

**PRIVILEGED CLASS DEVIANCE
STUDY MATERIAL (LCR 908)**

UNIT IV

(PROFESSIONAL DEVIANCE)

BY

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PROFESSIONAL DEVIANCE

➤ **Profession Defined –**

According to Webster (1969) it is believed that profession comes from the word 'profess' which means to receive formally into a religious community following a novitiate by acceptance of required vows. It might have something to do with the word 'priest' who is authorized to perform the sacred rites of a religion especially as a mediatory agent between man and God. According to Shaffer (1968) may be that priesthood was the oldest profession with special knowledge. A priest was capable of doing such things, which an ordinary person could not do. Seen in this context, profession is originally meant to be a calling requiring specialized knowledge and often long and intense academic preparation. *Oxford English Dictionary* defines a profession as "a vocation in which professed knowledge of some department of learning or science is used in its application to affairs of others or in the practice of an art founded on it".

Cambridge International Dictionary of English defines a profession as "any type of work which needs a special training or a particular skill, often which is 'respected because it involves a high level of education". Both definitions lay emphasis on intellectual and skill aspects of the profession.

- Every profession has code of conduct, conditions, rules and ethics.
- If any act violates such rules, etc., it is called as professional deviance.
- Professions includes: legal, medical, journalism, education, engineer, architect etc.

Professional deviance refers to the violation of professional norms, standards, or ethical codes by individuals in a particular profession. It involves actions or behaviors that deviate from the expected conduct within a professional setting. Professional deviance can range from minor infractions to serious misconduct that can harm clients, colleagues, or the reputation of the profession.

➤ **Causes of professional deviances-**

Majority of people in India are poor, illiterate and backward, hence they easily get exploited by the professionals. Some professions tend to have support from politicians – in return they finance the politicians during the election. Accumulation of wealth by illegal means to meet for future uncertain needs for their children.

1. PROFESSIONAL DEVIANCE BY LAWYERS

White collar criminality among lawyer is believed to be fairly widespread. The lawyer of good mass who not only advise organized criminals, but play a leading part in promoting and facilitating white collar criminality. It is not surprising that few lawyers often of the highest standard at the Bar, who specialize in corporation and constitutional law have suggested or guided the criminal or quasi-criminal activities of corporations under the guise of professionalism especially the wholesale white collar crimes of public utility in the past [*Bar Council of Maharashtra v. M. V. Dabholkar reported in (1975) 2 SCC 702, 1976 AIR 242, 1976 SCR (2) 48*]

The deteriorating standards of legal education and unethical practices resorted to by the members of legal profession to procure clientage are mainly responsible for the degradation of this profession which was once considered to be one of the noblest vocations, the instances of fabricating false evidence, engaging professional witnesses, violating ethical standards of legal profession and dilatory tactics in collusion with the ministerial staff of the courts are some of the common practices which are truly speaking, the white collar crimes qualities often practiced by the legal practitioners.

Though there is a definite code of conduct for legal profession but it is only an ornamental document.

However, this is not to say that all lawyers are corrupt and unethical, quite a large number of them are most sincere and honest in their profession commanding greater respect from all sections of society, perhaps, it is because of the peculiar nature of their profession that the lawyers and advocates have to resort to these tactics in order to survive on the profession which is becoming more and more competitive with the passage of time.

- a) Legal profession is a noble profession.
- b) As it is said, "As justice is the great interest of men on earth and as the lawyer is the high priest at the shrine of justice.
- c) Lawyers can perform well only if they maintain certain ethical moral standards.
- d) But today in India the lawyer's profession is not looked with much respect.

The laws governing legal profession in India are:

- I. The Legal Practitioners Act, 1879
- II. The Indian Bar Council Act, 1926
- III. The Advocates Act. 1961

These laws act as guidance to the legal profession. But these codes are only ornamental documents for a deviant lawyer.

➤ Examples of deviances by lawyers

- a. Fabrication of false evidences.
- b. Engaging professional witnesses and false security.
- c. Violating professional ethics and using dilatory tactics in collusion with Court Staff.
- d. Chamber practice – settlement of case in consideration of huge sum of money by lawyers.
- e. There are criminal lawyers who arrange professional alibies, cooked witnesses for the gangsters.
- f. Even the lawyers have their own trusted police officers who help them personally by taking heavy bribe.
- g. Even the Investigation Officer and Medical Officers can be managed by the lawyers to help win their case.
- h. Sometimes lawyers engage touts for the purpose of advertisement of professional services on percentage basis.
- i. Manage opposite lawyers by payment of money.
- j. Sometimes finance is provided for filing litigation against any reputed and rich person.
- k. Asking indecent and irrelevant questions to the rape victims during cross examination to embarrass her.

2. DOCTORS

Professional deviance by doctors

Medical professional is considered as a noble profession as it relieves pain and disease of people. Most of the doctors are law abiding citizens and believe in ethical medical practice and are aware of their responsibilities towards the patients. But some doctors deviate from their ethics and use wrong methods in their medical practice and forget humanitarian aspect. People have too much faith and respect for doctors even today. Doctors perform certain unethical acts during the course of their professional and violate legal norms. There are also doctors who are involved in corruptions, issuance of medical certificates, helping illegal abortions, secret services to dacoits. Dilatory tactics are also adopted by the members of this profession for extracting huge money. Generally, Doctors are treated as Gods. But sometimes these Gods can also become deviants. The Indian Medical Council prescribes code of ethics to regulate medical profession.

The Acts applicable to this profession are:

1. Indian medical Council Act, 1956.
2. Indian Medical Degree Act, 1916.
3. Indian Medical Council Amendment Act, etc.

Some of the forms of Medical Deviances

- Issue of false medical Certificate.
- False Post-mortem reports.
- Commissions from suppliers of medicines.
- Medicines and other equipments supplies to Govt. hospitals are sold to private hospitals.
- Sex determinations.
- Illegal abortions.
- False evidence in criminal cases.
- Extortion of money from patients in Govt. Hospitals.
- Running Kidney rackets, etc.
- Fake and misleading advertisements claiming medical cure, cosmetics, etc.
- Prescribing medicine for which he does not possess adequate qualifications.
- Conducting operations for when the Doctor does not possess a qualified degree.
- Providing secret services to criminals and dacoits, etc.
- Avoiding first aid treatment to an injured person unless a Police Report is being filed.

Case: *Parmananda Katara v. Union of India*, AIR 1989 SC 2039: SC said that it is the professional obligation of all doctors to extend medical aid to the injured immediately to preserve life without waiting for the legal formalities to be complied.

➤ **The Lentin Commission Report**

Brief History:

“In January-February, 1986, 14 patients on their way to recovery in Mumbai’s government hospital JJ Hospital suddenly died showing identical symptoms.

A glycerin laced with industrial glycol, a drug that endangers the kidney and kills instantaneously, has been used in the regular medicine.

These deaths prompted the Government of Maharashtra to declare the creation of an investigation committee presided by a sitting judge of the High Court of Bombay called Justice B. Lentin.”

Significant Findings:

- The tragedy took place because the Food and Drugs Administration granted an illegal license to the supplier of drugs.
- The hospital drug purchase committee went out of their way to place the order exceeding the proportion allotted to them.
- Lack of checks and transparency in the administration.

- The Dean, Superintendent and Pharmacist of J.J. Hospital showed carelessness of duty.

Recommendations of the Lentin Commission:

- Urgent reform and scrutiny of medicine manufacturing and supplying units.
- Increase of transparency in the system of drug administration.
- Prevention of circulation of banned drugs in Maharashtra as well as in entire India.
- Constitution of a strict Vigilance Commission.
- Reducing drug dependence on Maharashtra.

3. TEACHERS

Teaching profession falls under a special category among other professions, For instance, the job of a doctor as a professional is finished when the cure is attained and that of a lawyer when the case is decided in the court of law. But the influence of a teacher as a professional does not cease merely after passing of an examination by a student.

The professional role of a teacher is not analogous to that of a lawyer or a doctor, because the former's influence endures and is reflected in the minds sharpened (or not sharpened), personalities shaped (or not shaped) and characters moulded (or not moulded). Moreover, the teacher as a professional is the maker of other professionals.

➤ Professional deviance by teachers

1. Large sum is collected in the name of donations.
2. In Govt. Schools and Colleges money is collected as fees for the seats.
3. Some portion of the salary from the teachers will be cut as charges towards their appointment as a teacher in the institution.
4. Corruption and favouritism at the time of admission and exams.
5. Exploitation and victimization of students. Especially for internal marks.
6. Preparation and prescribing of textbooks of dubious (doubtful) standard.
7. Private coaching by Permanent appointed teachers banned by Maharashtra Coaching Classes Ordinance, 2000.

4. JOURNALISTS

Journalism is the activity of gathering, assessing, creating, and presenting news and information. It is also the product of these activities. Journalism can be distinguished from other activities and products by certain identifiable characteristics and practices. These elements not only separate journalism from other forms of communication, they are what make it indispensable to democratic societies. History reveals that the more democratic a society, the more news and

information it tends to have. Journalists educate the public about events and issues and how they affect their lives. They spend much of their time interviewing expert sources, searching public records and other sources for information, and sometimes visiting the scene where a crime or other newsworthy occurrence took place. After they've thoroughly researched the subject, they use what they uncovered to write an article or create a piece for radio, television or the internet.

➤ **Duties of journalists**

1. Reporting Duties

Before journalists can write about a subject, they must first gather information. They usually conduct several interviews with people involved in or having knowledge of the subject. They may also go to the scene of an event, such as a crime or an accident, to interview witnesses or law enforcement officers and to document what they see. In addition, they often search public records or other databases to find information and statistics to back up their stories. Researching a story is often similar to conducting an investigation, and journalists must sometimes ask difficult questions.

They may have to invest a lot of time tracking down information and people relevant to the story.

2. Working with People

Even though a news article bears a single journalist's byline, the process requires significant collaboration. How good a journalist's story is often depends on how adept he is at communicating and working with others. For example, journalists take instruction from their editors regarding what angle to approach when writing a story, how long the story should be and whom to interview. They also need strong people and communication skills so they can persuade sources to talk to them. Journalists frequently approach people they don't know, whether when reporting from the scene or calling to request an interview. If they're uncomfortable around strangers, they'll make others uncomfortable as well, making it less likely that people will want to be interviewed.

3. Legal Responsibilities

In addition to serving the public interest, journalists must also follow the law, especially regarding the confidentiality and privacy of the people they interview or write about. For example, while journalists often tape record their interviews to ensure accuracy, federal and state laws generally make it illegal to record a conversation without the permission of the other party. In this case, journalists must tell their sources they're recording the interview before it begins. Journalists must also understand the laws regarding libel and invasion of privacy. If a journalist is careless when reporting criminal allegations against a person, for example, he could face a defamation lawsuit if the accusations are proved untrue.

4. Ethical Responsibilities

Some aspects of a journalist's job are not subject to any kind of law but are just as important. Journalists must strive to present an accurate, well-balanced explanation of the stories they

cover. For example, they have an obligation to present all sides of an issue, and to conduct extensive research and talk to several sources knowledgeable about the subject. If they present only popular opinion, or if they conduct minimal research without fully exploring the subject, they don't give readers and viewers the information they need to understand the implications of the event or issue. Journalists must also be honest with the people they interview, telling them before talking to them what the article is about and that they plan to quote them in the piece.

Deviance by press or journalists

- Journalism – a fourth pillar of democracy.
- Freedom of speech and expression – Art. 19(1)(a).
- Can keep effective check on the State Administration.
- But today the social object of Journalism is lost.
- Journalists demand bribes for shutting their mouth in the case they have any sensitive news about politicians or reputed and rich people.
- Investigative journalism – interference into private life and conducting of case.
- Press Council of India has laid down ethics for journalism.

The press council on unprofessional and unethical journalism

The free press is not an option in democracy; it is the sine qua non. It is the voice of the people and the special purpose vehicle to supply information that helps people to form a collective opinion.

Today, the press with its technological privileges has assumed the foremost importance in society and governance. With time the dynamics have undergone huge transformations along with the maladies with which media suffers. These days working as a media professional can be challenging. Journalists are working under extreme pressure to timely report facts of an incident and the competition to be the first to report an occurrence often afflicts the integrity of the press and media. Media credibility is essential to promote public faith in the media; hence, the press needs to dwell on the path of ethical journalism in their profession.

The Press Council of India, since its inception, has been striving to preserve and promote the freedom of the press while ensuring that the high standards of the Indian press remain unfettered. In the process of realization of its mandate, the Council from time to time develops the code of ethics based on its adjudications, pronouncements and advisories to guide the press and foster a sense of responsibility and public service among all those engaged in the profession of journalism. This updated and revised edition of the Norms of Journalistic Conduct, 2022, covers several sensitive topics/issues to guide the media for reporting issues like sex workers, child abandonment, suicide, etc. with the utmost sensitivity.

5. ENGINEERS

Engineers develop new technological solutions. During the engineering design process, the responsibilities of the engineer may include defining problems, conducting and narrowing research, analyzing criteria, finding and analyzing solutions, and making decisions.

➤ Deviance by Engineers

- i. Underhand dealing with contractors and suppliers.
- ii. Passing of substandard works and materials.
- iii. Construction of buildings, roads, canals, dams and bridges with substandard material.
- iv. Computer related crimes – theft of communication services, tax evasion, etc.
- v. Cyber-crimes by highly talented engineers.

6. UNETHICAL PRACTICES AT THE INDIA BAR

Do lawyers weigh litigants' purse more than the case brief? This is the unfortunate but real face of the legal profession today. Is it alright for a lawyer to demand a percentage from the outcome of a case? Would it not amount to misconduct and breach of professional ethics?

The judgement of the Supreme Court delivered on December 5, 2017, in the case of B Sunitha vs The State of Telangana & Anr, answered these fundamental questions and categorically declared that such a practice amounts to professional misconduct. This case has reignited the debate on the professional ethics practiced by the Indian Bar and its repercussions on the overall administration of justice in the country. A reality check is essential to see the role of lawyers as equal partners in justice delivery and how their misconduct can be extremely damaging to society.

➤ Contingent Fee Agreements

A strong legal foundation for the prohibition of 'contingent fee agreement' entered into by a lawyer is provided in Rule 20, Bar Council of India's 'Standards of Professional Conduct and Etiquette' (Bar Council of India Rules, 1975). This rule states that "An advocate shall not stipulate for a fee contingent on the results of litigation or agree to share the proceeds thereof." Such contingent fee agreements are also unlawful by virtue of the operation of Section 23 of the Indian Contract Act, 1872, for being against professional ethics as well violating public policy. The core essence of this prohibition has been to guard the interest of those seeking justice against the abuse by a lawyer of his professional position.

Therefore, if a lawyer enters into an agreement to charge fees on percentage basis, a lawyer then doesn't remain 'professional' anymore. Instead, such an act would mean that the lawyer has become both personally and pecuniarily interested in the result of the litigation, thereby surrendering his position as an advocate and becoming a litigant in the garb of an advocate. The Supreme Court made this observation in 1954 in Registrar, High Court, Appellate Side, Bombay vs K L Gauba. Around the same time, in another case, the Supreme Court again declared that an act of an advocate to enter into a contingent fee agreement with a client cannot be lawful and would amount to professional misconduct and violation of public policy.

Claims for fees based on a percentage of the decretal amount are not only unethical but a clear example of a lawyer's greed for money. The increasing practice of charging exorbitant fees by the lawyers is a sophisticated act of extortion or terrorising a litigant by creating a fear psychosis that he or she would lose a case if a particular sum of legal fee is not paid. The money extracting tactics of the lawyers is doing grave disservice to clients, rather than any form of noble service to the community. Regulatory Framework The Legal Practitioners' Act 1846, enacted during British India, provided legal practitioners a freedom to charge any fees for the professional services rendered by them, leaving barely any place for the poor to access the counsel for effective representation of his case. Even in today's context, the situation is more or less the same. That is, the Advocates Act 1961, presently in force, is silent on the issue of lawyers' fees but retains its focus on professional quality and discipline. A regulatory framework to check the astronomical fees charged by lawyers is absent. Also, there is no sign of legislative intent to evolve a law-based solution to this corrupt practice.

When lawyers are regarded as equal partners in justice delivery, compromising professional conduct and ethics will have far reaching implications. In the case of Ministry of Information & Broadcasting, In re, (1995) 3 SCC 619, the Supreme Court had cautioned the legal practitioners about such consequences by observing that if people were to lose confidence in the profession on account of the deviant ways of some of its members, it is not only the profession which will suffer but also the administration of justice as a whole. This sad reality and a perception that lawyers never lose a case because they control the litigant's brief as well as the purse must change.

Whenever there has been a travesty of justice, the apex court of the country has stepped in to protect the fundamental rights and civil liberties of the common man. Even today, when legal practitioners are going astray and there is no law to set it right, we look up to the Supreme Court to regulate the behaviour and conduct of the Bar, and to remain the everlasting sentinel of justice, as it is most deservingly called.