

no question of repugnancy arises and both the statutes continue to operate in the same field.

### **Conclusion :**

In Article 245, they laid down that Parliament might make laws for the whole or any part of the territory of India, and the Legislature of the State might make laws for the whole or any part of the State. Article 246 provided that Parliament had exclusive power to legislate with respect to matters

included in the Union List, that State Legislatures had exclusive power to make laws with respect to subjects in the State List, and that Parliament and State Legislatures made laws with respect to matters in the Concurrent List.

Article 254 provided that the law made by Parliament, whether passed before or after the law made by the Legislature of a State, shall prevail, and the law made by the Legislature of the State shall to the extent of repugnancy be void.

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## **GLOBALISATION AND CHALLENGES BEFORE THE LEGAL PROFESSION IN INDIA**

*By*

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The United Nations Organization declares that globalization “is a widely-used term that can be defined in a number of different ways. When used in an economic context, it refers to the reduction and removal of barriers between national borders in order to facilitate the flow of goods, capital, services and labour. Globalization is not a new phenomenon. It began in the late nineteenth century, but its spreadness had been slowed during the period the First World War until the third quarter of the twentieth century. This slowdown can be attributed to the inward looking policies pursued by a number of countries in order to protect their respective industries. The pace of globalization picked up rapidly during the fourth quarter of the twentieth century.”<sup>2</sup>

The world famous columnist *Thomas L. Friedman* opines that “examine the impact of the ‘flattening’ of the globe”, and argues that globalized trade, outsourcing, supply chaining, and political forces have changed the world permanently, for both better and worse. He also argues that the pace of globalization is quickening and will continue to have a growing impact on business organization and practices.”<sup>3</sup>

The legal profession is considered as the one of the oldest and noblest profession in the world without any exception to India. It is proud to state that India has accommodating second largest legal professional around the world having capacity of about 6,00,000 lawyers serving every breadth of country from lowest Munsiff Courts to the apex Court of the land. The professional practice is regulated by the Advocates Act of 1961 and monitored by

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1. Assistant Professor of Law, Chairperson, Board of Studies, Department of Law, Telangana University, Nizamabad. Andhra Pradesh.

2. Summary of the Annual Review of Developments in Globalization and Regional Integration in the Countries of the ESCWA Region by the United Nations Economic and Social Commission for Western A

3. *Friedman, Thomas L.* “The Dell Theory of Conflict Prevention. “Emerging: A Reader. Ed. Barclay Barrios. Boston: Bedford, St. Martins. 2008.49

the Bar Council of India Act and Rules. The majority of Indian law providers are individuals and in recent past we have observing the emergence of firms in some metropolitan cities. The majority of all such firms engaging in issues of domestic law matters. The profession is still considered as the service under the laws and still the concept of trade interest has not incorporated in the domain of legal profession in India as that exists in the western countries. Justice *Krishna Aiyer* once remarked that “law is not a trade, not briefs, not merchandise and so heaven of commercial competition should not vulgarize the legal profession’.

The Judiciary time and again taken the stand that the legal service is a service not a trade. In the case of *Srinath v. Union of India*<sup>4</sup> the Madras High Court held that, in view of Section 3 of Consumer Protection Act, 1986 Consumer redressal forums have jurisdiction to deal with claims against advocates for their non-performance and they are liable for deficiency of services under the Consumer Protection Act 1986.

This concept of legal service has changed on account of enactment of the Competition Law in 2002, under Section 2(x) Act, 2002 defines that the ‘trade’ means any services provided which impliedly incorporates the legal services under its fold.

Globalisation brought about a revolution in international trade with increasing participation and involvement of countries and greater access to domestic economies. The implication of the same on the legal service sector has been both quantitative and qualitative. The past decade has been mini-revolution in legal service sector with the greatest legal impact on corporate legal arena. The domain of Intellectual Property protection, corporate taxation, competition law, environmental protection, investment law *etc.*, not widely known in the third world

countries pre globalize days. But due to globalize situations lead to entry of these things to legal services and which have fetching a lot revenue to them. In last few years law firms, in-house firms and individual lawyer’s expertise in providing legal services in corporate sector has increased by several times. There is also a discerning shift in the disposition of emerging legal sectors towards settling disputes through Alternative Dispute Redresal System (ADRS) rather adversarial litigation mode of dispute resolution. The globalization has thus expanded the internal and external demand for legal services.

### ***Foundation for Globalised Legal Services:***

The foundation for globalised legal services are made in General Agreement on Trade and Tariff negotiations which were started in 1948 and culminated in 1993 by Uruguay round of negotiations. In the Uruguay round of negotiations the services were brought into forefront in which General Agreement on Trade and Services (GATS) were also enlisted. The GATT was succeeded by the World Trade Organization in 1995 where the GATS were also added. As with the GATT, GATS serves to create a Most Favoured Nation (MFN) status for members of the WTO through specific commitments that allow non- discriminatory treatment to be given to foreign suppliers from overseas. Members have complete freedom to select which services to commit and while granting access a country may however limit the degree to which foreign services provider can operate in the market. Thus, it is possible for a country like India to limit the number of foreign legal practitioners who may be licensed to practice here. But it goes much further than that. A whole range of non-tariff barriers exist which countries may either commit to remove, dilute or otherwise restrict in their operation so as to create a friendlier trading environment within which services can be provided across national barriers. General Agreement on Trade and Services (GATS)

4. AIR 1996 Mad 427

achieve its objectives following basic General Agreement on Trade and Tariff (GATT) principles using Most Favoured National (M.F.N) treatment under Article II and XVII respectively while aiming to reform markets and yet allow special and differential treatment for developing countries.

### ***General Agreement on Trade and Services (GATS) and Legal Services:***

There are 12 sectors classified by General Agreement on Trade and Services (GATS) for which commitments may be made in which one of them is Business Services. Business Services is further divided into 6 types of services, which include professional services. The professional service sector further divided into 11 services, which include Legal Services. So far India has made only specific commitment in relating to engineering services. India has not made any commitments in the legal services at present. This may be contrasted with commitments made by 44 countries in the legal service sector even some developing countries have made commitments. Such commitments are beneficial to all *i.e.*, to countries and to consumers. As these commitments will bring Trade in the legal services which will play crucial role benefiting consumers countrywide.

### ***Trade in Legal Services: Benefits to Consumers:***

In the age of consumerism and competition law, consumers' right to free and fair competition is paramount and cannot be denied by any other consideration. Trade in legal services focuses on benefits accruing to consumers from legal service sector, particularly the quality of service available with respect to particular fields.

In the case of *In Re Sanjiv Datta*, Secretary, Ministry of Information and Broadcasting, the Supreme Court observed that "In our country most often consumers are at the mercy of advocates and the system and they

resort to any other service provider in absence of choice".

### ***Restriction on Legal Services:***

In our country there are number of restrictions have been imposed by the regulatory bodies such as the Bar Council of India on legal services which I am enlisting here.

1. In our country there is an absolute bar on advocates for going for advertising and soliciting for any purpose and indicating area of specialization. Restrictions on advertising by lawyers in India have resulted in a situation where consumers cannot make an informed choice from the competitive market since the information relating to service is not available to them. But in case of other professional services like the medical services these archaic restrictions have been removed but irony is that the same is still continuing in the most intellectual sector in the society.

2. The Bar Council of India Rules, 1975 in Chapter III Rule I, prohibits advocates from entering into partnership or any other arrangement for sharing remuneration with any person or legal practitioner who is not an advocate. Lawyers cannot enter in co-operation with non-lawyers. *Prima facie* there seems to be no pro-competitive justification for such a regulation. Such a measure as hampered the delivery of services to the consumer and anti-competitiveness. The absolute bar has been lifted to some extent with the institute of Chartered Accountants permitting tie-ups between lawyers and Chartered Accountants.

3. The regulatory and legal system in India has the effect of limiting the size of legal establishment. Section 11 of the Companies Act, 1956 stipulates that a partnership or any form of association with more than 20 members if not registered as company shall be an unlawful group. This kind of restriction is hampering the coming together of large

number of advocates under single banner. If the large number of advocates come together they can successfully justify the cases which they accept.

4. In India only natural person can practice law, as stipulations contained in Sections 24, 29 and 33 of Advocates Act 1961 and artificial body cannot act as a lawyer. Justification for such restriction is on public policy and in particular to ensure professional responsibilities and liabilities. But in the western advanced countries even an artificial persons or legal entities allowed to practice the law and such system is proved to be successful so far.

5. The requirement that advocates enter into partnerships only with other advocates belonging to our own country but advocates of our country are not allowed to tie-up or make partnership with other advocates and there is clear bar regard to it in the advocate Act and the Bar Council of India Rules. These restrictions on incorporation and size of partnerships, prohibition on entering into partnership with foreign firms and lawyers have resulting in adversely on Indian lawyers. That due to widespread globalization of trade and other services our lawyers not allowed to tie-up with other country lawyers causing tremendous loss to our legal fraternity, whereas in the western countries their advocates have allowed to tie-up with other country advocates. The relevant rules regarding to this to be introduced on par with rules prevalent in the western countries otherwise it would become a bane on Indian legal profession.

6. The lack of restrictions on partnerships across the world has given rise to firms with a member of partners. Big law firms having wide controlling, regulating and functioning power nationally and internationally. In sharp construct Indian firms are small and incapable of associating with legal experts firms other countries. This way Indian law firms are at disadvantage to law firms in United States and European Union.

The professional regulations are in all likelihood protecting the weak producers of professional services at the cost of information being made available to consumers. It is nothing but putting the consumers in the dark and these rules have been framed by the Bar Council of India on par with British Bar Council Rules and same still being implemented. In Britain though these tough restrictions were there the clients are well educated and having the capacity to face any kind of situations in the litigation but in our country there is totally contrasting scenario and blindly following the British system is leading to putting the profession among dark horses. This is the one of the reason as the charming student community is afraid to enter the legal profession as it take them to years together to get recognition. And other aspect is that the existing state of decay that the justice delivery system of our country finds itself to a certain extent attributable to the overprotected legal regime that they have been provided with and some of the members have adopted a "Casual approach" to the practice of law.

The Supreme Court has recently warned that "if the present trend is not checked it is likely to lead to a state where the system is found wrecked from within before it is wrecked from outside".

### **Conclusions:**

The opening up of legal services sector is going to lead to a flow of expertise in sectors where local firms and lawyers are deficiently delivering services. Accepting 'trade' facet of legal services would develop the profession qualitatively and competitively.

S.V.S Raghavan Committee<sup>5</sup> has summed up the effect of the existing regulatory system in professional services. The legislative restrictions in terms of law and self regulation

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5. Regarding Competition Bill in 2000

have the combined effect of denying opportunities and growth of professional firms, restricting their desire and ability to compete globally, preventing the country from obtaining advantage of India's considerable expertise and precluding consumers from opportunity on free and informed choice.

Nonetheless today or tomorrow we have to open up our legal service, but it should

not be seen as a threat to our legal community but it is an opportunity to compete in more and more countries. As soon as Indian perspective in concerned, already Indian legal service sector is hugely crowded, will be opening up of legal service in India will lead to cut-throat competition but the Indian lawyers also have fair chance of proving their mettle in other countries of the world and bring laurels to the nation.

### REFERENCE OF THE ADVOCATE-GENERAL ON THE DEMISE OF SRI E. AYYAPU REDDY, ADVOCATE

By

—D.V. SITHARAM MURTY,  
ADVOCATE-GENERAL  
HYDERABAD

My Lord the Chief Justice and companion Justices, Members of the Bar and friends.

Death strikes with regularity. It conquers with fatalism. It steals from us not just our near and dear but ever so often, those we look upto, those who inspire us and those whose presence in our midst has always been one of reassuring confidence.

It is rather sad that my first address to this Court must be a word of sorrow.

The passing away of Sri *E. Ayyapu Reddy* garu on June 27th is not just a loss to the Bar but a loss that will be felt in the realm of politics and the field of Telugu Literature.

Like many stalwarts, who were witnesses and participants in our historic struggle for freedom, he too started his long and illustrious career from the rural fields of Gadiga-revula Village in Kurnool District, where he was born on 14th January, 1924.

The Gold Medalist Law Graduate from Madras Law College had a long and lasting relationship with politics.

With patriotic fervor, he joined the Quit India Movement. The response to Gandhian call early in life was his insurance against the politics of corruption.

It would be appropriate to enlist some of the milestones he designed in life. To recall a few :

- (1) In the year 1955, he was elected to the A.P. Legislative Assembly on a Congress Party ticket.
- (2) Appointed as Chairman of the Delegated Legislative Committee of the Andhra Pradesh Legislative Assembly in the year 1957.
- (3) In the year 1962, he was re-elected to the A.P. Legislative Assembly.
- (4) Appointed as a Member of State Law Commission, where he acted as a Chairman of Delegated Legislation Committee for 5 years.
- (5) He was again elected unopposed to the A.P. Legislative Assembly in 1972.
- (6) He served as the Chairman of the Public Accounts Committee and as a