

Misconduct: lawyer and bar council



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Professional Misconduct An advocate is the most accountable, privileged and erudite person of the society and his act are role model for the society, which are necessary to be regulated. Professional misconduct is the behaviour outside the bounds of what is considered acceptable or worthy of its membership by the governing body of a profession. [1] Professional misconduct refers to disgraceful or dishonourable conduct not befitting an advocate[2]. Chapter V of the Advocate Act, 1961, deals with the conduct of Advocates.

It describes provisions relating to punishment for professional and other misconducts. Section 35(1) of the Advocate Act, 1961, proviso says, is relevant in this context. This proviso say, where on receipt of a complain 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 it disciplinary committee. In depth the provisions are discussed in the later part.

Generally legal profession is not a trade or business, it's a gracious, the noble, and decontaminated profession of the society. Members belonging to this profession have not to encourage deceitfulness and corruption, but they have to strive to secure justice to their clients. The credibility and reputation of the profession depends upon the manner in which the members of the profession conduct themselves. It's a symbol of healthy relationship between Bar and Bench.

There is heavy responsibility on those on whom duties' are vested by the virtue of being a part of my most credible as plausible profession of the

society. The Advocates Act, 1961 as well Indian Bar Council are silent in providing exact definition for profession misconduct because of its scope, though under Advocate Act, 1961 to take disciplinary action punishment are prescribed when the credibility and reputation on the profession comes under a cloud on account of acts of omission and commission any member of the profession.

What Is The Code Of Conduct Prescribed For An Advocate? The Bar Council Rules prescribe a strict code of conduct for advocates, it has to follow[3]: No advertising or soliciting work, it is against an advocate's code of ethics to solicit or advertise work and amounts to a misconduct on the part of the advocate. Both direct and indirect advertising is prohibited. An advocate may not advertise his services through circulars, advertisements, touts, personal communication or interviews not warranted by personal relations.

Similarly, the following forms of indirect advertising are prohibited: (i) by issuing circulars or election manifestos by a lawyer with his name, profession and address printed on the manifestos, thereby appealing to the members of the profession practising in the lower courts who are in a position to recommend clients to counsel practising in the HC. (ii) canvassing for votes by touring in the province or sending out his clerk or agents to the various districts, which must necessarily mean directly approaching advocates practising in subordinate courts.

Further, the signboard or nameplate displayed by an advocate should be of reasonable size. It should not refer to details of an affiliation by the advocate i. e. that he is or has been president or member of a bar council or of any

association, or he has been a Judge or an Advocate-General, or that he specialises in a particular kind of work, or that he is or was associated with any person or organisation or with any particular cause or matter.

Not demand fees for training; An advocate is restrained from demanding any fees for imparting training to enable any person to qualify for enrolment. Not use name/services for unauthorised practice; An advocate may not allow his professional services or his name to be associated with, or be used for any unauthorised practice of law by any lay agency. Not enter appearance without consent of the advocate already engaged: an advocate is prohibited from entering appearance in a case where there is already another advocate engaged for a party except with the consent of such advocate.

However if such consent is not produced, the advocate must state the reasons for not producing it, and may appear subsequently, only with the permission of the court. Duty to opposite party:- While conducting a case, a lawyer has a duty to be fair not only to his client but also to the court, and to the opposite party. An advocate for a party must communicate or negotiate with the other parties regarding the subject matter of controversy, only through the opposite party's advocate.

If an advocate has made any legitimate promises to the opposite party, he should fulfil the same, even if the promise was not reduced to writing or enforceable under the rules of the court. Duties of an advocate towards his client: The relationship between a lawyer and a client is highly fiduciary and it is the duty of an advocate fearlessly to uphold the interests of the client by

fair and honourable means without regard to any unpleasant consequences to himself or any other person.

Procedure Followed On The Notice Of Professional Misconduct The following is the procedure followed (1) In exercise of powers under Section 35 contained in Chapter V entitled “conduct of advocates”, on receipt of a complaint against an advocate (or suo motu) if the State Bar Council has ‘reason to believe’ that any advocate on its roll has been guilty of “professional or other misconduct”, disciplinary proceeding may be initiated against him. 2) Neither Section 35 nor any other provision of the Act defines the expression ‘legal misconduct’ or the expression ‘misconduct’. (3) The Disciplinary Committee of the State Bar Council is authorised to inflict punishment, including removal of his name from the rolls of the Bar Council and suspending him from practice for a period deemed fit by it, after giving the advocate concerned and the ‘Advocate General’ of the State an opportunity of hearing. 4) While under Section 42(1) of the Act the Disciplinary Committee has been conferred powers vested in a civil court in respect of certain matters including summoning and enforcing attendance of any person and examining him on oath, the Act which enjoins the Disciplinary Committee to ‘afford an opportunity of hearing’ (vide Section 35) to the advocate does not prescribe the procedure to be followed at the hearing. (5) The procedure to be followed in an enquiry under Section 35 is outlined in Part VII of the Bar Council of India Rules² made under the authority of Section 60 of the Act. 6) Rule 8(1) of the said Rules enjoins the Disciplinary Committee to hear the concerned parties that is to say the complainant and the concerned advocate as also the Attorney General or the

Solicitor General or the Advocate General. It also enjoins that if it is considered appropriate to take oral evidence the procedure of the trial of civil suits shall as far as possible be followed. Contempt Of Court As Misconduct In the recent case of B. M. Verma v.

Uttarakhand Regulatory Commission[4] court noted that, it was given the wide powers available with a Court exercising contempt jurisdiction, court quoted several he Delhi HC, in the case of Court of Its Own Motion v. State [5], dealing with the contempt proceedings involving two senior advocates, observed that ‘ given the wide powers available with a Court exercising contempt jurisdiction, it cannot afford to be hypersensitive and therefore, a trivial misdemeanor would not warrant contempt action.

Circumspection is all the more necessary because as observed by the SC in SC Bar Association v. Union of India[6] the Court is in effect the jury, the judge and the hangman; while in M. R. Parashar H. L. Sehgal it was observed that the Court is also a prosecutor. Anil Kumar Sarkar v. Hirak Ghosh[7], reiterates this. ‘ In the most controversial and leading case of R. K. Anand vs. Registrar of Delhi HC[8] facts, On 30th May, 2007 a TV news channel NDTV carried a report relating to a sting operation.

The report concerned itself with the role of a defence lawyer and the Special Public Prosecutor in an ongoing Sessions trial in what is commonly called the BMW case. On 31st May, 2007 a Division Bench of this Court, on its own motion, registered a writ Petition and issued a direction to the Registrar General to collect all materials that may be available in respect of the telecast and also directed NDTV to preserve the original material including

the CD/video pertaining to the sting operation. ISSUE : The question for our consideration is whether Mr.

R. K. Anand and Mr. I. U. Khan, Senior Advocates and Mr. Sri Bhagwan Sharma, Advocate have committed criminal contempt of Court or not. It was observed that prima facie their acts and conduct were intended to subvert the administration of justice in the pending BMW case and in particular influence the outcome of the pending judicial proceedings. Accordingly, in exercise of powers conferred by Article 215 of the Constitution proceedings for contempt of Court (as defined in Section 2(c) of the Contempt of Courts Act, 1972) were initiated against Mr.

Anand, Mr. Khan and Mr. Sri Bhagwan Sharma and they were asked to show cause why they should not be punished accordingly. HELD : court said that Courts of law are structured in such a design as to evoke respect and reverence for the majesty of law and justice. The machinery for dispensation of justice according to law is operated by the court. Proceedings inside the courts are always expected to be held in a dignified and orderly manner.

The very sight of an advocate, who was found guilty of contempt of court on the previous hour, standing in the court and arguing a case or cross-examining a witness on the same day, unaffected by the contemptuous behaviour he hurled at the court, would erode the dignity of the court and even corrode the majesty of it besides impairing the confidence of the public in the efficacy of the institution of the courts. This necessitates vesting of power with the HC to formulate rules for regulating the proceedings inside the court including the conduct of advocates during such proceedings.

That power should not be confused with the right to practise law. Thus court held that there may be ways in which conduct and actions of a malefactor who is an advocate may pose a real and imminent threat to the purity of court proceedings cardinal to any court's functioning, apart from constituting a substantive offence and contempt of court and professional misconduct. In such a situation the court does not only have the right but also the obligation to protect itself.

Hence, to that end it can bar the malefactor from appearing before the courts for an appropriate period of time. In the present case since the contents of the sting recordings were admitted in the present case, there was no need for the proof of integrity and correctness of the electronic materials. Finally the SC upheld HC's verdict making Anand guilty on the same count. On the other hand, the SC let off I U Khan, who was found guilty by the HC. Attempt Of Murder: In the case of Hikmat Ali khan v. Ishwar prasad arya and ors[9], FACTSIshwar Prasad Arya, respondent No. , was registered as an advocate with the Bar Council of Uttar Pradesh and was practising at Badaun. An incident took place on May 18, 1971 during lunch interval at about 1. 55 p. m. , in which respondent No. 1 assaulted his opponent Radhey Shyam in the Court room of Munsif/Magistrate, Bisauli at Badaun with a knife. A pistol shot is also said to have been fired by him at the time of incident. After investigation he was prosecuted for offences under Section 307 of the Indian Penal Code and Section 25 of the Arms Act.

The 1st Temporary Civil and Sessions Judge, by his judgment dated July 3, 1972, convicted him of the said offence and sentenced him to undergo rigorous imprisonment for three years for the offence under Section 307, I. P.

C. and for a period of nine months for offence under Section 25 of the Arms Act. On the basis of the said complaint disciplinary proceedings were initiated against respondent No. 1 by the Bar Council of U. P. he was found guilty of gross professional mis-conduct by taking the benefit himself of a forged and fabricated document which had been prepared at his behest.

The Disciplinary Committee of the Bar Council of U. P. directed that respondent No. 1 be debarred from practising as an advocate for a period of two years from the date of the service of the order. Respondent No. 1 filed an appeal, the said appeal was allowed by the Disciplinary Committee of the Bar Council of India by order dated June 8, 1984 and the order of the Disciplinary Committee of the Bar Council of U. P. dated January 30, 1982 was set aside on the view that there was no material on the basis of which it could reasonably be held that respondent No. had prepared the document which was subsequently found forged. Further the submission of Shri Markendaya is that having regard to the gravity of the misconduct of respondent No. 1 in assaulting his opponent in the Court room with a knife and his having been committed the offence under Section 307, I. P. C. and his being sentenced to undergo rigorous imprisonment for three years in connection with the said incident, the punishment of removal of the name of respondent No. 1 from the roll of advocates should have been imposed on him and that the Disciplinary Committee of the Bar Council of U.

P. was in error in imposing the light punishment of debarring respondent No. 1 from practising as an advocate for a period of three years only and that this was a fit case in which the appeal filed by the appellant should have been allowed by the Disciplinary Committee of the Bar Council of India.

HELD: The acts of mis-conduct found established are serious in nature. Under Sub-section (3) of Section 35 of the Act the Disciplinary Committee of the State Bar] Council is empowered to pass an order imposing punishment on an advocate found guilty of professional or other mis-conduct.

Such punishment can be reprimand [Clause (b)], suspension from practice for a certain period [Clause (c)] and removal of the name of the advocate from the State roll of advocate [Clause (d)], depending on the gravity of the mis-conduct found established. The punishment of removal of the name from the roll of advocates is called for where the misconduct is such as to show that the advocate is unworthy of remaining in the profession.

In this context, it may be pointed out that under Section 24(A) of the Act a person who is convicted of an offence involving moral turpitude is disqualified for being admitted as an advocate on the State roll of advocates. This means that the conduct involving conviction of an offence involving moral turpitude which would disqualify a person from being enrolled as an advocate has to be considered a serious misconduct when found to have been committed by a person who is enrolled as an advocate and it would call for the imposition of the punishment of removal of the name of the advocate from the roll of advocates.

In the instant case respondent No. 1 has been convicted of the offence of attempting to commit murder punishable under Section 307, IPC. He had assaulted his opponent in the Court room with a knife. The gravity of the mis-conduct committed by him is such as to show that he is unworthy of remaining in the profession. The said mis-conduct, therefore, called for the

imposition of the punishment of removal of the name of respondent No. 1 from the State roll of advocates and the Disciplinary Committee of the Bar Council of U. P. in passing the punishment of debaring respondent No. 1 from practising for a period of three years, has failed to take note of gravity of the misconduct committed by respondent No. 1. Having regard to the facts of the case the proper punishment to be imposed on respondent No. 1 under Section 35 of the Act should have been to direct the removal of his name from the State roll of advocates. The appeal filed by the appellant, therefore, deserves to be allowed. Finally court held that the respondents name should be removed from the rolls. Misbehaviour As Misconduct

Vinay chandra mishra, in re [10] facts; In this case a senior advocate in on being asked a question in the court started to shout at the judge and said that no question could have been put to him. He threatened to get the judge transferred or see that impeachment motion is brought against him in Parliament. He further said that he has turned up many Judges and created a good scene in the Court. He asked the judge to follow the practice of this Court. he wanted to convey that admission is as a course and no arguments are heard, at this stage.

But this act was not only the question of insulting of a Judge of this institution but it is a matter of institution as a whole. In case dignity of Judiciary is not being maintained then where this institution will stand. The concerned judge wrote a letter informing the incident to the chief justice of India. A show cause notice was issued to him. ISSUE: whether the advocate had committed a professional misconduct? Is guilty of the offence of the criminal contempt of the Court for having interfered with and obstructed the

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course of justice by trying to threaten, verawe and overbear the Court by using insulting, disrespectful and threatening language, and convict him of the said offence. Since the contemner is a senior member of the Bar and also adorns the high offices such as those of the Chairman of the Bar Council of India, the President of the U. P. HC Bar Association, Allahabad and others, his conduct is bound to infect the members of the Bar all over the country. We are, therefore, of the view that an exemplary punishment has to be meted out to him.

Thus the contemner Vinay Chandra Mishra is hereby sentenced to undergo simple imprisonment for a period of six weeks and he shall stand suspended from practising as an advocate for a period of three years. Strike As Misconduct Ex-capt. Harish uppal V. Union of India[11]facts, Several Petitions raise the question whether lawyers have a right to strike and/or give a call for boycotts of Court/s. In all these Petitions a declaration is sought that such strikes and/or calls for boycott are illegal. As the questions vitally concerned the legal profession, public notices were issued to Bar Associations and Bar Councils all over the country.

Pursuant to those notices some Bar Associations and Bar Councils have filed their responses and have appeared and made submissions before us. ISSUE: whether the lawyers have a right to strike. ARGUMENTS: petitioners submitted that strike as a mean for collective bargaining is recognised only in industrial disputes. He submitted that lawyers who are officers of the Court cannot use strikes as a means to blackmail the Courts or the clients. He submitted that the Courts must take action against the Committee

members for giving such calls on the basis that they have committed contempt of court.

He submitted that the law is that a lawyer who has accepted a Vakalat on behalf of a client must attend Court and if he does not attend Court it would amount to professional misconduct and also contempt of court. He submitted that Court should now frame rules whereby the Courts regulate the right of lawyers to appear before the Court. He submitted that Courts should frame rules whereby any lawyer who mis-conducts himself and commits contempt of court by going on strike or boycotting a Court will not be allowed to practice in that Court.

He further submitted that abstention from work for the redressal of a grievance should never be resorted to where other remedies for seeking redressal are available. He submitted that all attempts should be made to seek redressal from the concerned authorities. He submitted that where such redressal is not available or not forthcoming, the direction of the protest can be against that authority and should not be misdirected, e. g. , in cases of alleged police brutalities Courts and litigants should not be targeted in respect of actions for which they are in no way responsible.

He agreed that no force or coercion should be employed against lawyers who are not in agreement with the “ strike call” and want to discharge their professional duties. Respondent submitted that lawyers had a right to go on strike or give a call for boycott. He further submitted that there are many occasions when lawyers require to go, on strike or gave a call for boycott. He submitted that this Court laying down that going on strike amounts to

misconduct is of no consequence as the Bar Councils have been vested with the power to decide whether or not an Advocate has committed misconduct.

He submitted that this Court cannot penalise any Advocate for misconduct as the power to discipline is now exclusively with the Bar Councils. He submitted that it is for the Bar Councils to decide whether strike should be resorted to or not. Petitioner further relied on the case of Lt. Col. S. J. Chaudhary v. State (Delhi Administration)[12], the HC had directed that a criminal trial go on from day to day. Before this Court it was urged that the Advocates were not willing to attend day to day as the trial was likely to be prolonged.

It was held that it is the duty of every advocate who accepts a brief in a criminal case to attend the trial day to day. It was held that a lawyer would be committing breach of professional duties if he fails to so attend. In the case of K. John Koshy and Ors. v. Dr. Tarakeshwar Prasad Shaw[13], one of the questions was whether the Court should refuse to hear a matter and pass an Order when counsel for both the sides were absent because of a strike call by the Bar Association. This Court held that the Court could not refuse to hear the matter as otherwise it would tantamount to Court becoming a privy to the strike.

HELD : considering the sanctity of the legal profession the court had relied on words said in case of “ In Indian Council of Legal Aid and Advice v. Bar Council of India[14], the SC observed thus : “ It is generally believed that members of the legal profession have certain social obligations, e. g. , to render “ pro bono publico” service to the poor and the underprivileged. Since

the duty of a lawyer is to assist the court in the administration of justice, the practice of law has a public utility flavour and, therefore, he must strictly and scrupulously abide by the Code of Conduct befitting the noble profession and must not indulge in any activity which may tend to lower the image of the profession in society. That is why the functions of the Bar Council include the laying down of standards of professional conduct and etiquette which advocates must follow to maintain the dignity and purity of the profession. ” In Re: Sanjeev Datta[15], the SC has stated thus: “ The legal profession is a solemn and serious occupation. It is a noble calling and all those who belong to it are its honourable members.

Although the entry to the profession can be had by acquiring merely the qualification of technical competence, the honour as a professional has to be maintained by its members by their exemplary conduct both in and outside the Court. The legal profession is different from other professions in that what the lawyers do, affects not only an individual but the administration of justice which is the foundation of the civilised society. Both as a leading member of the intelligentsia of the society and as a responsible citizen, the lawyer has to conduct himself as a model for others both in his professional and in his private and public life.

The society has a right to expect of him such ideal behavior. It must not be forgotten that the legal profession has always been held in high esteem and its members have played an enviable role in public life. The regard for the legal and judicial systems in this country is in no small measure due to the tireless role played by the stalwarts in the profession to strengthen them. They took their profession seriously and practice it with dignity, deference

and devotion. If the profession is to survive, the judicial system has to be vitalised. No service will be too small in making the system efficient, effective and credible. In the case of SC Bar Association v. Union of India[16] it has been held that professional misconduct may also amount to Contempt of Court (para 21). It has further been held as follows: “ An Advocate who is found guilty of contempt of court may also, as already noticed, be guilty of professional misconduct in a given case but it is for the Bar Council of the State or Bar Council of India to punish that advocate by either debaring him from practice or suspending his licence, as may be warranted, in the facts and circumstances of each case.

The learned Solicitor General informed us that there have been cases where the Bar Council of India taking note of the contumacious and objectionable conduct of an advocate, had initiated disciplinary proceedings against him and even punished him for “ professional misconduct”, on the basis of his having been found guilty of committing contempt of court. ” Solicitation Of Professional Work Rajendra V. Pai Vs. Alex Fernandes and Ors. [17]court held that debaring a person from pursuing his career for his life is an extreme punishment and calls for caution and circumspection before being passed.

No doubt probity and high standards of ethics and morality in professional career particularly of an advocate must be maintained and cases of proved professional misconduct severely dealt with; yet, we strongly feel that the punishment given to the appellant in the totality of facts and circumstances of the case is so disproportionate as to prick the conscience of the Court.

Excepting the instance forming gravamen of the charge against the

appellant there does not appear to have been any other occasion where the appellant may have defaulted or misconducted himself.

Undoubtedly, the appellant should not have indulged into prosecuting or defending a litigation in which he had a personal interest in view of his family property being involved. Breach Of Trust By Misappropriating The Asset Of Client Harish Chandra Tiwari v. Baiju[18]; Court held on these fact, Appellant Harish Chandra Tiwari was enrolled as an advocate with the Bar Council of the State of UP in May 1982 and has been practising since then, mainly in the courts at Lakhimpur Kheri District in UP.

Respondent Baiju engaged the delinquent advocate in a land acquisition case in which the respondent was a claimant for compensation. The Disciplinary Committee has described the respondent as “ an old, helpless, poor illiterate person. ” Compensation of Rs. 8118/- for the acquisition of the land of the said Baiju was deposited by the State in the court. Appellant applied for releasing the amount and as per orders of the court he withdrew the said amount on 2. 9. 1987.

But he did not return it to the client to whom it was payable nor did he inform the client about the receipt of the amount. Long thereafter, when the client came to know of it and after failing to get the amount returned by the advocate, complaint was lodged by him with the Bar Council of the State for initiating suitable disciplinary action against the appellant. HELD, Court held that among the different types of misconduct envisaged for a legal practitioner misappropriation of the client’s money must be regarded as one of the gravest.

In this professional capacity the legal practitioner has to collect money from the client towards expenses of the litigation, or withdraw money from the court payable to the client or take money of the client to be deposited in court. In all such cases, when the money of the client reaches his hand it is a trust. If a public servant misappropriates money he is liable to be punished under the present Prevention of Corruption Act, with imprisonment which shall not be less than one year. He is certain to be dismissed from service.

But if an advocate misappropriates money of the client there is no justification in de-escalating the gravity of the misdemeanour. Perhaps the dimension of the gravity of such breach of trust would be mitigated when the misappropriation remained only for a temporary period. There may be justification to award a lesser punishment in a case where the delinquent advocate returned the money before commencing the disciplinary proceedings. Informing About Bribe : Misconduct Shambhu Ram Yadav v.

Hanuman Das Khatri,[19]It was that Court upheld the order of bar council of India dated 31st July 1999, which held that the appellant has served as advocated for 50 years and it was not expected of him to indulge in such a practice of corrupting the judiciary or offering bribe to the judge and he admittedly demanded Rs. 10, 000/- from his client and he orally stated that subsequently order was passed in his client's favour. This is enough to make him totally unfit to be a lawyer by writing the letter in question.

We cannot impose any lesser punishment than debarring him permanently from the practice . His name should be struck off from, the roll of advocates maintained by the Bar Council of Rajasthan. Hereafter the appellant will not

have any right to appear in any Court of Law, Tribunal or any authority. Court impose a cost of Rs. 5, 000/- to the appellant which should be paid by the appellant to the Bar Council of India which has to be within two months

Conclusion: The role of the lawyers in the society is of great importance.

They being part of the system of delivering justice holds great reverence and respect in the society. Each individual has a well defined code of conduct which needs to be followed by the person living in the society. A lawyer in discharging his professional assignment has a duty to his client, a duty to his opponent, a duty to the court, a duty to the society at large and a duty to himself. It needs a high degree of probity and poise to strike a balance and arrive at the place of righteous stand, more so, when there are conflicting claims.

While discharging duty to the court, a lawyer should never knowingly be a party to any deception, design or fraud. While placing the law before the court a lawyer is at liberty to put forth a proposition and canvass the same to the best of his wits and ability so as to persuade an exposition which would serve the interest of his client and the society. References: C. Rama Rao, Y. Vijayalakshmi Teyaru, Y. Nageswara Rao, Professional Ethics & Advocacy, Visakhapatnam : Gayatri Books, 1987.

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