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Ethics in Law and Life of Ancient India

There was a time in human evolution when law was part of ethics and religion, of morals and values, of philosophy and consciousness. Ancient civilizations, particularly that of India, conceived a legal order based on the compendious Sanskrit expression 'Dharma'. An inspiring and all-embracing concept of Nature evolved principles of Natural Law which all right-thinking human beings everywhere could advisedly follow for the welfare of themselves as well as of others. One aspect of Nature, common to all philosophies and basic to human life, is its view of 'Man' as a creature endowed with the capacity of reasoning as well as choosing between alternative courses of action, rejecting those that by some standard he regards as bad and accepting those that by the same standard he accepts as good. This is often explained as a sense of values or right reason which is a manifestation of the divine side of human nature. It is this sense of values again, that commands men to perform their duties and to restrain from doing wrong. Indeed it is through this standard that Natural Law philosophy enabled societies to evolve norms of positive conduct, arguing in the process that such norms which do not conform to right reason are unjust laws which deserve to be ignored even if they come as commands of political sovereigns. Thus in ancient philosophies, Law and Politics depended essentially on ethics for their nourishment and support.

Ethical ideals, according to Hindu religion, can be pursued at least at three different levels. On the objective level, it leads to the discovery of social laws which sustain order and progress. On the subjective level, it is a continuing search for God-realisation or self-fulfilment or enjoyment of bliss which is attained at the highest level of cosmic consciousness. It is a product of direct personal experience, a state of liberation or 'Moksha'. And on the transcendental level, ethics leads to a perception of the moral structure of life itself, in the overall scheme of Nature and Creation. Hinduism does not have a science of morals fashioned after the Greek or the European models. However, it does provide a scheme of moral life and the means to achieve it. Dharma, in essence, contains the basis of such a scheme.

The cosmic order which ancient Indian thinkers derived from their concept of Nature provided the foundation of ethical values, of law and life itself. They called that eternal order as Rta. In the beginning, Rta related to the physical universe and the natural phenomena. Then it led to the development of the concept of Natural Law. The societal application of this Natural Law philosophy is what we understand today as Ethics or the moral law. In fact, the idea of Rta as moral law assumed such a dominant influence in Vedic thought that it gave birth in later periods to the principles of Dharma. All epics of Hindu religion do contain infinite examples of the existence of good and evil invariably leading to the ultimate victory of good over evil. Even the moral character of Gods and Goddesses is depicted in relation to truth and virtue. This stream of ethical thought developed through the Vedic period characterised the endeavours of ancient thinkers to realize Rta in Nature.

The evolution of ethical notions in later periods as depicted in Smrithi (that which is remembered) literature, particularly the Dharma Sastras teach general principles of Dharma

or moral conduct. Of course, the sanctions supporting virtuous conduct or ethical behaviour were largely religious and not strictly judicial. Hindu ethics reflected in Hindu law is thus born out of the Vedic perspective of man in Nature, where harmony is inherent and righteous conduct is the natural result of human disposition. Unlike legal theories of the West, Hindu legal theory based on the concept of Dharma envisages ethical behaviour not out of experience of fear but out of preference and self-respect.

Law, Ethics and Society

The role of ethics and philosophy in explaining social problems and giving directions for social action is not adequately appreciated today. However, in making and interpreting law, no society can afford to ignore Ethics. After all, legal theory is only applied ethics. All issues, be they political or social, in the final analysis are ethical problems inasmuch as their resolution depends on a choice between alternate values. Whether the question involves freedom or equality, war or peace, treatment of women, children or Scheduled Castes and Tribes, it ultimately boils down to a choice of one of several alternative courses of action based on different set of values.

Modern law in many spheres has attempted to make fine distinctions between private and public morality, individual and collective responsibility as well as different standards of such responsibility. Certain set of values have been legislated as fundamental to the governance of the society and are even incorporated as part of the basic structure of the Constitution. Nevertheless, when it comes to individual behaviour, it comes down to the sense of fairness and righteousness inherent in the level of moral consciousness of the individual concerned. As such, no civilised society can now be structured without developing its moral fibre and consciousness either through law, religion, education or other instruments of social control.

The society evolved in Europe based on Christian ethics and the Natural Law Philosophy of that period had an ethical theory based on the greatest good of the greatest number of persons. Good was understood in this context as that which satisfies the impulses of human nature. The ethics of that period has been predominantly utilitarian and individualistic. It based all values relative to experience and self-realization. The nature of polity, government and legal system were justified or opposed in relation to that standard of ethics. A theory of basic human right and a set of principles founded on democracy and limited government emerged out of the ethical theory which, in turn, led to many political revolutions in Europe and elsewhere. The feudal structure of the society, the absolute hold of organised religion on man, and the practice of slavery got transformed in the process in many societies. The philosophy of public service and the emergence of the so-called noble professions have added new dimensions to the ethics of the times.

In jurisprudence, the concepts of law, rights justice, sovereignty etc. were subjected to fresh analysis and elucidation in the context of changing values and perceptions. The growth in education, communication and intellectual contacts at several levels provided fresh inputs to the interaction between law, ethics and society. The rationalist and secular movements and the advance of science and technology gave new meaning to concepts of right and wrong, good and bad. Law distinguished from Justice, Natural Law distinguished from positive law, and private morality distinguished from pubic morality, induced a type of dualism in ethical theory which resulted in more problems than it could solve. Whatever be the final outcome of this trend in different Societies, one thing is certain: that standards of ethics in individuals or institutions will no more be taken for granted. Law based on fear and punishment will have to assume a dominant role in regulating conduct in the future, perhaps in all societies.

Justice, Freedom and Responsibility

When one looks at standards of ethics in a given society, one necessarily has to examine a variety of values reflected in the Constitution, the laws and the system of administration of justice in that society. Freedom and equality are values cherished in the legal systems of most societies today. Nevertheless, the scope of human rights standards guaranteeing freedom and equality vary widely in different systems. Even when a certain norm in this regard is enacted in the laws, they often do not obtain in practical terms to many sections of people. Herein lies the importance of administration of justice.

Normally, law is supposed to incorporate Justice. Sometimes law is evaluated in terms of justice which is taken as a superior value. Conformity to law is supposed to be the mark of a just society while in others, disobedience to what are called unjust laws is accepted as justice. In any case, by making the distinction between legal and ethical justice, the problem is not solved since what is taken as 'superior justice' is open to different interpretations.

The problem can be illustrated by certain events of Indian legal and political history. When Gandhiji launched the civil disobedience movement against the British and called upon Indians to violate the infamous Salt law, he was appealing to a higher justice in the conscience of the people rather than anything prevailing in the British legal order. The ideas of democracy and republicanism introduced a number of new principles in legal and political theory challenging the old ones. And interestingly enough, the new ethical standards were invoked from the very same ethical foundations, namely the sense of fairness and the level of consciousness of the moral man. Justice is indeed the source and the result of ethics. Law is just an attempted approximation to the revealed standard of ethics.

It is interesting in this connection, to appreciate the concept of 'Freedom', another value of legal theory.

Is freedom self-control, absence of controls or limited control? In Hindu philosophy freedom essentially means the situation in which the baser instincts and impulses of man are brought under the control of the higher and nobler faculties which he possesses. The rationale underlying this theory is that freedom is related to consciousness and greater the level of consciousness the larger the scope of freedom. As one commentator puts it, "freedom emerges when the senses are made dependent on the mind. Freedom is enhanced when the mind is yoked with intelligence. Greatest freedom is achieved when intelligence is informed by the consciousness of the Self..... The highest level of consciousness leads to the maximisation of freedom". According to this line of reasoning "equality" can prevail in a society only if everyone in that society has an equal level of consciousness.

Freedom is understood differently in different societies. Related to equality of status and of opportunity, freedom has become a concept with varying content in practical politics. While the Indian Constitution has accepted equality as a fundamental right guaranteed to all citizens in Article 14, it has, in the very next Article, compromised that value in the name of social justice through adoption of what is called compensatory discrimination or reservation in favour of certain sections of people. While interpreting the provisions, the judiciary imported the principle of reasonable classification to justify what is apparently unethical and unjust application of legal norms. Similarly, in the interest of what is perceived at a given time as just or fair, ethical standards have been legislated re-drawing the parameters of certain values which were once considered as absolute and universal. This is where law becomes decisive in making a society 'moral' or 'right'. Some people therefore describe law as the minimum of morals. Ethics and Law may have the same object and the same centre (man), but have different circumferences.

The area of ethics is indeed wider than that of law.

A related ethical as well as legal concept which needs reference in this context is the notion of obligation or responsibility inherent in every individual. It is the relation of human self to events outside. It is a response of "individual will" to actions of others. What is the proper response in each situation is dictated by will, the sense of justice and the environment. When such patterns of responses are put together we get a set of obligations or responsibilities which we consider ethical, moral and just. Obligation in one creates right in the other. Thus one's rights are founded on the obligations of others. The balance between the two reflects the character of the ethical and legal order of a given society.

Responsibility for purposes of legal enforcement is divided into civil and criminal responsibility. The nature of ethical standards is nowhere better expressed than in its criminal laws and criminal justice system. The ethics of punishment tells us that no one ought to be subjected to it unless the person is responsible for the conduct prohibited. Thus it is for the violation of an obligation. Of course, an ethical question may be raised as to how the obligation itself is justified. That is another issue which also calls for examination. The two main theories advanced from time to time with varying degrees of emphasis are the retributive and the utilitarian. Both justify punishment for crime, though for different reasons. If punishment leads to deterrence or prevention it is justified under the utilitarian principle. Of course, the nature and quantum of punishment are still not free from ethical questions. For example, death penalty is considered wholly unethical in several legal systems and constitutionally prescribed. Similarly, corporeal punishments are abandoned in most legal systems. In any case, the utilitrian reasoning is a matter for empirical verification for its justification and if a given punishment is neither deterrent nor reformative, it may be discarded as unjustified or unethical. Retribution, on the other hand is justified as a method of correcting a wrong. On that theory, punishment is a deserved response of a righteous society to a wrong done against it.

If the administration of punishment is morally justified, it becomes imperative that only those who are proved responsible for the prohibited conduct alone are subjected to it. This takes us to a series of difficult ethical questions on how to prove a person responsible in order to deserve punishment. Criminal procedure and law of evidence have established standards to prove the innocence or guilt of persons accused of crime. Presumption of innocence, onus of proof, benefit of doubt to the accused, prohibition against self-incrimination, rule against double jeopardy, right to legal representation, system of appeals and revisions etc., are some of the accepted safeguards supposedly guaranteeing what is called "fair trial" in criminal proceedings. Even the substantive criminal law has built-in safeguards such as defenses to criminal prosecution, degrees of culpability based on intention, knowledge, rashness etc., to avoid underserved punishment. Of course, all legal systems have not uniformly accepted the value of these safeguards. Nor are the safeguards equally available to all persons involved in the criminal process. These are continuing challenges to the justice system of societies which claim superior moral standards. Indeed, criminal justice system is the true mirror of the degree of civilisation and the standard of ethics of a given society.

Ethical Values of the Indian Constitution

The Indian Constitution is not just a legal document. It is the Bible of an ethical civilization committed to human values and directed towards the building up of just social order in which—

Justice : Social Economic and Political;

Liberty of thought, expression, belief, faith and worship;

Equality of status and or opportunity; and

Fraternity assuring the dignity of the individual will be secured to all citizens of the Republic.

Throughout the Chapters on Fundamental Rights, Fundamental Duties and Directive Principles of State Policy, the Indian Constitution elucidates the quintessence of a socio-political order which can well be the pride of any nation. Realising the difficulty of guaranteeing equality in an unequal society, the Constitution authorises the State to adopt policies which may dismantle age-old institutions of inequality and promote equality wherever necessary through reverse discrimination strategies. Legal protections to guarantee freedom and personal liberty are mounted as fundamental rights with a view to avoid arbitrariness on the part of State authorities. Traffic in human beings and other forms of forced labour are prohibited. Untouchability is abolished and its practice in any form is made punishable. Employment of children in hazardous occupations is declared unconstitutional. Freedom to practise the religion of one's choice and uninterrupted maintenance of the cultural and educational rights of minorities are provided for.

A set of principles of State policy, declared fundamental for the governance of the country is also included as part of the Basic Law of the land. Among these principles are the duties of the State to secure equal justice and free legal aid, right to public assistance in cases of underserved want, provision for just and humane conditions of work, welfare of disadvantaged sections of the people, safeguarding of environment, forests and wild life and finally the promotion of international peace and security. The State is obliged to secure a social order in which justice, social, economic and political shall inform all the institutions of national life. The ethics of a civilized society are beautifully articulated by the Constitution makers and put as part of the agenda for State action.

The Constitution, by way of an afterthought, also adopted a set of Fundamental Duties on the part of citizens with a view to complete the vision of a just social order. It is the duty of every citizen to promote harmony and the spirit of common brotherhood amongst all the people and to renounce practices derogatory to the dignity of women. To have compassion for all living creatures and to protect the natural environment including forests, lakes, rivers and wild life is another fundamental duty of citizens under the Indian Constitution. By all standards, the basic Charter of Indian Society is a compendium of ethical principles designed for individual and State action in private and public life. Actions of the executive government and laws passed by the legislatures have to conform to the Constitutional standards outlined above and, if they do not, courts have been given the power to strike down such laws and orders as null and void. The Constitutional culture thus projects a value system which embodies the best of human endeavour and accomplishment.

The Legal Profession and Ethical Standards in Administration of Justice

It is generally said that 'law is what law does'. And what law does, is to a large extent structured and influenced by the activities of the legal profession including the Judges. In any discussion on law and ethics therefore, one has to examine closely the standard of ethics of the legal profession and role of lawyers in administration of Justice.

What makes Law, a Profession? Profession involves service of a high order which demands skill, specialisation and ethical conduct. In return, communities have authorised members of the profession to have monopoly of the service rendered, vested public trust on them, and endowed high status in them. The professions' ethical code is part formal and written. The informal is the unwritten code, which nonetheless carries the weight of formal prescriptions. It is characteristic of professional codes to be altruistic in sentiment and service-oriented in content and concerns. The ethical code of lawyers is full of such

commitments and obligations. It is instructive to make an assessment of the formal code of ethics the Indian legal profession has adopted to realize the high moral principles laid out by the Indian Constitution.

The Bar Council of India under powers vested in it under section 49(1)(*c*) of the Advocates Act, formulated certain rules relating to standards of professional conduct and etiquette. They relate to the duties of the advocate which he owes to the public, to the court, to his client, to his opposite Counsel and to colleagues in the profession. As in other professions, an Advocate who is established in the profession is expected to impart training to juniors without accepting fees therefor. Every lawyer, according to the code of ethics has also a duty to render free legal aid to those indigent persons in need of legal services. An advocate is also prohibited from taking other employment or engaging himself in other trade or business while practising law.

The Bar Councils are elected bodies and the code of ethics constitutes what they consider as essential to preserve the dignity and status and to fulfil the role as officers of court of the profession. The Advocates Act provides power to the Bar Councils to inquire into cases of misconduct of its members through Disciplinary Committees constituted by them. Section 42 of the Advocates Act provides that the disciplinary committee of a Bar Council shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure. The disciplinary committee at the end of hearing may dismiss a complaint, reprimand the advocate, suspend the advocate from practising law for a prescribed period, withdraw his license altogether or otherwise deal with him. Costs can also be awarded in such proceedings. An appeal lies from the disciplinary committee of the State Bar Council to the Bar Council of India, and, in selected cases, to the Supreme Court of India.

Interestingly, the nature of the rules and the way they are administered seem to suggest that the profession is concerned mainly to preserve its monopoly over legal services with little concern for the consumers of justice. The Indian legal profession is organized like a pyramid with concentration of work in few hands at the top who charge unlimited fees and show little respect to the rules concerning free training of juniors and free legal aid to the poor. According to the Report of the Gujarat Legal Aid Committee (1971), the so-called noble, learned profession of law allows "the market forces of demand and supply to operate with naked fury" bringing discredit to the system of administration of justice and denial of equal justice to majority of litigants.

A number of astonishingly unethical practices have been reported even at the highest levels of legal profession which, in business, can easily come within the definition of "unfair trade practices". These include what is called 'bench fixing' under which through a strange abuse of norms of ethics, 'inconvenient' judges are avoided or 'convenient' judges are adopted by the lawyers to hear one's petition. In some places it is reported that strong-arm methods including anonymous petitions against presiding officers are adopted to force their transfer from one station to another when they do not oblige an influential member of the Bar. The role of advocates in corrupting the courtroom bureaucracy has assumed menacing proportions in some places particularly at lower levels of the judiciary. Again, advocates have to share a large part of the responsibility for unpardonable delay in the adjudicative process. Adjournaments are obtained on flimsy grounds and judges who deny such a privilege to accommodate advocates are put to serious hardships, sometimes by the majority of members of the local Bar.

Another unethical practice that is becoming an increasingly widespread menace threatening the foundations of fair and objective justice is the relations of judges practising in the court in which the concerned judge is a member. The relevant rule in the Code of Ethics is being interpreted narrowly to men the 'Bench' in place of the 'Court' by

which all types of relatives of judges are allowed to build up roaring practice mainly on the basis of contact and relationship, vitiating the purity of administration of justice.

Time and again, there was public outcry against the escalating cost of justice through the court system. Despite this, many leaders of the profession have become notorious for charging unconscionable fees wholly disproportionate to the services rendered. Rules of court, prescribing the schedule of professional fees, are openly flouted with total impunity and a situation has reached wherein quality legal services are now beyond the reach of the majority of litigants in the country. It is indeed paradoxical that the legal system requires the services of professional lawyers for its effective use and at the same time keeps such services beyond the reach of the average man. Although normatively, the law is the same for all citizens, functionally it varies according to the socio-economic status of the persons involved. It is not that the person who needs the services most get them, but that the person who can buy the best available legal talents get maximum services. People living in the far-flung countryside and in locations geographically handicapped including tribal areas have a whole range of unmet legal needs for which the existing professional set-up has little relevance. The monopoly on legal practice granted to the profession has accentuated the problem and marginalised a large section of Indian people in terms of availability of legal services and access to justice. There is no scheme of legal aid systematically administered by the private Bar and, individual practitioners, if they render legal aid, it is at the instance of the court or as a matter of charity. Even the Rules of professional Ethics adopted by the Bar Council of India require the lawyers to give legal aid only subject to their economic circumstances.

The State-sponsored legal aid schemes have not yet made any substantial improvement in the condition of the poor in need of legal services. There are complaints that the schemes are not picking up at least partly because of the unhelpful attitude of some sections of the Bar. People have therefore enthusiastically welcomed the advent of "Lok Adalats" to settle disputes out of court even without the involvement of legal practitioners. Sensing the mood of the people and realising the inevitable drawbacks of the adjudicatory process in the formal court system, legislatures have increasingly tended to exclude appearance of lawyers by way of right. Today, there is a conscious and deliberate search for alternate dispute resolution mechanisms wherein the procedure can be less formal and the lawyer involvement can be minimal or avoidable. Without passing any judgement on this trend in the legislative and adjudicative processes, one can argue that professional re-organization could go a long way in better delivery of legal services in and outside the court system.

The case for restructuring the profession is canvassed by a section of the professionals themselves. It is common knowledge that work is unduly concentrated in a few hands at the top of the professional pyramid keeping a large bottom layer under-employed and under-paid. Concentration of work leads to demands for adjouurnments and delays in the judicial process. It further tends to the uneven distribution of professional competence resulting in the poor people receiving the least competent personnel in the organization. The mounting fees charged by the lawyers on the top is also a direct result of undue concentration of work maintained by a vicious system of cornering "Legal business" through methods legitimate and otherwise.

If equal justice under law is to become a more realistic goal there is need for a rational re-organization of the private Bar. In England and the United States the problem appears to have been tackled to a large extent by a massive programme of State-funded legal aid schemes. In socialist countries it is tackled by greater social control of the profession and by statutory creation of lawyers' collectives for defined regions with pre-determined service charges. In some other places legal insurance is being attempted.

Specialisation, division of work among different classes of practitioners, assignment of juniors with senior lawyers, and professional bodies themselves regulating work and fees distribution are steps in the same direction. Which of these strategies or combination of them will serve the conditions in India, is a matter which require serious and urgent consideration of the Bar Councils and the Government. Sinece access to legal services is a constitutionl requirement and a professional necessity, it is advisable to evolve strategies which will help re-organize the delivery system in a manner conducive to professional values and to consumer needs. It is clear that the present pattern of professional organization cannot continue for long without damaging the efficacy of the justice system itself.

Professional Competence and Equal Justice

Admittedly, there is wide variation in the quality of services offered by members of the profession. To a certain extent, it is inevitably so. However, the problem is the increasing erosion of even a minimum level of professional competence expected of members of the Bar. Whether it is because of the uncontrolled expansion in admission to the Bar or because of the extremely deplorable state of legal education in many Universities in the country, the fact remains that the average citizen is left with ill-equipped and poorly trained legal practitioners who enjoy a monopoly without commensurate social accountability. Unfortunately, neither the disciplinary jurisdiction of the Bar Councils nor the negligence liability in Common Law are effective means to enforce accountability or extract competent services from individual practitioners. The ignorance of the common man and the corruption in the system have put a discount on dishonesty and indifferent delivery of services. The effect is unmistakably felt on the justice system and its credibility amongst the people.

Dilution of professional standards and consequent weakening of the administration of justice have reached disturbing proportions at some levels and in some regions. If the ignorant, unsuspecting public are not protesting, it is only because of the overall performance of the system and a sense of helplessness in doing anything about it. As such, the profession must view the malaise seriously and take all possible steps to arrest the decline and redeem the promise for which society has reposed trust and gave monopoly of services on it. On different occasions, knowledgeable people and professional bodies have recommended a variety of steps in this direction but the implementation has been far from satisfactory.

Admittedly, there is inadequate enforcement of professional discipline and standards of ethical conduct. Very few people outside the profession are aware of the existing system of punishing erring advocates. Peer group justice has not been a success if one were to go by the statistics of violations and the extent of indiscipline often noticed among the advocates. Punishments administered are said to be too mild which in many cases had to be corrected by the Supreme Court. The cases are not publicised and the public are in the dark about the misdeeds of many lawyers on whom they depend for their life, liberty and property. A number of unholy practices many of which are not even recognised as unethical conduct continue unabated at different levels of the Bar. Besides, strike and boycott of courts at State and local levels have become a regular feature with advocates who are getting unionised on political and regional grounds. The fond hope of the All India Bar Committee (1954) for an integrated bar with high professional standards is steadily being eroded by the actions and omissions of a certain section of advocates themselves.

The situation calls for a revision of the rules of professional conduct and etiquette keeping in mind not only the interest of members of the profession but also those of the litigating public. There is need for greater openness and wider public participation in the

discipline enforcement mechanism of the Bar Councils. The severity of punishments need an upward revision in case of repeated violations or gross misconduct particularly when the lawyer involved is a senior member of the Bar. The electoral process by which Bar Council members are elected also need changes with a view to let public-spirited, professon-minded lawyers assume charge of the decision-making bodies of the organized Bar. The superviosry role of the High Courts on disciplinary matters may have to be revived at least in a limited manner to enforce accountability from indisciplined members of the Bar.

An efficient Bar alone can strengthen administration of justice. Mediocrity, indifference and incompetence on the part of members of the profession can seriously vitiate the course of justice and undermine public confidence in the system. As such, standards at the Bar can no more be left to the exclusive jurisdiction of few elected members of the Bar. A more effective system of monitoring, development and accountability will have to be evolved, if necessary, by a thorough revision of the Advocates Act and the rules thereunder. In the context of judicial reforms, a thorough study of the organization of professional services, the needs of the Bar at the turn of the century and its role in a people-oriented scheme of administration of justice is urgently required.

Lawyers Strike

An issue which has assumed importance not only on ethical grounds but also on the basis of contractual obligations in a civilized society, is the frequent paralyzing of judicial administration by lawyers resorting to strike and boycott of courts. Mandal Commission implementation, arrest of or assault on a lawyer, implementation of Family Courts Act, increase in the pecuniary jurisdiction of civil courts, division of courts for easier access to justice, transfer of judges are some of the issues on which lawyers have gone on strike from one day to three months or more. By resorting to strike for whatever reasons, the lawyers, in fact, cause immense problems for the general public besides positive harm to the interests of their clients. It is contended that by frequent resort to prolonged strikes and boycotts, the advocates are holding the society to ransom contrary to all principles of professional ethics.

Justice Wadhwa of the Delhi High Court in a report (1990) on police-lawyer conflict criticised the lawyers' strike stating that "militancy has no place in the legal profession committed to rule of law and bar association is not a trade union and strike by lawyers amounts to denial of justice to the litigants". A former Chief Justice of India suggested that lawyers are committing professional suicide by resorting to strikes and it does amount to professional misconduct. Unfortunately, the Bar Councils which lay down professional discipline under the Advocates Act have a different opinion on the issue and sometimes themselves call upon advocates to go on strike. Strikes aggravate the problem of delays and contribute to the further weakening of an otherwise tottering judicial system.

Judicial Ethics and Accountability

No discussion on law and ethics can be complete without reference to the ethics of judges and their accountability to judicial functions. In the recent past there have been reports of alarming increase in judicial imporprieties and corruption even in the highest judiciary of the country. According to some, the question of judicial accountability causes serious concern on account of the irresponsible conduct of certain judges under the cover of judicial independence provided by the Constitution and the laws. In the higher judiciary there is no way of proceeding against a corrupt judge excepting through a long drawn out process of impeachment in Parliament. Recent incidents involving sitting judges of the

Supreme Court and few High Courts have shaken the faith of the public in the integrity and fairness of our judicial system and unless something drastic is done without delay, the system may receive such a shock from which it may become difficult to recover.

Law, Lawyers and Public Interest

Legal profession is by and large a private sector activity. As its role in society is heavily oriented towards the cause of public interest, the people have reposed trust on the members of the profession to govern themselves and conferred monopoly protection on the services offered. With the decline in the quality of services, the increase in the cost and delay in litigation and the non-accountability of some sections of lawyers, a situation has reached for a thorough re-appraisal of the role of the profession in society. A people oriented profession rooted in public service has to reflect public accountability and concern for the common man in need of legal services. The legal profession took a leading role in the Freedom Movement and took public responsibilities in a spirit of service to the nation and its people. Today it has become a market place where the highest bidder got the services and the common man is totally neglected. For nearly a generation or two the Indian Bar, excepting some honourable exceptions failed to respond to issues of access to justice to the disadvantaged, equal justice to all, law reform in public interest, communal harmony and peace within the country and outside. On some occasions, there is evidence to argue that members of the profession have gone against public interest prompted by pure selfish interests. Does the same rule of ethics which they adopt in litigation between private parties apply with same emphasis to issues involving public interest? Are there not issues in a developing and unequal society like India which warrant public interest advocacy where the adversary model of adjudication has very little or no relevance? Is there not a need for a public sector in the legal profession with a new set of ethics articulated largely on meeting the unment legal needs of the rural and urban poor? Can any professional, even under the adversary system, deny the need for a certain level of personal responsibility not necessarily subsumed in what is conceived as professional responsibility?

It was Gandhi who was himself a lawyer who articulated a different role for lawyers both in the profession and in society. Uniting parties through conciliatory methods, reaching compromises without compromising trust and conscience, winning clients' cases only if it so deserved according to one's own conscience and keeping the purity of administration of justice in all that one does was the message of the Father of the Nation to his professional colleagues. Gandhiji would not subscribe to the theory that it is the duty of an advocate to defend a client whom he knows to be guilty. This is the Indian understanding of professional ethics which unfortunately has been ignored with the decline of the indigenous legal system. An agonising re-appraisal of professional obligations is high on the agenda of the nation. Profession for the people and not *vice-versa* has to inform the organization and functioning of the profession at every level.

The relationship between Law and Ethics ultimately comes down to the norms and standards of conduct practised by lawyers, judges and other functionaries of the legal system. While a substantial majority of law persons are still keeping up the ethical demands of the profession, an increasing number of professional deviants are creating serious problems which leads society to question the very ability of the profession to correct the distortions and to serve the public interest. It is time that all right thinking members in society within the profession and outside take an active interest in the organization and functioning of the legal system lest posterity should accuse the present generation for being silent conspirators to the murder of democracy, rule of law and Constitutional government.