

Revisiting the Indian Legal Structure: Attracting Young Bright Lawyers to Bar and Academia!

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Introduction:

Legal academia and litigation are nucleus of legal industry in any country. Decadence in its standards not only gets mirrored in receiving scanty services by various stakeholders but overall declension of the legal profession in a nation. The proximate interfaces at which legal academia and litigation works with the society attributes to how these professions are conceived by the society. Standard services offered by professionals yields to bright image of these professions leading to bright people taking them up as their careers, else their pungent odor keeps bothering everyone around. Post National Law School Model Experiment, situation hasn't changed much, so far as career options of young bright lawyers are concerned. This article aims to rationally identify the reasons behind young bright lawyers not taking up to either academia or litigation and ventures on to test the veracity of few methods through which these glitches may be rectified. It is observed that gnomish compensation when viewed at the backdrop of exorbitant fee paid by a law student propels him to succumb to career options offering alpine pay notwithstanding job satisfaction. Ubiquitous mediocrity in the profession is its hallmark. This mediocrity could be strongly attributed to lack of a robust screening mechanism before admitting lawyers to the bar which not only deprives the stakeholders from procuring standard services but also tarnishes the image of the profession in the society leading to a larger dent, deterring young bright lawyers to take it up. Situation is not much different in legal academia which is again characterized by a flyspeck pay and lack of due recognition for the services rendered by academicians. This article aims at exploring reasons rationally conceivable to the author as to

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why bright lawyers don't take up to these professions and float few suggestions with a view to attracting them towards it.

The article is split in two parts – First part deals with litigation and second part deals with legal academia. Suggestions for enhancing the standards of both the professions have been floated at the end of each part.

Litigation- Exploring the Uncharted Territories!

If one obviates the category led by *Osho* and *James Allen*, the spiritually wise men, a large chunk of beings are influenced either by power, money or recognition. When a law student softly slips into the blunt realms of real world from the cozy entrapments of law school, hard, rather harsh realities in litigation makes his mind to fast track other opulent options which he may have taken up had he not come to litigation, with an implicit understanding that - it is still not too late for him to go for it. This necessarily impels one to think, when litigation appears to be opium; and law student a crusader in the war of Justice while at a law school, what impregnates one's mind after the law school to think otherwise. This 'otherwise' thinking could be attributed to two main reasons.

Firstly, the way in which society conceives lawyers makes even lawyers hate themselves. People do things that make them happy but one of the tests for what makes one happy comes from the reaffirmation by Society towards what one does. I am not generalizing this, but as far as law goes, this statement stands the test of times and has deterred umpteen talented lawyers to move on and search their breads elsewhere. Question like, 'Weren't you good at Mathematics or science? Why law?' or opinions like, 'We don't have a policy to give loans to lawyers' or 'I don't mind keeping my daughter as maiden for the rest of her life but will never marry her to a lawyer' are some difficult nuts to crack, triggering a *feel bad factor* in the entire litigator community at large. Is the society at fault? To trace the answer to this query, consider this illustration: How would you expect society to conceive a medical practitioner who lingers a patient for weeks and months without affording significant treatment, charging exorbitant fee? The above situation is merely a symptom which can traverse through any profession or service, which admits candidates without a rigorous scrutiny, revealing a much significant menace hinting drastic lacunae in the Screening process. License to practice should be earned at the cost

of attaining a sound knowledge of law, and thus the screening process should put to test holistic knowledge of law acquired by a candidate over a period of five years or three years, as the case may be, while at law school. When knowledgeable and talented candidates enter the bar, society's perception towards litigators would inevitably change, conceiving them as a useful member of the society. Thus, charity exhibited by Bar Councilors in admitting lawyers to the Bar must be reserved, and displayed in affording free legal aid to the destitute clients. Standard of bar examination should not only test theoretical knowledge of a candidate but also aptitude, testing ones psychic by asking standard questions on ethics and real life situations.

Secondly, lack of financial support system to young litigators is a hard row to hoe. Young litigators, who wish to explore litigation, find it baffling to find home in a good lawyers chamber. Most of them don't, assuming they do then pay is gnomish, which deters them to continue for a long time. Life works on relative planes – assuming one exhibit guts and takes up to litigation at a flyspeck pay, how long do you expect him to continue when other batch mates of his are either earning fat pay cheques at a law firm or savoring the aroma of higher education at any world class institution! Trump of a Godfather has perennially been a game winning strategy in litigation. In a survey conducted by a research organization based in Ahmedabad, as close as 92% lawyers and judges of the total sample surveyed, believed in portentous of a Godfather in forging a surefire career in courts.²This could be rectified by institutionalizing the system of junior ship. Considering India is a huge country where it may not be possible to afford allowance to each and every young lawyer, an alternative system may be merited, which may give some sunshine to the young bright lawyers, also allowing hapless clients to bask in its light.

Proposed Model: Building a stronger nation for tomorrow's India!

Moving ahead from an era where a District Judge appoints amicus curiae for a destitute client to fight his case before a court of law at a district level or similarly by a Chief Justice of High Court at a High Court level, National Legal Service Authority (Free and Competent Legal Services) Regulation, 2010 enacted in pursuant to S. 29 read with S. 4 of the Legal Services Authority Act,

² R Ravikanth Reddy, *Law Students not so keen to practice in Courts*, The Hindu, Nov. 18th, 2012, Accessed from <http://www.thehindu.com/news/cities/Hyderabad/law-students-not-so-keen-to-practise-in-courts/article4106363.ece>

1987 has been a path breaker move and has taken legal aid to hallowed levels. Though, it hasn't been implemented in most parts of the country either due to misconceived apprehensions, funding issues or lack of strong will power, there are few issues which may still require some reconsideration under the regulation. As retainers are to be appointed on a full time basis³, they need to be trained in the skills required for dealing with such clients. A program may be run for them in the Lawyers Training Research Institutes (a body which has been mooted to be floated later in this paper for training lawyers, to be established in every district where principal High Court is situated in a State). With a view to attract bright lawyers to social interest litigation and offer them a holistic portrait of legal aid, a supplementary scheme may be run jointly by Government of India, state governments, Bar Council of India and state Bar Councils.

Under this scheme 60 Fellowships (tentatively, subject to change, depending upon availability of funds) may be constituted. They may be endowed jointly by Government of India, State governments, Bar Council of India and respective State Bar Councils. These Fellowships may be split across states in accordance to the individual population of the State. Say if Uttar Pradesh has the largest population then maximum number of fellowships should be constituted for the state of Uttar Pradesh.

Selection Criterion:

Top 200 candidates (on the basis of their preference to be considered for this fellowship by ticking a column in their application form) may be shortlisted from All India Bar Examination, assuming examination's rigor is increased, for an interview. A panel of not more than 5 people may be constituted for conducting interviews, comprising of a renowned social worker, an academician, a bar councilor, a renowned supreme court advocate and Chief Justice of India or his nominee. They may finally select these 60 Fellows, who later may be sent to different states and work closely with Legal Service Institutions established in the High Court under the Regulations of 2010. Their appointment shall be for a period of 2 years which may be extended subject to the report prepared by the Review Committee.

Members of the Panel may be selected by the Central Review Committee whose constitution has been given later in this part.

³ Regulation 8(10) of National Legal Services Authority (Free and Competent Legal Services) Regulations.

Working of these Fellows:

These fellows may be attached with the Legal Service Institution operating at various High Courts. A team of bright law students, either in a group of five or ten may be constituted and an individual fellow may be made as the head of this team. These law students may come from National Law School of the respective state or traditional Universities provided they are nominated from their respective institution and a substantial waiver in their fee should be made by the respective Institution as reward of the service rendered by him. Student appointments shall be made for a period of one year, the idea is to offer this exposure to as many students as possible.

Funds:

A stipend of not less than 30,000/- per month may be given to each fellow; this may of course increase subject to the availability of funds. Roughly an endowment of 30 lakh would fetch for an individual scholarship which suggests, for 60 scholarships approximately 18 Crores would be needed. As suggested above, this fund may be jointly endowed by Government of India, Bar Council of India, State Governments and State Bar Council which may be in the ratio of 5:1:3:1 or 6:1:2:1, whatever is mutually agreeable to all. This split is proposed with an understanding that respective State Governments and Bar Councils need to contribute only for the number of Fellowships which would be constituted for their states. For instance, if 4 Fellowships are constituted for the State of Uttar Pradesh then an amount of approximately 1 Crore 20 Lakhs would be needed to offer stipends to the fellows. This 120 Lakh may be split in the ratio of 5:1:3:1, which would be:

Central Government – 60 Lakh

Bar Council of India – 12 Lakh

Government of Uttar Pradesh – 36 Lakh

Bar Council of Uttar Pradesh – 12 Lakh

The same could be followed in different states.

The stipend could be dispensed through State Bar Councils.

Constitution of State Review Committee and Central Review Committee:

State Review Committee may comprise of three members which may include Chief Justice of the State High Court, Chairman of the State Bar Council and Dean of National Law School/Traditional University, as the High Court decides.

Central Review Committee may comprise of three members which may include Chief Justice of India or his nominee, Chairman of Bar Council of India and Vice Chancellor of National Law School, decided on a rotational basis mutually amongst the Vice Chancellors of all the National law Schools in India.

Review Committee:

Review Committee may be constituted at two levels, one at state and another at central. State review committee shall look into the performance of these fellows including number of cases disposed by them – both through litigation and out of the court settlement. Annual confidential report of each fellow may be prepared by the State Review Committee and forwarded to the Central Review Committee. It is on the basis of these confidential reports, renewal of Fellow's term shall be determined. It shall be the duty of State Review Committee to keep surveillance on the Fellows working within the High Court. State Review Committee may express their dissatisfaction to the Fellows during the course of the Fellowship if they are unhappy with the Fellow's performance, and provide counseling to improvise. However, in extreme situations they may recommend to the Central Review Committee for the termination of fellowship but such discretion should be exercised with utmost caution and very rarely. Also provided that, such discretion could be exercised only after the expiry of first year of fellowship and not before that.

Termination of Fellowship prematurely:

However, if the State Review Committee deems it necessary to recommend termination of a Fellow then it may do so by writing to the Central Review Committee along with the reasons, closely corroborating it with proof. If the Central Review Committee finds substance in the recommendation of the State Review Committee then it may terminate the Fellow and ask the respective state Bar Council to stop his stipend.

Academia: Reaffirming faith in ‘Knowledge is Power’!

This part of Chapter delves into two issues. Firstly, entry to barriers for bright law students in pursuing an academic career and secondly, within the existing resources what strategies could be adopted to increase the standards of legal academia across the country.

Ambition to rise high in career and make a niche for oneself drives young bright lawyers to take up to other lucrative options like Administrative Services, Judicial Services, law firms where on working hard one may make it to Partnership of the firm or litigation – where one works at proximate quarters with the society which fillips one’s chances of taking up public life later in career or getting elevated to Bench. Power, money and social recognition are poignant factors which anchors one’s choice to take up to other lucrative options but for academia. Francis Bacon’s *scientia potentia est*, which translates to ‘knowledge is power’ holds good for a society where knowledge ascends as a value superior to money and status. But in a society such as India, where development has reached mid-way on its way to home, knowledge walks hand in gloves with it. As a cardinal principle, superior value should trump the lesser superior ones. For this to happen, a collective effort is required to uplift knowledge and transcend nation’s destiny to the better, empowered levels. One of the leading figures in Indian legal chronicles, Mr. Nani Palkhiwala once observed, *‘If you want to change the destiny of a nation then make teachers as Lords, and see the rapid change’*. How letter perfect his observations are. He was suggesting at an implicit yet puissant factor involved in the selection of a career by individuals. Any nation is as good as its teachers. Mediocrity in teachers and teaching not merely reflects but essentially translates into mediocrity of a nation. If India aims at offering fillip to the status of teachers and escalate their standards, then society’s perception towards academia needs to undergo an overhauling. How to go about this overhauling is a bigger question. For this, it is pertinent to identify sectors towards which best minds are gravitated to and why so. Sabotaging all creativity and aesthetic sense, most parents in India sow the seeds of those careers whose fruits are borne either on the playgrounds of IIT’s, IIM’s or Lal Bahadur Shastri Training Academy for IAS officers. Any other playground is considered as middling. This grooms an individual’s mind to aspire for landing up at any of the playgrounds mentioned above, and by default they accept any other career choice as bush league. This reflects merely symptom but not the problem, which a

reader might assume to be parents after perusing the preceding paragraph which is categorically not what the case is. The problem is identifying the reasons why society conceives IIT's, IIM's or IAS belonging to the first tier careers as opposed to teaching. The reasons could be identified as money, power, other perks and privileges that comes along with the jobs. Social prestige and recognition follows above. Thus if, Bacon be followed and knowledge truly is made power with a handsome compensation being offered to the bright minds then there are no qualms why bright minds wouldn't come to academia. This could be achieved by providing academic liberty and stimulating law school - industry interface. While working on this interface, factors such as regular training of teachers and adequate compensation should be infused in the suggested matrix. This model when replicated at a public as well as private level would it then entail whacking acceptance by Society bringing a systemic change.

Another entry barrier for young bright lawyers to take up teaching is cumbersome educational loans at staggering escalating interests lying on their shoulders to pay off. Obvious resort for any young lawyer with an education loan to pay off is a high paying job which instantly obviates academia from his array of options. Leading nations realize the impact of education loans in deterring young bright minds to take up teaching, and hence are committed to support students in paying off their hefty loans.⁴ For instance there are numerous schemes operational in US that support students who wish to take up teaching. Elementary and secondary education Act provides for a list of low income schools under Title 1 to the Act, under which highly qualified teachers teaching in these schools for five consecutive years are eligible to get forgiveness on their education loan to the tune of \$ 17,500.⁵ To be considered as highly qualified one must have full certification in the State. While there is another model which provides for loan forgiveness of \$ 2000 every year for a period of five years for the services rendered in a low income educational institution.⁶ President Obama's regime brought a legislation under which one is eligible for a complete waiver of education loan after making regular payments for 120 months. This piece of legislations also provides that, those people who are committed to low income

⁴ "Fact Sheet: Help American Student Manage Student Loan Debt", Office of the Press Secretary, White House, October 25th, 2011, accessed from <http://www.whitehouse.gov/the-press-office/2011/10/25/fact-sheet-help-americans-manage-student-loan-debt>

⁵ Peterson's Starr, *The College Loan Forgiveness Programs for Teachers*, January 25th, 2013, Accessed from <http://www.petersons.com/college-search/college-loan-forgiveness-teacher.aspx>

⁶ Higher Education Opportunity Act, accessed from <http://www.socialworkers.org/loanforgiveness/faq.asp#one>

public work would be eligible for complete waiver only after making a regular payment of 60 months, so that they may save money for their family and home under Public Service Loan Forgiveness.⁷ Income Based Repayment plan created by the College Cost Reduction and Access Act of 2007 limits one's monthly loan payment amount to 15 percent of one's discretionary income and provides forgiveness of remaining student loan after 25 years. This benefit is going to augment from 2014 restricting the monthly payment to 10 percent of discretionary income and a complete forgiveness after 20 years.⁸In India, rate of interest on an educational loan is staggering high, varying from 11 to 14 percent, depending upon the financial institution from which a loan is borrowed.⁹In such a situation, taking up teaching would be a backbreaker for students who are yet to clear off their educational loans. This entails an imminent need for revisiting the existing policies in India regarding education with a view to attract bright lawyers to academia. Idea behind discussing this topic is to trigger a discussion which may be kicked off with a basic model proposed below.

Government of India may come out with a scheme offering forgiveness on educational loans to the scholars who are committed towards legal academia and are shaping a career in it. A list of educational institutions may be prepared which would be eligible to participate in this scheme. Compulsory service for two years at a public institution (which is part of the above list) shall be necessary to be eligible to participate in the scheme. Those who are duly qualified to teach in accordance with the relevant laws shall only be eligible to participate under it. Those teachers who have taught in these institutions for a minimum of two years may apply for getting the benefit under the scheme provided there shouldn't be any default in the payment of equal monthly installments towards the education loan at the time of applying for availing the benefits under the scheme. Government might prescribe a cap; say 5 or 10 lakhs for the purpose of constituting an individual grant under the scheme. Government may decide to pay monthly installments to the Bank directly towards the payment of educational loan or it may make an annual forgiveness amount for every year of continued service in legal academia after the

⁷ Student Loan Forgiveness Act of 2012, accessed from <http://www.usnews.com/education/blogs/student-loan-ranger/2012/03/21/learn-what-the-student-loan-forgiveness-act-could-mean-for-you>

⁸ *Learn what Obama's Student Loan Plans Means for You*, Equal Justice Works, November 9th, 2011, accessed from <http://www.usnews.com/education/blogs/student-loan-ranger/2011/11/09/learn-what-obamas-student-loan-plan-means-for-you>

⁹ Mulick Tewari, *Checklist for Education Loans*, Business Line, June 1st, 2013, accessed from <http://www.thehindubusinessline.com/money-wise/checklist-for-education-loans/article4772528.ece>

threshold of two years has been completed. For instance, after two years, one may get an annual forgiveness of 2 lakh rupees on education loan for every year of continued service in teaching subject to a cap of 5 or 10 lakhs rupees (as the government may finally decide). Alternatively, interest forgiveness on education loan may be offered to the teachers for every year of continued service on equal monthly installments after the completion of threshold period of two years and either 10 or 15 percent of the discretionary income could be determined as the monthly installment which may be payable in 15-20 years.

Figures mentioned above are tentative, and are mentioned with a view to invoke discussion on the given issue.

Second limb to this part focusses upon the measures needed to be adopted to buckle up the existing status of legal education in India. For those young minds who quit and exit academia, *faith* is the word. When one starts swimming or for that matter cycling, it appears to be the most arduous task on earth but with faith and consistent efforts a time comes when one masters it. The difference in feeling before and afterwards could be understood by one who has been on both the shores. Faith sails one through. Having said this, however, it is admitted that, there is lack of adequate guidance and mentorship for bright young faculties, for which Professors need to voluntarily step in and more gratuitously mentor these young minds. *The one who has seen and travelled the entire path is best suited to tell the beginners where difficulty lies, and more importantly how to overcome it.*

As part of the larger reforms for buckling up legal education in India, perennial support from practitioners is quintessential. The next topic explores the possibility of academia working in tandem with bar with a view to strengthen legal education in the country.

Academia and Bar: Working in Tandem!

True redemption of legal education could prove to be a mirage if assistance from Bar is not sought. As evident from past, most of the law students on graduating move on to practice law which make it basal for a law student to acquire such skills and values indispensable in the successful practice of it. This calls for a confluence between academic lawyers and practicing lawyers, a need which has been aptly put together by Harry T. Edward:

“Because of the tremendous gap between academic lawyers and practicing lawyers, an affirmative action program to integrate law faculties into the profession will be required. Most schools bring in a significant number of Judges and practicing attorneys as adjunct teachers, guest lecturers, and advisers to students. The problem at many law schools is that the faculty doesn’t get out enough. Schools should work with bench, the bar and government agencies to have professors in residence, faculty as speakers, faculty team teaching with the bench and the bar, and so forth.”¹⁰

Asserting on the urgency of such need, even McCarte Report provides:¹¹

“If a single public profession of shared learning, skills and professional values is to survive into the 21st century, the law schools together with the bar and the judiciary must all work for the perpetuation of core legal knowledge together with the fundamental lawyering skills and professional values that identify a distinct profession of law throughout the US.”

Not that its need wasn’t felt earlier, in fact 184th Report of Law Commission of India on Legal Education has recommended that Adjunct Professors should be appointed from amongst the members of the Bar and retired Judges. It also provides that, this should be done in consultation with the State Bar Councils, Legal Committee of the Bar Council of India and Legal Committee of the University Grant Commission. But sadly, proposed institutionalization of the appointment of adjunct professors hasn’t yet seen the light of the day. This cunctation on the part of law makers is putting in jeopardy careers of law students. How important skills are to a law student could be understood by a survey which was conducted by *Wallace Loh*¹² at University of Washington of its alumnus and the enucleation reported that law schools were successful in teaching substantive law, problem-solving, and legal writing and reasoning, but did not devote comparable attention to “practice skills and to the social and moral context of the law.” Indian legal milieu is akin to US and equally befitting are the observations made above. This shouldn’t be conceived as a copout with traditional academic method offered at the law schools but as a measure to make legal education more holistic. Skill development is an incessant activity which casts a stronger duty on the regulators to assure that after graduation certain basic skills are acquired before getting admitted to the Bar. Thus on clearing the Bar Examination completion of

¹⁰Harry T. Edward’s article, *The Growing Disjunction between Legal Education and the Legal Profession*, 91 Mich. L Rev 34, 103 (1992)

¹¹ McCrate Report (1992) at p. 120

¹² Wallace Loh, *Introduction: The MacCrate Report – Heuristic or Prescriptive?* 69 Wash L. Rev. 505, 510 (1994)

such training should be made compulsory. Bar Council of India and state Bar Councils should devise a mechanism to impart such training to the lawyers. License of practice should be only given after completing this training. Lawyers Training Research Institutes may be established in every city where High Court is situated in each State. Retired members from the Bench and experienced members from the Bar may be appointed as full time Professors/Trainers in these Institutes, who may instill such skills that are quintessential in the efficient functioning of the profession. This move is sure to see a strong opposition from the lawyer community but a move in the larger interest of lawyer community must not succumb to such oppositions, no matter how strong they may be.

Conclusion:

To conclude, litigators practicing in courts affect lives of millions and academicians lit up the light in young law students, making them radiant and exuberant. To efficiently execute such important roles, are needed the best minds in the country. Adequate compensation and opportunity to show talent should characterize litigation and that is what the community should aspire for. However for academia, creating an intellectual atmosphere where one feels the rush of adrenalin flowing coupled with academic liberty and adequate compensation is sure to attract bright lawyers to its altar. India is undergoing through a transition phase and services rendered by lawyers and teachers are going to go a long way in deciding how India of tomorrow would look. To assure we have able people participating in creating a promising future calls for a systemic overhauling and shedding off stereotypical attitude in running these institutions. Being best is an attitude and to attract men with such attitude, a level field has to be created for them so that they don't feel neglected and exploited. Gravitating the best mind to litigation and legal academia should be seen as a challenge and all possible efforts should be put in to bring them home – a place where their services could directly assist in the process of nation building.

