

ABSTRACT

ADVOCATES AND NEED FOR A CODE IN THE LIGHT OF ADVOCATES ACT 1961

***ANANNYA KOHLI**

Law as a legal profession has evolved in a country like India, tracing history we have realized that laws were prevalent since ancient times and every era from ancient, medieval, Mughal era, British and after independence it has undergone rigorous changes.

The standing of the legal profession as prestigious as it is today Indian's struggle for practicing law was not easier either, the paradox being that law stands for justice and that too was biased in British era who can and cannot practice law.

Finally, after independence the advocate's act 1961 the lawyers rule book was codified, and Indian lawyers could freely practice law but by abiding to rules.

It consists of all the rules and regulations an advocate needs to know and abide by before entering a court room, while in the court and even when not in a court room.

An advocate is a professionally qualified individual who has the license to practice law. They qualify for the same by undergoing the prescribed criteria by the governing authority i.e. The Bar Council of India, which was established as per section 4 of the Advocates act, 1961.

The body provides standards of professional conduct, etiquettes and exercises, disciplinary committee and jurisdiction, they also take actions against misconduct as there is a committee for the same apart from the code they also set standards for legal education in our country.

This research paper is a critical analysis of advocates and why the code of conduct is essential within the set boundaries of the Advocated Act, 1961.

INTRODUCTION TO ADVOCATES

The act of representing someone before an authority to unburden them from the allegations made by an individual or a mass has been a practice in India since ancient times.

The practice has evolved through different eras and currently this profession of representation of individual's conflict in front of the higher authority is termed as a "legal profession" and the ones practicing it are called "lawyers" or "advocates".

To become an advocate, one needs to qualify the set criteria for the same primary and secondary education with a three-year LLB or a 5 year LLB who are enrolled with the Bar Council.

According to section 2 {a} ¹ of the advocates act states that an advocate means an advocated who is enrolled under any provisions of this act. An advocate is a qualified professional in the field of law, advocacy has been a Nobel profession, it's considered as a noble profession because it revolves sheerly around serving the society. Advocates are regarded as the protectors of liberty and justice. The very practice of law is not considered a business or a trade, it's a profession.

Unfortunately, this pious profession of selflessness and servitude is being contaminated with malpractices in the modern times, that is the reason why the governing authority of the advocates i.e. The Bar Council has ensured stricter rules and need for a stricter code of conduct.

According to section section 2 {d} ² of the advocates act, it states that it means Bar council constituted under this act and according to section 2 {e} ³ of the advocates act it states that The Bar Council means The Bar Council constituted under section 4 to which the territories of this act extends.

Section 4⁴ of the advocates act , 1961 states all about The Bar Council of India .

They have further laid that in case of misconduct actions would be taken and punishment would be applicable for the same.

An advocate is the one who is a messenger of justice and do their best to do so.

BECOMING AN ADVOCATE

Since 2011 All India Bar Examination s been held regularly by the Bar Council Of India, it also regulates legal practice and education in India, along with it , it also grants recognition to universities whose degree in law will qualify for applicants to be advocates post-graduation.

¹ Section 2(a) of he advocates act defines advocate as individual entered in any roll under the provisions of this act.

² Section 2 (d) of the advocates act states that Bar council means a bar council constituted under this act.

³ Section 2(e) under the advocates act states that bar council of India means the Bar council constituted under section 4 for which the territories foe which this act extends.

⁴ Section 4 under the advocates act states that there shall be a bar council for the territories to which the act extends to be known as Bar Council of India .

Enrolment is compulsory for all law graduates after 2011.

No advocate under section 24 of ⁵the advocates act, 1961 shall be allowed to practice under chapter 4 of the advocates act until and unless they pass the ⁶ successfully.

The eligibility standards for the applicant to be registered as an advocate on the state bar -

1. Applicant must be the citizen of India; if the applicant is a national of any other country maybe admitted if citizens of India , duly qualified are allowed to practice law in that other country .
2. The applicant has completed the age of 21 years.
3. The applicant must have a 3 year or a 5-year law degree.
4. NOTE – there is no minimum percentage required in graduation to appear in the examination.

Under section 24 of the Advocates Act 1961 states that enrolment with the respective state bar council is also necessary as well as submission of suitable proof with the applicant form of the All-India Bar Examination.

GOVERNING ADVOCATES

Even though advocates deal with laws there are laws governing advocates. There are certain duties / expectations from an advocate moreover there are a set of rules all professionals must abide by.

⁷of the advocates act talks about the state bar councils and their set ups.

According to ⁸ of the advocates act the bar council of India was established with that purpose.

The main aim is to ensure fairness in the legal system, justice clean and pure and eradication of malpractices.

⁵ Section 24 of the advocates act states about the persons who may be admitted as advocates on the state roll.

⁶ an exam all law graduates have to pass after their law degree to obtain their license for practice - especially batches after 2009.

⁷ section 3 of the advocates act 1961 states about the state bar councils

⁸ section 4 of the advocates act 1961 states about the establishment of Bar Council Of India

The state bar councils and the Bar council Of India function hand in hand.

They work in co-ordination so as to function smoothly, the main reason behind setting up state bar councils in all state was to ensure transparency, efficient communication and faster justice.

Advocates are the messengers of justice, for them to be disciplined and well-mannered and law abiding is of the utmost importance.

The advocates are governed by majorly two authorities the Bar Council of India and the State Bar Councils.

The laws that govern the advocates have been laid down in the Advocates act 1961.

That truly govern advocates as they have legally recognized and codified laws for lawyers keeping a holistic view ranging from enrolling to setting rules for conducting themselves as well as expectations from them. , state what misconduct means in the eyes of law and lay down punishments.

The powers of the governing authorities I.e. - the Bar council of India as well as the state bar councils has been mentioned in the act clearly.

Hence governing authorities are extremely necessary to keep a check rest the misuse of power and malpractices might take place.

The act has been extremely efficient in concluding cases of misconduct.

DISCIPLINARY

Discipline is a virtue of the highest order for an advocate, it is an essential feature of the characteristic of a professional in the legal profession.

An advocate must be utterly disciplined to be a good law abiding and justice providing advocate.

However, this pious practice of law has been polluted with malpractices over the years. The focus from justice in some cases has shifted to winning even though justice does not prevail. That is everything our justice system does not stand for.

The advocates act of 1961 is the code that is legally recognized and laid down only for advocates. The act along with rights and duties of advocates also lays down what is misconduct and the punishment for misconduct.

The act has critically emphasized on the discipline, which is the most critical characteristic essential for an advocate.

The acts section 9 states that the state bar councils shall set up two or more disciplinary committees as they see fit, the members of the committee shall be three in number out of which two members would be co-opted by the members of the council itself whereas the other member would be co-opted by the council from amongst the advocates as they see fit.

The senior most member shall be the chair of the committee.

So, in short the state bar council shall consist of two or more disciplinary committees.

However, the act states staunchly about disciplinary committees,⁹ of the act too talks about disciplinary committee the section states about the disciplinary powers of the Bar Council of India.

Under this section the bar council of India believes if they receive a notification that any advocate not on a state roll has been accused of misconduct or ill behavior the case shall be disposed to the disciplinary committee.

The disciplinary committee may take any action they see fit to the nature of the accused's misconduct as per¹⁰ of the Advocates Act, 1961, with references to the attorney general of India.

The¹¹ under this section states that disciplinary committee of the Bar Council of India may make any orders as they see fit with the state bar councils' disciplinary committees can make under¹² As it has been established that the disciplinary committee is powerful and most importantly this committee is the most critical one.

⁹ section 36 of the advocates act 1961 states that disciplinary powers of the bar council of India

¹⁰ reference has been taken from the advocates act 1961 the section states about the punishment for misconduct.

¹¹ sub section 4 refers to the fourth point under this section whose reference has been taken from advocates act ,1961.

¹² sub section 3 of section 35 refers to the advocates act ,1961 .

The powers of the disciplinary committee have been laid down in ¹³ of the Advocates act 1961.

The section states that disciplinary committee of any bar council as have as much power as much as a court of court has under civil procedure 1908¹⁴) in respect to a certain matter as -

- Summoning and enforcing attendance of any individual and examining them under oath
- Needing discovery as well as production of nay documents
- Receiving evidence on affidavits
- Requisitioning any public records or copies from another court or office
- Issuance of commissions for the examination of documents or witnesses
- Any other matter which may be given, provided that no disciplinary committee shall have the right of attendance of the following -
- Any presiding officer of the court except for the prior sanction of the high court to which the court is subordinate
- Or any officer of the revenue court except with the prior sanction of the state government.

Apart from this it states that every state bar council shall consist of a chairman and a vice chairman plus they may take actions as they see fit.

Their main objective is to maintain the idea of fairness and justice and eradicate malpractices from pious profession and to maintain transparency between the profession and the practices of the profession and eradicate man practices from their roots

MISCONDUCT

Advocacy has always been considered as a very noble profession, the reason for the same is that it is neither a business or a trade it's a selfless service to help those in need.

¹³ section 42 the reference has been taken from section 42 of the advocates act,1961.

¹⁴ section 5 of cps states application of thecae to revenue courts.

However, over a period of time such pious practice has been contamination by unclean practices, to maintain the sanctity of this noble profession I believe a need for a stricter code is extremely necessary.

The primary meaning of the term misconduct is to not conduct or behave in the prescribed manner. Although lawyers are professionally trained and qualified individuals who have an innate knowledge of laws the paradox is there are laws and rules governing their actions on the professional front as well.

When an advocate behaves in a manner which is inglorious and contemptible outside the laid boundaries of professional ethics and code of conduct that is what is considered as misconduct.

Misconduct is easy term to comprehend, it is an amalgamation of transgression and unacceptably unprofessional behavior.

Advocacy's backbone is the profession nature of being selfless but when selfishness takes over this profession it stands for all the things it does not stand for.

Where there is misconduct there is punishment, advocates are no such exceptions even they are susceptible to punishment if an act of misconduct has been performed by them.

However, there are numerous ways by which an advocate misconduct oneself a few to name are as follows –

- forgery
- bribery
- conducting the case or attending the court under the influence of alcohol
- breach of trust
- fraud
- absence after taking the brief
- Fowl language against the court
- Dropping the client without a valid reason
- Behaving in an undignified manner with the court , client or the opposing advocate.

As mentioned above the list is endless but as long as a advocate pursues these rules / laws there will be nil chances of misconduct.

The advocates act, 1961 c¹⁵ consists of everything on misconduct ranging from the grounds of misconduct to the way the advocate appeal about the same.

The duty and rights of the lawyers towards that of the court are that the advocate will conduct himself in a decent manner while present in the court or presentation a case in the court , behavior of the advocate has to be decent. The advocate should always respect the court no ill words or ill actions towards the court should be said or made.

PUNISHMENT FOR MISCONDUCT

In chapter V of the advocates Act,1961 under ¹⁶. Under this section the advocates who have crossed the line of conduct are charged for misconduct.

The mere meaning of the term misconduct means that not behaving or abiding by the rules or the code of conduct already set.

In case of legal profession there are certain rules that lawyers have to abide by rest they are charged for misconduct.

The punishment for misconduct is not an easy task the task is a lengthy one and through research is done before the accused is charged with misconduct. Certain rules that all professionals have to follow are towards its client, towards the court, towards the opponent and towards the society in general.

Section 35 of the Advocates Act,1961 talks about punishment for misconduct for advocates.

The act states that there is a slight hint towards the any act of misconduct by an advocate the state bar council has the right to dispose the complaint to its disciplinary committee, under sub s¹⁷ the disciplinary committee shall further fix a date for the hearing. A notice for the same is provided to the accused advocate as well the advocate general of the state.

¹⁵ chapter v refers to the sections in which the bare act is divided , here we are referring to chapter 5.

¹⁶ section 35 of the advocates act states - punishment for misconduct , the reference has been taken from the advocates act,1961.

¹⁷ sub section 2 of section 35 , the reference has been taken from the advocates act ,1961.

As per the punishment under the codified section the advocate may be reprimanded , debarred from practice until the disciplinary proceedings reach a conclusion.

If the mistake is grave the name of the advocate could also be removed from the roll.

The punishment for not abiding by the rules ranges from suspension to removal of the name from the state board depending on the nature of the mistake.

NEED FOR ETHICS AND CODE

Ethics the term itself in a generalized manner means that morals or principles of the

Justice abbot parry believes, and he says that an advocate should possess seven important qualities, or he called them the seven lamps

- honesty
- courage
- industry
- wit
- eloquence
- judgement
- fellowship
- Discipline
- Dignified behavior

Advocacy is a selfless profession, it's not a business neither it is a trade, it's a noble and pious profession to fight for what's right to help deliver justice is what an advocate's role in the society is. Its human nature to be selfish at times but professionally in a pure profession like law it is sheer misconduct.

There is an ethical code or a code of conduct every advocate has to abide by and stay within the boundaries of because as soon as an advocate would overstep their bound it would be considered unethical and misconduct on part of the advocate.

The code of ethics or conduct for lawyers consist of the following rules -

Advertisement – in a profession like law advertising is strictly out of the question , sole aim is to aid those in need , advocates are selfless advertising stands for attention or being selfish and not of servitude that is why it is considered misconduct to advertise oneself , firm or company.

The advertising should not be direct or indirect, both are strictly prohibited.

DIRECT – personal communication, flyers, or pamphlets etc.

INDIRECT – touring one’s state or sending out one’s agents or clerks to spread the word or aiding in any activity which indirectly advertises ones profession.

- An advocate shall also not grant permission for his/her name to be used by any unauthorized agency to practice law or for the name to be associated with.
- Fees – an advocate shall not demand fees from a client for the purpose of bribe, demand fees for imparting knowledge to help one enroll.

There are certain duties of every advocate they need to fulfil on a constant basis or in other words we may also call them advocacy etiquettes, the duties are as follows:

- TOWARDS THE COURT
- TOWARDS OTHER ADVOCATES
- TOWARDS HIS CLIENTS
- TOWARDS THE OPPOSING PARTY
- TOWARDS ONESELF

1. Towards the court - an advocate is a representator of justice, he is a noble service-man his service is not only limited to the client is representing but to the court which has given him the opportunity to fight for justice.

It’s the duty of the advocate to be just and honest to the court and to others on the case ,to respect the court as the court respects the advocate , they should be well prepared and not waste courts precious time, they should remain loyal bearers of law and justice throughout their career .

2. TOWARDS OTHER ADVOCATES – advocates duties are not restricted to their clients or the court there are certain duties towards their fellow advocates too. Fairness is an essential quality each advocate must possess, respect towards other advocates is a duty all need to fulfil, remaining within the boundaries of professional etiquettes inside and outside the court with each other, and follow the rules.
3. TOWARDS HIS CLIENTS – The relationship of the client and the advocate is a confidential one and it's the duty of the advocate to protect it along with protecting the interest of the client, not to misuse their relationship for monetary and selfish purposes it's the primary duty of an advocate, not drop the case or change sides in the middle of an ongoing case.
4. TOWARDS THE OPPOSING PARTY – the advocate has to be just and loyal and honest in order for justice to be delivered, there are duties an advocate needs to fulfil towards the opposing parties too, no interference unnecessarily , no malpractices , loyalty , fairness and justice and transparency is all a advocate and the opposing party should have .
5. TOWARDS ONESELF – an advocate knows the role he / she must play inside and outside the court. They are professionally trained and qualified individual. There are certain duties an advocate needs to fulfil to oneself, they are, being honest to oneself , loyal to others around, believing in the law and justice , courage to fight for what's right , diligence and prudence is all the qualities an advocate must possess in order to be a good law abiding advocate .

When the etiquettes and the code is not abided by and the duties to oneself and others around are not fulfilled its misconduct.

Selfishness and greed when take over and an advocate is de railed from one's true motive, he / she carries out an act of misconduct.

There have been several cases of misconduct in the past as the noble profession has been polluted with malpractice and selfish motives to clean the profession and restore the status of nobility back in advocacy it is required that the code be strictly adhered to and that constant check on the following up of the code amongst advocates be done and updated on a constant basis.

CASES¹⁸

1. D.S DALAL V. THE STATE BANK OF INDIA

In this case there was a complaint against the advocate that he misappropriates the amount paid to him towards the filing of the suit and professional fees.

The advocate pleaded that the suit papers were misplaced by the High Court Registry. However it was duly established that the suit papers were returned to the advocate for the purpose of removing objections but the advocate did not re-file the suit for a long time.

The disciplinary committee found him guilty of misappropriation of money paid to him by the client and therefore, he was punished for professional misconduct.

2. SAMBHU RAM YADAV V. HANUMAN DAS KHATRY¹⁹

The appellant filed a complaint against the advocate to the Bar Council of Rajasthan stating that while appearing in an ongoing suit as a counsel, the advocate wrote a letter stating the concerned judge under whom the suit was being decided accepted bribes, and asked for Rs.10,000 for the purpose of bribing and influencing the judge for the sole purpose of obtaining a favourable order.

The disciplinary committee held that the advocate was guilty of misconduct and stated that such an act made the advocate “unfit to be a lawyer”.

Supreme court on upholding the findings of the Bar Council of Rajasthan said that profession of law is neither a trade or a business. Advocates have duties to fulfil and keep the integrity of the profession intact and prevent corruption in the profession in order to ensure that justice is secured in a proper legal manner.

¹⁸ The case's reference has been taken from <http://www.legalservicesindia.com/article/1665/Professional-misconduct-of-lawyers-in-india.html>

¹⁹ The 2 and 3 reference has been taken from <http://www.legalservicesindia.com/article/1665/Professional-misconduct-of-lawyers-in-india.html>

The act of the advocate in the case was misconduct of the highest degree- it was not only the obstruction of administration of justice but also the trashing of the good will of the profession in the eyes of public.

3. NORATANMAL COURASIA V. M.R MURALI

In the following case the Supreme court intricately observed the words “professional misconduct” as per section 35²⁰ of the Advocates Act ,1961.

The facts of the case stated that an advocate { who appeared as a litigant in the capacity of that of the respondent and not as an advocate in the rent control proceeding } assaulted and kicked the complainant and asked him to stay away from the proceedings of the case .

The main issue that arose was that the act of the advocate amounted as misconduct or not , the action against such act could be initiated by the bar council even though he did not act in the capacity of the advocate.

Supreme Court held that an advocate is expected and obliged to follow norms so that the community’s confidence in advocates is not shaken in him as the officer of the court.

Even though was not acting as the advocate, his behavior was observed to be unfit for that of an advocate and the Bar Council agreed with the disciplinary proceedings against him.

Arriving at the conclusion of this case the apex court kept in mind jurisprudence of the courts in misconduct, they held that misconduct was a broad term and that breach of discipline like – improper behavior, intentional wrongdoing or deliberate violation of a rule of standard behavior.

The term may also include wrongful intention which is not a mere error of judgement.

Although misconduct’s definition is not definitive derives its reference from the context, the delinquency in its performance and its effect on discipline and the duty of the nature.

²⁰ Section 35 of the advocates act states punishments for advocates for misconduct.

CONCLUSION

Advocates are selfless individuals and play a crucial role as the messengers of justice, whose main aim is to serve the society with even the slightest bit of intention of being selfish is not acceptable. But even advocates are human and cutthroat competition in the field of law tends to make one forget what one is in the race for. One often lets gives in to one's temptation but to prevent such a massive blunder from happening we need rules. The authority that governs the advocates in India and frames rules is The Bar Council of India as per section 49 of the Advocates Act, 1961.

These rules are called the code of conduct or ethical code once a law graduate is registered in the state roll or under the BCI they automatically have to abide by the rules no matter what stream of law they take up, rules are applicable to all practicing this profession no matter what kind of. An advocate has to respect their profession, the ground they fight on the courtroom, the opposing council all of these have to be treated with utmost respect.

The duty of the advocate is to treat a fellow advocate as brethren, court with respect and with the client in a dignified manner and not resort to any kind of malpractices which might be a hindrance in the path of true justice. The code enables to keep the quality of standards of the profession in check, ensures that no misconduct is conducted or has been conducted or even maybe conducted. When the code is not abided by then the code also has the power to punish the advocates for the same. This punishment is for the misconduct or the unacceptable behavior by the advocate.

This is done to keep the transparency amongst the bar and the bench to keep this pure and pious profession untainted by the malpractices, it also ensures to prevent and punish anyone who dares cross the boundary of the code. As Justice Abbot Parry mentioned the seven essential qualities an advocate should possess or seven lamps as he called them – honesty, eloquence, wit, courage, industry, fellowship, justice. This code has protected and punished several instances of misconduct with the intention of maintaining the sanctity of this selfless profession for generations to come.

Hence to conclude this research it has been evident that a code of conduct is extremely necessary for advocates, therefore the code is essential for advocates.