

Advocates Act 1961

- Chapter -1 deals with primary issues such as short title, extent and commencement and definitions
- Chapter -2 sections 3-15 deals with the bar councils.
 - Bar council of India
 - State bar council
- Chapter 3 deals with admission and enrolment of Advocates.
 - qualifications and disqualifications
 - types of Advocates
 - 1. senior Advocates and
 - 2. Other Advocates



- Chapter -4 deals with Rights, Duties and privileges of Advocates. (sections 29 to 34)
- Chapter -5 deals with the conduct of Advocates.
 - Professional misconduct
 - punishment
 - Remedies
- Chapter -6 deals with Miscellaneous issues.
- Chapter -7 deals with Temporary and Transitional provisions



SALIENT FEATURES

State Bar Council

Constitution : S.3 of the Advocates Act empowers for the creation of State bar councils for every state.

Number of members of the Bar Council varies from state to state, depending upon the number of Advocates on the State roll.

- 1. If the number of Advocates in the state roll is less than 5000 then the number of Bar Council members are 15.**
- 2. If the number of Advocates are 5000 to 10000 then the number of Bar Council members are 20.**
- 1. If the number of Advocates are more than 10000 then the number of bar Council members are 25.**

Members are elected by the Advocates whose names are there in the state roll by a single transferrable vote. The members hold office for a period of 5 years.

Powers:

The State Bar Council is empowered with the following powers.

- 1. It is body corporate.**
- 2. It is a legal body having the autonomous status.**
- 3. It has a common seal and perpetual succession.**
- 4. It can do the following things in its own name. Buying and selling properties, Entering into agreements, Filing cases.**
- 5. It can constitute executive committee etc.**
- 6. It can frame rules and regulations relating to day to day administration**

Functions: SEC 6

BAR COUNCIL OF INDIA

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term of office

- **Powers:**

_____ Functions of Bar Council of India.

BAR COUNCIL OF INDIA



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- Qualification Prescribed for Enrolment

- **The Supreme Court rules of practice classifies the Advocates into three categories.**

- **Advocate on Record.**

- **Advocates Roll According to S.17**

Lawyers Privileges

- **Following are some of the privileges**

Seven Lamps of Advocacy

Honesty

Courage

Industry:

Wit

ETHICS VERSUS ETIQUETTE

Ethics refer to the moral principles that govern our behavior.

Ethics is related to principles.

Ethics can mean different things to different people.

Ethics is personal; the right and wrong are judged individually.

Etiquette is a set of rules indicating the proper and polite way to behave.

Etiquette is related to behavior.

Etiquette can differ according to culture, ethnicity, religion, country, etc.

Etiquette is social; it is not created by an individually.

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The word 'ethics' derived from the Greek word 'ethos'. It means the habitual mode of conduct Professional ethics means a conduct written or unwritten which prescribes the duties of a profession (legal Profession).

- Professional ethics are principles that govern the behaviour of a person or group in an environment. Like values, professional ethics provide rules on how a person should act towards other people and institutions in such an environment.
- All members of the legal profession have a paramount duty to the court and towards the administration of justice. This duty prevails over all other duties, especially in the circumstances where there may be a conflict of duties.
- However, professional ethics are not just limited to legal profession. They are a part of each and every field such as medical, engineering, business, politics etc.

- Every profession has its own code of ethics. The legal profession in India is highly competitive and dynamic
- The nature of professional ethics is such that, it is the essence of the legal profession.
- It encourages a Lawyer to act in a dignified manner. • In order to maintain its dignity and integrity, professional ethics were codified. • It brings upon accountability upon the legal professionals for dishonest, irresponsible and unprofessional behaviour
- Advocates can lose their license (to practice at court/firm) if they resort to unethical practices that endanger and tarnish the dignity of the legal profession.

Maintaining independence and accountability of the legal profession. Preventing unfair practices. Administration of justice. A sense of social control. To avoid governmental interference. Peace and harmony

S.49(I) (C) of the Advocates Act, 1961 empowers the bar council of India to make rules prescribing the standards of professional conduct and etiquette to be observed by the advocates. The rules made by the Bar council shall come into effect only when it is approved by the Chief justice of India.

In exercise of this rule making power the Bar Council of India has made several rules prescribing the standards of professional conduct and etiquette for the advocates. These rules specifies the duties of an Advocate to the court, client, opponent and colleagues etc. These rules are broadly called as professional ethics

Duty to the Court

- Following are duties prescribed by the Bar Council rules as duty to the court, which should be observed by the Advocates.
 - An Advocate shall show the due respect to the court and shall never act in any manner to undermine the confidence in the judiciary.
 - 2. He shall not exert or attempt to exert any personal influence on the decision of the court, nor shall give any impression that he possesses personal influence with the judge before whom he normally practices.
 - 3. He shall be always punctual in attending courts in the prescribed dress.
 - 4. He shall be fair and frank in the court proceedings.
 - 5. He shall not include any fact which he knows to be false in the pleadings, petitions or affidavits.
 - 6. He shall not ask for any adjournment of a case without genuine reasons.
 - 7. He shall not communicate privately with the judges to influence them relating to any pending case..

8. He shall not speak ill of judges or use abusive remarks about them. But, if the judge behaves improperly, it is not only the right but also his duty to report it to the proper authorities.

9. He shall not interrupt when the counsel for the otherside or the judge is speaking.

10. He shall appear in the court in the prescribed dress and his appearances shall always be presentable. He shall not wear bands or gown in the public places.

11. He shall not practice before a judge if he is related to him.

12. He shall not act or plead in any matter in which he is pecuniarily(monetary) interested.

13. He shall not appear for any organization, institution, society or corporation if he is the member of the executive committee of such organization, institution, society or corporation

Duty to the Clients

- **1. An Advocate is bound to accept a case in the courts or tribunals where he is normally practicing.**
- **2. He shall not withdraw from a case which he has already accepted without sufficient reasons. He shall not withdraw from the case merely because his fees has not been paid in full. He shall withdraw from the case only after giving a reasonable notice to his client. After his withdrawal he must refund such part of the fees which is in excess in his hand.**
- **3. He shall not accept a case in which he has reason to believe that he will be called as witness. If he already engaged in a case in which he is called as a witness then he should return the case. But, if his retirement will cause irreparable loss to the client then he can continue to appear as a lawyer.**
- **4. He must make full and frank disclosures to his client relating to his connection with the parties and his interest in the controversy which may likely to affect his clients interest.**
- **5. He should fearlessly uphold the interest of his client by fair and honourable means without the fear of any pleasant consequences to himself or to any other person. He shall not refuse to appear for an accused person merely because in his personal opinion the accused has committed the offence**

- 6. An Advocate appearing as a prosecution counsel shall be fair and shall not conduct the prosecution with hostility to the accused to secure conviction. He should not obstruct the defence counsel in placing the relevant material evidence to prove the innocence of the accused.
- 7. He shall not disclose any matter communicated to him in his professional capacity to any other person without the consent of his client.
- 8. He shall not be a party to fomenting of litigation.
- 9. He should act at the instructions of his client and not at the instruction of any other person.
- 10. He shall not stipulate a fee depending on the success of the case or agree to share the proceeds of the litigation.
- 11. He shall not buy or agree to share the interest of the litigation.
- 12. He shall not directly or indirectly bid or purchase in his own name or in any other name any property sold in execution of a decree in which he was engaged as a lawyer.
- 13. He shall not adjust fees payable to him by his client against his own personal liability to the client.
- 14. He shall not do anything whereby he abuses or takes advantage of the confidence reposed in him by the client.
- 15. He should keep regular accounts of the clients money entrusted to him. The account should show the particulars of the amount received from the client and the expenses incurred for him.

- 16. He should maintain separate accounts for the amount received for the fees and for the expenses. The amount received for the expenses shall not be converted for fees without the consent of the client.**
- 17. Where any amount received on behalf of the client (either from the court or from any other person) it should be intimated to the client as early as possible.**
- 18. After the proceedings are over, he shall take the settled fee from the client's money in his hand and the balance, if any should be returned to the client.**
- 19. If the Advocates fee is left unsettled, he shall take a reasonable fee from the client's money in his hand, after the proceedings are over.**
- 20. A copy of the clients account shall be furnished to him on demand.**
- 21. He shall not convert the client's money in his hand as loan given to him by the client.**
- 22. He shall not lend money to his client for the purpose of any legal proceeding in which he is engaged as the lawyer. But, any amount given to his client in an unanticipated emergency shall not be treated as breach of this duty.**
- 23. An Advocate who has advised or prepared the pleadings or appeared for a party in any suit or appeal shall not act, appear or plead for the opposite party.**

In addition to the above duties prescribed by the Bar Council of India an Advocate is expected to perform the following duties also to the client.

- 1 He shall give advise to his client honestly and in good faith
- 2. He shall prepare the case with due care and skill.
- 3. He shall submit all relevant documents before the court in support of the claim of his client.
- 4. He should attend the court on every day fixed for hearing of his client's case.
- 5. He should return the whole fees received from his client, if he is not in a position to conduct the case

• **Lawyers Duty to Opponent Party(Rule34&35)**

- **1. Advocate shall not in any way communicate or negotiate upon the subject matter of dispute with the opposite party directly. For any reasons, If we want to communicate anything then it should be done through his Advocate.**
- **2. Advocate shall do his best to carry out all legitimate promises made to the opposite party. Even if such promises are not in writing or not enforceable under the rules of the court, he must try his level best to perform his promises.**
- **3. He shall not use unfair and malicious tactics against the opponents.**
- **4. He shall not abuse the rules of evidence and the process of the court in order to injure the opponent.**
- **5. He shall not make baseless attacks on the reputation of the opponent or his witness or unduly harass them.**
- **6. He may make concessions to the convenience of the opponent and his lawyer in fixing the date of trial.**

Duty to profession (rule 36-40)

Every Advocate owes an obligation to uplift the profession to which he belongs. He must avoid, any conduct that may lead to lower the standards of the profession. He shall never forget that he belongs to the noble profession. Following are some of his important duties to the profession. These duties are incorporated with the intention of raising the standards of the profession.

1. An Advocate shall not speak ill of the profession. He should conduct himself in such a way to enhance respect, sympathy and good feeling between the members of the profession and strive to maintain the honour and dignity of the profession.
2. He shall not discuss in the newspapers any pending case or appeal.
3. He shall not in any way solicit cases by advertisement or otherwise.
4. He shall not act or plead in his professional capacity before any officer of the state not exercising judicial or quasi-judicial powers.
5. He shall not appoint intermediaries for procuring cases and divide the fees between them or pay commission to them for such work.
6. He shall not entertain or show any undue hospitality to any particular judge.
7. He shall not place himself in the situation which may be unbecoming of a member of the bar.
8. He shall not oppose the desire of his client for additional professional help or assistance from other lawyers also.
9. He must appear in robes in the court proceedings. He shall not wear robes or gown in public places except on ceremonial occasion.
10. He shall not act as a managing Director or a secretary of a company without the leave of the Bar Council.
11. He shall not work as a full time salaried employee.
12. He shall not do any other business. An advocate who inherits any family business may continue it, but he should not personally participate in the management of the business.

Duty to Render Legal Aid

- ❑ Justice is a great interest of man on earth and the lawyer is the high priest in the shrine of justice. The quality of justice, to a great extent, depends on the moral quality, integrity and fairness of the lawyers.
- ❑ To develop their moral qualities, the lawyers must actively participate in the legal and aid programs and give free legal services to the poor and the needy people.
- ❑ This is one of the important duty an Advocate owes to the society. If a lawyer personally knows that his client is unable to pay because of poverty then he must represent the case without demanding any fees from him.
- ❑ Similarly, when the court appoints a lawyer to defend an accused, it is his moral obligation to accept such order and discharge his duties towards the court and the accused by the best use of his knowledge and ability.
- ❑ Lawyers shall co-operate and actively participate in joining hands with the local area legal services Authorities in organizing Lok Adalats and Legal Aid programs and conciliation proceedings.

Restriction on other Employments

Not to personally engage in any other business other than the legal profession. The reason for this restriction is that he should fully concentrate in the legal profession and elevate it to the high stand .

If he is allowed to do other business then that may lower down the standard of this profession. If he join as a full time salaried employee either in the Government or in the private sector he must request the Bar Council to remove his name from the Advocates Roll.

Though there is general restriction on other employment, there is no restriction for engaging himself in the following works.

He can be a Sleeping partner in a business, if in the opinion of the State Bar Council that business is not inconsistent with the profession.

1. An Advocate who has inherited a family business shall continue it, but he shall not personally participate in the management of the business.
2. He shall engage himself in writing Law Books.
3. He shall join as a part-time Law Teacher or any other part –time job which may not be inconsistent with the legal profession. The part-time job should not exceed more than 3 hours in a day.
4. He shall prepare question papers for the Exams.
5. He shall review parliamentary Bill for a remuneration.
6. He shall act as a member of the parliament or Member of the State Assembly.
7. He shall study Post Graduate course in Law without suspending his practice. An Advocate who is engaged in other business shall be punished for professional misconduct

DUTY TO SELF

- Legal profession is the noble profession. The degree of standard expected from the lawyer with respect to his knowledge, skill and ability is so high. So, an Advocate should follow the following duties as duty to self.
- 1. An Advocate must develop the habit of systematic study of law and acquire up-to-date knowledge in law.
- 2. He shall exercise prudence, diligence and judiciousness in all his activities.
- 3. He shall never be a party to anything which he known to be wrong.
- 4. He shall not stir up litigations.
- 5. He should discourage vexations (groundless)litigation.
- 6. He shall encourage compromise between the parties.
- 7. HE shall not indulge in any act which amounts to professional misconduct.
- 8. He should not do any act which amounts to contempt of the court.
- 9. He must be fair and honest in his dealings.

Duty to colleagues

- In order to maintain good relation among the members of the Bar, an Advocate has to perform the following duties to colleagues.
- An Advocate shall not enter appearance in any case in which there is already an Advocate.
- 2. He shall not in any way solicit cases by advertisement or otherwise.
- 3. He shall not allow his name to be used by some other person for unauthorized practice of law
- 4. He shall not accept a fee less than the fee chargeable under law.

Restriction on Advertisement.

- Rule 36 of Bar Council of India restricts the Advocates not to advertise about the profession.
- This restriction is imposed because Advocate profession is the noble profession. Due to this restriction Advocates are banned to do the following things.
 - Directly or indirectly advertise about their profession.
 - 2. Publishing his photo along the news regarding his appearance in a case.
 - 3. Circulation of pamphlets or giving advertisement with a view of soliciting case.
 - His name board should be small and in prescribed size. In the name board the following matters should not be mentioned.
 - 1. Information relating to his membership in Bar Council or post in the Bar Association.
 - 2. Information about the specialization in a particular branch of law.
 - 3. Information about Ex-Judicial Officer or Ex-Government Advocate.
 - 4. Information about his membership in other associations. Making advertisement against the above said restrictions will be treated as professional misconduct.