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**SHRI DHARMASTHALA MANJUNATHESHWARA
LAW COLLEGE & CENTRE FOR
POST GRADUATE STUDIES & RESEARCH IN LAW**
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Content	Page No.
<i>One Nation One Election; Legal and Constitutional Issues</i>	1
<i>Dr. Tharanatha</i>	
<i>Enforcing Resolution 47 to settle the Kashmir Dispute - A Review</i>	7
<i>Mr. Santhosh Prabhu and Mr. Sumith Suresh Bhat</i>	
<i>Debt Bondage: Law and Enforcement Issues</i>	14
<i>Dr. Gagan Krishnadas and Dr. Ramesh</i>	
<i>International Regime Relevant to Climate Change and Renewable Energy</i>	23
<i>Mrs. Chandralekha V. and Dr. T. R. Maruthi</i>	
<i>An Analysis on Media Ethics and Guidelines of Press Council of India</i>	32
<i>Mrs. Shubhalakshmi P.</i>	
<i>Multiculturalism - A Boon or A Bane to the Minorities?</i>	42
<i>Dr. Annapoorna Shet</i>	
<i>JUXTAPOSING- The Indian Scenario of players and Legal aspects of Sports</i>	50
<i>Mrs. K. Vinutha</i>	
<i>Health under British India & the Committees to Protect Right to Health</i>	57
<i>Mrs. Reshma</i>	
<i>Bayer V Natco: An Example of use of Lexibilities in the trips agreement.....</i>	68
<i>Mr. Dipa Gautalair</i>	
<i>An Assessment of the Labelling Regulations in the Indian Food Industry</i>	77
<i>Mrs. Jayamol P. S.</i>	
<i>Relevance of Professional Ethics in Modern Legal Practice</i>	88
<i>Mrs. Sharika Rai</i>	
<i>Indian Judiciary and Social Justice in India</i>	94
<i>Mr. Ravindra K. Rajputh</i>	
<i>Online Shopping - Security Issue and Defective Service</i>	101
<i>Mr. Karthik Anand</i>	
<i>Problem of Women in Unorganised Sector : Special Ref. to State of Gujarat</i>	107
<i>Ms. Vaishakhi Thaker</i>	
<i>Safeguarding the Dignity of Women Under Criminal Law</i>	116
<i>Miss. Shantika U. M.</i>	
<i>Judicial Approach towards the Medcio Negligence Cases</i>	123
<i>Mrs. Deepa Salian</i>	
<i>Legalperson under Transfer of Property Act- A Legal Dimension</i>	133
<i>Mr. Rakshith B. V.</i>	
<i>The Principle of Idea-Expression Dichotomy in Copyright Laws</i>	141
<i>Anuttama Ghose</i>	
<i>Global Brand Building and Legal Framework</i>	151
<i>Mr. Roopesh</i>	
<i>Making Food a right for all in India: Myth or Reality</i>	157
<i>Ms. Grishma Soni</i>	
<i>The Law of Adultery in India</i>	
<i>Mr. Maheshchandra Nayak</i>	



RELEVANCE OF PROFESSIONAL ETHICS IN MODERN LEGAL PRACTICE

Smt. Sharika Rai ¹

Abstract

The author tries to draw attention to the high standards of ethics which was followed by the legal practitioners, and how far it is practicable to follow them in the present scenario of legal practice. The author tries to throw light on the current style of practice which is so much different from the earlier times and the struggle and dilemma of the young practitioners to follow ethical practices and cope with competition. In this backdrop the author tries to highlight the transition of legal profession to legal business and the dwindling ethical practices in legal profession.

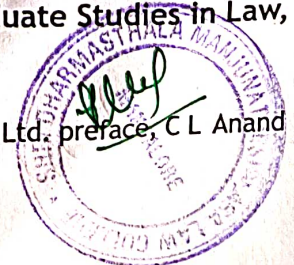
What Is Morally Wrong Cannot Be Legally Right:

"Men of bad character cannot but disgrace the profession even if their bad conduct does not extend to the professional sphere" said Strachan in his book 'Bench and Bar'²

Abstract

Lord MacMillan said no other profession touches human life at so many points. Legal Profession by its Ethics is a career of service to community and not trade³. Professional Ethics is a set of moral codes that guides and regulates a Legal Practitioner. It evolves from the moral principles and there is no uniform set of ethical rules governing the profession. But these are a general body of principles that springs out from the conscious and has a universal acceptability among the Legal Fraternity. It is the function of advocates in modern society to be the guardians and vindicators of justice and liberty. The moral quality of his work makes the profession more honourable,⁴ and its roots lie in the code of ethics which rest largely on tradition. Sharswood in his 'Essay on Professional Ethics' rightly says "*There is perhaps, no profession, after that of the sacred ministry, in which a high tuned morality is more imperatively necessary than that of the law. There is certainly without any exception, no profession in which so many temptations beset the path to swerve from*

- 1 Assistant Professor, SDM Law College and Centre for Post Graduate Studies in Law, Mangaluru
- 2 Strachan, Bench and Bar, page 36
- 3 Professional Ethics of the Bar, 11th Edition, 1987, The Law Book Company(P) Ltd. preface, C L Anand
- 4 Supra note 3



the line of strict integrity; in which so many delicate and difficult questions of duty are constantly arising. There are pitfalls and mantraps at every step and the mere youth at the outset of his career, needs often the prudence and self-denial, as well as the moral courage, which belong to riper, years."⁵

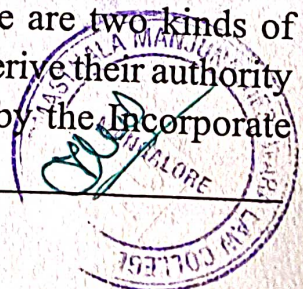
Legal profession in India had to undergo a great metamorphosis to attain respectable status as a profession in India. No doubt Legal Profession is considered as a noble profession all over the world. But in India the Profession has evolved through various phases. Prior to the Advocates Act of 1961, in India there were various grades of legal practitioners like, Advocates, Attorneys, Vakils, Pleaders, and Mukthars. Mukthars and Pleaders belonged to the mofussil courts and were the lowest grade of practitioners. They were more like agents of the parties. They did not possess any legal qualification. Moreover the Indian practitioners were widely discriminated from the English Barristers. There were not allowed to practice in the Royal Courts. There was very poor opinion as to their legal skills and integrity. This necessitated the codification of Legal ethics even greater in India than elsewhere. The rules of legal ethics mainly rest on tradition. In a country like India, Bar does not possess same prestige as Inns of Court of England, and its traditions are more recent. It was only after the Advocates Act of 1961, that the single grade of practitioner called Advocates came into force and uniform qualification for enrolment was set out. The establishment of Bar Councils at the centre and states was a significant step in raising the standard of the legal profession in India. Attempts have been made by Bar Councils to formulate code of conduct to regulate the conduct of Advocates and inject ethical values in them. Ethical values cannot be imbibed merely through lectures on ethics, however lapses from the traditional standards can be filled in by diffusion of knowledge of the rules applicable to the profession and help raise the standard of the profession⁶. A practice devoid of ethics will result in deterioration of the profession. It is only the knowledge & observance of legal ethics that will sustain the profession in all its glory.

Historical Background:

In England the profession dates from 1181, during the reign of Henry II. For centuries, in England, legal knowledge was monopoly of the priests and they alone had the privilege of appearing on behalf of the clients for a long period of time. Legal practice was considered to be a noble service and only noble men were inducted in to the profession. These men were more into service than profit making. It is said that Barristers had a pocket behind his gown and the client would deposit money which he could afford. The Barristers did not demand fees. This was the level of ethics followed in England. It gradually opened to all. Presently there are two kinds of practitioners in England viz Barristers and Solicitors. Barristers derive their authority to practice from Inns of Court, while roll of solicitors is kept by the Incorporated Society of Law.

⁵ Sharswood, Essay on Professional Ethics

⁶ Supra note 3, pg 22



In India instances of men learned in law pleading for others is mentioned in ancient scripts by Narada, Manu and Shukra. It appears from their writings that only a relative or an appointed agent of the party could plead on their behalf. The Bengal Regulation of 1793 shows the existence of a class of persons called Vakils who were appointed as agents of parties to represent them in Courts. In the due course various regulations were passed to regulate the profession in India. The Regulating Act of 1773 authorised the Supreme Court to admit, remove the advocates in Royal Courts, similar powers were conferred to other SC of Madras and Bombay. The Bengal Regulation 1793 regulated the practitioners in Company Courts in matters of oath, attendance, scale of fees etc, thus bringing in some level of standard in practitioners of Company Courts. The legal practitioners Act 1853 made good character as criteria to be qualified for the office of the Pleader and liberty was given to them to settle fees with the clients. Unworthy conduct of Pleader would subject him to penalty by Courts. Further the Legal Practitioners Act of 1879 which enlarged the area of practice of Vakils. Another significant Act was the Bar Councils Act of 1926 which partially fulfilled the Indian Practitioners demand for a unified bar and removal of discrimination of Indian Vakils and English Barristers. The Act provided Bar Councils at provinces and sought to regulate admission to legal profession, regulate discipline and professional conduct of practitioner⁷ and make arrangements of legal education and examination. It was only after the passing of the Advocates Act of 1961 the demands of the Indian practitioners were completely met with the establishment of autonomous body ie the Bar Council of India and provision for establishment of Bar Councils for States. It was only after this phase that the legal profession in India saw a sea of change in matters of enrolment, discipline, education and professional standards. One of the main role of the Bar Council was to lay down standards of professional etiquette for advocates, lay down procedures to be followed by disciplinary committees, lay down standards for legal education among others which drastically helped to improve the standard of legal profession. The Act abolished various grade of practitioners and brought a single grade of practitioner called Advocates and laid down an uniform qualification for enrolment to the profession prospectively.

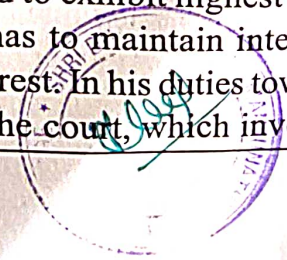
Standard of Conduct in Legal Profession:

An Advocate practicing law is under triple obligation – an obligation to his clients to be faithful to them unto the last, an obligation to the profession not to besmirch its name, and obligation to the court to be and to remain a dependable part of the machinery through which justice is administered.⁸

An advocate has wide variety of duties where he is required to exhibit highest order of professional ethics. In his duty towards his client he has to maintain integrity, honesty, confidentiality, loyalty and disclose conflict of interest. In his duties towards the court he has to work in the capacity of the officer of the court, which involves

⁷ Supra note 3 page 12

⁸ Supra note 3 pg64



show of respect to the bench, not misleading the court, guiding the court with proper law and citations, not seeking unreasonable adjournments and causing delay, not indulging in improper practices like bribing, tutoring witness and thus assisting court in dispensing justice. He also owes duty towards his colleagues or opponent and towards society. In discharge of his duty towards colleagues he is expected to respect his opponent, he is bound not to misguide his opponent, share information with opponent, use restrained language which is not offensive or abusive, not to carry ill feelings towards the opponent outside the court hall. There is a limit beyond which a counsel should not go in attacking the opposite party or his witness. He must not in any case abuse his privilege and make any attack which goes fairly beyond what is necessary for case of his client.⁹ An advocate is expected to exhibit a comradeship with his brothers at the bar. He must understand that he is fighting the case of his client and should not take it personally and tarnish his relationship with his colleagues. He must not try to undercut the fees of his colleagues nor indulge in snatching the clients of his colleagues. He must always speak high of his brethren. His duty towards society involves in his honest practice of profession and not indulging in corrupting the judiciary or the system of administration of justice, not touting the cases, not delaying the matters by seeking unjust adjournments. He must not forget that legal profession is service oriented and not a trade which is profit oriented. He must engage in Pro-Bono cases and thus extend service to those section of people who are deprived of justice due to economic conditions. Thus, in discharge of all his duties he is guided by the established traditions of ethical practices.

The canons of professional ethics also prohibit the lawyers from soliciting and self-advertising. Rule 36 of the BCI Rules prohibits the lawyers from any direct or indirect advertising. However, by resolution of 2008 the said Rule was amended to allow lawyers to furnish basic information like name, address, qualification, area of practice, websites etc. These are certain stringent standard set out in the traditional professional code of ethics which the advocate is expected to live up to.

Transition in Legal Profession and Ethical Concerns:

With the raging competition in legal profession and rapid commercialisation of profession, it is indeed a great challenge for the young advocates to follow the ethical traditions set out and sustain in the profession. Modern law practice has evolved into more complex and competitive field which is seen rapidly overpowering and overshadowing the established ethos of this ancient profession. With the emergence of large law firms, the private practitioners are in great dilemma to hold on to legal ethics and go with the present trends of profit making. The reasons for deteriorating or changing ethical practices could be summed up as attitude of commercialisation towards legal practice, ignorance of ethics, overcrowding at the bar leading to unhealthy competition and unemployment.

⁹ Supra note 3 pg 64

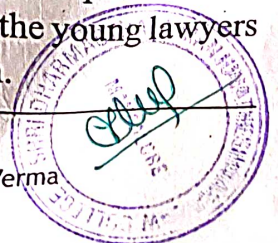


An attitude of commercialisation of law is a glaring instance of disrespect for professional observances. It is one of the fundamental conceptions, that law is a profession and not a trade or business. Primary aim of profession is service, and money making is incidental. In common parlance though legal practice is still described it as profession, the traditional outlook has slipped to the background. The ideals of legal practice have drastically shifted which leaves no doubt that it is now legal business than a legal profession¹⁰. It is now the general belief among the youth that rigid following of ethics is a hindrance in obtaining legal business. For example, advertising is prohibited according to the BCI Rules as it misleads and derogates the profession to solicit business, but in today's commercial world advertising techniques play crucial role in securing business, and the youth no more believes in word of mouth for securing fame and cases. Common law countries like US and UK have moved on from old law of prohibiting advertising by legal professionals. Many countries have lifted ban on this archaic rule. In contrast lawyers in India are restricted in this matter¹¹. In this period of globalisation such disadvantage matters a lot to the young lawyers and they resort to ways of disregarding and discarding these restrictive practices of ethics which they consider to be a hurdle for their success. They have understood the importance of advertising in the modern competitive era which helps to propel them to greater heights and mark their presence in the legal market. It is to be noted that advertising has its own advantages as it promotes legal awareness and helps clients to evaluate the counsel to be hired than relying on somebody's word of mouth who may be a tout of the advocate. However, restraint have to be exercised in advertising so that they may not project themselves as commodities and lower their standards by cheap advertisement tactics.

Most of today's young lawyers are left with the impression that be all and end all of legal practice is the billable hours. Ethical future of the legal industry in which young people are exploited and indoctrinated into a culture in which professional duties may be superseded for personal gain is a matter of great concern. The new technologies adopted in modern practice like virtual office where online consultation takes place also poses a threat of leakage of information which conflicts with the lawyers duty of confidentiality towards his client. Another matter of concern is the litigation funding which stands at complete conflict with the ethical practices. This prevailing practice among the lawyers reaffirms the view of the society that lawyers promote strife. Though done in the best of intentions and help the penniless clients with assets to seek relief, lawyers are best advised to avoid being embroiled in such situations which will cast a shadow on their reputation. The overcrowding at the bar, compel the lawyers to disregard their ethics in the face of stiff competition and hunger for success and survival. The tragedy is that, this attitude of the young lawyers is a serious threat to the integrity and reputation of the profession.

¹⁰ Supra note 3 pg4

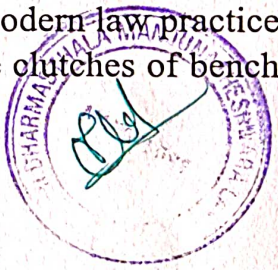
¹¹ [www.legalservices.com/article54/advertising in legal profession](http://www.legalservices.com/article54/advertising-in-legal-profession), Dheeraj Verma



Conclusion:

The grey areas of professional conduct have expanded and professional regulations struggle to keep up. In assessing challenges to ethical practice brought in by commercialisation, firstly we must understand that professional duties and standards like fidelity, good faith, care and candour which shall remain the same and always have universal acceptance and application. The importance of public trust in profession and role of self-regulation also shall remain critical. However, the modern ethical task is not merely to identify duties that continue to govern the legal profession, but to apply them to changing conditions of modern legal practice. The important task today is to see how the age-old professional ethics be upheld and re-enforced in to the modern practice¹². Today one cannot expect the lawyers to be monks who shun the world for ethical living and service, sacrificing his monetary interests in the changing dynamics of profession. In the present time where legal profession is evolving as a legal business, legal ethics has to be understood in the context of grappling with real world complexities and making choices about conduct in dealing with it.

At this juncture we must be realistic and understand that the lawyers run their law practices as business. That is to say lawyers are engaged in business for profit and it is to be treated and regulated as such. Many lawyers are caught up in the dilemma of idealised professionalism and rigors of business. New trends and technological changes have dramatically altered the conditions of competition and ways in which successful law business must work. The law practice now involves poor and unethical professional services, which are becoming worse, and it is unrealistic to dwell in fool's paradise that bar at one time contained principled lawyers self-regulated by ethical practices¹³. In this backdrop one has to seriously ponder whether the system of legal ethics can still be relied upon for making the lawyer accountable for their misdoings in their professional capacity, or the system of legal ethics as a control mechanism of professional conduct has to be completely abandoned and replaced. On examination of the current scenario we can fairly draw conclusion that system of legal ethics alone fails to regulate the professional conduct in modern law practice and an additional civil law accountability system, free from the clutches of bench and bar has become the need of the hour.



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¹² Commercialisation of legal practice::Conflict Ab-Initio:Conflict De Futuro, Commonwealth Law Association Law Conference, Hon'ble T.F. Bathurst, Chief Justice, New South Wales, Sydney, 21 April 2012.

¹³ www.digitalcommons.law.msu.edu/abandoning an Unethical System of Legal Ethics, 2012 Michigan State Law Review, 347, David Branchier.

854



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