



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2022 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

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Professional Misconduct of Advocates: Advocacy outside the Law

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Received 16 June 2022; Accepted 25 June 2022; Published 11 July 2022

The legal profession comes with the invaluable responsibility of upholding the laws and ensuring justice in society. There are certain norms that regulate the conduct of the advocates. In simple terms, professional misconduct may refer to any sort of deviation from the expected code of conduct to be followed in a profession or dereliction of the prescribed duties. The Advocates Act, 1961 contains legal provisions regarding advocacy and prescribes punishment for professional misconduct. However, there is no definition of the term 'misconduct' in the Advocates Act, 1961. This makes the landmark judgments pertaining to cases of professional misconduct on the part of advocates even more significant. There are certain duties that the advocates owe to the court, clients, opponents, and colleagues. Deviation from these duties cannot be said to be in consonance with the professional conduct of advocates. It is vital that advocates perform their duties with utmost sincerity and diligence to ensure that justice is rightly served to the deserving.

Keywords: *advocates, misconduct, profession, duties.*

INTRODUCTION

The legal profession is one of those occupations which are not only significant for the individual but also the humanity. It is not just living for an individual but the backbone of an orderly society. It is the key to justice and peace. It is only reasonable that there are certainly justified bars on the conduct of such professionals who carry huge responsibilities on their

shoulders. The Advocates Act, 1961 contains legal provisions regarding advocacy and prescribes punishment for professional misconduct. However, the act does not define what comes within the ambit of 'professional misconduct. In simple terms, professional misconduct may refer to any sort of deviation from the expected code of conduct to be followed in a profession or dereliction of the prescribed duties. To uncover what comes under professional misconduct of advocates, certain precedents must be discussed that have shed some light on the interpretation of the term. There have been several instances of professional misconduct, and some of them have been discussed in the paper.

THE DUTIES OF AN ADVOCATE

The Bar Council of India (BCI) has laid down certain rules and regulations pertaining to the duties of advocates.¹ These rules have been drafted in view of the power vested in BCI by the Advocates Act, 1961.² The comprehensive description includes the duties of the advocate towards the court, clients, opponents, and colleagues. Apart from these, the rules also mention the duties of the advocates in imparting legal training, rendering legal aid, and restriction other employments.³ Referring to these rules, determining the scope of professional misconduct is paramount. In its 266th report, the Law Commission defined misconduct as, the "transgression of some well-established and definite rule of action, where no discretion is left". It also recommended the definition of misconduct along with enlisting several instances of misconduct of advocates.⁴ Therefore, deviation from these rules can not be said to be in consonance with the professional conduct of advocates. However, misconduct cannot be confined to a specific number of instances.

WIDE AMBIT OF THE TERM 'PROFESSIONAL MISCONDUCT'

Though there are certain general duties, requirements, and expectations from advocates differ from case to case. The term 'professional misconduct' is not very specific in that respect. It

¹ Bar Council of India Rules, 1975, Chapter 2, Part VI

² Advocates Act, 1961, s 49 (1)(c)

³ *Ibid*

⁴ Law Commission of India, *The Advocates Act, 1961 (Regulation of Legal Profession)* (Law Com No. 266 2017) <<https://lawcommissionofindia.nic.in/reports/Report266.pdf>> accessed 15 June 2022

would be very complicated to restrict it to a specific range of acts. It is a skewed and interpretative term, and its meaning cannot be reduced to a specific number of instances. In *Bar Council of Maharashtra v M.C. Dabholkar*, the court opined that the professional principles cannot be confined to Bar Council rules or in conventional cant books, but they flow from the principles of conscience to obey the rules of morality and utility.⁵ Another case that widened the scope of professional misconduct of advocates is that of *Noratanmal Chaurasia v M. Murli*, in which the respondent, an advocate, acts in his capacity as a litigant in person in a rent control proceeding, inflicted physical injuries upon the respondent during the said trial. Consequently, disciplinary proceedings were initiated against him by the BCI. The Bar Council of India opined that the facts of the incidents were unreliable. An appeal was filed by the appellant in the Supreme Court concerning the given order. The Supreme Court held that “*To determine the quantum of punishment which may be imposed on an advocate, the test of proportionality shall be applied which would also depend upon the nature of the acts complained of. No universal rule thus can be laid down as regard initiation of a proceeding for misconduct of a member of the profession.*”⁶ It is perfectly clear that the scope of professional misconduct cannot be limited to narrow horizons, and it spreads to all the areas where the moral values and duties that uphold justice guide us.

UNFITTING PERFORMANCE OF DUTY TOWARDS THE CLIENT

The relationship that exists between the advocate and the client is one embedded in trust and reliance. The integrity of this relation should be maintained throughout the legal proceeding. Any sort of misconduct on part of the advocate that hampers his duty towards the client is unbecoming of his professional ethics. In *V.C. Rangadurai v D. Gopalan & Ors.*,⁷ an advocate, V.C. Gopalan, after receiving a certain amount of money and two promissory notes from the complainant-respondents for filing two suits on the basis of the same. However, he failed to do his duty since he filed a suit only on one of the promissory notes and did not represent it, and made false representations to the complainants regarding the matter. When the matter went to

⁵ *Bar Council of Maharashtra v M.V. Dabholkar* (1976), AIR 242

⁶ *Noratanmal Chouraria v M.R. Murli* (2004) Appeal (Civil) No. 5476/1999

⁷ *V.C. Rangadurai v D. Gopalan* (1979), AIR 281

the State Bar Council, the advocate contended that though he had drafted the complaints, he later transferred the case to a junior advocate. The advocate was thus held to be guilty of committing gross professional misconduct and he was suspended from practice for six years. The Bar Council of India later reduced the term of suspension to one year. The advocate then filed an appeal in the Supreme Court. The Court dismissed the appeal and affirmed the finding of the appellant is guilty of gross professional misconduct. The court held as a general rule there would not be interference of the Supreme Court with the concurrent factual findings of the disciplinary committees of state bar councils and the BCI merely because on the reassessment of an event, a different view may be possible except when the finding is not built on any evidence or it builds upon mere estimations and unwarranted interferences in an appeal made under section 38⁸ of the Advocates Act, 1961. This condition was absent in the present case. The court also held that it is against professional etiquette when an advocate hands over his brief to another advocate without the client's consent. Another relevant case that could be discussed here is that of *P.D. Khandekar v Bar Council of India*⁹, in which the court differentiated between the giving of improper legal advice and wrong legal advice. The court opined that mere negligence on the part of the legal practitioner without any sort of moral delinquency is not to be seen as professional misconduct. It was held that "When an advocate is entrusted with a brief, he is expected to follow norms of professional ethics and try to protect the interests of his client in relation to whom he occupies a position of trust... It is professionally improper for a member of the bar to prepare false documents or to draw pleadings knowingly that the allegations made are untrue to his knowledge. Thus, the giving of improper legal advice may amount to professional misconduct. That however may not be so by the giving of wrong legal advice." Thus, the judgment is of much significance in understanding how substantial the duty of the advocate towards the client is.

DEMEANOR DURING THE LEGAL PROCEEDINGS

An advocate's attitude in court is one of the salient aspects of his profession. The advocate does not have carte blanche to act however he/she wants in the court and his acts are

⁸ Advocates Act, 1961, s 38

⁹ *P.D. Khandekar v Bar Council of India* (1984), AIR 110

governed by a certain set of rules to maintain the sanctity of the institution. Maintaining a respectful and conducive atmosphere is substantial for a legal proceeding to be carried out smoothly. In the case of *Re: Vinay Chandra Mishra*, the contemnor was held to be guilty of criminal contempt of court, the court held that the right to continue to practice is subject to the law of contempt.¹⁰ In the case of *N. Dastane v S.S. Shivde*, the respondents were repeatedly seeking adjournments. One of the requests for adjournment was made by giving the reason that the first respondent is unable to speak because of a throat infection and constant cough. The case was adjourned again though the magistrate ordered the first respondent to produce a medical certificate and an amount of Rs.75 to be paid to the appellant. After the adjournment, the appellant saw the first respondent “forcefully and fluently arguing” a case before the court. The appellant then filed a complaint against both the respondents before the Bar Council of Maharashtra which dropped further proceedings against the advocates based on a report obtained by an advocate member. The Bar Council of India also disposed of the review petition holding the order given by the State Bar Council to be justified. The Supreme Court, disposing of the appeal, held that “an advocate abusing the process of court is guilty of misconduct”. The court held that it is considered to be a dereliction of the advocate’s duty to the court to seek adjournments for postponement of the examination of witnesses as that would cause many inconveniences to the witness. If such an act is done repeatedly, it would amount to misconduct on the part of the concerned advocate. The court directed the disciplinary committee of the bar council to adopt necessary steps for the disposal of the complaint in accordance with law and in light of the observations made by the court.¹¹ It is essential that the legal professionals are heedful of their actions in the court as it is important to maintain the decorum of the court throughout the trial and ensure that it gets resolved smoothly and in accordance with the law.

OTHER ACTS OF MISCONDUCT

Some landmark cases have held certain acts as constituting misconduct. In the case of *Shambhu Das Yadav v Hanuman Ram Khatri*, the respondent, an advocate was held to be guilty of

¹⁰ *In Re Vinay Chandra Mishra* AIR 1995 SC 2348

¹¹ *N.G. Dastane v Shrikant S. Shivde* (2001) Appeal (Civil) No. 3543/2001

professional misconduct as he asked the client through a letter to provide him with the said amount of money for bribing the judge. BCI gave the order of cutting off the advocate's name from the state roll but later allowed a review petition and the punishment of reprimand was substituted. When the case went to Supreme Court, it was held that the original order of the Bar Council of India is restored, and the impugned order was set aside. Misappropriation of the amount paid¹² and advertising of his profession by an advocate¹³ has also been held as constituting professional misconduct.

DEALING WITH MISCONDUCT UNDER ADVOCATES ACT,1961

Misconduct on the part of advocates must be taken with gravity. Section 35 of the Advocates Act deals with the punishment for misconduct.¹⁴ The case of misconduct goes to the disciplinary committee of the State Bar Council after the Council has examined the legitimacy of the complaint.¹⁵ Based on the legal proceeding, the disciplinary committee of the State Bar Council can issue orders regarding the complaint.¹⁶ It can reprimand,¹⁷ suspend¹⁸, or remove the name of the advocate from the state roll¹⁹. It can also dismiss the complaint or direct the proceedings to be filed. The Advocates Act, 1961 further lays down the constitution of the disciplinary committee²⁰. The powers of the disciplinary committee of a Bar Council are akin to those vested in the civil courts by the Code of Criminal Procedure,1908.²¹ The complaint of misconduct goes to the disciplinary committee of BCI when the concerned advocate does not have his name on any of the state rolls of advocates.²² A person aggrieved by the order of a State Bar Council can make an appeal to the BCI within 60 days after the order was communicated to him.²³ There is also a remedy available to the person aggrieved by the order

¹² *D.S. Dalal v State Bank of India* (1993), AIR 1608

¹³ *C.D. Sekkizhar v Secretary, Bar Council, Madras* AIR 1967, Madras 35

¹⁴ Advocates Act,1961 s.35

¹⁵ *Ibid*

¹⁶ Advocates Act,1961 s 35 (3)

¹⁷ Advocates Act,1961 s 35(3)(b)

¹⁸ Advocates Act,1961 s 35(3)(c)

¹⁹ Advocates Act,1961 s 35(3)(d)

²⁰ Advocates Act,1961, s 9

²¹ Advocates Act,1961, s 42

²² Advocates Act,1961, s 36

²³ Advocates Act,1961, s 37

of BCI i.e., to prefer an appeal to the Supreme Court.²⁴ The act has further contained provisions regarding altering the role of advocates,²⁵ stay of order by the disciplinary committee of BCI and the Supreme Court²⁶ , and reviewing the orders by disciplinary committees of the Bar Council.²⁷

CONCLUSION

Advocacy is not only significant at an individual level but also at a societal level. Lawyers form one of the stands of the platform on which justice rests. It is important to ensure that legal professionals should try to uphold the principles of law and justice and not engage in malpractices that denigrate the profession. It is vital that advocates perform their duties with utmost sincerity and diligence to ensure that justice is rightly provided to the deserving. As observed above, Misconduct is a wide term that cannot be restricted to a specific number of instances but extends to all those acts which in the eyes of law make a blot on the noble profession of advocacy and is against the professional ethics of advocates. As it has been rightly held in the judgment given in *Bar Council of Maharashtra v M.V. Dabholkar*, “Law is no trade, no merchandise and so the leaven of commercial competition or procurement should not vulgarise the legal profession.”²⁸

²⁴ Advocates Act, 1961, s 38

²⁵ Advocates Act, 1961, s 41

²⁶ Advocates Act, 1961, s 40

²⁷ Advocates Act, 1961, s 44

²⁸ Bar Council of Maharashtra (n 5)