**THE NEED, OBJECT AND PURPOSE OF PROFESSIONAL ETHICS**

There are various questions regarding ethics, specially professional ethics. Ethics exist in almost all the professions, for example, in medical, teaching, advocacy and engineering professions. They have a greater role to play in one’s professional life. The procedure of following ethics may be different in different professions, the ultimate objective, however, being the same. The dictionary meaning of ethics, is “*moral principles that govern a person’s behaviour or the conducting of an activity”, while that of morals is “concerned with the principles of right and wrong behavior; the moral dimensions of medical intervention, etc. It is concerned with or derived from the code of behavior that is considered right or acceptable in a particular society*.”[[1]](#footnote-1)

The system of beliefs and values called ethics must be applied meticulously to maintain integrity, accountability and professionalism. Ethics must be certain kind of expected behavior, to necessary to uphold a good reputation. An underlying principle behind having ethics in a ny profession is that a man’s greatest asset is his character.

An advocate has some basic duties or obligations towards his clients, the courts and the society in general. Some basic principles in the development of professional ethics in advocates are as follows:

* Honesty (towards oneself and others, both)
* Integrity
* Morality
* Trust or confidentiality
* Diligency
* Non negligient
* Respect

Any violation of the principles of professional ethics is unviable and unprofessional. A lawyer must not do anything that erodes his credibility and shakens the confidence of the public or abuses the process of the court.

In **OP. Sharma V. High Court of Punjab & Haryana[[2]](#footnote-2)**, the Apex Court observed that “*the role and status of lawyers at the beginning of Sovereign and Democratic India is accounted as extremely vital in deciding that the Nation's administration was to be governed by the Rule of Law. They were considered intellectuals amongst the elites of the country and social activists amongst the downtrodden. These include the names of galaxy of lawyers like Mahatma Gandhi, Motilal Nehru, Jawaharlal Nehru, Bhulabhai Desai, C. Rajagopalachari, Dr. Rajendra Prasad and Dr. B.R. Ambedkar, to name a few. The role of lawyers in the framing of the Constitution needs no special mention. In a profession with such a vivid history it is regretful, to say the least, to witness instances of the nature of the present kind. Lawyers are the officers of the Court in the administration of justice. The advocate or the party appearing in person, is given liberty of expression. But they equally owe countervailing duty to maintain dignity, decorum and order in the court proceedings or judicial processes. Any adverse opinion about the judiciary should only be expressed in a detached manner and respectful language”*

Again, in **R.K. Garg Advocate v. State of Himachal Pradesh**[[3]](#footnote-3)**,** the Court held that members of the Bar have to remember that such flagrant violations of professional ethics and cultured conduct will only result in the ultimate destruction of a system without which no democracy can survive.

In **Ramon Services Pvt. Ltd. v. Subhash Kapoor[[4]](#footnote-4)**, the apex Court observed that if any advocate claims that his right to strike must be without any loss to him, but the loss must only be borne by his innocent client, such a claim is repugnant to any principle of fair play and canons of ethics. Therefore, when he opts to strike or boycott the Court he must as well be prepared to bear at least the pecuniary loss suffered by the litigant client who entrusted his brief to that advocate with all confidence that his cause would be safe in the hands of that advocate

**AN INSIGHT INTO THE AMERICAN BAR ASSOCIATION: LAWYER’S RESPONSIBILITIES**

As a representative of clients, a lawyer performs various functions. As advisor, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system. As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealings with others. As an evaluator, a lawyer acts by examining a client's legal affairs and reporting about them to the client or to others.

In addition to these representational functions, a lawyer may serve as a third-party neutral, a nonrepresentational role helping the parties to resolve a dispute or other matter. Some of these Rules apply directly to lawyers who are or have served as third-party neutrals. See, e.g., Rules 1.12 and 2.4. In addition, there are Rules that apply to lawyers who are not active in the practice of law or to practicing lawyers even when they are acting in a nonprofessional capacity. For example, a lawyer who commits fraud in the conduct of a business is subject to discipline for engaging in conduct involving dishonesty, fraud, deceit or misrepresentation.

In all professional functions a lawyer should be competent, prompt and diligent. A lawyer should maintain communication with a client concerning the representation. A lawyer should keep in confidence information relating to representation of a client except so far as disclosure is required or permitted by the Rules of Professional Conduct or other law.

A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's business and personal affairs. A lawyer should use the law's procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials. While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process.

As a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession. As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law and work to strengthen legal education. In addition, a lawyer should further the public's understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority. A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. Therefore, all lawyers should devote professional time and resources and use civic influence to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel. A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest.[[5]](#footnote-5)

**Definition**

Professional Ethics may be defined as a code of conduct, written or unwritten, which regulates the behavior and conduct of a practicing lawyer towards himself, his client, opposite party and his counsel and towards the courts.

**Provisions dealing with the law on professional ethics**

1. Section 4, Advocates Act: As per this, there shall be constituted an All-India Bar Council, consisting of the Attorney General of India, the Solicitor General of India (ex-officio members) and one member each elected from the State Bar Councils.
2. Section 7, Advocates Act: This states the functions of the Bar Council of India. An important function is to lay down standards of professional conduct and etiquette for advocates (clause b).
3. Section 49, Advocates Act: This states the general power of the Bar Council of India to make rules, one of such powers is that the BCI will govern the standard of professional conduct and etiquette to be observed by advocates (clause c).
4. **Chapter II of Part VI of BCI Rules: Standards of Professional Conduct and Etiquette 45—59** (Rules under Section 49(1)(e) of the Act read with the proviso thereto)
5. Section 35 of Advocates Act, 1961: Punishment for professional misconduct- After an advocate is found guilty of professional misconduct, the case will be referred to the disciplinary committee that will fix a date of appearance for the advocate. After hearing the parties, the disciplinary committee has four options: to dismiss the complaint, to suspend the advocate, warn him of his conduct or to remove his name from the state roll of advocates.

**LAW COMMISSION OF INDIA REPORT NO 226- GTHE ADVOCATES ACT (REGULATION OF LEGAL PROFESSION)**

The Law Commission, with regard to the professional misconduct has made certain important observations. The wod ‘*misconduct’* has not been defined in the Advocates Act 1961. Misconduct means a wrongful action and not mere error of judgment. A transgression of some well-established and definite rule of action, where no discretion is left. It is a forbidden act, carelessness, an unlawful behaviour or neglect by which the right of a party has been affected e.g. allegation of disproportionate asset; misappropriation; and criminal breach of trust; not working diligently; an action which is detrimental to the prestige of the institution and acting beyond authority. It may be synonymous to an improper behaviour or mismanagement. It is detrimental to public interest. Misconduct is to be construed and understood with reference to the subject matter and context wherein the term occurs taking into consideration the scope and object of the statute involved.[[6]](#footnote-6)

Professional misconduct refers to disgraceful or dishonourable conduct, not befitting to the profession. Advocates have a duty to uphold the integrity of the profession and to discourage corruption so that justice may be secured by the citizenry in a legal manner. A lawyer must strictly adhere to the norms of profession which make him worthy as an officer of court. Dignity of the judiciary is to be maintained, failing which the institution itself will collapse. Indulging in practices of corrupting the judiciary or offering bribe to the Judge; retaining money deposited with the advocate for the decree holder even after execution proceedings; scandalizing the Judges; constant abstention from the conducting of cases; misappropriation of the amount paid ; attesting forged affidavit; failure to attend trial after accepting the brief ; taking money from client in the name of the Judge; gross negligence involving moral turpitude; indecent cross-examination; breach of trust; conducting fraud and forgery by the advocates, have been held to be serious misconduct by the Supreme Court.[[7]](#footnote-7)

1. Available at https://www.oxfordcollege.ac/news/ethics-versus-morals/ [↑](#footnote-ref-1)
2. O.P. Sharma V High Court of Punjab & Haryana, AIR 2011 SC 2101. [↑](#footnote-ref-2)
3. R.K. Garg Advocate v. State of Himachal Pradesh, 1981 (3) SCC 166. [↑](#footnote-ref-3)
4. AIR 2001 SC 207 [↑](#footnote-ref-4)
5. Available at https://www.americanbar.org/groups/professional\_responsibility/publications/model\_rules\_of\_professional\_conduct/model\_rules\_of\_professional\_conduct\_preamble\_scope/ [↑](#footnote-ref-5)
6. Black’s Law Dictionary, Sixth Edition; P Ramanatha Aiyar’s Law Lexicon, Reprint Edition 1987 at page 821. [↑](#footnote-ref-6)
7. The 226th Law Commission of India Report, available at http://lawcommissionofindia.nic.in/reports/Report266.pdf [↑](#footnote-ref-7)