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ANALYSIS OF THE RULES OF PROFESSIONAL MISCONDUCT
WITH EMPHASIS ON MUTHU KRISHNAN VS THE REGISTRAR
GENERAL OF THE HIGH OF MADRAS 2019

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ABSTRACT

1Misconduct means any acts which are unlawful by intention and they are not inherently wrongfull. Before the Advocates Act, 1961, we had the Legal Practitioners Act, 1879. there is no definition given for the term ‘misconduct’ within the Act, but the term ‘unprofessional conduct’ is getting used within the Act.

A lawyer’s profession is supposed to be a divine or sacred profession by all means. In every profession, certain professional ethics got to be followed by everyone who is into such a profession. But there is the very fact that professional misconduct may be a common aspect, not only in other professions but also in advocacy also. In simple terms, it means certain acts done by the persons who seem to be unfit for the profession also as which are against certain ethics during this field. The term has been clearly defined in Black’s Dictionary as, the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, unlawful behaviour, improper or wrong behaviour. Its synonyms are a misdemeanor, impropriety, mismanagement, offense, but not negligence or carelessness. From the definition, it is now clear that the act of professional misconduct is completed purely to urge unlawful gains. The Advocates Act, 1961, and therefore the Indian Bar Council play an important role in providing rules and guidelines regarding the working, code of conduct, and such other matters concerning lawyers and advocates in India.

The paper covers the concept of misconduct as defined under the code. Through this paper, I wish to analyse the instances of misconduct as employed by lawyers to their advantage and

\[1\] Available at https://www.latestlaws.com/articles/professional-misconduct-by-advocates-in-india-a-critical-analysis-by-trishala-singh/ last visited on 5th October 2020
what is often done as an interim and final measure to counter it by different groups like the overall public, judiciary, and therefore the government through a notification.

**Keywords:** Misconduct, Advocates act, interim measure, the official gazette

**INTRODUCTION**

A lawyer’s profession is meant to be a divine or sacred profession by all means. In every profession, certain professional ethics require to be followed by everyone who is into such a profession. But there is the fact that professional misconduct could be a standard aspect, not only in other professions but also in advocacy also. In simple terms, it means certain acts done by the persons who seem to be unfit for the profession also as which are against certain ethics during this field. The term has been clearly defined in Black’s Dictionary as, the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, unlawful behaviour, improper or wrong behaviour. Its synonyms are a misdemeanour, impropriety, mismanagement, offense, but not negligence or carelessness. From the definition, it is now clear that the act of professional misconduct is completed purely to urge unlawful gains. The Advocates Act, 1961, and therefore the Indian Bar Council play an important role in providing rules and guidelines regarding the working, code of conduct, and such other matters concerning lawyers and advocates in India.

The attributes of a profession are:

1. Existence of a body of specialized knowledge or techniques.
2. Formalized method of acquiring training and experience.
3. Establishment of a representative organization with professionalism as its goal.
4. Formation of ethical codes for the guidance of conduct.
5. Charging of fees based on services but with due regards to the priority of service over the desire of monetary rewards.

**BACKGROUND**

2 Misconduct means any acts which are unlawful in nature they are not inherently wrongful. Before the Advocates Act, 1961, we had the Legal Practitioners Act, 1879. There is no definition given for the term ‘misconduct’ within the Act, but the term ‘unprofessional

2 Available at [https://blog.ipleaders.in/professional-misconduct-advocates-act-1961/](https://blog.ipleaders.in/professional-misconduct-advocates-act-1961/) last visited on 5th October 2020
conduct’ is getting used within the Act. Some of the instances of professional misconduct are as follows:

• Dereliction of duty
• Professional negligence
• Misappropriation
• Changing sides
• Contempt of court and improper behaviour before a Magistrate
• Furnishing false information
• Giving improper advice
• Misleading the clients in court
• Not speaking the truth
• Disowning allegiance to the court
• Moving application without informing that an identical application has been rejected by another authority
• Suggesting bribing the court officials
• Forcing the prosecution witness not to say the truth

RULES OF MISCONDUCT LAID BY THE BAR COUNCIL

3 The provisions of Section 35 of the Advocates Act affect professional misconduct of lawyers and advocates in India, which read as:

A person is found guilty of professional misconduct, it shall refer the case to a disciplinary committee, shall fix a date of hearing, and issue a show-cause notice to the Advocate and therefore the Advocate General of the State. The disciplinary committee of the State Bar Council, after being heard of both the parties, may:

1. Dismiss the complaint, or where the proceedings were initiated at the instance of the State Bar Council, directs that proceedings be filed.
2. Reprimand the advocate.
3. Suspend the advocate from practice for such a period because it deems fit.
4. Remove the name of an advocate from the state roll of advocates.

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3 Available at http://www.lawsindia.com/Advocate%20Library/Amendments/Bar%20consi_rules/BAR%20COUNCIL%20OF%20INDIA%20RULES.htm last visited on 5th October 2020
Misconduct is of infinite variety; this expression must be understood during a broad meaning, such it extends the meaning under the law, and there is no justification for restricting their natural meaning. Section 49 of the Advocate Act empowers the Bar Council of India to border rules and standards of professional misconduct. Under the Act, nobody features a right to form advertisements or soliciting; it is against the advocate’s code of ethics. He is also not entitled to any advertisement through circulars, personal communications, or interviews, he is not entitled to demand fees for training and to use name/service for unauthorized purposes.

**CONTEMPT OF COURT AS PROFESSIONAL MISCONDUCT**

Contempt of court could also be defined as an offense of being disobedient or disrespectful towards the court or its officers within the sort of certain behaviour that defies authority, justice, and dignity of the court. In various cases involving contempt of court, the court held that if any advocate or legal practitioner is found guilty of the act of contempt of court, he/she may be imprisoned for 6 years and should be suspended from practicing as an advocate (In re Vinay Chandra Mishra). The court also held that license of the advocate to practice a legal profession might be cancelled by the Supreme Court or High Court in the exercise of the contempt jurisdiction.

There are many other landmark judgments regarding the cases involving professional misconduct of the advocates. In the case of V.C. Rangadurai v. D. Gopalan, the court looked into the matter of professional misconduct in such a way that the decision was made in a humanitarian manner, considering the future of the accused in this case. The court held that “even so justice features a correctional edge, a socially useful function, especially if the delinquent is simply too old to be pardoned and too young to be disbarred. Therefore, a curative, not cruel punishment has got to be delivered within the social setting of the legal profession”.

The court then gave the choice in such how that it checked out each aspect concerning the case also because of the parties concerned. It adopted a deterrent was of justice mechanism so that the accused person is awarded certain punishments but also provided a warning towards such people who shall commit acts of a similar nature. The judgment clothed to be a landmark in cases concerning professional misconduct because it delivered an efficient judgment and but did not jeopardize the long term of the accused person. In various other cases like In J.S.Jadhav v. Mustafa Haji Muhammed Yusuf, the court delivered the choice in

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4 1993 AIR 1535, 1993 SCR (2)1006
such how that it created a notion within the minds of the wrongdoers that offenders are going to be punished accordingly.

**PRASHANT BHUSHAN CASE**

The 2009 case against Mr. Bhushan was filed by senior advocate Harish Salve about an interview published in Tehelka magazine, during which he made allegations of corruption within the judiciary. Apart from Bhushan, then Tehelka editor Tarun Tejpal was also charged with contempt of court. In 2010, a three-judge bench headed by Justice Altamas Kabir had issued notices to Bhushan and Tejpal, but the case only came up for a hearing when the SC recently initiated a fresh contempt case against Bhushan. The fresh case involves two tweets by Bhushan about the Supreme Court’s functioning and therefore the judge of India. On August 14, the Supreme Court found the 2 tweets amounting to “serious contempt of court”. In this case, Bhushan has refused to apologize and has stood his ground that the tweets reflected his “bonafide beliefs”, whilst the Supreme Court gave him time to rethink and tender an unconditional apology or withdraw his statement. The court has now reserved its verdict on the quantum of punishment, if any, to be imposed on Bhushan. As per Article 145(3) of the Constitution, “the minimum number of Judges who are to require a seat for the aim of deciding any case involving a substantial question of law on the interpretation of this Constitution” shall be five. A bench of a minimum of five judges is about up to listen to significant Constitution cases.

When different rulings of the same Bench strength are not consistent with one another, a ruling by a larger Bench of an odd number of judges is preferred to harmonize the law. Once the inquiries to be settled are identified, these are placed before the CJI who will then assign it to a bigger Bench. The CJI, because the master of the roster, decides which Bench would hear the case.

The Contempt of Courts Act 1971 lays down the procedure to be followed in contempt cases. It also says that the offense is punishable with simple imprisonment for a term which can reach six months, or with a fine which can reach Rs 2,000, or both.

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However, Section 12 of the Act also adds an exception to the punishment prescribed. “Provided that the accused could even be discharged, or the punishment awarded could even be remitted on apology being made to the satisfaction of the court,” the law says.

**VIOLENCE UNDER THE AMBIT OF EXERCISE OF POWER**

Firstly, the choice is made as an inquiry and discovery of the court’s ‘power’ to punish for its contempt. I would like to suggest, however, that the word ‘power’ does not accurately describe what the court discovered. When courts sentence convicts to imprisonment or maybe death, we do not customarily describe this, in criminal terms, as a ‘kidnapping’ or a ‘murder’. What distinguishes the court’s action in these cases may be fiction that it is not acting individually, but representatively on behalf of the community. In Bhushan’s case, however, I feel grounds exist to withdraw this fiction.

In the name of exercising judicial ‘power’, it might appear that the Supreme Court has armed itself with the license to judicial violence.

In her celebrated monograph On Violence, the philosopher Arendt usefully distinguishes ‘violence’ from ‘power’. There are three features of her account of the violence that, I find, easily attach to what the Supreme Court calls its contempt ‘power’. Firstly, for Arendt, while power seeks ‘legitimation’ from the founding decisions of a community, violence seeks ‘justification’ from an end that lies within the future. Tellingly, she notes, “Violence is often justifiable, but it never is going to be legitimate”. In our present context, it bears reflection whether, in the name of seeking legitimation for its actions, the Supreme Court is justifying itself by citing the abstract need to secure ‘public confidence’ in the judiciary.

Secondly, in Arendt, “Violence appears where power is in jeopardy”. It is what regimes need to resort to once they become insecure about their legitimacy. Lurking beneath the court’s reasoning last week, in the way it skirts Bhushan’s voluminous charges, might we not read a tacit acknowledgment that it is quite a ‘power ‘less institution? That public confidence in it is at such a low ebb that only spectacular violence of this kind can secure its foothold.

Lastly, in Arendt’s conception, violence is arbitrary and for this reason, it has seldom been theorized. When a hyena mauls a fawn, one can react with horror, disgust, or anger, but it is pointless to analyse this violence. There are no principles it observes. One might say an

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6 Available at [http://www.legalservicesindia.com/article/756/Abuse-of-Administrative-Discretion.html](http://www.legalservicesindia.com/article/756/Abuse-of-Administrative-Discretion.html) last visited on October 5, 2020
equivalent of the arbitrary and absolute contempt jurisdiction that the Supreme Court has articulated during this case. Much of the response to the decision has, consequently, taken the form of anger and disappointment.

The Petitioner (an Advocate) has filed the petition Under Article 32 of the Constitution of India, questioning the vires of amended Rules 14-A, 14-B, 14-C, and 14-D of the Rules of the supreme court of Madras, 1970 made by the supreme court of Madras Under Section 34(1) of the Advocates’ Act, 1961 The supreme court has inserted Rule 14A in the Rules of the high court of Madras, 1970 empowering the high court to debar an Advocate from practicing. The supreme court has been empowered to require action Under Rule 14B where any misconduct mentioned Under Rule 14-A is committed by an Advocate before the supreme court then the supreme court can debar him from appearing before the supreme court and everyone subordinate courts. Under Rule 14-B(v) the Principal District Judge has been empowered to initiate action against the Advocate concerned and debar him from appearing before any court within such District.

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**ISSUES IN THE CASE**

7 Concerning the disciplinary power of the Supreme Court

After reviewing the international scenarios in this regard-the ethical standard of the legal profession and legal education has been assigned to the Bar Council. It has to maintain the

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dignity of the legal profession and independence of the bar. The bar association must be self-governing is globally recognized. The Provision and scheme of the Advocates Act has never intended to confer the disciplinary powers upon the High Court or upon Supreme Court except to the extent dealing with an appeal under Section 38.

THE POWER TO DEBAR AND THE AMBIT OF SECTION 34(1)

Section 34 of the Act does not confer such an influence on border Rules to debar lawyers for professional misconduct. The amendment made by providing Rule 14(A)(vii) to (xii) is not authorized under the Advocate Act. The supreme court has no power to exercise disciplinary control. It would amount to usurpation of the facility of Bar Council conferred under the Advocates Act. However, the Supreme Court may punish the advocate for contempt then debar him from practicing for such specified period as could also be permissible by law, but without exercising contempt jurisdiction by way of disciplinary control no punishment is often imposed. As such impugned Rules could not are framed within the purview of Section 34.

JUDGMENT ANALYSIS

8 In case misconduct is committed before any subordinate court, the concerned court shall submit a report back to the Principal District Judge and in this case, the District Judge shall have the power to take appropriate action. The procedure to be followed has been provided in the newly inserted Rule 14-C and pending inquiry, there is the power conferred by way of Rule 14-D to pass an interim order prohibiting the Advocate concerned from appearing before the supreme court or the subordinate courts.

- The amended Rule 14-A to 14-D came into force with effect from the date of its publication within the Gazette on 25.5.2016. Rule 14-A provides that an Advocate who is found to possess accepted money within the name of a Judge or on the pretext of influencing him; or who has tampered with the court record or court order; or browbeats and/or abuses a Judge or judicial officer, or is responsible for sending or spreading unfounded and unsubstantiated allegations/petitions against a judicial officer or a Judge to the superior court;

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8 Available at http://www.lc2.du.ac.in/DATA/R.%20Muthuukrishnan%20v.%20The%20Registrar%20General%20April%2020.pdf last visited on 5th October 2020
or actively participates during a procession inside the court campus and/or involves in gherao inside the court hall, or holds placard inside the court hall or appears within the court under the influence of liquor, the courts are empowered to pass an interim order of suspension pending inquiry, and ultimately to debar him from appearing within the supreme court and everyone other subordinate courts, as the case could also be.

SUGGESTIONS

9 From the analysis of various cases and certain facts and circumstances, it will be clear that unlike the other profession, advocacy is considered a noble profession and professional ethics must be maintained. Courts have addressed various cases of professional misconduct wherein an attempt of murder by the advocate towards his client has also been reported. Hence, there must be interference from concerned authorities so that persons with a criminal background are kept far away from this profession. Even though guidelines are handling the social background of the person enrolling during this profession, i.e. the person enrolling must be free from any criminal cases, it does not prove that the person features a criminal nature of his own. So, Bar Council can implement certain rules and regulations so that the conduct of the one that is showing criminal behaviour is often controlled by strict guidelines ensuring that the person no longer acts unlawfully against his profession. There must be various career guidance and development programs conducted by the Bar Council immediately after enrolment so that new legal professionals they’re going to remember of the do’s and don’ts of this profession and there will be a better group of advocates in the coming decades.

CONCLUSION

There are many other landmark judgments regarding the cases involving professional misconduct of the advocates. In the case of 10 V.C. Rangadurai v. D. Gopalan. The court looked into the matter of professional misconduct in such how that the choice was made in a humanitarian manner, considering the longer term of the accused during this case. The court held that “even so justice features a correctional edge, a socially useful function, especially if the delinquent is simply too old to be pardoned and too young to be disbarred. Therefore, a

9 Available at http://www.legalservicesindia.com/article/1665/Professional-misconduct-of-lawyers-in-india.html last visited on 5th October 2020

10 979 AIR 281, 1979 SCR (1)1054
curative, not cruel punishment has got to be delivered within the social setting of the legal profession”. The court then gave the choice in such how that it checked out each and each aspect concerning the case also because of the parties concerned. It adopted a deterrent was of justice mechanism so that the accused person is awarded certain punishments but also provided a warning towards such people who shall commit acts of a similar nature. The judgment clothed to be a landmark in cases concerning professional misconduct because it delivered an efficient judgment and but did not jeopardize the long term of the accused person. In various other cases like J.S. Jadhav v. Musthafa Haji Muhammed Yusuf, the court delivered the decision in such a way that it created a notion in the minds of the wrongdoers that offenders will be punished accordingly.

11 1993 AIR 1535, 1993 SCR (2)1006