



ROLE OF THE JUDICIARY IN PROFESSIONAL MISCONDUCT BY LAWYERS IN INDIA

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ABSTRACT

There is no denying the fact that the legal profession is a noble profession. This profession is regulated by the Advocates Act, 1961. This Act highlights the rules and regulations of the legal profession as well as the rights and duties of an advocate. It acts strictly maintains the legal profession in India. This Act of 1961 empowers Bar Councils to make certain rules and regulations for regulating the legal profession. In this research paper, the study has focused on highlights the role of the judiciary in professional misconduct by lawyers in India.

Key Words: Judiciary, Lawyer, Misconduct, Profession.

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INTRODUCTION

There is not denying the fact that Advocacy is a noble profession and an advocate is the most accountable, privileged and erudite person of the society and his act are role model for the society, which are necessary to be regulated. Professional misconduct is the behavior outside the bounds of what is considered acceptable or worthy of its membership by the governing body of a profession. Professional misconduct refers to disgraceful or dishonourable conduct not befitting an advocate.¹ Chapter V of the Advocate Act, 1961, deals with the conduct of advocates. It describes provisions relating to punishment for professional and other misconducts.

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

Misconduct, according to Oxford dictionary means a wrongful, improper, or unlawful conduct motivated by premeditated act. It is a behavior not conforming to prevailing standards or laws, or dishonest or bad management, especially by persons entrusted or engaged to act on another's behalf. The expression professional misconduct in the simple sense means improper conduct. In law profession misconduct means an act done willfully with a wrong intention by the

¹ Elbepeter, available on <http://www.legalservicesindia.com/article/1665/Professional-misconduct-of-lawyers-in-india.html> (last visited on 11 september 2018).



people engaged in the profession. It means any activity or behaviour of an advocate in violation of professional ethics for his selfish ends. If an act creates disrespect to his profession and makes him unworthy of being in the profession, it amounts to professional misconduct. In other word an act which disqualifies an advocate to continue in legal profession.

The expression “professional misconduct” has been well explained by the Supreme Court in the case of *V.P. Kumaravelu versus The Bar Council of India*.² The Court observed that whether negligence will amount to professional misconduct or not will depend upon the facts of each case. Gross negligence in the duties partaking of shades of delinquency would undoubtedly amount to professional misconduct. Similarly, the conduct which amounts to dereliction of duty by an advocate towards his clients or towards his case would amount to professional misconduct. But negligence without moral turpitude or delinquency may not amount to professional misconduct.

In the case *Noratanmal Chaurasia v. M.R. Murli*³ the Supreme Court has held that misconduct has not been defined in the Advocates Act, 1961 but misconduct envisages breach of discipline, although it would not be possible to lay down exhaustively as to what would constitute misconduct and indiscipline which, however, is wide enough to include wrongful omission or commission, whether done or omitted to be done intentionally or unintentionally. It means improper behaviour, intentional wrong doing or deliberate violation of a rule of standard of behaviour. Misconduct is said to be a transgression of some established and definite rule of action, where no discretion is left except what necessity may demand, it is a violation of definite law.

The Advocates Act, 1961 is a comprehensive legislation that regulates the legal practice and legal education in India. It envisages for the establishment of Bar Council of India and State Bar Councils with various disciplinary committees to deal with misconduct of the advocates. It also provides for the provisions relating to the admission and enrolment of advocates and advocate's right to practice. Chapter V containing sections 35 to 44 deals with the conduct of the advocates. It provides for punishment for advocates for professional and other misconduct and disciplinary powers of the Bar council of India. In order to attract the application of section 35 of the Advocates Act the misconduct need not be professional misconduct alone. The expression used in the section is Professional or other misconduct. So even conduct unconnected with the profession may account to a misconduct as for example, conviction for a crime, though the crime was not committed in the professional capacity. At the same time it is to be noted that a mere conviction is not sufficient to find an advocate guilty of misconduct, the court must look in to the

² AIR 1997 SC 110.

³ (2004) 5 SCC 689.



nature of the act on which the conviction is based to decide whether the advocate is or is not an unfit person to be removed from or to be allowed to remain in the profession.

The Part VII Chapter I of Rules made by the Bar Council of India under section 49(1)(f)⁴ contains the provisions relating to complaints against advocates and procedure to be followed by Disciplinary Committees of the State Bar Council and the Bar Council of India.

The principle to be applied in considering whether certain conduct amounts to misconduct or not are as follows⁵:

- 1) That the mere holding of certain views and expressions thereof in language, however emphatic or strong, is no ground for taking disciplinary action against a legal practitioner.
- 2) That mere conviction for an offence is not sufficient, but the court must look into the nature of the act on which the conviction is based to decide whether the legal practitioner is an unfit person to remain in profession
- 3) That a legal practitioner is a part of the machinery provided for the maintenance of order and the enforcement of the law of the land; therefore it is inconsistent with his duties as a legal practitioner to incite others to break the law, which it is the duty of the Courts to administer; those who live by the law cannot preach the breaking of the law
- 4) That organised breach of the law or incitement to acts tending of subvert order is a reasonable cause to suspend or remove a legal practitioner

That acts involving moral turpitude or which imply general infamy make a legal practitioner unfit to remain on the rolls of the Court. The motive of the informer in starting disciplinary action against an advocate is immaterial.

The Supreme Court in *Mahipal Singh Rana v. State of U.P.*⁶ while hearing the appeal in the matter of criminal contempt for intimidating and threatening a Civil Judge (Senior Division) by an advocate expressed its concern over unsatisfactory regulatory mechanism governing the advocates and observed that there was an urgent need to review the provision of the Advocates Act, 1961, particularly dealing with the regulatory mechanism for the legal profession and other identical issues in consultation with all concerned. Accordingly the matter was referred to the

⁴ Advocates Act, 1961.

⁵ C.C. Anajwala, *Law Realting to Advocates, Advocacy and Professional Ethics* 36 (C. Jamnadas & Co., Bombay, 1972).

⁶ AIR 2016 SC 3302.



Law Commission of India asking to go into all relevant aspects relating to regulation of the legal profession and submit its report. The Law Commission invited suggestions from all stakeholders including Bar Council of India to send their views and suggestions on the issue under examination and as to how the system could be improved. On 10th March, 2017, the Bar Council of India made comprehensive recommendations on various issues relating to the Advocates Act, 1961 and also submitted its draft bill for consideration of the Commission.

The Supreme Court while disposing off the Criminal Appeal of *Hussain & Anr. v. Union of India*⁷ deprecated the practice of boycotting the court observing that hardship faced by witnesses if their evidence is not recorded on the day they are summoned or impact of delay on under trials in custody on account of such avoidable interruptions of court proceedings is a matter of concern for any responsible body of professionals and they must take appropriate steps.

Conclusion

The role of lawyers in Indian society is of immense significance. They being part of the legal system of delivering justice holds great admiration and regard in Indian society. Each individual has a clear code of conduct that requirement to be followed by the individual living in society. A legal representative in discharging his specialized assignment has a sense of duty to his customer, a responsibility to his adversary, a duty to the court, a duty to the society at large, and a duty to himself. It needs a high degree of decency and poise to strike a balance and arrive at the place of blameless stand, more so, when there are incompatible claims. While discharging the responsibility to the court, a legal representative should never intentionally be a party to any dishonesty, design, or deception. While placing the law before the court a public prosecutor is at liberty to put forth a proposition and canvass the same to the best of his wits and capacity so as to argue an exposition that would serve up the interest of his customer and the general public.

⁷ 2017 SCC Online SC 235.