Ethical Implications of Globalization of Legal Education and Profession: Indian Perspective

Dr. Digvijay Singh*

ABSTRACT

Legal profession is a great healing profession with ethical/moral responsibilities and performance of such responsibilities are required to maintain the integrity of this noble profession. In the globalizing world this profession needs to cater the demands of market in the society at large. In different parts of the world, the focus of this profession is on integration of cross-border and international dimensions of practice with existing curriculum, with emphasis on problem-solving approach, negotiation and transnational practices and balancing it with the traditional curricular focus on litigation, use of information and communication technology (ICT) and a greater use of clinical legal education for bridging the existing gaps between theory and practice of law. Now, this profession has become a subject matter of trade, where little attention is given to ethical/moral aspect of the profession in contemporary world including India. It is argue that globalization has diluted moral fiber of profession to some extent and India is not an exception. Nonetheless, national character of law and legal profession are important factors to be borne in mind while considering transnational practice and in this context it is relevant to understand the ethical implications of globalization of legal profession. This paper examines ethical implications of globalization of legal profession in the Indian context.

Key Words: Ethical Responsibility, Moral Responsibility, Legal Education, Legal Profession, Globalization and Implications.

I. INTRODUCTION

As an instrument of progress, law has a dynamic role to play in society. In a complex society the role of law is multifaceted. In the process of globalization societies are becoming more complex and this complex structure of society needs versatile role to be played by the legal professionals to overcome the problems. Legal education teaches how to use law for the betterment of society. The survival of democracy and rule of law is possible only if the legal education inspires legal professionals to use law as a tool for its preservation.1 In this context, nature of legal education and profession is under drastic change in all over the world. Now, the perspective of this profession is changing very fast in the globalized world and India is no exception. This changing needs must also be a part of subject matter of legal education and profession as it was said that legal education needs to teach both law and its context, social, political historical, and theoretical.2 Globalization has induced changes in the international relations and also altered the nature of legal profession and as legal profession is closely tied up with legal education, time has come for legal educators and the regulatory authorities concerned to move forward and restructure legal education so that law graduates can successfully compete in the emerging global market of transnational legal service and respond to the law reform process, which has become

* Assistant Professor, School of Law and Governance, Central University of South Bihar, Gaya-823001 (Bihar)
an imperative task for many jurisdictions. There is an increasing demand for cross-border legal services that must take account of several national, international or supranational legal systems and cultures. This growing concern for overt emphasis on market oriented education which undermines the social value is a challenge which the task of legal reform has to face.

C. Raj Kumar rightly argues that globalization has posed multiple challenges to the future of legal education in India and also has provided an opportunity to challenge the status quo, which is an essential condition for reform. Reform is not possible without some fundamental changes. Law schools need to improve support for research and create an atmosphere that inspires students and faculty for quality research. In India, bright young lawyers should be encouraged to take up teaching as profession. The Bar Council of India has undertaken a few major steps to reform legal education in the country. A National Law School was set up at Bangalore in 1986 and was called as model institution for professional legal education pioneering reforms in curriculum development and clinical legal education. It was also one of the objectives behind its establishment to train the young law graduates in the global context and to improve clinical education in law colleges and a scheme of legal aid clinic in law colleges was introduced. In 2008, Bar Council of India (BCI) made it mandatory for all the law schools/colleges in country to provide for clinical legal education. Now, the appetite of Indian law students for understanding international and comparative law has significantly increased over the years, which range from issues such as energy law to investment law to dispute resolution. C. Raj Kumar, further argues that the most challenging task is to strike a proper balance to ensure that students are taught a fair mix of courses that give them knowledge and training in Indian law, but at the same time prepare them for facing the challenges of globalization.

Another aspect of the issue is the ethical implications of legal profession in the globalizing world. S. Balakrishnan argues that in the legal profession, new ethical questions keep arising. The answers keep dodging the courts and there are no all time unalterable answers to these questions. The globalization of legal profession is continuing and its pace is certain to accelerate, which likely to introduce a change in the entire fabric of legal profession in India. The future of legal profession in India need to be in hands of competent legal professionals graduating from major law schools but professional competency without an ethical base can pose

---

3 B.C. Nirmal, “Legal Education in India: Problems and Challenges”, 20 IIUMLJ, 2012, pp.139-167, at 167; See also, C. Raj Kumar, Global Legal Education in India: Opportunities and Challenges (Halsbury’s Law, 2009), at 13
8 Total 19 National Universities have been established in India to till date.
10 Supra note 6
12 B.C. Nirmal, supra note 3, at 167
dangers to the profession in the country. The present paper focuses on globalization of legal education/profession in India and it’s far reaching implications including ethical implications.

II. GLOBALIZATION OF LEGAL EDUCATION/PROFESSION

Today the term globalization seems to be on the tip of everyone’s tongue and it has been driven forward by the development of information and communication technology (ICT) that has intensified the speed and scope of interaction between people all over the world. It is a primarily economic phenomenon, which involves integration of national economic systems through the growth in international trade, investment and capital flows. However, one can also point out a rapid increase in cross-border, social, cultural and technological exchange as part of this phenomenon. Actually, there are many facets of globalization. It has been a subject of debates and discussions from numerous perspectives and there is no doubt that globalization has profound implications for the future of higher education worldwide. It is a defining characteristic of the present world order and as a force majeure on the legal profession also. It challenges the professional responsibility academy to explore the incipient structural transformations that are taking place on a macro-level and to reconfigure the classic curriculum to acknowledge the ethical implications of the globalization of the legal profession. In present, education systems of various jurisdictions are focusing on economic aspects only and there is no scope for ethical aspect of education, which undermine moral values in young professionals.

Legal profession has long been the subject of inquiry into its purpose and methods and the landscape of legal pedagogy reflect the diversity of interest it has generated. Recently, there has been a focus on legal education within a wider knowledge context, examining the teaching and learning of law as part of the overall project of developing analytical and conceptual skills as exemplified in the whole-person process of university education. It is essentially a multi-disciplined, multi-purpose education which can develop the human resources and idealism needed to strengthen the legal system. A lawyer, a product of such education would be able to contribute to national development and social change in a much more constructive manner. Although the ongoing processes of economic globalization have received a serious blow in the wake of the recent global financial meltdown/crisis, changes brought about by globalization in law and in the legal profession require to bring global perspective to legal education and impart

13 Raju Ramachandran, supra note 12, Foreword
16 C. Raj Kumar, supra note 6
such skills to students as are necessary for them to join the legal profession in the increased transnational legal service market.\textsuperscript{21}

Globalization induced changes in the international relations have also altered the nature of legal profession today and as legal profession is closely tied up with legal education, time has come for our legal educators and the regulatory authorities concerned to move forward and restructure legal education so that our law graduates can also successfully compete in the emerging global market of transnational legal service and respond to the law reform process.\textsuperscript{22} It is argue that legal education has maintained an \textit{ad hoc} character for most of its existence, in that it has never focused on a systematic theoretical approach to the study of law as civil law has instead preferring a craft approach, and has long been tied to the fortunes of the legal profession.\textsuperscript{23} Now, the need of the hour is a fair and balance of exposure to both national as well as foreign legal systems. Moreover, with the development of web-based research in the digitizing world and other online research tools and databases, there has been a remarkable transformation in the development of comparative and international research. It is important for global law schools to have or provide access to legal materials from different jurisdictions of all over the world.\textsuperscript{24} It has always borne an ambiguous relationship to the practice of law. Is a law degree a technical qualification, like carpentry or medicine, or a serious field of intellectual inquiry, like philosophy? The uncertain answers to that question is evident in the fact that so many jurisdictions require a professional qualification administered by the local guild, or a bar examination as well as a degree in order to practice.\textsuperscript{25} Since 2009-10, Bar Council of India (BCI) has made it mandatory for all the individuals in legal profession to qualify the examination in order to practice before court of law in Indian jurisdiction. But, quality of examination is as such no one is going to fail in it. Only a few allow lawyers to practice with only a degree, such as some civil law countries, or with only a professional certification, such as a handful of US states and until recently, Japan.\textsuperscript{26}

III. IMPACT OF GLOBALIZATION ON LEGAL PROFESSION

Now, the whole world is acknowledging the importance of knowledge economy. The development of knowledge economy, the establishment of educational institutions of global excellence along with changed new curriculum of global standard has become the priority of most of the countries including India.\textsuperscript{27} Globalization of the legal profession has introduced a sea change in the entire fabric of law teaching and legal profession in India. Today, legal education has to meet not only the requirements of the bar and the new needs of trade, commerce and industry but also the requirements of globalization.\textsuperscript{28} In India, it is important to take steps toward

\textsuperscript{21} Ibid.
\textsuperscript{22} B.C. Nirmal, \textit{supra} note 3, at 167
\textsuperscript{24} C. Raj Kumar, \textit{supra} note 3, pp.12-19
\textsuperscript{26} Ibid.
\textsuperscript{28} Ibid.
establishing universities that will bring together the best of academic scholarship, teaching excellence, and research aptitude for promoting knowledge-based initiatives all across the country. Establishing global universities of excellence has the potential to create new opportunities for growth and development in the knowledge sector, which is expected to be the key to future expansion of the Indian economy. Here, the establishments of National Law Universities may seem to bring together the best of academic scholarship, teaching excellence, and research aptitude for promoting knowledge based initiatives in the field of legal education all in the country.

The creation, development, and dissemination of knowledge in India need to be democratized. Democratization can take place only if both the state and private sectors make efforts to develop many global universities that will meet the governance challenges of India and the world at large. India needs a number of global universities of excellence that provide a world class education, promote cutting-edge research across disciplines, and encourage our youth to assume a leadership role in nation building. The need for promoting excellence in legal education in India ought to be predicated upon our responses to the central issues relating to the future of legal education and profession in India that within the larger debate relating to reform of the higher education sector in India, there is an urgent need to examine legal education and the impact globalization will have on it. In the global context Indian legal system must be reformed keeping in mind the following considerations to overcome the existing challenges:

a) Promotion of Exciting Research Frontier

The evolution of legal profession in the context of globalization presents a very exciting research frontier and opens newer opportunities for legal education and research institutions. The global society, with all its striding advancements in science, technology and the vast affiliated instrumentalities, embarked upon large scale overhauling and systematization process and the role of law is never ever as grandeur as of in the current world order. Consequently, legal education and research is under a great challenge. In the words of Prof. Madhava Menon, “Legal Education in India should be liberated from the dominant control of the Bar Councils and entrusted to legal academics with freedom to innovate, experiment and compete globally.” The experience of two decades of globalization has unfolded new opportunities in every segment of the socio-economic life. Similarly, it has also brought opportunities in the legal sector which includes legal education, legal profession and trade related aspects surrounding legal services.

---

31 Supra note 15
34 N.R. Madhava Menon, “Training in Legal Education: Some Comparative Insights from Indian and American Experience”, 49(3) JILI, at 400
However, still India has to walk miles before it integrates itself completely with the global legal market. The opportunities brought in by globalization in terms of volume of economic activities have certainly made the legal profession a leading career option. A pertinent question in this context is whether we are producing lawyers who are competitive enough to understand/face the challenges posed by globalization and contemporary business environment?

b) Need to Develop Global Curriculum and Programme

A few decades back, almost all the law schools in India only focused on study of domestic laws and related issues. After start of process of globalization, there started momentum towards the study of courses of international perspective and the appetite of Indian law students for understanding courses of international perspective has significantly increased over the years. To enable Indian legal professionals to compete in the transnational marketplace, there is a need to develop global curriculum, which must include topics of universal application and demand; and provide education in new areas like comparative law, information technology (IT), cyber law, space law etc. The needs to develop global programmes based on advanced courses are require to meet global needs.

c) Need to Have Global Faculty and Collaboration

All most all the Indian universities are facing the problem of scarcity of good academicians and law schools are no exception. In all most all the National Law Universities, most of the teaching could not be fulfilled in recent past and one of the reasons is that there is no competent scholar available. It is argue that, there is a need of sound policy to attract renowned legal professionals in academics. The amount of incentive may be an important factor in dealing with the issue. Now, issues relating to the Indian legal system are not only taught and researched in India, but also in many other parts of the world. There is need for having a global focus in appointing faculty for Indian law schools. The practice followed by the SAARC University, O.P. Jindal Global University may be a guiding line. The future of law schools will depend on the schools’ abilities to provide intellectual environment and financial and other incentives for scholars to teach and pursue research in India and to contribute to its growth. The law schools must provide for global interaction of faculty in teaching and research over the issues of global significance. There is a need to develop a shared understanding of the nature of exchange and collaborative programs being established for them to be effective and beneficial for all the parties concerned.

IV. ETHICAL IMPLICATIONS OF GLOBALIZATION OF LEGAL PROFESSION

Legal profession is a great healing profession with ethical and moral responsibilities. In the beginning of last decade of the 20th century, partially in response to widespread dissatisfaction with and in the legal system and lawyers, a new movement in law has emerged. It was a

---

36 C. Raj Kumar, supra note 30
37 Id., at 232
38 Id., at 232
39 Id., at 234
movement towards law as a healing profession.\textsuperscript{41} This movement takes an explicitly comprehensive, integrated, humanistic, interdisciplinary, restorative, and often therapeutic approach to law and lawyering. It was the result of a synthesis of a number of new disciplines within law and legal practice that have been rapidly gaining visibility, acceptance, and popularity in the last decade and a half, representing a number of emerging, new, or alternative forms of law practice, dispute resolution, and criminal justice.\textsuperscript{42} In the globalizing world, hastened by technological advances and worldwide environmental concerns, cultures of other countries have become more accessible and real.\textsuperscript{43} In this manner the legal professionals are able to access the legal instruments of other countries and sometimes they are dependent on such instruments to present their argument before court of law in matter which is posed by globalization.\textsuperscript{44} For example environmental problems have made us more dependent upon other countries and have forced us to collaborate with them to solve imminent global environmental concerns that threaten our way of life.\textsuperscript{45}

At present, the focus of legal profession in different parts of the world is on integration of cross-border and international dimensions of practice with existing curriculum, with greater emphasis on problem-solving, negotiation and transnational practices in the curriculum and balancing it with the traditional curricular focus on litigation, use of new technology and a greater use of clinical legal education for bridging the existing gaps between theory and practice of law.\textsuperscript{46} One may argue that the national character of law and legal profession are important factors to be borne in mind while considering transnational practice. In this context it is relevant to note ethical/moral aspect of legal profession. K. Sita manikyam and A. Lakshminath argue that managing globalization and massive explosion in scientific and technological knowledge and innovations is impossible without an ethical underpinning based on values shared globally.\textsuperscript{47}

\textit{a) Standards of Professional Conduct and Etiquette}

The Bar Council of India Rules on Standards of Professional Conduct and Etiquette provides that legal professionals\textsuperscript{48}, in addition to being professionals, are also officers of the courts and play a vital role in the administration of justice.\textsuperscript{49} This rule provides for various duties of a legal professional which are based on ethical concerns. For example legal professional should not

\begin{itemize}
\item \textsuperscript{41} Ibid.
\item \textsuperscript{42} Ibid.
\item \textsuperscript{45} Ibid.
\item \textsuperscript{46} See, Jane E. Schukoske, “Legal Education Reform in India: Dialogue Among Indian Law Teachers”, 1(1) \textit{Jindal Global Law Review}, 2009, pp.251-279
\item \textsuperscript{47} K. Sita manikyam and A. Lakshminath, “Legal Education: Ideological And Institutional Perspectives”, in B.C. Nirmal and Rajnish Kumar Singh (eds.) \textit{supra} note 1, at 554
\item \textsuperscript{48} The Bar Council of India Rules on Standards of professional Conduct and Etiquette was made in exercise of General Power of Bar Council of India under section 47(1)(c). This section provides that this standard of profession conduct and etiquette to be observed by advocates.
\item \textsuperscript{49} An advocate needs to maintain professional standards which are mentioned in Chapter II, Part VI of the Bar Council of India Rules. These rules have been placed there under section 49(1)(c) of the Advocates Act, 1961.
\end{itemize}
withdraw from service\textsuperscript{50}, make full and frank disclosure to client\textsuperscript{51}, and uphold interest of his/her client\textsuperscript{52} etc. The highest degree of probity is expected from the advocates in this regard.\textsuperscript{53}

How much of the aforesaid ethical norms are being followed by the present day legal professionals in this globalizing world?

\textbf{b) Judicial Approach in India}

In the \textit{In Re Sanjeev Dutta Case}\textsuperscript{54} a Double Bench of Apex Court made the following observation:

“Of late, we have been coming across several instances which can only be described as unfortunate both for the legal profession and the administration of justice. It becomes, therefore, our duty to bring it to the notice of the members of the profession that it is in their hands to improve the quality of the service they render both to the litigant-public and to the court, and to brighten their image in the society….It is for the members of the profession to introspect and take the corrective steps in time and also spare the courts the unpleasant duty.”

These strong words from the Apex Court did not bring about the expected good result and in \textit{R.K. Anand v. Delhi High Court}\textsuperscript{55} a three judges bench made following observation under the caption ‘Role of the Lawyers’ after realizing the important issue that causes us both grave concern and dismay is the decline of ethical and professional standard among lawyers:

“The bitter truth is that the facts of the case are manifestation of the general erosion of the professional values among lawyers at all levels. We find today lawyers indulging in practices that would have appalled their predecessors in the profession barely two-three decades ago. Leaving aside the many kinds of unethical practices indulged in by a section of lawyers, even some highly successful lawyers seem to live by their own rules of conduct.”

The core values of professional ethics based upon moral considerations cannot change with the passage of time and have not changed over the course of years. However, certain peripheral features of professional ethics do change and have to change with changing times.\textsuperscript{56} The issue of profession ethics may be pertinent in times to come.

\textsuperscript{50} The Bar Council of India Rules on Standards of professional Conduct and Etiquette on an Advocate’s Duty towards the Client, Rule 2: An advocate should not ordinarily withdraw from serving a client once he has agreed to serve them. He can withdraw only if he has a sufficient cause and by giving reasonable and sufficient notice to the client. Upon withdrawal, he shall refund such part of the fee that has not accrued to the client.

\textsuperscript{51} Id., Rule 4: An advocate should, at the commencement of his engagement and during the continuance thereof, make all such full and frank disclosure to his client relating to his connection with the parties and any interest in or about the controversy as are likely to affect his client’s judgment in either engaging him or continuing the engagement.

\textsuperscript{52} Id., Rule 5: It shall be the duty of an advocate fearlessly to uphold the interests of his client by all fair and honourable means. An advocate shall do so without regard to any unpleasant consequences to himself or any other. He shall defend a person accused of a crime regardless of his personal opinion as to the guilt of the accused. An advocate should always remember that his loyalty is to the law, which requires that no man should be punished without adequate evidence.

\textsuperscript{53} Raju Ramachandran, \textit{supra} note 11, at 15

\textsuperscript{54} (1995) 3 SCC 619 at 634, paras 19 and 20

\textsuperscript{55} (2009) 8 SCC 106

\textsuperscript{56} Raju Ramachandran, \textit{supra} note 11, at 17
V. CONCLUSION

In service oriented gracious profession, professionals are required to performance their responsibilities in order to maintain the integrity of profession. However, in the contemporary world, little attention is given to this aspect of legal profession and it is argue that globalization of legal profession has diluted this character of profession to great extent. Now, legal profession is witnessing drastic change in the globalizing world. Countries around the world have been introducing and developing the code of conduct for legal professionals to meet the challenges posed by globalization. There is a need to contribute towards a greater cause of inculcating the values and ethics into the minds of young law students and graduates through its various training programmes and preparing them to face the newer challenges of the profession. The basic factor in this transformation is the constitutional mandate to build a social order based on democracy, human rights and rule of law securing to all of its citizens justice, liberty, equality and dignity. It is argue that as the basic values change the legal profession will also be under the stress to evolve and respond to changes, which India is facing now. It is argue that there is a need to recognize the changes posed by globalization and internationalization in legal profession and provide efficient mechanism to make legal professionals competent to deal with those changes in the country.

*****