



## A CRITICAL ANALYSIS OF PROFESSIONAL MISCONDUCT BY ADVOCATES UNDER THE ADVOCATES ACT, 1961

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### Abstract:

India's legal practice has been governed by the Advocates Act of 1961. The Act also laid down the structure for the establishment of the Bar Councils for India and states, which was set up to register and discipline legal practitioners, as well as rules which govern the conduct of advocates in practice. Such misconduct by legal practitioners is prevalent, and the law has defined many degrees and subtypes of such misconduct, which can range from the unethical to the illegal and unprofessional. This research study digs at the Advocates Act's provisions governing professional misconduct, its repercussions, redress processes, and the role of legal entities in upholding professional ethics.

### INTRODUCTION

"Professional Ethics cannot be contained in a Bar Council rule nor in traditional can't 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 Iyer

Advocacy is a moral and a noble career. Because of the nature of activities which the advocate engages in on behalf of the client, the legal profession has always been one of the regarded as a key profession in the society, the purpose of which is to maintain justice and uphold the rule of law. The conduct of legal

practitioners in India, who are commonly referred to as advocates, is governed by the Advocates Act of 1961. This legislation provides not only the qualifications and duties which advocates should possess and perform, but also the standards of professional conduct. With regard to the principles of the legal profession, professional misconduct of a practitioner to these self-imposed regulations is a serious matter which every legal practitioner must appreciate, understand its implications, and the ethical and regulatory framework set up for protecting the legal profession.

This article discusses the concept of professional misconduct for advocates in terms of the provisions of the Advocates Act, of 1961, with regards to its definitions, rules, relevant case law, disciplinary proceedings, and need for ethics in the practice.

### THE ADVOCATES ACT, 1961: A BRIEF OVERVIEW

The Parliament of India passed the Advocates Act, 1961, to govern the legal profession and establish the Bar Council of India (BCI) and State Bar Councils. Its main aims are to:

- Ensure consistency and regulation in the practice of law throughout the country.
- Establish guidelines for workplace conduct and ethics.
- Protect advocate's rights and limit their actions.

The Act establishes who qualifies as an advocate, the credentials necessary to practice law, advocates' rights, and the Bar Council of India's authorities to regulate professional behaviour.

### UNDERSTANDING PROFESSIONAL MISCONDUCT

Professional misconduct means any act or omission by an advocate that fails to conform to the established standards and rules of practice by the legal profession. Misconduct could take the form of actions or



omissions towards clients, courts, or members of the public.

The Bar Council of India has formulated ethics in its code and rules which define ethical behaviour of advocates, which include integrity, honesty, confidentiality, client's allegiance, and respect to courts.

Misconduct can be of two major categories:

- Law-related misbehaviour: Such as neglect, dishonesty and other unprofessional behaviour in dealing with cases or clients or presenting them.
- Not directly connected to legal practice misconduct: This involves actions that are detrimental to the reputation of the profession, such as criminal crimes or unethical activities outside the practice of law:

#### PROVISION UNDER THE ADVOCATES ACT, 1961

Professional misconduct is governed by the Advocates Act, 1961 under professionals misconduct and regulations under a number of sections of the act, the most prominent includes:

1. Discipline by Bar Council of India (Section 35) — An advocate is found to be guilty of professional misconduct. It authorizes sanctions from warning to disbarment and allows for investigations into allegations of bad conduct.

#### KEY POINTS:

- All individuals such as clients alongside fellow advocates or general public members have the right to submit professional misconduct complaints to the State Bar Council.
- The Bar Council examines each complaint received to decide whether disciplinary measures should be taken against an advocate.
- When an advocate is found guilty of misconduct the Bar Council has the power to enforce sanctions which range from reprimands to suspension

or ultimate disbarment from the professional advocates' register.

2. Section 36: The Bar Council of India empowers the Bar to constitute national and state disciplinary committees to investigate allegations of professional misconduct.

#### KEY POINTS:

- The Bar Council can either suspend or disbar an advocate based on the severity of their misconduct.
- A serious violation could lead to permanent disqualification from legal practice which affects the lawyer's career for years to come.

3. Section 37: This section lays down the details for making a complaint detailing who will be able to file a complaint and the process for initiation of a complaint.

4. Procedure, Practice and Conduct of Courts and Bar: The Rule 10 of the Bar Council of India Rules. for example: obligations to the court, clients, colleagues, society. The Bar Council of India plays a significant role for conducting the affairs of advocates at national level.

Section 49: talks about the authority of the Indian Bar Council The Bar Council of India gets Section 49 empowered to lay down rules for the advocates' conduct and the standard of practice. These rules help to give detailed instructions on what constitutes professional misconduct and how to settle complaints correctly.

#### TYPES OF PROFESSIONAL MISCONDUCT

The Advocates Act provides a disciplinary framework for punishing an advocate with all kinds of professional misconduct. These consist of:

- Negligence and Lack of Diligence  
Professional misconduct happens when a case is handled negligently, like missing court dates, failing



to file paperwork or providing ineffective representation for the client. Advocates are tasked with representing their clients diligently, ensuring protocols are adhered to and deadlines are met.

- **Falsification and Deception**

When an advocate engages in dishonest conduct, such as fabrication of evidence, misrepresentation of facts to the tribunal or commission of fraud, it becomes a gross violation of ethics. Such misconduct erodes the faith of the public and the clients in the justice system.

- **Conflict of Interest**

The duty an advocate has to both clients is weakened when an advocate is acting for conflicting interests in the same case. Not disclosing such conflicts or giving one client priority due to this would amount to dishonesty and lead to allegations of professional misconduct.

- **Criminal Behavior**

Any illegal activity, whether connected to professional employment or not, may lead to a charge of misconduct against an advocate. In addition to the legal consequences, criminal acts can also tarnish the reputation of an advocate in the profession.

- **Misuse of the Legal Position**

An advocate should not abuse his office for personal purposes. Such acts of malpractices are classified as acts which involve bribery, exploitation of client, and malpractice.

- **Unethical Advertising**

Advocates cannot advertise their services. They cannot do that in a manner misleading or unethical. The Bar Council of India has prescribed guidelines for advertisements that could impair the dignity of the profession.

## CONTEMPT OF COURT AS PROFESSIONAL MISCONDUCT

Contempt of court includes any conduct which undermines or can disrupt the authority, justice or dignity of the court. Advocates may feel that such contemptuous conduct is professional misconduct

because it undermines the integrity of the legal process.

Types of Contempt:

- Civil contempt is the intentional disobedience of a court order or decree. Such as ignoring an order or injunction from a court of law.
- Criminal Contempt: acts that seek to undermine the court's authority, burke justice or demean the integrity of the legal system are all considered criminal contempt. Saying disparaging things about a judge or the court, for instance.

Professional misconduct is defined as improper behavior by a professional party, like an advocate insulting judges, using foul languages in court, disobeying court orders, etc. Not only does such behaviour violate moral principles, but it deprives the public of trust in the legal system. Apart from facing fines under the Contempt of Courts Act, guilty advocates will have to face disciplinary action under the Advocates Act, 1961. If an advocate indulges in acts which would malign the honour of the court and the profession, the Bar Council has the authority to suspend or remove them from the roll.

In *RE Vinay Chandra Case*, The Court held that the license of an Advocate might get cancelled by the Supreme Court and The High Court in exercise of the contempt of court.

## DUTIES OF AN ADVOCATE

Advocates are crucial to the legal system. Their actions affect the society as a whole, the integrity of the legal system and their clients. To preserve justice and the honor of the legal profession, advocates are bound by professional and ethical norms.) These obligations may be broadly categorized into obligations to society, to the legal profession, to the court, and to the client.

1. Obligation to the Court



- Decency and Respect: Advocates must show the court and its officials with appropriate decency. This entails speaking to the judge in a proper manner, abiding by the court's regulations, and acting professionally at all times. It is important for advocates to act in a way that promotes the court and the legal profession.
  - Advocate as an assistant in administration of justice: The primary duty or you can say the first duty an advocate is to assist the court in the fair administration of justice. The court should not be confused by setting examples in an upright way and also ensure that what they are arguing in court is backed by law and facts. Advocates shall refrain from frivolous or baseless allegations which may deter the course of justice.
  - Integrity and Honesty: Advocates have to deal with the court in an open and sincere manner. Even if certain facts are harmful to their client's interests, they should not mislead the court or withhold information that is important to the case. It is strictly forbidden to engage in any dishonest behavior that compromises the integrity of the legal system, including lying and misrepresentation
2. Obligation to the Client:
- Confidentiality: Advocates are expected to protect the privacy of their clients, unless they are forced to disclose it by law.
  - Best Interest of the Client: Advocates must avoid outward appearance of conflict of interest and strive for the best interests of their clients. They should act in a client's interests and be a knowledgeable counsel on legal matters.
  - Competence: In addition to representing clients in their area of expertise, advocates should stay current with developments in the field.
3. Professional and Ethical Responsibility
- Upholding the Highest Moral Standards: Advocates should not engage in any act of dishonest or immoral conduct.
  - A duty of care: The advocates shall not get into a position where their duty to the client or the court conflicts with their own interests
4. The Mandate to Protect Justice
- Forward Progressing of Justice: Advocates must actively pursue justice advancement instead of participating in unnecessary litigation to ensure proper legal system function.
  - Public Service: For broader justice access they should dedicate time to pro bono work or represent underserved communities.
5. Obligation to Bargain and Resolve Conflicts  
Advocates ought to guide clients toward settlements and other methods of dispute resolution to prevent lengthy legal battles where it makes sense.
- Disciplinary Process for Professional Misconduct**
- The following procedure governs the disciplinary procedure where an advocate is charged with professional misconduct:
- Making a Complaint  
A complaint of professional misconduct can be lodged with the State Bar Council by any person or authority, such as judges, fellow advocates, or clients. The complaint should be in writing and provide adequate information and evidence of the alleged malpractice.
  - Preliminary Investigation  
After receiving a complaint, the State Bar Council first conducts an initial investigation to establish whether the allegations are correct or not. A complaint can be withdrawn if the council establishes it to be a false complaint.
  - Investigating and Hearing  
An investigation is conducted if the complaint has a basis. A chance to answer is provided for the advocate. The case is forwarded to the disciplinary committee for further deliberations if the case indicates misconduct.
  - Disciplinary measures





A defense counsel can face one or all of the sanctions listed below when found to be guilty of professional misconduct:

1. A formal declaration of dissatisfaction is referred to as a reprimand or censure.
2. Suspension: A short stop to legal practice for a period determined by the committee.
3. Disbarment: An individual who is permanently removed from the list of advocates and not allowed to practice law.

### LANDMARK JUDGEMENTS

1. According to the Supreme Court ruling in *State of Punjab v. Ram Singh*, "professional misconduct" might include:

- Unacceptable or incorrect behavior
- Illicit behavior; immorality; negligence in doing one's duties; a conduct prohibited by law; or a violation

#### 2. *V.C. Ranga Durai vs. D. Gopalan*

It thus made it evident that the duty of the attorney assigned to a matter and brief is to follow professional ethics, which in turn protects the client's interest. Failure to do so would give rise to professional misconduct.

#### 3. *Mohd Ismail vs. Balarathna*

In this case, the Supreme Court held that if a lawyer fails to, it would lead to misconduct on his part and also ordered providing the paperwork which would facilitate in moving the case forward despite their frequent delays.

#### 4. *D. Dalal vs SBI*

In this case, an advocate was charged with embezzlement for taking the money received from the client.

The money was contributed to file a lawsuit, and the balance was used for professional expenses. According to the lawyer who was accusing the High Court of misplacing the litigation documents, this

was the amount the High Court registry was supposed to hand over. However, it was revealed that the advocate had not refiled the claim for a long time, and the register had sent the suit documents back to the attorney for the removal of objections. The disciplinary committee had targeted the advocate. The committee had rebuked the advocate for misconduct since they had found the advocate guilty of embezzling money paid by the client.

#### 5. *Bar Council of India V. High Court of Kerala*

The right to practice law is a legislative right under the Advocates Act, 1961, rather than a basic right under Article 19(1)(g) of the Indian Constitution. As a result, the phrase "subject to" that appears in Section 30 is incorporated in Section 34 of the Act, which deals with the High Court's rule-making authority, subject to the criteria specified in the Act and Rules.

#### 6. *Ex-Capt. Harish Uppal v. Union of India*

During the 1972 Indo-Pak War, the petitioner, a former army commander stationed in Bangladesh, was accused of embezzlement and brought before a military court in India. He was also court-martialed from his position and placed under two years of detention following a judicial probe. He filed a pre-affirmation motion in civil court to audit his case because he felt wronged by the court's ruling. After 11 years, he received a response from the court after the survey's statute of limitations had passed. It was later discovered that the survey's paperwork and his application were lost as a result of the Advocates' severe strike. And for this very reason, the petitioner sought to the Supreme Court to declare the attorneys' strike unlawful after filing a writ case in the High Court. When determining the case, the Honorable Supreme Court determined that an advocate's strike is illegal and that they thus have no authority to demand a boycott of the court, not even a symbolic one.

The court further held that a strike is only allowed in



situations where the independence of the judiciary or the honour and integrity of the Bar and Bench are at risk, and that too falls under the category of extremely rare cases, such as complaints against the presiding officer, a court ruling, a dispute with the administration, a conflict of interest between groups of lawyers, etc.

And that protest should be carried out by making explanations to the media, performing TV interviews, issuing further notifications, wearing white or dark bands, leaving the court's grounds, etc., but none of these should interfere with the court's ability to operate. The court additionally ruled that no such attorneys who wish to practice law should be prevented from doing so and forced to continue participating in a boycott under false pretenses, such as the fear of expulsion.

#### 7. ***Mahabir Prasad Singh v. Jacks Aviation***

Since the Bar Association had decided to boycott that court, an appeal to move the matter suo moto was filed before the trial court. This appeal was denied on the grounds that:

1. Professional decorum and etiquette necessity that a lawyer renounce his engagement in a court so that the party can hire another lawyer if he does not wish to appear there, even if it is for a valid cause.
2. However, it is unethical and unworthy of an advocate's position to keep his client's brief while simultaneously refusing to attend in that court—not on a certain day due to some counsel, but as a permanent feature.
3. A strike call issued by an advocacy group or a decision to boycott the courts generally or a specific court does not require a court to postpone a case.

#### 8. ***In Re: Mr. B. S. M. Shukla (2001)***

In this case, the Supreme Court had determined that an advocate must conduct himself or herself professionally with courtesy. The engaged advocate had been found guilty of impersonation and malfeasance in office. The Court underscored the

responsibility of an advocate to the court and how any fraudulent activity that risks the dispensation of justice should be addressed.

### **CHALLENGES IN ADDRESSING PROFESSIONAL MISCONDUCT**

1. **Poor Regulation Implementation :** The slow and often ineffective enforcement of disciplinary measures is one of the many hurdles in curbing professional misconduct. Complaints take years to file, investigations to complete, and hearings to conduct, making it nearly impossible to ensure timely accountability.

2. **Advocate's Lack of Awareness :** Many of them may not fully be aware of the professional duties and ethical requirements laid down by the Bar Councils. And the darkness of ignorance leaves them blind to unintentional violations of moral code.

**Political Influence and Corruption:** Impact of personal or political situation on the disciplinary process are notable in mostly cases which makes it difficult to impose liabilities on advocates.

#### **Changes and Suggestions**

1. **Simplifying the Disciplinary Process :** Simplifying the processes for investigating and adjudicating misbehavior complaints would also help to address unnecessary delays in taking disciplinary action. The process could be improved by the creation of specialized disciplinary panels or courts that would be empowered to conduct prompt hearings.

2. **Enhancement of Education and Knowledge :** Readings on professional behavior essentials and ethics codes should be given consistently to advocates. To ensure that advocates understand the implications of professional misconduct and the importance of maintaining strong ethical standards

**Strengthening of regulatory measures :** This will dig up cases of misconduct that might still be pending earlier



in the court so more power and funds should be given to such regulatory bodies like the Bar Council of India so that they can respond timely for exploring misconduct. Greater transparency in the disciplinary process may also bolster public confidence in the system.

### Importance of professional ethics

The philosophy of the legal profession rests upon the principles of trust and honesty. Because those who practice advocacy professional misconduct taints the legal system and erodes confidence in the judiciary. Advocates guarantee that justice is administered fairly to all and the rule of law is upheld by maintaining high requirements of ethical standards.

The State Bar Councils and the Bar Council of India play a vital role in maintaining the dignity of the legal profession. Maintaining the integrity of the profession requires effective disciplinary procedures, commitment to professional ethics, and ongoing education.

### CONCLUSION

The unethical behavior of advocates poses a serious risk to the legal profession and the judicial system. In order to maintain accountability among advocates, the Advocates Act 1961 comes with a detailed framework on the procedures to be used in dealing with professional misconduct. The BCI and the State Bar Councils must ensure that the legal profession protects the society's confidence by taking adequate disciplinary action. Public trust in the legal system and the ability of a nation to remain governed depends on the legal profession observing standards of ethical behavior. Advocates also have the struggle to maintain their clients' trust by balancing their personal values with the legal professional conduct requirements.

In order to protect these standards and make sure that any infractions are handled promptly and equitably, the Bar Council of India and the legal system continue to play a crucial role. The legal profession can only

remain a beacon of justice by maintaining a consistent dedication to professionalism and ethics.

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