

## **Evolving role of Legal Professionals/Institutions**

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Justice N. Kotiswar Singh,  
Chief Justice,  
High Court of Jammu & Kashmir  
and Ladakh.

The legal profession in India is deeply rooted in our modern history and has a rich and multifaceted journey, shaped by colonial influences, and the struggle for independence, with a deep commitment to the pursuit of justice and equality in our contemporary world. It is a story of lawyers transcending their traditional roles, becoming architects of modern India, and contributing to the development and transformation of our independent nation.

2. The legal profession in India, as we know it today, has its roots in the colonial era. During this period, British colonial rulers imposed their legal systems and jurisprudence on us. Proficiency in the law was a specialized discipline, and access to legal education was limited to the privileged classes. This exclusivity made the legal profession a preserve of the elite, and only those with rich background and recommendations from England or a judge in India could be admitted to high institutions like the three chartered High Courts.

3. The legal profession has always encouraged an **inquisitive mindset** and a **propensity to question the status quo**. This inherent quality of the legal professionals played a pivotal role **in fostering nationalism** and **political awakening in India**. As lawyers delved deeper into the intricacies of colonial rule, they began questioning the prevailing conditions, including the unjustness of the colonial policies. This probing attitude among legal professionals sowed

the seeds of dissent and paved the way for their active involvement in nationalist movements and fight for India's freedom.

4. Personalities such as **Umesh Chunder Banerjee, Badruddin Tyabji, Sir Pherozeshah Mehta** were some of the leading lawyers of the day who were actively involved in the formative years of the Indian National Congress. **Lala Lajpat Rai**, another lawyer freedom fighter who was also a founding member of the Bar Council of Hisar, often referred to as "**Punjab Kesari**", exemplified the multifaceted contributions of lawyers in nation-building. He founded Punjab National Bank, presided over the first session of the All India Trade Union Congress, attended international labour conferences, and opened up new opportunities for colonial India. Another freedom fighter, Bal Gangadhar Tilak who obtained his L.L.B degree from Government Law College, along with **Bipin Chandra Pal** from Bengal formed the triumvirate, popularly known as **Lal Bal Pal**, which changed the political discourse of the Indian independence movement.

5. India's journey towards independence, culminated in 1947, and the task of framing our Constitution fell upon the shoulders of visionaries, many of whom were lawyers. There were about 250 out of 389 members of the Constituent Assembly who were lawyers.

6. The legal fraternity's contribution to leadership and nation-building in the pre-independence era continued in the post-independence era.

7. Some of the sharpest minds in the legal profession in India have assisted the Indian Judiciary in broadening the vistas of the concept of equality, justice and liberty having universal applications and help chart new legal pathways like public interest litigation to make human rights more meaningful and realistic in the context of a functional democracy like ours, and to make access to justice a reality for the millions of citizens who have remained on the fringe of the society.

The legal theory of the basic structure of the Constitution which is now firmly entrenched in our legal system, and which has become an integral part of our democracy, has ensured the continuity of our democratic values and institutions without abrupt disruptions, in which some of the best legal minds have played a significant role. In short, the legal profession has been playing a stellar role in the transformation and development of our society and stabilizing it based on Rule of Law.

8. One of the most challenging tasks before the legal fraternity is how to make ourselves relevant to our large sections of society, the weaker sections, the marginalized.

Legal aid, a part of the Directive Principles of State Policy is also now considered to be a part of Article 21- Right to life. To make right to life meaningful to the underprivileged by providing legal aid assumes great importance in which the lawyers/legal fraternity must play a more active role.

There are **about 6 lakhs of prisoners** in India and about 77 percent are undertrials and many of the jails are overcrowded.

As per **World Bank Report in 2022, about 10.2% of the population are below poverty line.**

**About 23% of the population are illiterate.**

Though there is a sharp decline in the **child marriage, from about 37.7% in 2006 to 16.3% in 2019-21**, it is still a problem.

If the legal fraternity had played a significant role in the pre-independence era in the freedom struggle, today the legal fraternity must play a more constructive role in bringing about a more equitable society, and must join in the

campaign against poverty, illiteracy, corruption, terrorism, divisive forces which are eating into the vitals of our democracy.

**Thus, the need of the day for the legal profession is to change the focus from a private oriented profession to a public-spirited driven legal profession.**

9. Adversarial litigation has been the mainstay of the justice delivery system in our country. The training, habits, practices and resultantly, the mindset of the legal profession are geared accordingly to this approach of adversarial litigation. However, because of the increasing number of cases resulting in huge pendency of cases, causing undue delay in disposal of cases, **justice has been literally rendered illusive and illusory** to many. As on today there are **1,10,86,187** (more than one crore, ten lakhs, eighty-six thousand) civil cases and **3,33,72,404** (more than 3 crore 33 lakhs) Criminal Cases, totalling more than **4,44,58,591** (more than 4 crore and 44 lakhs) cases of the total population of more than 140 crores. Thus about 10% of our population are enmeshed in litigation.

This has necessitated devising new approaches and we have seen adoption and application of **Alternative Dispute Resolution** mechanism in our legal system with the incorporation of Section 89 in the CPC which casts a duty upon the Court to see whether any dispute can be resolved through any one of the ADR mechanisms which again brings into focus the role of a lawyer from that of adversarial mindset to a conciliatory approach.

Some of the ADR mechanisms which have become an integral part of our legal system are **Lok Adalats** which are organized under the aegis and guidance of the Legal Services Authorities in which the legal fraternity can play a very constructive role in helping and encouraging parties to come to a settlement.

10. Another ADR mechanism, **mediation** has also assumed great importance currently, for resolving disputes in an amicable manner, which has got a boost after the recent enactment of the **Mediation Act, 2023** which again requires change in the attitude, mindset of a lawyer. Under the new Act, irrespective of a prior mediation agreement, it will obligate each party to take steps to settle their dispute through pre-litigation mediation before approaching a court, which also provides for maintaining a panel of trained mediators. This is a new opportunity opening up for lawyers to act as professional mediators.

11. Lawyers who are trained to win cases and defeat the opponent in the court, have now to shift their gear to a reconciliatory mode and help create a win-win situation for both the adversaries ridden by bitterness and acrimony, to a process which is least expensive, most desirable and efficient way of resolving disputes amicably in the most cordial and congenial atmosphere. Equally important is the role of the lawyer in bringing awareness amongst the litigants and public of the advantages of the ADR mechanisms.

12. Another development is the growth of **arbitration** in India. There has been a paradigm shift in the law of arbitration with the adoption of the UNCITRAL model by enacting Arbitration and Conciliation Act, 1996 reflected of an era of an increasingly economically interdependent world and thus become a part of a robust cross-border legal regime for facilitation of international trade and investment.

I would like to add that not only retired Judges, who are the preferred Arbitrators, some lawyers of high standing in the Bar are also sought by the parties for appointment as Arbitrators.

The involvement in arbitration necessitates understanding of the foreign laws, which invariably leads to the need to have knowledge of other societies,

how they conduct their affairs. Thus, a lawyer needs to be an internationalist as well with a universal vision and not merely being a nationalist. For this, we must also be well conversant and acquainted with the numerous international covenants, instruments which are equally relevant and applicable to us.

Remember **Vishakha** judgment on sexual harassment in workplaces where the Supreme Court relied amongst others on '**Convention on the Elimination of All Forms of Discrimination against Women**' and the **Fourth World Conference on Women in Beijing**.

13. There is yet another arena where the legal profession needs to become more acquainted and aware, that is, in the field of **environmental law**. Environmental issues travel beyond national boundaries as these have international implications, such as global warming which has threatened the very existence of this earth.

Many Indian lawyers, prominent of whom is M.C. Mehta have played a pivotal role in addressing environmental challenges through PILs and have contributed to environmental protection and sustainability in several ways. There are 348 reported cases in the Supreme Court filed by M.C. Mehta.

There is a huge scope for the legal fraternity in formulating and shaping environmental policies and legislation by providing legal expertise in drafting laws related to environmental protection, conservation, and sustainable development. Lawyers can also assist businesses and industries in complying with environmental regulations, reducing environmental harm, and ensuring corporate responsibility.

15. India has been ranked 63<sup>rd</sup> amongst 190 countries in the **ease of Doing Business 2020** as per the World Bank Report in view of the ambitious program of regulatory reforms launched by the Government of India for making it easier

to do business in India. India was the third worst in resolving commercial disputes as a report of the World Bank in 2013. But things are changing.

One of the indexes is based on the efficacy of enforcement of contracts which was facilitated by the establishment of Commercial Courts. The new Mediation Act, 2023 is also going to be a game changer.

Another catalyst in the ease of doing business is the launching of National Judicial Data Grid (NJDG) in 2015 which provides case data including case registration, cause list, case status and orders/judgments of courts district-wise across the country and such data are accessible from anywhere in the world with the touch of a button without physically visiting the courts. Many initiatives taken in the field of digitisation under the guidance of the e-committee of the Supreme Court have contributed to transparency and speedy disposal of cases which has contributed to the rise in ranking.

16. The legal profession has to invariably adapt to the fast evolving and changing **digital eco-system**. Many in the legal profession unfortunately are still not well adapted to this new digital legal world. Use of digital platforms is not restricted to taking part in virtual courts and preparing cases, but also can be used for the dissemination of legal knowledge and the legal profession must adopt it wholeheartedly. Legal fraternity must take advantage of the new legal digital world, must get acquainted with the merging new digital innovations like use of AI technology in law.

17. Thus, **beyond the traditional roles**, lawyers must strive to contribute significantly to various critical areas of development and global transformation taking place in the field of economy and environment. Failure to participate in the evolving process and failure to adapt to the international demands would mean neglecting our responsibilities and duties. The legal profession must be

prepared to undergo a paradigm shift, or else risks rendering it irrelevant by falling behind and in the process failing to assist the Indian legal system in meeting the contemporary global demands effectively.

18. Consequently, Indian legal profession cannot afford to remain only court-centric in today's world. It must go beyond the court, beyond their own institutions of learning, and **reach out to other disciplines of life** for more meaningful and better application of law. As society becomes more integrated and more complex, and with increase in the number of specialized laws, interdisciplinary approach is the need of the hour.

19. As specialization in law is increasingly becoming a trend, it has become imperative that these intricate laws are made understandable to the common man, which is a task that can be accomplished best by the members of the legal fraternity.

20. It is for the same reason, that apart from courts, the legal profession has to get more involved with other legal institutions, statutory bodies as well as with non-governmental agencies to bring intricacies of laws understandable to the common man in whose interest the laws have been made and applied.

21. In this context, **collaboration with legal professionals** from other countries becomes significant. Hence, opening of foreign firms even if in a limited form would be a desirable step for more international collaboration which would also enhance our understanding of the global challenges and be thus, better equipped to deal with such issues having global implications.

22. Because of the change in the role and profile of the legal profession, the Bar Council of India which is the apex body of the profession must accordingly fashion and redirect itself to meet the changed requirements of the legal profession. The Bar Council has an enviable task cut out keeping in mind the huge number of lawyers and enormous disparity in the standard of lawyers spread



across this vast country. So are the institutions imparting legal education, which must reorient themselves to groom the law students keeping in mind the evolving role of the legal profession.

## **Conclusion**

23. I would conclude with the observation that legal profession in India has played a multifaceted role from fighting for independence to nation-building. It continues to play a vital role in shaping our development, reaffirming democratic values, and upholding the rule of law. India is an emerging power in the international arena. Thus, building a robust legal system in tune with international norms and requirement is **sine qua non** to retain the prominent place in the comity of nations in which the legal profession has to play a significant role and I believe this conference will help our legal fraternity finetune this unique role and responsibilities.

I know that nowadays Charles Darwin is discredited in many circles, yet I cannot but quote him as I end my address,

*"It is not the strongest of the species that survives, nor the most intelligent that survives. It is the one that is most adaptable to change."*

Thank you.