



PUBLIC INTEREST OVER PRIVATE GAIN: A CRITICAL EXAMINATION OF THE ETHICAL PERSPECTIVE IN THE SRI LANKAN LEGAL PROFESSION

KA.Lavanya Lewmini Gunaratne*

ABSTRACT

The legal profession is a pillar of societal order, promoting justice and fairness. The objective of this research is to look into the fundamental concepts that characterize the legal profession as a profession primarily dedicated to societal growth rather than private gain. To do that, this paper tries to evaluate frameworks of ethics and present practices of the Legal profession in Sri Lanka using qualitative analysis and critical examination, focusing on the overall dedication to serving public interest. The research identifies a gap in understanding how closely legal practitioners in Sri Lanka emphasize ethical standards in practice. While current literature and frameworks stress upon ethical norms, there is little evidence of how these principles are prioritized above financial rewards in this sector. This research highlights that Attorneys can achieve success in their noble profession by upholding professional ethics, ensuring that the ultimate objective of the legal profession is to administer justice to the rightful individual rather than solely focusing on financial gain.

KEYWORDS: *Legal Profession, Professional Ethics, Justice, Rule of Law*

Corresponding author: KA.Lavanya Lewmini Gunaratne, Email: lavanyalewmini@gmail.com

*Involve in private practice as a lawyer



<https://orcid.org/0009-0005-4188-1021>



This is an open-access article licensed under a Creative Commons Attribution 4.0 International License (CC BY) allowing distribution and reproduction in any medium crediting the original author and source.

1. INTRODUCTION

The development of justice and societal welfare is the primary focus of the legal profession, which is an essential component of society. It represents a noble effort to protect individual rights, maintain the rule of law, and promote justice and equity in society (Karnavas, 2016). Studying this area is essential because it gives insight into the significant impact that lawyers have on shaping communities, maintaining fairness, and defending the rule of law. Lawyers' job provides them with a livelihood and a sense of professional achievement, but their primary responsibility goes beyond individual profit to serve the public interest and guarantee that everyone has access to justice. This dedication frequently entails standing out for the rights of the marginalized, representing a range of interests, and upholding moral principles that put the good of the public above personal gain. Therefore, this paper analyses the importance of ethical conduct in the legal field and emphasizes how vital it is to uphold justice, integrity, and trust. It contributes new knowledge that clarifies the complexities of ethical issues in the field of law, opening the door to better professional conduct and better decision-making, and additionally, it emphasizes the relevance of ethics in the legal profession and outlines the essential principles that apply to the legal profession.

The primary research question of this research is: What are the prevailing ethical standards and laws in the legal profession mainly in Sri Lanka? The secondary question of this research is: To what extent do legal practitioners prioritize ethical considerations over financial gains? As a result of these two research questions, the research objectives of this research are: to explore and define the ethical principles and codes relevant to the legal profession mainly in Sri Lanka using case studies and laws and secondly to identify the weight given to the income of the lawyers as compared to adherence to their ethical principles.

2. METHODOLOGY

To give a multifaceted understanding of this Research topic, this research uses a qualitative approach. In the beginning, a comprehensive review

of literature was conducted, which included scholarly publications, legal sources, and important international agreements. This allows for the identification of essential concepts, legal principles, rules, and precedents related to the ethical conduct of the Legal Profession. Therefore, this research uses a qualitative approach, employing secondary data such as journal articles, documents, government reports, websites, books, and international agreements, and it also uses primary data such as statutes, cases, and constitutions that relate to ethical standards and rules related to the legal profession. These sources are used to better understand this research area. This qualitative research provides a comprehensive insight into how ethical frameworks are viewed, negotiated, and used in the complex environment of the legal profession through deep examination. These findings have direct implications for improving ethical standards, professional training, and the overall quality of the legal profession.

3. RESULTS AND DISCUSSION

3.1. Professional Ethics and Legal Profession

The idea of "public interest over private gain" implies that decisions and actions should prioritize the welfare and well-being of the general public over the interests of individuals or specialized groups for personal profit or benefit. It is frequently mentioned in discussions about governance, commercial practices, and social responsibility.

Professional ethics is the cornerstone of every profession. Ethics are essential in the legal field, operating as a foundation for sustaining the rule of law and justice (Karnavas, 2016). Preserving public trust in the field of law requires professional ethics. Professional ethics means a set of rules that a potential lawyer must follow and the moral ideas that should operate as guidelines for a lawyer's behaviour (Madhavan). These rules govern the behaviour and activities of practicing lawyers, including dealings with clients, the opposing side, and the court. When lawyers act ethically, the public's trust in the system of law is strengthened. This trust is essential for the legal system to work properly. Also, Professional ethics in the field of law promotes integrity and responsibility.

In his book "Professional Ethics and Responsibilities of Lawyers," A. R. B. Amarasinghe emphasizes the responsibilities of lawyers, including their clients, the court, and other institutions. Lawyers must work with honesty, integrity, and truthfulness, fulfill court directives, and maintain client trust while demonstrating ethical conduct to the public (Amarasinghe, 1993). Also, according to Principle 12 of the UN Basic Principles on the Role of Lawyers "*Lawyers shall at all times maintain the honour and dignity of their profession as essential agents of the administration of justice*" (Basic Principles on the Role of Lawyers, 1990). Therefore, it is clear that adhering to ethical norms develops duty and accountability, which improves the overall image of the legal profession.

To begin, it is critical to understand the importance of the legal profession in maintaining justice, defending human rights, and ensuring the rule of law. However, challenges develop when personal or corporate interests outweigh these fundamental principles.

According to the International Bar Association's International Principles on Conduct for the Legal Profession: "*Lawyers throughout the world are specialized professionals who place the interests of their clients above their own and strive to obtain respect for the Rule of Law. They have to combine a continuous update on legal developments with service to their clients, respect for the courts, and the legitimate aspiration to maintain a reasonable standard of living*" (IBA General Principles for the Legal Profession, 2006).

3.2. Domestic Legal Framework Governing Legal Ethics in Sri Lanka

The legal ethics of a country are generally established from domestic laws, although they may also be based on international and regional principles. According to Principle 26 of the UN Basic Principles on the Role of Lawyers "*Codes of professional conduct for lawyers shall be established by the legal profession through its appropriate organs, or by legislation, in accordance with national law and custom and recognized international standards and*

norms" (Basic Principles on the Role of Lawyers, 1990).

In Sri Lanka, as in many other nations, legal ethics refers to the norms, standards, and principles that regulate the conduct of attorneys and legal professionals. The Bar Association of Sri Lanka (BASL) is a major body that regulates legal ethics in Sri Lanka. They generally publish a code of ethics or conduct that outlines the rules that lawyers must follow in their duties as attorneys. Moreover, the Supreme Court of Sri Lanka has developed its own set of guidelines outlining the behaviour expected of lawyers in the island nation under Article 136 (1) (9) of the Constitution, and these regulations were published in the Gazette on December 7, 1988 (The Constitution of The Democratic Socialist Republic of Sri Lanka, 1978). These rules frequently address a variety of areas, such as professional standards, client representation, conflicts of interest, confidentiality, and courtroom behaviour.

According to Article 40 of the Judicature Act of Sri Lanka, if an attorney-at-law becomes a client's representative, he must have these key qualifications: Good repute, Competent knowledge, and Skills (Judicature Act, 1978). Attorneys are supposed to represent their clients with diligence, skill, and ethics. This entails giving genuine advice, keeping information private, avoiding conflicts of interest, and defending their clients' interests within the bounds of the law.

Rule 5 of the Supreme Court Rules states clearly that "*an Attorney-at-Law may not refuse to act on behalf of a party or person in any matter or proceeding before any Court, Tribunal or other Institution established for the Administration of Justice or in any professional matter at his or her Professional Fee*" (Supreme Court Rules, 1988). Also, according to the 5th rule, an attorney-at-law feels that if he represents a client, he will lose his professional independence therefore, he has the option of refusing the case without taking it. This is known as the Cab Rank Rule (Deegalla, 2019). If the client forces the attorney to provide fake documentation and evidence, or attempts

to wangle an attorney then the attorney can refuse to act as the client's representative by rules 6–13 which are exceptions to Cab Rank Rule (Deegalla, 2019).

More importantly, if a lawyer provides services to a client in an irresponsible manner, it violates their professional responsibilities. When a lawyer carries out their duties in such a manner, the legal profession needs to be disqualified. The Supreme Court was given this authority under Article 43(01) of the Judicature Act as an example of the legal profession being suppressed (Judicature Act, 1978).

in an irresponsible manner, it violates their professional responsibilities. When a lawyer carries out their duties in such a manner, the legal profession needs to be disqualified. The Supreme Court was given this authority under Article 43(01) of the Judicature Act as an example of the legal profession being suppressed (Judicature Act, 1978).

If a client chooses a lawyer to be their legal representative, then the client is required to pay the lawyer's fee and the attorney has no ethical reason for refusing that fee. When collecting fees, the attorney-at-law is supposed to follow Rules 27 to 30(b) of Supreme Court Rules including the Attorney-at-Law can waive fees due to client poverty or hardship, but cannot use client funds for specific purposes without client permission, and must respect their trust for legal advice and representation (Supreme court rules, 1988). According to Article 17 of SCR and as per the cases *In Re Aththanayake* (1987) and *In Re Brito* (1942), Lawyers must behave with complete honesty in all their interactions with clients and should not take any undue advantages from their professional responsibilities (Supreme Court Rules, 1988).

Moreover, Lawyers are required by professional ethics to offer their clients fair and impartial assistance. Lawyers guarantee that justice is not only served but also viewed as fair and unbiased by respecting ethical norms. Also, Competence and diligent representation necessitate that lawyers maintain a high level of knowledge and skill to successfully serve those they represent. By the Sixteenth Rule of the Supreme Court, attorneys-at-law must appear in court on specific days (Supreme Court Rules, 1988). Usually,

only the lawyer can postpone his or her case if he is unable to perform his official duties. There is a quote saying When justice is delayed, justice is denied.

usually, only the lawyer can postpone his or her case if he is unable to perform his official duties. There is a quote saying When justice is delayed, justice is denied.

Confidentiality is essential in ensuring that clients can provide highly sensitive information to their lawyers. Article 31-38 of Supreme Court rules and Article 126 of the Evidence Ordinance pointed out the confidentiality of information (Supreme Court Rules, 1988). According to Article 126(1), the Attorney-at-law or notary cannot disclose any communication made to them, the contents of any document they have become familiar with, or any advice given to their client without their client's express consent, during their professional employment (Evidence Ordinance, 1895). Therefore, Attorneys at law are required to maintain the confidentiality of information provided by clients. Because of this, lawyers must not reveal the details provided by the client or utilize the material for their gain.

The rules of 39-49 of Supreme Court Rules were specified about advertising and touting. The client experiences difficulties with their cases as a result of the excessive advertising and touting. Using a tout to help an attorney is a matter that goes to the heart of improper discipline and professional misconduct, which the court condemns, resulting in heavy penalties for delinquent lawyers (Supreme Court Rules, 1988). The *Re A. V. De Silva, Advocate (1934)* case states that an attorney-at-law is not permitted to use brokers to find clients.

Attorneys often find themselves in circumstances where the client's interests conflict with the lawyer's obligations to another client, previous clients, or third parties, or even against the lawyer's own personal interests due to the nature of the profession of law (Karnavas, 2016). This is referred to as a conflict of interest. The Supreme Court rule outlines some responsibilities of an attorney when there is a conflict of interest. According to Rule 58 of the Supreme Court Rules of 1988, an attorney's own interests shall

not conflict with the interests of his client, and as per Rule 57, an attorney must have no contacts or discussions with the opposing party (Supreme Court Rules, 1988). In the Indian case, *Chandra Shekhar Soni v. Bar Council of Rajasthan and Others* (1983), an attorney who was defending one party in a case shifted sides and began representing the other side and the Supreme Court held that it was not proper professional conduct.

The attorney, in his or her capacity as an Officer of Court, is bound by Rules 50 to 55 with regard to the courts. A lawyer must support the court in the proper administration of justice without undermining the Bar's independence and a lawyer is not allowed to let their client mislead or deceive the court in any way (Supreme Court Rules, 1988).

es, 1988).

Lawyers should conduct themselves with dignity and should adhere to the proper dress code when coming to court because it is crucial for a professional to show "professionalism" in their attire. It is crucial to remember that in the legal profession, appearance matters. This does not imply that a lawyer has to drive a luxurious vehicle and wear expensive suits (*Junior Bar Committee Induction Handbook for Junior Lawyers*, 2022). If an attorney is not appropriately attired, they may lose their chance to present their case before a Judge. The court attire of a Sri Lankan Attorney outlined in rule 6-8 of the Gazette of the Democratic Socialist Republic of Sri Lanka (Extraordinary) No. 1/4 dated 07.09.1978.

Furthermore, an attorney is expected to treat fellow members of the Bar fairly, courteously, and with respect in all professional engagements as a member of the profession (Supreme Court Rules, 1988). When interacting with other members of the profession, a lawyer ought to follow Rules 56 to 61 of the Supreme Court Rules. These are the main rules and regulations of Sri Lanka that an attorney should adhere to when dealing with clients, court, and other fellow members.

other members of the profession, a lawyer ought to follow Rules 56 to 61 of the Supreme Court Rules. These are the main rules and regulations of Sri Lanka

that an attorney should adhere to when dealing with clients, court, and other fellow members.

Recent claims against Sri Lanka's legal profession present compelling examples of unethical activities within the legal profession. One important example is the Bar Association of Sri Lanka (BASL), where numerous office bearers, including the President and Deputy President, have been accused of misappropriating money intended for an anti-corruption effort aided by the Japan International Cooperation Agency. According to reports, around Rs. 19 million of the Rs. 21 million allocated for the work was misused. This led to calls for a thorough investigation from the legal profession, highlighting the necessity of transparency and ethical leadership to rebuild the public's trust.

3.3. Challenges to Upholding Legal Ethics in Sri Lanka and the Need for Reform

Conduct that violates ethics in the legal sector can have serious consequences. Regulatory authorities may apply disciplinary measures and professional punishments, leading to a destroyed professional image. Furthermore, ethical violations may contribute to the loss of clients, coworkers, and the trust of the public. Also, Professional misbehaviour can potentially have legal and financial effects. Therefore, to ensure compliance with legal professional ethics in Sri Lanka, several steps must be implemented. These include staying updated on ethical norms and emerging issues, as well as ensuring that attorneys complete continuing legal education and training in ethics.

One important factor to examine is the presence of corruption and unethical behaviour in the judicial system. Bribery, nepotism, and cooperation with prominent parties are some examples of how this might emerge. When attorneys put financial gain over public interest, the entire legal system's legitimacy suffers, as does public trust.

Another factor to consider is the affordability and accessibility of legal services. In Sri Lanka, like in many other nations, socioeconomic class frequently determines access to justice. Lawyers may favor profitable cases over pro bono work or affordable

legal assistance, exacerbating the disparity between the rich and the underprivileged.

To overcome these difficulties, significant reforms are required at both the institutional and individual levels. Regulatory agencies must impose strict ethical standards and hold attorneys accountable for misbehaviour. Furthermore, legal education should highlight the value of ethical behaviour and inculcate a feeling of societal responsibility in future attorneys.

Furthermore, actions aiming at increasing openness, such as publicly declaring financial interests and conflicts of interest, can assist in reducing unethical behaviour. Encouraging a culture of integrity and accountability within the legal profession is critical for protecting the public's interests while respecting the values of justice and fairness.

4. CONCLUSION

In conclusion, it is clear that being an attorney is extremely noble, and it is important for both practicing and prospective attorneys to respect the profession and maintain their dignity. As Lawyers are responsible for serving society, upholding the law, and assisting in the maintenance of the law and peace in the nation as a whole, they must carry out their responsibilities while adhering to the rules of ethics. The outcomes of the research unquestionably support the idea that ethics in the legal profession outweigh the financial benefits. A thorough examination of ethical rules, professional conduct, and the impact on clients, society, and the legal system reveals that valuing ethical practices over financial incentives is critical. Maintaining standards of ethics not only fosters trust and integrity within the field of legal practice, but also ensures that justice is carried out impartially and fairly. While financial gain may provide short-term benefits, the long-term consequences of violating ethics may reduce public trust, ruin reputations, and undermine the legal system. Every attorney can pursue success while maintaining the ideals and standards that characterize their noble profession by adhering to professional ethics. Therefore, it is clear that the goal of the legal profession is to serve the proper person with justice, not to make money.

y reduce public trust, ruin reputations, and undermine the legal system. Every attorney can pursue success while maintaining the ideals and standards that characterize their noble profession by adhering to professional ethics. Therefore, it is clear that the goal of the legal profession is to serve the proper person with justice, not to make money.

5. REFERENCES

Basic Principles on the Role of Lawyers, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (1990), Available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfLawyers.aspx> (Accessed: 22 November 2023).

Booklet on ethics for Lawyers (no date) *Horizon institute*. Available at: <https://www.thehorizoninstitute.org/usr/library/documents/main/booklet-on-ethics-for-lawyers.pdf> (Accessed: 22 November 2023).

Chandra Shekhar Soni v. Bar Council of Rajasthan and Others (1983). AIR 1983 SC 1012, 1983 (2) SCALE 384, (1983) 4 SCC 255.

Deegalla, L. (2019). *Ethics of Lawyers: Legal Method*, *Academia.edu*. Available at: https://www.academia.edu/42062301/Ethics_of_Lawyers_Legal_method_LAKMAL_DEEGALLA_SRI_LANKA (Accessed: 23 November 2023).

Evidence Ordinance, No 14 of 1895.

Gazette of the Democratic Socialist Republic of Sri Lanka (Extraordinary), No. 1/4, 1978.

IBA International Principles on Conduct for the Legal Profession (2006), Available at: <https://www.ibanet.org/MediaHandler?id=e067863f-8f42-41d8-9f48-d813f25f793c> (Accessed: 22 November 2023).

In Re Aththanayake (1987). 1 SLR 314.

In Re Brito (1942). 43 NLR 529.

JICA scandal: BASL members urge removal of potentially implicated office bearers | *Daily FT* (2024), Available at: <https://www.ft.lk/news/JICA->

scandal-BASL-members-urge-removal-of-potentially-implicated-office-bearers/56-762340. (Accessed 20 October 2024).

Junior Bar Committee Induction Handbook for Junior Lawyers (2022), Available at: https://basl.lk/wp-content/uploads/2023/10/Induction-Handbook-for-Junior-Lawyers_compressed-1.pdf (Accessed: 23 November 2023).

Karnavas, M.G. (2016), *Lawyer's Ethics*, Available at: <https://www.osce.org/files/f/documents/a/e/315081.pdf> (Accessed: 22 November 2023).

Madhavan, A. (no date). *Legal profession and Ethics, Legal Service India - E -Journal*. Available at: <https://www.legalserviceindia.com/legal/article-3962-legal-profession-and-ethics.html> (Accessed: 22 November 2023).

Re A. V. De Silva, (1934). 37 N.L.R. 99.

The Constitution of the Democratic Socialist Republic of Sri Lanka of 1978.

The Judicature Act, No.2 of 1978.

The Supreme Court Rules, 1988.