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The Challenges of Legal Profession in India: Revisiting the Saga of Mahipal Singh Rana Case

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Abstract

In law profession misconduct means an act done willfully with a wrong intention by the people engaged in the profession. It means any activity or behavior of an advocate in violation of professional ethics for his selfish ends. The 266th Law Commission of India Report, took cognizance of the ever- increasing instances of Professional misconduct, specifically from the mishap of Mahipal Singh Rana's case.

The paper tries to dig deeper into the roots of professional misconduct in legal profession, looking for the potential reasons behind the same, and analyzing the gravity of the instances witnessed in this regard. It systematically attempts to analyze the steps taken by the legal fraternity to get a hold of this malpractice along with providing personal solutions to the same.

An in-depth analysis of the above-mentioned setbacks has been presented along with an logical conclusion of the subject matter.

The paper has sought to resort to different reliable sources, both online and offline, inclusive of different online reports, surveys, statistics, studies, books and articles inter alia for the purpose of research, analysis, interpretation and execution of the subject matter.

Keywords: Law Commission of India, 266th Report of LCI, Professional Misconduct, Legal Malpractices.

Introduction

In the words of Roscoe Pound, "*Historically, there are three ideas involved in a profession: organization, learning, and as spirit of public service.*"¹ We can very well say that legal professions is culmination of all these their virtues mentioned by Roscoe Pound. Considering the background and the importance of law as an ethical profession, the makers of our Constitution, in Indian while designing the nation as a Federal structure of governance and Unitary in Spirit, entrusted separation of powers to the three organs of the Government, and further gave the Judiciary the power to interpret and enforce the rights of the people.

The dawn of modern legal profession in India, began with the passing of the Indian High Courts Act, 1861. The said act prescribed for the establishment of High Courts initially at Calcutta, Madras and Bombay, (which was subsequently extended to other high courts as well) through the letter patents during the British period.² Thereafter, the respective High Courts were delegated with the power to make further rules for the enrollment and professional conduct of various advocates, attorneys and solicitors. The legal profession was considered to be a Nobel profession because it strived for the attainment of impartial justice in human society.

The Origin of Advocates Act, 1961 -its Legislative Intent

If we trace the genesis of the legislative development of legal profession in India post- independence period, it re-started with passing of the All India Bar Committee (1953)³ report along with recommendations. Thereafter, major development was initiated with the passing of the legislative enactment the Advocate's Act, 1961. As we know, the said act is a codified statute governing the conduct of the Advocates and regulating the entire system of legal profession as well as legal education in India. It has many other regulatory bodies within its scope, including the Bar Council of India and the various respective State Bar Councils, which have been delegated the statutory

mandate pertaining to the admission of advocates, maintaining their rolls, governing the professional conduct, interalia of the Advocates enrolled under them. With the ever-increasing number of cases, the legal profession has now become an indispensable part of our society, which is also evident by the exponential increase in the number of enrollments of advocates throughout the country. Advocates today are vital part of our judicial system ranging from the various courts to tribunals, to law firms and legal departments in various organizations.

Professional Misconduct: A Slippery Slope

In an article it was stated that ***"Legal profession is a noble profession. It is not a business or a trade. A person practicing law has to practice in the spirit of honesty and not in the spirit of mischief making or money-getting. An advocate's attitude and dealings with his client have to be scrupulously honest and fair,"***⁴ The given statement, however may be directly in conflict with the existing realities of the legal profession in India in present times. Hence, this case of conflict and mismatch suggests that the existing legal framework governing the legal profession i. e, the Advocates Act, 1961 needs urgent amendments to eradicate the issues of professional misconduct by advocates. Also, one needs to introspects and deeply analyze the way such cases of misconduct are dealt by the local Bar councils or the even the court of law. The ever-rising demand and supply of justice however seen a contrast decline in its professional ethics and decorum. There has been increasing number of instances, where the advocates, for their personal benefit and financial as well as professional gains have turned the face of justice to a darker side. Both occasional and repetitive, has been the instances where in the need of stringent regulations for the legal professionals have been felt. In recent years, the role of advocates, particularly in the dispensation of justice through courts of law, has come under sharp criticism and is being viewed as an eyesore by the public.⁵ A news item published in the Indian Express titled 'Laws for Lawyers', spoke of the crumbling regulatory structure after having witnessed a decline in the conduct of advocates; and lawyers that was unprofessional and inconvenienced by a variety of instances.⁶ The conduct of advocates inside and outside the courtroom, with the judges, other fraternity members and the parties along with the radical increase of day to day strikes have reached a terrifying level and needs to be checked for in order to render true justice to individuals.

The courtrooms nowadays often witness disturbing instances such as carrying arm, shoe hurling, abuses and giving threats to opponent advocates or judges by the appearing duly and qualified advocates themselves, may it be junior and senior as well. In addition to this, even in earlier occasions, various high courts had urged for the need for overhauling and making important amendments in the existing Advocates Act, for regulating the legal profession in matters related to professional misconduct. For example, the decision of the full judge bench of the Jharkhand High Court in the case of K. K. Jha Kamal & Anr. v. Pankaj Kumar & Anr.⁷, the full bench judgment of the Allahabad High Court in the case of Sadhna Upadhyay v. State of U.P.⁸, to name a few. The gravest of all being the case of a very senior advocate hailing from the state of Uttar Pradesh named one Mahipal Singh Rana, which attracted the robust attention of the apex court, the media, the Law Commission as well as the entire judicial fraternity. The said case acted as catalyst agent to give rise to the recommendations of the Law Commission in its 266th Report. Thus, it is pertinent to analyse the various facets of this landmark case Mahipal Singh Rana v. State of U.P. to get a deeper insight in the issue of professional misconduct.

Saga of Mahipal Singh Rana's Case

Mahipal Singh Rana vs State of UP⁹ case came into focus in the 266th law commission as this case aroused a major issue of misconduct by a senior advocate not only affecting the judge but also the whole legal profession and judiciary. Facts of the case illustrates that Advocate Mahipal Singh Rana who was enrolled as an advocate in the UP-State Bar Council, during a hearing of case, threatened a presiding civil judge Shri Onkar Singh Yadav and literally challenged his authority as a judicial officer and the authority of the court of law. He lost his temperament when the said judge was passed on order against him and hence, threatened the Hon'ble Civil Judge stating that he will make sure that the respective judge will no longer remain as a judge in judiciary of Etah. He also openly challenged the authority of whole judiciary by disclosing the fact that already 15-20 cases have been filed against him and thus, he is not afraid of anyone! Such facts essentially construe as a case of serious professional misconduct and thus such default on the part of advocate also directly lowers the decorum of the judge, dignity of the profession and adversely affects the functioning of the judiciary. Such incident did not happen for only once but again in another case advocate Mahipal Singh Rana again showed such aggressive and disrespectful attitude towards

the sitting judge. Repeatedly, Mahipal Singh hindered the court proceeding by his aggressive and hostile behaviors, challenging the authority of the pressing judges and violating the basic discipline of the judicial of the profession.

Aforestated facts and details accounts of the alleged misconduct were included by the said Judge Shri Onkar Singh Yadav in his compliant, being a witness himself he also represented before the Hon'ble High Court, urging for a strict action against such misconduct by an advocate is concerned. In the light of the above stated facts, the question arises why the local UP state bar council remained a silent spectator and allowed such an advocate to continue to terrorise, brow beat and bully the judicial officers? It is important to add here that under the Advocates Act, 1961 section 6(c)¹⁰ commands to every Bar Council itself having a primary authority to determine and dispose all cases of misconduct against any advocates existing on its roll. Thus, whenever any respective Bar Council fails to act or check the issues related to the misconduct of Advocates on its role, they need be made statutorily liable for such grave substantive as well as procedural lapses.

In its judgment the local High court at Allahabad held the said advocate guilty and made following observations; *"We thus punish him under Section 12¹¹ of the Contempt of Courts Act 1971, with two months 'imprisonment and also impose fine of Rs.2000/-on him. In case non-payment offline he will undergo further a period of imprisonment of two weeks.¹²"* Looking at this whole incident of serious misconduct, the most pertinent issue before us emerges that the term "Misconduct" is not clearly defined in the Advocates Act, 1961 and then how the cases relating to misconduct can be judiciously dealt by the respective Bar Councils or any court of law? Further, there is also an urgent need to review the existing provisions related to the quantum of the punishment, etc. Not only this, cases like Mahipal Singh Rana also puts a question mark on the regulatory role of the respective Bar Councils, the judiciary as well as the whole legal profession as a whole.

Verdict of the Apex Court

Further, the stubborn and habitually delinquent advocate Mahipal Singh filed as an appeal challenging the authority of the local High Court. In its verdict the apex court upheld the conviction and the direction given by the Allahabad High Court that the advocate shall not be permitted to appear in

courts in District Etah until he purges himself of contempt. The Court also held that under Section 24A13 of the Advocates Act, the enrolment of the contemnor Advocate will stand suspended for two years. The Court also said that, as a disciplinary measure for proved misconduct, the license of the contemnor will remain suspended for further five years. The Court has however set aside the imprisonment imposed on the Advocate keeping in mind his advanced age¹⁴. Thus, this case stands as a glaring example of the existing professional misconduct in the legal profession in India in recent times.

The Apex Court in its observation very rightly held that there is an urgent need to review the existing provisions of the Advocates Act dealing with regulatory aspects for the legal profession. The Court also held that, what is permissible for this Court by virtue of statutory appellate power under Section 38 of the Advocates Act is also permissible to a High Court under Article 226 of the Constitution in appropriate cases on failure of the Bar Council to take action after its attention is invited to the misconduct.¹⁵

The details analysis of the said case exposes existing several loopholes in legal frame work dealing with the issue of professional misconduct in legal profession in India. Firstly, the existing Advocates Act, 1961 definitely requires a suitable amendment to define and clarify the scope of terms "Misconduct" relating to legal profession. Secondly, there is also a need for marking a distinction between "Contempt" vis-a-vis a "Misconduct", as many cases of it may be a case overlapping both the issues. Thirdly, even though is the said case the respective High Court and Supreme Court dealt with the issue, but as per the mandate of the Advocates' Act it must be primarily dealt by the respective Bar council itself, as already held in the case of Supreme Court Bar Association vs Union of India & Anr¹⁶.

It was laid down very clearly in the said case that, prior to the enactment of the Advocate's Act, 1961, the former High courts were given the power to deal with the disciplinary matters of legal practitioners. Thus, previously High Courts were considered as the competent authority to punish the advocates for their professional misconduct. However, after the enactment of the Advocate's Act, 1961 this jurisdiction of dealing misconduct of the advocates was entrusted to the respective Bar councils and further the All India Bar Council. As the Bar council being a multifunctional body

with diverse mandate, the specific role to regulate misconduct cases has been entrusted to its Disciplinary Committees.

Thus, the Disciplinary Committees have authority to hold Disciplinary proceedings against the misconduct of advocates on any complaint received. Thus, vide the Advocates' Act each respective Bar Councils has the statutory power to take cognizance of the disciplinary proceedings of its advocates and hence, there shouldn't be any need for the state judiciary or the Apex court to get involve into such cases of misconduct again and again. It is just a sheer wastage of the valuable time of the apex court its worthy jurisdiction. Since, the said appeal completely lacked in merits and thus challenging such the judgement at the apex court was a complete wasteful exercise and loss of precious time of the court, however the observations of the court will be of paramount significant and will serve as judicial precedent for future. To avoid such wasteful judicial exercise, there should be clarity that what shall be the procedure and punishment and most importantly the jurisdiction of Bar councils to handle such cases of misconduct in future.

In its observation, it was expressed that there is a dire need for inserting stringent amendments and rules in the areas of Professional Conduct to the Advocates Act, was felt by the three judge bench of the Honorable Apex Court comprising of Justices Anil R. Dave, Kurian Joseph and Adarsh Kumar Goel, while hearing an appeal in a case of advocate's misconduct. The decision went in line with the increasing number of cases of Professional misconduct by the Advocates, which got the highest gravity in the case of Mahipal Singh Rana v. State of Uttar Pradesh¹⁷. The bench requested the Government and the Law Commission to suggest appropriate measures in this regard.¹⁸

Subsequent Initiatives by Law Commission of India

The 266th Report of the Law Commission of India, titled 'The Advocates Act, 1961 (Regulation of Legal Profession)' suggesting important amendments to the Advocates Act, 1961 was submitted to the Government¹⁹. Considering the aforesaid judgment of the Supreme Court and the intensity of the matter along with the need for maintaining decorum of the Legal Profession as a whole, the Law Commission of India suggested some important changes inclusive of the need of new regulatory bodies and mechanism inter alia, in its 266th Report. The Commission also proposed a draft of the Advocate (Amendment) Bill 2017.²⁰ On 22nd July 2016, the Law Commission of India put an

official notice inviting the suggestions from all the stakeholders as to how the system could be improved. Recommendations were asked from the Bar Council of India as well as various State Bar Councils as well. The Bar Council of India further constituted a committee headed by a former judge of Supreme Court Mr. Shivraj Patil. The Bar Council of India was of the view that in addition to the regulatory mechanism, other inter-related issues, i.e., constitution of the BCI and the State Bar Councils are also required to be revisited. The BCI made some suggestions in this regard.²¹

A detailed analysis dwelling into the major aspects of the amendments and changes suggested by the 266th Report is summarized herein below. Considering the recommendations and the provisions of the existing Advocates Act, the Law Commission came to the inference that the conduct of the Advocates in one way or the other affects the functioning of the Courts and has the potential to increase the already existing pendency of cases. It also observed that the practice of going on strikes by the Advocates is rampant along the length and breadth of the country which further darkens the course of justice. The commission was astonished that despite the landmark judgment of the Supreme Court in *Ex-Capt. Harish Uppal vs. Union of India*²² which stated that "*... that lawyers have no right to go on strike or give a call for boycott, not even on a token strike. The protest, if any is required, can only be by giving press statements, TV interviews, carrying out of Court premises banners and/or placards, wearing black or white or any colour arm bands, peaceful protest marches outside and away from Court premises, going on dharnas or relay fasts etc....only in the rarest of rare cases where the dignity, integrity and independence of the Bar and/or the Bench are at stake, Courts may ignore (turn a blind eye) to a protest abstention from work for not more than one day...*"

In spite of the decisions, the strikes have continued leading to the ever-increasing pendency of the cases. This goes against the decision of the Apex Court, which held that Right to speedy trial is an intrinsic part of Article 21 of the Indian Constitution. In the case of *Hussainara Khatoon v. Home Secy., State of Bihar*²³; and in some other cases, it was held that the litigant has a right to speedy justice. The lawyers' strike, however, result in denial of these rights to the citizens in the State. This was further affirmed by the apex court in the cases of *Hussain & Anr. v. Union of India*²⁴, *Ramon Services Pvt. Ltd. v. Subhash Kapoor*²⁵, *Vishram Singh Raghubanshi v. State of Uttar Pradesh*²⁶,

M.B. Sanghi v. High Court of Punjab and Haryana²⁷, R.D. Saxena v. Balram Prasad Sharma²⁸, Mahabir Prasad Singh v. Jacks Aviation Pvt. Ltd.²⁹, M/s. Chetak Construction Ltd. v. Om Prakash³⁰, Radha Mohan Lal v. Rajasthan High Court³¹ etc.

The Constitution provides for an independent and efficient justice delivery system. Any delay in disposal of cases not only creates disillusionment amongst the litigants, but also undermines the Capability of the judicial system to impart justice in an effective manner.³² The Supreme Court has even disapproved any such conduct of the party resorting to dilatory tactics before the court seeking adjournments on one or other pretext and observed that the party acted in a manner to cause colossal insult to justice and to the concept of speedy disposal of cases³³.

In Re: Ajay Kumar Pandey³⁴, the Supreme Court held: *"No one can be permitted to intimidate or terrorize judges by making scandalous unwarranted and baseless imputations against them in the discharge of their judicial functions so as to secure orders which the litigant 'wants' ... The liberty of expression cannot be treated as a license to scandalize the court..."*

In another case the Bar Council of India v. High Court of Kerala³⁵, the Supreme Court observed, *"An advocate in no circumstances is expected to descend to the level of appearing to support his view in a vulgar brawl."* In Re: S. Mulgaokar³⁶, the Supreme Court observed that *"public interest and public justice require that whenever there is an attack on the judge, it is scurrilous, offensive, intimidatory as well as malicious, the law must strike a blow on him as he challenges the supremacy of law by fouling the source and stream"*. Taking into account the gravity of the mentioned cases and issues, a suggestion was made by the commission for the setting up of an Advocates' Grievance Redressal Committee headed by a Judicial Officer in every district³⁷, which shall deal with the day to day or routine matters of the cases relating to professional misconduct.

Expressing and comprehending the concerns, the Law Commission of India further suggested modifications to Section 24(A)³⁸ of the Advocates Act, 1961 which provides for the disqualification of the enrolled advocates in certain specific cases. Section 24(A) of the Act provides that any person who is convicted of any offence is eligible to be enrolled as an advocate after the completion of two years from the date of completion of the sentence. It also went through Section 26(A)³⁹ of the Act, which provides for the power of the Bar Councils to remove names of the Advocates from the roll, do not provide for any ground for removing the names of Advocates who are or

were convicted of any offence under the Indian Penal Code. The issue was on the onset taken into account by the Honorable Gujarat High Court in the case of 'C' v. Bar Council of Gujarat⁴⁰.

Hence, the Commission submitted its recommendation for substituting Sections 24(A) and 26(A) with new provisions which would take into account the non-admittance of persons convicted for various crimes, as advocates and hence preserving the integrity and vitality of the Legal profession. On a rather stringent scrutiny, under the Bar Council of India Certificate and Place of Practice (Verification) Rules, 2015, the BCI found that as many as 33-45% of the then practicing advocates were bogus⁴¹ and were either practicing with fake degrees or with no degrees at all. *Owing to this startling end, the Law Commission recommended a specific rule making power for Bar Council of India to make rules for verification of certificates of Advocates and for periodical verification of antecedents, conduct, place of practice of Advocates; and to make a data-based web-portal of all the advocates.*⁴²

Imparting Quality Legal Education

Dwelling into the role of UGC and the BCI in imparting Legal Education throughout the Nation, The Law commission further suggested certain changes to the delivery of the Legal Education in the country. It suggested that Law Colleges should make their infrastructure revised and should provide for upgraded resources and Library facilities.

The BCI should also take measures to innovate the practice of learning in order to maintain the spirit of Globalization and International competency among the Indian Law Students.

Pre-Enrollment training of Advocates

The Law Commission also highlighted the problem of newly enrolled advocates directly practicing in Higher Courts without any experience or learning by practicing in lower courts. This leads to the increase instances of proxy appearances by the senior counsels who send the freshers to take up the matter without due experience and knowledge. This in turn hampers the path of justice to be given to the citizens. While dealing with such a situation, the Supreme Court in Sanjay Kumar v. State of Bihar⁴³, deprecated such practice by observing that an "arji", "farji" half-baked lawyer under the label of "proxy counsel", without any acquaintance with or authorization from the litigant

use, abuse or misuse the process of the court under the false impression that he has a right to waste public time.

Further, in a nun precedented step, the Supreme Court in Re: Rameshwar Prasad Goyal⁴⁴, held that conduct of Shri Goyal, AOR⁴⁵, lending his signature for petty amount without appearing in court had been reprehensible and not worth pardoning, and he was censured. The court also put him on probation for a year.

Hence, the Law Commission also suggested an insertion of clause 7 in the Act, which empowers the Bar Council of India to make provisions for a mandatory training before the enrollment of a person as an Advocate.

Redefining Misconduct-

The specificity of the term "Misconduct" under the statute of Advocates Act leaves room for doubt and hence, possible for either misinterpretation or vague judicial analysis. This is so because neither the Advocates Act nor the Bar Council of India Rules,⁴⁶ defines professional misconduct. However, if we consider the definition by various literary sources, texts and judicial precedents, misconduct may be defined as;

*"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 behavior 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 behavior 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."*⁴

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.⁴⁸ A lawyer must strictly adhere to the norms of profession which make him worthy as an officer of court⁴⁹. Dignity of the judiciary is to be maintained, failing which the institution itself will collapse.⁵⁰ Indulging in practices of corrupting

the judiciary or offering bribe to the Judge⁵¹; retaining money deposited with the advocate for the decree holder even after execution proceedings⁵²; scandalizing the Judges⁵³; constant absent from the conducting of cases; misappropriation of the amount paid⁵⁴; attesting forged affidavit⁵⁵; failure to attend trial after accepting the brief⁵⁶; taking money from client in the name of the Judge⁵⁷; gross negligence involving moral turpitude⁵⁸; indecent cross-examination⁶³; breach of trust⁵⁹; conducting fraud and forgery^{60,61} by the advocates, have been held to be serious misconduct by the Supreme Court.

Considering the aforementioned decisions of the Courts, the Law Commission further provided a well-defined and comprehensive definition of Professional Misconduct in its 266th Report.

Reviewing Regulatory Mechanism-

The commission also recommended that for the attainment of both present and future needs of the Legal System, certain amendments, providing for strong and competent regulatory bodies must be made to the Advocates Act, 1961. Thus, the case of Mahipal Singh Rana may be remembered a blotch mark judicial history, however the case also gets credit at the same time for stirred the hornet's nest and for bringing out several glaring issues related to the indiscipline existing in legal profession in India in present times. The legislators, law makers and the regulators have to together collaborate to tackle such attitude of indiscipline and lack of professionalism.

Thus, there is no iota of doubt that the existing law must expressly define the issue of "Misconduct" with reference to legal profession along with co-relating strict penal provisions to deal with it within the scope of existing legislation the Advocates Act as well as the Bar Council Rules. Further, all State bar councils must be made statutorily liable for implementation of the said rules without any scope for either substantive or procedural lapses. If urgent and necessary steps are not taken as advised by the apex court and the Law Commission of India, this legendary legal profession will continue to suffer from the plague of misconducts and indiscipline and will lose its real glory and importance in society.

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6. Supra Note 5.

7. AIR 2007 Jhar 67

8. 2003 (2) AWC 1297

9. AIR 2016 SC 3302

10. Advocates Act, 1961; Section 6(c) Functions of State Bar Councils: -

(c) to entertain and determine cases of misconduct against advocates on its roll

11. Section 12. Punishment for contempt of court

(1) Save as otherwise expressly provided in this Act or in any other law, a contempt of court may be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both:

PROVIDED that the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the court.

12. AIR 2016 SC 3302

13. Advocates Act, 1961; Section 24A Disqualification for enrolment

(1) No person shall be admitted as an advocate on a State roll-

if he is convicted of an offence involving moral turpitude.

If he is convicted of an offence under the provisions of the Untouchability (Offences) Act, 1955.

c. (Note: - Ins. by Act 70 of 1993, sec. 7) If he is dismissed or removed from employment or office under the State or any charge involving moral turpitude. 14. KM, A. (2016): *Law Commission Suggests Drastic Changes In Advocates Act: Live Law*. [online] Live Law. Available at: <http://www.livelaw.in/breaking-law-commission-suggests-drastic-changes-advocates-act/> [Accessed 20 May 2018].

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45.Advocate on Record

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