

An Empirical Study on Unethical Legal Practices in Bangladesh and Suggested Remedial Measures

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1. Introduction¹

Legal ethics play an important role in regulating legal practice and the legal profession in every country. Legal ethics deal with the ethical behavior of lawyers, roles and responsibilities of lawyers in society.² Lawyers are an integral part of the justice delivery system, entrusted with upholding the law and justice and promoting the rule of law. Legal ethics are a matter of public as well as a professional concern. Lawyers play a central role in the structure of legal, economic, and political institutions of any country. However, lawyers often face conflicts between their professional obligations and personal interests, which is described as ethical dilemma. A central challenge of legal practice is how to live a life of integrity in the tension between these competing demands.³ Legal ethics refer to the core values that should guide the lawyer in fulfilling his professional responsibilities. It is often said that lawyers are independent, self-regulated and self-employed. This independence of the legal profession places unique social responsibility for lawyers. Ethical lawyering requires a comprehensive understanding of the role of lawyers and of law in society. The principles of legal ethics cover duty to society generally, to clients, to other members of the legal profession and the duty to the courts. The professional virtues of lawyers include competence, independence, loyalty, and maintaining

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² Richard O' Dair, *Legal Ethics: Text and Materials*, (Butterworths, 2001) 5.

³ Deborah L. Rhode (ed), *Ethics in Practice* (Oxford University Press 2000) 3.

confidentiality. The MacCrate Report identified the fundamental professional values as are: providing competent representation- the responsibility to clients; - striving to justice, fairness and morality- the public responsibility to the justice system; maintaining and striving to improve the profession- responsibility to the legal profession; and professional self-development- the responsibility to oneself.⁴ Actually the contour of legal ethics is too wide to delimit and delineate its definite boundary. But in all events, it refers to minimum standards that a lawyer should at all events comply with.

The legal profession in Bangladesh has been undergoing a crisis of trust and public confidence. Widespread distrust of people on the justice delivery system in Bangladesh is a reflection of such a crisis. Lawyers serve not only in a private capacity to represent their clients, but also they occupy important positions in government offices and in the private sector. But many unethical practices of lawyers are observed today which can be attributed to such distrust and lack of public confidence towards lawyers. In Bangladesh, the general shift to practice in large law firms, increasing specialization in legal practice, more legal practice activities in-house rather than in court room pose new challenges for observing legal ethics. In many cases, unethical practices of lawyers go unnoticed and are not sanctioned effectively. A critical assessment of the code of conduct and existing mechanisms for the accountability of lawyers is essential for an in-depth understanding of the current regulation of the legal profession in Bangladesh. An accessible, transparent judicial complaint process and remedial and punitive sanctions for violation of code of conduct is required for ensuring lawyers' accountability.

Ethical lawyering encompasses a common understanding of expected and permissible behavior in the performance of the lawyer's office. Lawyers are also officers of the court. Lawyers' responsibilities are designed to protect not only the client, but also the profession, the public and the judicial system. In a common law system, the contesting advocates "use their skill to test the evidence, and to control the way the evidence emerges"⁵ and by doing so assist the court to seek out the truth as best as it can. But the scope of legal ethics is much wider than only regulating an advocate's role in the court.

Professional ethics are frequently formulated in codes of conduct which illustrates the high standards on which reputations for professionalism rest. There are two objectives of such a code of conduct- professional service is provided by only properly qualified or technically expert persons but also by persons whose professional standards merit the high degrees of public trustworthiness which are

⁴ 'Legal Education and Professional Development-An Educational Continuum', (*Report of the Task Force on Law Schools and the Profession: Narrowing the Gap* (A.B.A. Sec. of Legal Educ. & Admission 1992).

⁵ Iain Morley, *The Devil's Advocate* (Thomson Sweet & Maxwell 2006) 12.

typically required of professionals. Professional rules serve as a standard of conduct in disciplinary proceedings, as a guide for action in a specific case and as a demonstration of the profession's commitment to integrity and public service. As to the first of these, professional rules express the profession's collective judgement as to the standards expected of its members. The Bangladesh Bar Council Canons of Professional Conduct and Etiquette, 1969 framed in exercise of the power conferred on the Bangladesh Bar Council by Section 48(q) of the Legal Practitioners and Bar Council Act, 1965, contains legal ethics provisions that apply to lawyers' professional conduct in Bangladesh. The Bangladesh Canons of Conduct addresses a wide range of issues, including lawyers' duties to the court, conduct with regard to fellow practitioners and clients, and also the overarching duty to uphold rule of law and to strive for establishing and maintaining independence and integrity of the judiciary. However, there are many unethical practices that emerged in the last few decades which have not been addressed in the Bar Council Canons of Professional Conduct and Etiquette. Thus, the Bar Council Canons are not adequate and comprehensive enough to encompass all aspects of unethical practice which are observed today in Bangladesh. However, observance of legal ethics by lawyers should not be viewed from a narrow legalistic perspective. Lawyers' ethical behavior is inevitably affected by a host of factors including informal norms and shared values of the legal community.

Despite the importance of legal ethics in regulating the conduct of lawyers, no comprehensive research is yet to be undertaken in Bangladesh. In fact, legal ethics is an unexplored area of research in Bangladesh. This article is expected to fill in the gaps of knowledge on legal ethics in Bangladesh.

The article addresses the following research questions:

What are the common unethical practices in the legal profession in Bangladesh? To what extent is the Bangladesh Bar Council Canons of Professional Conduct and Etiquette 1969 adequate to deal with unethical legal practices? How far are the Bangladesh Bar Council Canons of Professional Conduct and Etiquette 1969 complied with? What reforms are needed in the Bangladesh Bar Council Canons of Professional Conduct and Etiquette 1969? To what extent have legal ethics been integrated in the curriculum of law schools of Bangladesh? How far is the mechanism for accountability of lawyers effective?

Accordingly, this article has the following aims and objectives: to identify the unethical practices in legal profession in Bangladesh; to examine the adequacy and relevance of the Bangladesh Bar Council Canons of Professional Conduct and Etiquette 1969 to address the unethical practices of lawyers; to examine the extent of compliance with the Bangladesh Bar Council Canons of Professional Conduct and

Etiquette 1969 by lawyers; to focus on effectiveness of existing mechanisms of accountability of lawyers in Bangladesh; and to suggest reforms for the Bar Council Canons of Professional Conduct and Etiquette in order to meet the changing needs of the legal profession.

2. Core Areas of Legal Ethics

2.1 *Duty to be Competent*

The duty to be competent is an important element of legal ethics. According to one commentator, “No matter how skillful, a lawyer is not a true professional without a commitment to fundamental values as well: the two aspects of lawyering are inseparable.”⁶ But what is competence? The word competency lacks any generally accepted meaning. It requires lawyers to use their best endeavours to complete any professional work competently and as soon as reasonably possible, and it becomes apparent that this cannot be done within a reasonable time, to inform the client immediately.⁷ According to the American Bar Association (ABA), ‘competence’ has been phrased in the following way:

“Legal competence is measured by the extent to which an attorney (1) is specifically *knowledgeable* about the fields of law in which he or she practises, (2) performs the techniques of such practice with *skill*, (3) manages such practices *efficiently*, (4) identifies issues beyond his or her competence relevant to the matter undertaken, bringing these to the client's attention, (5) *properly* prepares and carries through the matter undertaken and (6) is intellectually, emotionally and physically *capable*. Legal incompetence is measured by the extent to which an attorney fails to maintain these qualities.”⁸

In certain circumstances, competence also requires specialized knowledge. Legal practice in modern times involves more and more specialisation. Should there be a different standard for a specialist? Specialized lawyers should meet higher standards in their area of expertise than other members of the profession as implied by the test being ‘the standard of the ordinary skilled man exercising and professing to have that special skill.’⁹

⁶ Richard A Matasar, ‘Skills and Values Education: Debate about the Continuum Continues’ (2002-2003) 46(3-4) *New York Law School Law Review* 425.

⁷ Gino E. Dal Pont, *Lawyers' Professional Responsibility*, (4th edn, Thomson Reuters 2010) 75.

⁸ ABA-ALJ Committee on Continuing Professional Education Model peer review System, 11, Discussion Draft, 1980.

⁹ Ysaiah Ross, *Ethics in Law: Lawyers' Responsibility and Accountability in Australia* (5th edn, LexisNexis Butterworths 2010) 310.

2.2 *Duty to Uphold the Law*

The lawyer is part of a judicial system charged with upholding the law. One of the lawyer's functions is to advise clients so that they avoid any violation of the law in the proper exercise of their rights. The lawyer may not counsel or assist a client in conduct that is criminal or fraudulent. Similarly, a lawyer has a duty not to use false evidence. But a lawyer may have been innocently involved in past conduct by the client that was criminal or fraudulent. The lawyer may learn that a client intends prospective conduct that is criminal and likely to result in imminent death or substantial bodily harm. The lawyer in such cases has professional discretion to reveal information in order to prevent such consequences.¹⁰ A lawyer has a duty to obey existing laws and to assist in their enforcement. This duty to uphold the law manifests itself in three ways, namely: not to undermine the law; not to break the law; and to assist a client or an agent to break the law. While a lawyer is entitled to criticise the law, he or she should take particular care to ensure such criticism does not undermine the law itself or public confidence in it.¹¹

2.3 *Duty of Confidentiality*

The duty of confidentiality is an article of faith in the legal profession. Some courts have recognised the duty of confidentiality, and the corresponding obligation of the lawyer not to disclose client communications even to a court, as a fundamental human right.¹² In all legal systems, a lawyer has a right and a duty to maintain in confidence matters that have been learned from a concern a client. The duty governs not only communications directly from the client but also information obtained from others, such as the client's banker or accountant or friends or family members.¹³ In common law systems, the lawyer's duty of confidentiality is supported by a corollary known as the lawyer-client privilege.¹⁴ Lawyers perform most of their functions by conveying information about their clients to others, for example, in litigation through pleadings, motions, and evidence. Information about a client is transmitted to other parties in the negotiation. The addressee of information about a client may be a government official in response to an official inquiry.¹⁵

¹⁰ Richard O' Dair, *Legal Ethics: Text and Materials* (Butterworths 2001) 284-85.

¹¹ Geoff Monahan and David Hipsley, *Essential Professional Conduct: Legal Ethics* (2nd edn, Routledge 2006) 11.

¹² *ibid* 204.

¹³ *ibid* 205.

¹⁴ *ibid* 206.

¹⁵ *ibid* 210.

The primary arguments for confidentiality are three- for the adversary system to operate, citizens must use lawyers to resolve disputes and lawyers must be able to represent the client effectively. Second, lawyers can be effective only if they have all the relevant facts at their disposal. Third, clients will not provide them with information, unless all aspects of the lawyer-client relationship remain secret.¹⁶

Lawyers should maintain high standards of professionalism in all communications. They should not use insulting, provocative or annoying language or acrimonious or offensive correspondence as this is unbecoming, discourteous and may merit professional sanction. They should avoid discriminatory, harassing or vilifying communications with third parties.¹⁷ It is unethical to threaten the institution of criminal proceedings against a person in default of satisfying a civil liability to the lawyer's client.¹⁸

3. Areas of the Unethical Legal Practices in Bangladesh

According to the lawyers, judges and legal experts, the following unethical legal practices are found amongst legal practitioners in Bangladesh: taking up cases concealing conflict of interest; bribing judges and other officials in the judiciary; deliberate distortion of facts; taking up cases without appreciating that they do not have necessary expertise on the matter; despite taking fees, lawyers do not work for the clients; taking gratification from the opposing side; assisting or advising clients who are themselves involved in payment of bribe and other unlawful gratifications; using affiliation with the ruling party in order to gain leverage in judicial proceedings; informing clients about having personal relation and access to particular judge(s), and on that basis, guaranteeing a win in a case and obtaining excessive fees; providing incomplete, incorrect and negligent advice; charging higher fees and demanding fees as and when an advocate wishes on various vague grounds; advising and encouraging clients to initiate legal proceedings for the purpose of harassing someone or delaying proceedings; representing clients without proper preparation before courts; knowingly or recklessly misleading courts with wrongful information that may cause miscarriage of justice; pursuing private audiences with judges in the absence of opposite counsel; suggesting bribe to judge or court staff; intimidating and treating witness which discourages witnesses from coming to courts for providing their testimony which may cause miscarriage of justice; disrespect and using disgraceful words or gesture towards opponent counsel; making comments through printing, electronic and social media on sub-judice matters which is likely to impact

¹⁶ O' Dair (n 10) 250.

¹⁷ Dal Pont (n 7) 492.

¹⁸ *ibid* 493.

proper administration of justice; taking inducements from opposite side for compromising own clients' interest; not communicating with and updating clients about the progress of litigations; while representing Government or prosecution, public prosecutors trying to pursue courts to ensure conviction instead of assisting courts to ensure proper administration of justice; public prosecutors taking inducements from accused and playing a silent role before courts to ensure illegal discharge of the accused who would otherwise be convicted; taking pictures with clients and uploading them on social media, which compromises confidentiality about representation of a particular client; behaving on social, printing and electronic media in a way which is likely to diminish the trust and confidence which the general public places on advocates or the profession; purchasing clients' properties directly or indirectly; using political identity to obtain unreasonable, unlawful and illegal orders and judgments from courts; not paying junior advocates properly; not providing junior advocates with adequate tuition, and supervision; using monetary means to have hearing moved up in the daily cause lists of courts causing other hearings to be replaced; giving assurance of bail in the criminal cases; illogical and irrational demand of fee; disclosure of client's confidential information to other; claiming share of client's property as a fees for legal practice; demanding high fee after obtaining remedy; soliciting professional employment by *Dalal*; advising client for the violation of law; disrespectful attitude towards court; misleading the court, suppressing the fact before the court; discussing any confidential matters of clients of another lawyer in the absence of that lawyer; accepting a case in which the opposite party was his client in the same matter and he knows the confidential matters of the case; misappropriation of money which is due to client; tampering of evidence, showing cost of case more than actual; keeping necessary documents of client relating to case with him without any necessity and extracting money by keeping these documents; intentionally causing delay of proceedings of a case in order to economic gain; not discussing possible remedy or outcome of a case with client; sexual harassment of clients; threat of boycott or boycotting court; engaging junior advocates or trainees by senior lawyers to collect clients from premises of the courts and prisons; submitting petitions without informing the concerned advocates of the opposite parties and implore the judges to hear the petitions in the absence of the opposing counsels; misquoting the contents of documents; rude behavior of lawyers with the witnesses during cross-examinations; reacting badly before the Judges if the decision of the court goes against him; misbehaving with the client; creating fake documents and orders of court; refusing briefs by lawyers on the ground of religious belief, social or financial status, and political consideration of clients; carrying out other profession or business on full time basis and so on.

4. Adequacy and Effectiveness of the Bangladesh Bar Council Canons of Professional Conduct and Etiquette 1969 to Deal with Unethical Practices

The Bangladesh Bar Council Canons of Professional Conduct and Etiquette was formulated in 1969 to incorporate an ethical code of conduct for the lawyers. But the Bangladesh Bar Council Canons of Professional Conduct and Etiquette 1969 is not adequate enough as it is not exhaustive to deal with the present situation. It needs to be updated and elaborated in view of the changing circumstances and needs of society. According to experts, although the Bangladesh Bar Council Canons of Professional Conduct and Etiquette 1969 contains basic principles of legal ethics, it requires the elaboration of those principles. It is not adequate as it does not define clearly and specifically the process of determination of honorarium of lawyers. Lawyers' duty to render free legal assistance to the client and duty to imparting legal knowledge to the trainees also have not been covered by the Bangladesh Bar Council Canons of Professional Conduct and Etiquette 1969.

Lawyers have to observe the ethical conduct prescribed by the Bangladesh Bar Council and the government of Bangladesh under the Bangladesh Bar Council Canons of Professional Conduct and Etiquette 1969. In reality, the provisions are seldom observed and are hardly complied with by many lawyers in their day-to-day professional conduct. In Bangladesh, after enrollment as an advocate, in fact, there is nobody to monitor the lawyers' activities except the Bar Council. The District Bar Associations are not well equipped to monitor the unethical practices of the lawyers.

One reason for non-compliance with the Canons is that most of the lawyers are unaware of the contents of the Canons. However, it is difficult to quantify the level of observance and compliance with the Bar Council Canons in the absence of monitoring of such compliance. Lack of adequate sanctions for breach of the Canons has been cited as another reason for its non-observance.

Observance of the canon of conduct and etiquette also depends on the moral standard of individual lawyers. The centralisation of the Bangladesh Bar Council office in Dhaka has been cited as another reason for the poor observance of the Bar Council Canons. Since a huge number of lawyers are practicing in the district level, it is very difficult to control the conduct and etiquette by the Bar Council office based in Dhaka. As a result Bar Council cannot monitor compliance with the conduct and etiquette by the lawyers effectively.

5. Reforming of the Bangladesh Bar Council Canons of Professional Conduct and Etiquette, 1969

Although the existing Code of Conduct contains some important principles of legal ethics and addresses core areas of unethical practices, it should be revised in order to

bring simplicity and cohesion, to remove vagueness and obsolete words, and to reconcile overlapping principles in order to address the changing needs of the legal profession. Many provisions of the Bar Council Code of Conduct are outdated and not clear and specific in terms of misconduct. Usages and language in those canons are more in the nature of literature than legalistic. The existing provisions of the Code of Conduct are wide in scope and have been drafted in a broad manner. Therefore, in theory, there may not be any unethical legal practice that has not been covered by the Bangladesh Bar Council Canons of Professional Conduct and Etiquette 1969, but the provisions are not sufficiently specific to the unethical practices that are prevalent now. Some specific areas of the Code of Conduct which require reforms include:

- (a) The title ‘the Bangladesh Bar Council Canons of Professional Conduct and Etiquette 1969’ is too long and itself should be changed and simplified. It can be changed to ‘the Bangladesh Bar Council Code of Professional Conduct’ since the expression ‘canons’ also include etiquette.
- (b) Provisions relating to the conflict of interest should be elaborated.
- (c) The lawyers’ obligations to clients and judges should be spelled out with more clarity.
- (d) The mechanism under which lawyers can be made accountable should be updated.
- (e) Provisions relating to fixing and charging fees are vague and do not provide specific guidelines and criteria for charging fees by advocates. In order to avoid any uncertainty, these provisions should be reformed to include a prescribed fee schedule for each scope and stage of work for a particular class of advocates and criteria for charging fees by advocates.
- (f) There should be a mandatory provision requiring all advocates to provide an engagement letter setting out the scope of engagement and the fees for each scope and stage of work, to provide money-receipt to the clients in respect of receiving any payment.
- (g) There are overlapping provisions regarding the division of fees with any person for legal service is proper and avoiding conflict of interest. For example, Clauses 2, 3 and 4 of Chapter II forbid advocates from accepting instructions conflicting with the interest of existing and former clients. These three provisions may be reconciled and simplified.
- (h) The Code of Conduct contains obsolete and back-dated words. For instance, Clause 12 of Chapter II provides in the third paragraph “warm zeal” and “chicanery” which are exceedingly old and are not in use in modern times. Clause 3 of Chapter III provides “or jury” which is not applicable in Bangladesh since Bangladesh’s criminal justice system does not have a jury trial. These expressions and words need to be removed.

- (i) Clause 6 of Chapter III contains principles regarding publications by an advocate as to pending or anticipated litigation in “newspapers” only. This clause should be reformed to include provisions regarding publications, posting, making comments on other media, for instance: electronic media, social media including Facebook, Twitter etc.
- (j) Clause 4 of Chapter IV provides the liberty to an advocate to decline an instruction. This liberty is discretionary. Whilst providing liberty to advocates is logical, this principle would impose an unjustified restriction on the client’s choice of an advocate. There is also a risk that in some cases clients would be left without legal representations. In order to mitigate such risk, the liberty provision should be reformed to make it more balanced while mitigating the risk to clients indicated above. In order to mitigate such risk, Clause 4 of Chapter IV should be reformed requiring all advocates to accept any instruction if the advocate possesses appropriate experience and knowledge to provide competent professional service. In other words, an advocate must accept an instruction, if the same falls within his/her usual area of practice and expertise.
- (k) The Bar Council Canons also prohibit an advocate to carry on any other profession or business, or to be an active partner in or a salaried official or servant in connection with any such profession or business. This provision appears to be impractical in modern times. Therefore, this clause should be omitted.
- (l) The Bar Council Canons should make a mandatory provision requiring all law schools to include professional ethics as a module in their curriculum.
- (m) The Bar Council Canons should require all advocates providing to the junior advocates adequate tuition, supervision and sharing their experience with the junior advocates.
- (n) Proper provisions and guidelines should be incorporated to the Bar Council Canons for advocates with regard to using social media, making comments on social, electronic and print media on any sub-judice matter. This would reduce the chance of comments being made by influential advocates on social, electronic and print media, which may impact the proper administration of justice.
- (o) An advocate may be allowed to do part-time employment apart from his legal practice.
- (p) Professional training must be made compulsory and shall be arranged by the local bar association for the newly enrolled lawyers. Clinical legal education programme (CLEP) may be introduced for the newly enrolled lawyers. On the other hand, Bar Vocation Course (BVC) should be introduced as

compulsory programme and a prerequisite for enrollment as advocate. The main purposes of these programmes are developing professional competence, enhance ethical standards and to improve the public image of lawyers. Previously the Bar Council of Bangladesh introduced CLEP for the newly enrolled lawyers and BVC as requirement of entry into the legal profession in order to equip them necessary legal knowledge, skill and ethical value for lawyering. These programmes do not exist now. Both CLEP and BVC should be introduced by the Bar Council for imparting professional training and legal ethics in order to bridge between academic knowledge of law and practical skills required in the profession.

Apart from reforming the Bar Council Canons, the following provisions of the Bangladesh Legal Practitioners and Bar Council Order, 1972 should also be reformed:

- (a) Section 32(1) of the 1972 Order should be amended to empower the Bar Council Tribunal to make an order of compensation in favour of a victim of professional and other misconduct of an advocate and to order to the Bar Council to publish its order in Bar Council's website and in at least two national newspapers having wide circulation.
- (b) Framing of charges and formats of complaints are not clear and specific. These need to be more specific.
- (c) In the Bar Council Order 1972, there is no time frame for the disposal of allegations by the Bar Council. Amendment may be made for compulsory disposal of allegations within the time fixed by the Bar Council.
- (d) Usually, clients are not aware of the complaint procedure to the Bar Council. In most of cases, they make a complaint to the concerned District Bar Association and the Bar association solves it mutually. Amendment may be made for sending an annual report by the Bar Association to the Bar Council of the lawyer against whom any allegations have been made. The Bar Council may take steps in case of a repeated allegation against any lawyer. In case of enrolment of such lawyers to the High Court Division and Appellate Division, the reputation of such lawyers may be taken into consideration.
- (e) Criteria of determination of punishments for breach of the Bar Council Canons should be included in the Bar Council Order. Such punishment may vary depending on the gravity of the offences.

6. Integrating Legal Ethics in the Curriculum of Law Schools of Bangladesh

Fundamental goals of legal education include acquiring knowledge, skill and professional value. Law students must learn about problem-solving, legal analysis and reasoning, legal research, factual investigation, oral and written communication, counseling, negotiation, understanding of the procedures of ADR, organizing and managing legal work and recognizing and resolving ethical dilemmas. Law students must be exposed to four central professional values based on:

- (a) the responsibility to clients, e.g., providing competent representation;
- (b) the public responsibility to the justice system, e.g. striving to promote justice, fairness and morality;
- (c) the responsibility to the profession, e.g. maintaining and striving to improve it; and
- (d) The personal responsibility, e.g., one's own professional self-development.¹⁹

But scant attention has been given to the integration of legal ethics in the legal education curriculum of Bangladesh and overemphasis has been put on corporate and private practice. The traditional arguments against the integration legal ethics in the curriculum that ethics cannot be taught; the law is a value-neutral discipline and teaching ethics should be left to the profession- have been discarded now. On the other hand, it is now widely acknowledged that law schools can improve the ethical conduct of the lawyers through teaching legal ethics. The function of legal education is not only to impart legal skills but to impart values. Since the vast majority of law students are likely to be lawyers, therefore, legal ethics should be imparted in law schools.

Teaching legal ethics is concerned with imparting to students a critical understanding of the legal profession, its structures, its roles and responsibilities, the roles and responsibilities of lawyers in their provision of professional services and the individual student's own values and attitudes. It includes an examination of what the legal profession does and ought to do.' It also involves teaching students about the disciplinary rules regulating the legal profession.

But what is the appropriate teaching for imparting legal ethics is often debated. Clinical legal education instead of the traditional teaching method has been promoted as a valuable tool for instilling professional values and ethics of lawyers. Because the traditional method for teaching ethics tends to be abstract and theoretical. On the other hand, clinical legal education is an experimental method and emphasises on learning skills rather than pedagogy. The shared goal of teaching ethics can be achieved when the law schools, the bar and the bench working together to build an educational continuum that would assure all new lawyers the opportunity for comprehensive instruction in lawyering skills and professional values as the key to effective participation in the legal profession. The case method is important modality of teaching ethics as it functions as an instrument for the development of moral imagination. The case method also cultivates perceptual habits and may be used to cultivate a public-spirited approach to law and legal institutions. Case method as a teaching method covers ethical concerns naturally and pervasively throughout the

¹⁹ Robert MacCrate, 'Preparing Lawyers to Participate Effectively in the Legal Profession' (1994) 44(1) *Journal of Legal Education* 89, 90-91.

curricula even when the schools offer little or no specific instruction in legal ethics.²⁰ Case method can play a crucial role in building capacities for reflective judgment on issues involving professional conduct and regulation.²¹

But law schools of Bangladesh do not put sufficient emphasis on learning lawyers' professional ethical conduct. It is generally assumed that the law graduates would familiarize themselves with the professional standard when they appear for enrollment exams or enter into the legal profession. In fact, most of the law schools do not include legal ethics adequately as a module in their curriculum. Even where some law schools include professional ethics in their curriculum, most of them do not address the issues of legal ethics from a practical perspective as they only contain the Bangladesh Bar Council Canons of Professional Conduct and Etiquette, 1969. Because only studying the Code of Conduct is not sufficient unless the unethical legal practices that take place in everyday professional conduct of advocates are portrayed to the students.

It is vitally important for law students to learn about legal ethics. Otherwise they will lose their respect for the legal profession. It is widely believed that if ethics are integrated in legal education, law students will refrain from unethical practices. In all law schools, case studies of unethical practices (bases on real cases or simulated) should be included in the Syllabus.

Therefore, the law schools of Bangladesh should address the issue of legal ethics in their curriculum and it should be included as a compulsory course so that the students of law learn about the professional conduct and etiquettes from the beginning.

7. Effectiveness of Accountability Mechanisms for Lawyers in Bangladesh

There are mainly two types of sanctions for professional misconduct. Firstly, institutional sanctions: the institutions within which lawyers work may themselves impose sanctions upon misconduct. Misconduct may result in suspension from legal practice. Secondly, liability rules- in case of breach of contractual duty of care to the client, a lawyer may be sued both in contract and tort. In fact, breach of a legal obligation confers on a person affected a right to a remedy against the lawyer.

²⁰ Oliver W. Holmes, 'The Use of Law Schools' in Sheldon M. Novick (ed) *The Collected Works of Justice Holmes: Complete Public Writings and Selected Judicial Opinions of Oliver Wendell Holmes* (The Holmes Devise Memorial Edition, University of Chicago Press 1995) 55; See also, Anthony T. Kronman, *The Lost Lawyer: Failing Ideals of the Legal Profession* (Harvard University Press 1993) 113.

²¹ Deborah L. Rhode, 'Legal Ethics in Legal Education' (2009) 16 *Clinical Law Review* 43.

According to section 5 of the Legal Practitioners (Fees) Act, 1926 of Bangladesh, no legal practitioner who has acted or agreed to act shall, by reason only of being a legal practitioner, be exempt from liability to be sued in respect of any loss or injury due to any negligence in the conduct of his professional duties.²²

Under the Bangladesh Legal Practitioners and Bar Council 1972 Order and the Bangladesh Legal Practitioners and Bar Council Rules, 1972 there are provisions for making a complaint against an advocate for professional or other misconduct to the Bar Council by any court or advocate or any other person. Under the existing mechanism, a lawyer is accountable in two ways. (a) He is liable under civil and criminal law for his civil wrongs and crimes relating to his profession; (b) his professional body can disbar him and refer him to the police. The complaint is to be made by submitting the Complaint Form along with a fee of taka one thousand to the Bar Council. The Bar Council Tribunal as an organ of the Bangladesh Bar Council investigates and conducts a trial of any allegation of unethical practice against a lawyer. The existing mechanism of accountability may be triggered only when a complaint is made against an advocate who has committed professional misconduct.

The complaint procedure needs to be amended for speedy trial of cases as the procedure is complex and excessively lengthy. There is no sufficient supply of information and procedure on how to file a complaint against a lawyer for misconduct. Even if a complaint is filed, it has to be first scrutinized by the Executive Committee of Bar Council in its meeting whether the complaint should be dismissed or should be sent to the Tribunal for trial. In many occasions, it appears to be a time-consuming process. The Bar Council should frame guidelines or time frames for dealing with complaints. There is no time limit within which time a complaint is to be dealt with by EC. The Rules should spell out in a more detailed way about the proceedings before the Tribunal.

Usually, a lawyer does not make a complaint against another lawyer. In very exceptional cases, courts are seen making complaints to the Bar Council to take appropriate disciplinary action against an advocate, who according to the concerned court, seems to have committed misconduct. Lack of awareness about the complaint procedure among the litigants is another reason for the under-utilization of these rules. Clients or the general public who become victims of advocates' misconduct cannot complain due to the lack of information about the complaint procedure. Even when the clients know about the complaint procedure, they abstain from making a

²² Act No. XXI of 1926

complaint to the Bar Council due to the fear of damage to the litigation. Therefore, in order to make the existing mechanism of accountability of advocates in Bangladesh effective, the Code of Conduct should be amended.

8. Adequacy and Effectiveness of Sanctions for Breach of the Bangladesh Bar Council Canons

According to Section 34(4) and Section 32(1) of the 1972 Bangladesh Bar Council Order, on completion of the inquiry, the Tribunal may either dismiss the complaint or, direct that the proceedings be filed; or it may make an order of reprimand, suspension or removal of the concerned lawyer from the legal practice. The rate of disposal of complaints by the Tribunal is very low and lengthy. There is no provision under the 1972 Bangladesh Bar Council Order for making an order of compensation against a convicted advocate requiring him to compensate a client who suffered any damage due to the lawyer's professional or other misconduct. Apart from this, the centralization of the Bar Council Tribunal in Dhaka is another reason for the under-utilization of the complaint procedure as many people do not want to lodge complaints due to this geographical barrier.

According to most of the experts, sanctions for breach of the Bangladesh Bar Council Canons of Professional Conduct and Etiquette 1969 by the lawyers in Bangladesh are not adequate and effective. Although, Advocates are sometimes punished for their fraudulent activities, for example, the fabrication of documents, they rarely receive any sanctions for their unacceptable behavior with the judges and the public.

9. Suggestions on Reforming Accountability Mechanism under Bar Council Canons

Given the inadequacy of accountability for the lawyers for non-compliance with the Bar Council Canons, the accountability mechanism (including Chapter IV of the Rules) needs the following reforms:

- (a) Each Bar Association will have public display boards stating the contact number for the submission of the complaint before the Bar Council or the local Bar Association.
- (b) The Bar Council should respond to complaints within a short time.
- (c) All decisions by Tribunals should be publicized in each Bar Association.
- (d) Apart from disbarment, lawyers should be financially penalized for unethical practices.

- (e) Advocates who use financial means to have hearing moved up in the daily cause lists of courts through the backdoor should be deterred from such practices.
- (f) District Bar Associations should be strengthened to take necessary steps regarding the misconduct of the lawyers and they should be empowered with the same procedure of the Bar Council in case of the allegation against a lawyer.
- (g) The District Bar Associations should be more active and they should be given more power for ensuring the ethical behaviour of the lawyers.

10. Conclusion

Professional rules of ethics serve as a standard of conduct in disciplinary proceedings, as a guide for action in a specific case and as a demonstration of the profession's commitment to integrity and public service. Maintaining ethics enhances public confidence in the legal profession, enhances the legitimacy of the judicial system and increases the reputation, self-respect and dignity of a lawyer. It is also essential for the accountability of lawyers and the well-functioning of the administration of justice. The above findings of the empirical research clearly suggest that the value of ethics should be deeply ingrained in legal institutions and lawyers in order to deliver justice. Although the Bar Council Canons contains basic principles relating to legal ethics, it requires updating and elaboration of many key issues. The existing enforcement mechanism for ensuring compliance with the Bar Council Canons is not at all satisfactory. The Bar Council Canons need to be amended to address and include new forms of unethical legal practices, to prescribe punishment for unethical practices depending on the gravity of the offences, and to make accountability mechanisms for lawyers' conduct more effective. Sanctions for breach of the Bangladesh Bar Council Canons of Professional Conduct and Etiquette 1969 by the lawyers in Bangladesh should be made more effective.