after they actually occur, it would be of immense benefit to the society if sufficient attention were paid to prevent mental illness. Emotional literacy, anger management, conflict resolution, stress management, interpersonal relations *etc.*, are topics, which should be introduced even at the school level. Above all every attempt should be made to rid mental illness of all types of prejudices, stigma and discrimination. A few years ago persons diagnosed as HIV positive were shunned by the society. Due to concerted and aggressive campaign, today such persons are able to live with dignity. Attitudes can be improved by associating well-known personalities in such campaign. The print and electronic media can also play a significant role in this regard by adopting a positive and constructive role in highlighting the impact of culture and diversity on mental health in changing world, which is the theme of World Mental Health Day, 2007.

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TRADE IN LEGAL PROFESSION & ITS CHALLENGES**

**** Speech delivered by Hon'ble Sri Justice T.Ch.Surya Rao, Judge, High Court of Andhra Pradesh, Hyderabad, at the Seminar organized by All India Lawyers' Union, Hyderabad and Ranga Reddy District Committee on 25.11.2006**

HISTORY OF THE LEGAL PROFESSION :

The institution of trained lawyers who might be engaged by the litigants to appear on their behalf in the law Courts is of ancient origin in Europe as well as in the East. In England, the profession dates from 1181 when, in the reign of Henry II, certain persons of clerical training were appointed attorneys but whose functions were not exactly defined. Some years later, in the reign of Edward I there created the Order of Serjeants who could appear in Courts to represent litigants. The Order of Serjeants finally came to an end in 1875.

The institution of men, learned in the law, who as private agents, plead for others in the Courts is also of ancient origin in India. Mention is made of such lawyers by Narada, Virihaspati, Katayana, Manu and Shukra. It appears, however, from their writings that before persons could plead and argue for another in Court, he had to establish either that he was a relative or the appointed agent of the party. For instance, Narada says:

> "He deserves punishment who speaks on behalf of another, without being either the brother, the father, the son, or the appointed agent, and so does he who contradicts himself at the trial.[1]"

1. Vide Anand's Book on Professional Ethics of the Bar, 2nd Edition 1987, Pages 1 and 2.

The history of the legal profession has been traced by Mookerjee,J in *Regina Guha, In re*[2]. That was a case where Miss Regina Guha submitted an application for enrolment as pleader in the Court of District Judge at Alipur. A Special Bench was constituted consisting of five Judges to hear the application. The question arose before the Special Bench was "Whether it is desirable that women should be admitted as pleaders in the Courts subordinate to the High Courts?" Mookerjee,J in his separate Judgment traced the history of legal profession at page 316 thus:

> "As regards Hindu Courts, it is clear that the legal profession existed in the seventh century of the Christian era, when Asahaya wrote his commentary on the Institutes of Narada (see the edition of Narada Smriti, edited by Jolly, for the Bibliotheca Indica series, Book I, verse 6, page 48, Sacred Books of the East Series, Vol.XXXIII, page 43; see also Introduction, Section 2, verse 22, S.B.E., Vol.XXXIII, page 29). To the same effect are texts of Vrihaspati, Katyayana and Vyasa quoted by Raghunandan in his Vyabahara Tatwa. It is also fairly clear from Buddhistic books that the profession of lawyers existed in the first century before the Christian era; they were known as "sellers of law" or "traders of law" who "explained and re-explained, argued and re-argued" (Milinda Pantho, Book V.23' Trenckner's Edition, pages 344-345; translation by Rhys Davids, Sacred Books of the East, Vol.XXXVI, pages 236-238). There are also references to pleaders in the Dhammathats or the Laws of Menoo (Richardson's Laws of Menoo, Page 50). Similarly, the Sukraniti (IV 5, 10, 13, 26, 80-82) mentions pleaders."

At page 306 it was further held thus:

> "The earliest Regulation on the subject, passed by the Governor-General in Council as a Legislative Body was made on the 1st May, 1793, and is known as "A Regulation for the appointment of Vakils or Native Pleaders in the Courts of Civil Judicature in the Province of Bengal, Bihar and Orissa" (Regulation VII of 1793). The preamble shows that even before the Regulation was made, there was a profession of vakils in the Courts of Civil Judicature in the British Territories in Bengal, "men, who followed the business of the vakil to obtain a livelihood and appeared in the Courts of Justice or wherever the concerns of their constituents required their attendance." This is made manifest by an examination of the Regulations for the Administration of Justice made by the Governor-General in Council between the 21st August, 1772 and the 23rd November, 1792, and collected by James Edward Colebrooke in his supplement to the Digest of the Regulations and Laws (1807)."

Justice Sunder Iyer in his lectures to the Apprentices at Law articulated thus:

> "I believe it would be incorrect to say that the profession of advocacy was unknown in this country in olden times. The Sukraniti lays down that in some cases a litigant had a right to be represented by a paid advocate, that is, when he was unacquainted with legal practice or was overburdened with other work. The remuneration to be paid to the advocate, or niyogi as he was called, appears to have been fixed on a graduated scale varying from 1/16th (6 ¼ per cent) to 5/8 per cent of the value of the matter in litigation. The receipt of a larger remuneration was punishable. Only qualified persons could act as advocates, and corrupt conduct on the part of the niyogis was punished. In the case of serious crimes, the benefit of counsel was

2. 1916 (21) CWN 74 = 1917 (44) ILR (Cal.) 290

denied to the accused person – a rule which finds a parallel in the law for a long time prevalent in England."[3]

It is obvious, therefore, that the Institution of legal profession is most ancient.

LEGISLATIVE HISTORY :

The Regulating Act, 1773 passed by the British Parliament, which empowered the King by Charter or Letters Patent to establish a Supreme Court at Fort William in Bengal also, by clause II, authorized the said Supreme Court to admit, curtail and remove so many advocates and attorneys-at-law as the Supreme Court considered proper to appear and plead for suitors in the Supreme Court.

Law as public profession organized and controlled by the Government originated in India with the Bengal Regulation VII of 1793. The object of this Regulation was to control both recruitment and conduct of legal practitioners in the Company's Courts by prescribing qualifications in the first case, and rules of dealings in the second.

The preamble to the Regulation V of 1798 throws a flood of light on the reasons which led the Government to prescribe a fixed scale of fees to be charged by lawyers in specified kinds of cases. The object of prescribing by law a scale of fees was threefold: – (i) to render the office of vakil respectable and desirable; (ii) to prevent extortion of litigants; and (iii) to secure that only men of superior qualifications and diligence entered the profession, and litigants showed their preference on basis of merit and fitness only.

Some of the provisions of Regulation VII of 1793 requiring a pleader not to absent himself from the Court without leave were repealed by Regulation XXVII of 1814.

The next great step taken in the evolution of the Indian Bar was the Legal Practitioners Act I of 1846 which regulated the position not only of vakils but also of barristers. An Amending Act XXXVIII of 1850 allowed pleaders of civil Courts to defend the accused persons in criminal cases.

The next important statute was the Legal Practitioners Act, XX of 1853. Hitherto Regulations required pleaders to attend Courts whether they had work or not. This Act laid down that no pleader shall be bound to attend Court except at hearing of cause in which he was employed.

The Legal Practitioners Act, 1879 was passed which consolidated and amended the law relating to legal practitioners in certain provinces.

In 1926 The Bar Councils Act was passed to meet partially the twofold desire of the legal practitioners to have a unified Bar, abolishing the distinction of vakalatnama, etc. and to give to the legal profession some measure of autonomy in the management of its own affairs.

It is axiomatic that a properly equipped and efficient Bar can play a pre-eminent role not only in the system of justice but also in the constitutional government and rule of law. Realising the importance of an independent/integrated Bar, the All Indian Bar Committee was appointed by Government of India in 1951. It recommended, in 1953 inter alia, in its report the constitution of an All India Bar Council, State Bar Councils, a common roll of advocates and complete autonomy to the Bar in matters relating to qualification, administration, discipline, *etc.* of members of the profession. In 1958 the Law Commission in its fourteenth report on the Reform of Judicial Administration endorsed the recommendation of the All India Bar Committee and urged the Government to implement the same.

3. Vide P. Ramanatha Aiyer's Book on Advocate His Mind & Art, Third Edition 2003, Page 15.

In 1959, the Legal Practitioners' Bill incorporating the recommendations was introduced. The said Bill was ultimately enacted as the Advocates Act, 1961. The genesis of the Advocates Act, 1961 is found in the felt need for providing a uniform and well-knit structure of legal profession which plays a pivotal role in strengthening the system of administrative justice in the country.

Though the demand for a unified All India Bar initially emerged mainly, if not wholly, as a protest against the monopoly of the British barristers on the "Original Side" of the Calcutta and Bombay High Courts and the invidious distinctions between the barristers and non-barristers, after independence it assumed the status of a professional claim and a national necessity in the search for better delivery of justice to the people. It was assumed that a unified Bar for the whole country with monopoly in legal practice and autonomy in matters of professional management would advance the cause of justice in society. The role of the profession in the national movement for Independence and the professional standards displayed by native lawyers including Vakils, Pleaders and Mukhtars, convinced Parliament to adopt the Advocates Act giving a unique status and structure to the Indian Bar.

HOARY PAST :

Coming to the august gathering of legal fraternity the natural feeling of trepidation surges up because of the consciousness that the fraternity is hardly any more august, any more discerning and also perhaps any more skeptical, particularly in retrospect the hoary past of the legal profession, the imprint the men of law have left on the sands of time and their glorious role on occasions as sentinels of cherished values and basic liberties, and the distinguished role the members of the Bar played in the liberation of the country from foreign yoke. If there is indeed one profession which contributed the most in the freedom struggle and the most significant role played in bringing about national awakening and political consciousness, it was the legal profession. Among the galaxy of leaders, who led the freedom movement, the top position was held by the fraternity. Mahatma Gandhi, Pandit Moti Lal Nehru, Lala Lajpat Rai, Mr.C.R.Das, Pandit Jawahar Lal Nehru, Sardar Vallabhbhai Patel, Mr.Bhulabhai Desai, Mr.Srinivas Iyengar, all hailed from this noble profession.

The high status of lawyers in the Indian hierarchy reminds one of the words of De Tocqueville uttered in the early nineteenth century:[4]

> "In America, there are no nobles or literary men and the people are apt to mistrust the wealthy; lawyers consequently form the highest political class and the most cultivated section of society…If I am asked where I place the American aristocracy, I should reply without hesitation that it is not composed of the rich, who are united by no common tie, but that it occupies the judicial bench or the bar."

Although the members of the bar were previously looked upon in India as natural leaders of the community, I am not sure whether, after the dawn of independence, those in the world of law can still claim that primacy in social hierarchy. This is a matter that must engage our serious attention and we must ponder over the causes of the same. The question we have to ask is why, unlike in the past, the leading members of the bar, with few exceptions, are not getting involved in problems which beset the nation with a view to seeking their solution? Another question we have to face is as to whether the quality of our political life has

4. Law Men of Law and Education by H.R. Khanna Page 3.

not suffered because of the fact that leading members of the bar have generally kept themselves aloof from active political life.

JUDICIAL SYSTEM :

Human nature being what it is, disputes are bound to arise amongst men. In ensuring the rule of law the most significant part is, perhaps being played by the lawyers. The role of lawyers in a developing society is linked with the question of the contribution, which law can make for the development of society. Used as an instrument of social engineering, law can introduce smoothness in the act of change, prevent upheavals and eliminate jolts in the onward march of society. At the same time, law synthesizes change with stability, sets up a rapport between the past and the present and projects such rapport into the future. According to Oliver Lendyl Holmes "the law embodies the story of a nation's development through many centuries, and it cannot be dealt with as if it contained only the axioms and corollaries of a book of mathematics. In order to know what it is, we must know what it has been, and what it tends to become".[5]

The image of the Courts in the ultimate analysis depends not upon the architectural beauty and spacious nets of the Court buildings. It also does not depend upon finely cut robes of the members of the bench and bar or upon the other trappings of the Court. The image of the Court does not depend upon the lengthy arguments, the plethora of precedents cited and the erudition displayed in judgments, important though they are. It depends essentially upon the extent of confidence reposed by the public in the Courts, promptitude in the dispatch; the orientation towards the cause of justice. We must remember that in the final analysis, the people are the judge of judges and that every trial is a trial of our judicial system. Its strength and weakness, its success and failure, its utility and credibility as one of the three significant and essential organs of the State in a civilized society, the amount of esteem it enjoys would depend ultimately upon the way it satisfies the hopes and aspirations of the people, who approach the portals of the Courts in quest for justice, in keeping the scales even in any legal combat between the rich and the poor between the mighty and the weak between the State and its subject without fear or favour.

ROLE OF LAWYERS:

We have to also consider the roles of lawyers in nation's building and the nation's development as social engineers. Profession is integrally connected with the legal system. Two organs thereof are the bench and bar. The very notion of "a legal system" implies that a legal order is in some significant sense a unity, even if a complex unity. The whole of jurisprudence, indeed, is in a sense an explanation of this assumption. This is so even when we are concerned with the stabilising or disruptive factors springing from the impact of social, economic and psychological forces upon the legal order. It is appropriate here to contextually quote a passage from Julius Stone's "Legal System and Lawyers' Reasonings" 2nd Indian Reprint 2004, at pages 23 and 24, thus:

> "The roles of lawyer-theorising and lawyer-language are perhaps only special examples of the way in which "rules of legal art or craftsmanship (leges artis jurisprudentiae)" make for the unity of a legal order. Among such rules of art, there have been well detected those,
>
> which indicate how a precedent is to be used, a statute to be interpreted, an instrument to be construed; how large or how small a step of innovation is permissible under a given set of

5. The Lawyer's quotation Book by Smith Pae 23

circumstances, how the decision is to be justified in the written opinion, whether, and if so, in what manner an innovation is to be disguised as a mere application of existing law.

Roscoe Pound has used here the phrase "traditional techniques". Whatever they be called, these techniques are more practiced than talked about, and easier recognised than described, yet familiar from training and daily experience to all practitioners and to jurists who handle the products of practice. This is why even the fullest analysis of the theory of the ratio decidendi is only a first step in understanding what lawyers do with this theory. The achievements of precedent law, …….. , are a function not just of the theory but of the largely unarticulated techniques of operating it, as well as of the received ideals of the legal profession instilled by group training and experience.

Obviously, the traditional ideals and convictions of lawyers are not clearly separable from their traditional techniques. Perhaps, as with policies such as those against monopolies, or servile bargains, the ideals are somewhat more articulate than the techniques. Yet this too is a matter of degree; lawyers, like other men, tend to regard what they most value as self-evidently right, and therefore as not in need of explanation, much less justification. Moreover, the traditional ideals of lawyers in a particular society, at a particular time, have no necessary correspondence with those held by people generally, though it is likely that at some earlier stage they reflected the ideals of some wider class of the community and possibly of the community as a whole. In any case, it is important to say ideals and convictions as held and operative are phenomena which include elements of emotion and willing in the actors; for we shall see that this is of deep relevance from understanding the role and limits of logical reasoning within a legal system.

Particular items from lawyers' language, techniques and received ideals are often incorporated into positive law by enactment or by growth of customary law, just as are many moral and political beliefs of members of society generally."

In *Ramon Services Pvt. Ltd. v. Subhash Kapoor*,[6] the Apex Court held thus:

"The profession by and large, till date has undoubtedly performed its duties and obligations and has never hesitated to shoulder its responsibilities in larger interests of mankind. The lawyers, who have been acknowledged as being sober, task-oriented, professionally-responsible stratum of the population, are further obliged to utilise their skills for socio-political modernisation of the country. The lawyers are a force for the perseverance and strengthening of constitutional government as they are guardians of the modern legal system. After independence the concept of social justice has become a part of our legal system. This concept gives meaning and significance to the democratic ways of life and of making the life dynamic. The concept of welfare State would remain in oblivion unless social justice is dispensed. Dispensation of social justice and achieving the goals set forth in the Constitution are not possible without the active, concerted and dynamic efforts made by the person concerned with the justice dispensation system. The prevailing ailing socio-economic-political system in the country needs treatment which can immediately be provided by judicial incision. Such a surgery is impossible to be performed unless the Bench and

6. (2001) 1 SCC 118

the Bar make concerted effort. The role of the Members of the Bar has thus assumed great importance in the post-independence era in the country."

In *Mahabir Prasad Singh v. Jacks Aviation Pvt. Ltd.*,[7] it was held that both the Bench and the Bar are the two inextricable wings of the judicial forum and mutual respect is the *sine qua non* for the efficient functioning of the solemn work carried on in courts of law.

LEGAL PROFESSION - TRADE OR BUSINESS?:

Undeniably, the legal profession is service oriented. It was considered to be purely service oriented. In this perspective whether profession is a trade or business shall have to be examined. It is appropriate here to excerpt the contextual articulations of legal philosophers and jurists thus:

"Historically there are three ideas involved in a profession –Organisatiion, Learning, and a Spirit of Public Service. These are essential. The remaining idea that of gaining a livelihood is incidental." ROSCOE PONUND

"A practice of Law is more than a mere trade or business and … those who engage in it are the guardians of ideals and traditions to which it is right that they should from time to time dedicate themselves anew" H.L.MACMILLAN.

The above excerpted passages will tell us the basic philosophy behind the Legal Profession and Lawyers.

Sri *Nani A. Palkhivala* in his book entitled 'We The Nation' listed three grave shortcomings of the present system of administering justice.

"Firstly the commercialization of the legal profession. Secondly, administration of justice suffers from the intractable complexity of modern society. Life has become far more complex, and corruption and all-round lowering of standards are far more pronounced, than ever before. Thirdly, while all the time we emphasize our rights, we do not lay a corresponding stress on our responsibilities. I think it is the duty of the legal profession to make sure that it cooperates with the judiciary in ensuring that justice is administered speedily and expeditiously. It is the only duty of which we are totally oblivious".[8]

The Apex Court in *Shambhu Ram Yadav v. Hanuman Das Khatry*,[9] held in para 1 thus:

"Legal profession is not a trade or business. It is a noble profession. Members belonging to this profession have not to encourage dishonesty and corruption but have to strive to secure justice to their clients if it is legally possible. The credibility and reputation of the profession depends upon the manner in which the members of the profession conduct themselves."

A Seven Judge Bench of the Apex Court in *Bar Council of Maharashtra v. M.V. Dabholkar*,[10] held in Para 52 thus:

"The Bar is not a private guild, like that of "barbers, butchers and candlestick-makers" but, by bold contrast, a public institution committed to public justice and pro bono publico service. The grant of a monopoly licence to practice law is based on three assumptions: (1) There is a socially useful function for the lawyer to perform, (2) The lawyer is a professional person who will perform that function, and (3) His performance as a

7. (1999) 1 SCC 37

8. We the Nation by Nani Palkhivala, pages 214 and 215

9. (2001) 6 SCC 1

10. (1975) 2 SCC 702

professional person is regulated by himself not more formally, by the profession as a whole. The central function that the legal profession must perform is nothing less than the administration of justice ('The Practice of Law is a Public Utility' — 'The Lawyer, The Public and Professional Responsibility' by F. Raymond Marks et al — Chicago American Bar Foundation, 1972, p. 288-89). A glance at the functions of the Bar Council, and it will be apparent that a rainbow of public utility duties, including legal aid to the poor, is cast on these bodies in the national hope that the members of this monopoly will serve society and keep to canons of ethics befitting an honourable order. If pathological cases of member misbehaviour occur, the reputation and credibility of the Bar suffer a mayhem and who, but the Bar Council, is more concern ed with and sensitive to this potential disrepute the few black sheep bring about? The official heads of the Bar i.e. the Attorney-General and the Advocates-General too are distressed if a lawyer "stoops to conquer" by resort to soliciting, touting and other corrupt practices."

In *Dr. Haniraj L. Chulani v. Bar Council of Maharashtra and Goa*,[11] the question arose before the Apex Court was as to whether the act on the part of the State Bar Council of Maharashtra and Goa in refusing to enroll a medical practitioner as an advocate who does not want to give up his medical practice but want simultaneously to practice law was justified. Rule 1 of the Bar Council Rules which prohibits enrolment of a person as an advocate was challenged in the said decision as violative of Articles 14 and 21 of the Constitution of India. The Apex Court upheld the said Rule and in the process held thus:

"The obligation to maintain the dignity and purity of the profession and to punish erring members carries with it the power to regulate entry into the profession with a view to ensuring that only profession-oriented and service-oriented people join the Bar and those not so oriented are kept out. The role of an advocate is essentially different from the role of any other profession. An advocate is said to belong to a noble profession."

In *Devendra M. Surti (Dr.) v. State of Gujarat*,[12] it was held that that a doctor's establishment is not covered by the expression "commercial establishment".

In *S. Mohan Lal v. Kondiah*,[13] in the context of the provisions of A.P. Buildings (Lease, Rent & Eviction) Control Act, 1960 the Apex Court held that the word 'business' includes the practice of profession of an Advocate.

In *Bangalore Water Supply v. A. Rajappa*,[14] a larger bench of the Apex Court had to review its earlier judgments so as to construe the meaning of the word 'industry'. In the context of the provisions of the Industrial Dispute Act the Apex Court held thus:

"If in a pious or altruistic mission, many employ themselves, free or for small honoraria or like return, mainly drawn by sharing in the purpose or cause, such as lawyers volunteering to run a free legal services clinic or doctors serving in their spare hours in a free medical centre or ashramites working at the bidding of the holiness, divinity or like central personality, and the services are supplied free or at nominal cost and those who serve are not engaged for remuneration or on the basis of master and servant relationship, then the institution is not an

11. (1996) 3 SCC 342

12. AIR 1969 SC 63

13. AIR 1979 SC 1132

14. AIR 1978 SC 548

industry even if stray servants, manual or technical, are hired. Such eleemosynary or like undertakings alone are exempt, not other generosity, compassion, developmental passion or project."

In *V. Sasidharan v. Peter and Karunakar*,[15] it was held the office of a lawyer or of a firm of lawyers is not a shop within the meaning of Section 2(15) of the Kerala Shops and Commercial Establishments Act, 1960. The Apex Court in that context held that whatever may be the popular conception or misconception regarding the role of today's lawyers and the alleged narrowing of the gap between a profession on one hand and a trade or business on the other, it is trite that, traditionally, lawyers do not carry on a trade or business nor do they render services to customers.

In *New Delhi Municipal Council v. Sohan Lal Sachdev*,[16] the Apex Court having regard to the broad classification under the tariff rules of the Electricity Board, namely, domestic and commercial, the occupation of the premises by an Advocate not for residential purposes but for locating his office was considered to have fallen not in the category of domestic but invariably in the category of commercial.

In *M.P. Electricity Board v. Shiv Narayan*,[17] a circular issued by the Electricity Board classifying the office of an Advocate as a commercial establishment and the consumption of power is not for domestic purpose was challenged. In that context, the Apex Court adverting to the definitions of the words 'commerce' and 'profession' held that a professional activity must be an activity carried on by an individual by his personal skill and intelligence. There is a fundamental distinction, therefore, between a professional activity and an activity of a commercial character. The Apex Court dissented from the view expressed by it earlier in *New Delhi Municipal Council's* case (referred to supra). Of course, having regard to the *New Delhi Municipal Council's* case, the Apex Court eventually referred the matter to a larger bench for consideration.

Even under the Consumer Protection Act it was considered to be a service and any deficiency in the service entails action under the provisions of the Consumer Protection Act before the hierarchy of fora envisaged under that Act. All said and done, one shall not be oblivious of the fast of changing scenario through out the universe.

A Doctor's profession which is equally noble on par with a legal profession and service oriented was emphatically held by the Apex Court not a commercial establishment. Perhaps that was the situation in vogue by then. See the present day scenario. Corporate Hospitals have come into existence as a result of privatization policy of the State and on account of want of necessary legislation regulating the same. It is to the common knowledge and needs no dilation about the activity that is going on in the corporate Hospitals. It is for the members of the profession to consider such an activity in the corporate sector as integrally connected with the element of profit bringing thereby the activity squarely within the ambit of commercial establishment or not.

INDIAN PERSTECTIVE:

The law governing and regulating the legal profession in our country is the Advocates Act. Section 24 thereof mandates that only an Indian citizen has the right to practice and be enrolled as an advocate in India. Of course an exception is carved out only on reciprocity. If Indian citizens are permitted to practice in any other country the national of that country can be enrolled as an advocate under the Act. Section 47 enables the Bar

15. (1984) 4 SCC 230
16. (2000) 2 SCC 494
17. (2005) 7 SCC 283

Council of India to prescribe conditions subject to which foreign qualifications in law obtained by foreigners be recognized. The Act does not permit multi disciplinary practices. Unless suitable amendments are brought in to the Act foreigners cannot practice. It cannot also be ignored that the same difficulty may also arise for the fraternity in India to practice elsewhere.

With this necessary introspection, we need to look forward. The contemporaneous events in the world over portend ominous signals to the profession. Let us be realistic.

I refrain myself in expressing any view on that being very much in the office of a Judge of the High Court. The decisions of the Apex Court, as discussed hereinabove, have come to be rendered in peculiar circumstances and in different context. Let us wait and see as to what would be the ultimate word or say of the Apex Court since the matter is sub judice before a larger bench of the Apex Court. But one thing appears to be sure that the nobility of the profession is not lost, its avowed purpose and orientation towards the service of humanity is not jettisoned. All said and done eventually it was considered that the profession is for living but not for trade. Although the element of commercialisation has already been crept into the profession, but yet forgetting the established concept centuries together, it is very difficult to venture to articulate the theory that today's picture in profession is nothing short of a trade or commerce. The two essential requisites of the profession, namely, nobility and the service have been strongly embedded into the system centuries together and having regard to the same regardless of the fact that we are gradually plunging into the commercial activity but yet it is not apt to call the profession as a trade or commerce.

A transnational reconnaissance shows that there has been mushroom growth of law firms, more particularly, in U.S. Several professionals group together as a firm for practicing law. Such partnership firms engage in the profession with the necessary element of earning and in the process employ several assistants, workmen or other employees, so as to aid and help them in the profession. We have to consider the Judgment of the Apex Court in Bangalore Water Supply's case. Indeed the said Judgment has been considered by the Apex Court in the later judgment of *S.Mohan Lal's case* and as discussed hereinabove in the context of A.P. Buildings (Lease, Rent & Eviction) Control Act.

In course of time, we cannot just visualize what changes might come on account of globalization, liberalization and privatization. Multinational companies have started coming to India and establishing their industry, trade and commerce. It is quite surprising that already professionals belonging to foreign nations started coming to India as advisors of those multinational companies. The profession, therefore, has to face very stiff competition with these multinationals. The conservative and conventional litigation hitherto being practiced in Courts of law has already given way to the corporate sector.

CONSEQUENCES OF GLOBALISATION:

INTERNATIONAL TREATIES AND COVENANTS: India is the founder member of the WTO. At the heart of the WTO, there are a number of multilateral agreements which are negotiated and signed by the bulk of the world's trading nations. These documents provide the legal ground-rules for international commerce. They are essentially contracts; binding governments to keep their trade policies within agreed limits. The three major multilateral agreements in WTO are (1) dealing with trade in goods; (2) services and (3) intellectual property rights.

(1) General Agreement on Trade and Tariff: GATT is a multilateral agreement on

trade in goods. The GATT requires governments to make their trade policies transparent. And they share a common three-part structure.

(2) General Agreement on Trade in Service (GATS): GATS is the first ever set of multilaterally, legally enforceable rules, covering international trade in services. It was negotiated in the Uruguay Round. Like the agreement on goods, GATS operate on three levels; the main text containing general principles and obligations; annexes dealing with rules for specific sectors; and individual countries specific commitments to provide access to their markets. Unlike in goods, GATS has a fourth special element: lists showing where countries are temporarily not applying the "most-favoured-nation" principle of non-discrimination.

(3) Trade-Related Aspects of Intellectual Property Rights (TRIPS).

The General Agreement on Tariffs and Trade has only focused on the liberalization of trade barriers in goods and the reduction of tariffs. The tremendous growth of international trade in services over the past two decades, the increasing importance of trade in services to the national and international economies, and the recognition of the existence of substantial barriers to international trade in services eventually brought trade in services into the international arena.

The Uruguay Round of negotiations, launched in September, 1986 marked the first attempt to address, through multilateral negotiations, the elimination or reduction of trade barriers in services. The negotiations aim, among other things, to extend to trade in services rules and disciplines based on those which govern trade in goods under the GATT, with a view to promoting trade in services on a competitive and non-discriminatory basis.

After seven and a half years of protracted negotiations, the Uruguay round of trade negotiations finally concluded with the signing of the Final Act and the Agreement establishing the World Trade Organization (WTO) at a Ministerial Conference held in Morocco.

The term 'services" refers to a wide range of service sectors, which includes advertising, banking, communications, construction, franchising, retail trade, tourism, transportation, architectural services, accounting services and, last but not the least, legal services.

The GATS imposes two types of obligations: general obligations which apply to all service sectors and all members, and specific obligations which take effect only for those sections in which a member has made an explicit commitment.

General obligations under the GATS: The following general obligations are relevant to the provision of legal services.

(1) Most-favoured-nation ('MFN') treatment (Article II)

(2) Recognition requirements (Article VII)

(3) Transparency (Article III)

Specific obligations under the GATS: Specific obligations apply to members who have made an explicit commitment. The two major specific obligations are:

(1) *Market access:* In the context of legal services, this specific obligation can be broadly defined as the admission of foreign service suppliers to practice in Hong Kong.

(2) *National treatment:* In the context of legal services, this specific obligation requires each member to grant the same rights and privileges to the foreign service suppliers as are enjoyed by the

local suppliers. Members may not maintain domestic rules on services which discriminate against these foreign service suppliers.

SUMMING UP:

Legal profession has to compete with the multinationals in providing service suppliers in the legal field. Otherwise, the field, particularly in the country will be dominated by foreign service providers and the legal profession in the country will receive a set back. Already on account of commercialization the profession is on the verge of transforming itself into a business and what is more on account of GATS the entry of multinational companies in the country.

It seems not wise to say that the profession shall not undertake such service providing, only while sticking on to the avowed philosophy that the profession is the noble profession and it shall not indulge in such commercialization, trade or business. Even the Law Commission of India in its Report *inter alia* under the Chapter relating to "Entry of Foreign Legal Consultants and Liberalization of Legal Practice" pointed out that India was a party to the General Agreement on Trade and Services (GATS) and within a period of five years from January 1, 1995, it would be under an obligation to enter into successive rounds of negotiations periodically with a view to achieving a progressively higher level of liberalization which includes free trade and services without regard to national boundaries. The Law Commission had, in this connection, referred to the guidelines prepared by the International Bar Association with which the Executive Committee of the Bar Association of India was broadly in agreement. The Executive Committee of the Bar Council of India is of the view that Indian Legal system ought to integrate internationally under an appropriate regulatory system which would ensure the following – a general reciprocity of rights and non-discrimination; foreign lawyers/firms should be subject to the same disciplinary jurisdiction as Indian lawyers; and there should be greater opportunities for the future development of the entire legal profession in India. The time has come for having a greater introspection amongst the members of this noble profession, the jurists, and all concerned having regard to these fundamental developments in the world over qua the legal profession and the remedial measures to be undertaken.

As long as the sun and earth exist, it must be one's strong desire and conviction that the profession shall remain and be eternal integrally associated with the nobility and shall be service oriented. Having regard to the stiff competition that the profession might face on account of the advent of multi-national companies and influx of professionals from foreign countries visualising the portending threat to the profession, the present members of the profession and the future generation shall try to gear up to meet the challenge. Accumulation of knowledge in contradistinction to the wealth associated with the lawyers' erudition, craftsmanship and skill alone can save, in my humble view, the profession. Let us be optimistic that every situation would eventually turn for the benefit of this noble profession.

These passages would tell us the task of legal profession and its integration into the judicial system and legal order; *a fortiori* the idea that the legal profession has now become a trade or commerce cannot well fit in with the system.

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