Title of the Paper: **THE ETHICS AND MORALITY OF LEGAL PROFESSION**

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Abstract:

This paper discusses about Legal Profession, how it plays the important role in administration of justice. It talks about the legal practitioners, their position in Ancient India and how they contributed for the country in the best possible way with high morals. Morals play the most important role for becoming a lawyer successful. It also discusses the ethics of lawyers, what are their duties towards court, client, opponents and colleagues. Advocates Act, 1961 provides for Bar Council Rules for the proper conduct of the Advocates and they are bind by these duties. In case they do not follow, then there is remedy in the form of punishment which has been discussed with the help of case laws.
INTRODUCTION

The Legal Profession plays an important role in the administration of Justice. The Lawyers are considered to be the center of the administration of justice. Lawyers are the one who are related to the parties, they listen to the party and collect all the relevant legal materials relating to the case and argue the case in court, thus helping the Judge to arrive at the correct and fair judgment. Without the assistance of the lawyers it would be a superhuman task for the Judge to come at the satisfactory judgment. Justice P.N. Sapru\textsuperscript{1} has stated that, ‘justification for the existence to the 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.’

LAW IN ANCIENT INDIA

In ancient India it was a mandate that King should decide the cases according to law. The law which was there earlier included many facets and spectrums which included the injunctions or mandates given in Shastras, smritis, customs, rajdarma, rule of conduct, modes of livelihood, regulation that governs the society, elementary backdrop of labor law, sense of morality, doctrine of proportionality, etc. The laws, to some extent, inherently included morality from within and imposition from higher authorities. It is said that maintenance of Rule of Law in modern society is \textit{sine qua non} for the survival of democracy. With the passage of time the law has undergone many changes required according to the change in the society.

Long back, De Tocqueville stated that:- “The profession of law is the only aristocratic element which can be amalgamated without violence with the natural elements of democracy, and which can be advantageously and permanently combined with them”. As
this profession has gained the nobility, no one on this earth can contradict that the lawyers are responsible in the growth of law and make the courts as protector and guarantor of the indefensible rights of the citizens. The lawyers thus have an obligation to see that the rule of law is maintained and all its objectives are secured. The objectives thus include prevention of growth of deviant behavior in civilized society, detection of corrupt and corruptible behavioral pattern, valuation of extent of deviance and deviancy, etc. One of the Advocates in the earlier times who appeared as Amicus Curiae on his own was none other than Vibhishan who pleaded before his brother, King Ravana, as regards the concept of proportionality which has gained ground in modern jurisprudence in almost every field. Vibhishan counseled his brother that the messenger is not to be killed and it is the duty of the King to know the difference between right and the wrong. Before stating so the younger brother had asked for the forgiveness and stated the law as:-

“Kshama Rosham Tayaj Rakshendra
Praseed Me Vakyamidam Shurunshav
Vadham Na Kurvanti Paravargya Dutasya
Santo Vasudhadhipendra.”

“O mighty King of all demons! Forgive me! Discard your rage. Be pleased! Hearken to this counsel of mine. O knower of right and wrong, O king of all kings! One does not kill messengers, for messengers are under another’s orders.”

And again he solicited.

“Asanshayam Shatruyam Pravdhah Krutum
Hanenapriyamprameyam
Na Dutavadhyaam Pravdanti Santoo Dutasya
Drashta Bahavo Hi Dandha.”

“Without doubt this monkey is a deadly foe (and) has done incalculable harm. Do not kill messengers, rather, weigh the (the nature of the) messenger’s (offence). Multiple punishments exist for various offences. Wise men profess thus. These shlokas were referred by the Deepak Misra in his speech delivered at High Court Bar Association, Jabalpur with the purpose to show that there were certain persons in our myths and puranas who advocated the cause of justice. They were not only the lawyers and advocates but the better upholders of law.

THE LAWYERS OF HIGH MORAL VALUE

The Bar is a public institution and is under legal obligation to impart wholehearted cooperation for the development of law. History has said with grace and appreciation that how the eminent lawyers after independence started making law a legal science. When we talk about lawyers in pre-independence era, last part of 18th century the eminent lawyers helped in the development of enacted laws as well as customary laws. These lawyers were the one who had their morals and worked on the principle of ethics. The lawyers who were eminent in their own field got intrinsically involved in freedom struggle where their reasoning, rationality and logical factors helped them to solve many acute problems. Many of them played very important role in the formation and shaping of our constitution which eventually turned out to be one of the best constitutions of the world. One of the great examples of such personality is the Father of the Nation, Gandhiji, who was a lawyer. He started his practice in India and went to South Africa. It is noteworthy to state that Gandhiji was an excellent draftsman and his representations to the authorities used to be very logical, straight, unambiguous, and succinct and based on
natural and ethical legal paradigm. He believed in truth while practicing as lawyer and acted as a conciliator. In his autobiography “My Experiments With Truth” he has narrated how he required a prosperous businessman to confess his guilt and after the Court sentenced him, to keep judgment in a frame for posterity to see and realize.

Sir Alladi Krishna Swami Aiyer is another example, a lawyer who was also a freedom fighter. He was the acknowledged leader of the Madras Bar. After Independence he became a member of drafting committee of the Indian Constitution.

Dr. B.R. Ambedkar started practice at Bombay in 1924 and at the same time started his career as a social worker, writer, politician and socialist. His image as a jurist gained widespread recognition and emerged as the leader of depressed class. He was the Chairman of the Drafting Committee which framed the Constitution of India.

Gandhiji laid emphasis on moral fabric of the society, preached religious pluralism, anticipated ecological crisis of our time, accentuated on disciplined life, laid stress on personal efforts to rise in life and postulated prescriptions for constructive work. While talking about this brand of lawyers it is worth noting that Bhulabhai Desai had played a main role in the INA trial where his main contention was that a member of the subject country has a right to wage war for securing the freedom.

Another great lawyer in the post independent era is Viswanath Shastri. At one point of the time he was the leading practitioner in the Supreme Court. He was an authority in taxation law and remembered Privy Council Judgments on his finger tips. He was a simple men and in fact in his office there was no chair and fan.

Another illustrious lawyer who became a household name in India is Nani Palkhiwala. He had started without any ladder but his incomparable energy, phenomenal brilliance,
prodigious memory, enormous ability to work hard, profound analytical skill and unsurpassable humility took him to great heights.

**IMPORTANCE OF LEGAL PROFESSION**

The Lawyers play important role in the maintenance of peace and order in the society. Learned C.L. Anand has rightly stated that the advocates share with the judges the responsibility for maintaining order in the community. They do not promote stripes but settle them. They stand for legal order which is one of the noblest functions in the society. The order which the advocates seek is not of grave but based on justice. It is the foremost function of the advocates to fulfill the desire of their clients by providing them Justice. It is the desire of every human on the earth.

The Lawyers also play a very important role in law reform also. “By reason of the experience gained in daily application and interpretation of laws, lawyers are best aware of the imperfection, of the legal system and constitute the most competent class of men to advise on law reform and to promote popular enthusiasm and support for it. The most difficult part of the process of legislation is drafting of its provisions and no one is better fitted to give guidance on this than the lawyers.”

Thus, it can be said that the legal profession is a profession of great honour. This is made for public welfare, for public good. This is not for making money but to provide Justice to the right person. An advocate is an officer of the Court and is required to maintain towards the Court a respectful attitude bearing in mind that the dignity of the judicial office. The Supreme Court has rightly observed that the legal profession is a partner with the judiciary in the administration of justice.

**EHTICS OF LEGAL PROFESSION**
A legal practitioner is under triple obligation:-

An obligation to his clients to be faithful to them till the last, an obligation to the profession not to besmirch its name by anything done by him, and an obligation to the court to be and to remain a dependable part of the machinery through which justice is administered. The scope of legal ethics is beyond the treatise of evidence or witnesses to be presented before the court. In examining these witnesses the advocate should not forget that he is not mere the counsel of the client but also the officer of the court. In this way there are some of the duties thereinafter which the advocate should follow, like, professional courtesy, co-operation, equal consideration to all members of the profession, encourage junior brethren, should stand up for its dignity and privileges whenever there is occasion for it, he should expose corrupt or dishonest conduct in the profession.

In the words of Chief Justice Marshall has observed;

“the fundamental aim of Legal Ethics is to maintain the honour and dignity of the Law Profession, to secure a spirit of friendly co-operation between the Bench and the Bar in the promotion of highest standards of justice, to establish honourable and fair dealings of the counsel with his client opponent and witnesses; to establish a spirit of brotherhood in the Bar itself; and to secure that lawyers discharge their responsibilities to the community generally.”

**Professional Ethics** may be defined as a code of conduct written or unwritten for regulating the behavior of a practicing lawyer towards himself, his client, his adversary in law and towards the court. Thus, ethics of legal profession means the body of rules and practice which determine the professional conduct of the members of a bar. When the person joins the legal profession and starts practicing, his relation with men in general is
governed by general rules of law but his conduct as advocate is governed by the especial
rules of profession ethics of the Bar. The main object of the ethics of the legal profession
is to maintain the dignity of the legal profession and the friendly relation between the
Bench and the Bar.

Professional Ethics is also known as legal ethics. “Legal Ethics is that branch of moral
science which deals with the duties which a member of the legal profession owes to the
public, the Court, to his professional brethren and to his clients. [Ethics] is a study of the
meaning and application of judgments of Good, bad, right, wrong, etc. and every
evaluation of law involves an ethical Judgment.”

The description of Legal Ethics already clarifies that legal ethics is one of the branch of
moral science. Etymological origin of the words moral and ethics appear to be same. The
word moral comes from Latin Word mos (plural mores) meaning thereby “Custom or
way of life.” The related term Ethics is derived from the Greek word ethos meaning
“Custom” or “Character”. Thus both the words moral and ethics are mostly synonymous
and refer to a type of behavior practices by a group which tends to become customary.
But there is a slight difference in the two that moral or morality ordinarily refers to the
conduct itself, while ethics or ethical suggests the study of moral conduct or the system of
code which is to be followed.

The Oxford Companion to Law explains the professional ethics as “the standards of right
and honourable conducts which should be observed by members of learned professions in
their dealings one with another and in protecting the interests and handling the affairs of
their clients.”
NEED FOR PROFESSIONAL ETHICS

The American Bar Association Committee has well explained the need of the code of legal ethics. It is observed that the legal profession is necessarily the keystone of the arch of Government. If it is weakened, and allowed to be a subject of the corroding and demoralising influence of those, who are controlled by craft, greed or gain or other unworthy motive, sooner or later the arch must fall. The future of the country depends upon the maintenance of the shrine of the justice, pure and unrolled by the advocates. It cannot be so maintained, unless the conduct and motives of the members of the legal profession are what they object to be. Therefore, it becomes the plain and simple duty of the lawyers to use their influence in every legitimate way to help and make the Bar what it is ought to be. The committee has further observed that members of Bar, like Judges, are officers of the court and like judges, they should hold office only during good behavior and this good behavior should be defined and measured by ethical standards, however high, as necessary to keep the administration of justice, pure and unsullied. Such standard may be crystallized into a written code of professional ethics and the lawyer failing to conform thereto, should not be permitted to practise or retain membership in the particular organisation.

ADVANTAGES OF HAVING CODIFIED PROFESSIONAL ETHICS

Firstly, codes of ethics are important means of social control. It will keep new corner to the profession aware and old members in line according to the social requirement and expectations. The dignity of the profession will be required to be maintained by maintaining the public confidence in it.
Secondly, professional ethical codes prevent control or interference by the government or by society though some one of its agencies. If a degree of standardization is needed and that is done by the profession itself, it will keep outside interference away. Governmental regulations through law tend to be negative while ethics points to the goal desired.³

Third, ethical codes are important, in developing higher standards of conduct. The codes crystallize best judgment about the profession. Robert D. Kohn, Fellow of the American Institute narrates five stages of development.

Fourthly, the existence of code will have great educative, corrective and appreciable value for both the lawyers and the laymen.

THE BAR COUNCIL OF INDIA RULES

The Advocates Act, 1961 empowers the Bar Council of India to frame certain rules. Section 49 (1) (c) of the Act grants general power to The Bar Council of India to make rules relating to the standards of professional conduct and etiquette to be observed by advocates. The rules formed by Bar Council of India is given in Chapter – II of Part IV of the Bar Council of India Rules tells the duty of an Advocate to the Court, to the client, to opponent, to colleagues etc.

Preamble of Part IV, Chapter II reads and makes the following points clear.

1. An advocate shall, at all times, comport himself in a manner befitting his status as an officer of the court, a privileged member of the community and a gentleman;

2. He should bear in mind that what may be lawful and moral for a person who is not a member of Bar, or for a member of the Bar in his non-professional capacity may still be improper for an Advocate;
3. Without prejudice to the generality of the foregoing obligation, an Advocate shall fearlessly uphold the interests of his client, and in his conduct conform to the rules hereinafter mentioned both in letter and in spirit.

4. The rules hereinafter mentioned contain canons of conduct and etiquette adopted as general guides; yet the specific mention there of shall not be construed as a denial of existence of other equally imperative though not specifically mentioned.

Section 1 (of chapter II of Part IV of the Bar Council of India Rules) frames code of conduct and etiquette of Advocates and prescribes certain duties of an Advocate of the Court.

**Duty to the Court**

1. An Advocate shall, during the presentation of his case and while otherwise acting before a Court, conduct himself with dignity and self-respect. He shall not be servile and whenever there is proper ground for serious complaint against a judicial officer, it shall be his rights and duties to submit his grievance to proper authorities.

2. An Advocate shall maintain towards the Courts a respectful attitude, bearing in mind that the dignity of the judicial office is essential for the survival of free community.

3. An Advocate shall not influence the decision of a Court by any illegal or improper means. Private communications with a Judge relating to a pending case are forbidden.

4. An Advocate shall use his best efforts to restrain and prevent his client from resorting to sharp or unfair practices or from doing anything in relation to the
Court, opposing counsel or parties which the Advocates himself ought not to do. An Advocate shall refuse to represent the client who persists in such improper conduct.

5. An Advocate shall appear in Court at all times only in the prescribed dates, 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 Act, if the sole or any member thereof is related to the Advocate as father, grandfather, son, grandson, uncle, brother, nephew, first cousin, uncle, aunt, husband, wife, mother, daughter, sister, niece, father-in-law, mother-in-law, son-in-law, brother-in-law, daughter-in-law or sister-in-law.

7. An Advocate shall not wear band or gown in public places other than in Courts except on such ceremonial occasions and at such places as the Bar Council of India or the Court may prescribe.

8. An Advocate shall not appear in or before any Court or Tribunal or any other authority for or against an organization or an institution, society or corporation, if he is a member of the Executive Committee of such organization or institution or society or corporation.

Provided that this rule shall not supply to such a member appearing as “amicus curiae” or without a fee on behalf of a Bar Council, Incorporated Law Society or a Bar Association.

9. An Advocate should not act or plead in the any matter in which he himself is peculiarly interested.
ILLUSTRATIONS:- I. He should not act in a bankruptcy petition when he himself is also a creditor of the bankrupt.

II. He should not accept a brief from any company of which he is a Director.

10. An Advocate shall not stand as a surety, or certify the soundness of the surety for his client required for the purpose of any legal proceedings.

Learned C.L. Anand has observed that the advocates owe respect and courtesy to the Court for the following reason-:

- An Advocate is like a Judge, himself, an officer of the Court and an integral part of the judicial machine. The legal profession consists of the Bar as well as the Bench and both have common aims and ideals.

- In theory it is the King or Sovereign who presides in the Court of justice and judge is merely the mouthpiece and representative of the Sovereign. Respect shown to the Court is, therefore, respect shown to the sovereign whose representative the judge is

- Not only litigants and witnesses but the general public will get their inspiration from the example of advocates. It is necessary for the administration of justice that Judges should have esteem of the people. If judges are not respected it tends to impair public confidence in the administration of justice.

- It is the good manners and advocates before anything else are gentleman of the Bar.

- Even from a purely practical standpoint, there is nothing to be gained but there is much to lose by antagonizing the Court. Conflict with the Judge renders the trial
disagreeable to all and has generally an injurious effect on the interests of the client.

- The usual practice in modern times is to appoint Judges from among the members of even the Bar and even where this rule is not strictly observed the Bench is fairly representative of the Bar.

- It is necessary for dignified and honourable administration of justice that the Court should be regarded with respect to the suitors and people.

Section II- Duty to the Client

11. An Advocate is bound to accept any brief in the Courts or Tribunals or before any other authority in or before which he proposes to practice at a fee consistent with his standing at the Bar and the nature of the case. Special circumstances may justify his refusal to accept a particular brief.

12. An Advocate shall not ordinarily withdraw from engagements, once accepted, without sufficient cause and unless reasonable and sufficient notice is given to the client. Upon his withdrawal from a case, he shall refund such part of the fee as has not been earned.

13. An Advocate should not accept a brief or appear in a case in which he has reason to believe that he will be a witness, and if being engaged in a case, it becomes apparent that he is a witness on a material question of fact, he should not continue to appear as an Advocate if he can retire without jeopardizing his client’s interests.

14. An Advocate shall, at the commencement of his engagement and during the continuance thereof, make all such full and frank disclosures 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.

15. It shall be the duty of an Advocate, fearlessly to uphold the interests of his client by all fair and honourable means without regard to any unpleasant consequences to himself or any other. He shall defend a person accused of a crime regardless of his personal opinion as to the guilt of the accused, bearing in mind that his loyalty is to the law which requires that no man should be convicted without adequate evidence.

16. An Advocate appearing for the prosecution of a criminal trial shall so conduct the prosecution that it does not lead to conviction of the innocent. The suppression of material capable of establishing the innocence of the accused shall be scrupulously avoided.

17. An Advocate shall not, directly or indirectly, commit a breach of the obligations imposed by Section 126 of Indian Evidence Act.

18. An Advocate shall not at any time, be a party to fomenting of litigation.

19. An Advocate shall not act on the instructions of any person other than his client or his authorized agent.

20. An Advocate shall not stipulate for a fee contingent on the results of litigation or agree to share the proceeds thereof.

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

22. An Advocate shall not, directly or indirectly, bid for or purchase, either in his own
name or in any name, for his own benefit or for the benefit of any other person,
any property sold in the execution of a decree or order in any suit, appeal or other
proceeding in which he has in any way professionally engaged.

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

24. An Advocate shall not do anything whereby he abuses or takes advantages of the
confidence reposed in him by his client.

25. An Advocate should keep account of his clients money entrusted to him, and the
accounts should show the amounts received from the client or on his behalf, the
expenses incurred for him and the debits made on account of fees with respective
dates and all other necessary particulars.

26. Where moneys are received from or on account of a client, the entries in the
accounts should contain a reference as to whether the amounts have been received
for fees or expenses, and during the course of the proceedings, no Advocate shall,
except with the consent in writing of the client concerned, be at liberty to divert
any portion of expenses toward fees.

27. 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.
28. After the termination of the proceeding, the Advocate shall be at liberty to appropriate toward the settled fee due to him any sum remaining unexpended out of the normal paid or sent to him for expenses, or any amount that has come into his hands in that proceedings.

29. Where the fees has been left unsettled, the Advocate shall be entitled to deduct, out of any moneys of the client remaining in his hands, at the termination of the proceedings for which he has been engaged, the fee payable under the rules of the Court, in force for the time being, or by then settled and the balance, if any, shall be refunded to the client.

30. A copy of the client’s account shall be furnished to him on demand provided the necessary copying charge is paid.

31. An Advocate shall not enter into arrangements whereby funds in his hands are converted into loans.

32. An Advocate shall not lend money to his client for the purpose of any action or legal proceedings in which he is engaged by such clients.

Explanations:- An Advocate shall not be held guilty for the breach of this rule, if in the course a pending suit or proceeding, and without any arrangement with the client in respect for the same, the Advocate feels compelled by reason of the rule of the court to make the payment to the Court on account of the client for the progress of the suit or proceeding.

33. An Advocate who has, at any time, advised in connection with the institution of the suit, appeal or other matter or has drawn pleadings or acted for a party, shall not act, appear or plead for the opposite party.
Section III- Duty to Opponent

34. 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.

35. 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.

Section IV- Duty of Colleagues

36. An Advocate shall not solicit work or advertise, either directly or indirectly, whether by circulars, advertisements, touts, personal communications, interviews not warranted by personal relations, furnishing or inspiring newspaper comments or producing his photograph to be published in connection with cases in which he has been engaged or concerned.

37. An Advocate shall not permit his professional services or his name to be used in aid of, or to make possible, the unauthorized practice of law by any agency.

38. An Advocate shall not accept a fee less than the fee taxable under the rules when the client is able to pay the same.

39. An Advocate shall not enter appearance in any case in which there is already a vakalat or memo of appearance filed by an Advocate engaged for a party except with his consent; in case such consent is not produced, he shall apply to Court stating reasons why the said consent should not be produced and he shall appear only after obtaining the permission of the Court.

PROFESSIONAL OR OTHER MISCONDUCT- MEANING AND AMBIT
Section 35 of the Advocates Act provides in respect of punishment for professional or other misconduct. It provides that where on receipt of the 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 its disciplinary committee. Section 35 empowers the disciplinary committee to reprimand the advocate and suspend the advocate from practice for such period as it may deem fit or remove the name of the advocate from the State roll of advocates. However, an appeal against the order of the disciplinary committee may be preferred, to the Bar council of India and thereafter to the Supreme Court against the order of the Bar Council of India. Section 35 of the Advocates Act specifically mentions that an Advocate can be punished not only for professional misconduct but also other misconduct.

In case of Ram Singh the Supreme Court has explained the term “misconduct” in connection with the misconduct of the personnel in the Police Department but may be applied in determining whether or not conduct implies to misconduct. The Supreme Court has observed that the term ‘misconduct’ may involve moral turpitude, it must be improper or wrong behavior, willful in character forbidden act, a transgression of established or definite rule of action or code of conduct, but not mere error of judgment, carelessness or negligence in performance of duty.

According to Black’s Dictionary the term “misconduct” is defined as a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, unlawful behavior.
In *Nortanmal Chauaisia v. M. R. Murli*\(^{12}\), the Supreme Court has held that misconduct has not been defined in the Advocates Act, 1961. Misconduct, inter alia, envisages breach of discipline, although it would not be possible to lay down exhaustively as to what would constitute misconduct and indiscipline, which, however is wide enough to include wrongful omission or commission, whether done or omitted to be done intentionally or unintentionally. It means improper behavior, intentional wrong doing or deliberate violation of a rule of standard of behavior’.

In the matter of *P1*\(^{13}\), the Court has held that an advocate may be punished not only when he is guilty of professional misconduct but also if he is guilty of other misconduct which may not be directly concerned with the professional activity as such, may nevertheless be of such dishonourable or infamous character as to invite the punishment due to professional misconduct.

**THE BODY OR AUTHORITY EMPOWERED TO PUNISH FOR PROFESSIONAL OR OTHER MISCONDUCT**

1. **STATE BAR COUNCIL AND ITS DISCIPLINARY COMMITTEE**

Organization- Section 35 of the Advocates Act makes it clear that on receipt of a complaint or otherwise a State Bar Council has reason to believe that any advocate on its role has been guilty of professional or other misconduct, it shall refer the case for its disposal to disciplinary committee\(^{14}\). It is one of the functions of the State Bar Council to entertain and determine the cases of misconduct against the advocate on its roll\(^{15}\). Section 9 of the Act requires the Bar Council to constitute one or more disciplinary committees\(^{16}\). Each of such committee is required to consist of three persons of whom two shall be persons elected by the council from amongst its
members and other shall be a person co-opted by the council from amongst its member advocates who possess the qualifications specified in the provisions to sub-section (2) of section 3 and who are not members of council and the senior most advocate amongst the members of the disciplinary committee shall be the chairman thereof.

**Procedure**- Section 35 provides that after giving the advocate concerned and the Advocate-General an opportunity of being heard, the disciplinary committee of a State Bar Council may make any of the following orders-:

1. dismiss the complaint or where the proceedings were initiated at the instance of the State Bar Council, direct that the proceedings be filed;
2. reprimand the advocate;
3. suspend the advocate from practice for such period as it may deem fit;
4. remove the name of the advocate from the State roll of advocates\(^17\).

It is that when the advocate is suspended from the practice under the aforesaid clause (3), he shall, during the period of suspension, be debarred from practicing in any Court or before any authority or person in India\(^18\).

2. **BAR COUNCIL OF INDIA AND ITS DISCIPLINARY COMMITTEE**

**Organization**- Section 36 of the Advocates Act empowers the Bar Council of India to refer, in certain circumstances, the case for disposal to its disciplinary committee.

Section 9 provides that the a Bar Council shall constitute one or more disciplinary committees, each of which shall consist of three persons of whom two shall be persons elected by the Council from amongst its members and the other shall be a person elected by the council amongst advocates who possess the qualifications specified in the
provision to sub-section (2) of Section 3 and who are not members of the council and the senior most advocate amongst the members of disciplinary committee shall be the chairman thereof.

**Powers**: Section 42 deals with the powers of the disciplinary committee of a Bar Council. The provisions of Section 42 have already been stated in context of powers of the disciplinary committee of the State Bar Council. Section 42-A makes it clear that the provisions of Section 42 shall, so far as may be, apply in relation to the disciplinary committee of the Bar Council of India.

Section 43 makes it clear that the disciplinary committee of the Bar Council of India may make such order as to the costs of any proceedings before it as it may drew fit and any such order shall be executable as if it were an order of the Supreme Court.

**CASES OF MISCONDUCT**

**V.P.Kumarvelu v. The Bar Council of India**¹⁹

In this case the Appellant was appointed as city Government pleader in all the civil Courts other than the High Courts constituted at Madras, in October, 1978.

The Commissioner and Secretary of Tamil Nadu filed a complaint against the appellant before the Disciplinary Committee of the Bar Council of Tamil Nadu in respect of suit No. 400/1978 on the file of the City Civil Court at Madras. The Govt. Pledger was instructed to appear on behalf of the State Govt. in that case. The memo of appearance was filed by the previous Govt. Pledger. However, when the appellant was appointed Govt. Pledger, a fresh memo of parties was not filed on his behalf nor the papers were put before him. As a result, the suit was decreed *exparte* against the State.
In another case pertaining the appellant, a suit was filed by the Tranvancore Textiles Ltd against the State of Tamil Nadu relating to the lease of land forming part of a channel. Plaintiff had prayed for the declaration that the annual rent of Rs. 3609.66 as also the Municipal Taxes levied were illegal. Plaintiff had also made a prayer of refund of Rs. 25,575.74. The complaint alleged that as a result of the gross negligence on the part of the appellant the Govt. of Tamil Nadu had suffered the sustainable loss.

The appellant contended that since the office staff had not put up the papers of this case before him, it was through inadvertence that the suit was decreed exparte. The Bar Council of India had noted that at time when an application for setting aside the order was filed the applicant must have known the awaiting of the case and the serious consequences that could follow, if the order for the payment for payment of costs were not complied with.

In another complaint it was alleged that the appellant did not attend to the case and then the exparte decree was passed. This complaint was in respect of a suit filed by an employee of the directorate of Education of State of Tamil Nadu challenging its date of birth. Summons was forwarded to the appellant along with a letter informing him the date of hearing. There was an endorsement made by the office of Govt. pleader on that letter. Another letter was received by the Govt. pleader on which an endorsement was made “Remarks/ written statement to be prepared”. However, no memorandum for appearance was filed in that suit on behalf of the state of Tamil Nadu and an exparte decree was passed in that suit. In this respect the appellant contended that the office had not put up these papers before him and therefore there had been lapse in attending the case. The Bar Council of India accepted that there was no deliberate lapse on the part of the appellant.
However, he was held guilty of constructive negligence by the Bar Council of India and it reprimanded him for time lapse.

In appeal, the Supreme Court held that there were no findings of any *mala fides* on the part of the appellant or any deliberate inaction on his part in not attending to the two cases. There was failure on his part to discharge his duties towards his client but it was not deliberate on account of heavy pressure of work and lack of diligence on the part of his staff. The negligence on his part was without moral turpitude or delinquency and therefore he was not held guilty of professional misconduct. The Supreme Court observed that:

“Whether negligence will amount to professional misconduct will depend upon the facts of each case. Gross negligence in the discharge of duties partakes of shades of delinquency and would undoubtedly amount to professional misconduct. But negligence without moral turpitude or delinquency may not amount to professional misconduct.”

The Supreme Court however observed that the appellant was rightly held guilty of negligence, but in the absence of any moral turpitude or delinquency on his part, the findings of the bar council of India that whose conduct in the facts and the circumstances of the case amounted to professional misconduct.

**Hikmat Ali Khan v. Ishwar Prasad Arya and Others**

Ishwar Prasad Arya was an advocate practicing at Badaun in U.P. he assaulted his opponent, Radhey Shyam in the court-room of Munsif as Badaun with a knife. After investigation he was prosecuted for offences under section 307 IPC and section 25 of the Arms Act and he was sentenced for three years imprisonment. But he remained free on a fraudulent letter said to have come from the governor spending the conviction. The III
Additional District and Sessions Judge, Badaun sent a complaint containing these facts to the Chairman, Bar Council of U.P. The disciplinary committee of U.P Bar Council debarred him from practicing for a period of two years. The advocate appealed to the Bar Council of India which set aside the order of the Bar Council of U.P.

The appellant Himat Ali Khan complained against the advocate and prayed for fresh inquiry. In the said proceedings, the advocate appeared and filed his return statement but thereafter he did not appear. Hence, the Bar Council of U.P proceeded ex-parte against him and the disciplinary committee of the state Bar Council of U.P debarred for a period of three years. The advocate again appealed to the Bar Council of India and it had set aside the punishment. Then Himat Ali filed appeal to the Supreme Court. The Supreme Court held that his conduct was such that his name should be removed from the state rule of advocates as he was found guilty of an offence attempting to commit murder and convicted for it and as he was unworthy of remaining in the profession\textsuperscript{21}.

**CRITICAL ANALYSIS**

Professional ethics is developed by way of practices and traditions. The Advocates Act 1961, is the prime parliamentary legislation which governs the Bar activities and works for enforcement of professional ethics by providing punishment to the advocates who has failed to perform his duties. This act has been amended time and again to cope up with the emerging trends and problems. The Bar Council of India has also framed rules for conduct for the lawyers but till date they have not been able to achieve their aim. This increase in the delinquencies among the lawyers is a threat for administration of justice which will hamper the orderly functioning of the society. The learned, dignified, grand and service oriented profession is being converted into commercial enterprise, money-
making business and trade-unionism is raising its ugly faces by boycotting the courts and strikes.

The Advocates Act 1961, created all India Bar with a unified structure providing with a Constitution of Bar Council to the State and Central Bar Council with a view to ensure dignity and proper functioning of the courts. The Bar Council till date has not been able to achieve discipline among the advocates through the disciplinary committees. This deviance pattern and its handling finds a tendency of low-complaint filing by clients due to ignorance of disciplinary procedure on part of the clients or duress or inability to hire lawyers to file a complaint. Deviance on the part of advocates may relate to clients, abuse of judicial process, disrespect of court and disciplinary action following conviction of lawyers for criminal offences. In case of Harish Chandra Tiwari v. Baiju\textsuperscript{22}, the advocate who had misappropriated money of the poor client, falsely claimed to return that money and also filed fraudulent affidavit. The disciplinary committee of the Bar Council of India awarded the punishment of three years suspension from practice. In appeal the Supreme Court depreciated the attitude of the Bar Council of India to treat a very grave professional misconduct in a comparatively lighter vein.

Secondly, in cases of misuse of judicial process, lawyers have not been punished proportionate to their guilt. In a case\textsuperscript{23} an advocate had identified one person as deceased who encashed a bond of the value of Rs.4350/- and legal representatives of the deceased were deprived of their rightful claim. The Bar Council of India, reduced his suspension from three years to one year in view of the fact that “the appellant is a young person” with a large family to support.
Thus, the advocates act, 1961, should be suitably amended by restructuring section 34 of the act so as to empower the Supreme Court also to make rules as to the persons practicing before it.

The code of professional ethics were made with an assumption of legal profession being the learned profession and best equipped to articulate code of ethics.

The working of the code has many limitations. Firstly, although the prohibitions contained in the code are couched in mandatory terms, with the use of “shall not” but it is not clear whether violation of each and every rule is actionable. Dr. Bakshi has rightly observed that some rules does not seem to create obligations, violations of which will create ground for disciplinary proceedings. For example, rule 46 of the code, describes free legal assistance by every advocate to the indignant and oppressed as one of the highest obligations, which an advocate owes to the society. This obligation is of the nature of directive principle of state policy. This rule remains more or less as unenforceable.

Secondly, the code has not been able to severe connection between the legal professional and economy. An advocate may be a sleeping partner in a firm, director or a chair person of the company, inheritor of family business.

Thirdly. The code does not speak for the fixation of fee for the lawyers and thereby places no obligation on lawyers not to charge high fee.

**CONCLUSION**

To conclude the above, the professional ethics are also termed as the duties to be followed by the Advocate, these are the morals and the basic courtesy which every person in this profession should know. These are not only the duties to be performed
because the Bar Council has made the rule, but these are the basic manners which one should incorporate within them. These are the duties towards the Court, Client, Colleague or Opponent. The performance of the duty by the Advocate defines the determination, dedication and loyalty towards the profession. The profession of law is honourable and it is expected from every person who are in this profession to be honest and work in upright manner. And any deviation in their performance of duty should be taken seriously. An Advocate in this profession has many obligations towards court, client, judge, opponent, colleagues, etc. The Advocate who does not work with sincerity, who does not follow the rules of conduct is said to have misconducted in his profession. He is guilty of the misconduct of duty for which he is punished. In order to avoid misconduct one should work in proper and appropriate manner not for the sake of getting punished but for being loyal towards them, their profession. The fundamental aim of legal ethics is to maintain the honour and dignity of the law profession, to secure a spirit of friendly co-operation, to establish honourable and fair dealings of the counsel with his client, opponent and witnesses, to establish the spirit of brotherhood in the Bar itself; and to secure that lawyers discharge their responsibilities to the community generally. Legal profession is necessarily the keystone of the arch of government. Legal profession is not a business but a profession. It has been created by the state for the public good. Consequently, the essence of profession lies in two things:

- Organisation of its members for the performance of their function.
- Maintenance of certain standards, intellectual and ethical, for the dignity of the profession.\[24\]
Notes:

1 The Art of Advocacy, edited by Chief Justice Dr. B. Malik, p 325.

2 Judge, High Court of Madhya Pradesh, Jabalpur.


4 Quoted in C.L. Anand, General Principles of Legal Ethics, p. 63

5 Legal Ethics (New York : Columbia Uni. Press, 1953)


8 C.L. Anand, General Principles of Legal Ethics, p. 175

9 Advocates Act, Section 37

10 Section 38


12 2004 AIR SCW 2894

13 AIR 1963 SC 1313

14 Section 35

15 Section 6(c)

16 Section 9(1)

17 Section 35(3)

18 Section 35(4)

19 AIR 1997 SC 1014

20 AIR 1997 SC 864

21 Professional Ethics, Accountancy for Lawyers and Bench Bar Relation by Dr. S.R. Myneni

22 (2002) 2 SCC 67

23 II J.B.C.I 87 (1973)
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