



RAMA UNIVERSITY

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FACULTY OF JURIDICAL SCIENCES

SUBJECT: Professional Ethics and
Professional Accounting System

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LECTURE: 31

NAME OF FACULTY: Ms. Anjali Dixit

Assistant Professor

Lecture-31



Solicitation of Professional Work

Solicitation of Professional Work

Rajendra V. Pai V. Alex Fernandes and Ors. Court held that debarring a person from pursuing his career for his life is an extreme punishment and calls for caution and circumspection before being passed. No doubt probity and high standards of ethics and morality in professional career particularly of an advocate must be maintained and cases of proved professional misconduct severely dealt with; yet, we strongly feel that the punishment given to the appellant in the totality of facts and circumstances of the case is so disproportionate as to prick the conscience of the Court. Undoubtedly, the appellant should not have indulged into prosecuting or defending a litigation in which he had a personal interest in view of his family property being involved.

Breach of Trust By Misappropriating The Asset Of Client

Harish Chandra Tiwari v. Baiju; Court held on these fact, Appellant Harish Chandra Tiwari was enrolled as an advocate with the Bar Council of the State of UP in May 1982 and has been practising since then, mainly in the courts at Lakhimpur Kheri District in UP. Respondent Baiju engaged the delinquent advocate in a land acquisition case in which the respondent was a claimant for compensation. The Disciplinary Committee has described the respondent as “an old, helpless, poor illiterate person.” Compensation of Rs. 8118/- for the acquisition of the land of the said Baiju was deposited by the State in the court. Appellant applied for releasing the amount and as per orders of the court he withdrew the said amount on 2.9.1987. But he did not return it to the client to whom it was payable nor did he inform the client about the receipt of the amount. Long thereafter, when the client came to know of it and after failing to get the amount returned by the advocate, complaint was lodged by him with the Bar Council of the State for initiating suitable disciplinary action against the appellant. Court held that among the different types of misconduct envisaged for a legal practitioner misappropriation of the client’s money must be regarded as one of the gravest. In this professional capacity the legal practitioner has to collect money from the client towards expenses of the litigation, or withdraw money from the court payable to the client or take money of the client to be deposited in court. In all such cases, when the money of the client reaches his hand it is a trust. If a public servant misappropriates money he is liable to be punished under the present Prevention of Corruption Act, with imprisonment which shall not be less than one year. He is certain to be dismissed from service. But if an advocate misappropriates money of the client there is no justification in de-escalating the gravity of the misdemeanor. Perhaps the dimension of the gravity of such breach of trust would be mitigated when the misappropriation remained only for a temporary period. There may be justification to award a lesser punishment in a case where the delinquent advocate returned the money before commencing the disciplinary proceedings.

Informing About Bribe: Shambhu Ram Yadav v. Hanuman Das Khatry, the Court upheld the order of bar council of India dated 31st July 1999, which held that the appellant has served as advocated for 50 years and it was not expected of him to indulge in such a practice of corrupting the judiciary or offering bribe to the judge and he admittedly demanded Rs.10,000/- from his client and he orally stated that subsequently order was passed in his client’s favour. This is enough to make him totally unfit to be a lawyer by writing the letter in question. We cannot impose any lesser punishment than debarring him permanently from the practice .His name should be struck off from, the roll of advocates maintained by

the Bar Council of Rajasthan. Hereafter the appellant will not have any right to appear in any Court of Law, Tribunal or any authority. Court impose a cost of Rs. 5,000/- to the appellant which should be paid by the appellant to the Bar Council of India which has to be within two months.

The list of instances of professional misconduct is not exhaustive, the Supreme court has widened the scope and ambit of the term misconduct in numerous instances, only few cases has been elaborated above.

Sl no	Instance of misconduct	Held in Case	Citation
1	Retention of money deposited with advocate for the decree holder even after execution proceedings	Prahlad Saran Gupta V Bar council of India	AIR 1997.SC.1338
2	Misguiding Junior Advocate	Harish Chander Singh V SN Tripathi	AIR. 1997 SC 879
3	Assaulting opponent with Knife in Court room	Hikmat AliKhan v Ishwar Prasad Arya	AIR 1997. SC 864
4	Scandalisation against Judge	In re DC Saxena	AIR 1996 SC 2481
5	Attending court with fire arm	UP Sales tax service association v taxation Bar Association, Agra	AIR 1996.SC 98
6	Discussion of the conduct of judge and pass resolution by bar council, bar association or group of practicing advocates	C Ravichandran Iyer v Justice AM Bhattacharjee	1995. (2) KLT, SN 56 case no 77.
7	Failure to return will executed and kept in safe custody	John D Souza v edward Ani	1994. SC 975
8	Constant abstention from conducting of cases	Onkar Singh V Angrez Singh	1993, (1) KLT 650, P&H High Court.
9	Misappropriation of amount paid	DS Dalai V State Bank of India JS Jadhav v Mustafa Haji	AIR 1993 SC 1608 / AIR 1993. SC 1535

		Mohamed Yusuf	
10	Attesting forged affidavit	M Veerendra Rao v Tek Chand	AIR 1985 SC 28
11	Failure to attend trial after accepting the brief	SJ Choudhary v State	AIR 1984 SC 618
12	Improper legal advice	PD Khandekar v Bar Council of Maharashtra	AIR 1984 SC 110
13	Misappropriation of Decretal amount	KV Umre v Venubai	AIR 1983 SC 1154
14	Taking money from client for the purpose of giving bribe	Chandra Sekhar Soni v Bar Council of Rajasthan	AIR 1983 SC 1012
15	Rushing towards potential clients and snatching briefs	The bar Council of Maharashtra v MV Dabholkar	AIR 1976 SC 242
16	Taking advantage of the ignorance and illiteracy of the clients	NA Mirzan V the disciplinary committee of the Bar council of Maharashtra	AIR 1972 SC 46
17	Appearing with out authority on a forged vakalath	In re advocate	AIR 1971 Ker 161
18	Advertising profession	CD Sekkizhar v Secretary, Bar Council, Madras.	AIR 1967 Mad. 35
19	Gross negligence involving moral turpitude	In the matter of P an Advocate and VP Kumaravelu v the Bar council of India	AIR 1963. SC 1313 / AIR 1997 SC 1014
20	Coercing Colleagues	In re Badri Narin	AIR 1960 Pt. 307
21	Appearing for both sides	Rambharosa Kalar v Surendra nath Thakur	AIR 1960 MP 81

22	False identification of Deponents	Brahma din and others v Chandrasekhar Shukla	AIR 1958 AP 116
23	Indecent cross examination	Shri Narain Jafa V The Hon. Judges of the High Court, Allahabad	AIR 1953 SC 368
24	Shouting political slogans and holding demonstrations in court	In the matter of a pleader, Ottapalam	AIR 1943, Mad. 130
25	Attending court in drunken state	In the matter of a lower grade pleader	AIR 1934 Rang. 423
26	Breach of trust	Bapurao Pakhiddey v Suman Dondey	1999 (2) SCC 442
27	bribe	Purushottam Eknath Nemade v DN Mahajun	1999 (20) SCC 215
28	Fraud and forgery	LC Goyal v Nawal Kishore and Devender Bhai Shanker Mehta v Ramesh Chandra Vithal Dass Seth	1997 (2) SCC 258 / AIR 1996 SC 2022

Procedure Followed on the Notice of Professional Misconduct

The following is the procedure followed (1) In exercise of powers under Section 35 contained in Chapter V entitled “conduct of advocates”, on receipt of a complaint against an advocate (or suo motu) if the State Bar Council has ‘reason to believe’ that any advocate on its roll has been guilty of “professional or other misconduct”, disciplinary proceeding may be initiated against him.

(2) Neither Section 35 nor any other provision of the Act defines the expression ‘legal misconduct’ or the expression ‘misconduct’.

(3) The Disciplinary Committee of the State Bar Council is authorised to inflict punishment, including removal of his name from the rolls of the Bar Council and suspending him from practice for a period deemed fit by it, after giving the advocate concerned and the ‘Advocate General’ of the State an opportunity of hearing.

(4) While under Section 42(1) of the Act the Disciplinary Committee has been conferred powers vested in a civil court in respect of certain matters including summoning and enforcing attendance of any person

and examining him on oath, the Act which enjoins the Disciplinary Committee to ‘afford an opportunity of hearing’ (vide Section 35) to the advocate does not prescribe the procedure to be followed at the hearing.

(5) The procedure to be followed in an enquiry under Section 35 is outlined in Part VII of the Bar Council of India Rules made under the authority of Section 60 of the Act. Rule 8(1) of the said Rules enjoins the Disciplinary Committee to hear the concerned parties that is to say the complainant and the concerned advocate as also the Attorney General or the Solicitor General or the Advocate General. It also enjoins that if it is considered appropriate to take oral evidence the procedure of the trial of civil suits shall as far as possible be followed.

Critique

The advocates act 1961 was a long sought after legislation to consolidate the law relating to the legal practioners, constitution of autonomous Bar Councils, prescription of uniform qualification for admission and enrolment of persons as advocates, more importantly it imposes punishment for professional misconduct by advocates and in that respect it acts as a quasi-judicial body. Only body that can be approached for professional misconduct of advocate is Bar council constituted under the Act except for contempt of court which is also a misconduct. However the following criticisms are levelled against the Act in terms of its power to punish for professional and other misconduct;

- 1) No provision of appeal is provided in the act in respective High courts, hence power of bar Council of the State is equated with that of High court.
- 2) In ordinary course it is difficult for an advocate to approach the Supreme Court and get the case admitted from an aggrieved order of the Bar Council of India.
- 3) The act has not defined the term misconduct, instead it has included professional and other misconduct and definition is left to the Bar councils and Supreme court to decide and to widen the scope.
- 4) Denial of the principle of natural justice to an ordinary litigant who is aggrieved with the misconduct of the advocate, as the body of their association ie Bar council is deciding the case in which their own member is the respondent. This is against the rule that “no man can be a judge in his own case”. The lay person has to approach appropriate fora constituted under Consumer Protection act 1986 to get any pecuniary relief due to the loss caused by such misconduct, if it fits under deficiency of service.
- 5) At times, based on the circumstances the Act is violative of Article 19 (1) (g), right to practice trade or profession, and also freedom of speech and expression enshrined in Article 19(1)(a).

However the intention of the legislature to uphold the dignity of the profession and to preserve the moral etiquette among legal practioners have been largely achieved by the Act.

Comparable provisions in other countries

England – In England The Legal Profession Act, 1987 is “an Act to regulate the admission and practice of barristers and solicitors” (as amended in 2007) and the The Revised Professional Conduct and Practice

Rules made by the Council of the Law Society of New South Wales on 24 August 1995 pursuant to its power under Section 57B of the Legal Profession Act, 1987 and the Statement of Ethics proclaimed by the Law Society of New South Wales in November 1994 governs the conduct in legal profession. From 2010 on wards legal ombudsman is formed to deal with complaints against all lawyers, including solicitors, registered in England and Wales. The Legal Ombudsman replaced the previous complaint handling bodies (for example, the Legal Complaints Service in the case of complaints against solicitors), and has been dealing with new complaints since 6 October 2010. Anyone who is dissatisfied with the standard of service received from their lawyer should complain, in the first instance, to the lawyer concerned. If the matter cannot be resolved in this way, then a complaint may be made to the Legal Ombudsman.

USA – in USA each state has a separate set of rules of practices and different code of conduct for the advocates. For example the newyork state has a separate rules of Professional Conduct promulgated as Joint Rules of the Appellate Divisions of the Supreme Court, effective from April 1, 2009. They supersede the former part 1200 (Disciplinary Rules of the Code of Professional Responsibility). Indiana state has separate rules for professional conduct, which elaborates in detail about all aspects of professional conduct and code of ethics to be followed by an advocate.

SELF-TEST QUESTIONS

S.NO	Question	Option (a)	Option (b)	Option (c)	Option (d)

1	Failure to return will executed and kept in safe custody	John D Souza v Edward Ani	M Veerendra Rao v Tek Chand	In re DC Saxena	None of the Above
2	Constant abstention from conducting of cases	Onkar Singh V Angrez Singh	Harish Chander Singh V SN Tripathi	Harish Chander Singh V SN Tripathi	None of the Above
3	Misappropriation of amount paid	DS Dalai V State Bank of India	Harish Chander Singh V SN Tripathi	Harish Chander Singh V SN Tripathi	None of the Above
4	Attesting forged affidavit	M Veerendra Rao v Tek Chand	M Veerendra Rao v Tek Chand	In re DC Saxena	None of the Above
5	Appearing with out authority on a forged vakalath	In re advocate	M Veerendra Rao v Tek Chand	In re DC Saxena	None of the Above

Answers: 1-(a),2-(a), 3-(a),4-(a),5-(a)