

A STUDY ON PROFESSIONAL ETHICS IN LAW AND RESPONSIBILITY OF ADVOCATES IN INDIA

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ABSTRACT

Professional ethics encompasses an ethical code governing the conduct of persons engaged in the practice of law as well as persons engaged in the legal sector. All members of the legal profession have a paramount duty to the court and towards the administration of justice. The legal professionals should conduct themselves with etiquettes and manners. Advocates Act, 1961 empowers the Bar Council to lay down certain rules of conduct. Advocate holds a duty to the court where he is accountable to his client. Accordingly, the set of rules that govern their professional conduct arise out of the duties that they owe to the court, the client, their opponents and other advocates. Section 35 of the Advocates Act deals with the provisions regarding formulation and functioning of the Disciplinary Committee under the State Bar Council. The objective of the study is to know about the professional ethics in law and its responsibility in India. The sample size was 200. Dependent variables are about the importance of professional ethics, responsibilities of an advocate, awareness of the rules of Bar Council, duties of an advocate and their punishments for professional misconduct of an advocate. Independent variables are Age, gender. Professional ethics can also be stated as the duties that have to be followed by an advocate during his profession. The responsibility of legal ethics is to maintain honor and dignity of the legal profession to ensure the spirit of friendly cooperation, honorable and fair dealing of the counsel with his clients as well as to secure the responsibilities of the lawyers towards the society.

Keywords :- Professional Ethics, Etiquettes, Bar Council, Advocate and Legal Profession

INTRODUCTION

Professional ethics encompasses an ethical code governing the conduct of persons engaged in the practice of law as well as persons engaged in the legal sector. All members of the legal profession have a paramount duty to the court and towards the administration of justice. The Legal Practitioners Act, 1846, which was the first All-India law concerning the pleaders in the mofussil. This Act is regarded as the "first charter of the legal profession" although it left unsolved the important question of the right of Vakils to practice in the Supreme Courts. Advocates Act, 1961 was enacted to amend and consolidate the

law relating to legal practitioners. And to provide for the Constitution of state Bar Councils and the All India Bar Council. Rules of Conduct under Advocates Act The legal professionals should conduct themselves with etiquettes and manners. Advocates Act, 1961 empowers the Bar Council to lay down certain rules of conduct. Advocate holds a duty to the court where he is accountable to his client. Accordingly, the set of rules that govern their professional conduct arise out of the duties that they owe to the court, the client, their opponents and other advocates. Rules on the professional standards that an advocate needs to maintain are mentioned in Chapter II, Part VI of the Bar

Council of India Rules. These Rules have been provided under section 49(1)(c) of the Advocates Act, 1961. Section 35 of the Advocates Act deals with the provisions regarding formulation and functioning of the Disciplinary Committee under the State Bar Council. Under this, if any legal practitioner is found guilty of any professional misconduct, after providing an opportunity of being heard may make order to Dismiss the complaint or where the proceedings were initiated at the instance of the State Bar Council, direct that the proceedings be filed, Reprimand the advocate, Suspend the advocate for a period as it may deem fit, Remove the name of the advocate from the State roll of advocates. Professional ethics can also be stated as the duties that have to be followed by an advocate during his profession. These are moral duties and the very basic courtesy which every person in this field should know. An advocate who does not work with sincerity and does not follow the rules of conduct is said to have violated the code of ethics of this profession. The fundamental aim of legal ethics is to maintain honor and dignity of the legal profession to ensure the spirit of friendly cooperation, honorable and fair dealing of the counsel with his clients as well as to secure the responsibilities of the lawyers towards the society. The main aim of the study is to know about the professional ethics in law and its responsibility in India.

OBJECTIVES

- To know about the importance of professional ethics in the legal profession.
- To know the responsibilities of an advocate under professional ethics in India.
- To know the awareness of the rules of Bar Council among advocates.
- To know about the various duties of an advocate under professional ethics.

- To know about the disciplinary committee and their punishments for professional misconduct of an advocate.

REVIEW OF LITERATURE

1.Ethics means doing the right thing. Professional ethics are a code of conduct that govern how members of a profession deal with each other and third parties. Lawyers have a professional code of conduct and we need to follow those conduct for protecting our image and benefit for society's people. As a future lawyer I will try to follow all of the ethics. Our clients expect us to take them untruth to truth, darkness to light. I will not misuse their expectations. **(Popovski 2014)**

2.There are two major aspects in this regard. The first is related to 'legal education'- i.e. observance of ethics in the legal profession can be enhanced by 'building a habit of lawyers for observing ethical rules when they are students'. The second is related to the 'honesty of lawyers' to faithfully follow the rules of ethics. The theory of activist moral epistemology emphasizes the first paradigm. It is a theory of learning that emphasizes "actions" as a means of attaining moral knowledge. **(Cranston 1995)**

3.The legal profession across the world today has been detached from these philosophical traditions or has been prone to adopt any of these for its caprice objective. One of the serious problems in this regard is associated with discourse on 'philosophical underpinnings of professional rules'. **(Hutchinson 2006)**

4.Law schools tend to take professional rules as instrumental perspective and largely avoid substantive values. What professional rules are necessary to follow is emphasized rather than what is the reasoning to follow these rules. The psyche of taking these as formality among students is where the problems of unethical practice sprout out. **(Naagarazan 2006)**

5.The legal profession is not about making money, it is about helping the people to reach justice. We know honesty is the best policy and

should be an essential policy for we lawyers.(American Bar Association. House of Delegates and Center for Professional Responsibility. **(American Bar Association) 2007)**

6.Maintain truthfulness in statements to others and not to communicate with opposite parties. Lawyers provide some pro bono legal service and otherwise contribute to the legal community and society in general. **(Sir Parry 2021)**

7.Discipline at the bar is very essential. This is because offences, to which the police attach no significance when committed by a medical doctor, may be attended with humiliation and embarrassment when committed by a lawyer. Similarly, a simple act of breach of the law by an accountant, which may not be considered as anything, may form banner headlines in newspapers and magazines if committed by a lawyer. **(Dutt-Majumdar 1975)**

8.This only stresses the fact that society views lawyers as custodians of a high moral value and distinguished members of the society, whose conduct and activities should serve as a light to the rest of the society. To maintain this standard and meet the high expectation of the society on lawyer, the Rules of Professional Conduct for Legal Practitioners has been put in place to guide and regulate legal practice and the conduct of legal practitioners, especially with respect to their duties and responsibilities to their clients, the court, the profession and the society at large, and of course their rights and privileges. **(Bhalla, n.d.)**

9.Basing on the moral and ethical values of the Notary, carrying out the position of the Notary Public is a service to the community (client) independently and not taking sides in the field of notary, whose service is lived as a vocation based on the spirit of devotion to fellow human beings for the public interest and rooted in respect for dignity humans in general and notary dignity in general. **(Ritter and Graham 2020)**

10.Ethics are important and relevant in every profession; however, they are important and relevant to each profession in a different way. Ethics are important to the profession of a forensic researcher and psychologist to serial killers because there has to be a very distinct line drawn when working with these most dangerous of predators. **(Herring and in Law at Exeter College Jonathan Herring 2017)**

11.According to the European Foundation for Psychologists and Analysts (EFPA), ethics are important in this profession because they outline the responsibilities that a psychologist has to his or her patients. Ethics within the practice of psychology also establishes what actions and behaviours are considered acceptable and unacceptable. **(The City Law School 2020)**

12.Ethicists often fail to understand the dual character of law as both an institutionalised system in which authority is essential, and as an argumentative practice in which the quality of normative arguments is important. Consequently, they take either a naïve idealist view of law (reducing it to its argumentative dimension, making it almost identical to morality) or a naïve positivist view of law (reducing it to black-letter law and authoritative decisions). **(Cohen, Davis, and Elliston 2009)**

13.There are many versions of utilitarianism, which differ mainly in what precisely is to be understood as utility (pleasure, happiness, or some more sophisticated criterion), and whether the principle is to apply to individual acts or to general principles or rules. **(Payne 1941)**

14.The legal profession refers to the whole of occupational roles purposely oriented towards the administration and maintenance of the legal system, including judges, lawyers, counsellors, as well as experts of legal education and scholarship. **(“Responsibilities of the Contemporary Nurse Professional as Leader and Advocate” 2020)**

15. Lawyers possess training, skills, and position which give them immense power and which raise enormously complex moral questions inherent in the work itself. Does a lawyer representing a toy manufacturer retain his client's confidence that a toy on the market is dangerously defective, or does he/she warn the public? **(Marsh HUGHES 1845)**

16. Legal professionals in the modern world must have a comparative approach having a broad horizon to conduct any research, study or to work in any other way in multicultural or multiple legal systems. Legal professionals must know that they must cut themselves loose from their own doctrinal and juridical preconceptions and liberate themselves from their own cultural context in order to discover neutral concepts with which to describe problems. One must never allow one's vision to be clouded by the concepts of one's own national system. **(Ettlinger 1973)**

17. Legal professionals must have a comparative approach of objectivity to be free from their own preconceptions and biases and it will certainly enhance the level of autonomy to conduct study or to work in a multicultural multi legal system. Likewise distinction between the brokers and real professionals is necessary. The larger part of the legal profession is occupied by the brokers and consequently real professionals have severe challenges to save professionalism, its values, integrity and balance in their law jobs. **(Scully 2019)**

18. In relation to the Legal profession, Ethics (Legal Ethics) is defined as "the minimum standards of appropriate conduct within the legal profession, involving the duties of its members to one another, their clients and the courts". **(Scully 2019; The Bar Council of India Rules, n.d.)**

19. Ethics of the legal profession evolved over time, is a product of societal demands and expectations. The Rules found expressions in judicial pronouncements and subsequently in statute books as a way of reminding us of what the time-honoured traditions are and the

demands and expectations of our noble profession. **(Subramanyam and Lal 2010)**

20. Mixing the norms of laws, ethics, and religion may lead to fanaticism, yet to deny their connections to each other could result in total injustice (summum ius summa iniuria). It is precisely for this reason that it is essential in the social sphere to be clear about the norms by which we make decisions that directly affect the physical and mental well-being of our fellow human beings. **(American Bar Association. House of Delegates and Center for Professional Responsibility (American Bar Association) 2007)**

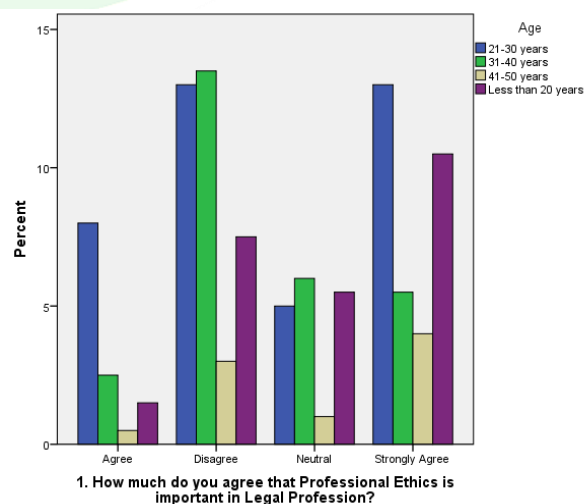
METHODOLOGY

For the purpose of this research, the primary data was collected in Chennai. The SPSS software by IBM was used to calculate the descriptive statistics. The sample size was 200. Dependent variables are about the importance of professional ethics, responsibilities of an advocate, awareness of the rules of Bar Council, duties of an advocate and their punishments for professional misconduct of an advocate. Independent variables are Age, gender. Various tools like simple percentage analysis and graphical representation.

ANALYSIS

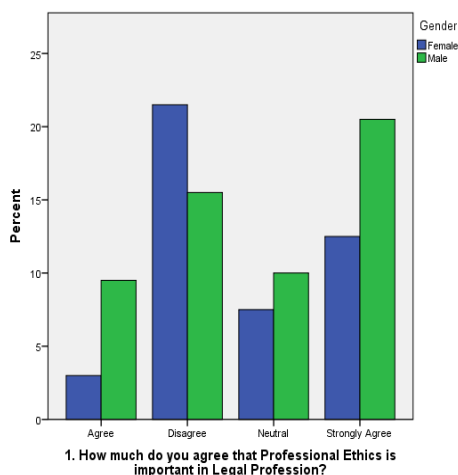
1. How much do you agree that professional ethics is important in the legal profession?

Figure 1 :-



Legend :- This figure shows how much people agree that professional ethics is important in the legal profession which is compared with Age.

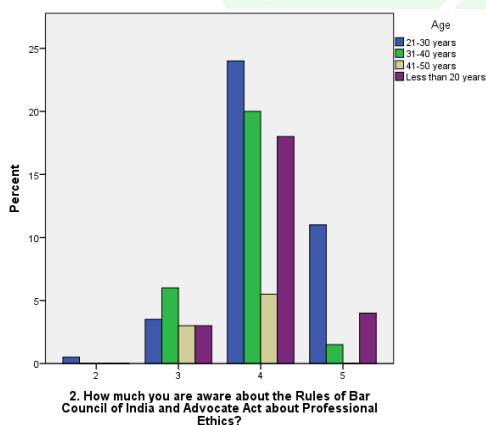
Figure 2 :-



Legend :- This figure shows how much people agree that professional ethics is important in the legal profession which is compared with Gender.

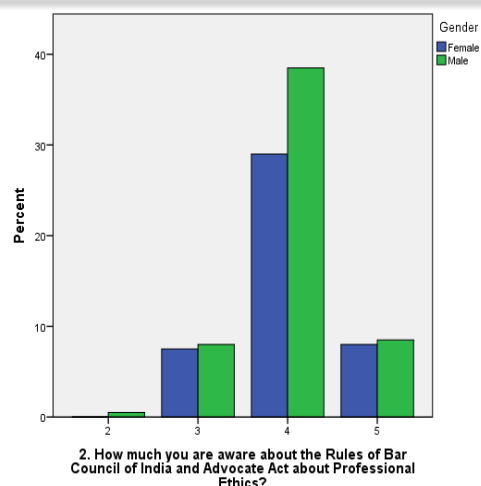
2. How much are you aware about the rules of the Bar Council of India and the advocate Act about professional ethics?

Figure 3 :-



Legend :- This figure shows how much people are aware about the rules of the Bar Council of India and the advocate Act about professional ethics which is compared with Age.

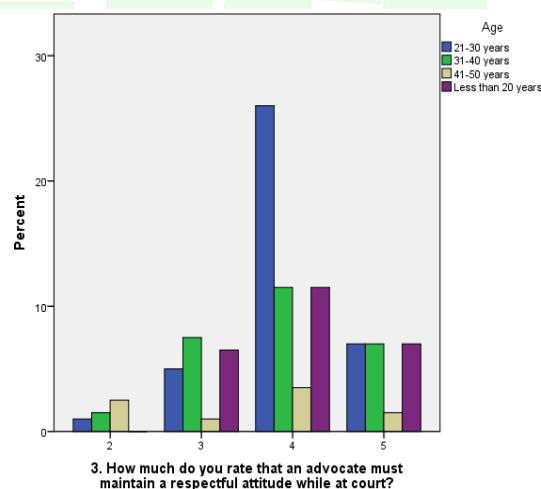
Figure 4 :-



Legend :- This figure shows how much people are aware about the rules of the Bar Council of India and the advocate Act about professional ethics which is compared with Gender.

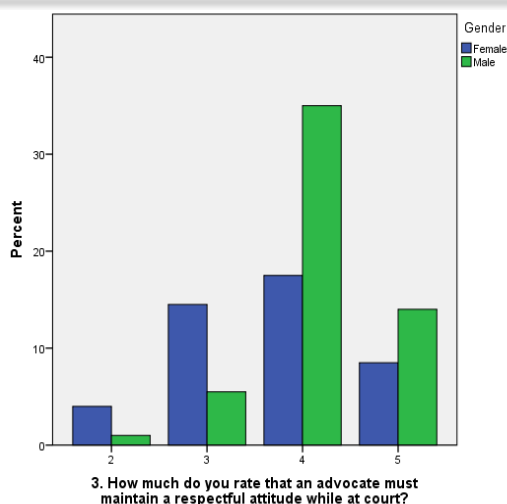
3. How much do you rate that an advocate must maintain a respectful attitude while at a court?

Figure 5 :-



Legend :- This figure shows the rating that an advocate must maintain a respectful attitude while at a court which is compared with Age.

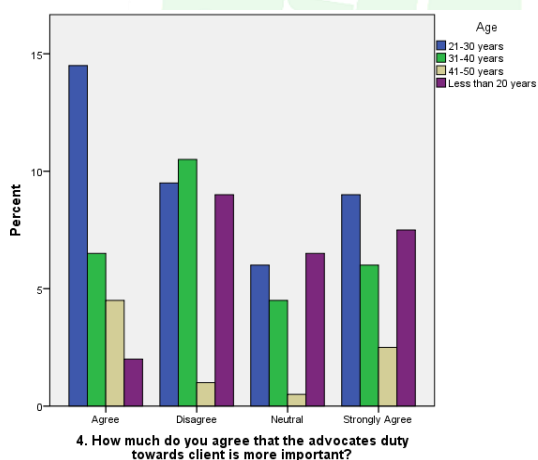
Figure 6 :-



Legend :- This figure shows the rating that an advocate must maintain a respectful attitude while at a court which is compared with Gender.

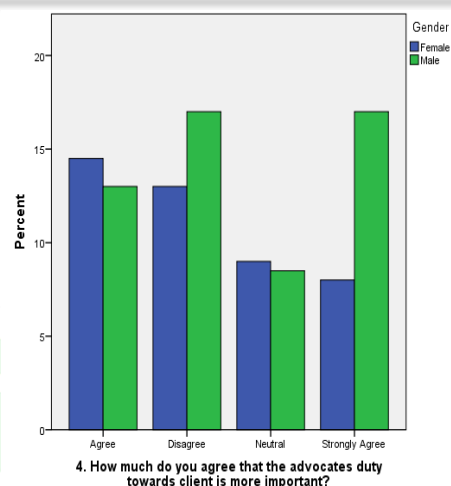
4.How much do you agree that the advocate's duty towards the client is more important?

Figure 7 :-



Legend :- This figure shows how much people agree that the advocate's duty towards the client is more important which is compared with Age.

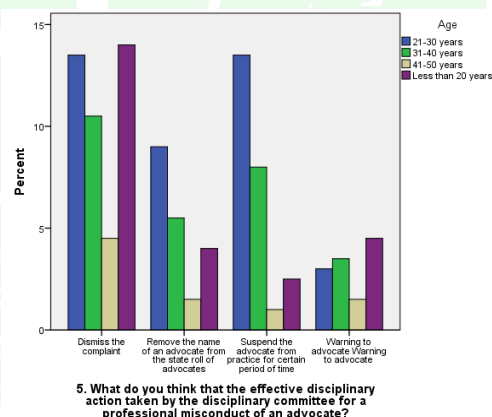
Figure 8 :-



Legend :- This figure shows how much people agree that the advocate's duty towards the client is more important which is compared with Gender.

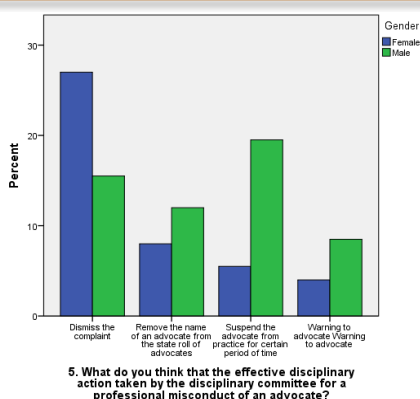
5.What do you think is the effective disciplinary action taken by the disciplinary committee for a professional misconduct of an advocate?

Figure 9 :-



Legend :- This figure shows the effective disciplinary action taken by the disciplinary committee for a professional misconduct of an advocate which is compared with Age.

Figure 10 :-



Legend :- This figure shows the effective disciplinary action taken by the disciplinary committee for a professional misconduct of an advocate which is compared with Gender.

RESULT

Figure 1:- Result of the survey shows that the people of the age group less than 20 years strongly agreed 11%, age group 21-30 years also strongly agreed 13%, age group 31-40 years disagreed 14% and age group 41-50 years strongly agreed 4% that professional ethics is important in the legal profession. **Figure 2:-** Result of the survey shows that both the male and female respondents strongly agreed 20% and 13% that professional ethics is important in the legal profession. **Figure 3:-** Result of the survey shows that the people of all age groups rated 4/5 that they were aware about the rules of the Bar Council of India and the advocate Act about professional ethics. **Figure 4:-** Result of the survey shows that both the male and female respondents rated 4/5 that they were aware about the rules of the Bar Council of India and the advocate Act about professional ethics. **Figure 5:-** Result of the survey shows that the people of all age groups rated 4/5 that an advocate must maintain a respectful attitude while at a court. **Figure 6:-** Result of the survey shows that both the male and female respondents rated 4/5 that an advocate must maintain a respectful attitude while at a court. **Figure 7:-** Result of the survey shows that the people of the age group less than 20 years strongly agreed 9%, age group 21-30 agreed 14%, age group 31-40 disagreed 11% and age group 41-50 years agreed 4% that the

advocate's duty towards the client is more important. **Figure 8:-** Result of the survey shows that the male respondents strongly agreed 16% and female respondents agreed 14% that the advocate's duty towards the client is more important. **Figure 9:-** Result of the survey shows that the people of the age group less than 20 years said dismiss the complaint, age group 21-30 said suspend the advocate from practise for certain period of time, age group 31-40 also said suspend the advocate from practise for certain period of time and age group 41-50 years said dismiss the complaint as the effective disciplinary action taken by the disciplinary committee for a professional misconduct of an advocate. **Figure 10:-** Result of the survey shows that the male respondents suspend the advocate from practice for a certain period of time and female respondents remove the name of an advocate from the state roll of advocates as the effective disciplinary action taken by the disciplinary committee for a professional misconduct of an advocate.

DISCUSSION

Figure 1:- Result of the survey shows that the people of the age group less than 20 years strongly agreed 11%, age group 21-30 years also strongly agreed 13%, age group 31-40 years disagreed 14% and age group 41-50 years strongly agreed 4% that professional ethics is important in the legal profession. From this result we came to know that professional ethics is important in the legal profession. **Figure 2:-** Result of the survey shows that both the male and female respondents strongly agreed 20% and 13% that professional ethics is important in the legal profession. From this result we came to know that professional ethics is important in the legal profession. **Figure 3:-** Result of the survey shows that the people of all age groups rated 4/5 that they were aware about the rules of the Bar Council of India and the advocate Act about professional ethics. From this result we came to know that they were aware about the rules of the Bar Council of India and the advocate Act about professional ethics. **Figure 4:-** Result of

the survey shows that both the male and female respondents rated 4/5 that they were aware about the rules of the Bar Council of India and the advocate Act about professional ethics. From this result we came to know that they were aware about the rules of the Bar Council of India and the advocate Act about professional ethics.

Figure 5:- Result of the survey shows that the people of all age groups rated 4/5 that an advocate must maintain a respectful attitude while at a court. From this result we came to know that an advocate must maintain a respectful attitude while at a court.

Figure 6:- Result of the survey shows that both the male and female respondents rated 4/5 that an advocate must maintain a respectful attitude while at a court. From this result we came to know that an advocate must maintain a respectful attitude while at a court.

Figure 7:- Result of the survey shows that the people of the age group less than 20 years strongly agreed 9%, age group 21-30 agreed 14%, age group 31-40 disagreed 11% and age group 41-50 years agreed 4% that the advocate's duty towards the client is more important. From this we came to know that the advocate's duty towards the client is more important.

Figure 8:- Result of the survey shows that the male respondents strongly agreed 16% and female respondents agreed 14% that the advocate's duty towards the client is more important. From this we came to know that the advocate's duty towards the client is more important.

Figure 9:- Result of the survey shows that the people of the age group less than 20 years said dismiss the complaint, age group 21-30 said suspend the advocate from practise for certain period of time, age group 31-40 also said suspend the advocate from practise for certain period of time and age group 41-50 years said dismiss the complaint as the effective disciplinary action taken by the disciplinary committee for a professional misconduct of an advocate. From this result we came to know that suspending the advocate from practice for a certain period of time is the effective disciplinary action taken by the disciplinary committee for a professional

misconduct of an advocate. **Figure 10:-** Result of the survey shows that the male respondents said that suspend the advocate from practice for a certain period of time and female respondents said that remove the name of an advocate from the state roll of advocates as the effective disciplinary action taken by the disciplinary committee for a professional misconduct of an advocate. From this result we came to know that suspending the advocate from practice for a certain period of time and remove the name of an advocate from the state roll of advocates is the effective disciplinary action taken by the disciplinary committee for a professional misconduct of an advocate.

LIMITATIONS

The Major limitation of the study is the sample frame, since the sample was taken only within Chennai. The restrictive area of sample frame and sample size is another drawback of the research. So we could only come to an approximate conclusion of what the respondent is feeling to convey.

CONCLUSION

From these results we can conclude that Professional ethics can also be stated as the duties that have to be followed by an advocate during his profession and professional ethics is important in the legal profession. Then the advocate must maintain a respectful attitude while at a court. An advocate has many duties under professional ethics and in that the advocate's duty towards the client is more important. These are moral duties and the very basic courtesy which every person in this field should know. An advocate who does not work with sincerity and does not follow the rules of conduct is said to have violated the code of ethics of this profession. And if it is done, suspending the advocate from practice for a certain period of time and removing the name of an advocate from the state roll of advocates is the effective disciplinary action taken for a professional misconduct of an advocate. The responsibility of legal ethics is to maintain

honour and dignity of the legal profession to ensure the spirit of friendly cooperation, honourable and fair dealing of the counsel with his clients as well as to secure the responsibilities of the lawyers towards the society.

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