Inspira- Journal of Modern Management & Entrepreneurship (JMME)
ISSN : 2231–167X, General Impact Factor : 2.3982, Volume 07, No. 04, October, 2017, pp. 57-62

ETHICS:
THE BIG TICKET OR THE DIME STORE FOR LEGAL EDUCATION IN INDIA

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ABSTRACT

In law a man is guilty when he violates the rights of others. In ethics he is guilty if he even thinks of doing so. Legal ethics codes goads lawyers to keep up the highest degree of ethical conduct and annunciate that the future of the country and the maintenance of justice depend upon whether the conduct and the motives of the members of our profession are such as to merit the approbation of all competent men. The objective of legal education should be not only to yield good lawyers but also create civilized, law abiding citizens who are inculcated with concepts of human values and human rights who can serve human kind in kaleidoscopic capacities such as administrators, law teachers, jurists, judges, industrial entrepreneurs, etc. The authors in this research will deliberate upon different issues related to law and ethics from the need for ethics in legal education to the difference between practicality and the utopian concepts of ethics. The authors have used doctrinal and empirical methodology to look at the relevancy of ethics in legal education. The research would make use of different research papers and conspicuous judgments with ethical issues involved to analyze the issue that whether legal education somewhere or the other coincides with ethics of human life or not. The fight between ethics and law has been going on for centuries. Do ethics supersede law or is it the other way around? Are law and ethics antipodes or connates? These are some of the prominent questions that need to be answered by the stellars of legal education throughout the world.

KEYWORDS: *Lawyer's Ethics, Utilitarianism, Equity, Professionalism, Commercialism.*

Introduction

The utopian concepts of ethics and its ever increasing conflicts with legal education and its practical implications have been going on for ages. The technical know-how's of ethics always seem to be a deterrent in some of the most conspicuous judgments in India and for that matter of fact, it has taken its toll all over the world. The concepts which are globally known to be purely and perfectly legal, somewhere down the line, have an ethical concept surrounding it. Ethical concepts seem to be the pinnacle of the standard for a perfect way of living while on the other hand legal judgements and other technicalities always seem to be a little less ethical and more practical, as and when compared to all the widely known ethical concepts. Almost all of the so called landmark judgments over the years have lacked ethically somewhere or the other according to the philosophers of ethics and also from a common man's point of view. These outbursts to bring in ethical concepts when a judgement is passed, spurred the veterans of legal education to lay a bit more emphasis on the enshrining of ethical courses in the legal education field and to introduce it as a full-fledged subject altogether.

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Ethics: The Omnipresent Concept

A certain person who had an inclination to get drunk on wine on a winter's evening resisted this evil temptation and for the sake of abstinence did not go to the inn. Meanwhile, if he had gone there, on the return journey, he would have found a half-frozen puppy and being in this given situation inclined to sympathy, would have picked up the puppy and thawed him out, and this puppy would have become a big dog and would have saved a girl form drowning in a pond, a girl who would latter have become the mother of a great man; whereas now, owing to a misplaced abstinence which upset the plans of Providence, the puppy froze, the little girl drowned and the great man, having been born of another mother, turned out to be an idiot (Soloviev, 2000, p. 190) The act of in intoxication, in its true and absolute sense, is morally wrong. A person who intoxicates himself voluntarily is considered to have hampered the renowned concepts of ethics. He is no more ethical! But was that the case here? If that person would have followed his normal routine and drank alcohol that day, he would have caused that chain of actions to start which would have led to a positive outcome for the society. He would have been a saviour for the society and in particular, that half-drowned girl. He would have had to renounce his morals in order to help that girl in need. Wasn't it rational on his part to put aside his ethical values and be a help for the society? From issuing of a death penalty to issuing of a building demolition contract, wherever there is a legal concept involved, ethical concepts are somewhere around it, lingering about, waiting for them to be applied to have a much more broader and altogether different scope of view for a slightly different result. The concept of utilitarianism which will be discussed in a much more broader sense in the latter part of the paper has a high scale usefulness and it is also a concept which involves prominent ethical questions in view while its application.

An Assemblage of Lawyers' Ethics

In theory there are four ethical types of lawyers according to one view of their 'popularity', are as follows:

- The adversarial or zealous advocate is often dominant and is oriented to the 'professional role' , paradoxically acquiescing to the client's demands and reluctant to see an essential function beyond that of their client's agent,
- The responsible lawyer who firmly and sometimes without much humour, gives priority to the fairness of the dispute resolution process and lawyers' duty to courts,
- The moral activist, often almost transparent in the ethical vista, who is typically utilitarian and concerned for socially just outcomes, though comfortable with whatever other method will advance social justice, and
- The 'ethicist (or relationship) of care', who might be said to aim for a neutral shade and travels in fellowship with Aristotle's virtues by nurturing the relationship between lawyer and client, while seeking 'holistic' solutions to their mutual objectives. (Christine Parker, 2004, p. 49)

  The given four types of lawyerly ethics are almost always conflated amongst each other and on any given day, a jurist is always an amalgamation of all the three cardinal virtues essential to make a competent jurist, but it is solely upon the prerogative of the concerned jurist as to which side of the above three, he/she lets overpower him/her, which again boils down to the type of education imparted to one at the base level itself.

Utilitarianism: Credible or Devastating

Legal education as a stepping stone for the to-be lawyers of the country has to give certain crucial insights of what a lawyer has to go through while providing justice for all. This is where famous concepts like utilitarianism, amongst others, find prominence in the field of legal education. Utilitarianism, in layman terms, simply means maximum pleasure and minimum pain. It is the belief that a morally good action is one that helps the greatest number of people. Veteran utilitarian's like Bentham, amongst others, promulgate the same idea and this 'infamous' theory, when viewed from an Indian context, has found its use in many conspicuous judgments over the years.

The question which is constantly prodding this theory of utilitarianism, particularly in the Indian context, is ironically, that of its utility. India being an amalgamation of innumerable cultures has a wide array of beliefs and kaleidoscopically thoughts when it comes to the idea of justice and equity. Some are ardent advocates of the theory of utilitarianism while on the other hand, others scathingly criticise it. The case of building up of Sardar Sarovar Dam (Narmada Bachao Andolan v. Union of India and Ors.) over the Narmada River has employed the concept of utility, inviting acidulous criticism from the inimical of the

concept of utilitarianism. The government's plan was to build 30 large, 135 medium and 3000 small dams to harness the waters of the Narmada and its tributaries. (Govindu, A Brief Introduction to the Narmada Issue) This meant that it was being built, giving due regard to the welfare of people all around. This on the face of it seems to be the most feasible solution, but when looked upon with a keen eye, this judgement to build this dam, transposed the people who lived near and around the river to nowhere. They had nowhere to go now. At least for those affected by submergence, since the beginning of the project, one would expect a correct estimation of the number of Project Affected Families (PAF) acknowledgement and granting of their traditional and customary rights, submergence impact on their properties and based on all these, complete assessment of agricultural land required for all. This having been done would have, led to a "Master Plan on Resettlement and Rehabilitation." This was exactly what was stipulated by the National Waters Dispute Tribunal Award (NWDTA). Such a plan was required to be ready by 1981 to ascertain those to Gujarat for resettlement and those to be resettled in their own state. Nothing of this has happened. A total violation of NWDTA thus, is obvious. (Govindu, Displacement, Submergence and Rehabilitation in Sardar Sarovar Project: Ground Reality Indicating Utter Injustice) The government in that case asserted that "It is apparent that the tribal population affected by the submergence would have to move but the rehabilitation package was such that the living condition would be much better than what it was before." (Narmada Bachao Andolan v. Union of India and Ors.) But in the end, the results of the project are for all to see.

Law students as mere prodigies have to look at every facet of this very concept to understand why this renowned concept has substantial flaws. Utilitarian advocates consider 51:49 as a majority but when viewed from an ethical scope, this is no majority whatsoever. The party which is on the losing side has a fair share of substantial majority themselves. It will be absolutely unfair for them if the decision is attributed against them. That is what a budding lawyer has to understand. Welfare of the majority does not mean that 51:49 is to be considered as absolute majority. Even if such a majorly criticised judgement is passed, it should be the duty of the court, and thus, the duty of the to be lawyers, to ensure that the fundamental rights of the citizen i.e. the Right to Life, enshrined in Article 21 of the Constitution of India, should not be transgressed upon by such judgments and that they get the fair share of the benefits attached to such a large scale project.

Law as the Dragoon of Equity

While the concepts like utilitarianism have been of great reference for the Indian judiciary, law has been very aptly used as the dragoon of equity. Employing coercive means to anything at first may seem a bit wretched way of getting someone to comply with a particular thing. When viewed from a lawyer's perspective, employing ethical means for achieving every end may not seem the rational way of going about their business. Blackjacking or coercing someone might be the only possible way out in certain situations for a particular jurist, who might be in a law school, somewhere, dreaming about imparting justice. The one suffering from a crime has the right to defence and compensation as far as possible; society has the right to security; the criminal has the right to instruction and correction. (Soloviev, 2000, p. 193) Take for instance, a lunatic. In general, people commit crimes out of deep moral depravity, or owing to mental anomalies, or last, as a consequence of losing self-control at a given moment. Apart from extremely rare exceptions, words of rational persuasion do not have any effect at all on any of these. (Soloviev, 2000, p. 186) Would it be absolutely rational or reasonable to employ just mere words to persuade someone to do the ethically correct thing, when he is facing such a deadening situation or when he has lost his conscience? The answer to this would be a sure shot NO! Rejecting any coercion at all is in no way, the right way of going about things. If this is the case, then all measures of sandbagging someone to yield to a particular standard of societal norms would be ethically incorrect, which as we know being rational human beings, is incorrect.

Coerciveness has two facets as well. A budding lawyer has to be made to understand every way in which coerciveness can be sometimes incorrect and correct at other instances. If employing muscular strength is incorrect according to the advocates of morals, because it encroaches upon one's right to live his life in his own manner, then similarly, saving a half drowned person from perishing, using the same old muscular strength employed in the first case, would also be 'morally incorrect', which, as we know is not the case. And what if, while bringing the half drowned person back to life, we actually cause some harm in another way, even leading to his death? What if the casualty that we saved by blackjacking the to-be criminal turns out to be a rogue himself and later turns into a terrorist? In this case, the epigones of consequential thinking will spring an argument that though one might have done this with a good intention in mind, yet the future consequences have absolute destroyed the fruitfulness of the act, thus,

killing the essence of the act. The answer to this would be that our actions or abstinence from action should be determined not at all by considering their possible (but to us unknown) indirect consequences, but by motives directly resulting out of moral principle. (Soloviev, 2000, p. 192). The sublime lawyers of our generation need to be taught these concepts so as to know why, just sometimes, coerciveness can be a practical and feasible solution to a particular problem and why is it not always incorrect to employ coerciveness to a given situation.

Death Penalty: An Anathema or a Benison

How would an ordinary person feel if he has an insight that he is about to be publically executed, or even for that matter, executed in presence of a small crowd? Death penalty or execution is something that has been utterly criticized, right from its conceptual origin to its very practical implications in our epitomized criminal world. The case for capital punishment usually rests not only on retributive sentiments but also on assumptions about its unique deterrent effects as compared with alternative lesser punishments. (Hood & Hoyle, 2008, p. 7) There have been many bulwarks of death penalty over the years. Some attribute the success of death penalty to its deterrent nature, some fanaticise over its authoritative implications but when it comes to the moral or ethical aspect of death penalty, even these so called bulwarks of death penalty are left with no answers. Even if they leave no stone unturned, death penalty in their mind, is somewhat flawed in some of its concepts.

The main question that pops up in one's mind is, why this issue at hand is even relevant for people entailing of legal education? Death penalties are upon the prerogative of a Judge when viewed from an Indian context, i.e. he has all the powers to order a person to be executed via death penalty. So, it is the responsibility of law schools, with the help of the developing legal education, to present every facet of this harsh punishment at the grass root level itself so the to-be lawyer, employs rational methods when awarding a death penalty. Death penalty has a lot of historical background attached to it. To clearly understand the very phenomena of death penalty, one would have to look at biblical texts and other historical notations related to this concept. According to biblical texts relating to human execution, says that a criminal, even a fratricide is not subject to human execution: "And the Lord put a mark on Cain, so that no one would kill him." (Green, p. Genesis 4:15; Leviticus 24:17; Romans 12:19; Deuteronomy 32:35; Hosea 6:6; Luke 19:10) The Bible is a complex spiritual organism which developed over a thousand years. (Soloviev, 2000, p. 176) The Bible has a tectonic effect on every Christian, who goes on to the extent of worshipping it. If these so called religious texts have such vast fan following then why are these texts followed in daily life? Are these so utopian that so many countries are so reluctant in abolishing it completely? There have been quite a few instances where rescinding death penalty has not always resulted in increased crime rate. In comparing the 1830s to the 1820s, there was no substantial difference in the social and cultural conditions of life, and therefore if the death penalty were to have an influence on the phenomenon of crime at all, then at this time the quick decline of death penalties (from 115 per year to 15, and even 10) which followed as a consequence of the change of the old statuses should have told of a significant increase of crime for which there was no longer threat of death. However, no increase whatever, much less a significant increase, of the number of crimes in England occurred; on the contrary, a certain decrease was displayed. (Kistiakovsky, 1840, p. 40) In Austria and Tuscany, relative examples of death penalty having no toll on its deterrent impact was seen which just substantiated on the view point of people who were against death penalty.

The deterrent effect and impact of death penalty has been severely criticized by another argument against it. The very idea why public executions are no more in practice, strikes against executions. Public executions are so openly condemned because instead of deterring other criminals, it gives them an impetus, an impetus to go against the government for such inhumane acts of executions. If the government which is having absolutely no problems in practically annihilating a criminal physically, then why should a common man feel some sort of a guilt before committing such infamy? In every way, law schools should endeavour to inculcate in the students, a will to understand exactly why a death penalty is publically condemned and questions like by what logic is the repetition of an evil, practical? The death penalty is murder, as such, absolute murder that is in principle the denial of a fundamental moral attitude towards a man. (Soloviev, 2000, pp. 180-181). Another one of those futile arguments given by the bulwarks of death penalty which is that death penalty is a means of achieving common good is also scrutinized severely. The common good should come as a good of this man too, his right to personal freedom, to live as a sane, healthy individual. Is it solving any purpose? Death penalty is just like punishing a child after he commits an abominable crime and not giving him any opportunity whatsoever to recover to his original, stable position.

Countries that seek to abolish the death penalty face the task of establishing viable alternatives that sufficiently satisfy the demands of retribution while remaining proportionate to the gravity of the crime. (Hood & Hoyle, 2008, p. 383) As students of Law, one should properly scrutinize death penalty severely before actually stepping into the real picture, side by side, devising other kinds of punishments which could serve as a viable alternative.

The other side of the coin is that if such a passive attitude towards a criminal is adopted wherein only verbally he is to be brought back to his senses, or in technical terms, rehabilitated. This kind of a passive attitude would mean that all measures of crime prevention including the right to imprison a person for a lifetime when he commits a murder or even if while saving a person we accidently and involuntarily go on to kill him, have been discarded. Would it even be possible to survive in this kind of a world? The function of law is to tame the public's anger both by satisfying (and thereby justifying) it, and by moderating it. Punishment satisfies the public's anger and promotes the law abidingness which, it is presumed, accompanies it. (Berns, 1979). Legal educationists have to understand that to give students of law these everlasting arguments is to give them weapons, not of mass destruction, but of mass protection, with the help of which they can be of real help for the society in a much wider way. They would actually understand the gravity of the situation before granting a death penalty which, if not implemented in a proper manner, makes them sorcerers murderers.

Professionalism V/s Commercialism

Professional ethics concerns the moral issues that arise because of the specialist knowledge that professionals attain, and how the use of this knowledge should be governed when providing a service to the public. (Srilakshmi & Kannan, 2009) The debate on whether extensive commercialization of a profession leads to the loss of ethics is going on since time immemorial. If we try to see the legal education field and its commercialization, we can very well see the loopholes in the system and the dilemma faced by an aspiring lawyer to the greatest of lawyers.

The question that arises in everyone's mind is whether it is ethical to do or abstain from doing a particular thing. Sometimes we know by doing a certain act we definitely can win a particular case but we need to consider is the ethical aspect and if it is not ethically correct, well then we are at the crossroads. We have talked about ethical behaviour but the question is what actually ethical behaviour is? An ethical behaviour is considered decisive and proper in all circumstances. A lawyer behaving ethically will intentionally choose between the major competing legal ethical principles and rules and a bona fide position and course of action, rather than responding to laziness, to intuition or to self-preservation. (Evans, 2011, p. 5). When a lawyer wins a particular case he is questioned about the way he opted in order to win. There is always negative public opinion about lawyers' ethics. Ethics assessment is the missing ingredient in this profession as it involves accountability for ethical consciousness. (Evans, 2011, p. 2) That is where the education at the base level, i.e. in law schools, comes into action. If we talk about the aplomb of the society in the legal system, it is influenced by the behaviour portrayed by the lawyers. To inculcate ethical behaviour in the lawyers and the budding lawyers we need to establish ethics in the cradle of the legal profession i.e. the Law schools. Everyone is aware about the significance of ethics in the life of a lawyer, but there is a considerable disparity between theory and practicality. In theory ethics and morality play a monumental role but in practice these ethics and morals take a back seat. It is important not to let this happen and hence comes the importance of Law Schools in shaping personalities of students such that they do keep the ethics and morality in mind while taking professional decision.

Lawyers sometimes get bedazzled with the money and other perks that come by commercializing their specialty and they try to find loopholes here and there to make sure their clients get what they want without even batting an eye to the ethical aspect of their act. That is when the role of the type of legal education one has received comes into contention. The type and quality of education one gets in his time in a law school shapes the thought process and actions of the person. If a law school successfully teaches the aspiring lawyers to think critically about the consequences and makes them think about all the dimensions, assess them, think about the short term perks and the long term consequences, this will lead to the person thinking about the ethical nature of the act. A new tendency and a fierce culture of commercial values which has its own set of righteous and material top loftiness is spreading in and around the whole profession. Prioritizing commercial needs over professional needs not only leads to public dissatisfaction but also we are no longer true to the profession itself.

There is always a discord between doing what's best for a client and doing what is right. The latter should always be a priority, then and only then will the society start developing faith and confidence in the

legal profession. Including ethics only as a subject in the law schools is not enough. We need to stress on the importance of the ethics in a delicate profession such as a legal profession and spread awareness about the same. There is no end to the debate on professionalism versus commercialism but what we need to keep in mind is that commercialization is good but not to the extent that it hampers the dignity and the integrity of the profession. Public and perhaps everyone consorted with the legal profession itself seem increasingly convinced that lawyers are tormenting the society onerously. This is a sorry state for the profession which is supposed to be the benefiter and protector of the public at large. Legal profession which is the provider of justice, creator of a morally strong society is now considered a plague. This raises a few questions in the mind of the public at large, where did we go wrong? How can it be rectified? The answer to this would again lie in the root cause of it all, the starting point, the legal education system.

Conclusion

With the ever increasing abhorrence of noted jurists, being an impediment in the path to justice, when they are employed to provide justice, the dearth for legal ethics is on the increase. Lawyerly ethics is one of those cardinal virtues, which, if inculcated, at the grass root level itself, in a befitting manner in the hearts of a to-be lawyer, would be prove to be of much substance for the future of the country as a whole. Being a provider of justice, a lawyer needs to have certain ethical values attached to him as well and not just the practical aspect of everything. Lawyers will, of course, differ over how to weigh the values at issue. And in some contexts, the need for a categorical rule may appropriately restrict individual attorneys' discretion. But any such rules must satisfy commonly accepted ethical principles, not just the restricted universe of client-centred concerns underlying bar ethical codes. (Markkula Centre for Applied Ethics, 2002). Dissatisfaction with lawyers is a chronic grievance and will remain so till the time lawyerly ethics is given additional accentuation. Introducing the subject of legal ethics, not just as a one credit course which students take as some sort of an inconsequential learning, but as something which is intriguing and at the same time is fecundate, seems to be the only feasible comeback for this problem of scathing criticism against lawyers and judges all around the country. Inchoate lawyers have to be made to understand the momentousness that ethics has, in the field of the legal profession. They need to be face to face with concepts like death penalty, utility, professionalism and so on, so that they have a fair picture of what they might have to encounter when they actually step into the playing field, and not the practice sessions, that is the law school. These concepts, being the underpinnings of the profession itself, have to be given the utmost emphasis. The pretension of the legal profession should be to produce jurists who are competent, in their lore of laws of the country as well as jurists who are well versed with ethical values and needs of the masses to ensure welfare for all.

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