

Legal Professional Ethics and its Reformation



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Abstract

Law is the great organ through which the sovereign power of the society moves. If democratic institution are to survive; it will not be simply by maintaining majority rules and by swift adoptions to the need of moment; but by the dominance of a sense of justice which will not long survive if Judicial process do not conserve it.

The law is one of the first and noblest of human science, a science which does more to quicken and invigorate the under-standing, than all the other parts of learning put together. Professional is a science which distinguishes the criterion of right and wrong; which reaches to establish the one prevent, punish or redress the other; which employs in its theory the noblest faculties of the soul, and extents in its practice the cardinal virtues of the heart, a science which is universal in its use and extent accommodated to each individuals, yet comprehending the whole community.

An Advocate is persons who is a law graduate from any recognize university and registered himself as an advocate in state Bar Council or Bar Council of India. The advocacy is the presentation of logical fact of any dispute in a right prospective. An advocate should be jacks of all trades but master of non except the case which he is pleading in the court of Law.

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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.¹

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.²

As Valdermar W. Scetzer 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.¹ 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.²

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 disbaring 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.

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 and 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 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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