



MOHANLAL SUKHDIA UNIVERSITY, UDAIPUR

FACULTY OF LAW

FIRST YEAR BACHELOR OF LAWS

(Effective from Session 2019-20)

PAPER – X (PAPER CODE - 6009):

(PAPER NAME – PROFESSIONAL ETHICS & PROFESSIONAL ACCOUNTING SYSTEM)

Max. Marks: 100

Min. Marks: 36

This paper shall consist of following two parts:

Part A. Practical Written Paper - 80 marks

Part B. Viva-voce Examination - 20 marks

The candidate must pass in both parts (a) and (b) separately. For Pass, he will be required to obtain 36% marks in each part, i.e. 28 marks out of 80 and 8 marks out of 20 marks.

PART – A 80 marks

PRACTICAL WRITTEN PAPER

(A) The Advocate, 1961

(B) Bar Council Rules

(C) The Contempt of Court Act, 1971 Legal Aid :

(D) Legal Aid under the –

(I) Constitution

(II) Cr. P.C.

(III) C.P.C

Objects, Role of Committee for implementation of Legal Aid Schemes (CILAS)-

Legal Aid & Law School

Legal Aid & Voluntary Organization

Legal Aid & Legal Profession

The Legal Services Authorities Act, 1987

Functions of National Legal Services Authority, State Legal Services Authority and District Legal Services Authority

(E) 10 selected opinions of the Disciplinary Committees of Bar Council of India and 5 major judgements of the Supreme Court on the subject.

Part – B 20 Marks

VIVA – VOCE

Students are required to write two opinions of the Disciplinary Committee Council of India and Two major Judgements of the Supreme Court of India on the Subject. Further they have to attend legal aid camp and have to report the same in their diary.

The Viva-voce examination shall be conducted by a committee of two Internal Examiners. The Committee shall award marks on the basis of written submission by the students and performance in the Viva-Voce examination.

LEADING CASES FOR EXAMINATION:

1. Bandhua Mukti Morcha v. Union of India, (1984) 3 SCC 161
2. D.P. Chadha v. Triyugi Narain Mishra, AIR 2001 SC 457
3. Sukhdas v. Union Territory of Arunachal Pradesh, AIR 1986 SC 928

4. Madhav Hayawadanrao Hoskot V. State of Maharashtra, AIR 1978 SC 1548
5. In Re: Vinay Chandra Mishra, (1995) 2 SCC 584
6. In Re, Hon'ble Shri Justice C.S. Karnan, Suo Moto Contempt Petition (Civil) No. 1 of 2017

CASES FOR READING:

1. Olga Tellis v. Bombay Municipal Corporation, (1985) 3 SCC 545
2. Sheela Barse v. State of Maharashtra, AIR 1988 SC 378
3. Rudul Shah v. State of Bihar, AIR 1983 SC 1086
4. Sunil Batra v. Delhi Administration, AIR 1980 SC 1579

SUGGESTED READINGS:

1. Anirudh Prasad: Professional Ethics
2. Kailash Rai : Legal Ethics
3. R.L. Rathi : वृत्तिक आचार सहिता
4. P.N. Bhagwati : Legal Aid as a Human Right
5. Sujan Singh : Legal Aid – Human Right of Equality
6. S.S. Sharma : Legal Assistance to Poor
7. P.N. Bajpayee : Legal Aid & the Bar Council

Professional Ethics (वृत्तिक अधिकारी)

By Dr. Deepak Vyas

Acts:

- The Advocate, 1961
- The Contempt of Court Act, 1971
- The Legal Services Authorities Act, 1987

80 marks theory

+
80 marks practice

Diary Viva

we've to write 3-4 cases

What we are studying are;

- Bar Council Rules, 1976 → make rules for Advocates.
- Legal Aid under the
विधिक सहायता
 - (i) Constitution
 - (ii) Cr. P. C.
 - (iii) C.P.C.
- CILAS : Committee for implementation of
Legal Aid Schemes.
 - Role & Object
 - Legal Aid
 - Law School
 - Legal Profession
 - Voluntary Organisation

1. The Advocate Act, 1961

(अधिकारी अधिकारी)

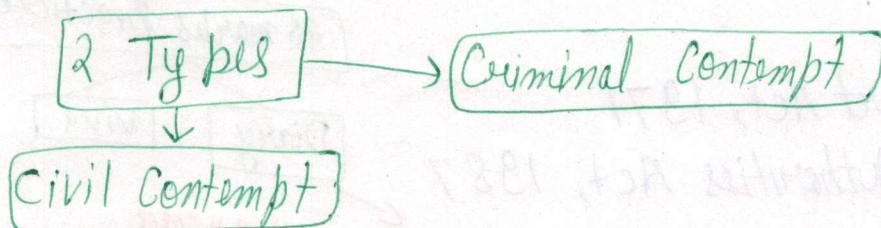
Who governs the advocate?

Bar Council

of India of State

इसके अंदर 60 वार्षिक है।

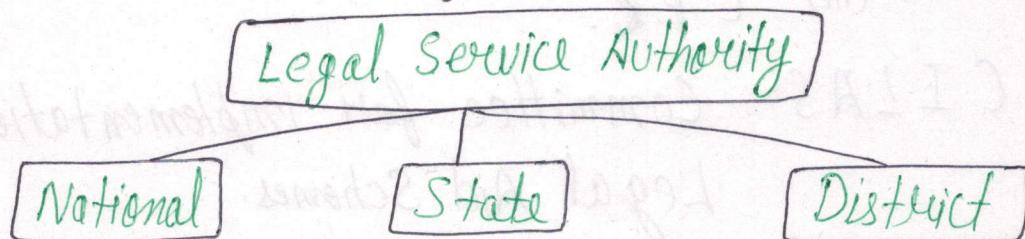
2. The Contempt of Court Act, 1971
(कोर्ट की अवमानना आधिनियम)
इसमें 24 sections होते हैं।



3. The Legal Services Authorities Act, 1987
(विधिक सेवा प्राधिकरण आधिनियम)

It has 7 chapters and 30 sections.

What we're to study is:



Advocates Act, 1961

②

Legal practitioner (विधि व्यक्ति)

it's exactly a noble profession

Section 2 of most of the act contains the definitions.

Definition: Adv. Act Sec 20(a)

"advocate" means an advocate entered in and roll under the provisions of this Act (Advocate Act, 1961)

Simple word definition: Advocate means; entered in any roll list maintained by Bar Council of state

किसी भी राज्य की एटी बार काउंसिल के राज लिस्ट में नाम दोगा तभी वह व्यक्ति है जिसके के लिए /

Sec 24
Persons who may be admitted as advocates on a state roll. [Whose name will be there in Roll list]

Qualification for enrollment (24(1))

Disqualifications for enrollment (24A)

- Indian
- 21 years
- LLB
- Other
- Fee
- convicted, moral turpitude नीतिक अद्यमत
- convicted - Untouchability (Offences) Act, 1955
- dismissed or removed from office under the State.

Freedom of profession/business/
occupation/trade

Article 19(1)(g)

(this is not absolute right, so we can't do any illegal business)

Article 19(2) → (6) reasonable restrictions

In Article (6) restriction are mentioned

- in the interest of general public
- technical/professional qualification
- State monopoly

Development of the Legal profession/Advocacy in India

3 Parts

Legal profession in pre-British India

Legal profession after Independence

Legal prof. during British India

Legal Profession in pre-British India:

- No Advocates are there in times of Bhartiya riyasat.
(Raja-maharaja)
- In mugal times ~~of~~ bajas were there, but no systematic proceedings happened.

Legal Profession during British India:

1726 : The charter of 1726

- East India Company's courts were running during this time.
- Legal history of India starts here.
- There were 3 presidency towns

Culcutta

Madras

Bombay

- Major court were established.

First in Culcutta

Second in Madras

Third in Bombay

1953 : (Not much important)

- In this charter, not much amendment happened.

1773/74 : Regulating Act, 1773 (3)

- Establishment of Supreme Court for the 1st time.
- Replacement of Mayor courts with S.C.

Culcutta (1774)	Madras (1801)	Bombay (1823)
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- S.C. governs on British law.
- Prepares a list of people, who can practice in S.C.

1861 : High Court Act, 1861

- Replace S.C. with H.C. in May 1862
- Each high court could consist of a Chief justice and up to 15 judges.
- The judges could be selected from:
 - Barristers (5 years of experience)
 - Civil Servants (10 years of experience, including 3 years as a zillah judge)
 - Judges of small court cause courts (5 years exp.)
 - Pleaders of H.C. (5 years exp.)

1879 : Legal Practitioners Act, 1879

Advocate

- Barristers of England/Ireland/Scotland
- Non-barristers are permitted in some certain circumstances.

Vabee

- the persons who had taken the Law degree from the Indian University & fulfilled certain other conditions.

1923 : Established Indian Bar Committee

- Chairman → Edward Chamier, a retired Chief Justice of Patna H.C.

- 4 Barristers, 1 Attorney, 1 civilian and 3 representatives of the Vakil Bar were the members.

1926 : The Indian Bar Councils Act, 1926

- A Bar Council was to consist of 15 members.
 - Advocate - General
 - 4 persons ^{नियमित} nominated by H.C.
 - 10 members elected by the advocates of H.C.

Legal Profession After Independence :

1951 : All India Bar Committee, 1951

(आंतरिक भारतीय वार समिति)

- Justice S.R. Das of the S.C. was the chairman.
- The desirability or feasibility of establishing a single Bar Council - For the whole of India; or for each state

1958 : Law Commission (विद्योतीकृत)

14th report

1961 : The Advocate Act, 1961

(4)

Roll of Advocates अधिकारी नामांकन
sec-16 to 28 of Advocate Act, 1961

I) Senior and Other Advocates (sec-16)

- The person whose name is not in senior advocate is other Advocate.
- Senior Adv. has some restrictions.

Sec-17 : State Bar Council to maintain Roll of advocates.

- Name will be entered in roll list as per the seniority. Overall 17 to 18 State bar council are there
- The person should be enrolled only one state's roll list.
 - 2 Parts - list of Sr. Adv.
 - list of other Adv.

Sec-18 : Transfer of name from one state roll to another

- To change the state of Bar council, the Advocate has to apply in Bar Council of India.
BCI check the imension, if there is any misconduct.

Sec-19 : State Bar Councils to send copies of rolls of adv. to BCI.

- Once in a year SBC sends the roll list to BCI.

Sec-20 : Special provision for enrolment of certain Spc & Supreme Court Adv.

- They can apply ~~anywhere~~ in any state of Adv.'s choice
- OR by default they will be enrolled to Delhi State Bar Council.

Sec 21: Disputes regarding seniority ज्येष्ठ कीन है।

- The person who has maximum age.

Sec 22: Certificate of enrolment (संख्या)

- Certificate given by SBC.

Sec 23: Right to pre-audience (heard as per the seniority)

- Attorney general of India will be listen first

Sec 24: Qualifications & Disqualification of Adv.

Sec 25: Authority to whom application for enrolment may be made

- It says, the Adv. should register only in the state where he wants to do practise.

Sec 26:- Disposal of applications for admission as an Adv.

- To Inform BCI and All State's BC for rejection.

Sec 27:- Entertain the application once which was refused

- Need to take permission from BCI.

written concern from BCI.

only in case if the name
of applicant was refund.

Sec 28:- Power to make rules

- This power is given to SBC.

Bar Council of Adv Act

(5)

Bar Council of State

Question can come for
any one of them 4

Constitution
(sec - 3)

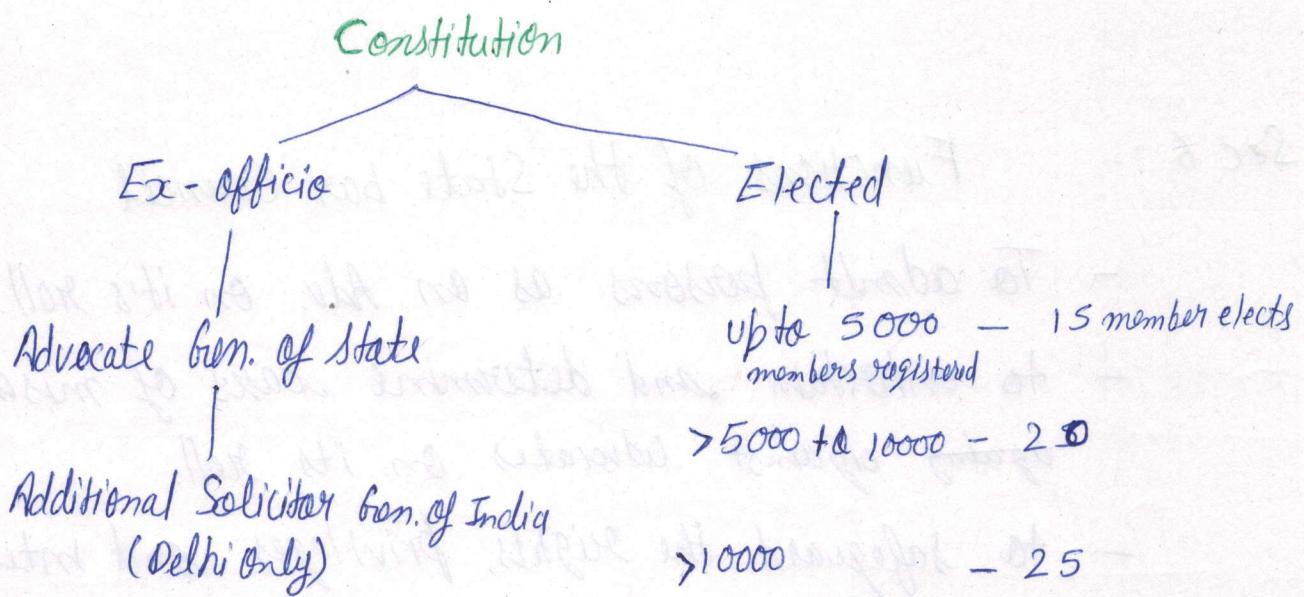
Legal Status
(sec - 5)

Functions
(sec - 6)

Power
(sec - 9, 10, 11, 35)

- Power to constitute committee (sec 9, 10)
- Appointment of staff (sec 11)
- Power to punish (sec 35)

Sec 3:



- Chairman & vice-chairman will be selected from the elected member. (in sec 3)

Term of the office: (sec 8)

- 5 years (from the declaration date of the election)

- 6 months of extension if election not done.

[The dissolution of old member; if ~~they~~ the period of 5 years & 6 months over (if election not done)]

Legal Status

Sec 5:

- Corporate Body
 - 1. Perpetual succession
 - 2. Common seal
 - 3. Separate Property
 - 4. Power to contract
 - 5. Capacity to sue or be sued

Sec 6 :- Functions of the State Bar Council

- To admit persons as an Adv. on its roll.
- to entertain and determine cases of misconduct against advocates on its roll.
- to safeguard the rights, privileges and interests of advocates on its roll.
- to promote & support law reforms.
- to conduct seminars & organised talks.
- publish general and papers of legal interest.
- legal aid to the poors.
- To manage & invest the funds of Bar council.
- to visit and inspect the universities.
- to do all other necessary things.

Powers to constitute Committees:-

- Disciplinary committee. (sec 10)
- Legal Aid committee. (sec 9) → 5 to 7 members

Sec 9: Disciplinary Committee :-

$$2 + 1 = 3 \text{ members}$$

- Executive committee (sec 10) → 5 members ~~for from~~ elected members
- Enrollment Committee (sec 10) → 3 members (elected)
- Other Committees (sec 10)
- Appointment of the Staff (sec - 11)
 - ~~21~~ ~~21~~, Secretary, Accountant, & other staff
- Power to make rules (sec - 15)

SEC-10B
if a person is absent regularly 3 times in BC meetings
the post become vacant.

Sec 15: Power to make rules →

- For elections of the members of Bar Council.
- For election & decide the powers & duties of chairman & vice-chairman.
- For filling casual vacancies in the bar council.
- For legal and financial help from legal aid fund.
- To organise meetings of bar councils.
- For organise meetings of various committee.
- For decide the qualification & the ^{condⁿ of} services of the employees.
- For maintenance of books of accounts & other books.
- For appointment of auditors & audit of accounts.
- For management the funds of the BC.

Punishment of Advocate for Misconduct (Sec 35)

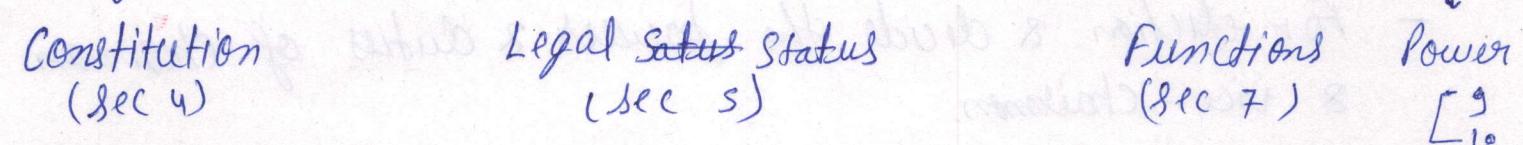
- Dismiss of or proceeding be ~~filled~~ filed.
[can be filed by anyone, or BAR council found some offence against the Adv. I by suo-moto.]
- ~~Reprimand~~ ^{reprimand} the advocate.
[no punishment, but a warning has to be given & a mark will be made in front of the roll list s/n no.]
- Suspend the advocate for a certain period.
- Remove the name of the advocate from the state roll of advocates.
[In case of serious offences]

Mistakes related to profession of Advocate. And the complaint goes to BC. And disciplinary committee will proceed / hear the case.

Only applicable on Advocates.

The misconduct will always ^{mention} in front of Roll list name of Adv.

Bar Council of India (Sec 2(c))



Constitution

Ex-Officio

Elected

1. Attorney Gen. of India. one elected member of each
2. Solicitor Gen. of India. State Bar Council.

(those who are in this post they will be the member of BCI automatically, till the term they are on this post.)

11
18
19
20
36
37

(7)

Term of the Office : (sec-4)

- 2 years from the date when he elects. OR term in the Bar council of state; or whichever is earlier.
- Ex-officio are automatically assigned to BCI. (by default).
- Chairman & vice chairman will be selected from elected members.

Legal Status:- (sec-5)

Corporate Body

- 1) Perpetual Succession
- 2) Common Seal
- 3) Separate Property
- 4) Power to contract
- 5) Capacity to sue or be sued.

Functions of the BCI (sec-7):

- 1) To lay down standards of professional conduct & ~~etiquettes~~ of the Advocates.
- 2) To lay down the procedure to be followed by its and each state BC disciplinary committee.
- 3) To safeguard the rights, privileges & interests of Advocate.
- 4) To promote & support law reforms.
- 5) To deal with and dispose of any matter arising under this Act which may be referred to it by State BC.
- 6) To exercise general supervision and control over the State BC.
- 7) To promote legal education & to lay down standards of such education in consultation with the Universities & the SBC.
- 8) To recognise Universities whose degree in law shall be a qualification for enrollment as an Advocate & for the purpose to visit and inspect Universities.
- 9) To conduct seminars and organise talks on legal topics & publish general journals and papers of legal interest.

- 10) To organise legal aid to the poor in the prescribed manner.
- 11) To recognise on a reciprocal basis foreign qualification in law obtained outside India. प्रतिवादक संघ
- 12) To manage & invest the funds of the BC.
- 13) To provide for the elections of its members.
- 14) To do all other things necessary for discharging the aforesaid functions. उपर्युक्त कार्यों के लिए

Powers Of Bar Council of India

- 1) Power to enroll as an Advocate.
- 2) Sec - 18, 19 & 20.
- 3) Power to constitute ~~committees~~ Committee. →
 - Disciplinary committee
 - Legal Aid committee.
 - Executive committee
 - Other committee
 - Legal Ed. committee

For BCI ↴

Sec 9

Disciplinary Committee.

3 members

2 + 1

member
of
BCI

member
of
SBC
of any
state

Sec 10B

Some assBC

Legal Aid Committee

5 - 9 members

Sec 10A

- BCI headquarter will always be in Delhi.
- In case meeting will be conducted at other place it will be given in written

Sec 10

Executive Committee

9 members

Other Committee

Legal Education Committee

5 + 5 members

BCI

Eligible members
Legal experts
other than BCI

Sec 36 : Power to punish Advocate

(8)

Imp. to
Write sub
sec here in
Sec 36 i.e.
(1) (2) (3) 84

1) refer the case to BCI.

- SBC will refer the case to BCI when the name of Advocate is removed from roll list of SBC & if he conduct misconduct.
e.g. Like he took a case and someth.

2) Call the case from state ~~SBC~~ bar council by disciplinary committee.

- When a court can't handle a case by any reason.
- When a person who wants to refer the case to BCI [अदायक अस्ति]
- When BCI thinks that SBC can't handle the case.

3) Followed the procedure layed down in sec 35.

4) Punishment [same as sec 35]

Appealant Power :- Sec 37

- Got info of Judgement; from that date 60 days.
- The person will be heard; when ~~the~~ the amendment of Judgement is happen.

Appeal to Supreme Court: Sec 38

Appeals
SBC → BCI → SC

- BCI's judgement's appeal will be done directly done in SC.
- Appeal should be done in 60 days.

Q Rights of Advocate for Judicial Administration.

- 1) Rights to plead.
- 2) Rights to take seat in court campus.
- 3) Rights to compromise on behalf of clients.
 • Civil Suit • Less serious matters.
- 4) Rights to inspect
- 5) Rights to obtain copies.
- 6) Rights to produce rulings in the court.
- 7) Rights to be appointed as commissioner in a case.
- 8) Rights to be appointed as a receiver.
- 9) Rights to obtain professional communication.
- 10) Rights to ~~only~~ obtain remuneration.
- 11) Rights to be obtain as a Notary public.
- 12) Rights to be appointed as a auth commisioner.

Duties of the Advocates towards the court (1 to 10)

- 1) Duty to conduct with dignity before a court.
 (Respect the court in own dignity)
- 2) Duty to maintain dignity of the Judicial officer.
 (He can complain about anything to a higher court)
- 3) Duty not to influence the decision of court of by any illegal or improper means.
- 4) Duty to prevent his client ~~is~~ the prescribed dress from doing unfair practices.
- 5) Duty to appear in court in the prescribed dress.
- 6) Duty not to practice before a court tribunal in which presiding officer or member is his close relative.
- 7) Duty ~~not~~ to wear a band or grown in public places ^{other} than court.

- 8) Duty not to plead for institution in which he is member of the executive committee.
- 9) Duty not to plead in any matter in which he himself interested.
- 10) Duty not to stand as a surety or security.

Duties of a Advocate towards the client: (11 to 33)

- 11) Duty to accept any brief. [Accept everything whatever the story client is saying] [In absence of himself (Adv); he has to appoint someone else]
- 12) Duty * not to withdraw from engagements/appearance once accepted. [If he wants to withdraw he has to inform the client lawfully]
- 13) Duty not to conduct such act which adversely effect client's interest.
- 14) Duty to disclose all fulfrank information to his client. [The client should know the actual status of the case]
- 15) Duty to uphold fearlessly the interest of his client and defend the case.
- 16) Duty not to conduct in such a way so that innocent can be convicted.
- 17) Duty not to commit a broach of the obligations imposed by Sec - 126 of the Indian evidence act. [do not disclose * the information which is not required to disclose]
[given by client]
- 18) Duty not act anytime be a party to fomiting litigations.
- 19) Duty not to act on the instructions of any person other than his client or his authorised agent.
- 20) Duty not to agree to share the proceeds received on the result of the litigation.

- 21) Duty not to agree to receive any interest or share in any actionable claim.
- 22) Duty not to bid any property sold by auction in which he was in anyway professionally engaged/trusted.
- 23) Duty not to adjust fee of client in his own personal liability.
- 24) Duty not to do anything whereby he takes advantage of the confidence reposed to him by his client.
 - [Vikas deshpande v/s BCI]
 - [Harishchandra v/s S N Tripathi]
- 25) Duty to keep accounts of the clients money.
- 26) Duty where money is received from client, the entries in the account should contain a reference whether the amount is form of fee or other expenses.
- 27) Duty to intimate the client about the amount received on behalf of client.
- 28) Duty to return the balance if any after deducting the expenses and fee when proceedings are terminated.
- 29) If the fee is not determined after the end of the proceeding as per the rules of the court reduced the fee and refund the balance.
- 30) An advocate must provide the copy of the client's suit by after receiving the copy charge.

- 31) An adv. shall not commit the compromise whereby bonds in hands are converted in loan.
- 32) Duty not lend money to his client for the purpose of any legal proceeding.
- 33) Duty not to act, appear or plead for the oppostit party.

Duty of an Advocate towards opponent :

- 34) Duty to communicate or negotiate the sub-matter or controversy with represented advocate.
- 35) An advocate shall do his best to carry out all legitimate promises made to the opp. party even though not in writing or enforceable.
- Duty towards the court / client
- Under the rules of the court.

Duties of an Advocate towards Colleague :

- 36) An advocate shall not advertise of his work.
- 37) An advocate shall not permit his name to be used in Ad. or to make possible the unauthorized practice of law by any agency.
- 38) An advocate shall not accept the a fee less than the fee taxable under the rule.
- 39) Duty not to appear in court in place of an authorised advocate.

Disciplinary Committee [अक्षराभूत समिति]

- 1) Disciplinary proceeding implement against only registered advocate.
- 2) Form of complain. [the complain will be done in form of Petition] प्राप्तीकरण
- 3) Refer the complain to the disciplinary committee.
- 4) Power of disciplinary committee [sec - 42(1) (cpc) → civil proceeding]
- 5) Disciplinary commi. proceeding's status recognise as disciplinary committee judicial proceeding.
- 6) Issue a notice to particular Advocate to self defense.
- 7) Withdrawal of proceedings.
- 8) Punishment of Advocates [BCS → 35] [BCI → 36] sections.
- 9) Review of order pass by disci. comm. [sec - 44].
BCS need to take permission of BCI
- 10) Appeal against orders passed by the disciplinary committee.
[sec → 37] [sec - 38]
- 11) Vary of orders in appeal.
- 12) Form of appeal. [it'll be memorandum (पत्रिका)]