



## ESSENCE OF ETHICS IN THE LEGAL PROFESSION

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### ABSTRACT:

‘Ethics’, ‘Morals’ & ‘Virtues’ are particular theoretical concepts that people from all walks of life are familiar with as these core values help in the successful moulding of our lives however, history is evidence, that it is a struggling path to incorporate them in the standard life. It is in the field of law also, that ethics play a pertinent role which makes this topic all the more intriguing when clubbed together. In light of the deteriorating condition of the legal profession it has become necessary to draw an analysis between these two studies i.e. ethics and law to understand the backdrop of the problem. This paper critically analysis the role of law universities, law firms & contribution of internships in inculcating the moral facet in the students by way of practical education and also highlights the incessant responsibility of the bar and bench in doing the same in the advocates by setting the appropriate examples in their legal practice. Further, the research also takes into account the unprecedented situation of Covid-19 to bring to surface the bitter sweet truth about the backwardness and laxness in the legal system, which more or less resulted in taking a toll on the ethical aspect. The paper helps to raise some thought provoking questions and also helps to comprehend that it is only when all the factors move forward by rightful orchestration of the lessons of ethics and morality that the corrupt image of the

profession would start declining and it will again restore its high status.

### INTRODUCTION

If we look back at the timeline of humanity we observe that from the time of god Ram to the era of King Ashoka, from the time of Lord Buddha to the teachings of Gandhiji, it is the virtues of morals and ethics which have held tightly the humankind together. Our grandparents, parents all impart us the well sung actions and famous stories of these heroes of the past so that we assimilate the same regulations and discipline in our life and conquer the difficulties. For the very same reasons the existing laws & rules that we have to follow today, have been framed by the founding fathers of our nation by imbibing & relying upon the lessons of ideal virtues & morality preached by the Vedas and Purans, raj dharma etc. Hence, the essence of these penalties & laws are a reflection of the teachings of our old gurus and their lessons in the manuscripts.

For people in the legal sorority the questions that raise uncertainty regarding the administration & channelling of fervent ethicality & uprighteousness always hold great superiority for example, what is the appropriate code of conduct? What are the general etiquettes? What are the specified distinctions between the actions of good and bad compared to worthy & admissible? The legal fraternity well understands that it is a must to adhere to the values of uprightness and integrity as not only they act as a stimulator but also bring one closer to triumph and the feeling of self contentment.

The adherence to the established set of laws while carrying out the service of advocacy is



pertinent since these charters of rules are drafted on the postulates of equality & justice which would help the legal professionals to soar higher & achieve the desired excellence, success and status.

The aim of accomplishment of success & status cannot be achieved by any person easily & same is the case of legal professionals, whose profession is all about contributing to social justice. It is only when the barristers & judiciary, the bar & the bench pursue the ethical principles and incorporate the rules of fairness and honesty as a supplement to their services, that they will be able to do justice to the profession.

In the times, the notion to complete their client's demand hastily & to practice according to their own comfort & autonomy has undermined the values & virtues in lawyers which are reflected in their working<sup>1</sup>. Hence, it would not be wrong to point out that it is the teachings of the legal academy & working of the courts and which have not given required importance to instilling patience & moral values in the aspirants & consequently it has lead them to practice according to their convenience.

The researcher finds it important to encompass the scenario of situations like Covid-19 and its undeniable impact on the legal field. While it is well understood that ethics is undebatably an integral part of our system, the question which pops up is how advanced is our system to retain the same in tough situations or are we allowed to forgo

the ethical aspect in such conditions to further the cause of justice. This question is reasoned by the ground reality where due to the pandemic new status quos have been set up and has pushed one and all to undergo the metamorphoses to reach stability so that justice is not compromised. Of course there are loads of changes which we will have to face after the epidemic but the true test to conclude that ethics are an uncompromised and inseparable part of our constitution can be calibrated only when it clarifies the hurdles during the ongoing condition.

“It is no hidden fact that the art of advocacy sways & guides many from the advocate's very technique of making contentions to his intelligent usage of the minimal available facts and therefore it is because of the vast impact that this profession shadows, that the demeanour of an advocate has to be flawless always.”<sup>2</sup>

“The obligation to follow the ethical laws not only flows from Indian laws but also from the international authorities. The International Bar Association has published the International Principles on Conduct for the Legal Profession which is binding on worldwide practising lawyers in order to promote a cooperative environment about the national and international laws which expected in the conduct of lawyers, and for also promoting the virtues of ethics.”<sup>3</sup>

“Hence, in a compact form it can be said that ‘legal ethics’ are certain standards which are devised to perform as regulatory instruments

<sup>1</sup>Prakash Sharma, *Continuing Legal Education: Rethinking professional ethics and Responsibility in the Indian Domain* at <https://journals.sagepubs.in/doi/18767839998390/>.

<sup>2</sup>Pankaj, *Changing dimensions of Legal Profession & Social duties of lawyers*, Himachal Pradesh University, p384(2015) at <https://handle.net/10603/122730>.

<sup>3</sup>*Supra* at 2.



to guide, restrict & check the professional conduct”<sup>4</sup>.

#### EPITOMES OF MORALITY IN THE LEGAL PROFESSION:

Even before there were any formalised ‘laws’ and ‘codes’ we observe that common man well understood that just like an engine runs by fuel, similarly formulation of ‘rules’ were necessary to run the society.

“Hence, what is crucial to understand is that it is only to curb malpractices, to prevent disrespectful behaviour & to set a fair standard operating procedure for both the privileged and unprivileged that the laws comprise of aortas of integrity, justice & ethics.

The term ‘advocates’ which owes its origin to the Latin word ‘*Advocatus*’ means ‘called for help’, which clearly reflects the rationale which might have gone in behind setting up the profession . The lawyers are expected to put in their blood and sweat to come hell or high in order to bag a fair deal to their client and hence they should have their priorities straightened out before they enter the field because the road to achieve justice is not a smooth one and the goal is attained only after crossing hot fires. For a better understanding behind the purpose of formation of the ethical rules it would be wise to glance back at the advocates of the late 18<sup>th</sup> century who played a pivotal role in the enactment of the customary laws keeping in mind the inclusion of principles of ethicality and morality”<sup>5</sup>.

“The father of our nation, Mohandas Karamchand Gandhi, a successful barrister and an excellent draftsman is well lauded for his actions showcasing gospel truth. His famous teachings about the importance of virtues and ideals are preached upon globally. He saw law as a set of ‘codified ethics’ and as a mean to ‘enthroned justice’.”<sup>6</sup> Even today he suits as the most classic example whenever any debate arises with respect to impartiality & honesty.

India has had many bench mark setting legal practitioners but only few are remembered for their great deeds. “One such exemplar human being is our first law minister, Dr B.R Ambedkar, who worked day & night to draft the Constitution of India & instilling it with equity & justice. He has time & again raised voice against the redundant laws that prevailed due to which the minorities were being oppressed.”<sup>7</sup>

“Another unequivocal colossus of the Indian bar is Nani **Ardeshir** Palkhiwala, who has always been an epitome of neutrality & fair play which is depicted in his famous works. He has always raised awareness regarding the basic human rights & has showcased the importance of moral dimensions in law repeatedly.”<sup>8</sup>

It has not only been the lawyers who have helped to ferment the practice of moral values in their professional and private lifestyle but also certain judges who are worthy to mention since they have gotten off the subject at hand on multiple occasions, only to remind the defending lawyers that showcasing a

<sup>4</sup>*Supra*.

<sup>5</sup>*Supra*

<sup>6</sup>Pyarelal, Mahatma Gandhi, Volume 1: The Early Beginning Phase, (1965)

<sup>7</sup>Naena Jain and Chitrukshee Singh, The Ethics & Morality of Legal Profession, Vol.13 Delhi Business Review No.2, 5-8(2011).

<sup>8</sup>*Supra*



disciplined attitude and respecting the courtroom regimen is ad rem and more worthy than winning the case. The activeness of the judges in pointing out the irrational behaviour of the violators is a breather to the overburdened legal system as it conveys that their aim is not only to finish the huge pile of cases but also to not tolerate any facades of impropriety.<sup>9</sup>

Dissent is a powerful and a crucial weapon in the legal field and it should be exercised without any shadow of doubt. Here, reference to the valiant soul, Justice H.R.Khanna is the most suited example, who did not step back albeit being the only dissenter while knowing wholly that it comes at the cost of his chief-justice ship. He received his due credit for the same after more than 41 years when the case was overturned,<sup>10</sup> which is undeniably late but one learns the lesson that we should stick to the dictates of conscience without thinking about the rewards and should not deter away from having a different legal opinion if they are characterised by honesty.

“It is important to mention here, former chief justice, Dipak Misra who has made it a point to come forward & call out advocates if they indulge in disrespecting the court. For him winning of a case has been secondary & adhering to the ethical call while arguing & maintaining the decorum of the court is always a primary matter.”<sup>11</sup>

The umbrella of ethics embraces the proper conduct which commands proper formal dressing, courteous behaviour, timely arrival

and other basic courtroom etiquettes which are not to be compromised in any situation. The same has been reiterated and mandated by the court even during the Covid-19 lockdown in the country where when the proceedings were going on by way of video conferencing, the court adjourned the hearing due to the counsel appearing in vest (baniyan) and pointed out that such improper dress code cannot be tolerated no matter the proceedings being carried on from home.<sup>12</sup>

Another emerging vogue being observed in the judicial sector are the ‘post retirement’ appointments of the judges, which according to some is a rational step while others view these appointments as more of a quid-pro-quo achievement in exchange for certain favourable judgements by the judges. It is not that such appointments have not been made earlier, the examples of Baharul Islam and Ranganath Mishra, ex-CJI P Sathisvam do bring back flashes of memory and the followed suspicions, but in this regard the assignment of former CJI Ranjan Gogoi’s to Rajya Sabha goes unprecedented mainly due to such limited cooling off period. Ofcourse, his appointment is valid under Article 80(3) of the Indian Constitution, but what one worries about is the plethora of politically infused cases which his bench presided over and their judgments which always favoured the ruling party. Such acceptance of position is a punch right in the gut of the judicial system and shakes its very foundation because these situations can be prevented as acceptance is not compulsory. The hypocrisy is nerve shaking as it was Justice Gogoi’s

<sup>9</sup>Hon’ble Shri R.C Lahoti, Former Chief Justice of India, The first MC Setalvadh Memorial Lecture, *Canons of Judicial Ethics*,(Feb 22,2005).

<sup>10</sup>KS Puttasway v. Union of Inda, (2017)10 SCC 1.

<sup>11</sup>*Supra* at 2

<sup>12</sup>Mohd Iqbul, Rajasthan High Court judge rebukes lawyer after appearing in vest for hearing on video conferencing, *The Hindu*,April 25,2020 at [https://www.thehindu.com/news/nationalnews/article328837.ece./](https://www.thehindu.com/news/nationalnews/article328837.ece/)



bench itself which had raised concern over the increasing post retirement trends in the Rojer Mathew case.<sup>13</sup>

The above examples are just a glimpse of how our legal system is being corrupted by ignorant actions of few members; however we need to divert our attention and practice and preach the lessons taught by the dedicated professionals who have illuminated the path by their truthful and moralistic insights and intellectual integrity to glorify the profession. Hence, the distinguished manoeuvre of these leaders to keep fuelling the torch of ethics and morality in furtherance of fulfilling their jobs and the persistent nature of the court to not let any mistake made by the advocates slip away leaves us with a substantial onus for keeping the slate of this profession free from any negative image.

#### A LAWYER'S OBLIGATIONS:

The legal duties of a lawyer are enacted in the Bar Council of India Rules & the Advocates Act, 1961. These legal duties are binding on each and every practicing member of the bar and the bench.

An advocate should bear in mind that his or her conduct can leave a deeply embossed impression on the minds of the people present in the courtroom. No lawyer should flout his or her legal obligation towards the court, clients, opponents, and the fellow advocates. While the need to abide by the procedural rules should be their inner calling rather than being coerced by some laws however, there

are many people who would want to neglect the laws or would like to earn extra by going around the bush or by taking advantage of the loopholes. Hence, such advocates who violate the laws shall be punished with strict penalties and restrictions as mentioned in the legislations.

In O.P. Sharma v. High Court of Punjab & Haryana, it has been said, *“the advocates and the party appearing in person equally owe a countervailing duty to maintain dignity, decorum and order in court proceedings. The liberty of free expression is not to be confused with a licence to make unfounded allegations against the judiciary”*.<sup>14</sup>

In Supreme Court Bar Association v. UOI, *“a few duties of a lawyer towards his clients include accepting briefs, not appearing in matters where he is a witness, upholding interest of the client, not disclosing the communications between client and himself, not charging on the basis of losing or winning of cases, not appearing for opposite parties, not agreeing to frivolous conditions of his client”*.<sup>15</sup>

It is not only by the Indian regulations that the advocate is bound to divulge into ethical practices but certain international standards are also binding on them. The UN Basic Principles on the Role of Lawyers lays down in its principle the pivotal roles expected of a lawyer. In Principle 4, it states that special attention should be paid to the less fortunate to help them assert their rights.<sup>16</sup>

<sup>13</sup>Rogur Mathews v. South Indian Bank Ltd 2018 SCC Online SC 500(India).

<sup>14</sup>O.P Sharma v High Court of Punjab & Haryana, 2011 6 SCR 301.

<sup>15</sup>Supreme Court Bar Association v. Union of India,(1998) 4 SCC 409.

<sup>16</sup>Basic Principles on Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of



Along with that, principles 14 & 15 of the same, aim at guiding all lawyers to deal with their clients in the most loyal & diligent manner in consonance with the national and international laws so that the human and fundamental rights of the clients aren't violated.<sup>17</sup>

In Shiv Narayan v. M.P. Electricity Board,<sup>18</sup> it has been emphasized by the court, that one is not supposed to acknowledge this profession of law as a commercial activity; moreover it will lead to violation of the constitutional principles if one does that. This has been time and again iterated by the courts because the moment lawyers start associating their work as a parallel to earning livelihood, the very moment this profession will lose its traditional superiority and respect that it has earned over the years.

From the legal precedent of Chandrasekhar v. Bar Council of Rajasthan and ors., one learns that, *"It is a lawyer's obligation not to negotiate directly with the opposing party and to carry out legitimate promises made. The Supreme Court held that an advocate may change side if express consent is given by all concerned after full disclosure of facts. These are his duties to his opponents and to maintain a healthy competitive spirit."*<sup>19</sup>

It is pertinent to emphasize on the fact that while zeal and enthusiasm are much needed traits in an advocate, however they should not cross the border line and timely identify their passion before it transforming into over enthusiasm. "It is high time that the duties of

a lawyer should not only be contained till defending cases but should also be compulsorily associated with advancing legal education, & delivering free legal aid to the deprived & proper training to young budding interns & moreover should not be regarded just as moral obligations but rather should be viewed as a complimentary element of their legal profession."<sup>20</sup>

It is perturbing revelation that even after being a well educated person and being well versed with the minimum requirements of court etiquettes, a lawyer engages in derogatory practices.

The incidents of shouting on a judge, questioning the authority of the judge, to threaten the judge with a transfer order & to abuse him for not passing a favourable order are all part and parcel of obstructing the justice.<sup>21</sup>

It is a common misconception that the duty of an advocate ends after being respectful to the bench & serving his clients, however such attitude needs to be discouraged because a lawyer and the judge are such people whose both professional and personal life are looked upon as ideal models for conduct. Hence timely appearances in the court, practicing lawfully, not hiding facts from the opposite counsel, not going behind the back of other colleagues to fulfil their aim, not engaging in work advertisement are certain expectations from any solicitor.<sup>22</sup>

#### MISCONDUCT BY LAWYERS:

crime and the treatment of offenders, Havana, Cuba, September 7, 1997.

<sup>17</sup>Supra at 15.

<sup>18</sup>Shiv Narayan v. M.P Electricity Board, AIR 1999 MP 246.

<sup>19</sup>Chandrasekhar v. Bar Council of Rajasthan & Ors. AIR 1934 Outh 58.

<sup>20</sup>Supra at 2.

<sup>21</sup>Re Vinay Chandra Mishra AIR1995 SC 2348.

<sup>22</sup>Supra at 2.



It is no hidden fact that lawyers are being perceived as rigid, hostile, ruthless and excessively rule-oriented which has resulted in creating a divide between lawyers & the general public. It is because of the gross negligence to the rules laid down on morality that has led to creation of such image.

The dereliction of duty by the advocates has been a trouble from the very beginning. Initially in cases of malpractices & misbehaviour, the High Court was vested with power to direct any tribunal or District Judge to investigate further into the matter.<sup>23</sup> However, as time passed and cases of misdemeanours were increasing, the need for codified law was felt. Henceforth, when the Advocates Act, 1961 was enacted the provisions for managing immoral practices were included in it. It can be said that the term 'misconduct' hasn't been defined so that it could encompass wider & all kinds of wrongful actions of the offender and the Disciplinary Committee of the Bar Council who has been granted to take disciplinary actions could suggest the adequate punishment & fines.<sup>24</sup>

In one such case i.e., *Re. Ajay Kumar, Advocate v. Unknown*, emphasis was been put on the fact that, "*No affront to the majesty of law can be permitted. The fountain of justice cannot be allowed to be polluted by disgruntled litigants*".<sup>25</sup>

Further while explaining the method of delivering of opinion in a civilised manner in *Radha Lal v. Rajasthan High Court*, it has been observed that, "*any adverse opinion about the judiciary should only be expressed*

*in a detached manner and respectful language*".<sup>26</sup>

One might be shocked to know that these disparaging conducts of the counsels have not only been confined to abuses and petty slurs but have also extended to incidents where an advocate along with shouting slogans engaged in flinging his shoe towards the judge for not giving a supportive judgment.<sup>27</sup>

It brings forward a plethora of questions regarding the severity of punishments for such misconduct and the effect of them on the offenders. Is our system so ineffective in setting strict examples of grave penalties? Are the laws governing the ethical conduct of a lawyer so weak that they are taken advantage of time and again? Are the right hand of the legal fraternity that is, them advocates so incompetent and ill educated? Is the education system not being able to channel the audacity of the lawyers in the right direction?

It is to be bought to notice here that ethical misconduct is not only confined to illicit actions by the advocates but have been carried out by judges as well. Recalling the recent case of Justice CS Karnan helps us to understand that ethical misconduct and contempt of court are terms with wide ambit attracting severe consequences regardless of the position & therefore any apologies made by the offender renders useless once such an unbearable folly has been committed. Justice Karnan indulged in foul mouthing with his colleagues at Madras High Court and also engaged in invectives when he was given a

<sup>23</sup>*Supra at 2.*

<sup>24</sup>*Supra at 2.*

<sup>25</sup>*Re Ajay Kumar Adv v. Unknown, 7 SCC 248 1998.*

<sup>26</sup>*Radha Lal v. Rajasthan High Court, 2003 3 SCC 427.*

<sup>27</sup>*Re Nandlal Balwani, AIR 1999 SC 1300.*



transfer order and was also repeatedly displaying his dissatisfaction in the roster. He raised serious allegations against several judges in a letter to the prime minister without backing them by concrete evidences. The consequence of all his actions making a mockery of rule of law was not forgiven even by an apology and led him to serve jail time.

One might think that malversation is only an act of immature, however factual incidences invalidates this thought. The episode of Supreme Court's Justice Markandey Katju poses an example where he narrowly escaped only due to his timely apology for slugging and condemning a courts verdict. However, there have been instances where similar delinquent acts have been totally negated by the justice system. The book "Big Egos Small Men", written by our famous former law minister, Mr. Ram Jethmalani puts out unfounded allegations and deflating remarks on the legal system and on certain fellow lawyers. While it sparked huge controversies, the senior advocate was not charged for contempt of court however, it did end in derailing his reputation to some extent in his confrere community.

If we dig deeper to reach the core of it all to understand why such misconducts are increasing, it is revealed that from the very beginning of legal education, the beau monde law school graduates are pulled towards the extraneous goals such as earning bigger bills & gaining the elite status and are eventually being pushed away from the deep rooted motivations such as care & compassion. Resultantly, they have started developing the

mindset that professionalism cannot go hand in hand with the emotional aspect, since they are not taught practicality of balancing the intrinsic and extrinsic values. Their chain of thoughts and actions should be nurtured in a way that they understand that it is one's virtues, morally guided perceptions & practical goals which not only shape the quality of life but also welcomes professional success.<sup>28</sup>

#### ESSENCE & NECESSITY OF ETHICS IN LEGAL PROFESSION

"If we look at the statistics from 2013, it is revealed that atleast ninety percent of advocates practicing at Supreme Court flunked the category of 'professional ethics and advocacy' in the Advocates on Record exam which focused on critical aspects revolving around integration of lawyer-clientele duties with court's administrators, the appropriate conduct of a lawyer in his day to day life versus in the court & rightful conduct in cases which require emotional rationale combined with the legal aspect etc."<sup>29</sup>

Shockingly, the results of this examination were even challenged by an advocate who could not pass the exam, on the grounds that the question were based on general ethics and code of conduct in the court since there is no correlation between the working of the Supreme Court and the moral values and that the morality aspect is immaterial to the legal

<sup>28</sup>Lawrence S.Kreegar, *The Inseparability of professionalism and personal satisfaction: Perspectives on Values, Integrity & Happiness*, 11 Clinical L.Rev.425, (2005).

<sup>29</sup>Ipsita Shengupta, *Nurturing Caring Lawyers: Rethinking professional ethics & responsibility*, Vol 5, Journal of Indian Law Society, 15-16(2014).



phenomenon.<sup>30</sup> The height of ignorance to the importance of ethical values & its effect in the legal profession was astonishing here and further makes the existence of certain rules regarding ethicality in the profession all the more important for awareness sake.

“The Interaction of Law & Religion,<sup>31</sup> written by Professor Harold J. Berman sheds light on the ‘*integrity crises*’ of western culture, and states that mostly the lawyers’ society ‘*is by all accounts confronting the probability of a nervous breakdown*’. He further contemplates that the word ‘breakdown’ is used because there is apparent loss of faith in ‘*law*’ & ‘*religion*’ & the extremeness of difference which has been bought between the two concepts. He is of the opinion that ‘*law*’ & ‘*religion*’ are incomplete without each other & cannot exist alone. Therefore since religion brings with itself rituals, accords & responsibilities hence it forms the basis for law to exist.”<sup>32</sup>

“If we look at recent studies and researches, it is surprising to know that even when majority lawyers are rule abiding still the community eyes them with much scepticism which has led to degradation of the hard earned respect which the profession originally had. On an average, about 33 percent people of America agree that it is very likely for lawyers to engage in unfair & prejudiced means regardless of the code of conduct if there are beneficial prospects for them.”<sup>33</sup>

<sup>30</sup>Utkarsh Anand, 93% lawyers failed exam on Ethics, The Indian Express, April 10,2013 at <https://indianexpress.com/news/lawyers-fail-paper/984764>.

<sup>31</sup>Harold J Burman, *The Interaction of law & religion*, Vol 3 Issue 1 Abington Press,117-121(1982).

<sup>32</sup>*Supra* at 2

These surveyed people also admitted that they would always prefer a protocol obeying & honest barrister over lawyers who succeed by resorting to shortcuts & devious ways.<sup>34</sup>

In another survey by Forbes conducted in 2018, to find out America’s most trusted and least trusted professions, it turned out that, out of the 15 professions, law stood at the 12<sup>th</sup> number in the decreasing order of most trusted professions with 28% having low to very low trust and only 19% having high to very high trust in the profession judging on the basis of honesty and ethical standards practiced in the profession.<sup>35</sup>

Of course when the bar, bench & advocates are questioned about the origin of such immoral behaviour in their fellow companions the conversation usually ends with the blame game. Neither the bar nor the academicians want to accept that the onus of disseminating ethical morals lies on the whole community collectively at different stages right from the moment a person is a law student till he or she becomes a lawyer & even beyond that. The process of dispersing and inculcating values of rightfulness in their practices is never ending in nature.

The legal actors which include the students, the advocates & the judges should not rely only on some written set of rules but should inherit a self discipline to help them in the long run. Ethics should be included in the

<sup>33</sup>Barbabra A Curran and Francees Speldieng, *The Legal Needs of the Public*, American Bar Association(1975).

<sup>34</sup>*Supra*.

<sup>35</sup>Niell McCarthy, *America’s most & least trusted Profession*, Forbes, Jan 11,2019 at <https://www.forbes.com/sites/2018/Americas-most-trusted-infographic/>.



work of a these actors without any knife hanging to their heads all the time. The fear of punishments and penalties should not be the guiding factor in depicting faith and honest gestures towards the client.

All professions and trades include certain implied rules which have been in practice since long similarly the legal fraternity should learn this art of generosity and commitment towards their client as an unwritten code of conduct just as in other professions like learning to bake without a baker, studying without a tutor or doing yoga without an instructor.

The profession of law has been one viewed with high esteem and the legal professionals should understand the honour & reverence which it has earned throughout history. The advocates should be well aware that attempting to win cases by short cuts is an attractive evil which sooner or later ends up blowing in the face of the practitioner. The lawyers should realise that even the most frivolous mistake at the end of the lawyer might result in corrupting the image of his client and he should be rational & empathetic about his conduct.

If we draw a comparison between the admiration and recognition which the legal professionals had 15 years earlier to the one they have now, the answer wouldn't come as a shock to many. To be a lawyer was one of the most outstanding and phenomenal tag and their black robes commanded an extraordinary imaginary salute by the general public. However, it is only because of the

unethical and inhumane actions of certain bad eggs in the community which has led to diminishing the shine of the profession. This negative image should be construed as a motivational factor for the current lawyers to undertake the task of giving a positive breather to the profession by working maturely and sincerely with full commitment towards not only their clients but also with general people.<sup>36</sup>

It is fitting to reproduce a paragraph from the case of Bar Council of Maharashtra v. M.V.Dabolkar etc, which iterates the ethical aspect of the profession and the expectations demanded of a lawyer:

*"52. The Bar is not a private guild, like that of 'barbers, butchers and candlestick-makers' but, by bold contrast, it is a public institution committed to public justice and pro bono public service. The grant of a monopoly licence to practice law is based on three assumptions: (1) There is a socially useful function for the lawyer to perform, (2) The lawyer is a professional person who will perform that function, and (3) His performance as a professional person is regulated by himself not more formally, by the profession as a whole."*<sup>37</sup>

#### ANALYSING CRITICALLY THE ROLE OF LAW SCHOOLS

It is revealed that it is due to the current structure of lawful training which is creating a divorce of the pedagogical nature of an understudy far apart from his passionate aspect, if one is to investigate the core reason

<sup>36</sup>Justice S.Vaidyanaathan, *Ethics & Moral Values in the Legal Profession world*, May 16, 2020 at <https://www.livelaw/ethics-&-moral-values-in-legal-world-72638>.

<sup>37</sup>Bar Council of Maharashtra v. M.V.Dabolker etc.,(1975) 2 SCC 702.



of why there is absence of alertness regarding this issue. It is the accentuation on the sense of internal intuitions in graduate universities which profoundly sabotages the requirement for imparting a feeling of moral obligation in the understudies.

“It has been suggested by Carol Gilligan that there is dire need to normalize & massly practice the virtues of morals and the ethics hypothesis by people in both their exclusive & professional life. In her theory, Gilligan dissected the ethical dynamic procedures of young ladies and young ladies stood up to with theoretical, hypothetical & genuine problems.”<sup>38</sup> “Another author, Lawrence Kohlberg did not rely on Carol’s results since they were based on female responses and according to him women are deficient of moral organization & ethical development and hence his theory was based on experiments carried on men.”<sup>39</sup>

“Muller however, summed up both Gilligan’s & Kohlberg’s theories by concluding that the men analyse the reality of any situation & then apply ethical rules & on the other hand females apply the care & ethical obligation by analysing their personal connection to the issue.”<sup>40</sup>

There are many available theories; however the main trouble is identified as detachment & lack of interdependence with which people associate ethics & law. It is shocking to know that the lawyers are basically instructed to

keep their personal feelings aside & then work on a case. They are tutored that success can only be achieved if emotional feelings are separated with the ethical values which the client commands.<sup>41</sup>

We should really focus on propagating that care is a feeling which should not be coerced but must be an outcome of voluntary & internal senses. Having said that, what needs to be discouraged is a legal culture that propagates selfish, benefit amplifying conduct & a legal system & workplace which maximises sensitivity towards others should be encouraged.<sup>42</sup>

Usually students who have just entered law universities have zero to little information about the pertinent role of ethics in legal field. They are just aware about the theoretical concept of honesty & morals and how everyone should follow the right path. However, what needs to be taught to them is that in practical situations when they are presented with lucrative rewards for favouring a particular party, or if they are induced with promotion promises by economically robbing their clients or when they are bestowed with retirement benefit plans for holding any biased judgement which they wouldn’t be entitled to otherwise, they should turn down such evil offers and follow the path which is legally & morally correct.<sup>43</sup>

<sup>38</sup>Carul Gillian, *In the different voice: Psychological Theory & Women’s development*,(1982)

<sup>39</sup>Lawrence Kohlburg, Volume 1: *The Philosophy of moral development: Moral stages & the Idea of Justice, Moral Development Essay*,(1982).

<sup>40</sup>Narveea Bohlor-Mullur, *Developing the jurisprudence of Gender Equality in South Africa*, Doctoral Thesis, Faculty of law, University of Pretoria,

South Africa 48 (Nov. 2005), at <https://upted.up.ac/thesis/available/etd84933020/unrestricted.pdf/>.

<sup>41</sup>*Supra* at 20.

<sup>42</sup>Carree Menkil Meadow, *Is Altruism Possible in the Lawyering segment?*, Geor State U.L.Rev 385.387(1991).

<sup>43</sup>*Supra* at 2.



This is what is wrong with our education system that universities rarely focus on designing courses or subjects that pivot directly at inculcating virtues & normative values in graduates. Even when these topics are introduced as 1 credit courses, the teachers are rarely interested in imparting knowledge about them and rather view them as an equivalent to burden. They believe that other subjects are more valuable & promote the same belief that since there are other substantial subjects available, hence these value inculcating subjects require no time & consequently the students take them very lightly.<sup>44</sup>

One of the Supreme Court's retired judges has commented on the topic and stated that "*law schools must consciously undertake the one task that they have universally rejected: instilling normative values in their student.*"<sup>45</sup> He observes that, "*the impacts of chapel and family, which once in the past built up these values, have radically lessened in significance in this nation, and no other power has emerged to take their place.*"<sup>46</sup>

The most daunting reality that our legal system exposed during the pandemic of coronavirus is the backwardness in the legal system. Due to the outbreak and the social distancing guidelines the physical courts had been moved to virtual spaces where proceedings were being carried on by way of Zoom & Microsoft meetings. One of the major concerns which was shared by the majority of litigation lawyers was the lack of practical knowledge about the usage of technology to carry out their work. The lack of access to proper internet facilities

compiled with no information about the usage of online methods led to financial loss to a considerable number of lawyers.

It definitely is a dilemma that in a country which has one of the largest legal systems of the world, the solicitors still suffers from intel backwardness. It is melancholic that Indians could never before this pandemic even imagine the substitution of physical courts with virtual courts and hence have been long deprived of the benefits of it. The education system and the justice system still hasn't been able to establish that how we as an economy can boost if we switch to online methods. Not only the complication of backlog of cases be solved rapidly but also the reliance on online modes will lead to conservation of paper, time and resources. However, no matter the proceedings be held in virtual or physical space, the duties still have to be carried on from the angle of client's preferences. It is only once we include the rampant use of online platforms in our legal system will the challenges of ethics in legal system be properly addressed.

It is observed that from the very onset of legal education, when the students are taught the technique of constructive arguments for defending their clients, the focus is diverted towards the sole purpose of submissions being only to prove the opponent as wrong. This turns out to be whole level of harmful for the students as it completely shreds & clouds the purpose of defending a client which is to make the correct side procure justice and not to go to any means to prove themselves right. Further it makes the teachings futile as it ends in not creating a

<sup>44</sup>Supra at 2.

<sup>45</sup>Tom Clark, *Teaching professional ethics*, Vol 12, San Diego Law Review12, 249 & 250 (1975).

<sup>46</sup>Supra.



holistic vision of the students but rather a very narrow one where the opportunity of infusing creativity faces a threat.

The sad truth is that the legal profession is gradually turning into a business where students and lawyers are only concerned about improving their resumes & at getting higher perks. Though the law schools acknowledge the increasing competition, still there way to cope up remains confined to encouraging students to participate in moot court & quiz competitions. It is the need of the hour that they start indulging students in such mandatory courses & discussions which result in infusing ethical & moral values in their day to day working style.<sup>47</sup>

#### RECOMMENDATIONS:

It is advised that the information about duties of members of the bar & bench & other related ethical lessons be incorporated in the syllabus of the students in every year whether it is a five year law course or the three year. Teachers should rely on recent judgements, articles & books by judges on this topic to enhance their knowledge so that when they understand the significance of the topic only then they can convey the same to their fellow students. Apart from separate moral subjects, efforts should be made to make ethical laws as an inclusive subject along with major courses. For example, in taxation law class the interest of students should be drawn towards topics like what are the odds of a client getting audited or how important it is to make accurate disclosures or does the lawyer have any obligations to report the shortcomings to the authorities or that a

mistake claimed by a client should only be an oversight etc. Making the lessons of ethics a part of the principal subject makes the subject both interesting and informative.<sup>48</sup>

In Moot Court trials those to be graduates should be familiarised with issues which preps them to deal with hot headed & impatient judges, so that they know how to tactfully handle them with patience and respect. These issues might seem insignificant but they help the students to prepare the correct line of thoughts & concoct them for unexpected circumstances.

Such courses & symposiums alleviate the students & make intelligent & rational judgements.<sup>49</sup>

We also need to make the justice system competent so that adapting to any unprecedented situation does not appear to be a challenging task. Despite the courts being partially functional by online proceedings and by conducting hearing of the mainstream urgent cases, the corona virus pandemic does bring out the rigid nature of our system. Agreed, that there are legislations like the Epidemic Diseases Act, 1897 and the Disaster Management Act, 2005 which help the government to cope up with these unpredicted situations, but the need of the hour reveals that we still require a formal draft to regulate the conduct of the legal system for future unforeseen situations, because even when all the businesses, professions and trades are on a halt due to the lockdown, the judiciary system has to operate relentlessly to combat all differences, to fuel the torch of hope and to nurture an unending atmosphere of justice .

<sup>47</sup>*Supra* at 44.

<sup>48</sup>*Supra* at 2.

<sup>49</sup>American Bar Assc., *Legal Education & Admissions to the bar, Teaching & Learning professionalism: Report of the Professionalism Committee*,(1996).



The difference between an effective and ineffective justice system is reflected in how the nation's privileged & underprivileged population's constitutional rights are dealt. However it has been observed that access to quality legal aid is a struggle for the middle class & the indigent population in our country. They have to surpass huge economic hurdles to be able to retrieve the best & honest legal opinions<sup>50</sup>. This lack of concern towards the poor looking for equity & justice is firmly connected to the sort of preparing that is bestowed in graduate schools and should be showered with more light<sup>51</sup>. Similarly another dilemma deals with the rusted psychology prevailing in the society where lawyers even who want to defend the deprived are usually not treated with the due respect & status by their fellow community members and hence they are seen as less accomplished.<sup>52</sup>

The lawyers today should not only be acquainted with the national laws to bestow their ethical duties but also should be well instructed about the international treaties and rules about the same, only then can we expect a transformed attitude to stem in their behaviour. Certain efficacious international resources which should be emphasized upon by the bar and the universities include the

'UN Basic Principles on the Role of Lawyers',<sup>53</sup> 'IBA International Principles on Conduct for the Legal Profession',<sup>54</sup> 'Solicitors Regulation Authority code of conduct for Solicitors, RELs and RFLs (StaRs) (replaced the earlier SRA Handbook 2011),<sup>55</sup> 'New York Lawyer's Code of Professional Responsibility'<sup>56</sup> & 'Law Society of Kenya's Digest of Professional Conduct and Etiquette'.<sup>57</sup>

These resources are some of the best drafted guidelines on promoting & conserving the ethics and values in the legal field. The mandatory study of these will not only help in the righteous supervision but also help to overcome the short sightedness in the ethical aspect of the national laws and further help in betterment of the mismanaged situation.

We need to incorporate changes in the legal training & internships also since they play a prominent role in a lawyer's career. Since most of the focus is directed towards winning the appreciation of their superiors in an internship, the trainee students do not put in any extra work to educate themselves regarding the rules of ethics or values which matter to their clients.<sup>58</sup> These are the aspects of the legal fraternity which still need to be deliberated upon so that the connotations are addressed properly and this profession can further the purpose for which it was built.

<sup>50</sup>Kaleswarum Raj, *Fair Advocacy as a Right*, The Hindu, Mar 27,2014 at <https://www.thehindu.com/fair-led-advocacy-as-a-right/article237389.ece/>.

<sup>51</sup>Michelle S.Jacob, *Full Legal Representation for the Poor Sector: The Clashes between lawyer values & client worthiness*,44 Howard L.J.257,258(2001).

<sup>52</sup>*Supra* at 2.

<sup>53</sup>*Supra* at 28.

<sup>54</sup>International Bar Association, *International Principles on Conduct for the Legal Profession*, May 30,2012 at <https://www.ibnet.org/Article/detail1u289390/>.

<sup>55</sup>Solicitors regulation Authority, SRA Standards & Regulations('StaRs'),Nov 25,2019 at <https://sra.org.uk/solicitors/standards-regulations/>.

<sup>56</sup>New York Lawyer's Code Of professional responsibility, April 1,2009 at [https://www.nycourts.gov/rules/NY\\_Rules-Conduct-1200.pdf/](https://www.nycourts.gov/rules/NY_Rules-Conduct-1200.pdf/).

<sup>57</sup>Law society of Kenya, *Digest of Professional conduct & etiquette*, Jan 1,2000 at <https://www.lsk.or.ke/article/>.

<sup>58</sup>*Supra* at 28.



The upcoming trend of ‘post retirement benefits’ to the judges also needs to be addressed as soon as possible. Many a times, powerful politicians, judges, social activists have spoken on this cause and how the option of availability of positions in the parliament or other rankings in the ruling party to the judges, is detrimental to justice system since it appears to be nothing less than a quid-pro-quo condition.<sup>59</sup> The Roger Mathews case is one such example, as previously mentioned, where the court openly addresses the trouble of the shrinking faith of common public in the legal system due to the hike in post retirement appointments of judges.<sup>60</sup>

Arun Jaitely the former union minister’s, viewpoint which he asserted at many conferences and parliament sessions that “*Pre-Retirement judgements are influenced by a desire for a post-retirement job*”, stands as a correct articulation of the issue.<sup>61</sup> While there exist other political influencers who completely disagree that this is a problem, one can easily judge the situation from the increasing number of biased judgements, and put a halt to this baseless debate for once and all. To stop this is not entirely impossible but the only requirement demands of honest intentions clubbed with formulating other regulated opportunities for the judges so that they are not lured by politically motivated incentives. While suggestions range from, extending the cooling off period to banning post retirement jobs, the transformation will only start by amending our existing laws for an independent and reliable judiciary.

From the above discussions we can infer that the legal fraternity needs to revamp their mentality & reorient their actions whenever faced with situations requiring application of ethical morals. It is the duty of a practicing lawyer that he should represent a client without any ulterior motive & should call out professionals who do so. The lawyers are named as the best liars since they interpret the laws in their favour but they should not resort to taking advantage of the loopholes for their personal benefit & the interest of his client should be given predominance over his personal gain.

“If from the very beginning of their legal career, students and young lawyers can meet these challenges, with the appropriate helping hand by the accomplished of the profession, it is then only that the tarnished image of the profession can be transformed into a shining surface.”<sup>62</sup>

#### CONCLUSION:

It definitely seems that over the decade there has been radical alteration in the structures and practices of legal service providers in India however, we still have a long way to go since the problem hasn’t been eradicated from its roots and for all we know the respect given to this profession has only diminished. We need to march forward by acknowledging the fact and feeling proud about it that only in this profession people refer to the legal actors as the mighty ‘learned’ ones .We need to bring in stricter laws regarding people breaking the ethical rules & the legal

<sup>59</sup>Abhishek G. Dastidar, *CJI told PM of ways to Insulate Judges from lure of Post-Retirement Jobs*, The Indian Express, Oct 25,2015 at <https://indianexpress.com/article/india-news/cjiteelspm/>.

<sup>60</sup>*Supra* at 12.

<sup>61</sup>Janaki Fernanades, *Post retirement jobs influence judge’s verdicts:Arun Jaitley*, The NDTV, Oct 1,2012 at <https://www.ndtv.com/india-news/judgesareinfluenced/298493/>.

<sup>62</sup>*Supra* at 2.



fraternity should make all endeavours to add new dimensions to illuminating and practicing professional responsibility in context of social & moral obligations, motivation moral reasoning, care and connection.<sup>63</sup>

As Albert Einstein rightly said, “Be a man of values, not a man of success”. It all starts with giving weightage to the basic etiquettes from your early years and later incorporating them in your profession. Legal professionals should not run after prosperity & shortcuts to achieve it, but should concentrate on the right way to fulfil their professional duties & automatically success would be attracted towards them. Hence it is the concepts of self accountability and societal obligation, the two ‘S’ words which should be remembered by, if anyone wants to achieve great reputation & heights in this career.<sup>64</sup>

When it comes to unforeseen situations, there are no two thoughts regarding the fact that the legal system is definitely going to face some colossal changes which were long overdue. We need to have open debates & discussions about the conduct of lawyers during a pandemic and that whether the health and personal needs of a lawyer can trump the practice of law. In the Covid-19 situation where even doctors are becoming a prey to this disease and where nobody knows how to bring an end to it, certain standards need to be laid down in the legal profession addressing some hot issues relating to the liability & safety of the lawyer and continuity of the case, if he or she suddenly falls ill while working with the client or the other way around. Further, lectures should be

arranged for the lawyers to part knowledge to them regarding being unbiased and impartial even in the worst case scenarios and to effectuate their duties by finding ways to protect themselves by protecting their clientele.

However, we should keep in mind that the placement of the burden of care should not promote disproportionate obligations and the thin line between care and charity in a country where paternalism trumps empathy should be taken utmost care of. In this existing legal arena of unsurety where the rules & laws are always evolving, the complexities revolving around legal relativism should also be addressed. Henceforth, it is only when there is efficient transgression of care, discipline & ethical theories by the universities, advocates & judges that the legal profession will be able to work as an example setter for the general public and other professions.

Hence to prevent this legal profession from converting into a money making venture, it is incumbent that the educators & the adjudicators all satisfy their roles with sense of authoritativeness & consciousness. From the above paragraphs it is well understood that the advocate has certain non negotiable duties since the day he enters the field which he has to fulfil with truthfulness, candour & sincerity. All these steps will help to build a cooperative, reliable legal environment & work as a magnet in attracting the society’s lost faith back into the justice system.<sup>65</sup>

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<sup>63</sup>Barbara Bezdek, *Reconstructing a Pedagogy of responsibility*, 43 Hastings L.J.1159, 1160(1991-92).

<sup>64</sup>*Supra at 2.*

<sup>65</sup>*Supra at 2.*