The PRACTICAL FILE

On PROFESSIONAL ETHICS, ACCOUNTABILITY OF LAWYERS AND BAR-BENCHRELATION



Under the Guidance of Dr.Salim Khan (Associate Professor) (UGC NET LL.D.)

Submitted By

Name : RollNo.:

EnrollNo.:M-

SubjectCode: K-3005

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DEPARTMENTOFLAW DIMT LAW COLLEGE (College Code-1279)

Kakra, Rawli Road, Muradnagar, Ghaziabad (U.P.)

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the galden oppositivity to do this wonderful work In performing my practical file, I would lik to express my thank to all the faculty members for helping mein various ways. I would also like to exprais my deepest gratitude to all those who have directly or imdirectly guided me in writing the practical file, I also express my sincere thanks to classmates and team members who have made valuable Comme nts and sugestions which helped me to improve my practical file.



DEVELOPMENT

OF LEGAL

PROFESSION

1: DEVELOPMENT OF LEGIAL PROFESSION IN INDIA

What is profession?

In Society, People Occupy different occuptions for their livelihood or for their Satisfaction. The occuptions may be broadly divided as productive occupation and service occupations. The occupation which require advanced education and special training are Called professions LAW, iteaching, architecture, medicine etc are related to professions. They are intended to serve mankind.

What is legal profession?

The profession of law is one of the aldest and noblest professions. The Person in the legal profession is called an advocate or lawyer. An Advocate is an afficer of justice and a friend of the court. He has to accept a brief for any man

who Comes before the Cowits and do What one can do honorably on behalf of his client. He has to Callect legal moterial relating to the Case of his client had argue in the Courts to help the judges to deliver judgments. The central function that the legal profession must perform is nothing less than the administration of justice.

An advocate also serves the public by giving legal advice by explaining the Complicated and confusing provisions of different Acts and Rules to Citizens who seek his service.

An Advocate also serves the public assists the parties in drafting the economic transactions like Contracts, agreements, deeds, wills etc.

(4) IMPORTANCE OF LEGAL PROFESSION

The degal profession plays an import-- circt role in the administration of justice. The claryer assists the Courts in avoiling at a carrect judgment. The lawyer Callects legal materials relating to the Case and thereby helps the court or judge to avoive at a connect judgm--ent. Without the assistance of the lawyer it would be a superhuman tark for the Judge to arrive at a vatisfactory gudgment. Justice P.N. Saporul has stated that the "justification for the existence of counsel is that each said to the Controversy should be in a position to Present its case before an importial tribunal In the best and most effective" manner possible.

(b) LEGAL PROFESSION IN ANCIENT INDIA

In India during the earlier period, People live in small groups. The heads of these groups on tribes delivered justice Under open sky before all the members. Open arguments were made. There were no specialist like a lawyer dwing those days. When Kingships was established in the society, Kings delivered justice In King's Court, the King was advised by his Councilors. The law of those days was a rooted in Hindu religion and custom. Dharma was protected by the King. Though there was no institution of a lawyer, some intellectual people served justice. From the stories of Maryada Ramayana and Vikramaditya, We are well aware of the wise man who salved the critical cases of those day. During those days the legal profession was administered by the administrators.

(C) LEGIAL PROFESSION IN BRITISH INDIA

1. CHARTER OF 1726

11. CHARTER OF 1773

Legal profession in British India -> As has been stated above, the legal profession as it exists today was oceated and deve--loped during the British period. However, it is notable that in early days of the Brutish period the legal profession was not paid due attention and it was not well organised. Actually the East India Company was not interested in organising the legal profession. There was no uniform judicial system in the settlements of the East India Company.

1. Charter of 1726 - In 1726 the Corown issued the Charter of 1726, and the Mayer's court were established in the presiding towns of Bombay, Calcutta, and Madras. They were the royal Courts. They followed the procedure based on English law.

But there were no facilities to get the elegal training. many persons who have no Knowledge of law were used to practice before the said Courts. The Mayor's Court has no jurisdiction in criminal Cases. The Criminal jurisdiction was conferred on the Governor.

11. Charter of 1773 — The Regulating Act 1773 empowered the British Crown to establish a supreme Court at Calcutta by issuing a Charter. Accordingly, a supreme court at Calcutta was established by is sung the Charter 04 1774.

Clause 11 of the Charter of 1774 empower -red the said supreme court of fudicature calcutta to approve and envall advocates and Attorneys-in-law. They were to be Attor--neys of record. They were authorized to appear and act in the supreme court. The Supreme Court had the power to remove any advocate for attorney on reasonable Cause. The deam attorney applied to the British attorneys or solicitor.

111. BENGAL REGULATING ACT 1793

The Bengal oregulation act VII of 1973
Permitted qualified Hindu and Muslim
Persons only to enroll as pleaders and
the Bengal Regulation XII of 1833 allowed
all the qualified persons of any nationality
ar religion to enroll as a pleader of
the Sardar Diwani Adalat.

IV. THE HIGH COURT ACT 1861

The Indian High Court act 1861 empowered the government to establish High Court in presidency towns. After the establishment of the high Courts. The Civil Courts were organized at different towns. The Criminal Courts were organized by the Criminal procedure code 1898.

V. LEGAL PRACTITIONERS ACT 1879

Under the legal practitioners Act 1879 the term legal practitioners means Advocate, Vakil, or attorney of a High Court and pleader, Mukhtar ar revenue agent, who were non-graduates and matriculates only. All these were brought under the jurisdiction of the high Court. Vakil were the persons who had taken the law degree from Indian Universities. pleaders and Mukhtars were the Indian Jawy ers but advocate were to be the barristers.

Section 5 of the act says that every person entered as an attorney on the orale of any High Court would be entitled to practice in all the Courts suboodinate so such High Court and in all revenue affices.

Section 6 of the act Empowered the High Court to make rules consistent with the act as to Suspension and dismissal of pleaders and Mukturs.

In 1923 a Committee Called the Indian Bar Committee was Constituted Under the Chairmanship of "Sir Edward Chamier". The Committee was to consider the issue as to the organisation of the Bar on all India basis and establishment of an all-India Bar Council for the High Court. The Commi--ittel was not in favour of organising the Bar on all India basis and establishing an all India Bar Council. The Committee suggested that in all High Courts a single grade of practitioners should be established and they should be called advocates. On the fulfilment of certain Conditions vakils Should be allowed to plead on the original side of the three High Courts. A Bar Council should be constituted for each High Court. It should have power to enquire into matters Calling for disciplinary action against a clawyer. The high Court should be given disciplinary power but before taking any action, it should refer the Case to Bar Council for enguing and report.

VII. INDIAN BAR COUNCILS ACT, 1926

In 1926, the Indian Bar Councils of India act was enacted to provide a bar Council for each High Court. The Bombay High Court and Calcutta High Court allowed non-barrister advocates to practice. Thus the distinction between Barristers and advocates was aballished. The pleaders and Mukhtars practicing in mufusil Courts were not within the scope of the Indian bar Council act 1926.

Even after the enactment of the Bar Council Act 1926, the High Court has the pawer of envallment of advocates and the functions of the bar Council was the adversary in nature and the rules made by the bar Council were to be effective only on the approval of the High Court, Section 10 of the Indian Bar Council Act 1926 empowered the High Court to reprimand, suspend or remove from practice any advocate of the High Court if he was found guilty of professional mis conduct or other misconduct.

(d.) LEGAL PROFESSION IN INDEPENDENT

All India Bour Committee 1951 -In 1951, the all India Bar Comm-- atter was constituted under the chairman - Ship of justice S.R. Das. The Committee in its report recommended the establishment of an all India Bar Councils and state Bar Councils. It recommended the powers of envallment suspension or the removal of advocates to the Bar Council. It ocecommended the Common rale of advocates should be maintained and they should be authorized to practice in all Courts in the Country. If further recom--mended that there should be no further recruitment of non graduated pleaders or Mukhtars. The similar recommendations were made by the fifth law Commission of India in its fourteenth report.

(d)(1.) <u>ADVOCATE</u> ACT 1961

As a result of the report of the. "All India Bour Committee Act 1961" the Central government enacted the Advocate Act 1961. This Act has been in force in entire India. It brought Revalutionary Changes in the legal profession in India. It was set out to achieve the utility and dignity of the profession of law on an all India basis. The preamble of The says that the Act amends as well as Consolidates the law relating to legal practitioners.

The advocate Act, 1961 Contains 60 sections set out in 7 Chapters.

Chapter-I — Deals with primary issues such as short title, extent and Commenc-ement and definitions.

Chapter - 2 - Section 3 to 15 deals with the Councils.

Chapter-3 - Section 16 to 28 deals with admission and envalment of advocates.

Chapter - 4 - deals with the right to practice

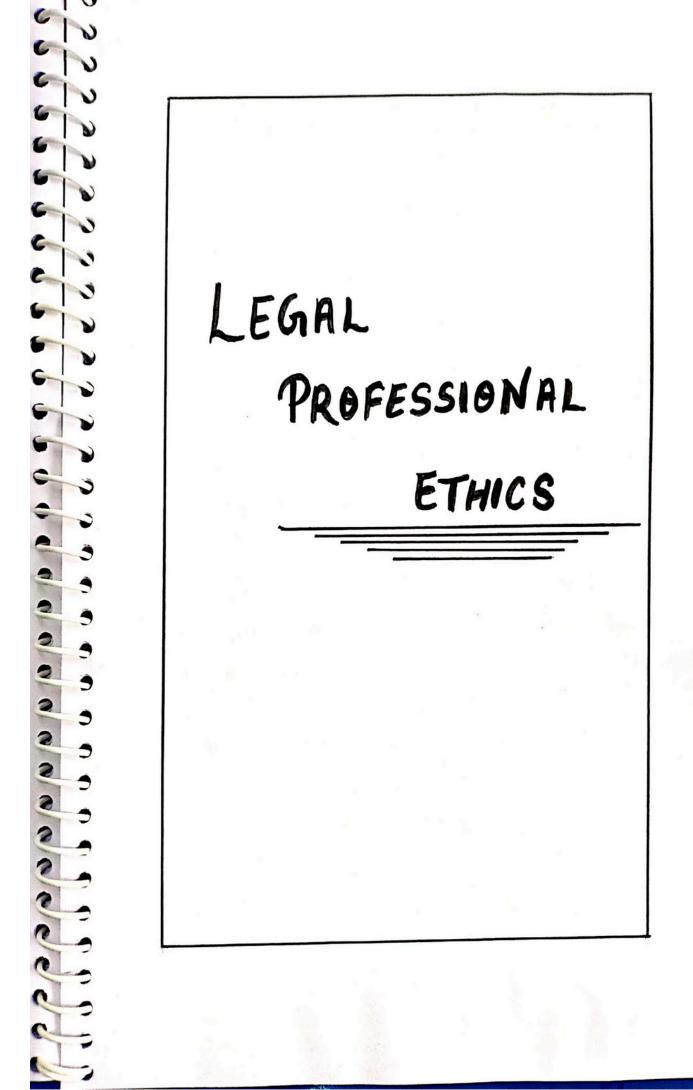
Chapters - Section 35 to 44 deals with the Conduct of advocate.

Chapter 6 - Miscellaneous issues.

Chapter 7 - deals with the temporary and transitional provisions.

The Advocate Act 1961 repeals the Indian Bar Council Act 1926 and all other claus the subject.

The advocate Act 1961, provides for an autonomous bar Council in each state and all India Bar Council Consisting mainly of the representatives of the state Bar Council. Under the act, a state bar Council is to ensall the qualified person as advocates and a prepare a roll of advocates practicing in the state and thereafter a comment roll of advocates for the whole of India is to prepared by the Bar Council of India.



LEGIAL PROFESSIONAL ETHICS

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The legal profession plays an important rale in the administration of justice. The Lawyers are Considered to be the central of the administration of justice. Lawyers are the one who are related to the parties, they listen to the party and Collect all relevant legal materials relating to the Case and argue the Case in court, thus helping the judge to arouve at the Correct and few judgment.

The lawyers play important role in the maintenance of peace and order in the society. Learned CL. Arrand has rightly stated that the advocates Share with the Judges the responsibility for maintaining order in the Community. They do not promote estripes but settle them. They do not promote stripes but settle them. They do not promote order which is one of the noblest functions in the society.

(a) ETHICS OF LEGIAL PROFESSION

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Legal ethics may be taken to mean the body of rules and practice which determine the professional Conduct of the members of bor. The main object of legal ethics has well been explained by the Chief Justice Marshall - The Fundamental aim of legal ethics is to maintain the honour and dignity of the Law profession to secure a spirit of friendly Cooper--ation between the Bench and the Barin 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 brother-hood in the bar itself and to secure that lawyers discharge their responsibilites to the Community generally."

(B) THE LEGIAL PROFESSION

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Legal profession is a profession, and degal professionals study, develop and apply dow. Usually, there is a requirement for someone choasing a career in low to first obtain a law degree or some other form of legal education.

It is difficult to generalize about the staucture of the profession, because

These are two major legal systems, and even within them, there are different arrangements in jurisdictions, and

· Terminalogy varies greatly.

while in Civil law Countries there are usually distinct clearly defined Correer paths in law, such as judge, in Common law jurisdictions there tends to be one legal profession, and it is not uncommon for instance, that a requirement for a judge is several years of practising law privately.

(C) NEED OF PROFESSIONAL ETHICS

The legal profession is necessarily the Keystone of the each of Government. If it is weakened, and allowed to be a subject of the coording and demoralising influence of those, who are controlled by craft, greed or gain or other Unworthy motive, sooner or later the each must fell. The future of the Gurtry 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, they should hald affice only during good behaviour

and this good behaviour should be defined and measured by ethical standards however high, as justic, pure and unsullied. Such standard may be crystallized into a written Code of professional ethics and the clawyer failing to Conform thereto, Should not be permitted to practise or cretain membership in the particular organisation.

The American Bar Association Committee has well explained the need of the Code of legal ethics. It has observed that the legal profession is necessarily the Keystone of the arch of Government.

(d.) NATURE OF LEGAL PROFESSIONAL ETHICS

Perofessional ethics may be defined as a Code of Conduct weather or unwritten for regulating the behaviour of a practising clawyer towards himself, his client, his adversary in law and towards the Court, Thus cathics of legal profession means the body of the rules and practice which determine the professional conduct of the members of bar. When a person becomes an advocate his relation with men in general is governed by the general rules of law but his Conduct as advocate is governed by the special rules of professi--onal 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 Bar.

(e) IMPORTANCE OF PROFESSIONAL ETHICS

Ethics in any profession are importent and it is Perhaps more importent in the legal Sector where lawyers are viewled with alevel of suspicion. Thus having an enforced Code of ethics is Coucial in ensuring the Credibinity of the practitioners and legal system altogether,

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Often lawyers and other legal professionals are faced with Conflicting Interests from the Clients they are working for and their personal interests, legal ethics are important in helping the attorney to work through the balance of these in interests and work to Bromate good faith.

20.

(F.) NATURE AND IMPORTANCE OF LEGIAL PROFESSIONAL

Actually the law is very complicated. The language of Acts and Regulations is often found to be very complicated and Confusing and not easy to be understood. The Citizens of the Country require the advice of the advocate to understand the exact meaning of the provisions of the Act and regulations. In the case of Madhav Singh? The court has observed that advocates and pleaders are enralled not only for the purpose of rendering assistance to the Courts in the administrat -ion of justice but also for fiving profess--ional advice for which they are entitled to be paid by those members of the public who require their services. The degal profession plays an Important rale in the administration

of justice. The lawyer assists the Court In covering at a Casocect judgment. The lawyer callects legal materials relating to the Case and thereby helps the Court or judge to avoive at a coverect judgment. without the assistance of the lawyer it would be a superhuman task for the judge to avoive at a satisfactory judgment justice P. N. Sapru has stated that the "justification for the existence of Counsel is that each side to the Controversy should be in a parition to present its case before an import-- ial tribunal in the best and most effective manner possible.

(G.) LEGIAL PROFESSION VS. ORDINARY PROFESSION

Legal profession—Legal profession is a profession, and legal professionals study, develop and apply low. usually, there is a orequirement for someone. Chassing a career in law to first obtain a law degree or some other form of legal education.

It is difficult to generalize about the structure of the profession, because

· There are two major legal systems, and even with them, there are different arrangements in jurisdictions, and

· Terminalogy varies greatly.

while in Civil law Countries there are usually distinct clearly defined

fledge, in Common law jurisdictions.

There tends to be one legal profession,
and it is not Uncomman, for instance,
that a requirement for a judge is
several years of practising laws
privately.

Judge — Historically, this has been the first legal specialization. In civil low countries, this is often a life long career. In Common law legal system, on the other hand, judges are recrited from practising lawyers

Lawyer, advocate, attorney ->

Practising law means advising and superesenting clients as a private practitioner or in a law firm. In most Countries, law graduates need

to undergo some sort of apprenticeship membership in a professional organization and a dicence.

Solicitary Solicitor advise clients, draft Contracts for them and supresent them in lower court of lew.

Ordinary Profession

A profession is an occupation founded upon specialized educational training the purpose of which is to supply disinterested objective Counsel and service to other, for a direct and definite Compensation. whally apart from expectation of other busin-ess pain.

The term is a trunation of the iterm "liberal profession" which is twen, an Anglicization of the french term "profession liberali" originally

borocowed by english weres in the 19th Century, it has been see - borrowed by international users from the late Doth, though the Cupper-middle Class overtones of the term do not seem to survive sutranslation "liberal profession" according to the European Union's Directive on Recognition of professional qualifications "those practiced on the basis of occlevant professional qualific--attons in a personal responsible and professionally independent Corpacity by those providing intellectual and Conceptual services in the interest of the client and the public".

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It has been said that a profession is not a trade and not an industry.

Medieval and early modern tradition recognized only there professions; divinity medicine, and law. the so called learned professions.

an occupation being identified as a profession include.

1. An occupation becomes a full-time

accupation

2. The establishment of a training school.

3. The establishment of a University school.

4. The establishment of a clocal association

5. The establishment of a national association of professional ethics

6. The establishment of state licensing laws.

THE ADVOCATE

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(a) MEANING OF ADVOCATE

The Advocates Act makes provision for the establishment of the state Bar Council and Bar Council of India. The main functions of the Bar Council of India are to lay down the standards of professional Conduct and etiquette for advocates, to day down the procedure to be followed by its disciplinary Committee, to safeguard the orights, privileges and interest of advocates, to promote and support daw reform, to promote degal education, to recognise universities which degree in law shall be a qualification for envalment as an advoc-- ate to Conduct seminars, etc. It provides for two classes of advocates, Senior advocates and other advocate. The state Bar Council are required do maintain vole of advocate and to send copies of wells of advocates to the Bar Council of India.

(b) PERSON ENTITLED TO BE ENROLLED AS ADVOCATE

Section 24 of the advocates Act specifies the qualifications of a person entitled to be enrolled into the Bar. If He/she fulfils the following criterion Subjected than He/she is Considered to be qualified.

- He is a citizen of India although a rational of any other Country may be admitted as an advocate on a state orall, if Citizens of India, duly qualified are permitted to practies law in that other Country, Subject to other restrictions.
- · He has Completed the age of twentyone years.
- He has obtained a degree in law after the 12th day of March, 1967 after under going a three/five years Course of study in law from any university in India which is successful for the

Purposes of the advocates Act by the Bar Council of India. In some cases, a clawyer who has abtained a degree from any university outside the territory of India, if the degree is recognised for the purpose of this Act by the Bar Council of India. he may be admitted.

· He fulfils such other Conditions as may be specified in the rules made the state bar Council Under the

The Candidate is required to at the start, clear the Bar Council of India examination. Thereafter the person an enral him self/herself Under any state Bar Council. Eligible persons are admitted as advocate on the rolls of the state Bar Council,

(C) DUTIES OF AN ADVOCATE

The Bor Council of India has made several rules so as to specify the duties of an advocate towards the Court, client, opponent, and colleagues etc.

(1) DUTY TOWORDS THE COURT

- 1. An advocate should be straight forward and his orguments should be painted, clear precise and concise.
- 2. An advocate should have sense of humor and pleasing manners in his arguments.
- 3. An advocate must be tactful in presenting the matters.
- 4. An advocate should not mislead the Court.
- 5. An advocale shall not influence the decision of the Court by any illegal or improper means.

- 6. An advocate shall appear In the Court at all times only in the prescribed dress. He shall not wear a band or gown in public places other than in Courts.
- 7. An advocate shall, when presenting his Case and while atherwise acting before a court, Conduct himself with dignity and self respect.
- 8. An advocate shall not enter appear--ance, act, plead or practice in any way before a court, tribunal or authority on behalf of close kith and kin.
- 9. An advocate shall not citizen the judiciary with malice.
- 10. An advocate should not actor Plead in any matter in which he himself pecunia-- rily interested.
- 11. An advocate shall assist court by presenting fully the pertinent law in his case.

- I An advocate shall not solicit work or advice directly or indirectly through mass Communication.
- 2. An advocate shall not pursue his profession in spirit of competition or rivalry. with his brethren.
- 3. An advocate should be courteous to opposing counsel and should accede io reasonable request regarding court proceedings.
- 4. An advocate does not enzy another advocate who attains to pasition and rank and earns well.
- 5. An younger advocate must be cordial and pay respect to senior advocates.
- 6. An advocates shall be ready to give help and advice to brother members.
- 7. An advocate shall strive at all the levels and the degal profession in advancing the standard of Member of Profession.

(111) DUTY TOWORDS THE CLIENT

I An advacate shall fearlessly uphold the interests of his client by all feir and honorable means without regard any upleasant Consequences to himself or any other.

2. An advocate shall fairly and reasonably submit the Case on behalf of his client.

3. An advocate shall pay attention which he is capable of giving to the Case he is dealing.

4. An advocate shall not act on the instructions of any person either than his client or authorised agent.

5. An advocate shall not oxclinavily with - draw from engagments ones accepted, with out sufficient cause an unless reasonable and sufficient notice is given to the client.

6. An advocate shall not do anything

where by be abuses or takes advantage. Of the Confidence reposed in him by his client.

7. An advocate shall not accept a fee cless than the fee taxable under the rules when the Client is able to pay the same.

8. An advocate shall not adjust fee payable to him by his client against his own personal dibility to the client which diability does not arise in the Course of his employment as an advocate.

9. An advocate should keep accounts of the clients money entrusted to him.

10. An advocate shall not disclose Communications made to them in Course of their professional engagement even after the Case is over.

(d.) DUTIES OF AN ADVOCATE TOWORDS

OPPONENTS

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- I. An advocate shall not Communicate or negotiate upon the subject matter of Controversy with any party represented by an advocate except through the advocate.
- 2. An advocate shall not mislead an opponent, on put him on the wrong scent regarding any point in the Case.
- 3. An advocate shall do his best to Carry out all legitimate promies made to the opposite party even though not oreduced to writing.

(e) DUTIES OF AN ADVOCATE AS PER

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State Bar Council is required to pay a Certain sum to the state Bar Council. Every advocate shall, in the practice of the profession of low, Shall bear in mind that any one genuinely in need of a lawyer is entitled to logal assistance even though he Cannot pay for it fully on adequately and that within the limits of an advocate's economic Condition, free legal assistance to the indigent and oppressed is one of the highest obligations as an advocate axes to the society.

Section 6 of the Advocate Act makes provisions in suspect of the function of the state Box Council. It provides that the functions of the state Box Council State Box Council Shall be -

(9) To Admit persons as advocate on

its ralls.

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- (b) To prepare and maintain such role.
- (c) To entertain and determine. Cases of. misConduct against advocates on its soll.
- (d) To safeguard the sights, polivileges and interests of advocation on its roll.
- (e) To peromote and support law suform.
- (f.) To manage and invest the funds of the Bar Council.
- (9) To provide for the election of its members.
- (h) To perform all other function Conformed on it by or under this act.
- (i) To do all other things necessary for discharging the aforessid functions.



THE CONTEMPT OF COURT

4. THE CONTEMPT OF COURT

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(a) Meaning of contempt of Cowet

The Contempt of Courts Act 1971 defines "Contempt of Courts" for the first dime. Before it, there was no stat--way definition of the Concept, Contempt of Court. Even the definition of Contempt of court given in the Contempt of Courts Act 1971, is not a definition, but only the Classification or Categories of Contempt of Courts. Actually, it is very difficult to define the contempt of Court. what would offend the dignity of the Court and lower the court's prestige is a matter for the Court to determine and it cannot be confined with the four walls of a definition.

In the apinion of aswald Contempt of Court may be said to be constituted by any Conduct that lends to bring the authority.

(b) MAIN PROVISION OF THE CONTEMPT OF COURT ACT 1971

Contempt of Court is a serious Challenge to the majesty of low. Some times it is Committed in ignorance i,e, the Contempor has no knowledge as to the meaning of the Contempt. Consequently, a definition of the expression Contemp of court is of much utility, but unfootunately there is no clear and definite definition of this expression. The Contempt of Court Act, 1971 defines it as a civil Contempt or Court or Countempt of Court or Court and Contempt

The Contempt of Courts Act makes provision in respect of the punishment for the Contempt of Court Section 12 of the Act provides that save as otherwise expressly provided in this Act or in any other claus, a Contempt of Court may be.

Aunished with Simple impressionment for a term which may extend to six months or with fine, which may extend to two thousand or upees are with both. In the Case of Supreme Court Born Association Vs. Union of India, the Supreme Court has made it clear that in exercise of the Contempt jurisdiction the licence of an advocate to practise legal profesor. I am convocate to practise legal profesor.

According to Section 12 of the Act the Contemner may tender apalogy to the Court and if the Court is satisfied that it has been made with real feeling of superstance it may sumit the punishment awarded for the Contempt.

Section 19 provides that an appeal shall lie as of sight from any order or decision of the High Court in the exercise of its jurisdiction to punish fo Contempt.

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(c) KINDS OF CONTEMPT OF COURT

The Contempts of Court has been Categories— Civil Categories— Civil Categories— Civil Contempt and Contempt. However as has been stated above the Categories are not closed.

1. Meaning and Nature of civil Contempt.

and omissions in procedure invalving a private injury by the disobedience of the judgment, order or other process of the court.

According to Section 2(b) of the Contempt of Courts Act, 1971 civil Contempt" means wilful disabedience to any Judgment, elecree, direction order, writ or other process of a Court or wilful breach of Undertaking given to a Court, for civil Contempt there must be disabedience to the order etc. of the Court or breach of undextaking given to the Court or breach court and the disabedience or breach

must be wilfel. It is a Sanction to enforce Compliance with the order of Court or to Compensate for losses or damages sustained by sceason of non-Compliance? Civil Contempt actually. serves dual purpose -

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U) Vindication of the public interest by punishment of Contemptuous Conduct and.

(11.) Coercion to compel the Contemner to do what the Court orequires of him.

To Constitute "Civil Contempt the followings are required to be proved—
1. There is disobeolicnce of the order, decree, etc. of the Court or breach of understaking given to the Court, and.
2. The disobedience or breach is wilful.



(11) Meaning and nature of Criminal Contempt — In India the definition

of Contempt of Court is found in clause (c) of Section 2 of the Contempt of Courts Act, 1971. It Provides that "Courninal Contempt" means the publication whether by words spoken or written or by signs, or by visible ocepresentations or other wise of any metter of the doing of any act whatsoever which—

1. Scandalizes or tends to scandalize or clower or tends to clower the authority

of any court, or.

11. Prejudices or interferes or tends to interfere with the due course of any judicial proceeding, or.

Interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner.

(d) ESSENTIALS OF CIVIL AND CRIMINAL CONTEMPT OF COURT

Every offence should have fulfilled Certain exceptions to make the person cliable for doing that act. Contempt of Court also has specific essentials.

- In case of civil Contempt, willful disobedince should be done to any of Court proceedings, Judgement, decree, order etc.
- In the Case of Criminal Contempt a bublication which is the most important thing that Can be done eighther by words or by spoken or written or by signed, or by visible representation.
- The Court should make a valid order which should be in the knowledge. of the respondent.

• The Contemnards action should be a deliberate and in olissegard of the order of the Court.

The Contempt proceedings are neither civil non Criminal. They are sui generis. They are neither governed by the Cipic. nor by the Cr. P.C. They are not governed by the Evidence Act. The Court has to be satisfied that the Contempt has been committed and it may adopt its own procedure for deriving the Satisfaction. In Contempt proceedings ordinarily the Court and Contemner are the necessary parties. The person who invites attention of the Court to the facts Constituting Contempt does not become Complainant or petitioner.

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(e) LEADING CASES

In S. K. Mohammedbhikhan Vs.

Manager Chandora Bhonu Cinema;
The Court has observed that in order that an authority Can be Considered to be a judicial authority it should be Covered within the scope and ambit of the word "Court" as employed by the Contempt of Courts Act and for this purpose,

In K. Shamraa

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Vs.

Assistant Charity Commissioner!

The supreme court has held that in order to Contribute a Court, an essential Condition is that the Court should have apart from having some of the trappings of a judicial toibund, power to give a decision or a definite.

Judgment which has finality and authoritativeness which are the essential tests of a judicial pronouncement. The Assistant Charity Commissioner appointed under the Bombay Public towest Act has been held to be a Caurt for the purposes of the Contempt of Courts Act.

In Rajesh Kumar Singh Vs.

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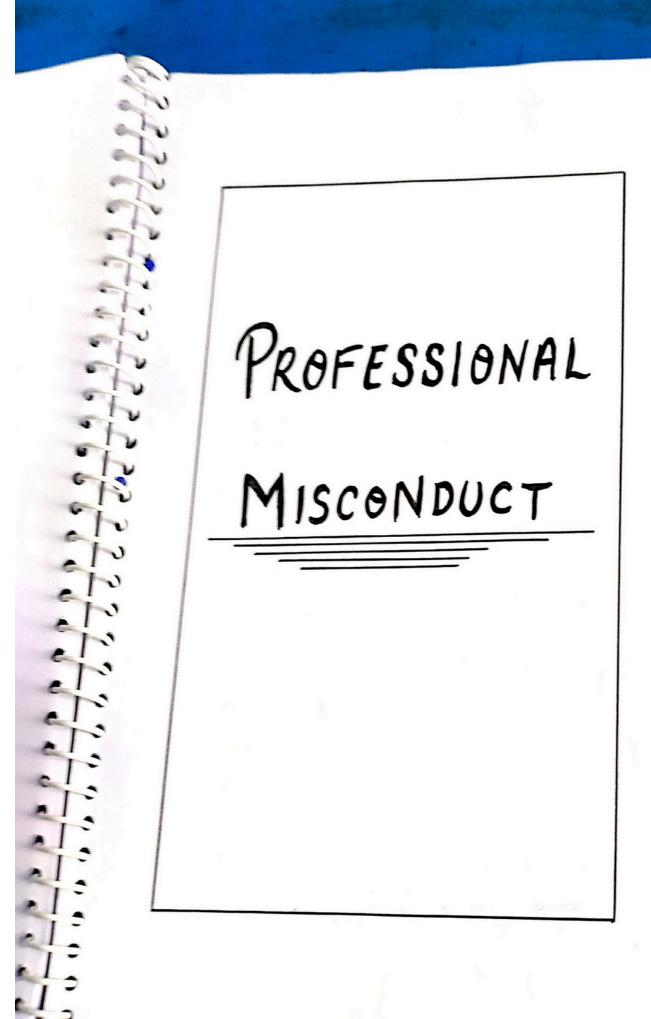
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High Court of Judicature of Madhya

fradesh, The supreme Court has made uit clear that attributing improper motive to a judge ar survilous abuse of a Judge will be taken as scandalizing the Court.



PROFESSIONAL MISCONDUCT

The wards "professional or other misconduct" are found in Section 10 of the Indian Bar Councils Act 1926, Interpreting these wards the Court held that they do not denote only the misconduct in Professional Capacity.

(a.) Meaning of Professional Misconduct

Section 35 of the advocate act provides in respect of punishment for professional or other misconduct. It Provides that where on receipt of a Complaint or otherwise a state Bar Council has reason to believe that any advocate on its real has been guilty of professional or other misconduct. Section 35 empowers the disciplinary Committee to reprimand the advocate or suspend the advocate for such period as it may deem fit or remove the name of the advocate from the

State vall of advocate. However, an appeal against the order of the disciptionary Committee may be preferred, to the Bar Council of India and there after to the supreme Court against the order of the Bar Council of India.

LEADING CASES

In U.P. Sales Tax service Association

Taxation Bor Association?

The supreme court has made it clear that if an advocate attends

Court with fire-arms his Conduct. Will be inconsistent with the dignity of the degal profession, Such Conduct is not befitting to dignity of the degal profession.

2. "Sardul singh

Vs.

Pritam Singh" The Respondent Can advocate) suppressed material facts about his earlies conviction by the Criminal Court.

He was suspended from practising for three years by the criminal Bar Council of India He Continued to practize dwing the period of his suspension. He sought seview of the order of suspension and the Bar Council of India restored the earlier order of admonition passed by the state par Council

In Bal Dev Singh Dhingra Vs.

Modan Ial Crupta, The supreme Court has held that the scope of discip-linary jurisdiction of the Bar Council is limited to punish practising advocate on their rall. Advocates whose name on rall of Bar Council is suspended Cannot be proceeded with under Section 35 for any misconduct Committee while he is not practising advocate.

(b) VARIOUS FORMS OF PROFESSIONAL MISCONDUCT

Section 35 of the Advocate act makes it clear that an advocate may be punished not only far professional mis conduct but also for other miscon--duct. from the preamble of the Rules made by the Bar Council of India it is evident that these Rules Contain Canons of Conduct and etiquette adopted as general quides and the specific mentioned thereof should not be construed as a derial of the existence of other equally imperative though not specifically mentioned. The purish provisions as to punishment thus, are not confined to the professi--onal misconduct only, it extends to the other misconduct also.

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The down "Misconduct" has been defined in Black's Dictionary as a trans-grassion of some established and definite rule of action, a forbidden act, a develiction of duty, unlawful behaviour, wilful in character, improper or wrong behaviour. Its synonyms are misdemeanour, impropriety mismanagment, offence but not negligence or Careless hess.

In Naratanmal Chawasia Vs.

M.R. Mwrli, * The supreme Court has held that misconduct has not been defined in the Advocate Act 1961. misconduct inter alia envisages breach of discipline although it would not be possible to clay down exhaustivally as to what would constitute misconduct and indiscipline which, however, is wide enough to include wrongful omission or commissio, whether done or omitted to be done intentionally or unintentionally.

1. _MISCONDUCT RELATING TO COURT

"Misconduct" is, thus, a wide expression. To treat a Conduct as misconduct it is not necessary that it should invalve moral twopitude. A Conduct may be taken as misconduct, although it does not involve moral trospitude. Any Conduct which in any way ocenders a person unfit for the exercise of his profession on is likely to temper on embarrers the administration of justice by the High Court on any other Court subordinate thereto may be taken as mis Conduct! The Jerm "misconduct" may be taken to mean infomous Conduct. The expression "infamous Conduct in professional respect has been defined by Lapes, L. J. In ocespect of medical

Profession but it has been applied even

in suspect of the legal profession, i.e. it has been applied in determining the professional misconduct of a lawyer.

The coords "professional or other misconduct" are found in Section to of the Indian Bar Councils Act, 1926.

Therpreting these words the Courts held that they do not denote only the misconduct in professional Capacity. This interpretation of the wards "Professional or other misconduct" is useful in the interpretation of the words "professional on other misconduct" is useful in the interpretation of the words "professional on other mixond-uct" in Section 35 of the Advocate Act.

11 MISCONDUCT RELATING TO CLIENT

Retaining the brief of his client and at the same time abstaining from appearing In that Court as a permanent feature is improfessional and embecoming of the status of an advocate. If an advocate in pursuance of boy call abstains himself fram a court and oreports that he will not attend the Court in furture and at the same time he retains the brief of his client, the Conduct of the advocate will amount to improsp -essional and unbecoming of status of an advocabe.

It has been made clear by the Court the before punishing an advocate for miscorduct there must be clear proof of his misconduct. An advocate should not be punished for misconduct

is free from doubt?

In a Case Under Section to of the Letters patent of the Madrias High Count, the Poury Council observed:

"Before dealing with the charges, it is right to state that, in their Lardships opinio, charges of professional misconduct must be clearly proved and should not be inferred from mere ground for suspicion however reasonable or what may be mere error of judgment or indiscretion!

The expression professional mis-Conduct" has been well explained by the Supreme Court in the Case of v. p. Kumaravelu Vs. The Bar Council of India: The Court has abserved that whether negligence will amount to professional Misconduct or not will depend upon the facts of each case.

CO REMEDIES AGIAINST PUNISHMENT FOR

Section 35 empowers the disciplinary Committee of the state Bar Council to punish an advocate for the professional on other misconduct. Section 36 empowers the disciplinary Committee of the Bar Council of India to punish an advocate for the professional or other misconduct. The advocate Act provides remedies against the order of punishment. These Remedies may be explained under the following headings.

1. REVIEW

Section 44 of the advocate Act provide that the disciplinary Committee of a Bar Council may of its own motion or otherwise review Chapter. However no such order of review of the disciplinary Committee of a state

Bar Council shall have effect, Unless it has been approved by the Bar Council of India.

Section 48-AA makes it Clear that the Bar Council of India or any of its Committee, there than its disciplinary Committee, may on its own mation or other wise review any order, within 60 Days of the date of that order, Passed by it under the Advocate Act.

the Boor Council of India deals with the review. Rule 4. provides that an application for review under Section 44 of the Advocate act. Shall be in the form of petition duly signed and supposted by an affidavit accompanied by the prescribed fee and filed within 15 days from the date of the order sought to be reviewed.

11. APPEAL

The Bar Council of India has framed orules as to the procedure to be observed in Case of appeal to it Under Section 37 of the act. Chapter 1 of Part VII of the orules of Bar Council of India deals with the rules relating to such procedure. Rule 19 provides that an appeal to the Council provided for Under Section 37 of the Act Shall be in the form of a memorandum in writing as set out in Rules in this Chapter. If the appeal is in a clanguage other than english.

Rule 20 provides that an appeal may be presented by the appellant or his advocate or by his recognised agent in the affice of the Bar Council reach the secretary, Bar Council of India on or before the dart day of limitation. An appeal may be admitted after the

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Period of limitation, if the appellent satisfies the disciplinary Committee that he had sufficient cause for not preferring the appeal with in such period. Any such application for condonation of delay shall be supported by an afficient.

Rule 21 Provides that the memorandum of appeal referred to in Rule 19 of this Chapter (Stated above) shall contain necessary particulars as in form No.6.

The memorandum of appeal shall state where the order was Communicated to the appellent and how it is in time along with the memorandum of appeal.

111. APPEAL TO THE SUPREME COURT

Section 38 of the advocate Act provides that any person aggrieved by an order made by the disciplinary committee of the Bar Council of India Under Section 36 on Section 37 on the Attorney-General of India or the Advocate-General of the State Concerned, as the Case may be, may within 60 days of the date on which the order is communicated to him, prefer an appeal to the supreme Court and the Supreme Court may pass such order including an order varying the punishment awarded by the disciplinary Committee of the Bar Council of India

Section 39 Makes it Clear that Section 5 and 12 of the limitation Act shall so few as may be apply to appeals under this Section Ci,e, Section 38)

38) Section 40 provides in respect of the stay of the order. According to this excition an appeal made under section 38 to the supreme Court shall not operate as a stay of the order appealed against but the Supreme Court may, for sufficient cause, direct the stay of such order on such terms and Conditions as it may deem fit. In The Case of Supreme Court Bar Association

Union of India, The Supreme Court has made it clear that in the exercise of the Contempt juridiction, the dicence of an advocate cannot be suspended or Cancelled by the supreme Court.
Such punishment Cannot be imposed by taking recourse to the appellate power Under Section 38 of the Advocate Act. While dealing with a case of Contempt of Court.

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