GLOBALIZATION AND THE LEGAL PROFESSION

A Blue Paper

by Cyril Shroff
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FOREWORD

The Harvard Law School Program on the Legal Profession was founded in 2004 to:

- Conduct, sponsor and publish world-class empirical research on the structure, norms and evolutionary dynamics of the legal profession;
- Innovate and implement new methods and content for teaching law students, practicing lawyers and related professionals about the profession; and
- Foster broader and deeper connections bridging between the global universe of legal practitioners and the academy

This manuscript by Cyril Shroff is part of a “blue paper” series of substantial essay, speech and opinion pieces on the legal profession selected by the program for distribution beyond the format or reach of traditional legal and scholarly media channels. Specifically, this text formed the basis for a keynote address delivered by Mr. Shroff at the program’s conference, The India Legal Profession in the Age of Globalisation, held in October 2011 in New Delhi, India. We thank you for your interest and look forward to your feedback.
INTRODUCTION

Although it is already upon us in many ways, globalization is about the future and has only just begun. India has seen consistent growth and a trillion dollar economy. It aspires to be the world’s third largest economy and the largest democracy. In dialogues such as this, it is very tempting to take an aerial view from 35,000 feet in the sky and then pat ourselves on the back. Instead I actually prefer to take a worm’s eye view today. The world looks very different from ground up; very different to a young law graduate; or to businessman who wants to deal with India; or to a general counsel of an emerging company. The world looks very different indeed, and honestly I am very saddened.

We have made progress on some fronts, but not on most. We have created a bar, the various segments of which are growing more and more antagonistic towards each other. There is no real conversation. Similar to the six blind men, we as a profession are trying to interpret the elephant by touching only the most familiar parts; constrained by our own dogmatic perspectives. To simplify the discussion, I will organize my analyses into four buckets:

1. The commercial bar (law firms);
2. The advocacy bar (litigators and adjudicators);
3. The in-house bar (the GC world); and
4. The unregulated and miscellaneous bar (inclusive of the LPO space).

Even though regulation of the legal industry has not changed much, globalization has been acting through market forces and touching each segment, some more than others. The endemic delays and the overall image of our dispute resolution system is the subject of great cynicism. In any international forum—whether it’s a gathering of lawyers or a businessmen’s conclave—I always boast of our rule of law and the sophistication of our judgments. I am instantly put on the back foot when someone inevitably jokes about the delays and inefficiencies of our system.
Globalization and the Commercial Bar

The world of Indian law firms is largely based in Mumbai and Delhi, and to a lesser extent Bangalore. The investment boom has inspired tremendous change in the law firm model. Our firm, for instance, has grown from 25 lawyers in 1994 to more than 550 lawyers today, making it one of the largest law firms in Asia. We went from being a firm of generalists to a firm of multi-specialists. From a law graduate’s perspective, we are a very good bet and—except for the public service minded or those drawn by the bright but dimming lights of London and New York—we attract the best talent. We face the great challenge of building a scalable law firm in India’s antiquated regulatory framework; it is like climbing a mountain on one’s fingernails. I can say with certainty that it is the most difficult environment in the world in which to build a law firm, and yet we as Amarchand Mangaldas and a few others like Zia Mody, Rajiv Luthra, and Jyoti Sagar have done it in varying degrees. And yet we prosper.

The law firm segment has been touched the most by globalization. But sadly, the biggest debate is the entry of foreign law firms, as if as if nothing else in India’s legal profession were more important than this sole aspect. This topic remains crucial and we can only ignore it at our own peril; as Mr. Nariman said, it is inevitable. Unfortunately, the current debate is one-dimensional and there has been no attention been paid to business organization, or to the ability to present ourselves in an internationally sophisticated way.

Except for a few law firms who choose to remain independent, most are secretly hoping to get “married” when the rules change; they see an imaginary pot of gold. This greatly influences behavior to the point where no one is investing in their own firms. Those who do so are basically attempting to increase market or resale value or to build their own résumés. I don’t see enough firms working towards an independent future in India’s legal industry beyond liberalization. It would be very sad if we go the way of accountants. Independence is not merely a matter of aspiration but also of execution. I hope I am wrong when I worry that no more than two or three independent law firms at the top level will survive liberalization. The regulatory establishment and the firms themselves are to be blamed for this.

Globalization and the Advocacy Bar

The advocacy bar, on the face of it, seems to be the least affected by globalization. They ask naively, “What is globalization?” They don’t see it as a problem, thinking that it only affects the law firm sector. What difference does it make to a counsel? Instead of being briefed by the Indian solicitors firm, they
would be briefed by a foreign law firm—and be paid much more in dollars. As long as the basic architecture of the dispute system does not change, the incentives for modernization of the advocacy bar do not exist. There needs to be urgent and enlightened introspection by this segment of a profession. We believe in a strange sort of way that we follow the best traditions of the English split bar. However, we follow the version from fifty years ago, and now follow only some of the most antiquated remnants of those traditions. England has changed beyond belief. See how they run counsel chambers. They have a Chief Operating Officer. A marketing department. Junior attorneys who get paid. Unthinkable in India!

We need to ask ourselves why we have the slowest litigation system and the world’s most expensive senior counsel bar. The client community deeply resents this and they believe they have no choice. The clients are now finding ways to bypass litigation by exporting our adjudication system, choosing non-Indian law, non-Indian arbitration, by settling cases and so on. Some of our brightest law students—the future Fali Narimans and Justice Vermas and future Ashok Desais—may want to be arguing counsel, but unless they have a relative that will support them they have no hope. The bar is totally closed. Instead, they turn to their secondary passion—transactional work.

The advocacy bar is in deep slumber because some of the best minds that India has produced have been lost to the bar because of its very own structure. Some academics who are not at all in touch with reality tend to blame law firms for their state of affairs. It is however squarely the advocacy bar that is to blame because of their overly conservative and selfish outlook. The prospect to a graduate of receiving no worthwhile compensation for five to seven years while their colleagues in law firms earn ten times more and become law firm partners creates perverse incentives. The advocacy bar is the breeding ground for our judiciary—the pride of the rule of law. By refusing to change, they are committing infanticide of the future judiciary. If the advocacy bar wants change, as we have seen in England, the reality is that at some stage, we will need to go to the US style of litigation practice, and law firms like mine will start an advocacy unit. We have enough captive work to keep a few mid-level counsel busy and we would use very senior counsel only in big cases. This is already happening in London. Once the trend starts, there is no stopping it. I beseech the advocacy bar to wake up from its deep slumber before it is too late—and to the misguided academicians and bar leaders, please stop blaming others for problems that lie squarely at the doorstep of the advocacy bar.

**Globalization and the In-House Bar**

For the in-house bar and the general counsel, the effects of liberalization rather than just globalization are far more evident, with some legal departments employing as many as 500 lawyers. As in many markets, the general counsel as the voice of the client corporation is demanding change from law firms. They ask us very uncomfortable questions such as why they have to pay for junior associate time. They want us to demonstrate results not efforts. Why did the QC who you briefed not read his papers? Why did they hold five conferences and yet not show up for the hearing? We have no answers except to blame it on the “general system” and to apologize. Are senior counsel not supposed to be professional? Or accountable? The general counsel are driving change but if we do not listen to them, one day the dam will burst and it will become a much bigger issue for the advocacy bar, the judiciary and society. The effects of globalization on in-house practice are very evident. It is becoming a powerful lobby.
Globalization and the ‘Fourth Bucket’

The fourth bucket is all about the unregulated space. It is a ‘black box’ and no one is really aware of how big it has grown. The radar has not picked it up because prominent LPOs have been careful to focus on international work and not Indian work. In fact, the fourth bucket it is actually bigger than the entire law firm sector combined. India is the world capital of LPOs. They represent the thin end of the wedge in the business of law. They are relentlessly driving the commoditization of work and continuously narrowing the legal space for lawyers. The irony is that they get away with many practices that lawyers cannot. I am truly amazed at how this space continues to be unregulated while the government is fast asleep. I have nothing against LPOs, but I do wonder from an industry design perspective how this area can be left completely unchecked. Is consumer interest of no concern to anyone?
CONCLUSIONS

I believe it is time for someone in the government to articulate a grand vision for our profession. If this happens we will soon create a thriving metropolis with beautiful gardens and fountains. But if it doesn’t, we will be establishing a haphazard township that does not befit the future of the third largest economy in the world. It will have a few skyscrapers that are world-class skyscrapers towering over many many slums. No one will believe us when we talk of ‘rule of law’ as a competitive advantage of doing business with Indian clients, and litigants will lose faith and become even more cynical than they already are.

I would like to see:

- A mature, open and comprehensive dialogue amongst all stakeholders—the real stakeholders;
- A nuanced and specialist dialogue between the various sub-categories—each has specific issues that should not be bundled together;
- An elevated debate, beyond the single point agenda of foreign law firm entry to a more mature conversation about market opening;
- A better balance between the business of law and the profession of law.

The Harvard Law School Program on the Legal Profession’s GLEE project could not have been more timely. As today we have neither information nor objective opinions to balance our biases and assumptions. I hope that the study will generate the knowledge and broaden the perspective to help India make the right choices. This will require great leadership, determination and wisdom. I hope that in the land of Gandhi and Nehru, we can find a few good people to give us this leadership. There needs to be a right and strict balance between the profession of law and the business of law. The needle has swung too far.
ABOUT THE AUTHOR

Mr. Cyril Shroff is the managing partner of Amarchand & Mangaldas & Suresh A. Shroff (Amarchand & Mangaldas), India’s largest and leading law firm. Mr. Shroff has vast experience in corporate law, including capital markets, foreign investment, privatization, mergers and acquisitions, and project finance. Euromoney, Asia Law, Legal 500 and Chambers Global have consistently selected Mr. Shroff as India’s top corporate and finance lawyer. He has worked on several landmark corporate and financing transactions. He also has been a member of several governmental and regulatory committees on law reform in the areas of corporate law, M&A, securities markets and infrastructure. He has also authored several articles and publications on legal topics. He has won numerous awards for legal excellence and is much sought after by Indian and foreign clients.

Mr. Shroff is a guest lecturer at the Government Law College Bombay on securities law. He is a member of several committees of the Confederation of Indian Industry (CII). He is a board member of the Legal Practice Division (LPD) of the International Bar Association (IBA) and a member of the Advisory Board of the Asia Pacific Forum of the IBA. He is a member of the Managing Committee of the Bombay Chambers of Commerce & Industry.