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Legal Professional Ethics as a Principal Subject in Law School Curriculum

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ABSTRACT

Legal ethics even though, part of the core curriculum of almost every Indian law school, is treated as a second-class subject. Even in the college I completed my law from pushed Professional Ethics into the last semester of both the three-year LLB and the five-year integrated course, making it impossible for the students to analyze other law courses in light of the legal ethics and values learnt in this course. Such sidelining of the subject has resulted in the legal profession becoming more of a lucrative job option than a field that can guide people into changing the society for good. This secondary treatment of the subject has taken away the sense of responsibility the new graduates should feel towards the society at large. In this article I will discuss that law schools should put Legal Ethics at the heart of their curriculum so that the students are able to make ethically informed career choices and mitigate the further decaying of our legal system.

Today “virtuous lawyer” or an “ethical lawyer” has become an oxymoron, its almost impossible for a lay man to fathom the idea of lawyers and ethical values coexisting. The legal profession is seen as an unethical one especially when it comes to practicing lawyers. Considering the current political climate and the blatant disregard of law on the part of our political leaders, the law schools should be committed towards producing ethical lawyers and therefore upholding law. This can be done by making significant changes to the law school curriculum and providing students with a lens to see ethical value in their work² apart from the monetary one. Professional Legal Ethics should be treated as an indispensable subject just like any other core subject. It should be taught in the first term of the three-year LLB and at least in the second term of the five-year integrated course, so that it is established both for the faculty and the students that legal ethics is a fundamental course, it also gives the students an opportunity to make a substantial connection and correlation between the study of law and

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² Russel G. Pearce, *Legal Ethics Must Be the Heart of the Law School Curriculum Symposium: Recommitting to Teaching Legal Ethics- Shaping Our Teaching in a Changing World*, 26 J. of the Legal Prof. 159, 159-160 (2002).

study of ethics.

The course instructors should not teach ethics to the students in an attempt for them to learn how the law functions, instead the aim should be for the students to get familiar with the law in context of its history and purpose. The students should be motivated to question their role as lawyers in the society. In my opinion legal ethics is an integral part of the law curriculum because the law students studying this subject go on to become advocates, jurists, legislators, policy makers and go on to hold other important offices in the bureaucracy and by giving the required importance to legal ethics as a subject in law school we can teach our students to not only judge their own actions in the light of particulars but also evaluate the efficacy of the practice in relation to the society.³

Some scholars have also suggested that apart from the one term ethics course that almost all Indian law schools have, we should also have an advanced one in later years to emphasize on the importance of ethics and also to facilitate the integration of their ethical knowledge with the practical knowledge gained in other courses⁴. I remember before my batch entered the fifth year there was a poll conducted by the student representatives and the administration, asking us whether we wanted Professional Ethics as a core subject or as an elective as there were students who were not interested in studying the subject at all. Some students were of the opinion that Professional Ethics as a subject was of no use to them and that they would rather take up another subject of their choice. This is how much ethics as a subject gets sidelined in later years of law school because by then the majority of the student body has made up its mind to become rich corporate lawyers for whom legal ethics do not serve much purpose. This is why the entire curriculum should be modified in such a way that the ethics curriculum becomes pervasive. This approach will teach the students to identify and analyze ethical issues throughout other courses even where ethics is not the focal issue⁵.

Lorie M. Graham in her paper 'Aristotle's Ethics and the Virtuous Lawyer' emphasizes on the importance of ethics in legal professions and therefore insists that we design a teaching system that not only helps students to critically reflect on ethical dilemmas but also helps them learn from practical experiences as if they are two sides of the same coin- neither exists without the other⁶. Clinical courses, although with some modifications, according to her help achieve the goal of imparting such skills to the students. One of the modifications is

³ Lorie M. Graham, *Aristotle's Ethics and the Virtuous Lawyer*, 20 J. Legal Prof. 5, 10 (1995)

⁴ Russel G. Pearce, *Teaching Ethics Seriously: Legal Ethics as the Most Important Subject in Law School*, 29 Loyola University Chicago Law J. 719, 724-736 (1998)

⁵ Id. at 737

⁶ Lorie M. Graham, *Aristotle's Ethics and the Virtuous Lawyer*, 20 J. Legal Prof. 5, 11-13 (1995)

encouraging reflection of actions and evaluating options keeping in mind the universal and the particular rather than mindlessly forming habits after the instructors. Secondly, increased client representation to remove the idea of a vacuum from the reality helps the students to gain some useful experience, knowing well that they would affect lives of people. Such an approach should also be adopted in core courses, rather than relying on hypotheticals because hypotheticals are models which are barren of context beyond a point and do not put the student in the spot of responsibility. In addition, there is need to start this training early on in the course so that the student learns more and more from the experience⁷. Terming law school to be the beginning of a life-long course on ethical education, she leaves us convinced of the importance of making good use of law school to serve as a foundation for this course. Even if clinical education does not seem fool-proof, when implemented with the suggestions by Graham, will leave the student with a rich experience and idea of what is to be expected in the future.

Some legal academicians believe that ethics cannot be taught and therefore should be excluded from the core curriculum entirely. Such academicians might be resistant to the idea of expanding the scope of ethics in legal curriculum. Some are of the view that the conventional Socratic method does more than enough in building moral character and others stand true to the business-profession distinction. The remaining believe that the law students are young adults who have developed their own sense of morality and there is nothing that can change that.⁸ The history of the legal profession in India is filled with the accounts of lawyers like CR Das, Sardar Patel, Moti Lal Nehru only to name a few, who were at the forefront of the Indian Independence struggle and did not hesitate in risking their careers and fought for what they *believed* was right then they went onto making India and its constitution what it is today by keeping their personal biases aside and maintaining the sanctity of the legal profession. At the law school level, students are taught that the prestige of a lawyer has a lot to do with the type of clients they have. Therefore, the students automatically learn to be on a lookout for wealthy clients and are forced to believe that working for poor clients will land them in lower ranks. We need to bring back the integrity of our profession. We need to remember that morality and character are at the core of our democracy.

As much as I believe that Law Schools have a huge role to play in manufacturing ethical lawyers, I also believe that it is not the only institution responsible for maintaining the

⁷ Id.

⁸ Russel G. Pearce, *Legal Ethics Must Be the Heart of the Law School Curriculum Symposium: Recommitting to Teaching Legal Ethics- Shaping Our Teaching in a Changing World*, 26 J. of the Legal Prof. 159, 161-162 (2002)

sanctity of the profession, Bar as well as Bench have some role to play.⁹ For lawyers to properly understand the moral connotations and obligations their role possesses, a more nuanced and serious understanding of the lawyers' etiquette is required, something that involves an interaction with the social context and their private morality.¹⁰ For this the students truly need to understand the value of their work and what difference passionate lawyers can make in the society. The quality of legal aid available to the poor sections of society is unfortunate. Although the aim of the legal system is 'justice for all' irrespective of the socio-economic differences, the overly priced quality legal representation is a hurdle in realizing this goal for the have-nots as compared to the haves in the legal system. The constitutional obligation that binds states to provide free legal aid has resulted in formation of legal service authorities, legal aid clinics; but systemic implementation failure and bureaucracy has kept help from reaching those in dire need. A World Bank study has also identified this as one of the causes of judicial ideological tilt in favor of the wealthy and middle class.¹¹ Even if lawyers these days have started taking up pro bono work, its more or less to add to their public profile and status elevation and not serve the cause in its true spirit. Even the Advocates Act doesn't impose on the advocates any ethical obligations in this regard or even with regards to imposing unreasonably high fees for that matter. Lower rate of disciplinary actions against lawyer, weak sanctions and other institutional problems in BCI disciplinary hearings in cases of professional misconduct further encourage lawyers' blatant disregard for existing rules and standards of professional conduct.¹² Ipshita Sengupta in her essay suggests reforming the contemporary legal pedagogy into one that prioritizes social context, care, connection, moral reasoning, intuition and motivation. She goes on to say that if the law students are exposed to the ethical dilemmas and constraints at an earlier stage it will help students in making ethically informed career choices while understanding the thin line between care and charity.

As Law School is a place where students first see the correlation between law and ethics, it is bound to leave some influence on them. As they spend three to five years in law school it has the power to restructure students' morality and help them imbibe professional values, norms and attitudes.¹³ Law is a noble profession and it affects people's lives and continuously shapes

⁹ Warren E. Burger, *The Role of the Law School in the Teaching of Legal Ethics and Professional Responsibility*, 29 Clev. St. L. Rev. 377, 391-393 (1980)

¹⁰ Ipshita Sengupta, *Nurturing Caring Lawyers: Rethinking Professional Ethics and Responsibility in India*, 5 J. of Indian Law and Society 13, 19-23 (2014)

¹¹ *Id.* at 30

¹² Ipshita Sengupta, *Nurturing Caring Lawyers: Rethinking Professional Ethics and Responsibility in India*, 5 J. of Indian Law and Society 13, 27-28, 33-34 (2014)

¹³ Warren E. Burger, *The Role of the Law School in the Teaching of Legal Ethics and Professional*

and changes the society; keeping this in mind law schools should take their responsibility more seriously as they are manufacturing the leaders of tomorrow. Therefore, ethics should be taught early, in a setting where the student is exposed to both actual events and reflective discourse. Traditional core courses should adopt clinical approaches to teaching and if legal educators are successful in linking theory to practice, they will be successful in linking habit to reason. Goal of a legal ethics course is two-fold: To teach law students to be more reflective about their own experiences and the experiences of others and to provide them with the necessary tools to make the study of legal ethics a life-long endeavor. Legal educators must be committed to training students to be ethical lawyers through a process of experience and reflection which can only be done by law schools reforming their curriculums and placing legal ethics at its heart.
