

# Effect of Globalization on Professionalism in Occupation in India

## Abstract

Globalisation has lots of impact on every sphere of life specially economics, social and political. It also involves the integration of the market and economics through trade, investment, finance, technology etc. Now a day, all over world, the relations between globalization, national development and the law are the matters of global importance to citizens, to governments and to non-government organizations. Globalization has increased the mobility of Professionals with the right legal skills and work experience.

**Keywords:** Globalisation Professionalism, Mobility, International Trade.

## Introduction

Globalization has impacted every area of economics, social and technological activity having an enormous influence on international structures, governance and the legal systems of individual nations. The globalization has affected Indian international relations with its domestic economy and political policies. It also involves the integration of the market and economics through trade, investment, finance, technology etc. Now a day, all over world, the relations between globalization, national development and the law are the matters of global importance to citizens, to governments and to non-government organizations.

Now the question arise that can the legal service and legal profession remains unaffected by this changing world.

Globalization is of great concern to the legal profession, which we belong to and whose professionals we train and certify.

## Objective of the Study

The objective of this research paper is to study and analyze the impact of globalization on legal profession in India in relation with World Trade Organization (WTO).

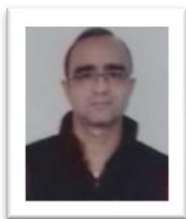
## Globalization and Professionalism in India

Globalization is basically interconnection and interdependence between all parts of the world, particularly at the levels of the economy and communications, such that former national barriers to the movement of information, finance, goods, services, and entrepreneurship, are being drastically reduced, and everybody now has to compete with everybody, in what has not become a global village and a single global market.<sup>1</sup> Globalization has also far-reaching ramifications on legal profession which has also increased the pace and complexity of law practice. Globalization has increased the mobility of lawyers with the right legal skills and experience.

Globalization 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. Therefore, need of professional service has been tremendous in the legal service sector. In last few years Law Firms, in house firms and individual lawyer's expertise in providing legal services in corporate sector has increased tremendously. Globalization has thus expanded the internal and external demand for legal services. Today in legal services is on inevitable fact. At the same time significant for progressive development of legal profession in India in this era of Globalization.<sup>2</sup>

## Changing Trends of the Profession in India

India has the world's second largest legal profession with more than 600,000 lawyers. The predominant service providers are individual lawyers, small or family based firms. Most of the firms are involved in the issues of domestic law and majority work under country's adversarial litigation system. The conception of legal services as a 'noble profession' rather than services resulted in formulation of stringent and restrictive



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regulatory machinery. These regulations have been justified on the grounds of public policy and 'dignity of profession'.

The judiciary has reinforced these principles, which can be reflected in words of Justice Krishna Iyer as,

Law is not a trade, not briefs, not merchandise, and so the heaven of commercial competition should not vulgarize the legal profession.

However over the years courts have recognized 'Legal Service' as a 'service' rendered to the consumers and have held that lawyers are accountable to the clients in the cases of deficiency of services.<sup>3</sup>

Madras High Court decided that in view of Section 9 of Consumer Protection Act, 1986,<sup>4</sup> Consumer Redressal Forums have jurisdiction to deal with claims against advocates.<sup>5</sup>

Section 2 (U) of Competition Act, 2002<sup>6</sup> defines the term 'Service' along the lines of Consumer Protection Act, 1986. Thus it may be concluded that legal services are becoming subject of trade related laws where consumerism and market forces should be given adequate space.<sup>7</sup>

Section 2 (x) of Competition Act, 2002 clearly described the meaning of trade in relation with services.<sup>8</sup>

#### **Competition in Services**

Service sector like insurance, banking, telecommunications, transportation is backward in India compared to that of developed countries. Therefore, inclusion of trade in services is detrimental to the interest of India. Liberalization of service sector would be under tremendous pressure.<sup>9</sup>

There is a vast level of difference in the development of services like banking, insurance, telecommunications and shipping as between the developed countries and the developing countries. Therefore inclusion of trade in services is bound to benefit developed countries much more than developing countries like India. In fact, the very inclusion of trade in services in Uruguay Round negotiations was on persistent insistence of the developed countries. Opening up of trade in services is an important requirement for globalization of development of world trade. The principal exporters of the services are USA, France, Japan and Netherlands. As far as India is concerned, it has a large reservoir of highly skilled and experienced professionals

#### **Legal Service Sector**

The term "legal services sector" is completely, different type of services as compared to software programming, medical practice or other professional services. Their traditional bases is derived from statutes and the existence of statutory bodies and from conservative and traditional mind set that inhibit development of cross border services supply. Even globally the legal services sector is necessarily shackled by jurisdictional constraints such of the requirement for a degree from the country where the service is to be imparted. There is the need to be part of a global fraternity and to make beneficial

commitments that promote trade in services and on the other hand there is need to preserve national interest.

Globalization has increased the internal and external demand for legal services and has given rise to situations involving multiple jurisdictions.<sup>10</sup>

#### **WTO and Agreement on Services**

WTO is a new international organization set up as a permanent body and is designed to play the role of a watchdog in the spheres of trade in goods, trade in services, foreign investment, intellectual property rights etc.

One of the WTO agreements is "Agreement on services". For the first times, trade in services like banking, insurance, travel, maritime transportation, mobility of labour etc. was brought within the ambit of negotiations in the Uruguay Round. The General Agreement on Trade in Services (GATS) provides a multilateral framework of principles and services which should govern trade in services under conditions of transparency and progressive liberalization. It spells out certain obligations like grant of Most-Favoured Nation Treatment (MFN) status to the other member nations with regard to trade in services, maintenance of transparency and also a commitment for liberalization in general terms

The Government of India has made a number of commitments to WTO. Under the General Agreement on Trade in Services (GATS), India made commitment in 33 activities. Foreign service providers will be allowed to enter these activities. According to the Government of India, the choice of the activities has been guided by consideration of national benefit that is the impact on capital inflows, technology and employment.

#### **Foundation of Globalize Legal Services**

World Trade Organization (WTO) is the successor of the General Agreement of Tariffs and Trade (GATT), which ruled the world between 1960 and 1993. Both Co-existed between 1994 and 1995, when WTO came into existence.

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.

GATS achieve its objectives following basic GATT principles using. Most Favoured National treatment under Article II (1)<sup>11</sup> and XVII respectively while aiming to reform markets and yet allow special and differential treatment for developing countries.

GATS provides for trade in services through four modes which are defined in Article 1 (1) as,

#### **Mode 1**

From the territory of one member into the territory of any other member.

**Mode 2**

In the territory of one member to the service consumer of another country.

**Mode 3**

By a service supplier of one member, through commercial presence in the territory of any other member.

**Mode 4**

By a service supplier of one member, through presence of natural persons of a member in the territory of any other member.

The GATS schedules refer to each of these modes and all commitments are made accordingly.

**GATS Classification and Legal Services**

There are 12 sectors classified by GATS for which commitments may be made, 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.

**India's stand on services at WTO Negotiations****Services**

1. Commitment by the developed countries on substantial openings for India's Contractual Service Suppliers (CSS) and Independent Professionals (IP's) in Mode 4 relating to movement of natural persons.
2. Development of disciplines in Domestic Regulations in Mode 4 involving qualifications and licensing requirements and procedures.

**India and Specific Commitments in Relating To Legal Services**

India has made no commitments in the legal services sector at present. This may be contrasted with commitments made by 44 countries in the legal service sector even same 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.

**Regulations on Legal Services Trade**

1. In India there is an absolute bar on advocates advertising and soliciting for any purpose and indicating area of specialization. Due to the restrictions on advertising by lawyers in India, consumers can not make an informed choice from the competitive market since the information relating to service is not available to them. Moreover restrictions on professional firms on the informing potential users on range of their services and potential causes further injury to the competition.
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. 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 assembly.<sup>12</sup>

4. In India, only natural person can practice law, as is evidenced by Sections 24, 29 and 33 of Advocates Act<sup>13</sup> and artificial body cannot act as a lawyer. Justification for such restriction is on public policy grounds and in particular to ensure professional responsibilities and liabilities. This a legal service provider can not be incorporated as a company and still continue in practice the profession of law in India, as per the provisions of Advocates Act, 1961.

The professional regulations are in all likelihood protecting the weak producers of professional services at the cost of information being made available to consumers opening up to legal service sector to foreign law firms and its interaction with growing arena of international trade shall be beneficial for development of the sector. The existing state of decay that the justice delivery system of country finds itself in is 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 Apex Court has 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.

**Conclusion and Suggestion**

Liberalization, globalization and privatization have far reaching ramifications on legal profession which has also increased the pace and complexity of law practice. In the new scenario, there is a radical change in the different streams of persons. Keeping in the view the challenges of the world, legal education has far more responsibility in making legal professional highly skilled, proficient and competitive.<sup>14</sup>

In order to meet the challenges posed by liberalization and globalization on legal profession in India, the following suggestions are made:

1. As a result of globalization and WTO, it is clear that the legal profession in India has to cater the needs of a new brand of legal consumers, like the foreign companies or collaboration.
2. Open up out legal service becomes an opportunity to complete in more and more countries. As soon as Indian perspective in concerned, Indian legal service is beneficial to give world class service jobs.

How globalize the world may became, and how professional peddle may became, that in race of globalization and professionalism, legal service shall continue to remain agency through which people can get justice.

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3. Adv. Swapnil Joshi, *Changing Face of the Legal Profession in India in the Era of Globalization, www.legalserviceindia.com/articles/lprof.htm*
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6. Section 2 (U) of Competition Act, 2002 provides as, "service" means service of any description which is made available to potential users and includes the provision of services in connection with business of any industrial or commercial matters such as banking, communication, education, financing, insurance, chit fund, real

*estate, transport, storage, material treatment, processing, supply of electrical or other energy, boarding, lodging, entertainment, amusement, construction, repair, conveying of news or information and advertising.*

7. Adv.Swapnil Joshi, *Changing Face of the Legal Profession in India in the Era of Globalization, www.legalserviceindia.com/articles/lprof.htm*
8. Section 2 (x) of Competition Act, 2002 reads as, "trade" means any trade, business, industry, profession, or occupation relating to the production, supply, distribution, storage or control of goods and includes the provision of any services.
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