

A CRITICAL ANALYSIS OF PROFESSIONAL MISCONDUCT BY ADVOCATES IN INDIA

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ABSTRACT

Professional misconduct in law basically refers to the dishonourable or disgraceful conduct by an advocate. It can be defined as the behaviour outside the limits of what is observed as worthy or acceptable by the governing figure of a profession. The author through this paper aims to provide an overview of the topic relating to the issue of 'Professional Misconduct' in the legal profession. The paper covers the types and instances of professional conduct, duties of advocates, the prescribed code for advocates, and certain landmark judgements related to the topic. The paper discusses the instances amounting to professional misconduct and the Advocates Act of 1961 along with the code of conduct prescribed by the Act for the legal practitioners. The author further mentions the various duties and restrictions that have been imposed on the Advocates by the Act of 1961. The paper studies the role played by the various significant judgements in understanding and developing laws and Acts relating to the issue of Professional Misconduct.

INTRODUCTION

“Professional Ethics cannot be contained in a Bar Council rule nor in traditional cant in the books but in new canons of conscience which will command the members of the calling of justice to obey rules or morality and utility.”

- Justice Krishna Iyerⁱ

Advocacy is an honourable and righteous profession. An advocate may be regarded amongst the most privileged, accountable and scholarly members of the society. Occupying such a high stature in the society, an advocate may be regarded as a role model for the members of the society, thus, the acts of an advocate must always be regulated. Professional ethics include the corporate and personal levels of behaviour which are expected of a professional. Thus, every profession requires the practising professionals to comply to certain principles or ethics that are a part of that profession. ‘Professional misconduct’ in simple terms refers to improper conduct. It may be done by an advocate in order to fulfil his selfish desires or make ends meet. Any act which leads to a dispute with the profession or makes the advocate unfit for the profession, amounts to Professional Misconduct. In simple terms, any act barring an advocate to continue as a professional. Clearly, legal profession is not a business or trade, rather it is a noble, courteous, and decontaminated profession. Thus, acts like corruption and deception must not be encouraged in such a profession, instead the members of the profession must put in their best efforts to obtain justice for their clients. The conduct of the members of the profession plays a vital role in determining the trustworthiness and stature of the profession.

Professional Misconduct includes the following situations-

- Betraying the trust of a client
- Practising fraud through certain means
- Deceiving the court
- Deceiving the opposing party or their counsel

In *State of Punjab vs Ram Singh*ⁱⁱ, the Supreme Court discussed that ‘Professional Misconduct’ may involve:

- Wrongful or unacceptable behaviour

- Behaviour that is unlawful according to law
- Immorality
- Carelessness in discharge of duty
- An act forbidden by law
- Or transgression

Chapter V of the Advocates Act of 1961 deals with the conduct of the Advocates. The chapter further describes the provision for punishment for any type of misconduct by the advocates. According to Section 35 (1) of the Act, when the State Bar Council has a basis to believe that an advocate engaged in any act that makes him guilty of any sort of misconduct, they shall forward the matter to the disciplinary committee for disposal.

Though no exact definition is provided by the Bar Council or the Act for professional misconduct, thorough punishments have been prescribed for the commission or omission of such an act by any person registered as an advocate. The following points can be used to explain the instances of Misconduct by an Advocate-

1. Non-performance of Duty

This situation is also known as the Dereliction of one's duty. It may be explained as that situation wherein an advocate either hands over the brief of the case to some other advocate or he abandons the client and fails to discharge the required duty. Such a transfer is regarded as unprofessional. However, it is not a misconduct if the advocate does so after seeking the client's consent.

- ***V.C Ranga Durai vs D. Gopalanⁱⁱⁱ***

It was clarified by the Apex Court that it is an obligation on the lawyer entrusted with a case and its brief to follow the principles of professional ethics and consequently protect the client's interests. The failure to do so would be a Professional Misconduct.

2. Negligence on behalf of the Professional

It is expected of an advocate to exercise necessary skills and knowledge while going forward with the case. Moreover, it is expected of him to not be careless or negligent. However, professional misconduct would be constituted in case there is negligence on the part of the advocate accompanied by the fabrication of facts or the nondisclosure of truth.

- ***Mohd. Ismail vs Balarathna***^v

In this case, the Supreme Court noted that it would lead to misconduct in case a lawyer fails to furnish the necessary documents required to proceed with the case despite of recurrent adjournments.

- ***N. Dastane vs S. S. Shivde***^v

The Supreme Court, in this case, clarified that seeking of recurrent adjournments by an advocate with an intention to postpone or prevent the examination of witnesses who are a part of the case amounts to professional misconduct. The Court made it clear that an advocate must be punished for the same.

3. Misappropriation

Misappropriation can be defined as that scenario wherein money is acquired by an advocate from his client for purposes relating to the case, however, the advocate misuses the acquired funds for purposes other than those related to the case. Misappropriation is a type of misconduct.

- ***D. Dalal vs SBI***^{vi}

Here, an advocate was accused of misappropriating the amount acquired by him from the client. The amount was collected for the purpose of filing of a suit and the rest was the professional fees. The advocate blaming the High Court claimed that the High Court registry had lost the suit papers. However, it was found that the registry had returned the suit papers to the lawyer for the removal of objections and it was the advocate who had not refiled the suit for a prolonged period. A disciplinary committee was set up against the advocate. The committee found the advocate guilty of embezzlement of funds paid by the client and thus, punished the advocate for misconduct.

4. Contempt of Court and Inappropriate behaviour before the Magistrate

Contempt of Court may be described as an offence wherein an advocate is disrespectful or disobedient towards either the court of law or any of its officers by ways of behaviour that disobeys or is against the justice, authority and dignity of the court. It is an advocate's duty to respect and maintain the dignity of the court. False allegations made against any officer of the judiciary amounts to misconduct. There are two types of contempt: improper behaviour towards the judicial members in the courtroom or will fully disobeying the courts order.

In 2010, M.V. Jayarajan, leader of the Communist party of India, was sentenced to six months in prison for contempt of court after he passed comments criticising the Kerala High Courts decision to ban meetings of people in public places. His sentence was however reduced to four months after an appeal to the Apex Court.^{vii}

5. *Furnishing False Information*

The intentional furnishing of false information by an advocate to a public servant amounts to misconduct. The information may either be regarding an offence which has already been committed or it may be about the commission of an offence and preventing the commission of such an offence. If the advocate knows or has a reason to believe that the information being furnished is false, then he shall be charged for such professional misconduct.

- ***Emperor vs K.C.B A Pleader***^{viii}

In this case, the Municipal authorities seized certain boxes of 'ghee' as they were informed that the 'ghee' was being adulterated. The authority ordered the boxes to be kept under the custody or supervision of Mr. Bazrang Marwari. Mr. Bazrang Marwari was falsely informed by the advocate that the Municipal authorities had ordered that the boxes were to be restored with the rightful owner. The information put through by the advocate was false, thus, he was guilty and action for misconduct was taken against him.

6. *Changing sides*

An advocate is not allowed to switch parties during the course of the case. All advocates are under the obligation to do their best towards the case in order to safeguard the client's interests. He is not allowed to represent the interests of conflicting parties. In simple terms, an advocate cannot represent both parties to the case. The changing of sides or the safeguarding of interests of both the parties to the case amounts to gross misconduct by the advocate responsible.

- ***State vs Lalit Mohan Nanda***

This case arose as a result of an enquiry made against Mr. Nanda as he had appeared against a client who had engaged him for the same case. The issue arose between stepbrothers and was related to a family dispute over the possession of a certain piece of land. Mr. Nanda appeared for one of the brothers acquiring confidential instructions and knowledge about his side of the case. Later, he was engaged by the other brother for the same case and successfully derived the

decree in his favour. Thus, as he had appeared for both the parties to the case, action was taken for professional misconduct against him.

7. Giving inappropriate advice

Advocacy is a righteous, noble, and honourable profession thus, it is the duty of an advocate to provide his clients with the best of his knowledge, judgement and talent. An advocate must always give proper advice to a client consulting him. In case the advocate is not able to take up the client's case, he must advise him to consult some other counsel rather than giving improper advice that may harm the client in any way. The imparting of improper or inappropriate advice by the advocate amounts to misconduct. These are certain acts which amount to professional misconduct. However, there are several other ways that can lead to an advocate being charged with professional misconduct. Other forms of professional misconduct include:

- Stating made up facts or lies to the client
- Misleading the courts with a view to deceive
- Abandoning allegiance to the courts
- Moving an application even after a similar application has been declined by some other authority
- Suggesting or trying to bribe the officers of the court
- Pressurising the witnesses to not state the truth or state fabricated facts
- Coercing colleagues
- Forgery or fraud.^{ix}

ADVOCATES ACT, 1961

The Chapter V of the Advocates Act, 1961 deals with the conduct of the Advocates. Section 35 of the Act through its various provisions deals with the charges of professional misconduct of advocates or lawyers in India.

When an advocate is found culpable for professional misconduct, the case shall be referred to the State Bar Council's Disciplinary committee. It is then the disciplinary committee's duty to fix a date on which the issue must be taken up. It also must issue a show cause notice to both, the Advocate and the Advocate General of the State. On the fixed date, the committee after hearing both the parties may take the following actions:

- Either dismiss the complaint against the advocate if it feels that the issue is not too grave, or direct the filing of proceedings at the same place where the proceeding was commenced by the State Bar Council
- Reprimand or reprove the advocate for the charges
- As it deems fit to the Committee, suspend, or charge the advocate for an appropriate period of time
- Withdraw the advocates name from the state roll.

PRESCRIBED CODE OF CONDUCT FOR ADVOCATES

Misconducts are of limitless varieties. Thus, it is necessary that the expression 'Misconduct' must be acknowledged in a broad manner, so much so that the meaning of the term comes under the purview of natural law, leaving no scope of justification for regulating their natural meaning of the expression. The Advocates Act through Section 49, provides the Bar Council of India the power to form and shape standards and rules regarding professional misconduct.^x

1) According to the Act, no advocate has the right to advertise or solicit his practice as it violates the code of ethics of the Advocates. Both, indirect and direct means of advertising are prohibited. Further, he is not allowed to advertise through personal communications, interviews, or circulars.

The following ways of indirect advertisement by the advocate are prohibited:

- The issuing of election manifestos or circulars with the advocates name, address and profession mentioned on such manifestos, which in a way is appealing to the members of the same profession practising in the subordinate courts to endorse clients to the counsel.
- Campaigning for votes through tours within the province.
- Sending out his agents or clerks to various districts within the state to directly approach advocates practicing in the lower courts.
- The nameplate or signboard exhibited by an advocate should not be of an unreasonable size. Further, it should not mention the details affiliated with the advocate, for example, that he is or was a member or the president of the Bar Council or of any other such

association, or if he ever was an Advocate General or a Judge, or even his own specialisation.

2) He is also not permitted to demand money for training purposes consequently enabling an aspiring lawyer to meet the requirements for enrolment into the State Bar Council.

3) He is not allowed to associate his services or name with any unofficial practices or purposes related to law or any agency of law.

4) He is forbidden from entering appearance in any case wherein an advocate has already been engaged by a party. He can do so after seeking the consent of the advocate engaged. However, if the consent of the advocate is not produced in court, the advocate has to state an appropriate reason for not being able to produce the same. He may appear afterwards, only with the consent of the court.

DUTIES OF AN ADVOCATE

There are various cannons of etiquette and conduct that have been adopted in order to conduct the working of members engaged in the profession. Thus, there are certain duties that have been imposed over the advocates in order for smooth and righteous working within the profession.^{xi} The following are certain duties that are expected of a legal practitioner:

i. Duty towards opposite party

- While directing the case, the advocate has an obligation to be fair and respectful to the court and the opposite party and not only to his own client.
- He must negotiate and communicate with the other parties, the subject matter and other details relating to the controversy, but only through the advocate of the other party.
- If the advocate made any promises to the opposite party, he should righteously fulfil the same, even in the event of the promise not being reduced to writing.
- He must by no means try to harm the opposite party or his Advocate, within or outside the premises of the Court.

ii. *Duty towards his client*

- The relationship between the client and the Advocate is highly fiduciary. The lawyer must fairly with consideration, estimate the value of the legal services and advices involved, not charging above what is estimated.
- Further, it is the duty of the Advocate to courageously support the interests of the client through honourable and fair means.
- He should not withdraw from a case which has already been accepted by him. If he is to so, he must provide a proper and reasonable cause to the client. After withdrawing, he must return the fee which he earned through the case.
- An Advocate shall in no case take advantage of the confidence and trust reposed in him by the client.

iii. *Duties towards the Court*

- The most important duty of an Advocate towards the court is to be honest and respectful. He must not be disrespectful as it would amount to professional misconduct.
- He must prepare the case thoroughly before presenting the case. While presenting the case, he must conduct the proceedings with utmost dignity and self-respect.
- He must not try to influence the court's decisions by any improper or illegal means. He should also not try to communicate with a Judge relating to a case which is still pending.
- The appearance of the Advocate must always be presentable, and he shall always appear in the prescribed dress.

iv. *Duty to Render Legal Aid*

- Every legal practitioner shall always keep in mind that any person who is in dire need of a lawyer is entitled to seek legal assistant despite the fact that he cannot pay an adequate or the full amount to the lawyer.
- Free assistance to the oppressed and indigent sections of the society is amongst the most important obligations owed by an Advocate to the society.

v. ***Restrictions on Employments***

- An advocate is not allowed to engage personally in any other business; however, he can be a sleeping partner in any firm involved in business. However, the nature of the business, according to the Bar Council, must not conflict with the dignity of the profession.
- As long as he is practicing law, he is not allowed to be a salaried employee of any government, person, corporation or firm.
- An Advocate may continue a family business inherited by him, but he must not actively participate in the administration of that business. Similarly, he is allowed to hold a share in a business inherited by him, but he must not personally and actively participate in the administration.
- An Advocate may be a Chairman or a Director of a company provided that his duties are not executive in nature. He shall not be a Secretary or a Managing Director of a company.

LANDMARK JUDGEMENTS

- ***Sambhu Yadav v/s Hanuman Khattry***^{xii}

Here, the complainant filed a complaint against an advocate enrolled with Rajasthan's State Bar Council. The complaint was related to bribery. According to the complaint, the counsel while appearing in the suit, through a letter demanded Rs. 10,000 as a bribe in order to influence the judge towards their own cause and get an order in their favour. According to the Disciplinary Committee, the actions of the lawyer rendered him totally unfit for the profession. The Supreme Court agreed with the judgement of the Bar Council and stated that law as a profession is neither a trade nor a business. It is the duty of the Advocates to strengthen the honesty and righteousness attached with the occupation and to prevent corruption with a view to secure justice.

- ***Noratanmal Chaurasia v/s M. Murl***^{xiii}

Here, the Apex Court stated that the Advocates Act does not define the term 'Misconduct', but misconduct pictures and includes the breach of discipline. The Advocate in this case kicked the complainant, assaulting him, and then asked the complainant to abstain from carrying on

with the case. The Apex Court stated that it is an obligation on the lawyers to follow the norms and rules related to behaviour. This type of behaviour was held unfit for any professional.

- ***Suo Motto Enquiry v/s Lal Balwani***^{xiv}

Here, the advocate opened his shoes, threw them and shouted slogans while appearing in the Apex Court. He was charged on two grounds, disrespect, and professional misconduct. The Apex Court found him guilty of his actions and imprisoned him for four months along with a fine of Rs. 2000. Later, the Bar Council of India along with the Disciplinary Committee finding him guilty of professional misconduct, ordered to remove his name from the State roll.

- ***BCM v/s M. Dabholkar***^{xv}

Here, it was noted that the lawyers placing themselves at the entry point of the Magistrate's court to rush towards and target possible plaintiffs, mostly led to a troublesome experience for both the parties involved. The Disciplinary Committee observed this was clearly a case of professional misconduct. It also stated that professional ethics could not be held in a book or ruler. Thus, misconduct relating to lawyers must be recognized in a dynamic and context specific sense, capturing the advocate's role towards the citizens.

- ***SCBA v/s UOI***^{xvi}

Amongst the vital functions of the State Bar Council in consideration to the conduct of the advocates is the taking up of complaints relating to advocates. If the States's Bar Council has any hint to suspect an advocate of misconduct, then it is its duty to refer the case to the State Bar's Disciplinary Committee for clearance. In case the Council even after receiving information from the Court does not begin proceedings against the advocate, then it would be the Court's responsibility to raise its power granted by Section 38 by transferring the proceedings of the Bar and passing satisfactory orders. Appellate powers provided by Section 38 do not apply to the High Courts.

CONCLUSION

“Lawyers are the foot soldiers of our Constitution.”

- Rennard Strickland

Legal Profession is highly significant in nature. Law as a profession is regarded as noble and righteous and thus, it is important that professional ethics are maintained. There have been instances wherein an Advocate attempted to murder his own client. Thus, it is extremely necessary to make sure that people with such criminal tendencies are not allowed to protect people from being punished. There are few provisions which ensure that the person getting enrolled as an advocate has no criminal records, however, these are not enough to ensure the criminal tendencies of that person. Therefore, it is extremely necessary for the legislators to create and modify laws relating to the various types of misconducts in this profession.

A lawyer is supposed to protect people from being punished, it does not suit a figure of such a stature to himself indulge in such instances of misconduct. The Bar Councils of each state must conduct yearly education programmes regarding the do's and don'ts of the profession in order to educate legal practitioners. It is equally important to remind the Advocates of their various duty's relating to the profession. In case of misconduct, strict punishments must be awarded to the accused in order to set examples for the rest of the Advocates.

ENDNOTES

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- ⁱ Bar Council Of Maharashtra vs M. V. Dabholkar, *available at* <https://indiankanoon.org/doc/276363/>
- ⁱⁱ AIR 1992 SC 2188
- ⁱⁱⁱ AIR 1979 SC 281
- ^{iv} AIR 1965 Mys. 28
- ^v AIR 2001 SC 2028
- ^{vi} AIR 1993 SC 1608
- ^{vii} Professional Misconduct, *available at* <https://easyadvocacy.com/EADigest/Professional-Misconduct-and-Its-Implications-Under-Advocates-Act-1961> (Visited on 7th October, 2020)
- ^{viii} AIR 1935 Cal. 547
- ^{ix} Misconduct under the Advocates Act, *available at* <https://blog.ipleaders.in/professional-misconduct-advocates-act-1961/amp/> (Visited on 7th October, 2020)
- ^x Misconduct of Lawyers in India, *available at* <http://www.legalservicesindia.com/article/1665/Professional-misconduct-of-lawyers-in-india.html> (Visited on 10th October, 2020)
- ^{xi} Duties of an Advocate, *available at* <https://www.lawyersclubindia.com/articles/rights-and-duties-of-an-advocate-10009.asp> (Visited on 10th October, 2020)
- ^{xii} Landmark judgements on Misconduct, *available at* <https://www.pathlegal.in/List-of-Landmark-Judgements:-Misconduct-of-an-advocate-and-I-blog-1158310> (Visited on 8th October, 2020)
- ^{xiii} *Supra* note 12
- ^{xiv} *Ibid*
- ^{xv} *Ibid*
- ^{xvi} *Supra* Note 10