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**Professional Misconduct of Advocates in India**

**Utkarsh Kumar**

## INTRODUCTION

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The legal profession is considered as a noble profession by the society and the fundamental prerequisite of any profession is good ethics. So to maintain the nobility of the legal profession it is mandatory to adhere and observe a set of professional norms by those who adopt this profession. This adherence and observance of a set of professional norms can be also referred to as Professional Ethics. These ethics are principles that govern the behaviour of a person or group in a professional environment. It provides rules on how a person should act towards other people and institutions in a particular environment.

The Advocates in India are governed by the Advocates Act, 1961. Further, the Advocates Act provides for the establishment of the State Bar Councils and the Bar Council of India vide section 3 and 4 of the Advocates Act, 1961, respectively.

Not complying with professional norms or ethics leads to misconduct. Professional misconduct is nowhere defined in the Advocates Act, 1961. Even the Bar Council is silent about what actually is professional misconduct. A professional misconduct here can be considered as any unacceptable or improper behaviour, especially done by a professional person. In the legal sense it means; an act done wilfully with a wrong intention by the people engaged in the legal profession, which betrays the client's confidence or attempting to practice fraud or to deceive the court or the adverse party or his counsel. In other words, it can be said that any act which disqualifies an Advocate to continue in the legal profession is considered as a professional misconduct.

## **DUTIES OF AN ADVOCATE**

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The advocates in India are governed by the Advocates Act, 1961. Further, the Bar Council of India was created by the Parliament under the Advocates Act, 1961. It is a statutory body that regulates and represents the Indian bar. 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. Such rules are mentioned under chapter II of part VI of the Bar Council of India rules, 1975.

The rules mentioned on standards of professional conduct and etiquette shall be adopted as a guide for all advocates in conducting matters related to law.

Some of the rules laid down by the bar council under chapter II of part VI of the Bar Council of India rules, 1975 are as follows:-

- **An Advocate's duty towards the Court**
  - I. To act in a dignified manner before the court.
  - II. To maintain towards the court a respectful attitude.
  - III. Not to influence the decision of a Court by any illegal or improper means.
  - IV. Not to appear in matters of pecuniary interest.
  - V. To appear in a proper dress code.
  - VI. Not to wear bands or gowns in public places.
  - VII. Refuse to appear in front of relations.
- **An Advocate's duty towards the Client**
  - I. Not ordinarily withdraw from serving a client once he has agreed to serve them.
  - II. Not to appear in a case in which he is a witness
  - III. To uphold the interests of his client by all fair and honourable means.
  - IV. The advocate should not by any means, directly or indirectly, disclose the communications made by his client to him
- **An Advocate's duty towards the Opponent**
  - I. An Advocate shall not in any way communicate or negotiate upon the subject matter of controversy with any party represented by an Advocate except through that Advocate.

There are various other duties and rules that are provided to be followed by an Advocate. Non compliance to any of the stated rules by an Advocate would be considered as professional misconduct.



## INTERPRETATION OF THE WORD 'PROFESSIONAL MISCONDUCT'

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The word 'professional misconduct' is nowhere defined in the Advocates Act, and it is not possible to come up with a standard definition of it. This makes precedents in this particular matter the only reliable source of understanding the meaning of professional misconduct.

In the case of **State of Punjab v/s Ram Singh Ex. Constable**<sup>1</sup>, the Supreme Court had observed that, Misconduct in office may be defined as unlawful behaviour or neglect by a public officer, by which the rights of a party have been affected. Further the court had observed that professional misconduct may involve –

- Moral Turpitude
- improper or wrongful behavior
- unlawful behavior
- willful in character
- a forbidden act
- transgression
- carelessness or negligence in the performance of duty
- or the act complained of bears forbidden quality or character

Moral turpitude is an act or behaviour that gravely violates the sentiments or accepted standards of the community. Section 24A of the Advocates Act, 1961, states that no person shall be admitted as an advocate on a state roll if he is convicted of an offence involving moral turpitude. Further, if such moral turpitude is committed by a person who is already enrolled as an advocate, then the Bar Council and its disciplinary committee can take up the matter and impose suitable punishments.

As stated by Justice K. Ramaswamy, in the above mentioned case, it can be said that any improper or wrongful behaviour which is unlawful in nature and is done deliberately by a professional person, can be considered as professional misconduct. Further, performing any forbidden act or a transgression of established and definite rule of action or code of conduct may lead to a professional misconduct.

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<sup>1</sup> 1992 AIR 2188, 1992 SCR (3) 634

## DISCIPLINARY COMMITTEE OF THE BAR COUNCIL

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The Bar Council performs a regulatory function by prescribing standards of professional conduct and etiquette and by exercising disciplinary jurisdiction over the bar. The Council also sets standards for legal education and grants recognition to Universities whose degree in law will serve as qualification for enrolment as an advocate.

To exercise disciplinary jurisdiction, the Bar Council of India and every State Bar Council has a disciplinary committee. Section 9 of Advocates Act, 1961, states that every Bar Council shall consist of a Disciplinary Committee, where every disciplinary committee shall consist of 3 members out of which two shall be persons elected by the Council from amongst its members, and the third shall be a person co-opted by the Council from amongst the advocates who possess the qualifications specified in the proviso to sub-section (2) of section 3 (i.e. a person who has been an advocate on a State roll for ten years) and who are not members of the Council. The senior most amongst the three shall be appointed as the Chairman of the committee.

Section 35 of the Advocates Act, 1961, deals with the Punishment of advocates for misconduct, and talks about the disciplinary powers of the State Bar Councils.

Section 35<sup>2</sup> states that –

(1) *“Where on receipt of a complaint or otherwise a State Bar Council has reason to believe that any advocate on its roll has been guilty of professional or other misconduct, it shall refer the case for disposal to its disciplinary committee”.*

Further the disciplinary committee of a State Bar Council shall fix a date for the hearing of the case and shall cause a notice thereof to be given to the advocate concerned and to the Advocate-General of the State. The disciplinary committee of a State Bar Council after giving the advocate concerned and Advocate-General an opportunity of being heard may make its decision on the matter. The Disciplinary Committee can make the following orders:-

- Dismiss the complaint or, where the proceedings were initiated at the instance of the State Bar Council, direct that the proceedings be filed;
- Reprimand the advocate;
- Suspend the advocate from practice for such period as it may deem fit;
- Remove the name of the advocate from the State roll of advocates.

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<sup>2</sup> THE ADVOCATES ACT, 1961

Likewise under section 36 of the Advocates Act, 1961, the Bar Council of India too has Disciplinary powers. The disciplinary committee of the Bar Council of India while disposing of any case under this section shall observe the same procedure as laid down in section 35. With reference to the Bar Council of India, while giving a notice to the concerned advocate, it shall also be given to the Attorney-General of India, which in the case of the State Bar Council is the Advocate-General of the State.

Any person, who is aggrieved by an order of the disciplinary committee of a State Bar Council made under section 35 or by the Advocate-General of the State, May, within sixty days of the date of the communication of the order to him, appeal to the Bar Council of India, under section 37. Such appeal shall be heard by the disciplinary committee of the Bar Council of India. Further, any person who is still aggrieved by an order made by the disciplinary committee of the Bar Council of India under section 36 or section 37 or the Attorney-General of India, as the case may be, he may within sixty days of the date on which the order is communicated to him, prefer an appeal to the Supreme Court and the Supreme Court may pass such order (including an order varying the punishment awarded by the disciplinary committee of the Bar Council of India) thereon as it deems fit.

## LANDMARK JUDGEMENTS RELATED TO PROFESSIONAL MISCONDUCT

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The question that arises here is that, are these rules which are provided by the Bar Council of India truly followed by the advocates in India? To get an in-depth detail about this matter, we need to refer to certain judgments given by the Honourable Courts in India.

It is the duty of an Advocate to uphold the interests of his client by all fair and honourable means, but in the case of **State vs Lalit Mohan Nanda**<sup>3</sup> the opposite happened. The point for consideration in this case was, whether Mr. Nanda is guilty of professional misconduct for breach of rules relating to professional conduct of Advocates made under Section 15(a) of the Indian Bar Councils Act, 1926. The Honourable Orissa High Court had observed that Advocate Lalit Mohan Nanda was guilty for professional misconduct, as he was found guilty of changing sides, which means that he had appeared for the opposite party in the same case after appearing for the first party. The duty of upholding the interest of a client was breached.

In the case of **Shambhu Ram Yadav vs Hanum Das Khattry**<sup>4</sup>, the respondent wrote a letter to his client and asked him to bribe the judge so that he could help the client win the case. The respondent was held guilty here of misconduct under Section 35 of the Advocates Act, for bribing a Judge and the State Bar Council suspended him from practice for a period of two years. The respondent challenged the aforesaid order before the Disciplinary Committee of the Bar Council of India, by order dated 31st July, 1999, the Disciplinary Committee of the Bar Council of India comprising of three members enhanced the punishment and directed that the name of the respondent be struck off from the roll of advocates, thus debarring him permanently from the practice. The respondent further moved to the Honourable Supreme Court of India. The Honourable Supreme Court here upheld the decision of the Disciplinary Committee of the Bar Council of India, and also mentioned that “Legal profession is not a trade or business. It is a noble profession”.

In the case of **Emperor v/s K.C.B**<sup>5</sup>, certain tins of ghee were kept under the custody of Bazrang Lal Marwari, as it was seized by the Municipal authorities, Katwa, for being adulterated. The advocate falsely told Bazrang Lal Marwari that the Sub-Divisional Officer, Katwa, had ordered that the tins to

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<sup>3</sup> AIR 1961 Ori 1, 1961 CriLJ 124

<sup>4</sup> AIR 2001 SC 2509

<sup>5</sup> AIR 1935 Cal 547

be handed over the owner. Here the Honourable Calcutta High Court held that the advocate was guilty of misconduct, for furnishing false information.

When an advocate collects money from his clients for court purposes and misuses it, it is called as misappropriation which amounts to professional misconduct. **L.C Goyal v. Suresh Joshi**<sup>6</sup> is one such case of misappropriation. In this particular case an advocate (appellant in this case) misappropriated the money received as court-fee. The appellant had misappropriated a sum of Rs. 25,491/-, for which the Honourable Supreme Court had held him guilty of professional misconduct.

The legal profession is a noble profession having high traditions. An advocate is expected to uphold those traditions. He must comply with the conduct of professional ethics and etiquette as laid down by the Bar Council of India. But as seen above, the traditions of the profession are not held up high. These are just a few judgements that show the reality of the legal profession. There are hundreds of cases out there, where the Advocates are not complying with the norms of professional ethics or conduct.

In the recent scenario, where online hearing is taking place due to the Covid-19 virus, many cases of professional misconduct are being seen. Advocates are not complying with the dress code and are appearing before the Honourable Court in a casual manner, which is against the duty towards the court. A Senior Advocate was seen smoking hookah in a live virtual hearing before the Rajasthan High Court. These are such things that are not expected from a person who is into a noble profession.

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<sup>6</sup> AIR 1999 SC 2222

## CONCLUSION

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Advocates have a dual responsibility of upholding the interest of their clients fearlessly while conducting themselves as officers of the court. Accordingly, they are expected to adhere to the highest standards of probity and honour. An Advocate's conduct should reflect their privileged position in the society which derives from the nobility of this profession.

As rule 15 of section II<sup>7</sup> states –

*“It shall be the duty of an Advocate fearlessly to uphold the interests of his client by all fair and honourable means without regard to any unpleasant consequences to himself or any other. He shall defend a person accused of a crime regardless of his personal opinion as to the guilt of the accused, bearing in mind that his loyalty is to the law which requires that no man should be convicted without adequate evidence”.*

Every Advocate has a responsibility to defend his client till the very end. According to a Latin phrase ‘Audi Alteram Partem’, both the parties of a case have a right to present themselves and try to defend themselves in the court of law. Article 22(1) of the Indian Constitution states that no person shall be denied a legal practitioner, which means it is the duty of an Advocate to fight for a person, regardless that the person is guilty or not. An advocate's loyalty lies towards the law and that should be upheld. As it was seen after the Nirbhaya case judgement, Advocate A.P. Singh who was fighting for the rape accused was condemned by the whole society for standing with the rapists. But, if we look at this from a professional point of view, then, Advocate A.P. Singh was doing justice to himself as an advocate for standing up with his client till the very end.

Mr. Potter Stewart, an American lawyer and judge, has rightly said that -

*“Ethics is knowing the difference between what you have a right to do and what is right to do”.*

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<sup>7</sup> PART VI CHAPTER II OF BAR COUNCIL OF INDIA RULES, 1975