



# RAMA UNIVERSITY

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## FACULTY OF JURIDICAL SCIENCES

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# Lecture-28



**Reciprocity as partners in administration of Justice**

## **Reciprocity as partners in administration of Justice**

The un courteous conduct or misconduct of a lawyer or judge may amount to contempt of Court, there are two Types of Contempt of Court. for example, using insulting language against a judge or threatening him with transfer or impeachment or addressing the judge in a loose manner or questioning his authority to ask questions or making scandalous allegations against a judge etc. It amounts to contempt of Court. He is liable for his un courteous act and punishable for such contempt of Court. The punishment for contempt of Court is intended to protect the public confidence in the system of Administration of Justice.

Bar-Bench Relation in law refers to the cordial relationship between the Advocates and the Judges. The Bar (Advocates) and Bench (Judges) play an important role in the administration of justice. The judges administer the law with the assistance of the lawyers. The lawyers are the officers of the court. They are expected to assist the court in the administration of justice. As the officers of the court the lawyers are required to maintain respectful attitude toward the court bearing in mind that the dignity of the judicial office is essential for the survival of the society. Mutual respect is necessary for the maintenance of the cordial relations between the Bench and Bar. The opinion of our Supreme Court in the context of Bench-Bar Relation has been clearly laid down in P.D. Gupta v. Ram Murti and Others<sup>1</sup> as follows: "A lawyer owes a duty to be fair not only to his client but also to the court as well as to the opposite party in the conduct of the case. Administration of justice is a stream which has to be kept pure and clean. It has to be kept unpolluted. Administration of justice is not something which concerns the Bench only. It concerns the Bar as well. The Bar is the principal ground for recruiting judges. Nobody should be able to raise a finger about the conduct of a lawyer. Actually judges and lawyers are complementary to each other. The primary duty of the lawyer is to inform the court as to the law and facts of the case and to aid the court to do justice by arriving at the correct conclusions. Good and strong advocacy by the counsel is necessary for the good administration of justice. Consequently, the counsel must have freedom to present his case fully <sup>1</sup> AIR 1998 SC 283. and properly and should not be interrupted by the judges unless the interruption is necessary."

In Mahant Hakumat Rai v. Emperor<sup>2</sup> the Lahore High Court had held that "Without failing in respect to Bench, it is the duty of the members of the Bar to assert their just rights to be heard by the tribunal before which they are practising. They should be fearless and independent in the discharge of their duties, and would be perfectly right in protesting against irregular procedure on the part of any judge; and if the advocate is improperly checked or found fault with, he should vindicate the independence of the Bar. He would be perfectly justified in insisting on getting a proper hearing and he would be perfectly right to object to any interruption with the course of his argument such as to disturb him in doing his duty to his client. Plenary powers vested in the Presiding Officer of the Court, apart from the fact that they have rarely been used against members of the legal profession so far, should only be used to vindicate the honour of the court or to satisfy the necessities of public justice and not as a matter of course." It may, however, be noted that the presence of professional etiquette coupled with recognition by judiciary of the importance of an independent Bar, will work together to minimize the possibility of confrontation between the Bench and the Bar. To conclude this part we can say that, a free and fearless Bar is not to be preferred to an independent judiciary, nor an independent judiciary to a free bar. Neither has a primacy

over the other. Both are indispensable to a free society. The freedom of the Bar presupposes an independent judiciary through which that freedom may, if necessary, be vindicated. One of the potent means for assuring judges of their independence is responsible, well-behaved, cultured and, learned Bar. Finally, reciprocal adjustment of conduct by the Bench and the Bar is the keystone to the smooth functioning of courts in general interest of the society.

### **Professional misconduct of lawyers in India**

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 behaviour 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 advocat. Chapter V of the Advocate Act, 1961, deals with the conduct of Advocates. It describes provisions relating to punishment for professional and other misconducts. Section 35(1) of the Advocate Act, 1961, says, 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 to it disciplinary committee. Generally legal profession is not a trade or business, it's a gracious, noble, and decontaminated profession of the society. Members belonging to this profession should not encourage deceitfulness and corruption, but they have to strive to secure justice to their clients. The credibility and reputation of the profession depends upon the manner in which the members of the profession conduct themselves. It's a symbol of healthy relationship between Bar and Bench.

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.

### **Meaning and Definition**

Profession is a vocation requiring some significant body of knowledge that is applied with high degree of consistency in the service of some relevant segment of society, by Hodge and Johnson. Occupation especially one requiring advanced education and special training by A. S. Hornby. It is different from other types of jobs, in the sense that it requires skills and these skills will be improved with experience.

The attributes of a profession as laid down by Dalton E. McFarland are;

- 1) The existence of a body of specialized knowledge or techniques
- 2) Formalized method of acquiring training and experience
- 3) The establishment of representative organization with professionalism as its goal.
- 4) The formation of ethical codes for the guidance of conduct.

5) The charging of fees based on services but with due regards for the priority of service over the desire for monetary rewards.

A person who carries/undertakes the profession is called a professional. Depending on the profession a person undertakes, he/she is identified with a special name relevant to 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 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.

To understand the scope and implication of the term 'misconduct', the context of the role and responsibility of an advocate should be kept in mind. Misconduct is a sufficiently wide expression, and need not necessarily imply the involvement of moral turpitude. 'Misconduct' per se has been defined in the Black's Law Dictionary to be "any transgression of some established and definite rule of action, a forbidden act, unlawful or improper behavior, willful in character, a dereliction of duty." In a different context, the Supreme Court has opined that the word "misconduct" has no precise meaning, and its scope and ambit has to be construed with reference to the subject matter and context wherein the term occurs. In the context of misconduct of an advocate, any conduct that in any way renders an advocate unfit for the exercise of his profession, or is likely to hamper or embarrass the administration of justice may be considered to amount to misconduct, for which disciplinary action may be initiated.

Darling J, defined the expression professional misconduct in, *In re A Solicitor ex parte the law society* as, It is shown that the advocate in the pursuit of his profession has done some thing with regard to it which would be reasonably regarded as disgraceful or dishonourable by his professional brethren of good repute and competency, then it is open to say that he is guilty of professional misconduct.

Misconduct is sufficiently comprehensive to include misfeasance as well as malfeasance and is applied to the professional people, it include unprofessional acts even though they are not inherently wrongful. The professional misconduct may consist the fact in any conduct, which tends to bring reproach on the legal profession or to alienate the favourable opinion which the public should entertain concerning it. In *State of Punjab v Ram Singh* the supreme Court held that the term misconduct may involve moral turpitude, it must be improper or wrong behaviour, unlawful behaviour, willful in character, a forbidden act, a transgression of established and definite rule of action or code of conduct, but not mere error of judgement, carelessness or negligence in performance of duty.

The Supreme Court has, in some of its decisions, elucidated on the concept of 'misconduct', and its application. In **Sambhu Ram Yadav v. Hanuman Das Khatri**, 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 of “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 in the opinion of the public.

In another case, **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.

It may be noted that in arriving at the decision in the case, the Supreme Court carried out an over-view of the jurisprudence of the courts in the area of misconduct of advocates. It reiterated that the term “misconduct” is incapable of a precise definition. Broadly speaking, it envisages any instance of breach of discipline. It means improper behavior, intentional wrongdoing or deliberate violation of a rule of standard of behavior. The term may also include wrongful intention, which is not a mere error of judgment. Therefore, “misconduct”, though incapable of a precise definition, acquires its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of duty.

In **N.G. Dastane v. Shrikant S. Shind**, where the advocate of one of the parties was asking for continuous adjournments to the immense inconvenience of the opposite party, it was held by the Supreme Court that seeking adjournments for postponing the examination of witnesses who were present without making other arrangements for examining such witnesses is a dereliction of the duty that an advocate owed to the Court, amounting to misconduct.

Ultimately, as it has been upheld and reiterated that “misconduct” would cover any activity or conduct which his professional brethren of good repute and competency would reasonably regard as disgraceful or dishonourable. It may be noted that the scope of “misconduct” is not restricted by technical interpretations of rules of conduct. This was proven conclusively in the case of **Bar Council of Maharashtra v. M.V. Dahbolkar**. The facts under consideration involved advocates positioning themselves at the entrance to the Magistrate’s courts and rushing towards potential litigants, often leading to an ugly scuffle to snatch briefs and undercutting of fees. The Disciplinary Committee of the state Bar Council found such behavior to amount to professional misconduct, but on appeal to the Bar Council of India, it was the Bar

Council of India absolved them of all charges of professional misconduct on the ground that the conduct did not contravene Rule 36 of the Standards of Professional Conduct and Etiquette as the rule required solicitation of work from a particular person with respect to a particular case, and this case did not meet all the necessary criteria, and such method of solicitation could not amount to misconduct. This approach of the Bar council of India was heavily reprimanded by the Supreme Court. It was held that restrictive interpretation of the relevant rule by splitting up the text does not imply that the conduct of the advocates was warranted or justified. The standard of conduct of advocates flows from the broad canons of ethics and high tone of behavior. It was held that “professional ethics cannot be contained in a Bar Council rule nor in traditional cant in the books but in new canons of conscience which will command the member of the calling of justice to obey rules or morality and utility.” Misconduct of advocates should thus be understood in a context-specific, dynamic sense, which captures the role of the advocate in the society at large.

### **Provisions in Advocates act 1961**

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 advocates 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 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.

Misconduct is of infinite variety, the expression professional or other misconduct must be understood in their plain and natural meaning and there is no justification in restricting their natural meaning. The term misconduct usually implies an act done willfully with a wrong intention and as applied to professional people it includes unprofessional acts even though such acts are not inherently wrongful.

### **The Code of Conduct Prescribed For Advocate**

Section 49 of the advocates act 1961 empowers the Bar Council of India to frame rules regulating standards of professional conduct. Accordingly various duties are prescribed for the advocates some of them are highlighted below.

No advertising or soliciting work, it is against an advocate’s code of ethics to solicit or advertise work and amounts to a misconduct on the part of the advocate. Both direct and indirect advertising is prohibited. An advocate may not advertise his services through circulars, advertisements, touts, personal communication or interviews not warranted by personal relations. Similarly, the following forms of indirect advertising are prohibited:

(i) by issuing circulars or election manifestos by a lawyer with his name, profession and address printed on the manifestos, thereby appealing to the members of the profession practicing in the lower courts who are in a position to recommend clients to counsel practicing in the HC.

(ii) canvassing for votes by touring in the province or sending out his clerk or agents to the various districts, which must necessarily mean directly approaching advocates practicing in subordinate courts. Further, the signboard or nameplate displayed by an advocate should be of reasonable size. It should not refer to details of an affiliation by the advocate i.e. that he is or has been president or member of a bar council or of any association, or he has been a Judge or an Advocate-General, or that he specializes in a particular kind of work, or that he is or was associated with any person or organization or with any particular cause or matter.

Not to demand fees for training; An advocate is restrained from demanding any fees for imparting training to enable any person to qualify for enrolment.

Not use name/services for unauthorized practice; An advocate may not allow his professional services or his name to be associated with, or be used for any unauthorized practice of law by any lay agency.

Not to enter appearance without consent of the advocate already engaged: an advocate is prohibited from entering appearance in a case where there is already another advocate engaged for a party except with the consent of such advocate. However if such consent is not produced, the advocate must state the reasons for not producing it, and may appear subsequently, only with the permission of the court.

Duty to opposite party:- While conducting a case, a lawyer has a duty to be fair not only to his client but also to the court, and to the opposite party. An advocate for a party must communicate or negotiate with the other parties regarding the subject matter of controversy, only through the opposite party's advocate. If an advocate has made any legitimate promises to the opposite party, he should fulfill the same, even if the promise was not reduced to writing or enforceable under the rules of the court.

Duties of an advocate towards his client: The relationship between a lawyer and a client is highly fiduciary and it is the duty of an advocate fearlessly to uphold the interests of the client by fair and honourable means without regard to any unpleasant consequences to himself or any other person.

The above are only few important code of conduct to be observed by an advocate practicing in India. According to Justice Abbot Parry, there are seven important qualities that a lawyer should possess, he call these qualities as seven lamps of advocacy, they are; Honesty, Courage, Industry, Wit, eloquence, Judgement, and Fellowship. Apart from that the panchsheel of the bar are Honesty, Industry, Justice, Service and Philisophy and Panchsheel of the bench according to Sri ram Kishore Rande are, Impartiality, Independence, Integrity and Industry, Judicial activism and Prayer. Among the various duties of the advocates like, duties to client, court, public, colleagues and self, selected points can be picked up and arranged according to the due and relative importance and are called as ten commandments of advocates they are;

#### **a) Duties to client**



- 1) Protection of the interest of the client
- 2) Proper estimation of the value of legal advices and services

**b) Duties to court**

- 3) Honesty and respect
  - 4) Preparation of the case
- c) Duties to Public
- 5) Service
  - 6) Loyalty to law and justice

**d) Duties to colleagues**

- 7) Fellowship
  - 8) Fairness
- e) Duties to self
- 9) Systematic study
  - 10) Prudence and deligence

The rules laid down by the Bar Council of India forms the code of conduct for advocates and in broad sense any violation of such rules or code of conduct can be termed as professional misconduct. The scope of the term has been still widened by the Supreme Court in various decisions.

**Instances of Misconduct**

Legal Practioners act 1879 has not defined the word Misconduct. The word Unprofessional conduct is used in the act. Even the Advocates Act 1961 has not defined the term misconduct because of the wide scope and application of the term. Hence to understand the instances of misconduct we have to rely on decided cases. Some of the instances of Professional misconduct are as follows,

- 1) Dereliction of duty
- 2) Professional negligence
- 3) Misappropriation
- 4) Changing sides
- 5) Contempt of court and improper behaviour before a magistrate
- 6) Furnishing false information
- 7) Giving improper advice
- 8) Misleading the clients in court
- 9) Non speaking the truth
- 10) Disowning allegiance to court
- 11) Moving application without informing that a similar application has been rejected by another authority
- 12) Suggesting to bribe the court officials
- 13) Forcing the procecuton witness not to tell the truth.

## 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)**