



**ORIGINAL RESEARCH PAPER**

**Law**

**THE CONCEPT OF LEGAL PROFESSIONAL ETHICS IN INDIA**

**KEY WORDS:** Advocacy- Legal Profession- Professional Ethics- Professional Misconduct- Role of Supreme Court- Bar Council of India Rules.

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**ABSTRACT**

Advocacy is considered as a Noble Profession. Advocacy has many different aspects than those of other business and professions. It requires many a good virtues like Honesty, Courtesy, Hard working and what not. At the same time, it requires for a lawyer to be a genuine one. Hence, this article revolves round the meaning of professional ethics, professional misconduct and the consequences of its. It reminds us the great resolutions of David Hoffman, who has always been considered as THE DEVIL'S ADVOCATE

**INTRODUCTION:**

The word PROFESSIONAL has always been accepted in each and every field. Be it a branch of engineering or medical or chartered accountancy or advocacy. It requires to be a professional conduct for any profession. Legal field requires a great attention on Legal Professional Ethics. In India, there is a separate law deals with code of conduct of advocates, and that is known as the Advocates Act, 1961. The title of the act is having the following objects of the Act :

1. To establish a Bar Council of India in the Country.
2. To establish a State Bar Council in each and every state of India.
3. To frame and maintain the code of conduct, that is known as Professional Ethics for lawyers.

— So the main object of the Advocate Act is to maintain the legal professional ethics in Advocacy. However, the Bar Council of India has framed a separate rules related with Professional Ethics by BAR

**COUNCIL OF INDIA RULES.**

A lawyer in India has to follow the same. In failure of it, a lawyer may face a procedure of PROFESSIONAL MISCONDUCT under the Advocates Act, 1961.

**(2) MEANING OF PROFESSIONAL ETHICS IN LEGAL FIELD:**

A lawyer is expected to follow some code of conduct under the Advocates Act, 1961, that is known as PROFESSIONAL ETHICS in Legal field. A lawyer is bound to pay proper attention of the duties towards COURT, CLIENT, and FELLOW LAWYER are known as PROFESSIONAL ETHICS.

**1. DUTIES TOWARDS COURT :**

A lawyer must wear a proper prescribed dress in court. He should speak politely to the court. He is not supposed to insult the court. He should not produce false documents to the court. He should not do any mischief with the records of the court.

**2. DUTIES TOWARDS CLIENTS :**

A lawyer should give proper advice to the client. A lawyer should not misguide his client. A lawyer cannot compromise the case in absentia of his client. A lawyer should not demand more fees in case of winning the matter.

**3. DUTIES TOWARDS FELLOW MEMBERS :**

A lawyer should fulfill the promise given by him to his fellow members. He is supposed to co operate the fellow members.

---- These are known as THE CODE OF CONDUCT regarding Legal Professional Ethics.

When a lawyer fails to comply with the codes, he is said to have done professional misconduct in his part.

**(3) NEEDS OF LEGAL PROFESSIONAL ETHICS AND CODE OF CONDUCT RELATED WITH ITS :**

Legal Profession is known as a noble profession. It differs from

business, trade and other professions. It requires to have good virtues, because it provides the path of JUSTICE. The path of Justice requires Honesty, Hard working, self discipline and other virtues. This Profession matters if a lawyer is having any relation with the Judge of the case arguing before him ! Mahatama Gandhi is considered as a good lawyer on account of his professional ethics. Nani Palkhivala, H.M.Seervai, and other famous lawyers of India have also been appreciated because of his path of professional ethics.

**(4) PROVISIONS FOR THE PROTECTION OF LEGAL PROFESSIONAL ETHICS :**

Chapter V of the Advocates Act, 1961 deals with CONDUCT OF ADVOCATES. Section 35 of the Act lays down the provisions related with PUNISHMENT OF ADVOCATES FOR MISCONDUCT. Section 36 empowers the Disciplinary Committee of the State Bar Council to take the action related with the complaint of professional misconduct of a lawyer. The provisions for this purpose are as under :

**(a) On receipt of any complaint :**

There must be a complaint against any lawyer regarding professional misconduct. However, the Bar Council may take sue moto any complaint against any lawyer in case of reasonable ground to do so. Such complaint must be in writing and stating the proper name, address and details of professional misconduct against a lawyer.

On receipt of such complaint, it is forwarded to the DISCIPLINARY COMMITTEE of the state Bar Council. A State Bar Council may have more than one committees.

By this way, the entire procedure shall be followed by the Disciplinary Committee.

**(b) Formation and functions of the Disciplinary Committee :**

Chapter 2 of the Advocates Act, 1961 deals with BAR COUNCILS. Section 3 of the Act deals with State Bar Council. It says that there shall be a State Bar Council in each and every State.

Section 9 of the Act deals with DISCIPLINARY COMMITTEE. It says a State Bar Council shall constitute one or more disciplinary committees. It shall consists of 3 persons. One person shall be a Chairman and other two persons shall be members of the committee.

**Functions of the Disciplinary Committee**

- To be acquainted with the complaints of professional misconduct.
- To go through the details of the complaint.
- If the complaint does not seem to be genuine, the committee may dismiss the complaint.
- If the complaint seems to be genuine, the committee may fix a date for the procedure, after consulting the Advocate General of the State, and inform the same to the parties of the

case.

- The committee may take evidence from the parties and also can ask questions on oath. By this way, the committee is having the same powers like a civil court.
- After going through the details of the case, arguments and evidence of the case, the committee may reprimand the Advocate or suspend the Advocate from practice for such period as it may think fit to do so or the committee may remove the name of the Advocate from the State Roll of Advocates.

**(c) Complaint can be forwarded to the Bar Council of India :**  
Sec.36-B of the Advocates Act says that if any complaint is not concluded within one year from the receipt of any complaint before a State Bar Council, such complaint shall be transferred to the Bar Council of India.

Then it may presume that the complaint may be heard by the Disciplinary Committee of the BAR COUNCIL OF INDIA.

**(d) Appeal :**

The aggrieved party may file an appeal to the BAR COUNCIL OF INDIA within 30 days of the decision of the Disciplinary Committee of the State Bar Council and after the decision of the Bar Council of India, the aggrieved party may file an appeal to the Supreme Court of India.

**(5) INDIAN JUDICIARY ON LEGAL PROFESSIONAL ETHICS :**

The role of Indian Judiciary for maintaining Legal Professional Ethics has always been appreciated. Some illustrations of its are as under :

**1. PRAHALAD SHARAN GUPTA VS. BAR COUNCIL OF INDIA :**

**Fact :**

In a disputed matter, both the parties decided to settle the dispute for Rs.1500/-

The Advocate did not return the amount to any party. However, the client had made repeated requests regarding the same, the Advocate did not pay proper attention regarding the same.

**Decision :**

Not returning the amount to the client is considered as PROFESSIONAL MISCONDUCT.

**2. HIKMAT ALI KHAN VS. ISHVAR ARYA :**

**Fact :**

In this case an Advocate assaulted another advocate of the case with a knife in the court premises. During the prosecution against him, the advocate fabricated a false letter of Governor for his benefit.

**Decision :**

To assault a lawyer with a knife and making false letter in the name of Governor is PROFESSIONAL MISCONDUCT.

**3. HARISH CHANDAR SINGH VS. TRIPATHI :**

**Fact :**

In this case, an Advocate misguided his client and his junior Advocate by making a Power of Attorney by his junior Advocate's name. Then the Advocate made the property in the name of his father.

**Decision :**

Making fraud with Junior Advocate and client is PROFESSIONAL MISCONDUCT.

**4. R.D.SAXEMA VS. BALARAM SHARMA :**

**Fact :**

An Advocate kept the papers of the client, as the payment\ fee was not paid to the Advocate of the case.

**Decision :**

An Advocate is not having the Right of Lien. So it is treated as PROFESSIONAL MISCONDUCT.

**5. SHAMBHURAM YADAV VS. HANUMANDAS**

**KHATRI :**

**Fact :**

A senior advocate ( 90 years of age ) had written a letter to his client for obtaining Rs. 10,000/- so it could be sent to a Judge. In his letter the advocate insisted to give bribe to a Judge for the case was pending. The client produced the letter to the Bar Council and a complaint was accepted against the advocate.

**Decision :**

To insist a client for corruption practice is considered as a Professional Misconduct.

**6. N.G.DASTANE VS. SHRIKANT SHIVDE :**

**Fact :**

The Appellant had to approach before the court from abroad. While his Advocate always asked for adjournments in the case by some or other reason. On dated 4th December 1993, the Advocate of the case requested the court for adjournment on account of his health. Being disappointed, the client was about to leave the court. Suddenly, the client saw that his Advocate was arguing in another court. So the client made an application against the Advocate before the Bar Council.

**Decision :**

Taking adjournments repeatedly by false reason is the breach of the duties towards the client and court and so it is treated as PROFESSIONAL MISCONDUCT.

However, in some cases our H'ble Supreme Court has found that some cases CANNOT BE CONSIDERED AS PROFESSIONAL MISCONDUCT, such as :

**7. PAVAN KUMAR SHARMA VS. GURUDAYAL SINGH :**

Merely having taxies in the name of an Advocate, cannot be treated as PROFESSIONAL MISCONDUCT.

**8. R.JANARDAN RAO VS. LINGAPPA :**

Merely non payment of borrowing amount to the client cannot be treated as PROFESSIONAL MISCONDUCT.

**9. BALDEVSINGH DHINGARA VS. MADANLAL GUPTA :**

An Advocate deposited his SANAD, as he joined JUDICIARY. He was dismissed from the service on account of the allegation of taking bribe. He requested the Bar Council to renew his SANAD. It was held that his action of taking bribe was not in the capacity of an Advocate. So it cannot be treated as PROFESSIONAL MISCONDUCT.

**(6) CONCLUSION :**

The concept of Professional Misconduct is vary from case to case and fact to fact. Recently on dated 16th February 2017, our H'ble Supreme Court of India in T.A. KATHIRU KUNJU VS. JACOB MATHAI & ANR has held that when an advocate returned the cheque to the client without receiving acknowledgement from the client cannot be treated as MISCONDUCT in the part of Advocate. So in this case, NEGLIGENCE has been divided into two parts : MERE NEGLIGENCE and GROSS NEGLIGENCE. So an Advocate is guilty in case of Gross Negligence, but not guilty in case of Mere Negligence.

Recently on 23rd March 2017, Report No. 226 of 2017 of LAW COMMISSION OF INDIA deals with THE ADVOCATES (AMENDMENT) BILL, 2017 for developing and sustaining the concept of LEGAL PROFESSIONAL ETHICS in India. A new definition of MISCONDUCT has been stated in this proposed Act. It includes CONTEMPT OF COURT and other kinds of misconduct of an Advocate. Sec.35 of this Act is to be amended to meet the concept of PROFESSIONAL ETHICS. From Legal Education to Day by Day work of a lawyer have been considered in this Bill.

However, it should be included in the definition of MISCONDUCT, if any lawyer possessing an office as a trustee or KMP in corporate fields, making mismanagement of gross negligence in complying

the norms of related institutes. Because, the entire society of any country have faith in LAWYERS. It is the faith that is injured when a lawyer makes negligence in his part. So be it with the direct connection of his profession or not, if a lawyer makes negligence or repeated negligence or gross negligence in the capacity of his office, as a lawyer he is possessing, must be treated as MISCONDUCT and such types of negligence should be included in the per view of Sec.35 of the Advocates Act, 1961.

These words still rings in our ears : " A person practising law has to practise in the spirit of HONESTY and not in the spirit of MISCHIEF-MAKING or MONEY-GETTING."

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