

Globalization and Legal Profession in India

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India has world's second largest legal profession with more than 600,000 lawyers. The predominant service providers are individual lawyers, smaller family based firms (Joshi, S. 2014). The majority of lawyers are in active practice are engaged in litigation work at three levels: mainly at the district or lower courts; at the High courts or at the Supreme Court. However, a very small percentage of lawyers work in law firms as transaction lawyers (Julian, A. Francis 2009). The impact of globalization is mainly on transactional work rather than on litigation work in the courts at various levels. Globalization has mainly affected this section of lawyers, mainly engaged in transactional work. Therefore, the present paper is focused on analyzing the impact of globalization on this emerging elite section of the legal profession of India. But before we analyse the impact of globalization on legal profession in India, it seems necessary to understand the evolution of legal education and profession in India in last 240 years.

Evolution of Legal Education and Profession in India

India has a colonial past and the legal education and profession have passed through different phases of evolution before the forces of globalization have penetrated them in the last decade of 20th Century and brought some structural changes in them. Here this process of evolution is discussed very briefly.

The legal profession in India evolved in British period with enforcement of Regulating Act of 1773 which empowered to enroll advocates and Attorneys-at-law to the Supreme Court. Although the Supreme Court was actually established one year later in Bengal, through a Charter issued in 1774. At that time, Indian lawyers were not allowed to appear in the courts. It could be possible with Bengal Regulation VII of 1793 which created for the first time a regular legal profession in India for the East India Company's courts by allowing the appointment of *vakils** or native pleaders in the courts of civil judicature in three provinces-Bengal, Bihar and Orissa. After the 1857 mutiny, British Crown had taken over the rule of India from the East India Company, three High Courts were established in 1861 at Calcutta, Madras and Bombay. At this time, three bodies of legal practitioners-advocates, attorneys and *vakils* were in existence. Advocates were the barristers of England or Ireland but the *vakils* were Indian practitioners. Legal Practitioners Act, 1879 provided the enrolments

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to only those practitioners who were taken LL.B. (Bachelor of Law) degree from Indian Universities. Bar Council Act, 1926 unified two grades of legal practitioners- the *Vakils*, and the pleaders, by merging them in a single class of advocates (Sharma, K. L. 1984). Thus, by this time the legal profession started to take a shape.

Formal legal education in India came into existence in 1855 through starting the LL.B. course in the colleges and universities of India with an aim to develop the human resources for the growing need of British administration to help the lower courts and the High Courts in the administration of justice by enrolling themselves as *vakils* for or becoming judicial officers. Although a number of elite families preferred to send their family member to England for higher and legal education. In 1857, legal education was introduced as a subject in three universities in the Presidency towns of Calcutta, Madras and Bombay. In this period, the legal profession acquired a very high prestige in society as most of the leaders participated in National Freedom Movement of India were lawyers of very high prestige studied in England and practiced in India as well as abroad. Thus, in British period, Indian legal education and professions have taken a proper shape and a number of lawyers studied at England became the role model of Indian lawyers (Singh, V. P. 2003a,b). This has helped in westernization of the legal profession in India.

In post-independence period, a number of lawyers became legislators and participated in making of Indian Constitution. A number of reforms were suggested by the Setalvad Commission in 1954 in the system of legal education: It was emphasized that only graduation should be eligible for legal studies; the theory and principle of law should be taught in the law school and the procedural law and the law of practical character should be taught by the Bar Council. The university course should be for two years and the Bar Council training should be one year and All India Bar Council should be empowered to ascertain whether law college maintain the requisite minimum standards and should be empowered and should be refused recognition for the law Law colleges. It was only after the year 1961 that the Bar Council of India was empowered to lay down standards of legal education. In 1967 this body established a uniform three years LL.B. Course with an annual examination system (Singh, V. P. and Roopa Rani 2014).

However there was a significant deterioration in the prestige of legal professionals in comparison to the other professionals, namely, scientist, doctors and engineers. It was because of the high demands of technical personals, doctors, engineers and scientists in first three decades after independence which made the people crazy for science education (Deepthi, S. 2007). While the association of the legal profession with the political class has deteriorated its prestige in society and it was chosen mainly by those having a graduation in art subjects or those who could not get admission in the subjects of science stream or by those who were aspired to join politics for their career. Another factor responsible for this deterioration was the policy of a number of states governments particularly in the Hindi dominated states implemented the policy of imparting legal education in vernacular language while in the remaining states continued with English language as medium of instruction in law courses. Although, this change in these states has opened up the legal profession for those section of society who were excluded from the legal profession because of their social and economic background particularly those of rural and lower caste origin and

helped in improvement of their socio-economic status but at the same time it also deteriorated the quality of legal education in these states.

In 1980s, the Indian government had made an attempt to modernize and improve the legal education as it was highly dissatisfied with the poor quality of Indian law schools especially when compared with India's engineering and medical schools. "To rectify this situation, the government began creating a small numbers of very selective of National Law universities (NLUs) that would do for the legal profession what the Indian Institute of technology was already accomplishing for the engineering profession. These NLUs were expressly design to be centre of excellence, with an aim to train the graduates to be both technically competent and socially conscious and engaged" (Papa and Wilkins 2012:14). The advent of globalization in India proved a boon to these graduates as the overwhelming majority of them chosen their careers either in corporate law business or positions in large companies. Recently, a numbers of university departments and colleges have introduced a Five Years Integrated Degree Course in Law after completion of twelve years of schooling, keeping in view the growing demand of the corporate sector jobs in India. This Five Years Integrated Degree Course in Law is generally self-financing or with a high fee structure and taught invariably in English medium. The course contents have been thoroughly revised and updated to meet the demand of globalizing legal service market on the line of courses by NLUs. However, at the same time, after completion of graduation in any stream, the conventional three-year LL.B. course is also run by the same department/college with a nominal fee structure, in vernacular medium with traditional course contents. Generally, students of rural backgrounds and with vernacular medium take admission in this course. They generally prefer to practice in districts courts where clients from rural areas come abundantly for their case work. These new developments have stratified the legal education in two strata not only in terms of social background of the students but also in making their professional choice there by creating a n elite stratum within the legal profession. It is in the light of above historical background that we can now focus on globalization of legal profession in India.

Globalization of Legal Profession in India

A number of significant changes can be observed in the post-globalization period in the legal service sector. Areas like activities in project financing, intellectual property right protection, environmental protection, competitive law, corporate governance and investment law were almost unknown to Indian lawyers before 1990s. But now they are becoming the part of curriculum in new integrated courses and the conventional courses are also being revised although the ace is very slow in most of the universities. Although, globalization has created the demand for corporate legal services in India, but it has not produced free trade in this sector of economy. Indian market remains closed for foreign law firms and lawyers despite India's general open policy to multi-national corporations and foreign companies. But indirect presence of these firms can be seen in form of liaison offices or other informal means. At the same time, Indian corporate law firms have strengthened and expended in an impressive manner during last one decade.

The globalization of legal profession in India involves three important issues - the debate over the liberalization of legal services market; the actual competition between domestic and foreign

law firms notwithstanding formal barriers to entry; and India's evolution as the major centre for legal process outsourcing (LPO) (Papa and Wilkins 2012).

In the early 1990s, Indian government granted liaison licenses to some foreign law firms which enabled them to open their offices in India for liaison work, such as information gathering and dissemination. However, these law firms faced the charges of exceeding the terms of their licenses by engaging themselves in consultancy/legal services through their offices. In 2009, none but Bombay High Court ruled out that the original grant of licenses to these foreign firms had been done in violation to Indian law. The court has specifically pointed out the Advocates Act of 1961 which regulates all legal practice in India and prohibits both litigation and non-litigation work conducted by foreign lawyers even if the foreign lawyer in question has a degree from an Indian law school and confines his or her work to issues relating to their "home country" law. This ruling made the Indian regulatory regime one of the most restrictive in the world for foreign lawyers. This led to an active political debate between the advocates of liberalization in legal services and those who oppose liberalization in legal service sector. The advocates of liberalization argued that opening of market is beneficial for both the firms and the clients. With an increase in the number of transnational deals, everyone will be benefitted; deregulation of legal market will lead to overall professionalization of the industry, increase in efficiency, easy and more and more access to foreign expertise and works; promote the in-country expertise and retention of legal talent. Liberalization will further enable the clients to get a broader selection of law firms to practice in India because Indian law firms may also practice in other jurisdictions including the UK and the US (Papa and Wilkins 2012)). On the other hand, their opponents argued that India's legal profession has a unique harmony based on a well-developed ethos, culture and tradition and a very noble heritage and it should not be treated as a commodity. Their worry is that once foreign lawyers are allowed to practice, they would undermine this ethos and interfere in the workings of the Indian legal system. Apart from these normative concerns, there are other factors also which are behind this opposition. One of these is that Indian law firms continue to face a number of regulatory restrictions like limitations on partnership size, advertising, contingent fees, and partnership with non-advocates. Therefore, they find themselves not very comfortable in competing with foreign law firms and foreign lawyers as the foreign law firms are not subject to some or all of these restrictions. Thus, it is a hard reality that the Indian legal market is closed to foreign firms due to regulatory restrictions but the foreign law firms have already gained a foothold inside India through a wide range of associations and other relationships with Indian firms. Many of them actively work on India-related transactions from their London, Washington, Singapore or Hong Kong offices (Russell 2010). These firms have invariably an "India desk" that employs a good number of lawyers from India's top law schools, and their full-time jobs are to provide services to their Indian clients and perform India-related transactions. At the same time, Indian lawyers have also started to work on the conventional corporate activities in last two decades. There has been tremendous growth in the number of lawyers working on corporate legal activities both within corporate firms and as well as in-house legal departments in India-based corporations. Furthermore, Indian legal firms have also started venturing abroad to capitalize on the inflow and outflow of investment. Another important development in legal profession of India, which can be observed in last one decade, is the emergence of India as a major Legal Process Outsourcing

(LPO) destination. Legal Process Outsourcing refers to “sending of legal work traditionally handled inside a company or firm to an outside contractor for performance” (Papa and Wilkins 2012: 10). LPO could be possible in India because of the disaggregation of legal services into separate component parts and sophisticated information technology. Indian Outsourcing firms charge very low rate (one-tenth to one-third) of what a traditional foreign firm charges per hour. It also saves time because their lawyers can focus on value added to the final product instead of routine works like electronic document management, and review, legal research and other menial tasks and they can also benefit from time zone differences, which makes 24-hour workflow possible. There are a number of reasons for dominant position of India in LPO market. One of the factors responsible for the growth of LPO in legal services is that India has vast pool of educated, English-speaking lawyers and paralegals, and it utilizes a common law system, similar to the one practiced in the US, UK and the Australia (Papa and Wilkins 2012). It suggests that outsourcing of legal services in India will not only contribute significantly in the process of economic development but also new employment opportunities to the young lawyers as it has already happened in case of information technology, pharmaceuticals and software development in past two decades.

Conclusion

The legal profession has evolved during the British colonial in India. In its initial stage, only advocates of foreign origin mainly from England or Ireland were allowed to practice in Indian courts established by East India Company. The *vakils* or attorneys, who were of Indian origin, were, however, not allowed to appear in the courts. In this way the *vakils* or attorneys who constituted a large part of legal profession at that time were having a sub-ordinate position and acted as agent/ translator for their clients and provided the assistance to the English-speaking advocate (Sharma, K. L. 1984). But gradually with the introduction of legal education in Indian universities and colleges in second half of nineteenth century, the lawyers of Indian origin joined as advocates and barristers in Indian legal profession and the sub-ordinate category of *vakils* and attorneys was merged with advocates. Thus, a uniform structure of legal profession emerged in India. It has helped in further growth of the legal profession and in the first half of 20th century many youth of elitist family aspired to get legal education in England and joined the legal profession. In this period, the legal profession attained a high reputation in the society. Again, when some eminent lawyers and barristers launched struggle for India's freedom, the legal education and profession became the launching pad for the freedom struggle. This trend continued over a period of time even in post-independent period. This can be termed as expansion phase of legal profession in India. Three areas of legal practice can be identified in this period-civil, revenue and criminal. In post-independent period, the legal profession was further diversified to new areas like income tax, sales tax, and litigations related to land consolidation etc. This phase is also characterized as phase of diversification of legal profession. The '*parochialisation*' of the legal profession started with implementation of the policy aimed to provide legal education in vernacular languages so that people from all social classes can join the legal profession. As a result the profession became more inclusive with the joining of the people of backward and scheduled castes, women and *ruralites*. However, it also resulted in deterioration of legal education and profession particularly in 1970s and 1980s and it has lost its prestige. In 1980s, the establishment of National Law Universities (NLUs) in different parts of the country was

an attempt to modernize the legal profession and in bringing back its lost prestige. This step became very productive in the post-globalization phase as most of the products of the NLUs were absorbed in highly paid corporate sector and MNCs due to the high quality of education imparted in these institutions. But the legal profession of India is highly restricted in the world as Advocate Act of 1961 restricts the foreign lawyers and firms to provide legal services in India. But despite this restriction the foreign legal firms and lawyers have penetrated the market of legal services in India although indirectly or through informal means. It has generated a debate among the Indian lawyers regarding the opening of legal service market and they are divided into two categories of pro-liberalization and anti-liberalization. Further, the legal education has been stratified into two strata: one of those having high quality of professional education (FYIDL) and those having a simple LL.B. degree after graduation. These two strata differ from each other in terms of their socio-economic background, quality and contents of their professional training and consequently in their prospects in the profession. The growth of LPO in legal services in India has created new opportunities for young Indian lawyers. One of the important characteristic of globalization, its capacity of simultaneously excluding and including the people, activities and places (Castells, M. 2000, Singh, V. P. 2007), is confirmed in case of legal profession of India. It is including a small elitist section of the lawyers and they are getting maximum economic benefits from globalization of the profession while the others who don't fit in its framework are being excluded by the forces of globalization. Thus, on the basis of above discussion, it can be concluded that the forces of globalization have made the legal education and profession in India not only segmented and stratified in terms of income, power and prestige but also simultaneously creating inclusion and exclusion in society.

**The term for a lawyer is 'vakil' which was also used in Muslim India in the sense of an agent or ambassador who represented his principal for varied reasons (See B. B. Misra 1961: 162-63)*

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