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Client Interview

DR. P.R. KALIDHASS ¹

ABSTRACT

Client interview is a skill of an advocate to obtain relevant information from the client, to identify the nature of legal problem from the information, to reach a potential solution for the legal problem and to establish a relationship with the client. Every lawyer learns the law, some become leading counsel others are not. A lawyer who gets a number of cases is presumed to be a leading counsel. Getting cases depends on skill in handling clients vis-a-vis handling cases. It is briefed here that the skill in handling clients.

Keywords: Advocate, Client, Interview, Rapport, Question, Listening

I. INTRODUCTION

In court settlements and also in out-of-court settlements (i.e., negotiation, mediation, conciliation, arbitration, and *lok adalat*),² the advocates play a vital role in representing their clients. Hence an advocate should know the story of his client. To understand the story thoroughly, during the client interview the advocate has to step into the shoes of the client or mirror the emotions of the client as it is (not more not less). Clients generally come from different age, sex, caste, religion, race, colour, language, place of birth, economic, educational, cultural, social and political background. Clients' face often reflect anger, fear, hesitation, nervousness, jealous, cunningness, vengeance, arrogance, ego, pride, expectation, tear, suppression, depression, sadness, greediness, smile, etc. Clients mostly come with different problems and issues related to property, matrimony, contract, company, labour, environment, intellectual property, public interest, crime, etc.³ Clients also come for drafting various deeds

¹ Author is an Assistant Professor at Faculty of Law (LC-1), University of Delhi, India

² In court settlement (e.g., government appointed judge remains to be neutral and gives decision as per law) and in out-of-court settlement (i.e., *negotiation* regulated by conscience of the parties – without intermediary, parties negotiate each other and settle the dispute themselves; *mediation* regulated by Mediation Rules framed by each High Court – parties appointed mediator remains to be neutral and persuades them towards settlement but cannot give suggestions; *conciliation* regulated by Arbitration and Conciliation Act 1996 – parties appointed conciliator remains to be neutral and persuades them towards settlement and can give suggestions; *arbitration* regulated by Arbitration and Conciliation Act 1996 – parties appointed arbitrator remains to be neutral and gives award as per law; *lok adalat* regulated by Legal Services Authorities Act 1987 – court appointed presiding officer remains to be neutral and persuades the parties towards settlement and can give suggestions and confirms their agreement through award). Section 89 read with Order X Rule 1A, B, C of Civil Procedure Code 1908 deals with alternative dispute resolutions and provides various modes of settlement outside the court. For more details about alternative dispute resolutions refer *Salem Advocate Bar Association v/s Union of India* (2003) 1 SCC 49; *Salem Advocate Bar Association v/s Union of India* (2005) 6 SCC 344; and *Afcons Infrastructure Ltd. v/s Cherian Varkey Construction Co. Pvt. Ltd.* (2010) 8 SCC 24.

³ *Property disputes*: sale, mortgage, lease, will, gift, power of attorney, eviction, partition, settlement, injunction,

and documents for sale, gift, will, settlement, lease, mortgage, trust, partnership, company, etc.). Advocates normally meet the clients at the stage of *pre-trial* (for filing suit, complaint, petition, application, caveat, injunction, maintenance, bail, writ, etc.); *during-trial* (for chief examination, cross examination, re-examination of witnesses, appointing commission, etc.); *post-trial* (for execution, appeal, revision, review, curative, contempt, etc.).

II. RAPPORT BUILDING

Clients are the source of information. To get sufficient information from client, an advocate needs to build the rapport. *How an advocate can build rapport with the client?* An advocate can build rapport with the client by *Ease* (i.e., put the client feel calm and relax by giving water/soft drink, or through spacial expression/eye contact, or by words); *Elicit* (i.e., generate/explore/bring-out/promote/obtain responses/answers/emotions/feelings from client); *Empathy* (i.e., understand/feel the client's feelings and emotions); *Reassurance* (i.e., remove client's doubt/fear by giving confidence/motivation); *Implication* (i.e., convey the effect/impact involved in the case or in your advice). Eye contact, body language, tone, speed of the voice, facial expression, using appropriate words are all matters in interviewing the client. During interview, questions may be *open ended* (that brings broad range of information from client by posing 'wh' type questions); *close ended* (that brings information upon a specific issue from client by posing 'yes/no' type questions); and *leading* (that brings confirmation on the facts, issues, expectations, and suggestions from client which has been discussed during the interview by posing 'yes/no' type questions). While interviewing client, listening may be *active* (i.e., during interview advocate needs to reflect the contents and feelings of the client, and needs to give motivating statements); and *passive* (i.e., during interview advocate suppose to say yes, okay, is it, oh, ah, sure, agree, nice, carry-on, go-ahead, proceed, shaking/nudging head, simply asking when, why, who, how, where or even sometime needs to keep silence to acknowledge the client's feelings and emotions); *verbal* (i.e., during interview advocate listens the client by speaking orally); and *non-verbal* (i.e., during interview advocate listens the client by sign, gesture, facial expression, eye contact, smile, laugh, etc.). Rapport building should not be mechanical (that should co-relate each other feelings, emotions and ideas; create close and

probate, letters of administration, etc.; *matrimonial disputes*: nullity, divorce, restitution, custody, maintenance, etc.; *criminal disputes*: murder, hurt, grievous hurt, molestation, rape, adultery, dowry death, domestic violence, theft, extortion, robbery, dacoity, criminal negligence, defamation, cheque bounce, bail, etc.; *civil disputes*: consumer claims, motor vehicle claims, insurance claims, negligence, nuisance, trespass, etc.; *commercial disputes*: contractual disputes, company matters, partnership disputes, industrial disputes, labour claims, environmental issues, etc.; *intellectual property disputes*: patents, copy rights, trademarks, industrial designs, and geographical indications; *writs*: habeas corpus, mandamus, prohibition, certiorari, and quo warranto; *appeal*: civil appeal, criminal appeal, writ appeal; *revision*; *review*; *execution*; *contempt*; *representative suit*; *public interest litigation*; and so on.

harmonious relationship; gain trust, confidence and respect of client). Gather necessary/material/relevant information through documents and personal interaction; collect new and additional information with existing knowledge as and when required; segregate legal and factual issues; prioritize the issues; etc.

III. DO'S AND DON'TS

While interviewing client: Don't hesitate to get or extract information, don't treat him like fool/illiterate/unintelligent, don't point out his faults, don't ask excessive questions in the beginning itself, don't be so much hurry and mechanical in asking questions then he will not take part actively in the interview, don't anticipate, don't be pre-judgemental, don't leap to conclusion, avoid taking control of interview, avoid unnecessary interruption, don't identify unexpressed feelings, don't be vulgar or voyeur, don't invade his privacy, don't sleep, don't stare, don't show displeasure on your face, don't torture him in any manner; Try to understand his feelings and emotions against whom he has ego, against whom he has fear and why he fears, upon whom he has respect, who is the actual culprit and who is innocent in the entire story, what is his financial position, what he hides, where he lies, which is truth and which is false; List the options as per his requirement, express the strengths and weaknesses of options, don't insist and don't pass any comments – just you need to assist or guide him like a friend or legal expert – he has to choose the option (i.e., give decision making power to client and don't make decision for client); Finding right words are important to express his feelings and emotions, let him reveal all the information without any hesitation, remember important characters in the story and the place/date/time of occurrence and their relationship with the story, understand properly the case and his views and expectations, give necessary advice, be human and treat him humanly.

IV. COMMUNICATION INHIBITORS

Client hides some information due to following factors: *ego threat* (i.e., to secure self-esteem client often hides his own faults), *case threat* (i.e., client perceives revealing some information may be harmful to the case), *etiquette* (i.e., client often avoids disclosing intimate sexual relation to lawyer whom he/she just met, or due to cultural/societal reasons), *trauma* (i.e., remembering/recalling/retelling unpleasant situation generate re-experience of those feelings), *greater need* (i.e., client feels a greater need to talk about something else than the information what the lawyer actually wants), *preconceived irrelevancy* (i.e., client perceives some facts are irrelevant to the case). These factors are considered as 'communication inhibitors'. Advocate has to bring those information-out through motivating statements and through supportive

listening, by way of *positive feedback* (i.e., encouraging the client during interview, by highlighting his positive actions in the story or in the incident), by way of *expectative motivators* (i.e., encouraging the client during interview, as and when required as per his expectation), by way of *recognizing and combating communication inhibitors* (i.e., acknowledging the client's emotions during interview, combats communication inhibitors and motivates him to communicate further).

V. LIST OF MOVIES

Movies help us to understand: how to take client interview? how to keep confidential information? how to secure trust, confidence and respect of client? how a lawyer should work with colleagues in the office and also with bar members? how to collect evidences? how to examine witnesses? how to plead/argue cases? how to behave in courts? how to handle and behave with clients, witnesses, opponents, and judges? how to fix and earn fees? what are the dangers or problems in the profession? how to escape from the dangers or problems? how to tackle frustration? how to get relax after winning/losing cases? what kind of professional ethics a lawyer should have?, etc. Movies express such things in a natural way than a teacher. The most notable movies related to legal profession are: *Child of the Big City* (1914), *Miracle on 34th Street* (1947), *Rashomon* (1950), *Twelve Angry Men* (1957), *Witness for Prosecution* (1957), *Anatomy of Murder* (1959), *Inherit the Wind* (1960), *Judgement at Nuremberg* (1961), *To Kill A Mockingbird* (1962), *A Man for All Seasons* (1966), *In Cold Blood* (1967), *10 Rillington Place* (1971), *The Paper Chase* (1973), *And Justice for All* (1979), *Kramer v. Kramer* (1979), *Breaker Morant* (1980), *The Verdict* (1982), *Fatal Attraction* (1987), *Suspect* (1987), *A Cry in the Dark* (1988), *Mississippi Burning* (1988), *Reversal of Fortune* (1990), *A Few Good Men* (1992), *Basic Instinct* (1992), *My Cousin Vinny* (1992), *Body of Evidence* (1993), *In the Name of the Father* (1993), *Philadelphia* (1993), *The Firm* (1993), *The Pelican Brief* (1993), *Disclosure* (1994), *Murder in the First* (1995), *A Time to Kill* (1996), *Primal Fear* (1996), *Sleepers* (1996), *Amistad* (1997), *Liar Liar* (1997), *The Devil's Advocate* (1997), *The Rain Maker* (1997), *A Civil Action* (1998), *Rounders* (1998), *The Accused* (1998), *Presumed Innocent* (1999), *The Confession* (1999), *The Green Mile* (1999), *The Hurricane* (1999), *The Insider* (1999), *Erin Brockowich* (2000), *I am Sam* (2001), *In the Bedroom* (2001), *Legally Blonde* (2001), *Chicago* (2002), *Runaway Jury* (2003), *The Life of David Gale* (2003), *10th District Court* (2004), *The Merchant Venice* (2004), *Thank you for Smoking* (2005), *Find Me Guilty* (2006), *An American Crime* (2007), *Fracture* (2007), *Michael Clayton* (2007), *The Reader* (2008), *Law Abiding Citizen* (2009), *State of Play* (2009), *Conviction* (2010), *The Conspirator* (2010), *The Social Network* (2010), *You Don't Know Jack* (2010), *A Separation*

(2011), Guilty (2011), Hot Coffee (2011), The Lincoln Lawyer (2011), Accused (2014), Judge (2014), Vidhi (1984), Meri Jung (1985), Ea Ruka Hua Faisla (1986), Suryaa: An Awakening (1989), Damini (1993), Great Debaters (2007), Shahid (2012), Jolly LLB I (2013), Court (2014), Pink (2016), Rustom (2016), Jolly LLB II (2017), Mulk (2018), Badla (2019), Adaalat (TV Series 2010-2016), etc.

VI. INFORMATION SHEET

Advocate's Detail

Name _____

Roll No. _____

Place of Interview _____

Client's Detail

Name _____

Roll No. _____

Date & Time of Interview _____

Facts

- Note down the facts chronologically (date wise or event wise step-by-step)
- Identify the issues
- Note down what remedy client expects

Legal Claim

- Mention under which provision or under which law the remedy available

Advice

- Possible outcome (percentage of winning or losing approximately)
- Alternative remedy (negotiation, mediation, conciliation, arbitration, writ, injunction, caveat, criminal complaint, civil suit, representative suit, public interest litigation, appeal, revision, review, contempt, etc.)
- Risk/impact/effect involved in the case or in your advice
- Brief the process of proceedings from filing to execution

Fees

- Consultation fees Rs...
- Fees Rs... (includes advocate fees, court fees, typing and printing charges, transport expenses, etc.)
- May receive fees in installments (1st would be before drafting, 2nd would be at the time of examination of witnesses, and 3rd would be before the final arguments)

- Give information about legal aid cell (if you don't want to take the case)

Next Meeting

- Fix the place, date, and time for next meeting

Evidences/Witnesses

- Ask the client to bring documentary evidences (photos, videos, cassettes, CDs, pendrives, marriage certificate, medical report, FIR, complaint, pending case detail, email/whatsapp/facebook messages and chats, etc.)
- Ask the client to bring oral or eye witnesses (who saw or heard the incident, who signed the documents such as meddle men, village headman, relatives, friends, etc.)

Questions

- Write down the 'wh' type or 'yes/no' type questions asked in the interview
- That questions may be open ended, close ended, and leading.

VII. CONCLUSION

If the client hides the truth or gives irrelevant information or takes too much time during the interview – that proves advocate's inability to handle the client. Similarly, if the client didn't turn-up to the office after the interview – that proves advocate's inability to build the rapport. *What are the objectives of the interview?* Make client comfortable; get relevant facts; understand conflict of interests; identify legal issues or actual problems; ask what the client wants to achieve out of the suit (i.e., aim or goal of client in filing the case); bring trust and confidence; and build rapport. *How an advocate should structure the interview?* Interview should be client centered; there should be an introduction between the advocate and the client; while interviewing open ended, close ended, and leading questions (i.e., 'wh' type or 'yes/no' type questions) may be posed date-wise/event-wise/issue-wise step-by-step; listen actively or passively or both; and give suggestions at the end of the interview what the client has to do or what steps need to be taken by the client. *What an advocate should practice or avoid?* Don't hesitate in getting information from client; explore every detail and no important detail left-out; don't miss the name (and remember important characters in the story and the place/date/time of occurrence and their relationship with the story); understand the financial position of the client; understand and reflect the contents and feelings of the client; provide motivating statements; avoid premature diagnosis; don't be judgmental; avoid unnecessary interruption; careful and attentive listening is must; say that the information is confidential; find legal and other alternative solution; fix next meeting; and take interview within the time limit. *What is the role*

of an advocate in the client interview? Act as facilitator, catalyst, sympathizer, motivator, advisor, interviewer, friend, guide, mentor; have persuasive role; be neutral; don't be a judge; be a good listener; listen the pain, maximize satisfaction and help the client to reach solution.
