

LEGAL PROFESSION – A STUDY*By***–T. RAKESH SINGH**

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Today the legal profession is one of the growing and lucrative professions all over the world. Demand for bright law graduates continues to rise. Career in law offers exciting opportunities as an Advocate, Solicitor, Consultant, Counselor, Academician, Researcher, Author, Social Worker, Court Reporter, Legal Editor, Political and Business Correspondent or Analyst in print, audio-visual and cyber media, Legal or Personnel Manager/Executive in Multinational Companies or Government Service, Banker, Arbitrator, Judge Advocate-General in Defence Forces, Police Service, Criminologist, Politician, apart from much coveted and the prestigious Judiciary.

Law is an ongoing and continuing process, an orderly arrangement which changes with time. The fast evolving concept of law affects the daily lives of people, services, business, thereby encompassing all facets of human life in a civilized State. All day-to-day matters howsoever complicated or complex may have to be addressed, which necessitate a legal approach, understanding procedures and interpretation of rules of law. Each State frames certain laws, rules and regulations for its citizens to stop the detrimental effect of actions of one or more individuals, in the interest of their fellow beings. Under the law of the land, one can seek legal remedies when his legitimate interests and rights are being harmed either by an individual or by the State authorities. The parties to the dispute engage professionals to defend their interest by interpreting the legal provisions in their interest. These breeds of professionals who analyses and interpret law properly are termed as Lawyers, pleaders, attorneys and

advocates. A good Lawyer not only keeps himself abreast with changes in the law but also with the applications and implications of those changes.

Legal Profession in India

Broadly, the legal profession consists of Lawyers and Judges, who administer, interpret and apply law. Lawyers in private practice, on either civil side or criminal side or both advise clients on their legal rights and legal issues affecting their personal and professional lives and also represent them in the Courts of law. Some also appear on behalf of the Government, public bodies, and local authorities. Lawyers are also retained as Legal Advisors by corporate houses to aid, advice and represent their legal interest in the Courts of law. Usually, Lawyers set up their practice at different Courts/Tribunals as per their convenience and location.

Objectives of Legal Professional's –

- (a) Protecting and promoting the public interest;
- (b) Supporting the constitutional principle of the rule of law;
- (c) Improving access to justice;
- (d) Protecting and promoting the interests of the clients of the legal practitioners;
- (e) Promoting healthy competition amongst the legal practitioners for improving the quality of service;
- (f) Encouraging an independent, strong, diverse and effective legal profession with ethical obligations and with a

strong sense of duty towards the Courts and Tribunals where they appear;

- (g) Creating legal awareness amongst the general public and to make the consumers of the legal profession well informed of their legal rights and duties;
- (h) Promoting and maintaining adherence to the professional principles.

Principles laid in legal profession—

Include—

- (i) That the Legal Professionals should act with independence and integrity;
- (ii) That the Legal Professionals should maintain proper standards of work;
- (iii) That the Legal Professionals should act in the best interest of their clients;
- (iv) That the Legal Professionals who are authorize to appear before a Court or Tribunal, by virtue of being such authorisation should comply with their duty to the Court/Tribunal to act with independence in the interest of justice;
- (v) That the affairs of clients should be kept confidential.

Lacuna in Legal Profession in India:—

The above objectives and principles are laid down by legal experts through Acts, Sections, Articles *Etc.*, But practically speaking the implementation of these are not followed by any of the legal professionals in India. Advocate *K.T.S. Tulsi* of the Supreme Court has pointed out there are 987 cases per Judge in India against 3235 in the USA! The number of cases filed in India in 1999, with a billion populations, had been just 13.6 million against 93.81 million cases in the USA with less than 25 percent of India's population!

Number of Judges per million people - is it important for India?

The Courts often say that there are too few Judges per citizen in India, which is why there are delays. The number is quoted at 150 per million people in the US, whereas the same number is 12 Judges per million people in India.

But is the number of Judges per million people really important? The people of India, barely educated in law and struggling to live above subsistence levels, can hardly afford to litigate. The number of cases each Judge has to handle is quite low.

This exposes how inefficient the Indian judiciary really is. Despite a low number of cases per Judge, the disposal of cases by Judges is far lower than that in the USA.

We should remember to counter the favorite argument of the Indian judiciary "There are not enough Judges in India as compared to other countries" by pointing out "But there are not too many cases per Judge in India as compared to other countries".

Justice preserved, protects. Justice destroyed, destroys. May not our country be destroyed due to justice destroyed.

The Indian Judiciary suffers from several setbacks. To note few of them are incompetence, supremacy, self ego problem, political inclinations, carelessness, non accountability, non adhering to qualities and standards before elevation to superior Judgeship either from lower judiciary or from the bar associations, canvassing *etc.* The judgments and/or orders are too ambiguous from higher judiciary, by not fixing any accountability on the erring person causing hardship on the Common People.

- Delay in decisions
- Corruption

- loop holes
- Lack of responsibility
- Procedure Lacuna.
- No constitutional Knowledge.
- No Proactive steps being taken.
- Political Patronage.
- Carelessness of Indian People.
- No awareness about rights in public.
- Meager salary for Judicial Officers.

Effect of Poor Judiciary:

- Increases Economic Imbalance between rich and poor
- Lost of trust by public on justice
- Acquittal of criminals
- Judgments being biased
- Law profession turning into Business.

Suggestions to setbacks-

- Judiciary from low to top level should be open to scrutiny by independent authority

Firstly, we need to address the issue of corruption. Nobody can deny that corruption is at rampant in Judiciary. We have been reading the news papers when some vigilance wing or CBI proceeds against a Magistrate or Judge on the charges of corrupt practice and I would say that even this instance are isolated. When it to come to higher judiciary, though many assert that there is so much corruption, it is very rare to see proceeding against a corrupt Judge. The issue of addressing the corruption in the lower judiciary and the higher judiciary is to be tackled on a different footing due to provisions enshrined in Constitution of India. Except through impeachment, a Judge

of constitutional Court cannot be removed assuming that the corrupt charges are proved. Our Governments may not have much time to move impeachment motion even if it is willing and the procedure is cumbersome. In-between the issue of independence to Judiciary comes into play. In my opinion the steps for correcting the lower judiciary and the higher judiciary are to be as follows:

Steps to correct the lower judiciary:

1. The Magistrate or the Judge has to disclose his assets and the assets of his family members as pre-condition and disclosure is to be done continually like filing a tax return every year.

2. A State level authority like vigilance commission is to be separately set-up to deal with the corruption cases with separate enactment and separate procedure. Public should be solicited to express their views in writing to the authority through on-line and also in writing. The committee should have an official web-site where anyone can access and present their views which will automatically shows the view to all the public without any concealment and screening. The committees should comprise a top official from vigilance commission, a top official from CBI, a Judge of High Court and very reputed personalities from the public in general. The committee should comprise majority of reputed personalities from public and the decision on corruption to be taken by majority. While selecting the reputed personalities from public, the track record of the person, achievements, societal consciousness, the assets, the vision and mission of the person to be taken into consideration. It should function like Election Commission with complete independence and excellent set-up. If any law is to be enacted for this set-up, that can be done on urgent basis. The committee will only take a decision with regard to immediate suspension or dismissal of the Judge or the Magistrate and other criminal proceedings will be

preceded by the law enforcing authorities like the State Government, the Vigilance Commission and the CBI in some cases. The committee's decision on immediate suspension and the dismissal will be final irrespective of the result of the criminal proceedings and the resultant appeal against the suspension or dismissal should go only to the Supreme Court and the appeals should not be loosely entertained by High Court. This is the complicated set-up and with proper study, understanding, planning and speedy implementation, this can be done. All independence is to be given to the committee and decision of the reputed personalities from the public or the majority of the committee should be final.

3. The salaries of the Magistrates and the Judges should be increased.

Steps to be taken to correct the Higher Judiciary:

1. All the Judges should disclose their assets and the assets of their family members as a precondition and the disclosure to be done continually. If required, a constitutional amendment or a separate law can be passed in this regard. No Judge or the judiciary can say that they are immune from disclosing their assets. There can't be any justification for non-disclosure.

2. Like the committee at the State Level, there should be a committee at the Central Level to deal with the allegations against the Judges including corrupt practices. There should be on-line mechanism to receive the complaints and post their views. The views expressed by the public upon a particular Judge should not be concealed or screened except in exceptional cases. Dealing with this aspect will be a big challenge for any Government in view of the constitutional provisions. Impeachment is the only thing to impeach a Judge as per the provisions of Constitution of India. If need be, the constitution is to be changed.

Otherwise, there should be a law saying if the committee recommends for impeachment motion, then, the Government should move the impeachment. The committee should comprise Chief Justice, the Prime Minister, the head of CBI, head of Intelligence Wing and also the reputed personalities from the public. People like Dr. *Jayaprakash Narayan* of Loksatta who has unblemished and excellent record can be selected as the members of the committee. The committee should comprise the majority members from the public. The set-up can be similar to the present National Advisory Counsel to advice the Government on moving impeachment motion. If required, a separate enactment can be passed in this regard. If constitution is not amended providing for alternative of impeaching a Judge, then, there should be a law prescribing for compulsorily moving impeachment motion. We don't have this set-up at present though anyone can complain about the corrupt practices of a Judge to the State or intelligence wing like CBI. We know the fate of our complaints and the political compulsions. But, certainly, if we enable the public to post their opinions directly in a web-site about a Judge, then, the Judge will definitely be cautious and it will certainly reduce the rate of corruption to a great extent. As there is no set-up to impeach a Judge except moving the motion, many Judges are bypassing the established practice and procedure too. The Judge should feel that he is simply a judge, has to read the papers, listen to the Counsel, apply the law to the set of facts and pass orders. Judge should not feel that he is the lord and upon his discretion, he can pass any orders. This is very important issue and we need to concentrate more on this.

3. Salaries of the Judges should be increased.

4. The selection process is to be fine-tuned and despite the independence to Judiciary to some extent when it comes to

appointments, we are witnessing as to what is happening when it comes to appointments. This is to be changed. There should be more inclusions in the committee which recommends for appointment and it should comprise people with expellant track record and Senior Counsels also can be members in the committee. There should not be any compromise in efficiency when it comes to appointments to the Higher Judiciary.

Step - 2:

We need to concentrate on allocation of more funds to the Judiciary and infrastructure.

Step - 3:

We need to concentrate more on legal education and standards in legal education. No truly unqualified should come out of law college and practice law. The legal education is to be reformed completely. We do have private and public participation in legal education as is the case over all. The State should give more priority to legal education and must allocate sufficient funds. We need to have a proper plan on giving permission to the establishment of law colleges, the infrastructure in law colleges, the standards, the selection of faculty and their salaries, the programmes, the subject, the exams and the practical training. The Government colleges should compete with National Law Schools and it is very important to concentrate on legal education. There should not be any college which is below the prescribed standards. The functioning of law colleges should be monitored specially. Government should keep the legal education in priority as it is very important to strengthen our judicial system and ensure that public can get right

redresses through Court. We need to have a complete revamp in legal education. Only when we see truly qualified professionals in Court, we can expect other things like standards, knowledge and the quality, speedy delivery *etc.*

Step-4:

Like national knowledge commission *etc.*, there should be a high level committee in Delhi which looks only into the justice delivery mechanism and suggests the ways for improvement. All issues connected to the legal profession, judiciary or the justice delivery system should come under this. The committee should send its recommendations directly to the Prime Minister in nutshell form so that the needed reforms can be brought with immediate effect.

Conclusion-

To conclude our whole discussion on legal profession. The profession of law is honorable and its members are expected to act in an honest and upright manner. And any deviation from these elementary principles is liable to be dealt with severely. Misconduct can be defined as dereliction of or dereliction from duty. A legal professional is answerable for dereliction of duty. In order to avoid misconduct every legal practitioner should understand his duties. When Lawyer is guilty of any professional misconduct, then only any action can be taken. The fundamental aim is to maintain the honor and dignity of the law profession. Legal profession is necessarily the keystone of the arch of Government. Legal profession is not a business but a profession. It has been created by the State for the public good.