

INSTANCES OF MISCONDUCT

Legal Practitioners act 1879 has not defined the word Misconduct. The word Unprofessional conduct is used in the act. Even the Advocates Act 1961 has not defined the term misconduct because of the wide scope and application of the term. Hence to understand the instances of misconduct we have to rely on decided cases. Some of the instances of Professional misconduct are as follows,

- 1) Dereliction of duty
- 2) Professional negligence
- 3) Misappropriation
- 4) Changing sides
- 5) Contempt of court and improper behaviour before a magistrate
- 6) Furnishing false information
- 7) Giving improper advice
- 8) Misleading the clients in court
- 9) Non speaking the truth
- 10) Disowning allegiance to court
- 11) Moving application without informing that a similar application has been rejected by another authority
- 12) Suggesting to bribe the court officials
- 13) Forcing the prosecution witness not to tell the truth.

Contempt of Court As Misconduct

In the recent case of B. M. Verma v. Uttrakhand Regulatory Commission court noted that, it was given the wide powers available with a Court exercising contempt jurisdiction. In the case of Court of Its Own Motion v. State dealing with the contempt proceedings involving two senior advocates, observed that 'given the wide powers available with a Court exercising contempt jurisdiction, it cannot afford to be hypersensitive and therefore, a trivial misdemeanor would not warrant contempt action. Circumspection is all the more necessary because as observed by the

SC in SC Bar Association v. Union of India the Court is in effect the jury, the judge and the hangman; while in M.R. Parashar H. L. Sehgal it was observed that the Court is also a prosecutor Anil Kumar Sarkar v. Hirak Ghosh, reiterates this.

In the most controversial and leading case of R.K. Anand v. Registrar of Delhi High Court, On 30th May, 2007 a TV news channel NDTV carried a report relating to a sting operation. The report concerned itself with the role of a defence lawyer and the Special Public Prosecutor in an ongoing Sessions trial in what is commonly called the BMW case. On 31st May, 2007 a Division Bench of this Court, on its own motion, registered a writ Petition and issued a direction to the Registrar General to collect all materials that may be available in respect of the telecast and also directed NDTV to preserve the original material including the CD/video pertaining to the sting operation. The question for our consideration is whether Mr. R.K. Anand and Mr. I.U. Khan, Senior Advocates and Mr. Sri Bhagwan Sharma, Advocate have committed criminal contempt of Court or not. It was observed that prima facie their acts and conduct were intended to subvert the administration of justice in the pending BMW case and in particular to influence the outcome of the pending judicial proceedings. Accordingly, in exercise of powers conferred by Article 215 of the Constitution proceedings for contempt of Court (as defined in Section 2(c) of the Contempt of Courts Act, 1971) were initiated against Mr. Anand, Mr. Khan and Mr. Sri Bhagwan Sharma and they were asked to show cause why they should not be punished accordingly. Court said that Courts of law are structured in such a design as to evoke respect and reverence for the majesty of law and justice. The machinery for dispensation of justice according to law is operated by the court. Proceedings inside the courts are always expected to be held in a dignified and orderly manner. The very sight of an advocate, who was found guilty of contempt of court on the previous hour, standing in the court and arguing a case or cross-examining a witness on the same day, unaffected by the contemptuous behaviour he hurled at the court, would erode the dignity of the court and even corrode the majesty of it besides impairing the confidence of the public in the efficacy of the institution of the courts. This necessitates vesting of power with the HC to formulate rules for regulating the proceedings inside the court including the conduct of advocates during such proceedings. That power should not be confused with the right to practise law. Thus court held that there may be ways in which conduct and actions of an advocate may pose a real and imminent threat to the purity of court proceedings cardinal to any court's functioning, apart

from constituting a substantive offence and contempt of court and professional misconduct. In such a situation the court does not only have the right but also the obligation to protect itself. Hence, to that end it can bar the advocate from appearing before the courts for an appropriate period of time. In the present case since the contents of the sting recordings were admitted and there was no need for the proof of integrity and correctness of the electronic materials. Finally the Supreme Court upheld High Court's verdict making Anand guilty on the same count. On the other hand, the Supreme Court let off I U Khan, who was found guilty by the High Court.

Attempt of Murder:

In the case of Hikmat Ali Khan v. Ishwar Prasad Arya and ors, Ishwar Prasad Arya, respondent No. 1, was registered as an advocate with the Bar Council of Uttar Pradesh and was practising at Badaun. An incident took place on May 18, 1971 during lunch interval at about 1.55 p.m., in which respondent No. 1 assaulted his opponent Radhey Shyam in the Court room of Munsif/Magistrate, Bisauli at Badaun with a knife. A pistol shot is also said to have been fired by him at the time of incident. After investigation he was prosecuted for offences under Section 307 of the Indian Penal Code and Section 25 of the Arms Act. The 1st Temporary Civil and Sessions Judge, by his judgment dated July 3, 1972, convicted him of the said offence and sentenced him to undergo rigorous imprisonment for three years for the offence under Section 307, I.P.C. and for a period of nine months for offence under Section 25 of the Arms Act.

On the basis of the said complaint disciplinary proceedings were initiated against respondent No. 1 by the Bar Council of U.P. he was found guilty of gross professional mis-conduct by taking the benefit himself of a forged and fabricated document which had been prepared at his behest. The Disciplinary Committee of the Bar Council of U.P. directed that respondent No. 1 be debarred from practising as an advocate for a period of two years from the date of the service of the order. Respondent No. 1 filed an appeal, the said appeal was allowed by the Disciplinary Committee of the Bar Council of India by order dated June 8, 1984 and the order of the Disciplinary Committee of the Bar Council of U.P. dated January 30, 1982 was set aside on the view that there was no material on the basis of which it could reasonably be held that respondent No. 1 had prepared the document which was subsequently found forged. Further the submission of Shri Markendaya was that having regard to the gravity of the misconduct of respondent No. 1 in

assaulting his opponent in the Court room with a knife and his having been committed the offence under Section 307, I.P.C. and his being sentenced to undergo rigorous imprisonment for three years in connection with the said incident, the punishment of removal of the name of respondent No. 1 from the roll of advocates should have been imposed on him and that the Disciplinary Committee of the Bar Council of U. P. was in error in imposing the light punishment of debaring respondent No. 1 from practising as an advocate for a period of three years only and that this was a fit case in which the appeal filed by the appellant should have been allowed by the Disciplinary Committee of the Bar Council of India. It was held that the acts of mis-conduct found established are serious in nature. Under Sub-section (3) of Section 35 of the Act the Disciplinary Committee of the State Bar Council is empowered to pass an order imposing punishment on an advocate found guilty of professional or other mis-conduct. Such punishment can be reprimand [Clause (b)], suspension from practice for a certain period [Clause (c)] and removal of the name of the advocate from the State roll of advocate [Clause (d)], depending on the gravity of the mis-conduct found established. The punishment of removal of the name from the roll of advocates is called for where the misconduct is such as to show that the advocate is unworthy of remaining in the profession. In this context, it may be pointed out that under Section 24(A) of the Act a person who is convicted of an offence involving moral turpitude is disqualified for being admitted as an advocate on the State roll of advocates. This means that the conduct involving conviction of an offence involving moral turpitude which would disqualify a person from being enrolled as an advocate has to be considered a serious misconduct when found to have been committed by a person who is enrolled as an advocate and it would call for the imposition of the punishment of removal of the name of the advocate from the roll of advocates. In the instant case respondent No. 1 has been convicted of the offence of attempting to commit murder punishable under Section 307, IPC. He had assaulted his opponent in the Court room with a knife. The gravity of the mis-conduct committed by him is such as to show that he is unworthy of remaining in the profession. The said mis-conduct, therefore, called for the imposition of the punishment of removal of the name of respondent No. 1 from the State roll of advocates and the Disciplinary Committee of the Bar Council of U. P., in passing the punishment of debaring respondent No. 1 from practising for a period of three years, has failed to take note of gravity of the misconduct committed by respondent No. 1. Having regard to the facts of the case the proper punishment to be imposed on respondent No. 1 under Section 35 of

the Act should have been to direct the removal of his name from the State roll of advocates. The appeal filed by the appellant, therefore, deserves to be allowed. Finally court held that the respondents name should be removed from the rolls.

Misbehaviour As Misconduct

Vinay chandra mishra, in re; In this case a senior advocate in on being asked a question in the court started to shout at the judge and said that no question could have been put to him. He threatened to get the judge transferred or see that impeachment motion is brought against him in Parliament. He further said that he has turned up many Judges and created a good scene in the Court. He asked the judge to follow the practice of this Court. He wanted to convey that admission is as a course and no arguments are heard, at this stage. But this act was not only the question of insulting of a Judge of this institution but it is a matter of institution as a whole. In case dignity of Judiciary is not being maintained then where this institution will stand. The concerned judge wrote a letter informing the incident to the chief justice of India. A show cause notice was issued to him.

Whether the advocate had committed a professional misconduct? Is he guilty of the offence of the criminal contempt of the Court for having interfered with and obstructed the course of justice by trying to threaten, overawe and overbear the Court by using insulting, disrespectful and threatening language, and convict him of the said offence. Since the contemner is a senior member of the Bar and also adorns the high offices such as those of the Chairman of the Bar Council of India, the President of the U.P. HC Bar Association, Allahabad and others, his conduct is bound to infect the members of the Bar all over the country. We are, therefore, of the view that an exemplary punishment has to be meted out to him. Thus the contemner Vinay Chandra Mishra is hereby sentenced to undergo simple imprisonment for a period of six weeks and he shall stand suspended from practising as an advocate for a period of three years.

Strike As Misconduct

Ex-capt. Harish uppal V. Union of India, Several Petitions raise the question whether lawyers have a right to strike and/or give a call for boycotts of Court/s. The petitioners submitted that strike as a mean for collective bargaining is recognised only in industrial disputes. He submitted

that lawyers who are officers of the Court cannot use strikes as a means to blackmail the Courts or the clients. He submitted that the Courts must take action against the Committee members for giving such calls on the basis that they have committed contempt of court. He submitted that the law is that a lawyer who has accepted a Vakalat on behalf of a client must attend Court and if he does not attend Court it would amount to professional misconduct and also contempt of court. He submitted that Court should now frame rules whereby the Courts regulate the right of lawyers to appear before the Court. He submitted that Courts should frame rules whereby any lawyer who mis-conducts himself and commits contempt of court by going on strike or boycotting a Court will not be allowed to practice in that Court. He further submitted that abstention from work for the redressal of a grievance should never be resorted to where other remedies for seeking redressal are available. He submitted that all attempts should be made to seek redressal from the concerned authorities. He submitted that where such redressal is not available or not forthcoming, the direction of the protest can be against that authority and should not be misdirected, e.g., in cases of alleged police brutalities Courts and litigants should not be targeted in respect of actions for which they are in no way responsible. He agreed that no force or coercion should be employed against lawyers who are not in agreement with the “strike call” and want to discharge their professional duties. Respondent submitted that lawyers had a right to go on strike or give a call for boycott. He further submitted that there are many occasions when lawyers require to go, on strike or gave a call for boycott. He submitted that this Court laying down that going on strike amounts to misconduct is of no consequence as the Bar Councils have been vested with the power to decide whether or not an Advocate has committed misconduct. He submitted that this Court cannot penalise any Advocate for misconduct as the power to discipline is now exclusively with the Bar Councils. He submitted that it is for the Bar Councils to decide whether strike should be resorted to or not. Petitioner further relied on the case of Lt. Col. S.J. Chaudhary v. State (Delhi Administration, the HC had directed that a criminal trial go on from day to day. Before this Court it was urged that the Advocates were not willing to attend day to day as the trial was likely to be prolonged. It was held that it is the duty of every advocate who accepts a brief in a criminal case to attend the trial day to day. It was held that a lawyer would be committing breach of professional duties if he fails to so attend. In the case of K. John Koshy and Ors. v. Dr. Tarakeshwar Prasad Shaw, one of the questions was whether the Court should refuse to hear a matter and pass an Order when counsel for both the sides were absent because of

a strike call by the Bar Association. This Court held that the Court could not refuse to hear the matter as otherwise it would tantamount to Court becoming a privy to the strike. Considering the sanctity of the legal profession the court had relied on words said in case of “In Indian Council of Legal Aid and Advice v. Bar Council of India, the SC observed thus : “It is generally believed that members of the legal profession have certain social obligations, e.g., to render “pro bono publico” service to the poor and the underprivileged. Since the duty of a lawyer is to assist the court in the administration of justice, the practice of law has a public utility flavour and, therefore, an advocate must strictly and scrupulously abide by the Code of Conduct behoving the noble profession and must not indulge in any activity which may tend to lower the image of the profession in society. That is why the functions of the Bar Council include the laying down of standards of professional conduct and etiquette which advocates must follow to maintain the dignity and purity of the profession.” In Re: Sanjeev Datta, the SC has stated thus: “The legal profession is a solemn and serious occupation. It is a noble calling and all those who belong to it are its honourable members. Although the entry to the profession can be had by acquiring merely the qualification of technical competence, the honour as a professional has to be maintained by its members by their exemplary conduct both in and outside the Court. The legal profession is different from other professions in that what the lawyers do, affects not only an individual but the administration of justice which is the foundation of the civilised society. Both as a leading member of the intelligentsia of the society and as a responsible citizen, the lawyer has to conduct himself as a model for others both in his professional and in his private and public life. The society has a right to expect of him such ideal behavior. It must not be forgotten that the legal profession has always been held in high esteem and its members have played an enviable role in public life. The regard for the legal and judicial systems in this country is in no small measure due to the tireless role played by the stalwarts in the profession to strengthen them. They took their profession seriously and practice it with dignity, deference and devotion. If the profession is to survive, the judicial system has to be vitalised. No service will be too small in making the system efficient, effective and credible.” In the case of SC Bar Association v. Union of India, it has been held that professional misconduct may also amount to Contempt of Court. It has further been held as follows: “An Advocate who is found guilty of contempt of court may also, as already noticed, be guilty of professional misconduct in a given case but it is for the Bar Council of the State or Bar Council of India to punish that advocate by either debarring him from practice

or suspending his licence, as may be warranted, in the facts and circumstances of each case. The learned Solicitor General informed us that there have been cases where the Bar Council of India taking note of the contumacious and objectionable conduct of an advocate, had initiated disciplinary proceedings against him and even punished him for “professional misconduct”, on the basis of his having been found guilty of committing contempt of court.”

Solicitation of Professional Work

Rajendra V. Pai V. Alex Fernandes and Ors. Court held that debarring a person from pursuing his career for his life is an extreme punishment and calls for caution and circumspection before being passed. No doubt probity and high standards of ethics and morality in professional career particularly of an advocate must be maintained and cases of proved professional misconduct severely dealt with; yet, we strongly feel that the punishment given to the appellant in the totality of facts and circumstances of the case is so disproportionate as to prick the conscience of the Court. Undoubtedly, the appellant should not have indulged into prosecuting or defending a litigation in which he had a personal interest in view of his family property being involved.

Breach of Trust By Misappropriating The Asset Of Client

Harish Chandra Tiwari v. Baiju; Court held on these fact, Appellant Harish Chandra Tiwari was enrolled as an advocate with the Bar Council of the State of UP in May 1982 and has been practising since then, mainly in the courts at Lakhimpur Kheri District in UP. Respondent Baiju engaged the delinquent advocate in a land acquisition case in which the respondent was a claimant for compensation. The Disciplinary Committee has described the respondent as “an old, helpless, poor illiterate person.” Compensation of Rs. 8118/- for the acquisition of the land of the said Baiju was deposited by the State in the court. Appellant applied for releasing the amount and as per orders of the court he withdrew the said amount on 2.9.1987. But he did not return it to the client to whom it was payable nor did he inform the client about the receipt of the amount. Long thereafter, when the client came to know of it and after failing to get the amount returned by the advocate, complainant was lodged by him with the Bar Council of the State for initiating suitable disciplinary action against the appellant. Court held that among the different types of misconduct envisaged for a legal practitioner misappropriation of the client’s money must be

regarded as one of the gravest. In this professional capacity the legal practitioner has to collect money from the client towards expenses of the litigation, or withdraw money from the court payable to the client or take money of the client to be deposited in court. In all such cases, when the money of the client reaches his hand it is a trust. If a public servant misappropriates money he is liable to be punished under the present Prevention of Corruption Act, with imprisonment which shall not be less than one year. He is certain to be dismissed from service. But if an advocate misappropriates money of the client there is no justification in de-escalating the gravity of the misdemeanor. Perhaps the dimension of the gravity of such breach of trust would be mitigated when the misappropriation remained only for a temporary period. There may be justification to award a lesser punishment in a case where the delinquent advocate returned the money before commencing the disciplinary proceedings.

Informing About Bribe:

Shambhu Ram Yadav v. Hanuman Das Khattry, the Court upheld the order of bar council of India dated 31st July 1999, which held that the appellant has served as advocated for 50 years and it was not expected of him to indulge in such a practice of corrupting the judiciary or offering bribe to the judge and he admittedly demanded Rs.10,000/- from his client and he orally stated that subsequently order was passed in his client's favour. This is enough to make him totally unfit to be a lawyer by writing the letter in question. We cannot impose any lesser punishment than debarring him permanently from the practice .His name should be struck off from, the roll of advocates maintained by the Bar Council of Rajasthan. Hereafter the appellant will not have any right to appear in any Court of Law, Tribunal or any authority. Court impose a cost of Rs. 5,000/- to the appellant which should be paid by the appellant to the Bar Council of India which has to be within two months.

The list of instances of professional misconduct is not exhaustive, the Supreme court has widened the scope and ambit of the term misconduct in numerous instances, only few cases has been elaborated above.

Sl no	Instance of misconduct	Held in Case
1	Retention of money deposited with advocate for the decree holder even after execution proceedings	Prahlad Saran Gupta V Bar council of India
2	Misguiding Junior Advocate	Harish Chander Singh V SN Tripathi
3	Assaulting opponent with Knife in Court room	Hikmat AliKhan v Ishwar Prasad Arya
4	Scandalisation against Judge	In re DC Saxena
5	Attending court with fire arm	UP Sales tax service association v taxation Bar Association, Agra
6	Discussion of the conduct of judge and pass resolution by bar council, bar association or group of practicing advocates	C Ravichandran Iyer v Justice AM Bhattacharjee
7	Failure to return will executed and kept in safe custody	John D Souza v Edward Ani
8	Constant abstention from conducting of cases	Onkar Singh V Angrez Singh
9	Misappropriation of amount paid	DS Dalai V State Bank of India JS Jadhav v Mustafa Haji Mohamed Yusuf
10	Attesting forged affidavit	M Veerendra Rao v Tek Chand
11	Failure to attend trial after accepting the brief	SJ Choudhary v State
12	Improper legal advice	PD Khandekar v Bar Council of Maharastra
13	Misappropriation of Decretal amount	KV Umre v Venubai

14	Taking money from client for the purpose of giving bribe	Chandra Sekhar Soni v Bar Council of Rajasthan
15	Rushing towards potential clients and snatching briefs	The bar Council of Maharashtra v MV Dabholkar
16	Taking advantage of the ignorance and illiteracy of the clients	NA Mirzan V the disciplinary committee of the Bar council of Maharashtra
17	Appearing with out authority on a forged vakalath	In re advocate
18	Advertising profession	CD Sekkizhar v Secretary, Bar Council, Madras.
19	Gross negligence involving moral turpitude	In the matter of P an Advocate and VP Kumaravelu v the Bar council of India
20	Coercing Colleagues	In re Badri Narin
21	Appearing for both sides	Rambharosa Kalar v Surendra nath Thakur
22	False identification of Deponents	Brahma din and others v Chandrasekhar Shukla
23	Indecent cross examination	Shri Narain Jafa V The Hon. Judges of the High Court, Allahabad
24	Shouting political slogans and holding demonstrations in court	In the matter of a pleader, Ottapalam

25	Attending court in drunken state	In the matter of a lower grade pleader
26	Breach of trust	Bapurao Pakhiddey v Suman Dondey
27	bribe	Purushottam Eknath Nemade v DN Mahajun
28	Fraud and forgery	LC Goyal v Nawal Kishore and Devender Bhai Shanker Mehta v Ramesh Chandra Vithal Dass Seth

Procedure Followed on the Notice of Professional Misconduct

The following is the procedure followed (1) In exercise of powers under Section 35 contained in Chapter V entitled “conduct of advocates”, on receipt of a complaint against an advocate (or suo motu) if the State Bar Council has ‘reason to believe’ that any advocate on its roll has been guilty of “professional or other misconduct”, disciplinary proceeding may be initiated against him.

(2) Neither Section 35 nor any other provision of the Act defines the expression ‘legal misconduct’ or the expression ‘misconduct’.

(3) The Disciplinary Committee of the State Bar Council is authorised to inflict punishment, including removal of his name from the rolls of the Bar Council and suspending him from practice for a period deemed fit by it, after giving the advocate concerned and the ‘Advocate General’ of the State an opportunity of hearing.

(4) While under Section 42(1) of the Act the Disciplinary Committee has been conferred powers vested in a civil court in respect of certain matters including summoning and enforcing attendance of any person and examining him on oath, the Act which enjoins the Disciplinary Committee to ‘afford an opportunity of hearing’ (vide Section 35) to the advocate does not prescribe the procedure to be followed at the hearing.

(5) The procedure to be followed in an enquiry under Section 35 is outlined in Part VII of the Bar Council of India Rules made under the authority of Section 60 of the Act. Rule 8(1) of the said Rules enjoins the Disciplinary Committee to hear the concerned parties that is to say the complainant and the concerned advocate as also the Attorney General or the Solicitor General or the Advocate General. It also enjoins that if it is considered appropriate to take oral evidence the procedure of the trial of civil suits shall as far as possible be followed.