

# Scope and Significance of Legal Ethics in India

## Abstract

"Wherever Law Ends, Tyranny Begins"

-Locke

India has the world largest legal profession. In Law nothing is certain but the expense. Legal Profession is an important limb of the machinery for administration of justice. The duties of the Bar Council were to decide all matter concerning legal education, qualification for enrolment discipline and control of Profession.

Legal profession is a profession, and legal professionals study, develop and apply law.

The lawyer plays an important role in providing justice to the people in the society, and ensures that they have fair and equal rights in justice they are seeking lawyers are able to legally represent their clients and deals with a wide range of cases.

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## Introduction

Legal profession is necessarily keystone of the arch of government. The word ethics only means rules of conduct pertaining to a particular class of human action. The word ethics means a science of morals or it is that branch of philosophy which is only concerned with human character and conduct and so it is a moral science. The standards of morals which are applied to an ordinary citizen in any other walks of life; shall be the standard of morals for an Advocate too, Professional ethics means a code of conduct which regulates the behavior and conduct of practicing lawyer towards himself; his client, opposite party and his counsel and towards the court. The legal profession is a legal profession and is one of the most brilliant; learned and challenging profession. An Advocate stands for justice more than a judge as he pleads for it. The word ethics only means rules of conduct pertaining to a particular class of human action. The professional ethics means- professional etiquette or Decency or elegance or dignity.<sup>1</sup>

Nations falls when judges are unjust, because there is nothing which the multitude thinks worth defending; but nations do not fall which are treated as we are treated. And why Because this country is a country of the laws; because judge is a judge for the peasant as well as for the palace; because every man's happiness is safeguarded by fixed rules from tyranny or caprice and I have no doubt that as long as lawyers, whether practitioners or judges, allow themselves to be conducted by ethical principles without fear or favour and as long as they both retain their independence and their integrity, the roots of democracy planted in our country will thrive and the country will grow from strength to strength ringing happiness and prosperity to the denizens of our dear homelands.

## Objective of the Study

Article 19(1) (g) of Indian constitution provides that every citizen of India is free to adopt any trade, profession, business or occupation whatever he likes subject to certain restrictions imposed by constitution. The advocate and advocacy is a noblest profession in the world provided it has to flourish between the banks of ethics and etiquette manner of the professional ethics. The central idea of article is to enlighten the practitioner about their rights and duties as well as past glory of the profession.



**Kishori Lal**

Assistant Professor,  
Faculty of Law,  
University of Lucknow,  
Lucknow, U.P, India.

**Review of Literature**

Prof. J.P.S. Sirohi, professional ethics, accountancy for lawyer & bench bar relation ,dr. Basantilal Babel in professional ethics, dr. Murlidhar Chaturvedi in professional ethics, lawyers's accountability & bench bar relationship and advocate s.vaidya in professional ethics.

**Concepts and Hypothesis**

As Valdermar W. Sctzer said, "Ethics is not definable, is not implementable, because it is not conscious, it involves not only our thinking, but also our feeling."

Some professional organizations define their ethical approach in terms of a number of discrete components. Typically these include:

1. Honesty.
2. Integrity.
3. Transparency.
4. Accountability
5. Confidentiality.
6. Objectivity.
7. Respectfulness.
8. Obedience to the law.
9. Loyalty.

In the face of globalization, there has been a growing demand to bring in reforms in the functioning of the legal profession in India. The Bar Council of India was faced with the challenge to recognize the presence of foreign law firms and foreign lawyers in A.K. Balaji's case.<sup>1</sup> The members of the India legal fraternity have also begun showing their concerns about the standards of the legal profession in the competitive global world. From the perspective of citizens, a more stringent process of accountability is being demanded wherein the concerns of the client are given paramount importance.<sup>2</sup>

**Professional Principles**

The Bar Council of India had drafted the Statndards of Professional Conduct and Etiquette which imposed rights and duties on the advocates. The proposed legislation has moved steps forward and recognized a set of professional principles as:

1. that the Legal Professionals should act with independence and integrity;
2. that the Legal Professionals should maintain proper standards of work;
3. that the Legal Professionals who are authorize to appear before a court or tribunal, by virtue of being such authorization should comply with their duty to the court/tribunal to act with independence in the interest of justice;
4. (iv) that the affairs of clients should be kept confidential.

**Professional Conduct and Professional Ethics**

There is a little confusion between these two terms. People think that these two terms are one and the same. However, there is a slight difference between professional conduct and professional ethics. In professional conduct, the member of the profession acts under some statutory or contractual powers i.e., legal obligation, whereas in professional ethics a member of profession is expected to follow moral obligation. Professional ethics is noble and

those who remain within it are considered divine. Although codes, policies, and laws of conduct are very essential and constructive, like any set of rules, they do not cover-each and every possible incident that may arise, and in some cases they often conflict. They also require substantial amount of interpretation.

As Justice P.B. Majmudar rightly said, "I feel the rules governing ethics of lawyers should never have had to be codified but there are black sheep in every profession."

**Necessity of Professional Ethics in Various Professions Professional**

Ethics is very necessary in professions for followings reasons-

**For Implementation of Standard of Profession**

Most professions have internally enforced codes of practice tht members of the profession must follow to prevent exploitation of the client and to preserve the integrity of the profession. This is not only for the benefit of the client but also for the benefit of those belonging to the profession. Disciplinary Codes allow the profession to define a standard of conduct and ensure that individual practitioners meet this standard, by disbarring them from the professional body if they do not practice accordingly. This allows those professionals who act with conscience to practice in the knowledge that they will not be undermined commercially by those who have fewer ethical qualms. It also maintains the public's trust in the profession, encouraging the public to continue seeking their services.

**For Internal Regulations**

In cases where professional bodies regulate their own ethics, there are possibilities for such bodies to become self-serving and to fail to follow their own ethical code when dealing with renegade members. This is because of the nature of professions in which they have almost a complete monopoly on a particular area of knowledge. For example, until recently, the English Courts deferred to the professional consensus on matters relating to their practice that lay outside case law and legislation.

**For Statutory Regulation**

In many countries there is some statutory regulation of professional ethical standards. These statutory regulations aim at preventing exploitation of clients and patients, and at the same maintain the standard of profession.

**Computerization and E-Courts.**

E-Courts mean paperless Courts. This system is being followed by courts at various levels in the United States, as well as in our Supreme Court, though with limited success. To effectively achieve this objective, the following steps are required to be carried out:

1. Papers, pleadings etc. are filed on-line.
2. When a plaint or petition is filed, it is processed by the Office/Court.
3. The scrutiny takes place on-line by the Registry.
4. Any defects are pointed out on-line.
5. The petitioner can rectify the defects on-line.

6. The date of first hearing is communicated on-line.
7. The papers are placed before the Court and the Judges have computers screens/laptops.
8. Computer monitors are available to lawyers.
9. When an order is dictated by the Court, the order will be typed on a screen. The order will be read by the Court Officer/Stenographer/Court Master who would then release the order of the Court under digital signatures.
10. A certified hard copy of the order can also be obtained.
11. The move to a paperless documentation system should be carried out within 3 years for the entire country.
12. Payment of Court Fee can be explored with Court Fee debit cards, whose details are entered in secure on-line transactions like Pay Pal.
13. If the Court dismisses the matter or issues notice, the orders will be issued under a secure digital signature.
14. In case notice is issued in a matter, notice will be issued by e-mail.
15. Service of notice will also be possible in addition through fax, courier and registered post. Since the Evidence Act (after the amendment brought about by the Information Technology Act, 2000) now envisages the use of electronic media to transmit documents, service of notice through e-mail may be considered to be valid service.
16. The post office must be looked as a central player in the matter of E-Courts. Therefore e-mail service may be attempted through the post office.
17. The post office could be served with the notice via e-mail. The hard copy can be printed out at the post office and then served upon the opposite party(ies). The cost of printing can be borne by the plaintiffs/petitioners.
18. Upon service of notice by the postman the post office can relay an electronic confirmation of delivery receipt/service of notice. The Indian Postal Service presently operates a service named 'e-post', where letters are electronically transmitted and delivered to recipients. A similar service can also be set up for service of court documents.
19. When the defendant/respondent enters upon appearance, he can do so on-line.
20. The Registry will scrutinize the reply and make it a part of the Court's record.
21. Similarly, the rejoinder/additional documents by the plaintiff or the petitioner can be brought on record on-line.
22. The date of hearing will be electronically communicated.
23. In the event the court admits a matter, it will also indicate a hearing schedule.
24. The hearing schedule will demand written briefs on-line by a particular date.
25. On the dates specified, there shall be oral arguments within the time specified. However, the time can be extended at the discretion of the Court.
26. With respect to court fees, it is important that they are electronically generated so as to avoid fake stamps. The amount can be deposited to the treasury of the Government. As with electronic transmission of notices, the electronic money order facility of the Indian Postal Service may also be used for payment of court fee.
27. The following Courts should be converted into E-Courts
  - (a) Trial Courts,
  - (b) Appellate Courts including High Courts,
  - (c) Supreme Court,
  - (d) The Gram Nyayalay Act, 2008 has been brought into force. It needs to be made operational and Rules formulated at the earliest.

**Reformations**

Following are the Reformations in Legal Professional Ethics.

**Legal Services Board**

The Bar Council of India created a Legal Services Board (LSB).

The primary function of this Board is to regulate the functioning of the legal profession. Accordingly, the Board is required to promote Regulatory Objective, such as:

1. protecting and promoting the public interest;
2. supporting the constitutional principle of the rule of law;
3. improving access to justice;
4. protecting and promoting the interests of the clients of the legal practitioners;
5. promoting healthy competition amongst the legal practitioners for improving the quality of service;
6. encouraging an independent, strong, diverse and an effective legal profession, with ethical obligations and with a strong sense of duty 'towards the courts and tribunals where they appear;
7. creating legal awareness amongst the general public and to make the consumers of the legal profession well informed of their legal rights and duties;
8. promoting and maintaining adherence to the professional principles.
9. The legal professionals other than those covered by the Advocates Act, 1961 as enumerated in Schedule I, such as:
  - i. Qualified lawyers who are not practicing advocates, doing legal service in their Chambers.
  - ii. Qualified lawyers engaged in drafting and conveyancing.
  - iii. Income-Tax Practitioners.
  - iv. Sales-Tax Practitioners.
  - v. Practitioners in Revenue Courts.
  - vi. Customs clearance agents.
  - vii. Customs and Immigration Law Practitioners.
  - viii. Trademark attorneys/lawyers.
  - ix. Patent attorneys/lawyers.

**Consumer Panel**

The Act proposes for the creation of a Consumer Panel which shall perform the following functions:

Establish and maintain a panel of persons to represent the interests of consumers and the clients of the legal professionals;

The consumer panel shall have a fair degree of representation of both the consumers/clients of the legal professionals and those who are using or may be contemplating using the services of the legal professionals as consumers/clients;

1. Carry out research for the Board;
2. Give advice to the Board;
3. Publish such information as it thinks fit about the advice it gives and about the results of research carried out by it.

**Ombudsman**

The statute also proposes for the appointment of an 'Ombudsman' to redress the grievances of the clients and consumers of the Legal Professionals. There shall be a Chief-Ombudsman at the center and Ombudsmen for each separate state to deal with complaints against legal professionals at the state-level. The Advocates Act, 1961 did not contain any provision to deal with consumer or client grievances.

The following are the procedures to be applied by the Ombudsman for carrying out such purposes:

1. On receipt of a complaint relating to a legal professional, the Ombudsman shall issue notice to the legal professional concerned and also to the complainant and shall fix a date for inquiry into the complaint.
2. The Ombudsman shall examine the documents and the witnesses, if any, on both sides and shall prepare his findings after hearing both the sides.
3. The report of the Ombudsman shall be forwarded to the Disciplinary Committee of the Bar Council of the state, with a copy to the Board.
4. The report of the Ombudsman shall contain his own findings about the allegations against the Legal Professional and the proposals for taking necessary action.
5. The report of the Ombudsman shall be published in the manner as prescribed by the Rules.
6. The Disciplinary Committee of the Bar Council of the state shall consider the report of the

*Justice Sydney Smith*

*Legal practitioners (Regulation and maintenance of Standards in Profession, Protecting the Interest of Clients and Promoting the Rule of Law) bill, 2010.*

Ombudsman and if such report is not accepted by the Bar Council, reasons thereof, shall be recorded in writing and such reasons shall be published in the manner as prescribed by the Rules with sufficient justification.

7. The reasons for rejection of the recommendation of the Ombudsman shall be explained in detail which shall also be published.

**Free Legal Services**

The Advocate Act, 1961 did not make it mandatory for advocates to provide free legal services. The proposed legislation, however, aims to overcome this lacuna by making every Legal Practitioner duty bound to give free legal service to the financially weaker consumers/clients who fall just above the income levels prescribed under Section 12 (h) of the Legal Services Authorities Act, 1987.

**Conclusion**

The aim of the above discussed Legal Practitioners Bill, 2010 is laudable in many different ways, like, broadening the concept of legal professionals, recognition of consumers of legal services, conferring legal rights to clients, providing mandatory legal services, establishment of Ombudsman etc. Unfortunately however, even after four years after the Bill was drafted, no serious efforts have been made to give it the shape of a law. The major criticism against this Bill is, that, it attempts to bypass the authority of the Advocates Act, 1961. It further creates a supra-governing body for the legal professionals in India above the Bar Council of India, which is totally contrary to the demands of the legal fraternity of having an independent, autonomous and self-regulating All India Bar.

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*Dr. J. S. Sirohi, Dr. Basanti Lal Babel, Dr. Murlidhar Chaturvedi, Pro. R. Venkata Rao, Advocate S. Vaidya*