

INTRODUCTION

Development of legal profession in India

- Importance of legal profession.
 - Legal profession in pre-British India.
 - Legal profession during British period.
 - Legal profession after Independence.
 - All India Bar council.
 - Advocates act, 1961.
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- The legal profession plays an important role in the administration of justice. The lawyer assists the court in arriving at a correct judgment. The lawyer collects legal material relating to the case and thereby helps the court or judge to arrive at a correct judgment. Justice P.N. sapru has stated that the justification for the existence of counsel is that each side to the controversy should be in a position to present its case before an impartial tribunal in the best and most effective manner possible.
 - Actually the law is very complicated. The language of Acts and Regulations is often found to be very complicated and confusing and not easy to be understood. The citizens of the country require the advice of the Advocates to understand the exact meaning of the provisions of the Act and Regulations.
 - They are responsible to the court for the fair and honest conduct of a case. The lawyers play important role in the maintenance of peace and order in the society. They play important role in the law reforms also. The most difficult part of the process of legislation in the drafting of its provisions and no one is better fitted to give guidance on this than the lawyers.
 - Thus the legal profession is a profession of great honour. It has been created not for private gain but for public good. It is not a money making occupation but a branch of administration of justice. Since it is not a business, a lawyer cannot solicit work or advertise either directly or indirectly. An advocate is an officer of the court and required to maintain towards the court a respectful attitude bearing in mind that the dignity of the judicial office is essential for the survival of the society.
 - It is not well settled as to whether the legal profession was in existence in the pre-British India. However, it is clear that in pre-British India, it was not as organized as today. Actually, the legal profession as it exists today was created and developed during the British period.
 - During the Hindu period, the courts derived their authority from the king who was considered the fountain head of justice. The king court was superior to all other courts. The king was advised by his councilor in hearing and deciding the case but he was not bound by their advice. During the Muslim period the litigants were represented by a body of persons known as vakils. The vakil was paid a percentage of the amount in the suit.
 - It is notable that in early days of the British period the legal profession was not paid due attention and it was not well organized. Actually the East India Company was not interested in organizing the legal profession. In 1726 by a charter known as charter of 1726 in each Presidency Towns a Mayors court was established and, thus, by the charter a uniform judicial system was introduced in all the Presidency Towns- Bombay, Calcutta and madras. Before 1726 the courts were the courts of East India Company and they derived their authority not from the British Crown but from the East India Company and their decisions were not as authoritative as those of the courts in England. The Mayor's court was the Royal Courts and they derived their authority from the British Crown and not from the East India Company. The charter of 1726, thus, introduced Royal Courts in India but did not make provisions for the regulations of the legal practitioners. The legal profession was not organized. Many persons having no knowledge of law were practicing. In 1753 a new

charter was issued to modify the charter of 1726, but even after this chapter the legal profession was not organized.

- The Regulating Act, 1773 and the Charter of 1774 contributed much to the development on legal. The Regulating act 1773 empowered the British Crown to establish a supreme court at the Calcutta by abolishing Mayor Court constituted by Charter of 1753. Clause II of the charter 1774 empowered the Supreme Court to approve and enroll advocates and attorneys-at-law.
- The term “Advocate” then extended only to English and Irish Barristers and members of the Faculty of advocates in Scotland and the term “Attorneys” then meant only the British attorneys or solicitors. The Indian legal practitioners were not authorized to appear before the Supreme Court.
- The Indian High Courts Act 1861 occupies an important place in the development of the judicial administration in India. It empowered the British Crown to establish one High Court in each presidency Town. There after civil courts were also established in Bengal, Assam and North-western under civil court act 1887. Subsequently, the courts were organized in other provinces also. The criminal courts were organized properly by the criminal procedure code of 1898. The high courts were empowered to exercise the power of superintendence over the criminal and civil courts.
- The Letter patent of 1865 made provision in respect of the enrolment of the legal practitioners.
- In 1879, the legal practitioners Act was passed to consolidate and amend the law relating to the legal practitioners. It empowered advocates or vakils on the roll of any High court or the pleader of the Chief court of the Punjab, to practice in all the courts subordinate to the courts on the roll of which he was enrolled.
- Under the Legal practitioners act, 1879 the term “legal practitioners” has been taken to mean advocates, vakil or attorney of a high court and pleader. Mukhtar or revenue agents. This particular act has made certain provisions as regard to enrollment, practice, dismissal, suspension of the legal practitioners.
- In 1923 a committee called the Indian Bar committee was constituted under the Chairmanship of Sir Edward Chamier. The committee was to consider the issue as to the organization of the Bar on all India basis and establishment of an all-India Bar councils for the High court.
- In 1926 the Indian Bar Councils Act was enacted to give effect to the some of the recommendations of the Indian Bar committee. The act failed to satisfy the bar. The pleaders and mukhtars practicing in the Mufussil Courts were not within its scope. They were only advisory bodies.
- In 1951 a committee known as the All India Bar Committee was appointed under the chairmanship of Justice S.R. Das. It recommended for the establishment of an All India Bar council and state bar councils. It also recommended that there should be a common role of Advocates who should be authorized to practice n all courts in the country.
- In 1961 the existing Advocates act was enacted. It was passed for the purpose of amending and consolidating the law relating to legal practitioners and also for providing the constitution of bar council and an all India Bar and further providing many other provisions relating to advocates, law reforms, legal education, recognition of universities and colleges etc.

Legal Ethics & Significance

The word ethics is derived from the Greek word ethos (character), and from the Latin word mores (customs). Together they combine to define how individuals choose to interact with one another. In philosophy, ethics defines what is good for the individual and for society and establishes the nature of duties that people owe themselves and one another. The following items are characteristics of ethics:

- Ethics involves learning what is right and wrong, and then doing the right thing.

- Most ethical decisions have extended consequences.
- Most ethical decisions have multiple alternatives.
- Most ethical decisions have mixed outcomes.
- Most ethical decisions have uncertain consequences.
- Most ethical decisions have personal implications.

Legal profession is noble profession. The nobility of the legal profession is maintained by the adherence and observance of a set of professional norms by those who adopt this profession. It is known as legal ethics or the ethics of the legal profession. The fundamental of the legal ethics is to maintain the honor and dignity of the law profession, to secure a spirit of friendly cooperation between Bench and Bar in the promotion of highest standard of justice, to establish honorable and fair dealings of the counsel with his client, opponent and witness, to establish a spirit of brotherhood with bar.

Areas of application

1) Conflict of interest

A lawyer is at times faced with the question of whether to represent two or more clients whose interests conflict. Quite aside from his ethical obligations, the legal systems of the world generally prohibit a lawyer from representing a client whose interests conflict with those of another, unless both consent.

2) Confidential Communication

In Anglo-American countries judicial decisions, legislation, and legal ethics generally forbid a lawyer to testify about confidential communications between himself and his client unless the client consents. Provisions regarding confidentiality are also found in such diverse legal systems as those of Japan, Germany, and Russia. In countries in which the attorney's obligation to protect state interests is given relatively greater emphasis, there may be a duty to disclose information when it is deemed to be to the state's advantage

3) Advertising and solicitation

Traditionally, advertising by lawyers was forbidden almost everywhere. It was a long-standing principle of legal ethics in Anglo-American countries that an attorney must not seek professional employment through advertising or solicitation, direct or indirect. The reasons commonly given were that seeking employment through these means lowers the tone of the profession, that it leads to extravagant claims by attorneys and to unrealistic expectations on the part of clients, and that it is inconsistent with the professional relationship that should exist between attorney and client. A more basic reason appears to have been the social necessity of restraining the motive of personal gain and of stressing the objective of service.

4) Fees

In principle, attorneys are ethically enjoined to keep their fees reasonable, neither too high nor too low. Attempts to control fees have included the passage of general Statutes designed to regulate compensation for legal services of all sorts, as in Germany; the imposition of fees by courts in contentious matters, as in England and Wales; and the establishment of advisory fee schedules by the legal profession, as in Canada, France, Spain, and Japan. In the United States, local bar associations sometimes enforced minimum fee schedules through disciplinary proceedings; however, the U.S. Supreme Court held in 1975 that such practices violated antitrust laws.

5) Criminal cases

Both the prosecution and the defense of criminal cases raise special ethical issues. The prosecutor represents the state, and the state has an interest not only in convicting the guilty but also in acquitting the innocent. The prosecutor also has an ethical and, in considerable measure, a legal duty to disclose to the defense any information known to him and unknown to the defense that might exonerate the

defendant or mitigate the punishment. He must not employ trial tactics that may lead to unfair convictions, nor should he prosecute merely to enhance his political prospects.

6) Globalization

Although economic globalization has contributed in important ways to the worldwide growth of the legal profession, it has also created the potential for conflict between different ethical traditions. In Europe, for example, standards of confidentiality for in-house counsel differ from those observed by independent attorneys, a fact that has created difficulties for some U.S.-trained lawyers working for European firms. In China the rapidly increasing market for legal services has attracted legal professionals from democratic countries, which generally do not share the Chinese conception of an attorney's public obligations. It is likely that these kinds of challenges will be intensified by the continuing liberalization of the international legal market and by the development of technologies that enable lawyers to give advice from their offices to clients in distant and very different jurisdictions.

ETHICS OF LEGAL PROFESSION

Meaning, Nature and Need

Professional ethics are a set of norms or codes of conduct, set by people in a specific profession. A code of ethics is developed for each profession. Suppose you write articles in a newspaper. Professional ethics require that you verify facts before you

Write that article, isn't it? Simply put, professional ethics for lawyers in India lay down a set of guidelines, which defines their conduct in the profession that is highly competitive and dynamic. Indian law requires lawyers to observe professional ethics to uphold the dignity of the profession.

People are surprised when they hear that lawyers are expected to follow professional ethics and that they are accountable for dishonest, irresponsible and unprofessional behavior. Further, most people do not know that lawyers in India can lose the license to practice if they are found guilty of unethical practices that tarnish the dignity of their profession. A lawyer must adhere to the professional norms, for fair dealing with his client and to maintain the dignity of the profession.

The Bar Council of India is a statutory body that regulates and represents the Indian bar. It was created by Parliament under the Advocates Act, 1961. It prescribes standards of professional conduct and etiquette and exercises disciplinary jurisdiction. It sets standards for legal education and grants recognition to Universities whose degree in will serve as a qualification for students to enroll themselves as advocates upon graduation.

PROFESSIONAL ETHICS

Section 49(1)(c) of the Advocates Act, 1961 empowers the Bar Council of India to make rules so as to prescribe the standards of professional conduct and etiquette to be observed by the advocates. It has been made clear that such rules shall have only when they are approved by the Chief Justice of India. It has been made clear that any rules made in relation to the standards of professional conduct and etiquette to be observed by the advocates and in force before the commencement of the Advocates (Amendment) Act, 1973, shall continue in force, until altered or repealed or amended in accordance with the provisions of this act.

Chapter II of part VI of the rules framed by the Bar Council of India deals with the standards of professional conduct and etiquette. It contains several rules which lay down the standards of professional conduct and etiquette. These rules specify the duties of an advocate to the Court, client, opponent and colleagues, etc

The rules mentioned in chapter II of part VI of the rules of Bar Council of India may be discussed as follow-

Duty towards court

The Bar Council of India has made certain rules so as to prescribe duties of an advocate to the court. Such duties may be explained as follow-

1) During the presentation the case and while acting otherwise as an advocate before the court it is required to conduct himself with dignity and self respect. It is his duty to submit his grievances to the

proper authority. The rule empowers the advocate to make complaint against judicial officer but it should be submitted to proper authority.

- 2) An advocate is required to maintain towards the court respectful attitude bearing in mind that the dignity of judicial office is essential for survival of free community.
- 3) Rule has made it clear that no advocate shall influence the decision of the court by any illegal means. It prohibits the private communication with the Judge relating to pending case. If any advocate attempt to influence the decision of court by illegal means then it may amount to misconduct.
- 4) The rule requires the advocate to use his best effort to restrain and prevent his client from resorting to sharp or unfair practice opposite from council or parties which the advocate himself ought not to do.
- 5) An advocate shall appear in court at all times only in the prescribe dress and his appearance shall always be presentable.
- 6) An advocate shall not enter appearance act, plead, or practice in any way before a court, tribunal, or authority mentioned in section 30 of the Advocates Act, 1961 if the sole or any member thereof is related to the advocate as father, nephew, grandfather, son, grandson, uncle, brother, first cousin, husband, mother, wife, daughter, sister, niece, sister-in-law, mother-in-law, and father-in-law.
- 7) The rule requires the advocate not to wear bands or gowns in public place other than in court except on such ceremonial occasions and at such places as the Bar Council of India and the court may prescribe.
- 8) The rule provides that an advocate shall not appear in or before any court or tribunal or any other authority for or against an organization, institution, society, or corporation if he is a member of executive committee of such organization, institution, society, or corporation.
- 9) An advocate shall not act or plead in any matter in which he himself has some pecuniary interest.

Duty towards Client

Rule 11 to 33 deal with the duties of an advocate to his client. These rules may be explained as follow-

- 1) Rule 11 provides that an advocate is bound to accept any brief in the court or tribunal or before any authority which he proposes to practice at fee consistent with his standing at bar and also nature of case.
- 2) Rule 12 provides that an advocate shall not withdraw from engagement once accepted without sufficient cause and unless reasonable and sufficient notice given to the client.
- 3) Rule 13 provides that an advocate should not accept the brief or appear in a case in which he has reason to believe that he will be a witness.
- 4) Rule 14 provides that an advocate shall 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 judgment in either engaging him or continuing the engagement.
- 5) Rule 15 provides that it is the duty of an advocate to uphold the interest of his client fearlessly by all fair and honorable means without regard to any unpleasant consequences to himself or to any other.
- 6) Rule 16 provides that an advocate appearing for the prosecution of criminal trial shall so conduct the prosecution that it does not lead to conviction of an innocent.
- 7) Rule 17 provides that an advocate shall not commit directly or indirectly any breach of the obligation imposed by section 126 of Indian Evidence Act.
- 8) Rule 18 provides that an advocate shall not at any time be a party to the fomenting litigation.
- 9) Rule 19 makes it clear that an advocate shall not act on the instruction of any person other than his client or his authorized agent.
- 10) Rule 20 provides that the fee of an advocate depending upon the success of the sue he is considered as oppose to public policy. Contract for contingent fee is also hit by section 23 of the Indian Contract Act.
- 11) Rule 21 provides that an advocate shall not buy or traffic in or stipulate for or agree to receive any share or interest in any actionable claim.

- 12) Rule 22 provides that an advocate shall not directly or indirectly bid for or purchase either in his own name or any other name for his own benefit or benefit of any other person, any property sold in execution of decree or other proceeding in which he was professionally engaged.
- 13) Rule 23 provides that an advocate shall not adjust fee payable to him by his client against his own personal property or liability to the client which liability does not arise in course of his employment as an advocate.
- 14) Rule 24 provides that an advocate shall not do anything whereby he abuses or takes advantage of the confidence reposed in him by his client.
- 15) Rule 25 provides that an advocate should keep an account of clients money entrusted to him and accounts should show amount received from the client or on his behalf the expenses incurred for him and the debits made on account of fees with the respective dates and all other necessary particulars.
- 16) Rule 26 provides that where money is received from or on account of client, the entries in the account should contain a reference as to whether the amount has been received for fees or expenses and during the course of the proceeding no advocate shall accept with the consent in writing of the client concerned to be at liberty to divert any portion of the expenses towards fee.
- 17) Rule 27 provides that where any amount is received or given to him on behalf of his client, the fact of such receipt must be intimated to the client as early as possible. If the client demands the payment of such money and in spite of such demand the advocate does not pay him, he will be guilty of professional misconduct.
- 18) Rule 28 provides that after termination of the proceeding the advocate shall be at liberty to appropriate towards the settle fee due to him any sum remaining unexpended out of the amount paid or sent to him for expenses or any amount that has come into his hands in that proceeding.
- 19) Rule 29 provides that if the fee has been left unsettled the advocate can deduct out of any money of the client remaining in his hand at the termination of the proceeding for which he had been engaged.
- 20) Rule 30 provides that the copy of clients account shall be furnished to him on demand provided the necessary charges are paid.
- 21) Rule 31 requires an advocate not to enter into arrangements whereby funds in his hands are converted into loans. It makes it clear that an advocate shall not enter into arrangements whereby funds in his hands are converted into loans.
- 22) Rule 32 prohibits an advocate to lend money to his client for the purpose of any action for legal proceeding in which he is engaged by such client. It provides that an advocate shall not lend money to his client for the purpose of any action or legal proceeding in which he is engaged by such client.
- 23) Rule 33 provides that an advocate who has at any time advised in connection with the institution of the suit appeal or matter as drawn pleading or acted for party shall not act appear or plead for the opposite party.

Duty towards opponent

Rule 34 and 35 framed by the Bar council of India contain provisions as to the duties of an advocate to the opponent.

Rule 34 provides that an advocate shall not in any way communicate or negotiate upon the subject matter of controversy with any party represented by an advocate except through that advocate.

Rule 35 provides that 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. It is the duty of the advocate not to engage in discussion or argument about the subject of the dispute with the opposite party without notice of his counsel. Resolution 43 of Hoffman provides-

“I will never enter into any conversation with my opponent’s client relative to his claim or defence, except with the consent and in the presence of his counsel.”

Other duties

- 1) Rule 40 requires every advocate on the rolls of the State Bar Council to pay a certain sum to the state bar council. Rule 41 provides that all the sums so collected by the state bar council shall be credited in a separate fund to be known as “Bar Council of India Advocates welfare fund for the State” and shall be deposited in the bank as provided there under. According to rule 41(2) the Bar Council of India Advocates Welfare fund Committee for the State shall remit 20% of the total amount collected and credited to its account, to the bar council of India by the end of every month which shall be credited by the Bar council of India and the Bar council of India shall deposit the said amount in a separate fund to be known as “Bar Council of India Advocates Welfare fund.”

According to rule 41(3) the rest 80% of the total sum so collected by the Bar Council of India Advocate Welfare Fund Committee for the state shall be utilized for the welfare of the advocates in respect of welfare schemes sponsored by the respective State Bar Council.

Rule 42 deals with the consequences of non payment of the said amount by the advocate. It provides that if an advocate fails to pay the aforesaid sum within the prescribed time, the secretary of the State Bar Council shall issue to him a notice to show cause within a month why his right to practice be not suspended. In case the advocate pays the amount together with late fee within the period specified in notice, the proceeding shall be dropped. If the advocate does not pay the amount or fails to show sufficient cause, a committee of three members constituted by the state bar council in this behalf may pass an order suspending the right of the advocate to practice.

Rule 43 provides that an advocate who has been convicted of an offence mentioned under section 24-A of the Advocates Act or has been declared insolvent or has taken full time service or part time service or engages in business or any avocation inconsistent with his practicing as an advocate or has incurred any disqualification mentioned in the Advocates Act or the rules made there under, shall send a declaration to the effect to the respective state bar council in which the advocate is enrolled, within 90 days from the date of such disqualification.

Rule 44 provides, an appeal shall lie to the bar council of India at the instance of an aggrieved advocate within a period of 30 days from the date of the order passed under rule 42 and 43.

Rule 44-A provides that there shall be a Bar council of India Advocates Welfare Committee consisting of five members elected from amongst the members of the council. The term of the members of the committee shall be co-extensive with their term in the Bar Council of India. Rule 44-b makes it clear that the Bar Council of India shall utilise the funds received under rule 41(2), stated above, in accordance with the scheme which may be framed from time to time.

- 2) Duty in imparting training – rule 45 framed by the Bar Council of India makes it clear that it is improper for an advocate to demand or accept fees or any premium from any person as a consideration for imparting training in law under the rules prescribed by the State Bar Council to enable such person to qualify for enrolment under the Advocates Act, 1961
- 3) Duty to render legal aid – rule 46 provides that every advocate shall in practice of the profession of law bear in mind that any one genuinely in need of a lawyer is entitled to legal assistance even though he cannot pay for it fully or adequately and that within the limits of an advocates economic condition, free legal assistance to the indigent and oppressed is one of the highest obligation, as an advocate owes to the society.
- 4) Restriction on other employment – rules 47, 48, 49, 50, 51 and 52 deals with the restrictions on other employment. Rule 47 provides that an advocate shall not personally engage in any business but he may be a sleeping partner in a firm doing business provided that in the opinion of the appropriate state bar council the nature of the business is not inconsistent with the dignity of the profession. Rule 48 makes it clear that an advocate may be director or chairman of the board of directors of a company with or without any ordinary sitting fees, provided none of his duties are of executive character. An advocate shall not be a managing director or a secretary of any company. Rule 49 provides that an advocate shall not be a full time salaried employee of any person, government, firm, corporation or concern, so long as he continues to

practice and shall taking up any such employment intimate the fact to the bar council on whose roll his name appears and shall thereupon cease to practice as an advocate so long as he continues in such employment. Rule 50 provides that an advocate who has inherited or succeeded by survivorship, to a family business may continue it, but may not personally participate in the management thereof. According to rule 51 an advocate may review parliamentary bills for a remuneration, edit legal text books at a salary, coach pupils for legal examination, set and examine question papers and subject to the rules against advertising and full time employment, engage in broadcasting

Journalism, lecturing and teaching subject both legal and non legal. Rule 52 makes it clear that nothing in these rules shall prevent an advocate from accepting after obtaining the consent of the state bar council, part-time employment provided that in the opinion of the state bar council, the nature of the employment does not conflict with his professional work and is not inconsistent with the dignity of the profession.

Bar councils

In the year 1951, there was the appointment of a committee under the chairmanship of Justice S.R. Das which recommended for the establishment of an all India Bar Council and State Bar councils. The significant recommendations offered by the commission, among others, were that the powers of enrolment, suspension and removal of the advocates should be vested in the Bar councils. As a consequence, the 5th law commission in its fourteenth report, submitted in 1958 recommended for the establishment of a united All India Bar.

Acting upon the above recommendations the present Advocate act, 1961, was enacted aiming thereby to mend and consolidate the law relating to legal practitioners and also for containing provisions for the constitution of Bar council for the state and an All India Bar council.

Section 3 of the act provides for state Bar council. SBC shall consist of ex officio as well as elected members as provided under the advocate act, 1961.

Elected members:-

- (1) Fifteen elected members if the SBC has an electorate not exceeding five thousand.
- (2) Twenty elected members if the SBC has an electorate exceeding five thousand but not exceeding ten thousand.
- (3) Twenty five elected members if the SBC has an electorate exceeding ten thousand.

As per section 3(3) of the Act there shall be a chairman and the vice chairman of each SBC elected by the council as prescribed.

According to section 8 of the Advocate act, 1961 the term of the member shall be for a period of five years. If the SBC fails to provide for the election before expiry of the term, BCI may extend it for a period of six month.

Functions of the SBC:-

As per section 6 the functions performed by the SBC are as follows:-

- To admit persons as advocate on its roll.
- To prepare and maintain the roll concerning the persons admitted as advocates.
- To entertain and determine cases of misconduct against advocate on its roll.
- To safe guard the rights, privileges and interests of advocates on its roll.
- To promote the growth of Bar Association for the purpose of effective implementation of the welfare schemes as laid down under this section and section 7 of the Act.
- To promote and support law reforms.
- To conduct seminars and organize talks on legal topics by eminent jurists and publish journals and papers of legal interest.
- To organize legal aid to poor.
- To manage and invest the funds of Bar council.
- To provide for the election of its members.

- To visit and inspect universities as per the directions given under section 7 of the act.
- To perform all other functions conferred on it by or under the Act.
- To do all other things essential for the discharging of the functions as mentioned.

Section 4 of the Advocate act, 1961 contains the provision for the constitution of the BCI. It shall also have ex officio and elected members (one elected member by each SBC from amongst its members).

It shall also have one chairman and vice chairman, elected as provided.

Functions of the BCI, as per section 7 of the act are as follows:-

- It lays down standards of professional conduct and etiquette for advocates.
- It lays down the procedure which is to be followed by its disciplinary committee and the disciplinary committee of the SBC.
- It safeguards the rights, privileges and interest of advocates.
- It promotes and supports law reforms.
- It deals with and disposes of any matter arising under this act which may be referred to it by any SBC.
- It exercises general supervision and control over state bar councils.
- It promotes legal education and lays down standards of such education after consulting universities engaged in imparting legal education and also consulting SBC.
- It recognizes universities whose degree in law shall be a qualification for enrolment as advocate.
- It conducts seminars and organizes talks on legal topics wherein eminent jurists participate.
- It publishes journals and papers of legal interest.
- It makes arrangements for the legal aid to the poor.
- It recognizes foreign qualifications in law obtained outside India for the purpose of admission as an advocate under this act.
- It manages and invests funds of the BCI.
- It makes provisions for the election of its members

Ex officio shall hold office for a period of two years and members for a period of five years.

Legal status of Bar council:- According to section 5 of the Advocate act, 1961, every Bar council shall be a body corporate having a perpetual succession and a common seal, with the power to acquire and hold property, both movable and immovable, and to contract and may sue and be sued by the name which it is known.

Committees which may be constituted by the Bar council

Special committee (section 8-A):- The SBC has to conduct election for its members before the expiry of five years or the extended term. If there is failure on the part of the SBC to provide for such election, the BCI may constitute a special committee.

The committee shall consist of ex officio member of the SBC (who shall be the chairman of this committee) and two members to be nominated by the BCI.

The special committee is constituted for the purpose of discharging the functions of the SBC so long as bar council is constituted under the Act. (Section 8-A). The special committee has to conduct election within a period of 6 months from the date of its constitution.

Disciplinary committee: - (section 9) The Bar council is empowered to constitute one or more Disciplinary committees. This committee consists of three persons elected by the council from amongst its members. Its main duty is to conduct proceedings in cases of professional misconduct of advocate's referred to it. The tenure of committee is three years.

Legal Aid committee (section 9-A):- The Bar council may constitute one or more legal aid committees. The committee consists of maximum of 9 members but not less than 5, as may be prescribed. The tenure of the committee is 2 years.

Functions of the BCI (section 7):- The functions performed by the BCI are as follows—

- It lays down standards of professional conduct and etiquette for advocates.
- It lays down the procedure which is to be followed by its disciplinary committee and the disciplinary committee of the SBC.
- It safeguards the rights, privileges and interests of advocates.
- It promotes and supports law reforms.
- It deals with and disposes of any matter arising under this act which may be referred to it by any state Bar council.
- It exercises general supervision and control over state Bar councils.
- It promotes legal education and lays down standards of such education after consulting universities engaged in imparting legal education and also consulting state bar councils.
- It recognizes universities whose degree in law shall be a qualification for enrolment as advocate.
- It is empowered to visit and inspect such universities. It can also delegate this power to state Bar council.
- It conducts seminars and organizes talks on legal topics wherein eminent jurists participate. It is also engaged in the task of publishing journals and papers of legal interest.
- It makes arrangements for the legal aid to poor.
- It recognizes foreign qualifications in law obtained outside India for the purpose of admission as an advocate under this act.
- It manages and invests funds of the BCI.
- It makes provision for the election of its members.
- It also performs all other functions conferred on it by or under this act.

Admission, Enrolment and Rights of Advocate

- **Section 16 to 28 of the Advocate act deal with the admission and enrolment of advocate.**
- Section 16(1) provides that there shall be two classes of advocates, namely, senior advocates and other advocates.
- Section 16(2) provides that, an advocate may, with his consent, be designated as senior advocate if the Supreme Court or a High court is of opinion that by virtue of his ability, standing at the Bar or special knowledge or experience in law, he is deserving of such distinction.
- Such senior advocate shall, in the matter of their practice, be subject to such restrictions as the BCI may, in the interest of legal profession, prescribe.
- The rules framed by the BCI in the exercise of its power u/s 49(1) (g) of the Advocates Act are also notable. Chapter I of part IV of the rules of BCI makes provisions in relation to the senior advocates and they are as follows:-
- In the matter of their practice, a senior advocate shall not file vakalatnama or act in any court or Tribunal or before any person or Authority mentioned in section 30 of the Advocates Act.
- He shall appear along with an Advocate on record in the Supreme Court and also before any of the court, person or authority as mentioned in sec.30.
- A senior Advocate shall not accept instructions to draft pleading or affidavits, advice on evidence or to do any drafting work of an analogous kind in any court or Tribunal or any other Authority as mentioned in sec.30 of the advocates act.
- The senior Advocate be free to make concessions or to give undertakings in the course of arguments on behalf of his client on instructions from the junior advocates.
- A senior advocate shall not accept directly from a client any brief or instructions to appear in any court or Tribunal or other Authority in India.

Persons who may be admitted as advocate on a state roll (section 24)

- **As per section 24 of the advocates act and the rules made there under, a person shall be qualified to be admitted as an advocate on a state roll, if he fulfills the following conditions, namely:-**

- He is a citizen of India. (Section 24(1) (a) provides that the person concerned should be a citizen of India. Even the nationals of other country are permitted to practice law in our country and may be admitted as an advocate on a state roll; if citizens of India, duly qualified, are permitted to practice law in that other country.
- Age:- section 24(1)(b) provides that the person concerned should have completed the age of twenty-one years.
- Degree of law:- section 24(1)(c) provides that he should have obtained a degree in law from a recognized university.
- Fulfilment of other conditions:- According to section 24(1)(e), the person concerned should fulfil such other conditions as may be specified in the rules made by the state Bar council.

Disqualification for enrolment:-section 24-A:- The person concerned should not be convicted of an offence involving moral turpitude, under the provisions of untouchability (offences) act,1955 and he should not have been dismissed or removed from any employment or office under the state on any charge involving moral turpitude.

BENCH – BAR RELATION

The Bar and Bench play an important role in the administration of justice. The judges administer the law with the assistance of the lawyers. The lawyers are officers of the court. They are expected to assist the court in the administration of justice. Actually lawyers collect materials relating to the case and thereby assist the court in arriving at a correct judgment. The legal profession has been created not for private gain but for public good. It is a branch of the administration of justice. It is a partner with the judiciary in the administration of justice.

Since the lawyers are officers of the court, they are required to maintain towards the court respectful attitude bearing in mind that the dignity of the judicial office is essential for the survival of the society. During the presentation of the case and while acting otherwise before the court an advocate is required to conduct himself with dignity and self respect. He should not influence the decision of the court by any illegal or improper means. Besides, he is prohibited the private communication with the judge relating to a pending case. He should use his best efforts to restrain and prevent his client from restoring to unfair practices in relation to the court. An advocate should not consider himself mere mouthpiece of the client and should exercise his own judgment in the use of restrained language during arguments in the court.

Besides, the court acts on the statements of the advocates and therefore the advocates are under obligation to be absolutely fair to the court. They are required to make accurate statements of facts and should not twist them. An advocate is under duty not to misguide the court.

An advocate should not be servile and in case there is proper ground for complaint against a judicial officer, it is not only his right but also duty to submit his grievances to the proper authorities. He should always bear in mind that he is an officer of the court and part of the administration of justice. If the courts or judges are not respected, the whole administration of justice, of which he is a part, will result in the complete death of the rule of law.

Many duties of the lawyers to the court are confined by the Bar Council of India. The breach of such duties is taken as professional misconduct and it is punished in accordance with the provisions of the Advocates Act. Actually, self restrain and respectful attitude towards the court, presentation of correct facts and law with a balance mind and without over statement, suppression, distortion or embellishments are requisites of good advocacy. It is the duty of lawyer to uphold the dignity and decorum of the court and must not do anything which brings the court itself in to dispute.

Mutual respect is necessary for the maintenance of the cordial relations between the bench and the bar.

On account of such importance of the judges in the maintenance of the orderly society, it is the duty of the lawyers to play constructive role in the administrative of justice. They must be respectful to the judges but at the same time, in case of proper ground for complaint against a judge, they should submit the complaint to the proper authority in proper manner.

CONTEMPT OF COURT

Meaning and Nature

The Contempt of Court Act, 1971 defines contempt of court for the first time. There is no statutory definition of contempt of court. Whatever definition provided under this act is not a definition but only classification of the term contempt of court. Contempt of court in general means to offend the dignity of the court and lower the prestige of the court.

Halsbury defines as follow “any act done or writing publish which is calculated to bring a Court or judge into contempt or to lower his authority or to interfere with the due course of justice or the lawful process of the court is contempt of court.”

Contempt of court is disobedience to court by acting in opposition to the authority, justice and dignity thereof. It signifies a willful disregard or disobedience of courts order. Section 2(a) of the Contempt of Court Act, 1971 defines contempt of court as civil contempt or criminal contempt.

Kinds of contempt of courts: - Civil contempt and criminal contempt.

Section 2(a) of the contempt of courts Act, 1971 provides that “contempt of court” means civil contempt or criminal contempt. It, thus, classifies the contempt of court into two categories, civil and criminal contempt.

The interference with the administration of justice may be in the form of willful disobedience to the order of the court or in the form of scandalizing the court or lowering the authority of the court in the eye of the public or interfering with the due course of any judicial proceedings, etc.

On account of it, the willful disobedience to the order of court is considered civil contempt, while the scandalizing or lowering the authority of the court in the public eyes, etc. is considered criminal contempt. Thus, the interference which is considered less injurious to the administration of justice is taken as civil contempt while the interference which is considered more injurious to the administration of justice is taken as criminal contempt.

Contempt by Lawyers

On account of nature of duty to be discharged by the lawyers and the judges they may get into heated by law which may result in contempt of court. There are several instances of the misconduct such as using insulting language against the judge, suppressing the facts to obtain favorable order, imputation of partiality and unfairness against the judge. A council who advices his client to disobey the order of court is also held liable for contempt of court. Attacking the judiciary in the bar council election is taken as contempt of court. If the council refuses to answer the question of the court is also liable for contempt of court.

In Re Ajaykumar Pandey case the Supreme Court held that advocate using intemperate language against various judicial officers and attributing motives to them while discharging there judicial function would be held guilty of contempt of court. In this case such advocate was sentenced or punished to 4 months simple imprisonment and fine of rupees 1000/-.

Contempt by judges, magistrates or other person acting judicially

Section 16 of Contempt of Court Act, 1971 makes judges, magistrates and other person liable for contempt of court. This section provides that subject to the provision of any law for time being in force a judge, magistrate or other person acting judicially shall also be held liable for contempt of his own court or any other court in same manner as any individual is liable and provision of this act shall also be applied accordingly. This provision is not applicable to any reward or expression delivered by a judge in

a matter which came before him in appeal or revision. Actually the contempt of court is punished not to protect the judge personally but to safeguard the dignity of the seat of justice so that people's faith in the judicial administration may not be shaken.

Mohd. Shafi, Advocate V/s Choudry Quadir Baksh, AIR 1949 Lah 270

Contempt liability of state, corporate bodies and their officers

As state becomes welfare state, now it is well settled that state shall not be immune from contempt liability and therefore it will be held liable for contempt of court. In *Mohammad Aslam v. Union of India* the chief minister of Uttar Pradesh Kalyan Singh had given the undertaking to the court for protecting the Babri Masjid in his personal capacity as well as in his official capacity. He was found guilty of willfully committing breach of undertaking and therefore the court sentenced him to one day token imprisonment and fine of rupees 2000/-. The minister or officer of government is also either in his official capacity or if there is personal element contributing to contempt in his personal capacity, is liable in contempt.

CONTEMPT PROCEEDING – NATURE AND MAIN FEATURES

Contempt jurisdiction is a special jurisdiction. Summary procedure is a special feature of the contempt proceeding. In England the common law has power to deal summarily with contempt committed in their presence. However, in the early days the distinction was made between the acts in and out of the presence of the judge. The summary procedure was adopted in case of the contempt committed in presence of court and not in the case committed outside the court, except the contempt by the officer of the court. In India also the courts of record which are provided under article 229 of the constitution can deal with summary of all types of contempt. It was held in *Re Abdul Hassan Jauhar 1926*, that there is uniformity in the judicial opinion that the power to punish summarily for contempt is not a creature of statute but inherent incident of every court of record i.e. it is a power available to every court of record because being a court of record. The high court and federal court were recognized as courts of records even under the government of India Act, 1935. The existing constitution of India contains specific provision for recognizing the high court and Supreme Court as court of record. Article 129 provides that the Supreme Court shall be court of record and shall have all the powers including the power to punish for contempt itself. Similarly article 215 provides that every high court shall have power which includes power to punish for contempt of itself and such high court considers court of record as like article 129.

Contempt in face of subordinate court

Provisions of section 14 apply only to the contempt in face of Supreme Court and high court. They do not apply to the subordinate court. In case of subordinate court it can take immediate action under section 228, 345 and 346 of Indian penal code and criminal procedure code. Section 345 of criminal procedure code lays down the procedure or investigation and punishment for the offences specified in section 175, 178, 179, 180 or 228 of Indian penal code.

Contempt outside court which is known as constructive contempt

Section 15 of the act deals with criminal contempt other than those covered by section 14. Section 15 of contempt of court act, 1991 read as cognizance of criminal contempt in other cases. In case of criminal contempt other than referred under section 14 the Supreme Court or high court maintain action on its own or motion made by

- a. Advocate general
- b. Any other person with the comment in writing of advocate general
- c. In relation to any high court of the union territory of Delhi, such law officer as the central government may specify in the official gazette or any other person on behalf of such law officer.

ADVOCACY

Advocacy is speaking up for, or acting on behalf of, yourself or another person.

The other person is often receiving a service from a statutory or voluntary organization and is referred to throughout this handbook as the service user.

Advocacy can help service users to:

- Make clear their own views and wishes;
- Express and present their views effectively and faithfully;
- Obtaining independent advice and accurate information;
- Negotiate and resolve of conflict.

Some people aren't clear about of their rights as citizens, or have difficulty in fully understanding these rights. Others may find it hard to speak up for themselves.

Advocacy can enable people to take more responsibility and control for the decisions which affect their lives.

ADVOCACY MODELS

- SELF ADVOCACY
- CITIZEN ADVOCACY.
- CRISIS ADVOCACY
- PEER ADVOCACY.
- PROFESSIONAL ADVOCACY
- COLLECTIVE ADVOCACY

CASE LAWS RELATING TO CONTEMPT OF COURT

Case No: Criminal Appeal No(s) 1108 of 2002)

Roy Fernandes Appellant(s) versus State of Goa & Others Respondent(s)

Date of Decision (mm/dd/yy): 2/1/2012.

Judge(s): Hon'ble Mr. Justice Asok Kumar Ganguly and Hon'ble Mr. Justice T.S. Thakur.

Subject Index: Indian Penal Code, 1860 — sections 143, 148, 323, 325 and 302 r/w section 149 — conviction and sentence of the appellant under — appeal against — the incident took place on account of a sudden dispute arising out of the proposed fencing of the Chapel property which act was seen as an obstruction to the use of the passage/pathway — whether the commission of murder by a member of an unlawful assembly that does not have murder as its common object would attract the provisions of Section 149 IPC — whether the appellant as a member of the unlawful assembly knew that the murder of the deceased was also a likely event in prosecution of the object of preventing him from putting up the fence — whether the sudden action of one of the members of the unlawful assembly constitutes an act in prosecution of the common object of the unlawful assembly and whether the members of the unlawful assembly knew that such an offence was likely to be committed by any member of the assembly — to consider — evidence on record proved that even when commission of murder was not the common object of the accused persons, they certainly had come to the spot with a view to overawe and prevent the deceased by use of criminal force from putting up the fence in question. However, no evidence to show that the appellant knew that in prosecution of the common object of preventing the putting up of the fence around the Chapel the members of the assembly or any one of them was likely to commit the murder of the deceased — the conviction of the appellant for offences punishable under Sections 323 and 325 of the IPC affirmed and the appellant is sentenced to the period of imprisonment already undergone by him while, his conviction under section 302 r/w section 149 of IPC set aside — appeal disposed — sentence modified.

(Case No: Criminal Appeal No(s). 263 of 2012 with CrI. A. Nos.

264,265,266,267,268,269,270,271,272,273,274,275-294,295-303 of 2012)

JIK Industries Limited & Others Appellant(s) versus Amarlal V. Jumani and Another Respondent(s)

Date of Decision(mm/dd/yy): 2/1/2012.

Judge(s): Hon'ble Mr. Justice Asok Kumar Ganguly and Hon'ble Mr. Justice Jagdish Singh Khehar.

Subject Index: Negotiable Instruments Act, 1881 — section 138 r/w section 141 — processes issued for the commission of the offences under — several Criminal Writ Petitions filed challenging the processes — the High Court after dismissing the writ petitions held that sanction of a scheme under Section 391 of the Companies Act, 1956 does not amount to compounding of an offence under Section 138 read with Section 141 of the N.I. Act — hence, the appeals — a scheme under Section 391 of the Companies Act does not have the effect of creating new debt. Therefore, the offence which has already been committed prior to the scheme does not get automatically compounded only as a result of the said scheme — the Supreme Court held that Section 147 of the N.I. Act must be reasonably construed to mean that as a result of the said Section the offences under N.I. Act are made compoundable, but the main principle of such compounding, namely, the consent of the person aggrieved or the person injured or the complainant cannot be wished away nor can the same be substituted by virtue of Section 147 of N.I. Act — impugned judgment of the High Court affirmed — appeals dismissed.

(Case No: Civil Appeal No(s). 1191 of 2012)

Joshna Gouda Appellant(s) versus Brundaban Gouda & Another Respondent(s)

Date of Decision(mm/dd/yy): 1/31/2012.

Judge(s): Hon'ble Mr. Justice Altamas Kabir and Hon'ble Mr. Justice J. Chelameswar.

Subject Index: Gram Panchayat Act, 1964 — section 31 r/w section 34 — election petition under — on the ground that the appellant was not eligible to contest the election in view of Section 11(b) of the Act which declares that no member of 'Gram Sasan' shall be eligible to contest for the post of Sarpanch if he has not attained the age of 21 years — allowed — hence, the appeal — the Supreme Court held that the burden to prove the fact that the appellant was born on 20.6.1986 and thus, he was not eligible to contest the election on the ground that the appellant was not 21 years of age on the relevant date rests squarely on the first respondent and since the first respondent failed to discharge the burden cast upon him, the election petition must fail — impugned judgment under appeal set aside — appeal allowed.

(Case No: Civil Appeal No(s). 1193 of 2012)

Dr. Subramanian Swamy Appellant(s) versus Dr. Manmohan Singh & Another Respondent(s)

Date of Decision(mm/dd/yy): 1/31/2012.

Judge(s): Hon'ble Mr. Justice G.S. Singhvi and Hon'ble Mr. Justice Asok Kumar Ganguly.

Subject Index: Prevention of Corruption Act, 1988 — whether a complaint can be filed by a citizen for prosecuting a public servant for an offence under the Prevention of Corruption Act, 1988 — whether the High Court was justified in refusing to entertain the writ petition filed by the appellant — to consider — illegal grant of licences at the behest of Mr. A. Raja - respondent No. 2 — the appellant filed Civil

Writ Petition for issue of a mandamus to respondent No.1 to pass an order for grant of sanction for prosecution of respondent No. 2 — the High Court dismissed the petition holding that when the matter is being investigated by the CBI, and the investigation is in progress, it would not be in fitness of things to issue a mandamus to the first respondent to take a decision on the application of the petitioner — hence, the appeal — no provision either in the 1988 Act or the Code of Criminal Procedure, 1973 which bars a citizen from filing a complaint for prosecution of a public servant who is alleged to have committed an offence — the Supreme Court held that while considering the issue regarding grant or refusal of sanction, the only thing which the Competent Authority is required to see is whether the material placed by the complainant or the investigating agency prima facie discloses commission of an offence — the material placed on record does not show that the CBI had registered a case or started investigation at the instance of respondent No.1. Even though the appellant repeatedly wrote letters to respondent No.1 highlighting the seriousness of the allegations and supplied the facts and documents which could be made basis for grant of sanction to prosecute respondent No.2, the concerned officers in the PMO kept the matter pending and then took the shelter of the fact that the CBI had registered the case and the investigation was pending — impugned order set aside however, keeping in view the fact that the Court of Special Judge, CBI already took cognizance of the offences allegedly committed by respondent No.2 under the 1988 Act, no other direction issued — appeal allowed.

Bench Bar Relation

The bar and Bench play 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. Mutual respect is necessary for the maintenance of the cordial relations between the bench and bar.

The following points are to be kept in mind while understanding the Bench and bar relations:-

- Respect to the authority of courts
- Decent conduct of the lawyer towards courts
- Courts are the Temple of justice
- Citizen's fundamental rights rest on sound judicial wisdom
- Administration of justice relates Bench as well as Bar
- Bench and Bar should grow in harmonious relations

Duty of the lawyers:-

Actually lawyers collect materials relating to the case and thereby assist the court in arriving at a correct judgment. The legal profession has been created not for private gain but for public good. It is a branch of the administration of justice. It is a partner with the judiciary in the administration of justice. Since the lawyers are officers of the court, they are required to maintain towards the court respectful attitude bearing in mind that the dignity of the judicial office is essential for the survival of the society. During the presentation of the case and while acting otherwise before the court an advocate is required to conduct himself with dignity and self-respect. He should not influence the decision of the court by any illegal or improper means. He should use his best effort to restrain and prevent his client from resorting to unfair practices in relation to the court. He should not use intemperate language during arguments in the court.

The court acts on the statement of the advocates and therefore the advocates are under obligation to be absolutely fair to the court. They are required to make accurate statement of facts and should not twist them. An advocate is under duty not to misguide the court. He should not cite knowingly an overruled decision or a repealed statute.

If the courts or judges are not respected, the whole administration of justice, of which he is a part, will result in the complete death of the rule of law. Thus, the lawyers should uphold the dignity and decorum of the court and should not do anything which brings the court in to disrepute.

Mutual respect is necessary for the maintenance of the cordial relations between the bench and bar.

Duty and role of the judges:-

The judges play important role in the maintenance of rule of law which is essential for the existence of the orderly society. It has rightly been stated by C.L. Anand- that there is no office in the state of such power as that of the judge. Judges hold power which is immensely greater than that of any other functionary. The citizen's life and liberty, reputation and property, personal and domestic happiness are all subject to the wisdom of the judges and hang on their decisions. Where judicial power becomes corrupt, liberty expires; no security is left of personal or domestic happiness. A strong impartial and capable, judiciary is the greatest need of a state.

A judge must be impartial and must do everything for justice and nothing for himself or his friend or his sovereign. A judge must not allow himself to be subjected to any influence other than influence of the law and justice of the cause. He must discharge his duties without fear or favour, affection or ill-will. A judge should possess calm temper. He should have patience and gravity of hearing.

Justice R.J. Kocher has observed:- " If the independent judiciary is the pillar of the Democracy, the Bar is the foundation of the independent judiciary. The Bar is the mother of the Bench and the bright mirror

of the judicial officers whose image, character and conduct is correctly and visibly reflected therein, and it is for the Bench to nurse and nourish the merits of the bar.”

Overall judges owe some of the obligations to the bar, they are as follows:-

- Duty of consideration and courtesy to the Bar.
- Duty to respect its privileges (respect towards right of the counsel)
- Duty of having a respective mind (to form opinion after completion of the hearing)
- Duty to allow counsel in their argument and in examination of witnesses.

In the case of (P.D. Gupta v/s Ram Murti AIR 1988 SC 283) the Supreme Court has observed that administration of justice is 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. Bar is the principal ground for recruiting judges. No one should be able to raise 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 the aid the court to do justice by arriving at the correct conclusions.

Advocate:- Section 2 (a) defines the term “advocate” as, “advocate means an advocate entered in any roll under the provisions of this act.

The words ‘this act’ used in this definition means under the provisions of the Advocates act, 1961.

An advocate is an officer of the court and with that privilege; responsibility must follow in its wake. His primary allegiance is to the court and it is no part of the professional duties of an advocate to act merely as a mouthpiece of his client. A member of the Bar should use best efforts to restrain and prevent his client from restoring to any unfair practice.

Right to practice as an advocate is merely a statutory right and not available to every citizen as natural right and no one can pick this as a normal avocation. The right to plead for others in a court of law or before any such forum or authority depends upon the permission to be granted by such courts, subject to rules made in respect thereof by the High court vide section 34 and also depends upon the enrolment of the person concerned by the state Bar council in the state roll. Sections 29, 30 and 33 of the Act would also go to show that the right to practice as an advocate is merely a statutory right and not a fundamental right.

A member of legal profession, which is a noble one, is expected to maintain a standard in dignified and determined manner. In other words he should maintain decorum of the legal profession to the expectation of all concerned.

A person enrolled as an advocate is entitled to practice in all the courts of India. Under Rule 49 of the Bar council of India rules, an advocate shall not be a full-time employee of any person, Government, firm, corporation or concern and on taking up such employment, shall intimate such fact to the Bar council concerned and shall cease to practice as long as he is in such employment. However, an exception is made in the case of law officers of the government and corporate bodies despite their being full-time salaried employees.

Conduct of Advocate

Professional and other misconduct:- Section 35 of the Advocates act, 1961, deals with punishment for professional misconduct and the procedure to be followed in such cases.

As per sec. 35(1) – where on receipt of a complaint or otherwise a state bar council has reason to believe that any advocate on its roll had been guilty of professional or misconduct; it shall refer the case for disposal to its Disciplinary committee. As per section 35(1-A) State Bar council has a discretionary power to withdraw a proceeding pending before its disciplinary committee and direct the inquiry to be made by any other committee.

The term misconduct has not been defined in the advocate act, 1961. It inter alia includes breach of discipline, improper behavior, intentional wrong doing or deliberate violation of a rule of standard of behavior.

As the obvious sense suggests, misconduct in the course of profession is known as professional misconduct. The expression “professional or other misconduct” occurring in section 35 of the advocate Act means misconduct in a professional or other capacity.

Although the power of the Bar council is not limited, the thrust of charge must be such which would necessitate initiation of disciplinary proceedings. In following conditions professional misconduct is presumed:-

- Seeking adjournments without making alternative arrangement.
- Misappropriation of client’s money.
- In cases of remiss in the performance of their duties in a manner which is worthy of their profession (Advocate owes duty not only to the client, but also to the court)
- Innocence of the client cannot be taken advantage of.
- Restitution not enough to condone the misconduct.
- Negligence (gross misconduct or misconduct relating to dereliction of duty by the advocate towards his client or case.)

Procedure to be followed in case of professional misconduct:-

The body or authority empowered to punish for professional misconduct or other misconduct:-

- State Bar council and its disciplinary committee. (section 35 of Advocates Act) This particular section provides the right of the Bar council to entertain complaints against an advocate, constitute a disciplinary committee, procedure of conducting the proceedings and power to make orders into it.
- Section 42 of the Act deals with the powers of the disciplinary committee.
- Section 43 provides for the provision for the cost of proceedings before the disciplinary committee.
- Section 44 provides for the provision for review of its order, within 60 days of the date of the order passed by it.
- Section 35-B makes provision in respect of the disposal of the disciplinary proceedings. It should be concluded within a period of 1 year from the date of receipt of the complaint. If not concluded it should be forwarded to Bar council of India.
- Bar council of India and its disciplinary committee.(section 36 of the Advocates act).
- Complaint against advocates and procedure to be followed by the disciplinary committee:---
- A complaint against an advocate shall be in form of a petition duly signed by and verified as required under the code of civil procedure.
- If the complaint is not in English, a translation thereof in English shall be filed along with the same.
- It is the duty of the secretary of the Bar council to see that every complaint shall be accompanied by the fees as prescribed and all relevant documents and copies as required. If the complaint is found in order it shall be registered and placed before the Bar council for such order as it may deem fit to pass.
- After registration of the complaint and when it is being forwarded to a disciplinary committee, the registrar shall send a notice to the advocate concerned requiring him to show cause and to submit the statement of defense, documents and affidavit in support of such defence.
- Chairman of the disciplinary committee shall fix a date, hour, and place of enquiry which shall be within 30 days of the receipt of the reference. The registrar is required to give notice of the same along with a copy of the complaint and all relevant documents to all concerned.
- Parties can appear in person or through an advocate.
- All proceedings and evidence given before the disciplinary committee shall be recorded in English. A record of its day-to-day proceedings shall be recorded in a case diary.

- If in an enquiry pending before the disciplinary committee, the complainant dies and there is no legal representative to conduct the case on his behalf, the committee may make a suitable order on the basis of the material before it, or drop the case.
- The registrar of the disciplinary committee is required to send to each of the parties in the proceedings a certified copy of the final order or judgment.
- Section 35 and section 36 respectively provide state and Bar council of India a power to its disciplinary committee to punish an advocate for the professional or other misconduct.

Remedies against the order of punishment;-

Review under section 44 of the Advocate Act provides that the disciplinary committee of the Bar council may of its own motion or otherwise review any order, within 60 days of the date of the order passed by it.

Appeal: - As per section 37 of the Advocate Act any person aggrieved by an order of the disciplinary committee of a state bar council, may make an appeal to the Bar council of India.

Appeal to the Supreme Court: - Section 38 of the Advocate act provides that any person aggrieved by an order of the Bar council of India under section 36 or section 37 or the Attorney- General of India or the Advocate-General of the state concerned, as the case may be, may prefer an appeal within a period of 60 days of the date

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