advocate should also be well versed with complex Court procedures which the Governments and the Judiciary have failed to simplify over the period of several years.

Unlike the spokespersons of the past, an advocate requires 'Professional qualification' such as a law degree and is required to go through rigorous scrutinization like All India Bar Examinations, Certification of Practice, continuity of Court practice, etc., to be legally qualified to represent clients in a Court of law. In any case, the Government does not provide free legal Education and also monetary assist Advocates to conduct cases free of cost. In fact, National Law Schools run by the Governments are some of the most expensive Law Schools. The Court fee and the tedious Court procedures are only becoming more and more hostile for a Court practice, which in any case the Advocates cannot subject themselves to free of cost. A fresh law graduate has to work in these circumstances with a very meager pay he/she receives from Counsel on record with a hope that he/she can 'earn' for survival in the near future. Governments have also done little to enhance the standard of living of young Advocates at this context.

Even as the Court is very much concerned about 'profession' becoming 'trade' the difficulty in distinguishing between advocacy as a 'profession' and 'trade' also arises out of certain set up the judiciary and statutes have framed over the years.

For instance, until recently the Madras High Court had stipulated that for designation of an Advocate as a Senior Advocate, the Advocate concerned should have been earning not less than ₹7,00,000 per annum in three years preceding such designation. Section 16 of the Advocates Act, 1961 provides for designation of an Advocate as Senior Advocate 'if the Supreme Court or a High Court is of opinion that by virtue of his ability, standing at the Bar or special knowledge or experience in law he is deserving of such distinction.' But what has his earning (of not less than ₹7,00,000) to do with the 'special knowledge', 'experience at law', 'ability' or 'standing at the bar'? It is still not clear if the Supreme Court's recent Guidelines will be taken as the rule book by all the High Courts. Therefore such drive to 'earning' also begins with the necessity even judiciary has created. Moreover, a Senior Advocate is not entitled to represent a party to the proceeding directly. He can only be engaged by the party's Counsel when there is a necessity to '*explain to the Court certain substantial questions of law*'. But are Senior Advocates engaged by Advocates on record only to explain such substantial questions? Sadly, the answer is in the negative. This makes the service of a Senior Advocate expensive – and designation as Senior Advocate requires 'earnings'. This also forms a vicious circle.

There are also instances where several persons have requested me to initiate Legal proceedings requiring monetary Compensation, on the

condition that I shall charge them only from the proceeds they would ultimately be entitled to. I ask them 'what do I get if I lose your case?' and reject their proposals right away. It's my personal belief that I be paid for the service I render and not for the ultimate benefit my client is entitled to. But can all Advocates afford refusing briefs? The litigants calculate their ultimate monetary proceeds before preparing to pay the Advocate fee.

It is also a general perception among public that a good Lawyer has a sophisticated office infrastructure coupled with a huge library. I have seen and heard instances where several knowledgeable and Competent Advocates lose briefs because when the clients meet them for the first time, they are not 'satisfied' with their 'small office' or a 'few books' they own. For such litigant, it is totally irrelevant if the Advocates refer books in library or if they choose to spend on books without actually reading them. In fact, it is usually joked that a Lawyer needs to be rich to earn clients. Therefore, expensive lawyers are generally preferred over others as the people equate 'money' with 'expertise in law'. I don't think an Advocate can spend on infrastructure without necessarily charging enough for the service he/she is required to render.

Similarly, it is practically difficult for Advocates to rent house/office accommodation because they go by 'rule books' and not let the Landlords dictate terms unlawfully. Hence, they end up shelling out disproportionately higher rents even to have a 'home'. Where do they get the money from?

Barring a few successful and 'expensive' advocates, most other Advocates lead a struggling life for survival. Social aspects like 'marriage', 'peer pressure' and inequitable distribution of societal resources have only been forcing several competent Advocates to quit Court practice and take up high paid desk jobs. Death or grievous injuries, bodily or mental disablements of Advocates can also sometime push their families to a state of poverty and despair. Neither the Governments nor the Judiciary have done enough to protect Advocates from such disastrous contingency. Though the State Bar Councils extend certain Insurance Policies for Advocates, status of such policies are not followed up due to various factors.

In these trying circumstances, it is rather harsh to expect an Advocate to render his/her service gratuitously or for a nominal sum of money with which he/she cannot sustain Court practice. On the other hand, it is also pertinent to note that several lawyers are already engaged in 'pro-bono' activities with the 'money' they earn from their Court practice. In several cases, several social and political activists happen to be Advocates, who can afford such activist approach only with their earnings. Therefore, blaming Advocates (barring the ones who indulge in extra-legal methods in their Court practice) for 'charging fee' or converting 'profession into trade' is of little help unless conducive environment is provided for them to carry on their profession.