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PROFESSIONAL MISCONDUCT BY ADVOCATES IN INDIA:**A CRITICAL STUDY****INTRODUCTION**

In the basic sense, the word 'Professional Misconduct' implies unethical actions. It implies, in the legal sense, an act intentionally committed by the people involved in the profession with the wrong intention. For his selfish ends, it implies any action or actions of an advocate in breach of professional ethics. It leads to 'professional misconduct' if an act results in a conflict with his profession and renders him ineligible to be in the profession. In other words, an act that disqualifies an advocate from continuing in the field of law.

In the Advocates Act, 1966, misconduct was not specified, but misconduct envisages infringement of discipline, although it would not be possible to set out exhaustively what would constitute misconduct and indiscipline, which, however, is broad enough to include wrongful omission or commission, whether done or omitted to be done intentionally or unintentionally.

In Black's Dictionary, misconduct has been described as a transgression of some known and definite rule of action, a prohibited act, a dereliction of duty, unlawful behaviour, inappropriate or incorrect behaviour. Misdemeanours, impropriety, mismanagement, offence, but not negligence or carelessness, are synonyms.

In **Noratanmal Chaurasia v. M.R.**, the case The Supreme Court held that misconduct was not specified in the Advocates Act, 1966, but misconduct envisages violation of discipline, although it would not be possible to set out exhaustively what would constitute misconduct and indiscipline, which, however, is broad enough to include wrongful omission or commission, whether done or omitted to be done intentionally or unintentionally

It has been concluded **In Re Tulsidas Amanmal Karim** that any behaviour that in any way renders a person unfit for the exercise of his profession or is likely to influence or embarrass the administration of justice by the High Court or any other subordinate court may be regarded as misconduct.

In the case of a judge, if a lawyer's behaviour is such that it makes him incapable of becoming a member of the honourable legal profession and unable to be entrusted with the responsible duties that a lawyer is called upon to perform, he would be guilty of errors.

Thus, two tests were laid down following this case:—

- (a) The conduct of the advocate is such that, in order to remain a member of the honourable profession, he must be treated as unworthy.
- (b) The lawyer's conduct is such that it must be deemed unfit to be entrusted with the responsible duties which the lawyer is called upon to perform.

These two tests have been interpreted as disjunctive and thus the fulfilment of any one of the said criteria will be appropriate to regard the behaviour as misconduct.

ADVOCATES ACT, 1961

“Section 35

Punishment of advocates for misconduct¹.—

(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

¹ <https://indiankanoon.org/doc/1460739/>

the case for disposal to its disciplinary committee. 1[(1A) The State Bar 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 and direct the inquiry to be made by any other disciplinary committee of that State Bar Council.]

*(2) The disciplinary committee of a State Bar Council 2[***] 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.*

(3) 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:—

(a) Dismiss the complaint or, where the proceedings were initiated at the instance of the State Bar Council, direct that the proceedings be filed;

(b) Reprimand the advocate;

(c) Suspend the advocate from practice for such period as it may deem fit;

(d) Remove the name of the advocate from the State roll of advocates.

(4) Where an advocate is suspended from practice under clause (c) of sub-section (3), he shall, during the period of suspension, be debarred from practising in any court or before any authority or person in India.

(5) Where any notice is issued to the Advocate-General under sub-section (2), 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. 3[Explanation.—in this section, 4[section 37 and section 38], the expressions “Advocate-General” and Advocate-General of the State” shall, in relation to the Union territory of Delhi, mean the Additional Solicitor General of India.]

Section 41

Alteration in the roll of advocates

Where an order is made reprimanding or suspending an advocate, a record of the punishment shall be entered against his name in the state roll and where an order is made removing an advocate from practice, his name shall be struck off the state roll.

Section 36-B

Disposal of disciplinary proceedings

This section provides that the disciplinary committee of the State Bar Council shall dispose of the complaint received by it under section 35 expeditiously and in each case the proceedings shall be concluded within a period of one year from the date of the receipt of the complaint or the date of the initiation of the proceedings at the instance of the State Bar Council, as the case may be, failing which such proceedings shall stand to the BCI which may dispose of the same as if it were proceedings withdrawn for inquiry under section 36(2).

Remedy against the order of punishment by the State Bar Council

Section 44

Review of order by disciplinary committee

The disciplinary committee of Bar Council may of its own motion or otherwise review any order, within 60 days of the date of the order passed by it. However no such order of the review of the disciplinary committee of a State Bar Council shall have effect, unless it has been approved by the Bar Council of India.

Section 37

Appeal to the Bar Council of India

(1) Any person aggrieved by an order of the disciplinary committee of the State Bar Council made Under Section 35 or the Advocate General of the State may within 60 days of the date of the communication of the order to him; prefer an appeal to the Bar Council of India.

(2) Every such appeal shall be heard by the disciplinary committee of the BCI which may pass such order including order varying the punishment awarded by the disciplinary committee of the State Bar Council as it deems fit.

(3) No order of the disciplinary committee of the State Bar Council shall be varied by the disciplinary committee of the BCI so as to prejudicially affect the person aggrieved without giving him reasonable opportunity of being heard.”

Professional misconduct vis a vis court contempt

The spectrum of contempt proceedings is far broader than professional misconduct proceedings, as professional misconduct proceedings may only be carried out against the lawyer, while contempt proceedings can be instituted against both bar and bench members.

There is no fixed procedure for the initiation or penalty of the accused/ guilty in the case of contempt of court and although proceedings are to be carried out in the case of professional misconduct in compliance with the Advocates Act 1966, which lays down a thorough procedure for the same.

In the case of proceedings for contempt of court, the Criminal Procedure Code and the Indian Evidence Act are not valid because these proceedings are carried out on the basis of the principles of natural justice- objectivity and fairness, respectively. Cross-examination in contempt of court proceedings is tolerated in restricted cases only.

For instance, Mr. R.K. Anand was not permitted to cross-examine Poonam Aggarwal, who was in charge of the sting operation, in the case of contempt proceedings against R.K Anand. In comparison, cross-examination is a significant element of professional misconduct trials.

As provided for in the Contempt of Court Act, the penalty for contempt of court also varies from the penalty for professional misconduct provided for in the Advocates Act, 1966.

CRITIQUE

The Advocates Act 1961 was a long sought-after act to consolidate the law relating to legal practitioners, the establishment of autonomous Bar Councils, the prescription of a uniform qualification for membership and the registration of individuals as advocates, and more significantly, it imposes penalties on advocates for professional misconduct and serves as a

quasi-judicial body in that regard. The Bar Council formed under the Act is only a body that can be approached for professional misconduct of a lawyer except for contempt of court, which is also misconduct. However, in terms of its ability to sanction for professional and other wrongdoing, the following criticisms are levelled against the Act;

(1) No right of appeal shall be provided for in the act before the relevant High Courts and, hence, the power of the Bar Council of the State to act shall be equated with that of the High Court.

2) It is impossible for an advocate to approach the Supreme Court in the ordinary course and to seek the case from an aggrieved order of the Bar Council of India

3) The act did not specify the term misconduct, but instead included professional and other misconduct, and the Bar Councils and Supreme Court are left to determine and to extend the scope of the definition.

(4) Denial of the principle of natural justice to an ordinary litigant aggrieved by the advocate's wrongdoing, as the body of its association, i.e. the Bar Council, decides the case in which the respondent is its own member. This is against the "no man can be a judge in his own case" theory. In order to seek some pecuniary relief due to the damage incurred by such misconduct, the lay individual must contact relevant forums established under the Consumer Protection Act 1986 if it suits under service deficiency.

(5) Sometimes, on the basis of the circumstances, the legislation violates Article 19(1) (g), the right to practice a trade or professional operation, as well as the freedom of speech and expression provided for in Article 19(1) (a).

However, the legislation has largely accomplished the purpose of the legislature to preserve the integrity of the profession and to retain the moral etiquette of legal practitioners.

LANDMARK JUDGEMENTS

1. State vs. Lalit Mohan Nanda

It is the responsibility of a Lawyer to defend his client's interests by all reasonable and honourable means, but the opposite occurred in the case of State vs. Lalit Mohan Nanda. In this case, the point of concern was whether Mr. Nanda was guilty of

professional misconduct for a violation of the laws on the professional conduct of lawyers under Section 15(a) of the Indian Bar Councils Act, 1926. Advocate Lalit Mohan Nanda was found guilty of professional misconduct by the Hon'ble Orissa High Court, as he was found guilty of changing sides, meaning that after appearing for the first party, he had appeared for the opposite party in the same case. The responsibility of upholding a client's interest was violated.²

2. Shambhu Ram Yadav vs. Hanum Das Khattry³

The respondent wrote a letter to his client in the case of Shambhu Ram Yadav vs. Hanum Das Khattry, and asked him to bribe the judge so that he could help the client win the case. The respondent was found guilty of bribery under Section 35 of the Advocates Act, for bribing a judge, and he was barred from practise for a term of two years by the State Bar Council. By order of 31 July 1999, the respondent challenged the above order before the Disciplinary Committee of the Bar Council of India. By order of 31 July 1999, the Disciplinary Committee of the Bar Council of India, consisting of three members, reinforced the penalty and ordered that the name of the respondent be excluded from the roll of advocates, thus permanently prohibits him from practice. In addition, the respondent was transferred 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 declared that" The legal profession is not a trade or business. It is a noble profession".

3. Emperor vs. K.C.B.

Some tins of ghee were held in Bazrang Lal Marwari's custody in the case of Emperor vs. K.C.B, as it was confiscated for adulteration by the Municipal Authorities, Katwa. Bazrang Lal Marwari was falsely informed by the advocate that the Sub-Divisional Officer, Katwa, had instructed the owner to hand over the tins. The Honourable Calcutta High Court ruled here that the lawyer was guilty of misconduct for supplying false data.

4. L.C. Goyal vs. Suresh Joshi

² https://lexforti.com/legal-news/professional-misconduct-of-advocates-in-india/#_ftn4

³ <http://www.legalservicesindia.com/article/1665/Professional-misconduct-of-lawyers-in-india.html>

If a lawyer receives and misuses money from his clients for court purposes, it is known as misappropriation, which amounts to professional misconduct. One such case of misappropriation is L.C Goyal v. Suresh Joshi. In this specific case, the money earned as a court fee was misappropriated by an attorney (appellant in this case). The appellant had misappropriated an amount of Rs. 25,491/- for which he had been found guilty of professional misconduct by the Honourable Supreme Court.

CONCLUSION

A lawyer has a duty to his client, a duty to his opponent, a duty to the court, a duty to the community at large and a duty to himself while discharging his professional assignment. During periods when there are competing arguments, it takes a high degree of probity and poise to strike a balance to achieve the position of righteous standing. An attorney is also an agency of the Court that is responsible for the rendering of sound quality facilities. Deficiency in services of the form of absence when the problems are scheduled, filing of incomplete and incorrect pleadings, even illegible for a long time and without personal supervision and proof, the inability to pay court fees and procedure fees leads to job deficiency.

The conduct of an Advocate typically affects only his clients, although people who are personally affected by the actions of the advocates or omissions may also bring an action against him in such circumstances.

A prestigious profession with respected values is the legal profession. It is expected that an advocate would maintain those values. He must comply with the conduct set out by the Bar Council of India of professional ethics and etiquette. But the traditions of the profession are not held high, as seen above. These are only a few decisions that reflect the legal profession's truth. There are hundreds of cases out there where the proponents do not comply with professional ethics or moral requirements.

In the current example, where the Covid-19 virus triggers an online trial, there are several reports of professional misconduct. Advocates should not comply with the dress code and appear casually before the Honourable Court, which is against the obligation of the court. In a live virtual hearing before the Rajasthan High Court, a Senior Advocate was seen smoking hookah. There are things that are not expected from a person who is a noble professional.

A relationship of confidence, also known as a fiduciary relationship, is the relationship held between a lawyer and his client. A lawyer is responsible for this and is responsible for keeping the discussion confidential and preserving secrecy about case matters. If a lawyer engaged by a person to settle the matter involving and having knowledge of the law does not take those measurements, which then requires a legal professional to deal with by using his competence productively in some matters. Therefore, if the advocate does not honour the partnership and does not hold the confidentiality of the case matter, he is defective in rendering the standard sound service he is bound to provide. I want to say that the problem is not the number of laws or the obsolete or old laws, but it is the ineffective laws. The real problems are the inept and ineffective systems that enforce them.

Advocates have a dual obligation to fearlessly protect the rights of their clients while conducting themselves as court officers. It is also required that they will adhere to the highest levels of probity and honour. The actions of an Advocate should represent the privileged place in society resulting from the nobility of this career.



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