

## DERELICTION OF ADVOCATE'S DUTY IN THE COURT OF LAW: AN EXPLORATORY STUDY

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*“Lawyers have their duties as citizens, but they also have special duties as lawyers. Their obligations go far deeper than earning a living as specialists in corporation or tax law. They have a continuing responsibility to uphold the fundamental principles of justice from which the law cannot depart.” - Robert Kennedy*

*The art of advocacy is that of a noble profession and the same should be treated with the highest standard. In all the professions at hand, there are certain professional ethics that needs to be followed. However, the fact that professional misconduct is a common occurrence can be seen not only in other professions but also in practice of advocacy.*

*The Advocates Act, 1961 was a long sought by the legislation to consolidate the law relating to the legal practitioners and also with regard to the constitution of an autonomous Bar Council. The Advocates Act, 1961 and the Indian Bar Council play a vital role in providing rules and guidelines regarding the working practice, code of conduct and such other related matters concerning lawyers and advocates in India. The Act has vividly laid down the ground rules; however the implementation and practice of the same is still impugned. There have been instances where advocates who are supposed to play a robust role in administering justice have lacked the basic legal knowledge and drafting skill, which has affected the court hall procedure.*

*The paper seeks to make an attempt to bring out such latent defects and also, drawing attention to certain fundamental areas which have been a base and highlight for justice administrators and to endeavor the correction of such errors based on the Act<sup>1</sup>.*

## **INTRODUCTION-**

In the recent years, India's legal communities are facing a new set of encounters and at the same time are availing opportunities as a result of globalization. It is obligation of every advocate, being the officer of justice to comply with given ethical standards of the Advocacy Act, 1961. In the legal profession, the legal counselor needs to manage the best conceivable assortment of human relations and have his courage always challenged from each point, so that it gives him an exceptional chance to outfit himself with those qualities, which is included for prominence in the society. The ability to dissect and filter practicalities, to infiltrate the deepest opening of the human personality and to find there, the sources of men's activities and their actual thought processes, and to see and present them with explicitness, exactness, and power, are qualities which are demanded from a lawyer and work on the development of such traits to succeed in his profession. Thus, an advocate is required to put his client's interest before his monetary benefits. There are also Rules established under by Advocates Act, 1961 which is to be abided by the advocates, nonetheless is not being followed by many, since it seems to be just an obligation imposed upon them. The Act<sup>2</sup> also provides penalties for resisting the same, but more emphasis must be laid down to ensure the nobility is maintained in the legal profession.

## **DUTIES RELATING TO PROFESSIONAL AND PERSONAL CAPACITIES OF ADVOCATES UNDER THE ACT-**

Chapter V of the Advocates Act, 1961 lays down the Conduct of Advocates. As officers of the Court as well as agents of the client, it is the utmost duty of the advocate to adhere to a standard of conduct which is befitting of his status and responsibility<sup>3</sup>. It may be noted that under the Advocates Act, that the concerned State Bar Council can take disciplinary action against any advocate who is found to be guilty of professional or other misconduct. The use of the word

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<sup>1</sup> Advocates Act, 1961

<sup>2</sup> The Advocates Act, 1961

<sup>3</sup> Preeta, Misconduct of an advocate and Indian law in light of Supreme Court judgments, October 2, 2011, <https://blog.ipleaders.in/misconduct-of-an-advocate-and-indian-law-in-light-of-supreme-court-judgements/>

‘other’ clearly indicates that misconduct does not merely refer to professional misconduct – it could also refer to any misconduct, whether in the professional capacity or personal capacity or otherwise.<sup>4</sup>

No member of the legal profession ever hesitates to condemn injustice and tyranny. These qualities which he possesses by education and by training make him the leader of society as a matter of course.<sup>5</sup> The sole purpose is to avoid unnecessary exploitation of power and privilege by the advocates in the court as well as against clients. Here Mahatma Gandhi’s visions, can give a broader perspective-

*“I had learnt the true practice of law. I had learnt to find out the better side of human nature and to enter man’s hearts. I realized that the true function of a lawyer was to unite parties riven as under. The lesson was so deeply burnt into me that a large part of my time during the 20 years of my practice as a lawyer was occupied in bringing about private compromises of hundreds of cases. I lost nothing thereby – Not even money, and certainly not my soul.”<sup>6</sup>*

The Code of conduct gives a general manual for moral norms and standards to be observed to by individuals belonging to the Bar Council, in the case of practicing distinctly or as a law firm or office and whether occupied with suits or value-based/corporate work. Section 49 (1) (e) of the Advocacy Act, 1961 empower Bar Council of India to make rules to regulate the actions of advocates.

There are many *Rules on advocate’s duty to the court*<sup>7</sup>; the main focus is on the following-

1. An advocate shall not influence the decision of a court by any illegal or improper means. This means that, the advocate cannot collude with judge or other party in the mindset of winning the case. There should be no conversation between the judge and the advocate present for the case.

***Few Rules on advocate’s duty to the client*<sup>8</sup>-**

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<sup>4</sup> Ibid at 3

<sup>5</sup> Krishnaswami Aiyer, Professional Conduct and Advocacy, Oxford University Press, 1945.

<sup>6</sup> M.K. Gandhi, My Experiments with Truth: An Autobiography, Beacon Press, reprint 1993.

<sup>7</sup> Chapter II, Standards of Professional Conduct and Etiquette, Section I, Bar council of India Rules

<sup>8</sup> Chapter II, Standards of Professional Conduct and Etiquette, Section II, Bar council of India Rules

1. It shall be the duty of an advocate fearlessly to uphold the interests of his client by all fair and honorable 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.<sup>9</sup>
2. An advocate shall not do anything whereby he abuses or takes advantage of the confidence reposed in him by his client.<sup>10</sup>
3. Where any amount is received or given to him on behalf of his client, the fact of such receipt must be intimated to the client, as early as possible.<sup>11</sup>

**Few of the Lacunas in the above mentioned Rules on advocate's duty are explained with the help of case laws-**

*Manipulation of the judgment and the decree:*

In the case of *Surendra Nath Mittal v. Daya Nand Swaroop*<sup>12</sup>, the brief facts in this case are that the respondent advocate made a manipulation in the operative part of the judgment and decree to the same was made by adding the words "mai sood"<sup>13</sup> i.e. including interest. The respondent advocate however denied the allegation and contended that he had not committed any offence. The disciplinary committee found the supporter blameworthy and held that it was the respondent advocate who had included the words in this way and this adds up to proficient wrongdoing. The council requested for his suspension of one year.

In the case of *Sambhu Ram Yadav v. Hanuman Das Khatri*,<sup>14</sup> a complaint was filed by the appellant against an advocate to the Bar Council of Rajasthan, that while appearing in a suit as a counsel, he wrote a letter stating that the concerned judge, before whom he suit is pending accepts bribes, and asked for Rs. 10,000 to bribe and influence the judge to obtain a favorable order. The Disciplinary Committee, holding that the advocate was guilty of "misconduct",

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<sup>9</sup> Rule 15, *ibid* at 8

<sup>10</sup> Rule 24, *ibid* at 8

<sup>11</sup> Rule 27, *Ibid* at 8

<sup>12</sup> AIR 1987 All 132

<sup>13</sup> *Ibid* at 10

<sup>14</sup> AIR 2001 SC 2509

stated that such an act made the advocate “totally unfit to be a lawyer.” The Supreme Court, upholding the finding of the Rajasthan Bar Council held that the legal profession is not a trade or business. “Members belonging to the profession have a particular duty to uphold the integrity of the profession and to discourage corruption in order to ensure that justice is secured in a legal manner. The act of the advocate was misconduct of the highest degree as it not only obstructed the administration of justice, but eroded the reputation of the profession in the opinion of the public.”<sup>15</sup>

*Deceiving the client by manipulating his/her lack of education:*

In the case of *Smt. Jamila Khatoon v State of Bihar*,<sup>16</sup> the obtaining of the signature by the advocate on blank vakalatnama and blank water marked papers for the purpose of swindling of the client’s interest amounts to the professional misconduct.

*Defrauding client of his rightful property:*

The court in the case of *John D’souza v. Edward Ani*<sup>17</sup>, held up the dissension with the Karnataka State Bar Council in the context of the respondent Edward Ani charging that the appealing party with whom the will executed by his relative Mrs. Mary Raymond was endowed with safe guardianship decline to restore that will despite two letters requesting to hand over the will. It was held that the advocate has committed breach of his professional duty and found him guilty of profession misconduct.

## **THE BODY THAT IS AUTHORISED TO PUNISH MISCONDUCTS BY ADVOCATES-**

### **STATE BAR COUNCIL AND ITS DISCIPLINARY COMMITTEE-**

The punishment to advocates for misconduct has been laid down under Section 35 of the Act<sup>18</sup> which provides for, where on a receipt of 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, shall be referred to the disciplinary committee for its disposal. The State Bar

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<sup>15</sup> Ibid at 12

<sup>16</sup> 2002 (2) JCR 323 Jhr

<sup>17</sup> 1994 SCC (2)64

<sup>18</sup> Section35, Advocates Act, 1961

Council may, either of its own motion or on application made to it by any person interested, withdraw a proceeding pending before its disciplinary committee or direct the inquiry to be made by any other disciplinary committee of that State Bar Council<sup>19</sup>. The disciplinary committee of a State Bar Council after giving the advocate concerned and the Advocate – General an opportunity of being heard, may make any of the following orders, namely<sup>20</sup>-

- a. To dismiss the complaint or, in case where the proceedings were initiated at the instance of the State Bar Council, the same to direct that the proceedings to be filed.
- b. Reprimand the advocate
- c. Suspend the advocate from practice for such periods as it may deem fit.
- d. Remove the name of the advocate from the State roll of advocates

Where an advocate is suspended from practice under clause (c) of sub section (3) he shall, during the period of suspension, be debarred from practicing in any court or before any authority or person in India. Where any notice is issued to the Advocate-General under sub-section (2) of the Act<sup>21</sup>, the Advocate –General may appear before the disciplinary committee of the State Bar Council either in person or through any advocate appearing on his behalf.

#### BAR COUNCIL OF INDIA-

The Indian Bar Council is the main body and has delegated its power, thus making the State its physical body to carry on its functions. The articulation of the word "advocate" as mentioned in the Code of Conduct should incorporate to the degree practicable, any attorney or group of legal counselors who are a part of a law office and the law firm itself. Firstly, an advocate should, constantly, comport himself in a way befitting the exclusive expectations of the Indian Bar and of his/her status as an officer of the Court and an advantaged member from the group, remembering that what might be legal and moral for a man who is not an individual from the Bar, or for a member from the Bar in his/her non-proficient limit may at present be uncalled for an advocate. Secondly, without bigotry to the generality of the preceding duty, an advocate should fearlessly uphold the interests of his/her client. Moreover, the advocate in his/her

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<sup>19</sup> Section 35 (1)A , Advocates Act, 1961

<sup>20</sup> Section 35 (3) , Advocates Act, 1961

<sup>21</sup> Advocates Act, 1961

conduct should conform to the rules mentioned both in letter and in spirit. The rules mentioned contain canons of conduct and etiquette adopted as general guides, yet the specific mention thereof shall not be construed as a denial of the existence of others equally imperative though not specifically mentioned.<sup>22</sup> In the case of *Noratanman Courasia v. M. R. Murali*<sup>23</sup>, the Supreme Court explored the amplitude and extent of the words “professional misconduct” under Section 35 of the Advocates Act. The facts of the case were that of an advocate who assaulted and kicked the complainant and asked him to refrain from proceeding with the case. The main concern of the case was whether the act of the advocate amounted to misconduct, the action against which could be initiated in the Bar Council, even though he was not acting in the capacity of an advocate. It was upheld by the Supreme Court that a lawyer is obliged to observe the norms of behavior expected of him, which make him worthy of the confidence of the community in him as an officer of the Court. Therefore, in spite of the fact that he was not acting in his capacity as an advocate, his behavior was unfit for an advocate, and the Bar Council was justified in proceeding with the disciplinary proceedings against him.

Furthermore, as the officers of the court the lawyers are required to uphold the dignity of the judicial office and maintain a respectful attitude towards the Court.<sup>24</sup> It is the duty of an advocate to uphold the dignity and decorum of the Court and must not do anything to bring the Court itself into disrepute, and ensure that at no point of time, he oversteps the limits of propriety.<sup>25</sup> The standard of conduct of advocates flows from the broad canons of ethics and high tone of behavior. It was held that “professional ethics cannot be contained in a Bar Council rule or in traditional cant in the books but in new canons of conscience which will command the member of the calling of justice to obey rules or morality and utility.” Misconduct of advocates should thus be understood in a context-specific, dynamic sense, which captures the role of the advocate in the society at large<sup>26</sup>.

### **COMPARABLE PROVISIONS IN OTHER COUNTRIES-**

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<sup>22</sup> Bar council of India Rules (Rules under Section 49(1)(c) of the Advocates Act r/w the proviso thereto.

<sup>23</sup> [2004] RD-SC 283

<sup>24</sup> Dr Elbe Peter, MDS, LL.B, Professional misconduct of lawyers in India, June 06, 2014, <http://www.legalservicesindia.com/article/article/professional-misconduct-of-lawyers-in-india-1665-1.html>

<sup>25</sup> Ibid see 24

<sup>26</sup> *Bar Council of Maharashtra v. M.V. Dahbolkar*, 1976 SCR (2)48

In England the Legal Profession Act, 1987 provides for Act to regulate the admission and practice of barristers and solicitors. The Act was amended in the year, 2007. The Revised Professional Conduct and Practice Rules were made by the Council of the Law Society of New South Wales on 24 August 1995. In pursuant to its power under Section 57B of the Legal Profession Act, 1987 and the Statement of Ethics proclaimed by the Law Society of New South Wales in November 1994, the same governs the conduct of advocates who are in the legal profession. In 2010, a legal ombudsman was formed to deal with complaints against all [lawyers](#), including solicitors, registered in England and Wales. The Legal Ombudsman replaced the previous complaint handling bodies and started dealing with new complaints since 6 October 2010.<sup>27</sup> The above provides for anyone to approach the Legal Ombudsman, subject to those who are dissatisfied with the standard of service received from their [lawyer](#) and should first complain, to the [lawyer](#) concerned. If the matter cannot be resolved in this way, then a complaint may be made to the Legal Ombudsman.

On the other hand, in USA a separate offence known as the Dereliction of Duty has been provided under United States Code<sup>28</sup> against servicemen. Furthermore, each state has a separate set of rules of practices and different code of conduct for the advocates. For instance, the New York state has a separate rules of Professional Conduct stated as the Joint Rules of the Appellate Divisions of the Supreme Court, 2009. They supersede the former Disciplinary Rules of the Code of Professional Responsibility. The Indiana state has separate rules for professional conduct, which elaborates in detail about all aspects of professional conduct and code of ethics that which must be followed by an advocate.

### **CONCLUSION:**

The Advocates Act, 1961, which aims at improving the professional ethics and upholding of the professional conduct and duty among advocates, has fallen short of its objective. Special attention needs to be emphasized on improving and maintaining the art of advocacy, which exists in the realm of professional ethics. If an advocate is found guilty of professional misconduct, their name shall be removed from the roll<sup>29</sup> by the respective State Bar council. Although, this is done to ensure that the advocates are kept in check to abide by the rules under

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<sup>27</sup> Ibid at 24

<sup>28</sup> Title 10, Section 892, Unites States Code

<sup>29</sup> Section 35 of the Advocates Act, 1961



the Advocates Act, the same is subject to the discretion of the Committee rendering such judgment. Moreover, the advocates who are found guilty of such misconduct shall not be allowed to practice in any other court in the country. This infringes Article 14 and Article 19 of the Constitution of India, which provides for right to equality and Right to Freedom as the punishment for the same misconduct may differ for different advocates. It is the duty of the advocate to ensure that he acts in professional manner and to ensure that the rights and interests of his client are protected.

Furthermore, he should not let his personal interests get in the way of achieving the best interests of his client. The advocates should aim at acting in a professional way not only as a man of the letter, but also ensure that, he in his personal capacity acts in the spirit of the same.