



SATHYABAMA

**INSTITUTE OF SCIENCE AND TECHNOLOGY
(DEEMED TO BE UNIVERSITY)**

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SCHOOL OF LAW

COURSE MATERIAL

PROFESSIONAL ETHICS AND PROFESSIONAL ACCOUNTING

(CLINICAL PAPER- II)

**UNIT – 1 - THE LEGAL PROFESSION AND
ITS RESPONSIBILITIES (SAL1001)**

1.1 Development of Legal Profession in India

1.2 Professional Ethics

1.3 Indian Bar Councils Act, 1926.

1.4 Seven Lamps of Advocacy

1.5 Salient Features of the Advocates Act, 1961.

1.1 DEVELOPMENT OF LEGAL PROFESSION IN INDIA

The history of the legal profession in India can be traced back to the establishment of the First British Court in Bombay in 1672 by Governor Aungier. The admission of attorneys was placed in the hands of the Governor-in-Council and not with the Court. Prior to the establishment of the Mayor's Courts in 1726 in Madras and Calcutta, there were no legal practitioners. The Mayor's Courts, established in the three presidency towns, were Crown Courts with right of appeal first to the Governor-in-Council and a right of second appeal to the Privy Council.

In 1791, Judges felt the need of experience, and thus the role of an attorney to protect the rights of his client was upheld in each of the Mayor's Courts. This was done in spite of opposition from Council members or the Governor. A second principle was also established during the period of the Mayor's Courts. This was the right to dismiss an attorney guilty of misconduct. The first example of dismissal was recorded by the Mayor's Court at Madras which dismissed attorney Jones. The Supreme Court of Judicature was established by a Royal Charter in 1774. The Supreme Court was established as there was dissatisfaction with the weaknesses of the Court of the Mayor. Similar Supreme Courts were established in Madras in 1801 and Bombay in 1823.

The first barristers appeared in India after the opening of the Supreme Court in Calcutta in 1774. As barristers began to come into the Courts on work as advocates, the attorneys gave up pleading and worked as solicitors. The two grades of legal practice gradually became distinct and separate as they were in England. Madras gained its first barrister in 1778 with Mr. Benjamin Sullivan. Thus, the establishment of the Supreme Court brought recognition, wealth and prestige to the legal profession. The charters of the Court stipulated that the Chief Justice and three puisne Judges be English barristers of at least 5 years standing. The charters

empowered the Court to approve, admit and enrol advocates and attorneys to plead and act on behalf of suitors. They also gave the Court the authority to remove lawyers from the roll of the Court on reasonable cause and to prohibit practitioners not properly admitted and enrolled from practising in the Court. The Court maintained the right to admit, discipline and dismiss attorneys and barristers. Attorneys were not admitted without recommendation from a high official in England or a Judge in India. Permission to practice in Court could be refused even to a barrister.

In contrast to the Courts in the presidency towns, the legal profession in the mofussil towns was established, guided and controlled by legislation. In the Diwani Courts, legal practice was neither recognized nor controlled, and practice was carried on by vakils and agents. Vakils had even been appearing in the Courts of the Nawabs and there were no laws concerning their qualification, relationship to the Court, mode of procedure of ethics or practice. There were two kinds of agents – a. untrained relatives or servants of the parties in Court and b. professional pleaders who had training in either Hindu or Muslim law. Bengal Regulation VII of 1793 was enacted as it was felt that in order to administer justice. Courts, must have pleading of causes administered by a distinct profession. Only men of character and education, well versed in the Mohamedan or Hindu law and in the Regulations passed by the British Government, would be admitted to plead in the Courts. They should be subjected to rules and restrictions in order to discharge their work diligently and faithfully by upholding the client's trust.

Establishment of the High Courts In 1862, the High Courts started by the Crown were established at Calcutta, Bombay and Madras. The High Court Bench was designed to combine Supreme Court and Sudder Court traditions. This was done to unite the legal learning and judicial experience of the English barristers with the intimate experience of civil servants in matters of Indian customs, usages and laws possessed by the civil servants. Each of the High Courts was given the power to make rules for the qualifications of proper persons, advocates, vakils and attorneys at Bar. The admission of vakils to practice before the High Courts ended the monopoly that the barristers had enjoyed in the Supreme Courts.

There were six grades of legal practice in India after the founding of the High Courts – a) Advocates, b) Attorneys (Solicitors), c) Vakils of High Courts, d) Pleaders, e) Mukhtars, f) Revenue Agents. The Legal Practitioners Act of 1879 in fact brought all the six grades of the profession into one system under the jurisdiction of the High Courts. The Legal Practitioners

Act and the Letters Patent of the High Courts formed the chief legislative governance of legal practitioners in the subordinate Courts in the country until the Advocates Act, 1961 was enacted. In order to be a vakil, the candidate had to study at a college or university, master the use of English and pass a vakil's examination. By 1940, a vakil was required to be a graduate with an LL.B. from a university in India in addition to three other certified requirements. The certificate should be proof that a. he had passed in the examination b. read in the chamber of a qualified lawyer and was of a good character.

The High Courts of the three presidency towns had an original side. The original side included major civil and criminal matters which had been earlier heard by predecessor Supreme Courts. On the original side in the High Courts, the solicitor and barrister remained distinct i.e. attorney and advocate. On the appellate side every lawyer practiced as his own attorney.

However, in Madras the vakils started practice since 1866. In 1874, the barristers challenged their right to do original side work. However, in 1916, this right was firmly established in favour of the vakils. Similarly, vakils in Bombay and Calcutta could be promoted as advocates and become qualified to work on the original side. By attending the appellate side and original side 9 Courts each for one year, a vakil of 10 years service in the Court was permitted to sit for the advocates' examination.

1.2 PROFESSIONAL ETHICS

“To succeed as a lawyer, a man must work like a horse and live like a hermit”

- **Sir John Scott.**

As like every profession, the legal profession is encapsulated in a code, which is avowed ethics. Undeniably, the bedrock principle on which this noble profession has built is professional ethics. Such legal professional ethics lay down the ethical code that a legal person should possess so as to keep up the law and justice by balancing the relationship between the bar and the bench.¹

A great position entails great responsibility, as like, an advocate being the authority qualified to plead should hold certain qualities and other pertinent skills. As far as India is concerned, legal ethics can be defined as the code of conduct stated either in written or unwritten provided for the regulation of advocates behaviour falls within the purview of Advocates Act, 1961.

Professional ethics encompasses an ethical code governing the conduct of persons engaged in the practice of law as well as persons engaged in the legal sector. All members of the legal profession have a paramount duty to the court and towards the administration of justice. This duty prevails over all other duties, especially in the circumstances where there may be a conflict of duties. It is important that legal practitioners conduct themselves with integrity, provide proper assistance to the court, and promote public confidence in the legal system. In carrying out their duties, they are required and expected to deal with other members of the legal profession with courtesy and integrity. Advocates, apart from being professionals, are also officers of the court and play a vital role in the administration of justice.

Accordingly, the set of rules that govern their professional conduct arise out of the duties that they owe to the court, the client, their opponents and other advocates. Rules on the professional standards that an advocate needs to maintain are mentioned in Chapter II, Part VI of the Bar Council of India Rules. These Rules have been provided under section 49(1)(c) of the Advocates Act, 1961.²

¹ <https://lawcorner.in/seven-lamps-of-advocacy/>

² <https://blog.iplayers.in/professional-ethics-law/#:~:text=Professional%20ethics%20encompasses%20an%20ethical,engaged%20in%20the%20legal%20sector.&text=In%20carrying%20out%20their%20duties,profession%20with%20courtesy%20and%20integrity.>

1.3 INDIAN BAR COUNCILS ACT, 1926

The Indian Bar Councils Act, 1926 was passed to unify the various grades of legal practice and to provide self-government to the Bars attached to various Courts. The Act required that each High Court must constitute a Bar Council made up of the Advocate General, four men nominated by the High Court of whom two should be Judges and ten elected from among the advocates of the Bar. The duties of the Bar Council were to decide all matters concerning legal education, qualification for enrolment, discipline and control of the profession. It was favourable to the advocates as it gave them authority previously held by the judiciary to regulate the membership and discipline of their profession. The Advocates Act, 1961 was a step to further this very initiative. As a result of the Advocates Act, admission, practice, ethics, privileges, regulations, discipline and improvement of the profession as well as law reform are now significantly in the hands of the profession itself.

1.4 SEVEN LAMPS OF ADVOCACY

Professional Ethics are governed and rooted in the principle of the ‘Seven lamps of Advocacy’ through the book *Seven Lamps of Advocacy*, written by Justice Abott Parry. To become a successful lawyer, one should follow these seven lamps.

1. Honesty
2. Courage
3. Wit
4. Industry
5. Eloquence
6. Judgement
7. Fellowship

1. Honesty

The statement that has always been used to lambast legal professionals, in general, is “*lawyers are liars.*” Nevertheless, one cannot overlook the reality that what layman concludes to be a lie maybe not be a lie in a genuine sense. Per contra, lawyers are supposed to be honest since they have a fiduciary duty to act in the best interests of the clients. Such honesty should be reflected in every single act of theirs viz. While delivering the Argument, thoughts, words, so on.

Honesty and straightforwardness resemble the quality of not being relied on the leverage of deceit, dishonesty, cheating, or any other unethical or criminal behaviour. If so,

it will amount to a kind of professional misconduct and vitiate their growth. Primarily, he should be a pioneer to reinforce justice in every possible way, not to be adept at deceiving. He should provide proper legal guidance to his clients. Honesty in the profession will efficiently help him to succeed in his field.

2. Courage

The nexus between courage and honesty are irrefutable. Refined legal knowledge, skills, and other qualities of truthfulness will enhance the ability to remain fearless under pressure and pain. But why advocates are supposed to possess this quality? This is not an open-ended question since courage is the defined quality of great lawyers attributable to eloquent speech, persuasive writings, and critical thinking.

Good lawyers always combine extraordinary work ethics with compassion. No matter how talented and result-oriented is an advocate; he can never find himself as an expert in this field unless and until he has courage. Courage connotes pacifists with a strong moral compass and the capacity to uphold their clients in front of the bench. Thus, lawyers should not back off his action even it might be a dissent one out of fear or danger advancing towards them.

3. Wit

Wit denotes *the keen perception and cleverly apt expression of those connections between ideas that awaken amusement and pleasure*. In other words, it is the capacity to think clearly and speak concisely with an ingenious expression of thoughts. The phraseology *wit lightens the darkness of advocacy* implies the significance of this lamp. But why an advocate must possess this quality? Because, it imparts a great deal of critical analyzing skills as it is the outcome of cleverness, intelligence, smartness, and keen-mindedness.

Withal, Advocacy is the art of conducting cases in court, which comprises arguments, producing evidence, cross-examinations, and convincing the jury or the court. Substantially, a planned and prepared speech will never help you out in court, but quick-wittedness will. But, it is pertinent to note that people often compare law with the spider web because of its analogy to the latter's entanglement feature i.e. it *only entangles and holds the poor and weak, while the rich and powerful will easily break through them*. An advocate must possess sufficient wit to bridge this gap.

4. Industry

This lamp recommends advocates to be excelled at all the required skill set to sustain or succeed in the field of law. Law is not static but dynamic as it evolves with the needs of society and adapts to the changing status quo. Pursuant to this, an advocate should update himself in compliance with the adage ‘There is no alternative to hard work.’

At the same time, no one can become a master in law, as Savigny opined “*law is like a language which develops with the life of people*” i.e. “*law grows with the growth and strength with the strength of people and its standard of excellence will generally found at any given period to be complete harmony with the prevailing ideas of the best class of citizens.*” Thus, if the law gets amended in compliance with societal needs, lawyers should also be acquainted with the latest law.

5. Eloquence

This lamp plays a pivotal role in assessing the abilities of an advocate, which determines his career success rate. Eloquence is the art of speaking; in fact, it is a panacea for all other incompetence. But one must know that an eloquent speech is way more different than mere deliverable speech as it holds a long-lasting effect on the bench as well as the clients and the listeners.

In general, the word eloquence implies an error-free fluent communication that has a persuasive effect but never prescribes to deliver a grandiloquent speech that sounds better than the actuality. Fluency of speech can be developed, but it is a continual process that demands an acquired keen knowledge on the subject, followed by the practitioner.

Steps to bring off this skill,

- Noticing other parties’ faults
- Presence of mind
- Efficacy in argumentation with justification.

6. Judgement

It is the most important of all the Seven Lamps of Advocacy. Judgment in advocacy is a skill by which an advocate ascertains the collective case facts by discerning both merits and demerits of the case at hand. Anticipating the possible counterarguments and tackling the same by having an intellectual capacity to see the right turning point of the case. Basically, it is the deed of translating good sense into good action.

An advocate is obliged to inform the true legal status of the case to his clients. He should be adept at picking option which seems righter at the time of the decision, withal, figuring out all the possible contingencies that will arise.

7. Fellowship

While conducting the lawsuits advocates obviously opposes the other to uphold the interests of their clients. But, such a battle of words in the court hall shall not bother the friendly relation between them, because they are opponents but not enemies. To facilitate this interest, after having obtained a Certificate of Enrolment under section 22 of the Advocates Act, 1961, advocates are made required to obtain membership in bar associations.

1.5 SALIENT FEATURES OF THE INDIAN ADVOCATES ACT, 1961

INTRODUCTION

The Indian Advocates Act, 1961 was brought into force to implement all recommendations made by the All India Bar Committee. This act aims at amending and forming laws related to the legal practitioners and to provide for the establishment of the State Bar Council and the All India Bar Council. This act made a provision to set up the Bar Council of India as an autonomous body, which would be given powers to carry out and discharge certain duties and perform certain functions. According to this act, an Advocate is defined as “An advocate who has entered any roll under the Advocate’s Act, 1961”. Earlier, according to the Legal Practitioners Act, lawyers were classified as advocates, lawyers, vakil etc. but this act scrapped these titles off and put everyone under the single title of advocate. They are then also classified as “Senior Advocates” and “other advocates” on their merit.

According to this act, advocates have the right to practice in any court. Although the advocates have the right to practice in any court, there is a provision under this act which provides the courts to allow or deny an advocate to practice in that court. Under article 32 of this act, the advocate whose name is not registered under the Advocates Act, can also practice in any court, but only at the discretion of the court.

There are various provisions under this act which speak about the punishment of an advocate in case of any misconduct. A State Bar Council has the right to punish an advocate for any misconduct done.

SCOPE OF THE ADVOCATES ACT, 1961

The Bar Council of India, under this act, can make rules on the matters like the election of other Bar council members or the election of the president and vice president. If there is any dispute regarding the election of any sought or the validity of these elections, the decision of the Bar Council will be final.

SALIENT FEATURES OF THE ACT

The main features of this act are as follows-

1. This act enabled the establishment of the Bar council of India and State Bar Councils.
2. Any advocate cannot enroll himself/ herself in more than one State Council, though he can be transferred from one state council to another.

3. The Bar council was given an autonomous stature.
4. It provided for the provisions for similar roll of Advocates throughout the country.
5. It also provided to combine all the laws of the legal system into one.
6. There were various provisions set up for the Bar Council at state and central level.
7. As stated earlier, the different titles like lawyer, vakil was scrapped off and a single title of Advocate was applied.

REFERENCES

1. <https://lawcorner.in/seven-lamps-of-advocacy/>
2. <https://www.lawcolumn.in/salient-features-of-the-indian-advocates-act-1961/>
3. <https://lawcorner.in/seven-lamps-of-advocacy/>
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**UNIT 2 - DUTIES TOWARDS THE COURT AND
SOCIETY
(SAL1001)**

2.1 Rules on the professional standards

2.2 Duties of an Advocate

2.2.1 Duty to the Court

2.2.2 Duty to the Client

2.2.3 Duty to the Opponent

2.2.4 Duty to the Public and the State

2.1 RULES ON THE PROFESSIONAL STANDARDS

Advocates, in addition to being professionals, are also officers of the courts and play a vital role in the administration of justice. Accordingly, the set of rules that govern their professional conduct arise out of the duty that they owe the court, the client, their opponents and other advocates.

Rules on the professional standards that an advocate needs to maintain are mentioned in Chapter II, Part VI of the Bar Council of India Rules. These rules have been placed there under section 49(1)(c) of the Advocates Act, 1961.

2.2 DUTY OF AN ADVOCATE

(As per the Advocates Act, 1961 & Bar Council of India Rules)

FOUR DUTIES

1. Duty towards Court
2. Duty Towards Client
3. Duty towards Opponent
4. Duty Towards State and Public

2.2.1 RULES ON AN ADVOCATE'S DUTY TOWARDS THE COURT

1. Act in a dignified manner

During the presentation of his case and also while acting before a court, an advocate should act in a dignified manner. He should at all times conduct himself with self-respect. However,

whenever there is proper ground for serious complaint against a judicial officer, the advocate has a right and duty to submit his grievance to proper authorities.

2. Respect the court

An advocate should always show respect towards the court. An advocate has to bear in mind that the dignity and respect maintained towards judicial office is essential for the survival of a free community.

3. Not communicate in private

An advocate should not communicate in private to a judge with regard to any matter pending before the judge or any other judge. An advocate should not influence the decision of a court in any matter using illegal or improper means such as coercion, bribe etc.

4. Refuse to act in an illegal manner towards the opposition

An advocate should refuse to act in an illegal or improper manner towards the opposing counsel or the opposing parties. He shall also use his best efforts to restrain and prevent his client from acting in any illegal, improper manner or use unfair practices in any matter towards the judiciary, opposing counsel or the opposing parties.

5. Refuse to represent clients who insist on unfair means

An advocate shall refuse to represent any client who insists on using unfair or improper means. An advocate shall exercise his own judgment in such matters. He shall not blindly follow the instructions of the client. He shall be dignified in use of his language in correspondence and during arguments in court. He shall not scandalously damage the reputation of the parties on false grounds during pleadings. He shall not use unparliamentary language during arguments in the court.

6. Appear in proper dress code

An advocate should appear in court at all times only in the dress prescribed under the Bar Council of India Rules and his appearance should always be presentable.

7. Refuse to appear in front of relations

An advocate should not enter appearance, act, plead or practice in any way before a judicial authority if the sole or any member of the bench is related to the advocate as father, grandfather, son, grandson, uncle, brother, nephew, first cousin, husband, wife, mother, daughter, sister,

aunt, niece, father-in-law, mother-in-law, son-in-law, brother-in-law daughter-in-law or sister-in-law.

8. Not to wear bands or gowns in public places

An advocate should not wear bands or gowns in public places other than in courts, except on such ceremonial occasions and at such places as the Bar Council of India or as the court may prescribe.

9. Not represent establishments of which he is a member

An advocate should not appear in or before any judicial authority, for or against any establishment if he is a member of the management of the establishment. This rule does not apply to a member appearing as “amicus curiae” or without a fee on behalf of the Bar Council, Incorporated Law Society or a Bar Association.

10. Not appear in matters of pecuniary interest

An advocate should not act or plead in any matter in which he has financial interests. For instance, he should not act in a bankruptcy petition when he is also a creditor of the bankrupt. He should also not accept a brief from a company of which he is a Director.

11. Not stand as surety for client

An advocate should not stand as a surety, or certify the soundness of a surety that his client requires for the purpose of any legal proceedings.

2.2.2 RULES ON AN ADVOCATE’S DUTY TOWARDS THE CLIENT

1. Bound to accept briefs

An advocate is bound to accept any brief in the courts or tribunals or before any other authority in or before which he proposes to practise. He should levy fees which is at par with the fees collected by fellow advocates of his standing at the Bar and the nature of the case. Special circumstances may justify his refusal to accept a particular brief.

2. Not withdraw from service

An advocate should not ordinarily withdraw from serving a client once he has agreed to serve them. He can withdraw only if he has a sufficient cause and by giving reasonable and sufficient

notice to the client. Upon withdrawal, he shall refund such part of the fee that has not accrued to the client.

3. Not appear in matters where he himself is a witness

An advocate should not accept a brief or appear in a case in which he himself is a witness. If he has a reason to believe that in due course of events he will be a witness, then he should not continue to appear for the client. He should retire from the case without jeopardising his client's interests.

4. Full and frank disclosure to client

An advocate should, at the commencement of his engagement and during the continuance thereof, make all such full and frank disclosure to his client relating to his connection with the parties and any interest in or about the controversy as are likely to affect his client's judgement in either engaging him or continuing the engagement.

5. Uphold interest of the client

It shall be the duty of an advocate fearlessly to uphold the interests of his client by all fair and honourable means. An advocate shall do so without regard to any unpleasant consequences to himself or any other. He shall defend a person accused of a crime regardless of his personal opinion as to the guilt of the accused. An advocate should always remember that his loyalty is to the law, which requires that no man should be punished without adequate evidence.

6. Not suppress material or evidence

An advocate appearing for the prosecution of a criminal trial should conduct the proceedings in a manner that it does not lead to conviction of the innocent. An advocate shall by no means suppress any material or evidence, which shall prove the innocence of the accused.

7. Not disclose the communications between client and himself

An advocate should not by any means, directly or indirectly, disclose the communications made by his client to him. He also shall not disclose the advice given by him in the proceedings. However, he is liable to disclose if it violates Section 126 of the Indian Evidence Act, 1872.

8. An advocate should not be a party to stir up or instigate litigation.

9. An advocate should not act on the instructions of any person other than his client or the client's authorised agent.

10. Not charge depending on success of matters

An advocate should not charge for his services depending on the success of the matter undertaken. He also shall not charge for his services as a percentage of the amount or property received after the success of the matter.

11. Not receive interest in actionable claim

An advocate should not trade or agree to receive any share or interest in any actionable claim. Nothing in this rule shall apply to stock, shares and debentures of government securities, or to any instruments, which are, for the time being, by law or custom, negotiable or to any mercantile document of title to goods.

12. Not bid or purchase property arising of legal proceeding

An advocate should not by any means bid for, or purchase, either in his own name or in any other name, for his own benefit or for the benefit of any other person, any property sold in any legal proceeding in which he was in any way professionally engaged. However, it does not prevent an advocate from bidding for or purchasing for his client any property on behalf of the client provided the Advocate is expressly authorised in writing in this behalf.

13. Not bid or transfer property arising of legal proceeding

An advocate should not by any means bid in court auction or acquire by way of sale, gift, exchange or any other mode of transfer (either in his own name or in any other name for his own benefit or for the benefit of any other person), any property which is the subject matter of any suit, appeal or other proceedings in which he is in any way professionally engaged.

14. Not adjust fees against personal liability

An advocate should not adjust fee payable to him by his client against his own personal liability to the client, which does not arise in the course of his employment as an advocate.

15. An advocate should not misuse or takes advantage of the confidence reposed in him by his client.

16. Keep proper accounts

An advocate should always keep accounts of the clients' money entrusted to him. The accounts should show the amounts received from the client or on his behalf. The account should show along with the expenses incurred for him and the deductions made on account of fees with respective dates and all other necessary particulars.

17. Divert money from accounts

An advocate should mention in his accounts whether any monies received by him from the client are on account of fees or expenses during the course of any proceeding or opinion. He shall not divert any part of the amounts received for expenses as fees without written instruction from the client.

18. Intimate the client on amounts

Where any amount is received or given to him on behalf of his client, the advocate must without any delay intimate the client of the fact of such receipt.

19. Adjust fees after termination of proceedings

An advocate shall after the termination of proceedings, be at liberty to adjust the fees due to him from the account of the client. The balance in the account can be the amount paid by the client or an amount that has come in that proceeding. Any amount left after the deduction of the fees and expenses from the account must be returned to the client.

20. Provide copy of accounts

An advocate must provide the client with the copy of the client's account maintained by him on demand, provided that the necessary copying charge is paid.

21. An advocate shall not enter into arrangements whereby funds in his hands are converted into loans.

22. Not lend money to his client

An advocate shall not lend money to his client for the purpose of any action or legal proceedings in which he is engaged by such client. An advocate cannot be held guilty for a breach of this rule, if in the course of a pending suit or proceeding, and without any arrangement with the client in respect of the same, the advocate feels compelled by reason of the rule of the

Court to make a payment to the Court on account of the client for the progress of the suit or proceeding.

23. Not appear for opposite parties

An advocate who has advised a party in connection with the institution of a suit, appeal or other matter or has drawn pleadings, or acted for a party, shall not act, appear or plead for the opposite party in the same matter.

2.2.3 ADVOCATE'S DUTY TO OPPONENTS

1. Not to negotiate directly with opposing party

An advocate shall not in any way communicate or negotiate or call for settlement upon the subject matter of controversy with any party represented by an advocate except through the advocate representing the parties.

2. Carry out legitimate promises made

An advocate shall do his best to carry out all legitimate promises made to the opposite party even though not reduced to writing or enforceable under the rules of the Court.

2.2.4 ADVOCATE'S DUTY TOWARDS FELLOW ADVOCATES

1. Not advertise or solicit work

An advocate shall not solicit work or advertise in any manner. He shall not promote himself by circulars, advertisements, touts, personal communications, interviews other than through personal relations, furnishing or inspiring newspaper comments or producing his photographs to be published in connection with cases in which he has been engaged or concerned.

2. Sign-board and Name-plate

An advocate's sign-board or name-plate should be of a reasonable size. The sign-board or name-plate or stationery should not indicate that he is or has been President or Member of a Bar Council or of any Association or that he has been associated with any person or organisation or with any particular cause or matter or that he specialises in any particular type of work or that he has been a Judge or an Advocate General.

3. Not promote unauthorized practice of law

An advocate shall not permit his professional services or his name to be used for promoting or starting any unauthorised practice of law.

4. An advocate shall not accept a fee less than the fee, which can be taxed under rules when the client is able to pay more.

5. Consent of fellow advocate to appear

An advocate should not appear in any matter where another advocate has filed a vakalt or memo for the same party. However, the advocate can take the consent of the other advocate for appearing.

In case, an advocate is not able to present the consent of the advocate who has filed the matter for the same party, then he should apply to the court for appearance. He shall in such application mention the reason as to why he could not obtain such consent. He shall appear only after obtaining the permission of the Court

UNIT 3 - CONTEMPT OF COURT (SAL1001)

3.1 Contempt of Court Act, 1972

3.2 Selected Major Judgments of the Supreme Court

3.2.1 Re: Ajay Kumar Pandey, A.I.R 1997 SC 260

3.2.2 Supreme Court Bar Association v. U.O.I, AIR 1998 SC 1895

3.2.3 Nirmaljit Kaur v. State of Punjab, AIR 2006 SC 605

3.2.4 Zahira Habidullah Sheikh v. State of Gujarat, AIR 2006 SC 1367

3.2.5 Rajendra Sail v. M.P High Court Bar Association, AIR 2005 SC 2473.

3.1 Contempt of Court Act, 1972

According to the Oxford Dictionary, contempt is the state of being despised or dishonored; disgrace. Any conduct that tends to bring the authority and administration of law into disrespect or disregard or to interfere with or prejudice parties or their witness during litigation is considered to be contempt of court, says Oswald. Contempt is defined by Halsbury, as consisting of words spoken or written which obstruct or tends to obstruct the administration of justice.

The Indian legislature does not provide with a concrete definition of contempt, however section 2(a) of The Contempt of Courts, 1971 says 'contempt of court means civil contempt or criminal contempt'. Section 2(b) & section 2(c) of The Contempt of Courts Act, 1971 defines civil and criminal contempt. Although the legislature has not defined what amounts to contempt, it has defined civil and criminal contempt. Thus, contempt cannot be confined to four walls of a definition. Therefore, what would offend the court's dignity and what would lower the court's prestige is thus a matter which can be decided by the court itself and it's for the court to deal with each case of contempt under the facts and circumstances of that case.

KINDS OF CONTEMPT

Contempt of court are classified under three broad categories, according to Lord Hardwick:

1. Scandalising the court itself
2. Abusing parties who are concerned in the cause, in the presence of court.

3. Prejudicing the public before the cause is heard.

However, in India, contempt is classified under two major categories:

1. Civil contempt
2. Criminal contempt

Civil Contempt

According to section 2(b) of the Contempt of Courts Act, 1971 civil contempt means willful disobedience to any judgement, decree, direction, order, writ or other process of a court or willful breach of an undertaking given to a court.

Criminal Contempt

According to section 2(c) of The Contempt of Courts Act, 1971, criminal contempt means the publication (whether by word, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which-

- i) Scandalizes or tends to scandalize, or lowers or tends to lower the authority of, any court, or
- ii) Prejudices or interferes or tends to interfere with the due course of any judicial proceeding, or
- iii) Interferes or tends to interfere with, or obstruct or tends to obstruct, the administration of justice in any other manner.

3.2 CONSTITUTIONAL VALIDITY OF CONTEMPT OF COURTS ACT, 1971.

Article 129 of the Constitution of India says that the Supreme Court Shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.

According to article 215 of the Constitution of India, every High Court Shall be court of record and shall I have all the powers of such a court including the power to punish for contempt of itself.

Parliament and the State Legislature both have power to make laws with respect to any of the subject enumerated in list III (Concurrent List) of the Seventh Schedule of the Constitution. The Parliament has exclusive power to make laws with respect to any of the matters are subjects enumerated in list -I (Union list) of the 7th of the Constitution.

The state legislature has exclusive power to make laws with respect of any of the matter or subjects enumerated in list II (State list) of the seventh scheduled of the Constitution.

Entry 77 of the list is as follows-

Constitution, organization, jurisdiction and powers of the Supreme Court (including contempt for such a court) and the fees taken therein; persons entitled to practise before the Supreme Court.

Entry 15 of list II is as follows " contempt of court but not including contempt of Supreme Court ".

The legislature is fully competent to legislate with respect to contempt of court subject only to the qualification that the legislature cannot take away the power of the Supreme Court or the High Court to punish for contempt or vest that power in some other court.

Article 142(2) of the Constitution of India states that the Supreme Court shall have all and every power to make any order for the purpose of securing the attendance of any person, the discovery or production of any document, or the investigation or punishment of any contempt of itself.

According to Article 372 of Constitution of India, all the laws in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent legislature or other competent authority. That is why section 22 of the Contempt of Courts Act 1971, it makes it clear that the provision of this Act shall be in Addition to and not in derogation of the provision of any other law relating to contempt of courts.

The Contempt of Courts Act is not violation of guarantee of equality and article 14 as the classification of a founded on the intelligible differentia which distinguish persons or things that are grouped together from other left out of the group and the differentia has a rational relation to the object thought to be achieved by the statute in question is reasonable.

As the existing law relating to contempt of court imposes reasonable restrictions within the meaning of article 19(2) and therefore, it is not violative of the fundamental right to freedom of speech and expression guarantee by article 19 (1)(2) of the Constitution.

According to clause 10 of the Article 366 the existing law means any law ordinance order bye-law, rule or regulation passed or made before the commencement of this Constitution by a

legislature, authority or person having power to make such a law, ordinance bye-law, rule or regulation.

The contempt of law is not violative of article 21 which provides that no person shall be deprived of his life or personal liberty except according to the procedure established by law as the existing procedure for contempt proceedings have statutory sanction. Section 10 of the contempt Act,1971, makes it clear that every High Court shall have and exercise the same jurisdiction powers and authority in accordance with the same procedure and practice in respect of contempt of courts subordinate to it as it has and exercise in respect of contempt of itself. beside this article 225 of the Constitution of India makes provision for its continuity. Hence on the above grounds, it can be concluded that the contempt of court at 1971 is not violative of any provision of the Constitution and it is constitutionally valid.

3.2 Selected Major Judgments of the Supreme Court

3.2.1 Re: Ajay Kumar Pandey, A.I.R 1997 SC 260

The Supreme Court has held that an advocate using intemperate language and casting unwarranted aspersion (false report) on various judicial officers is equality of gross contempt of court for not getting expected results. Court awarded punishment of sentence to 4 months simple imprisonment and fine Rs.1000 /-

Supreme Court in this case warned that only because a lawyers appear as a party in Person, he does not get a license to submit content of court, by intimidating the judges or scandalizing the Court. An Advocate can use language either in pleading or during argument which is either intemperate or unparliamentary and which has tendency to interfere in the administration of justice and undermine the dignity of the Court.

3.2.2 Supreme Court Bar Association v. U.O.I, AIR 1998 SC 1895

Facts

In Re: Vinay Chandra Mishra, this Court found the Contemner, an advocate, guilty of committing criminal contempt of Court for having interfered with and "obstructing the course of justice by trying to threaten, overawe and overbear the court by using insulting, disrespectful language. Aggrieved by the direction that the contemner shall stand suspended from practising

as an advocate for a period of three years issued by the Supreme Court by invoking powers under Articles 129 and 142 of the Indian Constitution, the Supreme Court Bar Association, through its Honorary Secretary, filed a petition under Article 32 of the Constitution of India seeking relief by way of issuing an appropriate writ, direction, or declaration, declaring that the disciplinary committees of the Bar Councils set up under the Advocates Act, 1961, alone have exclusive jurisdiction to inquire into and suspend or debar an advocate from practising law for professional or other misconduct, arising out of punishment imposed for contempt of court or otherwise and further declare that the Supreme Court of India or any High Court in exercise of its inherent jurisdiction has no such original jurisdiction, power or authority in that regard notwithstanding the contrary view held by this Hon'ble Court in *In Re: Vinay Chandra Mishra*.

Issue For Consideration

The petition was placed before a Constitutional Bench for passing the appropriate direction, order or declaration. The bench identified a single question and had to decide upon was whether the Supreme Court of India can while dealing with Contempt Proceedings exercise power under Article 129 of the Constitution or under Article 129 read with Article 142 of the Constitution or under Article 142 of the Constitution can debar a practicing lawyer from carrying on his profession.

The Supreme Court can neither create a "jurisdiction" nor create a "punishment" not otherwise permitted by law and that since the power to punish an advocate (for "professional misconduct") by suspending his license vests exclusively in a statutory body constituted under the Advocates Act, this Court cannot assume that jurisdiction under Article 142 or 129 or even under Section 38 of the Advocates Act, 1961. The bench came to the conclusion that the Supreme Court under Article 129 and the High Court under Article 215 of the Indian Constitution declaring them court of records has the power to punish the for contempt of itself. The Court observed that Parliament is competent to make law in relation to Contempt of Court. After analyzing Article 246 and entry 77 of List I of the VIIth Schedule and entry 14 of List III of the said schedule it is evident that the legislature can make a law regarding the same, but cannot take away contempt jurisdiction from the Courts which flows from the Courts being deemed as Courts of record which embodies the power to punish for the contempt of itself.

Conclusion

The Supreme Court is vested with the right to punish those guilty of contempt of Court under Article 129 read with Article 142 of the Constitution of India. The power to punish contemners is also vested with the High Courts under Article 215 of the Constitution and the Contempt of Courts Act, 1971 also governs the punishments given by the High Court. This act in no way controls the jurisdiction of the Apex Court. The Court in *In Re: Vinay Mishra* misconstrued Article 129 read with 142 and robbed the Bar to of all powers to try and punish those for professional misconduct. It even assumed jurisdiction when Section 38 of the Advocates Act, 1961 explicitly provides only appellate jurisdiction to the Apex Court. The Court punished Shri Mishra by suspending him thus the petition arose in the 1998 case, **Supreme Court Bar Association v. Union of India**.

3.2.3 Nirmaljit Kaur v. State of Punjab, AIR 2006 SC 605

The case of the petitioner is as follows: -

The petitioner - Nirmaljit Kaur got married to Surinder Singh Batra as per Sikh rites and out of the wedlock a female baby Simran was born on 16.02.1992. Respondent No.2 - Gurubachan Singh Batra is the brother of Surinder Singh Batra. Respondent No.4 - Harbans Kaur is his wife. Respondent No.3 - Arminderjit Singh Batra is the nephew of Surinder Singh Batra whereas Respondent No.5 - Ranjita Kaur is the wife of Respondent No.3 - Arminderjit Singh Batra.

According to the petitioner, Surinder Singh Batra died intestate leaving behind the petitioner and baby Simran as his only legal heirs. On 23.02.1997, the respondent Nos. 2-5 and 3 other sisters of Surinder Singh Batra and sisters of respondent No.3 forcibly took away baby Simran from the petitioner with ill design. The petitioner was turned out of her matrimonial house by them and since then she has been living with her relatives.

It is alleged that the respondents in order to divest the petitioner of her legitimate right to succeed to the estate of her late husband fabricated a Will dated 19.10.1996 purported to have been executed by her husband. The two witnesses to the Will are Joginder Singh and one J.S. Batra (since died). The Will was got registered on 31.03.1997 after the death of the petitioner's husband (died on 23.02.1997) without notice to the petitioner. The alleged Will named Arminderjit Singh as the guardian of the child Simran on the ground that the testator's wife failed to take care of her. According to the petitioner, the Will does not bear the signatures of her husband and the Will falls to the ground for want of compliance with the statutory

requirement of Section 63 of the Indian Succession Act, 1925 as the Will was not attested by the two witnesses each of whom had seen the testator signing the Will in their presence. Each of the witnesses has not signed the Will in presence of the testator, though it was signed by two witnesses. This apart, Surinder Singh Batra had no power or authority or right to appoint any person as guardian of her daughter as per the provisions of Section 9 of the Hindu Minority and Guardianship Act. Thus, the appointment of respondent No.3 as sole custodian and guardian of minor by Surinder Singh Batra during the lifetime of the petitioner is a nullity in the eyes of law, inoperative and ineffective.

The third respondent - Arminderjit Singh Batra, on the basis of the said Will, filed an application under Section 192 of the Indian Succession Act before the District Judge, Amritsar. The petitioner filed an application under Section 25 of the Guardian and Wards Act for the custody of the minor child whereas the respondent No.3 claimed guardianship by virtue of the Will dated 19.10.1996. The District Judge, Amritsar, by judgment dated 23.12.1997, dismissed the application of respondent No.3 filed under Section 192 of the Act holding respondent No.3 was not competent to claim guardianship of the minor Simran Batra. However, this order was set aside by the High Court.

3.2.4 Zahira Habidullah Sheikh v. State of Gujarat, AIR 2006 SC 1367

Facts

On 02.03.2002, Best bakery at Vadodara was burnt down by a mob of large number of people. In this incident 14 people died. The attacks were stated to be a part of retaliatory action to avenge killing of 56 persons burnt to death in the Sabarmati Express.

In this case Zaheera named women was the main eye witness who lost family members including innocent children and helpless women in the incident. A day after the bakery was burnt the owners daughter Zaheera Sheikh lodged a police complaint against the 21 persons accused.

- In this , Zaheera turned hostile , her mother and her brothers retracted their statements in the court. Zaheera said that she was on the terrace while the incident took place and couldn't identify the accused.
- Zaheera along with her mother told the Sunday express that she lied in the court because she feared for her life.

- The NHRC filed a special leave petition in the supreme court and asked for a retrial in a court outside Gujrat.
- In a sworn affidavit to the Supreme Court, Zaheera said she turned hostile because when she reached the court premises, she met Chandrakant Batthoo, who threatened her. He told her that if she stuck to her earlier statements, the remaining four members of her family will be killed.
- Supreme court Division Bench ordered retrial of the Best Bakery case outside Gujrat in Maharashtra.
- While transferring the case to Mumbai, the supreme Court stated, “The State of Gujrat shall also ensure that the witnesses are produced before the concerned court, whenever they are required to attend them, so that they can depose freely without any apprehension of threat or coercion from any person. In the case if any witness asks for any protection, then the state of Maharashtra shall also provide such protection as deemed necessary, in addition to the protection to be provided for by the state of Gujrat”.

Issues

Whether this would amount to contempt of the court?

Related Provisions

Indian Penal Code, 1860

Section 195 – Giving or fabricating false evidence with intent to procure conviction of offence punishable with imprisonment for life or imprisonment

Whoever gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which[by the law for the time being in force in [India]] is not capital, but punishable with [imprisonment for life], or imprisonment for a term of seven years or upwards, shall be punished as a person convicted of that offence would be liable to be punished.

Section 15 of Contempt of Courts Act, 1971. – Cognizance of criminal contempt in other cases

Constitution of India, 1950

Article 129– Supreme Court to be a court of record —The Supreme Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.

Article 142(2) – Enforcement of decrees and orders of Supreme Court and orders as to discovery, etc

(2) Subject to the provisions of any law made in this behalf by Parliament, the Supreme Court shall, as respects the whole of the territory of India, have all and every power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of itself.

• **Related Cases**

1. In fact, the High Court has felt that extraneous materials are now sought to be introduced and it is not known as to whether the present statement of the witnesses is correct or what was stated before the trial Court originally was the truth. The Court analysed the evidence of the material witnesses and noticed several relevant factors to arrive at this conclusion. The necessity and need for additional evidence has to be determined in the context of the need for a just decision and it cannot be used for filling up a lacuna. Reference is made to the decisions of this Court in Jamatraj Kewalji Govani v. The State of Maharashtra (1967 (3) SCR 415) and Mohanlal Shamji Soni v. Union of India and Another (1991 Supp (1) SCC 271).

- While dealing with the claims for the transfer of a case under Section 406 of the Code from one State to another this Court in Mrs. Maneka Sanjay Gandhi and Anr. v. Ms. Rani Jethmalani (1979 (4) SCC 167), emphasised the necessity to ensure fair trial, observing as hereunder: “Assurance of a fair trial is the first imperative of the dispensation of justice and the central criterion for the court to consider when a motion for transfer is made is not the hypersensitivity or relative convenience of a party or easy availability of legal services or like mini-grievances. Something more substantial, more compelling, more imperilling, from the point of view of public justice and its attendant environment, is necessitous if the Court is to exercise its power of transfer. This is the cardinal principle although the circumstances may be myriad and vary from case to case. We have to test the petitioner’s grounds on this touchstone bearing in mind the rule that normally the complainant has the right to choose any court having jurisdiction and the accused cannot dictate where the case against him should be tried. Even so, the

process of justice should not harass the parties and from that angle the court may weigh the circumstances.

- In Rambhau and Anr. v. State of Maharashtra (2001 (4) SCC 759) it was held that the object of Section 391 is not to fill in lacuna, but to subserve the ends of justice. The Court has to keep these salutary principle in view. Though wide discretion is conferred on the Court, the same has to be exercised judicially and the Legislature had put the safety valve by requiring recording of reasons.

Judgment

At the trial in Vadodara Session Court in June 2003, Court acquitted all the accused in lack of evidence and lack of confidence in the statement of witnesses including the Main witness Zaheera Sheikh. Session Court held that there is no sufficient evidence that a large number of peoples have done such act and carnage with full of intention and there is no prima facia evidence is available.

Gujrat High Court has given judgment on appeal of State of Gujrat on 26th December 2003 and reasons were given on 12th January 2004. Gujrat High Court had denied Retrial of the case and said that the following power was given in Cr.PC Court is satisfied that there is no further requirement of a retrial. Court has also dismissed the plea of the National Human Rights Commission on stay of proceeding that plea is pending with the supreme court.

On 12th April 2004 Supreme Court of India ordered for retrial, reinvestigation, and transfer of the Bakery case to Bombay High Court, the supreme court explain the case as “without Parallel and Comparison” and said that the fact of the case for retrial is inevitable.

In February 2006, Session Court in Mumbai sentenced 9 accused had given life imprisonment. After an appeal in Bombay High Court by the accused, Bombay High Court has given judgment that 4 were given life imprisonment and 5 had acquitted by the court.

Concepts Highlighted

This judgement is one of the landmark judgements of the Indian judiciary. Not only it had a heinous crime of genocide with it but also it had many issues which are always present in a case but rarely surface like the impact of media , hearsay evidence, witnesses turning away from their statements etc. The judiciary has tackled all the issues in an intelligible way and paved way for future legislations.

3.2.5 Rajendra Sail v. M.P High Court Bar Association, AIR 2005 SC 2473.

The Supreme Court sentenced Rajendra K Sail, President of Chhattisgarh People's Union for Civil Liberties (PUCL) in the Contempt of Court Case, which arose out of his statements uttered in the wake of acquittal of murderers of Shaheed Shanker Guha Niyogi by the MP High Court at Jabalpur in June 1998. It may be recalled that the MP High Court had sentenced Rajendra Sail for six month's simple imprisonment on 19th March 2001. Today's judgement was passed in an Appeal against the MP High Court judgement filed by Sail in the Supreme Court of India, in which the arguments were held on 22nd February 2005.

In a judgement delivered today, Hon'ble Justice Y S Sabbarwal and Tarun Chhatterji of the Supreme Court said that 'with regard to his work and the organisation with which he has been associated and the PILs that he has filed, we find the sentence given by the High Court unjustified. And hereby reduce the sentence to one week simple imprisonment'. However, the conditional apology tendered by Rajendra Sail was unacceptable.

The four others belonging to The Hitvada Daily published from Nagpur, Maharashtra, were acquitted and their unconditional apology was accepted. It may be recalled that these four press persons were also sentenced with six month's imprisonment along with Sail.

According to a press release, issued by Chhattisgarh PUCL, treating the social activist differently from the press persons was not considered as a healthy sign. Expressing concern at the increasing use of Contempt of Court Act 1971, mainly on social and human rights activists and movement, the PUCL said that on the one hand Rajendra Sail stands vindicated in this judgement, because the MP High Court had passed a harsh punishment of six month's which has been referred to as "unjustified" by the Hon'ble Supreme Court. On the other hand, it goes on to confirm the growing belief that the Contempt of Court proceedings are also being used to silence the voices of dissent in a democracy, especially by those resisting globalization, combating communalism and defending democracy. The PUCL clearly stands for the repeal of the Contempt of Court Act, which are irrelevant in the context of public accountability and transparency.

The Contempt of Court proceedings were initiated by the MP Bar Association at Jabalpur on the basis of statements purportedly made by Rajendra Sail and published by The Hitvada on Shaheed Diwas on 1st July 1998. The background of the case is the public protest by various organisations and activists against the acquittal of all accused by the MP High Court in June 1998 in the Shaheed Shanker Guha Niyogi Murder Case. It may be re-called that the trial court at Durg had convicted Paltan Mallah, the hired assassin, with capital punishment,

and two industrialists of Simplex Group of Industries, and three of their muscle-men with life imprisonment. There were nation-wide protests against their acquittal by the MP High Court. Later, on 20th January 2005, the Supreme Court in an Appeal reversed the MP High Court judgement to the extent that it found Paltan Mallah guilty of murder.

The PUCL has also noted with concern that such judgements do not, in any way, help in restoring people's faith in judicial system. On the contrary, people are getting more and more disillusioned with the justice delivery system.

REFERENCES

- 1 <https://www.srdlawnotes.com/2016/02/constitutional-validity-of-contempt-of.html>
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3. Supreme Court Bar Association v. U.O.I, AIR 1998 SC 1895
4. Nirmaljit Kaur v. State of Punjab, AIR 2006 SC 605
5. Zahira Habidullah Sheikh v. State of Gujarat, AIR 2006 SC 1367
6. Rajendra Sail v. M.P High Court Bar Association, AIR 2005 SC 2473

**UNIT 4 - PROFESSIONAL AND OTHER
MISCONDUCT (SAL1001)**

4.1 Powers of the Disciplinary Committee of the Bar Council of India

4.2 Procedure of Complaints Against Advocates

4.3 Punishments for Misconduct

4.4 Remedies Against Order of Punishment

4.5 Judgements related to Professional Misconduct

4.1 POWERS OF THE DISCIPLINARY COMMITTEE OF THE BAR COUNCIL OF INDIA

The Law Commission, presided over by Mr. M.C. Setalvad, then Attorney-General of India, in its fourteenth report on the Reform of Judicial Administration endorsed the recommendations of the All India Bar Committee, as regards the creation of a unified all India Bar as well as the establishment, composition and functions of the state and All India Bar Councils.

The Law Commission further recommended, inter alia, that the requirement of a certain number of years' practice in the High Court for enrolment as a Supreme Court advocate should be dispensed with, the advocates on the common roll should have the right to practise in all the courts in India, the dual system should continue on the original side of the Calcutta and Bombay High Courts and the Bar should be divided into senior advocates and advocates.[2]

The Advocates Act, 1961, which received the assent of the President of India on the 19th of May, 1961, extends to the whole of India, except the State of Jammu and Kashmir.

Broadly speaking, the main features of the Act are:

- i. to have, in course of time only one class of legal practitioners viz, advocates, with the right given to them to practice in all courts and tribunals in India,
- ii. to take away the powers till then vested in the courts, in the matter of admission of advocates and the maintenance of the rolls, and their disciplinary conduct (subject to an ultimate appeal to the Supreme Court), and

- iii. the constitution of a central Bar Council for purposes of control and supervision with powers, inter alia, to the central Bar Council to recognise the degree in law for admission as advocates. Every Bar Council constituted under the Act is a body corporate having a common seal, and may, by the name by which it is known sue and be sued.

History of Disciplinary Committees in India

The High Court was empowered under section 10 of the Legal Practitioners Act to reprimand, suspend or remove from practice any advocate of the High Court for professional or other misconduct after following the procedure described below.

Complaints against advocates for professional or other misconduct had to be made to the High Court. If on receipt of a complaint, the High Court did not summarily reject it, it had to refer the case for enquiry to the Bar Council, or after consultation with the Bar Council, to a district judge. The High Court had power to make such a reference suo motu even if there was no complaint. Cases referred to a Bar Council had to be enquired into by a committee of the Bar Council (called tribunal) comprising not less than three and not more than five members appointed by the Chief Justice of the High Court.[3]

The High Court was required to make rules for the conduct of disciplinary enquiries. The finding of the tribunal after enquiry was to be forwarded to the High Court through the Bar Council and the finding of a district court was to be forwarded direct to the High Court which was required to send a copy to the Bar Council. Notice was to be given of the date fixed for hearing to the advocate concerned and to the Bar Council and to the Advocate-General and after affording them an opportunity of being heard, final orders were passed by the High Court. A record of the punishment of suspension or reprimand was made in the rolls of the High Court. If the advocate was to be removed from practice, his name was removed from the roll and the certificate of any advocate so suspended or removed was to be recalled. The tribunals and the district judge conducting the enquiries were vested with powers of a court under the Code of Civil Procedure examining him on oath, compelling the production of documents and issuing commissions for the examination of witnesses.

It may be pointed out that under the Act, the power of enrolment of advocates virtually continued to remain in the High Court and the function of the Bar Council was advisory in nature. The Act did not affect the original side of the Calcutta and Bombay High Courts.

Further, the attorneys of Calcutta and Bombay were not affected by the Act and the enrolment of and the disciplinary jurisdiction over the attorneys continued to be in the hands of the High Courts under their respective Letters Patents.

The right of the advocates of one High Court to practice in another High Court was made subject to the rules made by the High Court. The rules made by the Bar Councils had stipulated that advocate of other High Courts would be permitted to appear and plead in the respective High Courts only with the permission of the Chief Justice provided an advocate enrolled in that High Court appeared with him. The provisions in the Bar Council's Act were regarded as unsatisfactory.

Right To Practise

Chapter IV of the Advocates Act regulates the right of advocates to practise. One of the objects of the Act is to have in course of time only one class of legal practitioners. Different provisions of this chapter have been brought into force at different times. For instance, section 32 which empowers the courts to allow persons who are not enrolled as advocates to appear before them in particular cases was brought into force from 4-1-1963.

Sections 29, 31, 33 and 34 were brought into force from 1-6-1969. Section 30 has not yet been brought into force. Section 29 provides that subject to the provisions of the Act as from the appointed day (1-6-1969), there shall be only one class of persons entitled to practice the profession of law, namely, advocates. Under section 30 all advocates are entitled as of right to practice throughout the territories to which the Act extends in all courts including the Supreme Court, before any tribunal or person legally authorized to take evidence or before any other authority or person before whom such advocate is entitled to practice. Further under section 33 advocates alone are entitled to practice in any court.

However, sections 29, 30 and 33 have to be read along with section 50(2) and sections 55 and 58 of the Act. Section 50(2) provides that on the date on which chapter III (Admission and Enrolment of Advocates) comes into force (it came into force on 1-12-1961) certain sections

of the Legal Practitioners Act, 1879, Bombay Pleaders Act, 1920, Indian Bar Councils Act, 1926, and Letters Patent of High Courts which relate to the admission and enrolment of legal practitioners stand repealed. Under sections 55 and 58 rights of certain existing legal rights are protected.

Reference may in this connection be made to two decided cases. The High Court of Mysore in its judgment dated 26th March, 1964 in writ petition No. 2497/1963 **E.C. Agrawala v. Mysore State Bar Council**, held that section 58(4) only empowers the renewal of sanads of pleaders who had been admitted before 1-12-1961, and does not permit fresh admission of pleaders after that date by way of issue of fresh sanads.

The other decision is that of the Calcutta High Court in **Sunil Kumar v. State of West Bengal**[7], holding that section 58(4) cannot apply to persons who had not acquired the necessary rights under section 6 of the Legal Practitioners Act before 1-12-1961.

In **re Lilly Isabel Thomas**, the proper construction of article 145(i)(a) of the Constitution in the context of a declaration that rule 16 of order IV of the Supreme Court Rules is invalid, was the principal point raised by an advocate entitled under the Advocates Act, 1961, to practise in the Supreme Court having been originally enrolled in the Madras High Court under the Bar Councils Act, 1926. Rule 16 which now corresponds to rule 5 provided for the qualifications requisite for an advocate to be registered as an advocate on record.

It was held that section 58(3) of the Advocates Act which confers on the advocates the right of practice in the Supreme Court is itself subject to section 52 which specifically says the right of the Supreme Court to make rules under article 145 of the Constitution. The court held that on the express terms of article 145(1), the impugned rules 16 and 17 are valid and within the rule-making power.

The Act makes some special provisions which it is necessary to note in this connection. The power of the High Court at Calcutta and at Bombay to provide for and make rules for the admission of attorney, and for their removal or suspension is not affected by the Act.[9] The power of any court, authority, or person to permit any person not enrolled as an advocate under the Act to appear before it or him is specifically preserved.[10]

The High Court is empowered to make rules laying down the conditions subject to which an advocate shall be permitted to practise in the High Court and the courts subordinate thereto.[11] The exact scope and implication of this provision may, when it becomes necessary, have to be construed, in the light of the other provisions of the Act.

Scope and Extent Disciplinary Committee

a. Proceedings before state Bar Councils and the disciplinary committees

The state Bar Council on the roll of which an advocate is enrolled has the jurisdiction and the power to act on receipt of a complaint or otherwise. A fee of Rs. 25 is prescribed by the Bar Council of India as payable on a complaint, which shall be in the form of a petition duly signed and verified as required under the Civil Procedure Code. If the state Bar Council has reason to believe that the advocate concerned has been guilty of professional or other misconduct, it has to refer the case for disposal to its disciplinary committee.

The disciplinary committee to which the case has been referred may summarily reject the complaint. If it does not do so, it should fix a date for the hearing of the case and cause notice thereof to be given to the advocate concerned and to the Advocate-General of the state (the Solicitor-General in the case of the Delhi Bar Council). After giving him an opportunity of being heard it should make its order.

b. Powers of the disciplinary committees

Section 42 provides that the disciplinary committee of a Bar Council shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, in respect of summoning and enforcing the attendance of any person and examining him on oath, requiring discovery and production of any documents; receiving evidence on affidavits; requisitioning any public record or copies thereof; issuing commissions for the examination of witnesses or documents and any other matter which may be prescribed.

An advocate who is suspended from practise is debarred from practising in any court or before any authority or persons in India. The disciplinary committee of a state Bar Council may of its own motion or otherwise review any order passed by it, but no such order shall have effect unless it has been approved by the Bar Council of India.

The Disciplinary Committee of the Bar Council of India

The Act has conferred powers on the disciplinary committee of the Bar Council of India to make inquiry in some cases on complaints of misconduct referred to it, to withdraw cases for enquiry before itself, to hear appeals and order stay and to review its own orders. It has the power to make such order as to costs of any proceedings before it as it may deem fit. Any such order shall be executable as if it were an order of the Supreme Court.

c. Power to enquire and to withdraw

If on receipt of a complaint or otherwise, the Bar Council of India has reason to believe that any advocate on the common roll whose name is not entered on any state roll has been guilty of professional or other misconduct, it shall refer the case for disposal to its disciplinary committees, The committee may also of its own motion, withdraw for enquiry before itself any proceedings for disciplinary action against any advocate pending before the disciplinary committee of any state Bar Council and dispose of the same.

d. Power to hear appeals and order stay

Any person aggrieved by an order of the disciplinary committee of a state Bar Council made under section 35 may within sixty days of the date of the communication of the order to him, prefer an appeal to the Bar Council of India. Every such appeal is to be heard by the disciplinary committee of the Bar Council of India which may pass such order thereon as it deems fit. Under the rules made by the Bar Council of India a fee of R.s. 50 has been prescribed for an appeal to be filed before the Bar Council of India.

The case of **Adi Phirozshah Gandhi v. H.M. Seervai**[12], before the Supreme Court was one in which suo motu action was taken against the advocate by the Bar Council of Maharashtra. Notice was given to the Advocate-General as required under the Act. The Advocate-General appeared before the committee. The disciplinary committee was satisfied that there was no reason to hold that the advocate was guilty of professional or other misconduct.

The Advocate-General filed an appeal against the said order under section 37 of the Act. The disciplinary committee of the Bar Council of India in its order allowed the appeal and suspended the advocate for a year over-ruling, inter-alia, the objection that the Advocate-General was not competent to file the appeal. The advocate appealed to the Supreme Court of

India. In its judgment by the majority Their Lordships Hidayat-ullah, CJ., Shelat, J., Mitter, J[13], it was held that the appeal by the Advocate-General was incompetent.

4.2 PROCEDURE OF COMPLAINTS AGAINST ADVOCATES

A complaint against an advocate has to be in the form of a petition. It has to be duly signed and verified as required under the Code of Civil Procedure.

The complaint can be filed in English or in Hindi or in a regional language where the language has been declared to be a state language. In those cases where the complaint is in Hindi or in any other regional language, the State Bar Council shall translate the complaint in English whenever a disciplinary matter is sent to the Bar Council of India as per the Advocates Act.

Every complaint shall be accompanied by the fees prescribed in the Bar Council of India Rules.

Removal of Defects and Request for Particulars in a Complaint

The Secretary of the Bar Council may require the complainant to pay the prescribed fees if the proper fee has not been paid. He can also call the complainant to remove any defects and call for the particulars or copies of the complaint or other documents as may be considered necessary.

On a complaint being found to be in order, it shall be registered and placed before the Bar Council for such order as it may deem fit to pass.

Withdrawal and Settlement of Complaints

No matter taken up by the State Bar Council (either *suo motu* or on a complaint made by other parties) for misconduct of advocates shall be dropped solely by reason of its having been withdrawn, settled or otherwise compromised, or because the complainant does not want proceed with the enquiry.

Before referring a complaint for misconduct of an advocate to one of its Disciplinary Committees to be specified by it, the Bar Council may require a complainant to furnish further and better particulars or may call for comments from the advocate complained against, within a time to be fixed by it.

Show Cause Notice

Once the Bar Council has referred the complaint to a disciplinary committee, the Registrar should expeditiously send a notice to the advocate.

The notice will ask the concerned advocate to show cause within a specified date, on the complaint made against him and to submit the statement of defence, documents and affidavits in support of the defence.

It will also further inform him that in case of his non-appearance on the fixed date of hearing, the matter shall be heard and determined in his absence. Appearance usually includes appearance by an advocate or through a duly authorised representative.

Time of Enquiry

The Chairman of the Disciplinary Committee will fix the date, hour, and place of the enquiry. This date will not ordinarily be later than thirty days from the receipt of the reference. The Registrar has to give notice of the date, hour and place to the complainant or other person aggrieved, the advocate concerned, and the Attorney General or the Additional Solicitor General of India or the Advocate General, as the case may be.

Notices

The notices shall, subject to necessary modification, be in Form Nos. E-1 and E-2. It shall be sent to the advocates appearing for the parties. Notice to a party not appearing by the advocate shall be sent to the address as furnished in the complaint or in the grounds of appeal.

The cost of the notices shall be borne by the complainant unless the Disciplinary Committee otherwise directs.

The notices may be sent ordinarily through messenger or by registered post and served on the advocate or the party concerned or his agent or other person as provided for in Order V of the Civil Procedure Code.

Notice may also be sent for service through any Civil Court.

Where the notice sent to any party cannot be served using the normal methods listed above, it may be served by affixing a copy in some conspicuous place in the office of the Bar Council, and also upon some conspicuous part of the house (if any) in which the party concerned is known to have last resided or had his office.

Appearance and Witnesses

Parties can appear in person or by an advocate who should file a *vakalatnama* giving the name of the Bar Council in which he is enrolled, his residential address, telephone number if any, and his address for service of notices.

A Senior Advocate is entitled to appear with another advocate who has filed a *vakalatnama*.

The Bar Council or its Disciplinary Committee may at any stage of a proceeding appoint an advocate to appear as *Amicus Curiae*. Such advocate may be paid such fee as the Council or the Committee may decide.

Excepting when the Committee has otherwise directed, service on the advocate shall be deemed to be sufficient service on the parties concerned, even if copies of the notices are in addition sent to the parties, whether the parties have or have not been served.

Unless otherwise indicated, where more than one Advocate appears for the same party, it is sufficient to serve the notice on any of them.

***Ex-parte* Proceedings**

If, in an enquiry on a complaint received, either the complainant or the respondent does not appear before the Disciplinary Committee in spite of service of notice, the Committee may proceed *ex-parte* or direct fresh notice to be served.

Any such order for proceeding *ex-parte* may be set aside on sufficient cause being shown, when an application is made supported by an affidavit, within 60 days of the passing of the *ex-parte* order.

The provisions of Section 5 of the Limitation Act, 1963 shall apply to this sub-rule.

Proceedings and Exhibits

The Disciplinary Committee shall hear the Attorney General or the Additional Solicitor General of India or the Advocate General, as the case may be or their advocate and parties or their advocates.

The matters can be heard and determined on documents and affidavits. Unless the committee is of the opinion that it should be in the interest of justice to permit cross-examination of the deponents or to take oral evidence, in which case the procedure for the trial of civil suits shall as far as possible be followed.

On every document admitted in evidence, the following endorsement shall be made which shall be signed by the Chairman or any member of the Committee:

The Disciplinary Committee of Bar Council of

Exhibit No

Date of Document.....

Produced by

Date

Signature of

The exhibits shall be marked as follows: –

- a. Those of the complainant as C1,C2, etc.
- b. Those of Respondent as R1, R2,etc.
- c. Those of Disciplinary Committee as D1, D2, etc.

The Disciplinary Committee may at any stage direct the parties or their advocates to furnish such further and better particulars, as it considers necessary.

Recording of Evidence

Any member of the Committee or any other person authorised by the committee shall record the evidence given before the Disciplinary Committee preferably in English. The evidence so recorded shall be signed by the Chairman or by any other member of the committee if the Chairman is not there.

In the case where the records of evidence are in any other language than English and the same has to be sent to the Bar Council of India or its Disciplinary Committee, then the same has to be translated into English. Such a translation thereof in English has to be made by a person nominated by Committee or Registrar certifying the same to be true copy should also be sent.

Record of Proceedings

Every Disciplinary Committee shall make a record of its day-to-day proceedings.

The Registrar of the Disciplinary Committee shall maintain a case diary setting out shortly in order of date, all relevant information concerning the date of filing, the date for hearing and despatch.

The case diary shall also have the details of service of the notices on the parties or the Advocates or the Attorney General or the Additional Solicitor General or the advocate General as the case may be, of statements or petitions filed and/or of their order, and of other proceedings in the matter before the Committee.

Dropping of Enquiries on Certain Grounds

In the case of the death of the complainant during the enquiry proceedings (and if there is no representative who is willing to conduct the case), the Disciplinary Committee may having regard to the allegations made in the complaint and the evidence available, make a suitable order either to proceed with the enquiry or to drop it.

In the case of an enquiry against one advocate only, on his death the Disciplinary Committee shall record the fact of such death and drop the proceedings.

Where the enquiry is against more than one advocate, on the death of one of them, the Disciplinary Committee may continue the enquiry against the other advocate unless it decides otherwise.

No disciplinary enquiry shall be dropped solely by reason of its having been withdrawn, settled or otherwise compromised, or that the complainant does not want to proceed with the enquiry.

Dress

Unless otherwise permitted, counsel appearing before any of the Disciplinary Committees of the State Bar Council or Bar Council of India shall appear in court dress.

Findings and Judgment

The finding of the majority of the members of the Disciplinary Committee shall be the finding of the Committee. The reason given in support of the finding may be given in the form of a judgment.

If there is a difference of opinion, any member dissenting shall be entitled to record his dissent giving his own reason. It shall be competent for the Disciplinary Committee to award such costs as it thinks fit.

The Registrar of the Disciplinary Committee shall send, free of charge to each of the parties in the proceedings, a certified copy of the final order or judgment.

The date of an Order made by the Disciplinary Committee shall be the date on which it is first received in the office of the Bar Council after all the members have signed it.

For the purpose of limitation, the date of the Order shall be the date on which the contents of the signed Order are communicated to the parties affected.

Pending Matters

Certified copies of the records of a case pending before the Disciplinary Committee may be granted to the parties or to their counsel on an application made in that behalf and on payment of the prescribed fee. This is mandatory unless the Committee has directed otherwise.

The Secretary of a State Bar Council shall send to the Secretary of the Bar Council of India, quarterly statements of the complaints received and the stage of the proceedings before the State Bar Council and Disciplinary Committees.

The Secretary of the Bar Council of India may call for further statements and particulars as he considers necessary.

The Secretary of every State Bar Council shall furnish such particulars and send such statements as may be considered necessary by the Secretary of the Bar Council of India for these purposes and send them all to the records of proceedings that stand transferred.

The date of receipt of the complaint or the date of the initiation of the proceedings at the instance of the State Bar Council shall be the date on which the State Bar Council refers the case for disposal to its Disciplinary Committee.

Withdrawal of Proceedings

Where a State Bar Council makes a report, the Secretary of the State Bar Council shall send to the Secretary of the Bar Council of India, all the records of the proceedings, along with the report.

An application by a person interested in the withdrawal of a proceeding shall sign the same. It shall set out the necessary facts supported by an affidavit and accompanied by the fee prescribed.

For making an order on an application of a party or otherwise for withdrawal of an application, the Disciplinary Committee of the Bar Council of India may:

- a. Call for a report of the Disciplinary Committee seized of the proceedings;
- b. Issue notice to the respondent;
- c. Require the parties to file such statements as it considers necessary;
- d. Call for the records of the proceedings; and
- e. Examine any witnesses.

In the proceedings before the Disciplinary Committee of Bar Council of India, the parties may appear in person or by an advocate who shall file a *vakalatnama*.

On consideration of the report of a State Bar Council or otherwise, the Disciplinary Committee of the Bar Council of India shall pass such orders as it considers proper.

Appeal to the Bar Council of India

An appeal to the Council from the State Bar Council shall be in the form of a memorandum in writing. If the appeal is in a language other than English, it shall be accompanied by a translation in English.

In every appeal, all persons who were parties to the original proceedings alone, shall be impleaded as parties.

In an appeal by the advocate against an order for misconduct, in case of death of the complainant, the legal representatives of the complainant shall be made parties.

An appeal may be presented by the appellant or his advocate or by his recognised agent in the office of the Bar Council of India. It can also be sent by registered post, so as to reach the Secretary, Bar Council of India. The appeal has to be presented on or before the last day of limitation.

Any appeal may be admitted after the period of limitation if the appellant satisfies the Disciplinary Committee that he has sufficient cause for not preferring the appeal within such a period. Any such application for condonation of delay shall be supported by an affidavit.

The memorandum of appeal shall contain necessary particulars as in Form G. The memorandum of appeal shall state when the order was communicated to the appellant and how it is in time.

Along with the memorandum of appeal, the appellant shall file:

a. The certified copy of the order appealed against, signed by the Registrar of the Disciplinary Committee,

or

b. (i) If there is only one respondent, five additional copies of the memorandum of appeal and of the order appealed against.

(ii) If there is more than one Respondent, such number of additional copies as may be necessary.

All copies shall be certified as true copies by the appellant or by his counsel.

Every memorandum of appeal shall be accompanied by the prescribed fees in cash.

If the papers filed in an appeal are not in order, the Registrar shall require the appellant to remove such defects within a specified time.

Allocation of Matters in Appeal

The Chairman of the Executive Committee or in his absence the Vice-Chairman of the Executive Committee) or such other member authorised in this behalf by the Council) shall have the power to allocate matters relating to the Disciplinary Committee. Sometimes the Council allots a particular case to any one particular Disciplinary Committee.

Any matter allotted to a particular Disciplinary Committee, which has not been heard, may be reallocated to a different Disciplinary Committee.

Interim Orders in Appeal

The Chairman of any Disciplinary Committee shall have powers to issue interim orders on urgent matters which may be placed before him by the Registrar.

Time and Date in Appeal

Subject to any resolution of the Bar Council of India relating to the places of hearing, the Chairman of the Disciplinary Committee concerned shall fix the date, hour and place for the hearing of the appeal.

Exhibits and Records in Appeal

The appellant shall be required to file six typed sets of the papers properly paged and indexed, if there is only one respondent.

In case of multiple respondents, as many more sets as there may be number of respondents, for the use of the Disciplinary Committee and by the other parties and for the record.

The papers to be filed are: –

- a. The complaint and the statement in the defence of the advocate,
- b. The oral and documentary evidence and such other papers on which parties intend to rely,
- c. Any other part of the record as may be directed by the Committee.

Where any of the above papers is in a language other than English, English translations thereof will be filed.

The respondent shall, if he so desires, or if so called upon, file six sets of typed papers of any part of the record on which he intends to rely. He shall also file English translations of papers that are not in English.

Notice of Hearing in Appeal

The Registrar shall give notices to the parties, informing them of the date, the time and the place of the hearing of the appeal. A copy of the memorandum of appeal shall be sent to the respondent along with the notice of the appeal.

Withdrawal of Appeal

No appeal filed against an order of punishment of an advocate shall be permitted to be withdrawn on account of settlement or compromise or adjustment of the claim against the advocate.

Every appeal filed by or against an advocate shall abate on the death of the advocate so far as he is concerned.

Records from State Bar Councils

The Registrar shall issue notice to the State Council concerned for the complete records to be sent to the Council.

The Registrar of the State Council concerned shall send along with the records a list containing particulars under the following columns and comply with such other directions as may be issued.

Application for Stay

An application for stay shall be made by the applicant with at least five copies of the application, and the affidavit and as many additional copies as there are respondents. Where the application is not in English, five copies with translation in English shall also be filed.

In every application for stay made to the Council, the applicant shall state if any application has been made to the State Council and the orders on the same.

Before a matter is allotted to a Disciplinary Committee the registrar may obtain orders on applications for interim stay or other urgent applications from the Chairman of any of the Disciplinary Committees. The orders passed shall be communicated to the parties and to the Secretary of the Bar Council concerned.

The Disciplinary Committee of the Bar Council of India shall exercise all the powers exercised by the Civil Court or Court of Appeal under C.P.C.

Sources available at: <http://www.barcouncilofindia.org/about/professional-standards/procedure-for-complaints-against-advocates/#:~:text=A%20complaint%20against%20an%20advocate,the%20Code%20of%20Civil%20Procedure.&text=The%20complaint%20can%20be%20filed,to%20be%20a%20state%20language.>

4.3 PUNISHMENTS FOR PROFESSIONAL MISCONDUCT

Chapter V of the Advocates Act, 1961 deals with the Conduct of Advocates.

35. Punishment of advocates for misconduct-³

(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 the case for disposal of its disciplinary committee.

(1A) [(Note:- Sub-section (1-A) ins. by Act 60 of 1973, sec.24) 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 (Note:- Certain words omitted by Act 60 of 1973, sec.24) shall fix a date for the hearing of the case 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 periods 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 practicing in any court or before any authority or person in India.

³<https://www.advocatekhoj.com/library/bareacts/advocate/35.php?Title=Advocates%20Act,%201961&STitle=Punishment%20of%20Advocates%20for%20mis>

(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.

[Explanation - (Note:- Ins. by Act 21 of 1964, sec.17) In this section, [(Note:- Ins. by Act 60 of 1973, sec.24) section 37 and section 38] the expression "Advocate-General" and "Advocate-General of the State" shall, in relation to the Union territory of Delhi, mean the Additional Solicitor General of India.]

The Disciplinary committee of the State Bar Council after hearing the Advocate concerned and the Advocate general comes to the conclusion that the misconduct is proved that it may pass any of the following orders, namely

- (i) Reprimand the Advocate.
- (ii) Suspend the Advocate from the practice for such period as it thinks fit.
- (iii) Remove the name of the Advocate from the Advocates Roll.

Punishment may be awarded depending on the gravity of misconduct established against him. The punishment to remove from the Advocates Roll is awarded only in the cases where the misconduct is of such nature that the Advocate is unworthy of remaining in the profession. Where an Advocate is suspended from the practice he shall not practice in any court or tribunal or any authority or person during the suspended period. Where notice is issued to the Advocate general, he may appear before the disciplinary committee in person or through any Advocate appearing on his behalf. If the misconduct is not proved beyond reasonable doubt, then the disciplinary committee shall dismiss the petition.

4.4 REMEDIES AGAINST THE ORDER OF PUNISHMENT

1. Appeal to the Bar council of India (s 37): Any person aggrieved by the order of the disciplinary committee of the State Bar Council, or the Advocate general of the State may within 60 days from the date of the order may prefer an appeal to the Bar Council of India. The appeal shall be filed in person or through by Advocate or by registered post. He must submit 5 copies of appeal memorandum along with the attested copy of the order of the State Bar Council. Such appeal shall be heard by the disciplinary committee of the Bar Council of India and after hearing it may pass any order it deems fit ie., it can confirm. The order of the State Bar Council, or increase or reduce the punishment, or totally remove the punishment.

2. Appeal to the Supreme Court : Any person aggrieved by an order made by the Disciplinary committee of the Bar Council of India, or the Attorney General of India may within 60 days from the date of order prefer an appeal to the Supreme court. The Supreme Court after hearing the parties concerned shall pass any order as it thinks fit. Normally, the Supreme court will not interfere with the concurrent findings of fact by the disciplinary committee of the Bar Council of India and the State Bar Council. If the finding is based on no evidence, then the court will examine it.

3. Stay of the order: For the convenience of filing an appeal against the order of the State Bar Council or the Bar Council of India, the aggrieved party can file an application before the concerned Bar Council which has passed the order to stay the order still appeal is filed. If genuine grounds are there then the concerned Bar Council can stay the order. Similarly, after filing the appeal before the Bar council of India or before the Supreme Court the aggrieved party can ask for the stay of the order still the disposal of the appeal. If the genuine grounds are there then the Bar Council or Supreme Court shall stay the order still the disposal of the appeal.

4.5 SUPREME COURT JUDGEMENTS ON PROFESSIONAL MISCONDUCT:

1. Sambhu Ram Yadav v. Hanuman Das Khatry:

The Supreme Court has, in some of its decisions, elucidated on the concept of ‘misconduct’, and its application. The facts of the case is that a complaint was filed by the appellant against an advocate to the Bar Council of Rajasthan, that while appearing in a suit as a counsel, he wrote a letter stating that the concerned judge, before whom the suit is pending accepts bribes, and asked for Rs. 10,000 to bribe and influence the judge to obtain a favourable order. The Disciplinary Committee, holding that the advocate was guilty if “misconduct”, stated that such an act made the advocate “totally unfit to be a lawyer.” The Supreme Court, upholding the finding of the Rajasthan Bar Council held that the legal profession is not a trade or business. Members belonging to the profession have a particular duty to uphold the integrity of the profession and to discourage corruption in order to ensure that justice is secured in a legal manner. The act of the advocate was misconduct of the highest degree as it not only obstructed

the administration of justice, but eroded the reputation of the profession.

2. Noratanman Courasia v. M. R. Murali

The Supreme Court explored the amplitude and extent of the words “professional misconduct” in Section 35 of the Advocates Act. The facts of the case involved an advocate (appearing as a litigant in the capacity of the respondent, and not an advocate in a rent control proceeding) assaulted and kicked the complainant and asked him to refrain from proceeding with the case. The main issue in this case was whether the act of the advocate amounted to misconduct, the action against which could be initiated in the Bar Council, even though he was not acting in the capacity of an advocate. It was upheld by the Supreme Court that a lawyer is obliged to observe the norms of behavior expected of him, which make him worthy of the confidence of the community in him as an officer of the Court. Therefore, in spite of the fact that he was not acting in his capacity as an advocate, his behavior was unfit for an advocate, and the Bar Council was justified in proceeding with the disciplinary proceedings against him.

REFERENCES

1. <https://www.legalserviceindia.com/legal/article-4046-scope-and-extent-of-disciplinary-committee.html>
2. <https://www.advocatekhoj.com/library/bareacts/advocate/35.php?Title=Advocates%20Act,%201961&STitle=Punishment%20of%20Advocates%20for%20mis>
3. <http://www.jiwaji.edu/pdf/ecourse/law/16.04.2020%20Professional%20Misconduct.pdf>
<http://www.legalservicesindia.com/article/1665/Professional-misconduct-of-lawyers-in-india.html>

UNIT V - ACCOUNTANCY FOR LAWYERS (SAL1001)

Accountancy is the science, art and practice of an accountant. It is a discipline which records, classifies, summarises and interprets financial information about the activities of a person or concern so that intelligent decisions can be made about the future actions.

Functions of Accounting:

1. Systematic record of transactions.
2. Communicating results to the interested parties.
3. Compliance with legal requirements.
4. Ascertain the financial position of individual.

Advantages of Accounting:

1. Replacement of memory.
2. Evidence in court.
3. Settlement of taxation liability.
4. Comparative study.
5. Assistance to various parties.

Limitations of Accounting:

1. Records only monetary transactions.
2. No realistic information.
3. Personal bias of accountant affects the accounting statements.
4. No real test of managerial performance.
5. It lacks a uniform procedure.

Need for Accountancy for Lawyers:

Lawyers have to maintain accounts and for this they should have the knowledge of accounting due to the following reasons:

1. As a member of the Bar Council, he should know its accounting.
2. He should know Legal services Authorities and Supreme Court Legal Services Committee.
3. He should know the accounting of Advocates as per Supreme Court rules.
4. He should know the welfare fund accounting.
5. He should know how to prepare his own accounts.

Case Laws:

1. **Hikmat Ali Khan v. Ishwar Prasad Arya and Others (AIR 1997 SC 864).**
The Supreme Court held that the conduct of Ishwar Prasad, an advocate was such that his name should be removed from the state roll of advocates as he was found guilty of an offence of attempting to commit murder and convicted for it and as he was unworthy of remaining in the profession.
2. **Pawan Kumar Sharma v. Gurdial Singh (1998 (7) SCC 24).**
The court held that mere ownership of the taxi cannot lead to any irresistible conclusion that he was engaged in “taxi business” to constitute misconduct.
3. **Harish Chander Singh v. Suman Dondey (1999 (2) SCC 215).**
The court held that the disciplinary committee of bar council could not have held the advocate guilty of charge of misappropriation especially without going the whole of accounts.
4. **Hamiraj L. Chulani v. Bar Council of Maharashtra & Goa (AIR 1996 SC 1708).**
The Supreme Court held that the rule made by the bar council restricting the entry of a person already carrying on other profession is not arbitrary and at the same time it does not impose reasonable restrictions.