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Legal Profession, Education and the Journey: With Advent of Globalisation

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ABSTRACT

The research paper throws light on the impact of globalisation on the legal profession and legal education in India. It acts as a trailblazer by taking us through the history and various landmark judgments, decisions and risks the country went through to achieve the legal positioning it beholds at the moment. Yes, there has been a critical analysis of some prominent statutes and appropriate recommendations have been provided therein. Not just globalisation, but how development in international laws has a direct influence has also been demonstrated in the advocacy of India. The economy is a major chunk whenever we talk about any aspect of Globalisation. The paper lays down a contrast between the previous legal education and going developments due to sufficient funds which is expected to multifold over the upcoming years. Hence, changing scenarios and procedures is of huge significance. Emphasis has been laid regarding what is Legal outsourcing, its procedure, how it helps to boost the economy and lastly, what is its stance on Indian laws.

There is also a discussion on the role of advocates have played in history and what is expected of them in the future. The role of bridging the gap between societies and attempting to truly deliver justice to the needy.

Hence, the paper is a movement from historical India to the modern developing India today which is sprouting as tough competition for developed nations.

Keywords: *Advocates Act, Globalization, Profession, Lawyers, Legal Education, Outsourcing*

I. INTRODUCTION

No profession has been left unaffected by the massive influence the term “Globalization” has brought. It has spread into an array of ways like innovation, occupation, trade, commerce as well as public relations. Globalization or rather defined as an approach to being present and interacting with people beyond boundaries and setting up standards acceptable to the worldview. It just speeds up the movements and exchanges in multiple regards like goods, services, capital etc. It has rather been prevailing over the legal profession in a dynamic way

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which seems positive. *Dynamism* here is brought by increasing connectivity and interlocked business workings. The major impact can be witnessed at the following three levels: Technological, Political and Economical. But this impact brings into the legal profession the “*universalization of law*”.

Simply put, the Globalization of law may be defined as the worldwide progression of transnational legal structures and discourses along the dimensions of *extensive, intensity, velocity and impact*.³

What final aspiration this extends is to bring together people and emerge a new system of global governance and civil society. This can be encountered even practically today, given the increased mobility of lawyers and the complexity of their dealings.

Today, lawyers are presented with several opportunities to practice both domestically and offshore. Such establishments of ventures and legal alliances give beneficial advantages to lawyers in case of remuneration, acquisition of legal skills, experience and cutting-edge legal landmarks. India is leveraging all the available upgrowth technology that has further brought into the legal sector and thus us creating a positive impact.

II. EFFECTS OF GLOBALIZATION ON LEGAL PROFESSIONALS AND PRACTITIONERS

The judicial advancement directly links to the advancement of the country. The inflow of globalisation and liberalisation quickens the movement and creates some of the most gainful outcomes. The concept heavily weighs on the importance of the exchange of trade by creating simple developments across financial developments and training legal professionals.

In the landmark judgment of *A.K Balaji and Ors*⁴, the Supreme Court held that foreign firms or lawyers are not permitted to practice in India until they abide by the requirements of *The Advocates Act, 1961* and *the Bar Council of India rules*.⁵

The requirements to practice are as follows :

1. One must a citizen of India
2. Should have a degree from a recognised university in India

³ Terence C Halliday & Pavel Osinsky, *Globalisation of law*, (Oct 20, 2022), https://www.researchgate.net/publication/228352345_Globalization_of_Law#:~:text=Globalization%20of%20law%20may%20be,sity%2C%20velocity%2C%20and%20impact.

⁴ A.K Balaji and Ors, A.I.R. 2018 S.C. 1382 (India).

⁵ Shivangi0609, *Impact of Globalisation On Legal Profession In India*, (Oct. 30, 2022) <https://www.legalserviceindia.com/legal/article-4634-impact-of-globalization-on-legal-profession-in-india.html>.

3. Citizens of only those nations are permitted to practice in India where Indian nationals are permitted to practice.
4. Only those foreign degrees are permitted whose universities are recognised by the Bar Council of India.

In addition to the above point, when the Madras High Court first gave its judgment in the case, along with the above point, it mentioned the term “fly-in” and “fly-out“. Under this, the court stated that India anyways does not have any restriction for foreign practitioners or firms visiting India for a brief period for a “fly-in” and “fly-out” reason with necessary legitimate guidance and arrangement.

The Hon’ble Supreme Court altered the second point and clarified that the term “fly-in“ and “fly-out” only constitute to part-time visits and not practice. Further, it said that under *Sections 32 and 33* of the Advocates Act, 1961 such foreign practitioners won’t be suspended in case of issues arising out of the Arbitration and Conciliation Act, 1996 from international commercial arbitration. But in this case, the regulation and control are in the hands of the Bar Council of India.

Thus, all in all, foreign practitioners and foreign law firms don’t have a sole direct right to practice the legal profession in India. And if provided with exceptions then the rules laid by the Bar Council of India should be followed.

III. EFFECT OF GLOBALIZATION ON THE ECONOMY

An ocean of change. An avid turn in the legal teaching and law profession in India. With the far-reaching impact on the economy, globalisation in the legal arena has brought competition into the global market. All this can be summed up: “*getting worldwide acclamation*”. Young law graduates also benefited from this as from the start of their career they had the golden opportunity of training themselves to work both onshore and offshore projects with a clientele available to them from all around the world.⁶

Recognition received at global platforms is boosting our economy. Additionally, recognition of advocates creates opportunities for wealth creation. Thus, such a situation attracts *foreign direct investment (FDI)* and collaborations with foreign institutions.

⁶ SHRUTI GARG & AVIRAL SAXEN, Globalisation and Legal Profession, Legal Service India.

IV. GLOBAL CHANGES IN THE LEGAL PROFESSION

It is of dire need now that the intensity of interest maintained in law schools should be intensified. The world has not just revolved around training around provisions, professional statutes, etiquettes, book-keeping and trust accounts. As per *Professor Ross Cranston*,⁷ technical rules can be left to the practical course and it is the responsibility of all law teachers to pay attention to the ethical underpinning of legal practice. The students must be sensitized to the ethical problems that practitioners face by resolving the issues and exposing them to wider issues like the unmet need for legal services.

With the changing world, law teaching should meet the requirements of the present to bring proficiency in work. Over the course of time, new subjects have been introduced into the course curriculum to assist law students like *intellectual property, competition laws* etc which were previously left unknown. Moreover, increase in investments and economic activities create more work opportunities for lawyers as these require additional roles in the case of policy planning, business advisor, and negotiator who hone specialised knowledge and skills.

Legal education for companies dealing with international business is a must, these can alter the dynamic international legal structure. Emerging markets require standardised legal services like partnerships, mergers, ventures etc with parties legally involved to carry out responsibilities. The judicial structure of one nation needs to be adjusted with another to bring out a standardised norm for working.

V. DIFFICULTY FACED BY THE INDIAN LEGAL EDUCATION SYSTEM DUE TO GLOBALIZATION

1. *Inadequate Infrastructure*:- It plays a crucial role in broadening the scope of the law and accommodating law students enough to level with global lawyers who have been working under learned experts with excellent infrastructures. We can still spot many law universities in India that lack the basic required infrastructure and faculties due to the law of funds.
2. *Foreign Direct Investment*:- As a revolution in policies and society is brought, the FDI enabled India, to adapt to cutting-edge competition has become a matter of major concern. To keep up with the developed nations, the developing nations are struggling hard to extend a global curriculum and standardised legal system. Now need to expand in studying international laws along with domestic laws is required.

⁷ PROFESSOR ROSS CRANSTON, Legal Ethics and Professional Responsibility.

3. *Global programs and experiences*:- indulgence into broader international connection through opportunities like student exchange programs to foreign countries stand very equivalent to receiving a dive into international universities.
4. *Legal approach and research-based education*:- In law school, having an edge over others cannot be achieved through theoretical learning but only through leveraging on research skills. Observation, participation and continuous legal education along with all remaining accountable is something to note.

VI. GLOBALIZATION ON THE JUSTICE SYSTEM

The judicial decision-making body has also been affected by the engaging globalisation. The development of laws and increasing awareness around human rights, intellectual property, media laws etc are deeply rooted in the economics of the nation.

With the opening up brought by liberalisation, India faces continuous competition from the outside world as the market now is exposed to the outer world. Such a situation demands strong legislation and a justice system.

One example of this could be the introduction of *the Competition Act, of 2002* which was a direct result of such an action. The commission acts as a quasi-judicial body in case of commercial matters.

Development in human rights through conferences and conventions around the globe has moulded into an inclusive view of human dignity and violations.

VII. CHALLENGES FACED GLOBALLY

With various intakes for various multinationals in India, the lawyers need to be technical and imperative. Competent lawyers are needed through quality education to match up to International requirements and company demands. The education needs to suffice students with much-needed skills to meet the challenges of a globalized India. The new era opens a broad arena for ever-changing and adapting individuals whose centre of focus should remain at the required development.

There is a need to develop independent systems for ratings on a certain agreed criterion regarding legal education so as to maintain uniformity in education. Grant or withdrawal of recognition should be on such standard. And most importantly, such standards need to be reviewed annually, get revised and updated and should be available to the general public.

What the curriculum demands is an integrated form of information, technology, public health, biodiversity, environment, biotechnology, ocean, marine, space and other related subjects. The law should be related to contemporary works and students having the freedom to choose.

In regards to the examination system and the evaluation, tests need to be encouraging in the terms of *communication, application-based, analytical and writing-heavy*, traversing away from rote learning. Some improvements can be done through presentations, viva etc.

For lawyers dealing with and working around the globe, it becomes extremely imperative to have knowledge of a foreign language. The law students should be provided with an opportunity to learn a foreign language which can act as a tool for skill development and increase their interpretation skills of foreign laws.

By dedicating long hours to work, individuals can excel in their performances in terms of professionalism and credentials. The education system needs to be at par with global needs for improved infrastructure, training programs and research studios. The new world demands skilful, hardworking and innovative law thinkers at various judicial positions to improve legal needs.

VIII. INDIAN SCENARIO

Globalisation entered India very late around the 1990s. When the government welcomed foreign professionals, manufacturers and investors, globalisation started to take an upside wave slowly and steadily. The same has been the tide of legal complexity. Such a time forced the Indian Lawyers to adapt to the times in order to take the full opportunity. Professionals who were not able to adapt to the change and cope with the pressure were left behind. It brought in a new set of fraternity with the advent of upcoming economic policies, regulations etc which were not present in the “*closed economy*” before. The 1990s to 2000s can be considered a phase of “*mini-revolution*” for the corporate sector in India which brought in previously unknown and extensive work pressure on lawyers.

Exporting, partnerships and mergers were allowed. Thus, providing opportunities for domestic lawyers to work beyond boundaries. Young professionals were exposed to working on projects both on and offshore.⁸

IX. MAJOR ISSUES UNNERVING THE LEGAL SERVICE SECTOR

India has been behind in entering the negotiation mandated for successive rounds by the World Trade Organisation (WTO). Somewhere, it can be found that the provisions under the

⁸ SHRUTI GARG AND AVIRAL SAXEN, *supra note 4*.

Advocates Act, 1961 and the BCI regulations may have been a little too rigid when allowing only those universities who have obtained recognition from the BCI.

In 1955, when foreign legal firms like *White and Case, Parke* wanted to set up their liaison offices in India under Foreign Exchange Regulation Act, 1973, a collective lawyer body for public interest trust was formed to provide free legal aid and services moved to the Bombay High Court to fight for foreign lawyers and practitioners to practise in India. Their main motive was to express to the court that it is not just a job of legal drafting and advising clients. On the other hand, the central government was completely against it and prevented foreign lawyers for anything beyond.

Previous points of discussion were “fly-in” and “fly-outs” which have been found not to be pragmatic. The Supreme Court’s decision might affect the inflow of foreign direct investments and sophisticated investors who are drawn to a good legal service sector.

According to the *Srinath V. Union of India*⁵ case, the Madras High Court held that to deal with claims of advocates, Consumer Redressal Forum will have jurisdiction according to Section 3 of the Consumer Protection Act, 1986. The laws related to trade are a matter of subject where a lot of concern should be given to the consumers.⁹

Globalisation is reshaping how we used to look at legal services across economies like Brazil, China, India and several other Asian countries. Further, there is the advent of virtual law firms which provide versatile working hours and hence, provide a work-life balance. This helps to avail highly skilled professionals from any part of the world.

X. LEGAL OUTSOURCING IN INDIA

It is the process of outsourcing legal work from such a jurisdiction where the expenses are comparatively lesser than where the case originated. It can be termed as a new age modern branch which been gaining tremendous growth in India over the years.

Working could be around *document reviews, research, drafting, briefings etc.* As countries like the United States and Europe have very expensive litigation procedures, such countries try to outsource their work to countries like India to get the work done for cheaper.

Even though such outsourcing is prohibited on Indian clients by the Bar Council of India, foreign laws are allowed to work on *basis of templates, review of documents, compliance, proofreading etc.*

⁹ *Srinath V. Union of India*, A.I.R. 1996 M.A.D. 427 (India)

Advantages:

1. Cost Saving
2. Access to high-level talent
3. Reduced workload
4. Flexibility

XI. CONSTITUTIONAL PERSPECTIVE

Even though education is a part of the state list, under the concurrent legislative power it comes under the union. With respect to this, parliament has enacted the Advocates Act, 1961 so as to maintain uniformity in the legal system. To achieve this goal, it has set up the *Bar Council of India (BCI) and State Bar Council*. Under *section 7(1)(h)*¹⁰ of the legislation, the bar council has the power to set the minimum academic standards as a precondition for one to commence legal studies.

Section 7(1)(i) also provides the Bar Council of India the power to recognise universities whose degrees will be considered qualified for enrolment as an advocate.

Section 24 entails that a person who is a citizen of India and has received a bona fide law degree from a recognised university can only practice as an advocate in India.

Foreign law firms and their relation with India have always remained to be controversial after the case of *White and case* and other such firms who even were allowed to open liaison offices in India but were prohibited from practising by the *Foreign Exchange Regulation Board*. Even after getting challenged by the Bombay lawyers collective, the central government prevented foreign lawyers to practice or providing advice.

In 2009, the *Bombay High Court* allowed open offices for foreign law firms and lawyers only on the condition of them being enrolled under the advocate's act. Then, in 2012, the *Madras High Court* held that foreign law firms and lawyers cannot practice unless they fulfil the requirements of the Bar Council and the Advocates Act. This was applied to both litigations and non-litigious matters. They gulf only fly-in and fly-out.

Further, *the Supreme Court* has held that no opening of offices not practising for foreign law firms and lawyers. But the only exception is the “fly-in” and “fly-out” policies.

¹⁰ Sect. 4, Functions of bar council of India, The Advocates Act, 1961 (India).

XII. CONCLUSION

Most people especially in a developing country like India are unaware of laws, unaware about their vested rights. For justice to prevail, advice from experts in law like lawyers are to be seeded who have good proficiency in legal statutes. Hence, legal education needs to be formulated so as to serve at a multi-disciplinary level. A law student needs to be thorough with political, technological, sociological, psychological and several other essential aspects of the global world today along with mastering soft human skills like being honest, hardworking, skilled, communicative, devoted etc so as to rightly adapt to changes.

With that, there are many aspects of the legal system and statutes which needs thorough review, Like allowing foreign courts to file “*wakalatnama*” and revision on the requirement of “*have to be a citizen of India*”. Faulty areas need to be identified so as to be corrected within the viable time.

Harmonisation between countries in a globally operating world by offering a standardised and acceptable legal structure.

Therefore, we defiantly witness a rigorous change in a legal professional’s life with the upsurge of globalisation and it is likely to continue and increase geometrically. It impacts directly *local, political and business* aspects of things. A general prevalence of an efficient legal system leads to justice for the entire *humanity*.

XIII. REFERENCES

Articles

1. David B. Wilkins, *The Indian Legal Profession in the Age of Globalization, The Practice* (2017)
2. Pradip Kumar Das, *‘Curriculum of Legal Education to meet Challenges of Globalization.*
3. Professor Ross Cranston, *“Legal Ethics and Professional Responsibility.”*
4. Shruti Garg and Aviral Saxen, *“Globalisation and Legal Profession”*, Legal Service India

Books

1. Legal Ethics (Accountability for Lawyers and Bench-Bar Relations) Dr. Kailash Rai

Cases

- 1) A.K Balaji and Ors, A.I.R. 2018 S.C. 1382 (India).
- 2) Srinath V. Union of India, AIR 1996 MAD 427

Statute

- 1) The Advocates Act, 1961 (Act No. 25 of 1961)
