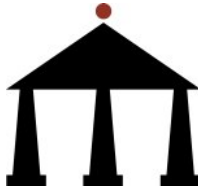




**Research Foundation for Governance:
in India**

Entry Barriers to the Litigation Profession in India





Research Foundation for Governance: in India

A report on entry barriers to the litigation profession in India

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Foreword

After completing my legal studies at the London School of Economics, I started practicing law at the Gujarat High Court. I was quite surprised when many lawyers and even judges approached me, asking me to reconsider my decision! They recommended that I should join a corporate office in a well-paid profile. I wondered why so many in the profession were apprehensive about well-educated lawyers joining the bar.

I decided to start speaking to younger lawyers and find out the underlying issues. The problem seemed more deep-rooted than I had imagined it to be. On one hand, as per an UNDP estimate, the present backlog of cases in Indian courts is estimated to take 350 years to resolve but on the other hand, bright youngsters were dispirited from contributing to bring about a change.

As part of RFGI, we took this issue as a key project. The present report is the culmination of our efforts to create awareness on encouraging young lawyers in litigation. We hope that it achieves its purpose by reaching the right offices and bring about a change.

Kanan Dhru

Founder & Managing Director, RFGI

This Report is based on a survey and a series of interviews carried out in the summer of 2009 by the Research Foundation for Governance in India (RFGI), the seminar on “Entry Barriers to the Profession of Litigation” held on July 5 2009 at the GLS Auditorium in Ahmedabad and a further survey carried out in May 2010. It comprises an analysis of the bridge between legal education and “junior” level litigation in India and also presents a comparison of the systems in the UK and USA. The report aims to show that there are several “barriers” preventing and discouraging capable students from entering the profession of litigation, which results in adversely affecting the quality of the profession, the administration of justice and even the economic development of the nation. It also presents recommendations as to how the current system can be improved in India.

Many interns and volunteers of RFGI have participated in researching for this report. It has been put together by Joshua Rennie, law graduate of the University of Aberdeen, Scotland, as part of his internship at RFGI from April to June 2010.

Executive Summary

In the summer of 2009 a survey of law students, advocates and judges was carried out by the Research Foundation for Governance in India. The survey brought to light a disturbing statistic that only 12% of lawyers and judges believe that “bright youngsters” are joining the litigation profession. In other words, the most interested, ambitious and talented graduates are avoiding a profession which is the foundation of the justice system, a profession which is in desperate need of the best graduates the country has to offer. Following this, further surveys were carried out focusing on the bridge between legal education and “junior” level litigation. This report comprises an analysis of the results of these surveys, and considers the reasons why capable graduates are passing up a career as an advocate. It aims to show that, despite the fact that entrance to litigation is formally undemanding, there are certain informal “barriers” preventing and dissuading most of India’s top graduates from becoming advocates in the courts. The article identifies what these “barriers” are, and presents evidence to show that they are discouraging the most qualified graduates, that is to say those who have graduated from India’s National Law Schools, from entering the profession. The article then presents a comparison with the entrance to litigation in the UK and the USA, and finishes by presenting a number of recommendations as to how the system can be improved in India.

I. Introduction

Justice is conscience, not a personal conscience but the conscience of the whole of humanity. Those who clearly recognize the voice of their own conscience usually recognize also the voice of justice.

~ Alexander Solzhenitsyn

To fully understand the significance of the results presented below it is important to consider the nature of problems within India's legal system and their impact on society as a whole. The strengths and weaknesses of the legal system are reflected throughout society, helping or hindering industry and foreign investment and succeeding or failing to grant equal rights to all citizens. An effective legal system can also hold companies and public bodies to account. Unfortunately the Indian legal system is teeming with problems, the largest and most visible of which can be categorized into separate yet not entirely independent issues: corruption, delay in dispensing justice, the backlog of cases and the quality of training or education.

The Global Corruption Report 2007 provides data which unveils systemic corruption in the Indian judiciary. In 2006, around Rs. 2,630 Crore (US \$593.1 million) in bribes was paid to lawyers (61%), court officials (29%) and middlemen (5%).¹ Judges cannot be removed from office without impeachment by Parliament, and there is no regulating body or “Performance Commission” holding them to account, leading to a continually increasing disregard for rules² and even sexual misconduct.³ Another glimpse of the extent of corruption is the fact that lawyers across the country have felt the need to stage strikes and protests on several occasions to voice their resentment of corruption in the judiciary.⁴

Statistics vary regarding the backlog of legal cases to be tried in the Courts, with the one trend being that the backlog is monumental in proportions.⁵ The United Nations Development Programme estimates that there are about 20 million cases remaining to be tried in India,⁶ and in 1999 another report stated that it would take 350 years

for disposal of the cases if no others were added.⁷ In 2006 there were 33,635 pending cases in the Supreme Court, which has 26 judges.⁸ The most apparent reason for these delays is that there are simply too few judges. Currently in India there are around 13 judges per million people,⁹ compared to 173 in China,¹⁰ and 66 in England & Wales,¹¹ prompting the Supreme Court to declare that it is necessary to increase the ratio to 50 per million over the next five years.¹² This, however, may not be the only cause of the backlogs as many believe it to be a result of deliberate procedural abuse by advocates using delaying tactics to stall litigation.¹³

The quality and effectiveness of the legal system does not only depend on how its rules are structured, but also the people it employs. Responsible and intelligent application of the law is only possible when the legal profession is filled with well educated and well trained lawyers, and in the words of Madhava Menon “There cannot be meaningful reform of the judiciary without

appropriate reform of the legal profession”.¹⁴ The quality University education has, however, always been a major issue for the legal profession, something commonly illustrated by Dr. Radhakrishnan who complained that “our colleges of law do not hold a place of high esteem either at home or abroad, nor has law become an area of profound scholarship and enlightened research”.¹⁵ The strengths and weaknesses the system are complex and need volumes upon volumes to be dealt with conclusively,¹⁶ thus we will consider a few of the issues most relevant to this report. Firstly, on establishing the three year law schools, the decision to opt for an essentially vocational degree combined with low entry standards, low testing standards and poorly paid professors, paved the way for one-dimensional, low quality legal education.¹⁷ This, coupled with the fact that no further qualification is needed to practice as a lawyer, affected the quality of the legal profession. To combat this, in 1987 the National Law School of India University (NLSIU) offered the first five

year law degree, with high entry standards, experienced professors and a well rounded intellectually stimulating curriculum focusing both on the academic and vocational sides of legal education. A current disadvantage of this is that there is a huge disparity between three year and five year schools, yet the qualification (LLB) is the same, allowing students of both to practice law upon graduation. Moreover, whereas in the past the three year schools were aimed primarily at producing litigators,¹⁸ graduates of the five year programmes are steering continually further away from the profession of litigation in favour of more financially rewarding, structured and secure paths in modern corporate law firms or private companies.¹⁹

It is precisely this growing aversion to litigation by the brightest law graduates in the country that inspired the survey and seminar, the results of which are evaluated below. The problems discussed above are interrelated, and improving the legal system as a whole requires the brightest and best qualified graduates to enter the

litigation profession. The main emphasis is therefore on routing out the reasons for this aversion to litigation, and proposing simple reforms that may be crucial for the development of the profession and the legal system as a whole. This may seem too ambitious given the immensity of the problems laid out above, however, hope can come from making modest incremental reforms rather than massive overhaul of the system. Richard Posner puts it succinctly:

I emphasize the importance of modest fiscal outlays in creating a virtuous cycle of legal and economic reform... A small expenditure on law reform can increase the rate of economic growth, which will in turn generate additional resources for more ambitious legal reforms later.²⁰

As will be seen from the results below, removal of the “barriers” to entry into the litigation profession would be a modest, feasible, yet crucial reform of the legal system in India.

II. Entry to the litigation profession

a. Methodology

Totally there are three surveys, covering the whole spectrum of the profession, that is to say, law students, recently employed graduates, senior advocates and judges.

The first survey, directed at advocates and judges, comprises a series of questionnaires and interview sessions conducted by the RFGI during summer 2009, the results of which were originally presented at a seminar on 5 July 2009, including speeches and a panel discussion involving experts on the subject. Respondents of the survey included 100 lawyers from the lower courts, 150 lawyers and judges from the High Court and 30 Supreme Court lawyers and judges spread across the cities of Mumbai, Delhi, Ahmedabad, Chennai, Bangalore and Hyderabad. Notable attendees of the seminar included Mr. Justice Radhakrishnan, then Honourable Chief Justice of the

Gujarat High Court, Dr. Madhava Menon, founder of National Law School Bangalore and the National Judicial Academy, Mr. Sachin Malhan, Founder of Law School Tutorials, Mr. Vyapak Desai, Head of Cross Border Litigation at Nishith Desai Associates (Mumbai), Mr. Rajshekhar Rao, Advocate at the Supreme Court of India and Mr. Devang Nanavati, Advocate at the Gujarat High Court.

The second was an online survey of students currently studying at various law schools, and was conducted between August 2009 and January 2010. Respondents were from all National Law Schools as well as some of the three year Colleges. There were 152 responses made up of 19 first years, 39 second years, 33 third years, 22 fourth years and 38 fifth years.²¹

The third survey was conducted in May 2010. This was a survey of 20 graduates of National law Schools who completed their law degree between one to five years ago.

The respondents were on average considered highly sought after, with a wide variety of career options. The questions focused specifically on issues that arose from the previous surveys concerning possible “entry barriers” to litigation.

b. Results: The Entry Barriers

It was mentioned by several attendees of the Seminar, such as Mr. Rajshekhar Rao and Dr Madhava Menon, that there are in fact no entry barriers to litigation. This is officially correct as only a law degree, 21 years of age, stamp duty²² and the enrolment fee payable to the State Bar Council are required.²³ These requirements are far from onerous given that there are around 980 law schools graduating 80,000

students per year, and the Bar Council enrolment fees are nominal.²⁴ In contrast, the results of the second survey show that at least 70% of the country's top graduates are deterred from entering the profession, a figure which represents a huge sway from times when "lawyer" and "litigator" were all but synonymous.²⁵ More disturbing was the statistic, as displayed in the chart below, that when the 280 judges and advocates were asked whether they think "bright" young graduates end up joining litigation, 74% said no while only 12% answered "yes".²⁶

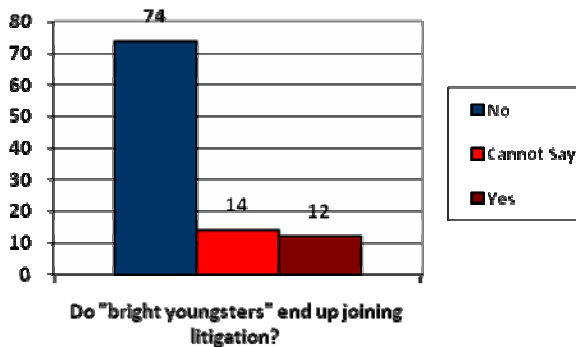


Fig 1 - Question posed to 280 judges and advocates

This highlights the issue that, because the majority of graduates are not interested in becoming litigating lawyers, when given an option the graduates who are the brighter and who also have a choice of several career paths are the least likely to enter litigation. This reflects the perception of lawyers and law students about their own profession and colleagues. In particular, it seems that India's 1105 graduates²⁷ from the prestigious National Law Schools are avoiding joining litigation at all costs. A recent survey of final year NALSAR²⁸ students, conducted by *Rainmaker*,²⁹ which asked what they intend to do after graduation found that 44.26% want to work at one of the top-5 corporate law firms. The second most popular option was working in-house for a large corporation³⁰ and the remainder predominantly intend to work for small or medium firms. A mere 6.56% are intent on joining the office of a Supreme Court litigator, and working for an NGO, policy group or social activist even at 4.92% is still a

more popular option than joining litigation in the High Court or lower courts. Supposing that this is a general trend throughout National Law Schools, these results suggest that only 75 – 100 graduates out of the total 1105 intend to enter litigation. This is particularly disconcerting if considered in unison with the above-mentioned problems that are plaguing the profession. To improve India's judicial system, it is essential that the best possible individuals with the highest quality education are the ones who will become the next advocates and ultimately judges³¹. This has been known for a long time, and was the reason for establishing the new and improved National Law Schools.³² This aim, however, has failed due to the simple fact that litigation is clearly not the top choice for graduates, and the best graduates, those of National Law Schools, have the most choice.

The three surveys conducted by RFGI highlight certain problems in relation to the bridge between graduation and a successful career as an advocate. As will

become evident, it is precisely these problems coupled with the availability of other choices that are discouraging the “brightest” graduates from becoming litigators. The first is that without a family background it is very difficult for a young advocate to make successful progress. Secondly, the system for “junior” litigators is unregulated, forcing them to do menial work for little remuneration over an undetermined period of time. Both problems are linked to the issue of salary, perhaps the determining factor for the most qualified students who can easily find an alternative, less risky career with a much higher starting wage. These problems are the “barriers” preventing or deterring entry to litigation.

i. 1st Barrier: It's a Family Affair

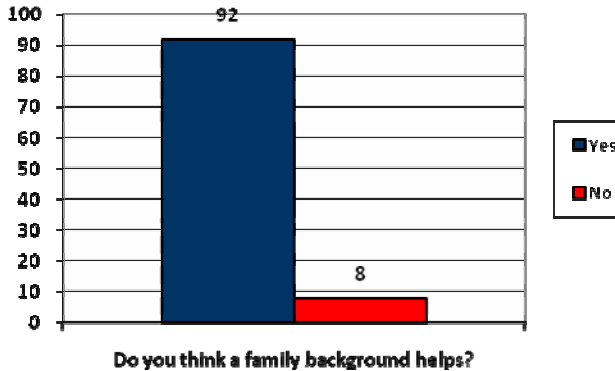


Fig.2 – Question posed to 280 judges and advocates

When asked whether a family background helps students to become successful advocates, 92% of lawyers and judges answered “yes”. Of course, any LLB graduate is eligible to become an advocate, but a lack of background in litigation can work as a barrier in several ways. It may prevent a fresh graduate from entering the profession because they were unable to find a suitable senior to work for. As one interviewee said “litigation has become like the caste system, only the person having a father can enter it”,

which can be supported by another respondent who said “This is where your godfather comes to play to get you placed with highly recognised lawyers”. For junior lawyers who are still not put off by this, there is the fact that “there is a difference in flourishing and surviving...(and)...people with a godfather reach the flourishing level quite fast”. Moreover, reputation plays a huge role in the career of an advocate, and having the consequential reputation connected with a family background attracts better clients and even better treatment from judges. One advocate of the Supreme Court remarked that “judges do treat you nicely knowing you are ‘who’s-who’ son and this helps boost confidence compared to other youngsters who hold briefs and are bullied a lot”. Students are well aware of this barrier. When students were asked in the second survey whether a family background was necessary to enter the profession, 65% answered 7 or above, where 10 was “absolutely necessary”, and when asked why they chose not to enter litigation 33.6% cited “lack of family

background” as their main reason. This clearly showed that lack of family background is an entry barrier, however, the survey included a broad range of law students who had not yet attempted to pursue a career and who may not have a better choice for their career path. Therefore the final survey was made up entirely of excellent National Law School graduates who had a choice of career path, and posed the question “why did you not choose litigation”. As can be seen below, 46% answered “lack of family background”.

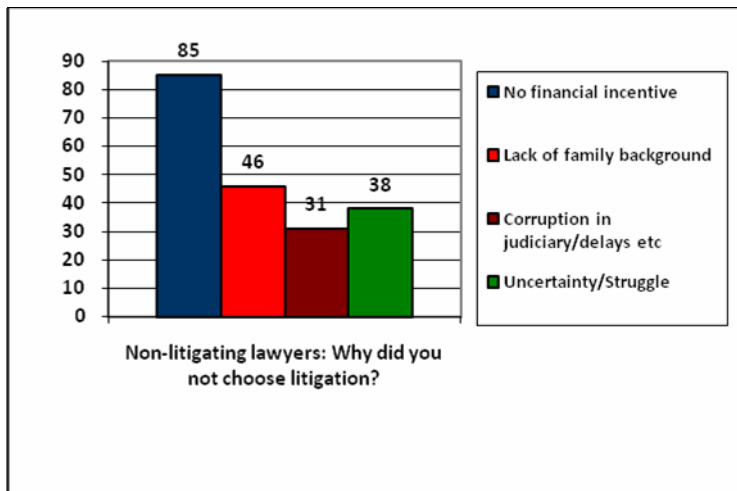


Fig.3 – National Law School graduates who did not choose litigation as their career

Still, this statistic may not paint the full picture. The other major reasons for choosing against litigation, “lack of financial incentive” and “uncertainty/struggle” could also be equated with lack of family background, due to the fact that without a “godfather” you may never get the reputation, the clients, and accordingly the money. There is plenty money to potentially earn, however there is not so much reputation to go around. This is evident from the fact that there are a handful of top litigators earning as much as Rs. 50 Crore per annum.³³ The income inequality cannot owe to a monopoly of manpower, or services – there are over 80,000 law graduates per year and around 1,086,626 Advocates enrolled in the Bar Council of India.³⁴ Instead, this is an oligopoly of reputation, where new entrants to the “market” will find it almost impossible to gain any of this reputation by standard means. An oligopoly usually

exists where there are entry barriers to a market, such as patents or large start-up costs, and in the litigation profession this barrier is family background. In the third survey there were a number of respondents who had originally intended, and attempted a career in litigation, but gave up after a few months. Thus, only this survey could display the full extent of the role that family background plays in discouraging or encouraging entry to the profession. The results, displayed in fig.4 below, show that every respondent with a family background entered litigation and almost every respondent lacking this background opted for an alternative career:

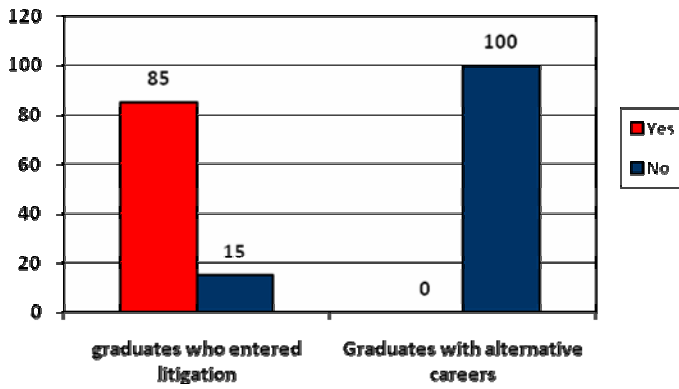


Fig.4 – Do you have a family background in litigation?

ii. 2nd Barrier: Juniorship - Lack of Regulation, More Restrictions

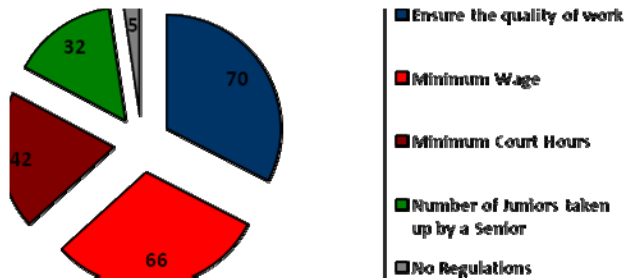


Fig.5 – Law Students: “Do you think “juniorship” should be regulated in any of the following ways?”

As previously mentioned, there are currently no formal barriers to becoming an advocate. In reality, however, this lack of formal regulation acts as an informal entry barrier. The custom, or arguably requirement, of working as a “junior” entails working for a very low wage,

undertaking the most menial work for an undetermined period of time, and is commonly known as “juniorship”. The chart above (Fig.5) shows that very few law students are happy with the existing system of juniorship, with only 5.3% believing that it should remain unregulated. This is unsurprising since they would prefer to have a standardised minimum pay (66.4%), and good quality work, rather than pointless menial tasks (70.4%). When advocates and judges were asked whether juniorship should be institutionalised, many answered along the lines that “no profession is easy at the beginning”. Needless to say, these members of the profession who have made it through the system, and been generally successful, have a slightly different view than students who do not want to face years of unpaid work. Nevertheless, 48% answered “yes”, that juniorship should be formally regulated, and only 26% said “no”.³⁵

The barrier of informal juniorship, like family background, is allied with problems of financial instability.

In the first survey, judges and advocates were asked how much they earned during the juniorship period of their career, and the results corroborated the general belief among law students that there is very little financial incentive during the initial stages of a career in litigation. The results, displayed below, show that the majority were more or less unpaid during juniorship:

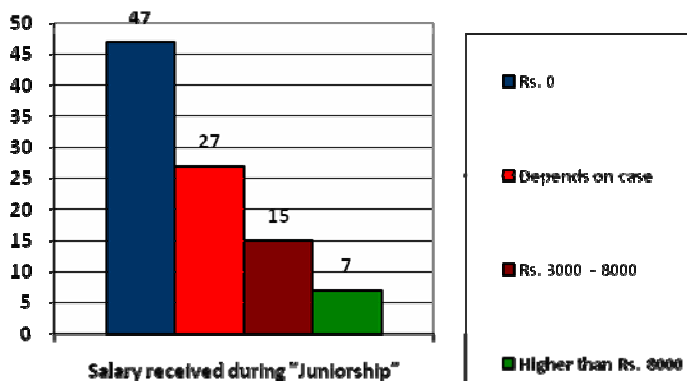


Fig.6 – Question Posed to Judges and Advocates

If we again consider the answers displayed in Fig.3 to the question “why did you not choose litigation” where 86% of graduates answered “lack of financial incentive” and 38% said “uncertainty/struggle”, it is unquestionable that the generally unpaid juniorship is a barrier that is turning away the best graduates from litigation. This fact is clear, but the problem is more complex. Firstly there is a lack of financial incentive in the short term – even survey respondents who had become successful advocates and who had a family background in the profession received a negligible initial income. This is enough to turn away many of the best graduates who have high salaried options with corporate firms or in-house legal teams. Corporate salaries vary hugely, however, respondents to the third survey of National Law School graduates received from Rs. 300,000 to Rs. 1,500,000 per year for their first year. The chart below is another example of the initial income disparity between litigation and corporate in India,

showing at the same time that this disparity is not so big in the UK and USA.

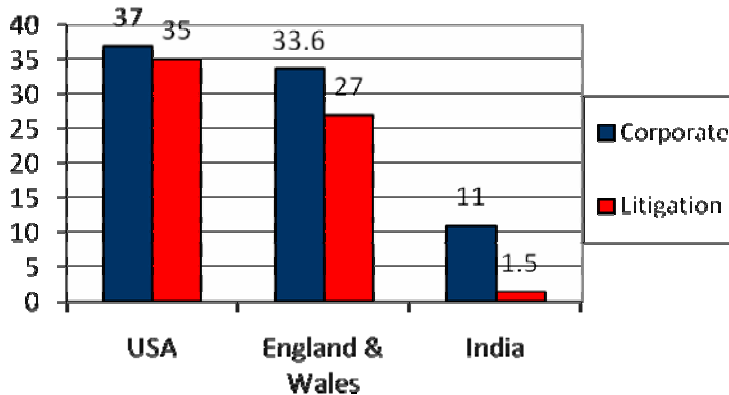


Fig. 7 – Salaries in Lakhs Rs of First Year Lawyers in India and Abroad³⁶

This is simply too tempting an offer for a large proportion of graduates, however, theoretically there remain other strong incentives to pursue a career as an advocate. One such incentive is that the potential future income can be much greater than that of corporate solicitors.³⁷ Another is that many graduates prefer the nature of litigation work to

corporate transactional work. An example can be seen from the third survey where graduates who entered litigation were asked why they joined the profession:

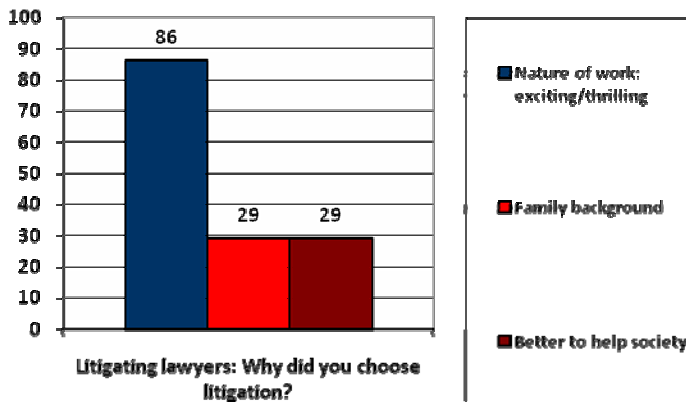


Fig.8 – Reasons why recent graduates joined the litigation profession

Whereas most joining corporate firms cite practical reasons, such as good salary and steady income, most of those joining litigation seem genuinely excited about their work.

For instance, 86% of respondents replied that they chose the career because the work was “exciting”, “thrilling” or “challenging”. Moreover, 29% were happy in their career choice as they believed it to be better for helping society. For graduates who are excited about starting a career as an advocate, a period of unpaid work is not too onerous a burden, that is, if the two incentives mentioned above are realistically attainable and of course there is no financial pressure to earn immediately upon graduation. This particularly becomes difficult considering the high fees of the National Law Schools³⁸, which requires some students to even take up loans to pay their fees.

The real barrier of juniorship is therefore that, due to the fact that it is unregulated, it does not provide a set duration of when the pay is low and *de facto* sets the period of high income far into the future. For one respondent it will take about ten years before he can make a sufficient income. The other fact that makes the informal juniorship an entry barrier is that it also takes away the second

incentive of high quality, exciting and interesting work experience. This is apparent from the results displayed in Fig.5 where 70.4% of students said that juniorship should be regulated by “ensuring the quality of the work”, and 42.8% said there should be a provision for “minimum Court hours”. The “quality of work” incentive is of crucial importance because it not only fulfils advocates’ desires for an exciting and challenging career, but it provides the experience necessary to move up the career ladder, gain better clients and ultimately greater financial benefit. Currently, without regulating the juniorship, there is no promise of good quality work nor is there any form of training or ongoing education. Senior advocates can often abuse the system by giving juniors tedious, menial tasks. Many successful advocates are also running a *de facto* firm, with junior advocates acting as employees working for the Senior’s clients and billing the fees under the Senior’s name. This abuse of the system is fortifying the entry barrier created by the informal nature of juniorship. Many

students like the idea of litigation, but will not choose to enter the profession due to the uncertainty surrounding the quality of work given to juniors. In the survey of National Law School graduates, 81% of those who did not choose to become advocates were avid participants in the moot courts, and 78.3% of students said they would be “more interested in litigation” if Seniors signed a voluntary code of conduct to ensure the quality of work.

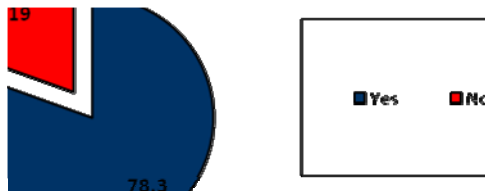


Fig.9 – Students: “Would you be more interested in litigation if Seniors signed a Voluntary Code of Conduct ensuring the quality of work?”

c. Entry to the litigation profession abroad: the U.S.A. and U.K.

i. United Kingdom (England & Wales)

There are many traditional similarities between the legal systems of India and the United Kingdom, however in practice there are often stark differences. One of these is the path to becoming a litigator. In England & Wales the Bar is very restrictive and, unlike India where competition comes later in the struggle for reputation, competition is fierce at every stage of entry to the profession. There is a

certain glamour associated with being a barrister, and immense prestige. As one legal writer comments, “it's more competitive than anything other than sport or rock music”.³⁹ The fierce competition comes about due to a combination of strict regulation, a limit on numbers and the promise of good future financial rewards. Only the country's best graduates attempt to apply, and only a handful of them are selected. For instance, each year almost 3,000 degree holders apply for the Bar Professional Training Course, whereas the number entering employment for the first time each year is around 200.

The Bar Standards Board regulates the profession, their requirements are as follows.⁴⁰ Firstly, an undergraduate degree in law (LLB) or an undergraduate degree in another discipline with a one year conversion course (CPE) is required. Secondly, after joining one of the four “Inns of Court”, the one year Bar Professional Training Course including 12 qualifying sessions (which are often formal dinners at the Inn) must be completed.

Finally, it is required to complete a “Pupillage”, which is a one year training period spent working with qualified Barristers, before applying for “Tenancy” in a “Set” of “Chambers”.

Like India it is financially difficult to start a career as a barrister in England & Wales. The cost of the CPE, at around Rs. 500,000⁴¹ and Bar Professional Training Course, between Rs. 700,000 and Rs. 1,000,000,⁴² cannot be covered during Pupillage which in general pays about Rs. 700,000 and more loans have to be taken in order to cover living expenses.⁴³ After this, only one third of Pupils manage to secure a Tenancy with a Set of Chambers, which is necessary to practice as a Barrister, and those who do not make it are forced to extend their Pupillage by six or twelve months and take out additional loans. The difference between this and the situation in India is that financial gain is almost guaranteed after securing Tenancy, and in spite of being a junior in a Set of Chambers headed by a senior Barrister, every Tenant is self employed and

works only for themselves. Potential financial gain is very big, with an average yearly income of Rs. 2,500,000 – Rs. 13,000,000 after five years of Tenancy.⁴⁴ However, with a handful of highest paid Barristers earning around Rs. 130,000,000, the top litigators in India are earning approximately four times more.⁴⁵

ii. U.S.A.

The United States' legal profession does not make the same distinction between litigators and transactional lawyers as in the UK. Like India, after qualifying a lawyer in one of the US jurisdictions is free to choose which type of practice to undertake, and the distinction comes by naturally grouping litigators together as a category of 'arguing lawyers'. Entry to the Bar, however, is regulated very strictly and competition is extremely fierce.

The requirements regulated by the American Bar Association for entry to the Bar in the United States vary among the different States.⁴⁶ In District of Columbia (D.C.) it is possible to qualify after successfully practising in the Courts of another State for five years or more. There are, however, some general rules which are applicable to the United States as a whole. In most cases a *Juris Doctor* from a law school approved by the State is required, entrance to which demands an undergraduate degree in another discipline and an extremely competitive application process. In most States it is also necessary to pass the Multistate Professional Responsibility Examination (MPRE) which covers issues of ethics and professional responsibility. It is then almost always required to pass the State bar exam, before paying the State licensing fees and taking an oath to comply with the rules governing the practice of law in that State. After admission to the practice it is often required to renew the licence at intervals by undertaking some form of Continuing Legal

Education (CLE). In general, admission to the Bar is expensive, lengthy and highly competitive, especially in the more popular States such as New York or California. As an example, In February 2009, 4,084 people sat the California Bar Exam and only 1,368 (33%) were successful.⁴⁷

It is clear that there are several formal entry barriers to the profession in the USA, as well as barriers in relation to the extremely high law school fees and the time it takes to qualify. In spite of this, there are strong incentives to become a lawyer in the USA, and the “barriers” do not discourage the best students from attempting a career in law. Being a lawyer is considered highly prestigious, and the wages can be sky high.⁴⁸ Crucially, incomes are also generally well spread, with more or less guaranteed salaries, and an average lawyers’ income of Rs. 5,000,000 per annum.⁴⁹

III. Recommendations for Reform

Let us again recall Madhava Menon's declaration that "There cannot be meaningful reform of the judiciary without appropriate reform of the legal profession".⁵⁰ As we have seen, with problems of corruption and delays there is desperate need for reform of the judiciary. The legal profession, primarily the litigation profession, needs the best educated youngsters otherwise this "appropriate reform" cannot take place. Legal education has arguably been improving continuously in India, especially with the five year National Law School models to follow, however, due to the entry barriers identified in this report the improvements in education have failed to transfer to the litigation profession. An essential step in the reform of the judiciary is therefore to attempt to remove these barriers and create incentives for the best students to become advocates. The recommendations below are suggestions, based on the findings of the surveys as discussed above, as to how the entry barriers can begin to be removed.

a. Removing the unregulated juniorship barrier

It is one thing to identify a problem; another is to come up with a solution. One must then consider the possible disparity between an ideal situation and a practical, workable solution. In the present context, the workable solution has to be within the existing framework of the litigation profession, and has to involve small, incremental changes rather than massive overhaul of the system.

With regard to the barrier caused by the informal nature of juniorship, two suggestions are made: A) the **Bar Council of India and the State Bar Councils should play a closer role in regulating juniorship**, and B) **advocates themselves should group together to create a “Code of Conduct”** in order to set out rules governing how they deal with new graduates entering the profession. These recommendations highlight two possible paths, the first and perhaps most effective is to “institutionalise” juniorship and the second would be to introduce a less

binding, voluntary code of conduct. Breaking down the entry barriers means encouraging the best graduates to join litigation and any reforms made must genuinely increase incentives, thus both institutionalisation and a code of conduct must contain the following provisions. Most importantly, there has to be a method of regulating salary at the beginning of an advocate's career. This could be done by enforcing a minimum wage paid by seniors, or by regulating how profits are divided within "collectives" or *de facto* firms. With more experience, juniors will have the chance to move more quickly up the salary ladder, therefore there must also be a provision regulating the quality of work to be given during juniorship. For instance, there should be a certain number of court hours that a junior has to undertake, and a balance between menial administrative tasks and purely legal work. Finally, if the system of juniorship is to avoid abuse, then there may need to be a set period of time when an advocate is a junior and is treated as such. That is to say, treated as a trainee who

has to be given work in order to learn, and is being prepared to become a fully fledged advocate once the training period is over. Clients should be able to tell who is a junior and who is a properly trained advocate, and they should be confident that an advocate has gone through the proper training during juniorship.

Another method of regulation is to **establish a system of ongoing legal education for advocates**. This will probably not directly incentivise students to become advocates, however, it may help to reassure clients that there is a general spread of standardised expertise, eventually spreading income and allowing less experienced advocates to gain clients. This is a recommendation which only the Bar Council can develop.

b. Removing the family background barrier

There is no way to change the fact that a background in any profession will naturally bestow success. In the context of the litigation profession, however, it appears to bestow success to such an extent that it removes almost every incentive for those lacking such a background to become an advocate. It is the removal of these incentives that is the cause of the entry barrier. The regulations suggested in the previous section have the potential to create some incentives such as minimum wage and better quality work experience, which potentially will spread income, experience and reputation to those who do not have a family background. The other way is to **make entrance to the profession merit-based**. For that purpose, the much mooted Bar Exam is the most obvious choice, and it is likely to come into force by the end of 2010.⁵¹ Even if this may itself seem like a 'barrier' in the literal sense, it may

lead to the removal of greater yet unobvious barrier by keeping a quality check. While it is a welcome reform to install some meritocracy into the system, it can only work effectively if it is a genuinely demanding test, and if the content adds value to the students' existing legal knowledge. Another suggestion for merit-based entry would be to create a one year training programme for graduates who intend to become advocates, similar to the system in England & Wales. It is essential that this programme is difficult and truly tests the ability of future advocates as well as providing proper training. In addition to a Bar Exam or a training programme, it is also recommended that there should be **screening on conduct and ethical grounds**. Perhaps this could be similar to the Multistate Professional Responsibility Examination that exists in the United States, that is to say a standalone test, or it could be incorporated into the Bar Exam and other training courses.

IV. Final Remarks

“Legal practice is not ought to be a speculative business. In the ideal state, doctors, lawyers and the like will work solely for the benefit of the society, not for self.”

Mahatma Gandhi

By way of conclusion, it is important to understand that there are no distinct problems and no black and white solutions in India’s judicial system or litigation profession. Various issues were singled out from the results of the surveys conducted by RFGI, but at the same time they have been recognised as inseparable. One thing is clear, that entry barriers to the profession currently exist, however, the family background and juniorship barriers and the lack of financial incentive are all inextricably linked. An attempt to reform one area is futile without considering the others. It is evident, from a recent interview with Bar Council of India Chairman Gopal Subramaniam, that the Bar Council is aware of the shortcomings of the system and has several plans to

address the problems relating to entrance to the litigation profession.⁵² This provides hope for the future. A hope which can be brought to fruition if the problems are addressed collectively, with an ultimate aim of lifting the entry barriers and creating incentives for the brightest graduates to join the profession.

¹ *Global Corruption Report 2007*, p.215, Transparency International

² : B J Sethna, “Corruption in judiciary escalating”,

<http://cities.expressindia.com/fullstory.php?newsid=232930> Online: 28 April 2010

³ V.R. Krishna Iyer, “Limits on Judicial Conduct”, *The Hindu* Friday, Aug 07, 2009, <http://www.hindu.com/2009/08/07/stories/2009080754240900.htm> Online: 28 April 2010

⁴ http://www.dnaindia.com/india/report_lawyers-to-hold-march-against-corruption-in-judiciary_1364221 ;

<http://timesofindia.indiatimes.com/city/delhi/Lawyers-strike-against-corruption-in-judiciary/articleshow/5669441.cms> Online: 12 May 2010

<http://timesofindia.indiatimes.com/city/chennai/TN-lawyers-strike-Litigants-fight-own-cases-get-bail-on-phone/articleshow/4251867.cms>

Online: 6 September 2010

⁵ Marc Galanter and Jayanth K. Krishnan, “Bread for the Poor: Access to Justice and the Rights of the Needy in India” 55 HASTINGS L.J. 789, n. 1 (2004); Jayanth K. Krishnan, “Outsourcing and Globalizing Legal Profession” 48 WM. & MARY L. REV. 2189, 2221-6 (2007)

⁶ <http://www.india-briefing.com/news/indias-legal-system-need-overhaul-220.html/> Online: 28.04.10

⁷ “Delays and Corruption in Indian Judicial System and Matters Relating to Judicial Reforms” Conference organised by Transparency International – India and Lok Sevak Sangh, in New Delhi, 18–19 December 1999

⁸ *supra* fn.2

⁹ Committee on Reforms of Criminal Justice System Report 2003

http://www.mha.nic.in/pdfs/criminal_justice_system.pdf Online: 28.04.10

¹⁰ Keith Henderson “Corruption in China: half-way over the Great Wall”, in *Global Corruption Report 2007: Corruption and Judicial Systems*, 2007 Cambridge University Press. It should be noted that China is not a common law system.

¹¹ Marc Galanter and Jayanth K. Krishnan, “Debased Informalism: Lok Adalats and Legal Rights in Modern India” in Erik Gilbert Jensen, Thomas C. Heller (eds.), *Beyond Common Knowledge*, 2003 Stanford University Press, Stanford

¹² *All-India Judges Association & Others v Union of India*, 2002 (4) SCC 247

¹³ Jayanth K. Krishnan, “Globetrotting Law Firms”, 23 *Georgetown Journal of Legal Ethics* (2010), Section III

¹⁴ N.R. Madhava Menon, “Reforming the legal profession: some ideas”, *The Hindu*, Wednesday, Feb 20, 2008

<http://www.thehindu.com/2008/02/20/stories/2008022052621000.htm> Online: 29.04.10

¹⁵ Report, Radhakrishnan Commission on University Education

¹⁶ A good starting point would be Marc Galanter, “The Study of the Indian Legal Profession”, (1969) *Law & Society Review*, Vol. 3, No. 2/3; Madhava Menon, *Reflections on Legal and Judicial Education*, 2009 Universal Law Publishing, and Swethaa Ballakrishnan, “Where Did We Come From? Where Do We Go?: an enquiry into the pedagogy and systems of legal education in India”, Biennial Conference of the Commonwealth Legal Education Association, April 1, 2009, City University of Hong Kong

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¹⁷ Madhava Menon, *Reflections on Legal and Judicial Education*

¹⁸ *ibid*

¹⁹ *infra*: Results

²⁰ Richard A Posner, “Creating a Legal Framework for Economic Development”, *The World Bank Research Observer*, vol.13, 1998, p.8

²¹ Two did not respond to this question.

²² Indian Stamp Act 1899

²³ The Advocates Act 1961, S.24(1), www.barcouncilofindia.org

²⁴ www.barcouncilofindia.org

²⁵ Galanter, “The Study of the Indian Legal Profession”, *supra*. fn.17

²⁶ 14% said they “Can’t say”. In the series of questionnaires and interviews “bright” was understood to mean capable, academically outstanding *et cetera*

²⁷ Statistics from <http://www.clat.ac.in/webpages/> and <http://nludelhi.ac.in/>

Online: 15 May 2010

²⁸ NALSAR University of Law, Hyderabad

²⁹ <http://rainmaker.co.in/index.php> Survey available at:

<http://rainmaker.co.in/Feature/What-would-you-like-to-do-after-you-graduate-Most-of-NALSAR-graduating-batch-say-large-law-firms.html> Online: 15

May 2010

³⁰ 14.75%

³¹ Given that most High-Court and Supreme Court judges are chosen from the pool of lawyers. Article 124(3)(a) and Article 217 (2)(b) of the Constitution of India

³² See: Madhava Menon, *Reflections on Legal and Judicial Education*

³³ “Star lawyers get Rs 5 Lakh for 5-minute job”, *Economic Times*, New Delhi.

<http://indialawyers.wordpress.com/2010/01/09/> Online: 19 May 2010; “India’s

top 10 lawyers”, *Times of India*:

<http://timesofindia.indiatimes.com/india/Indias-top-10->

[lawyers/articleshow/5426768.cms](http://www.barshow.com/lawyers/articleshow/5426768.cms) Online: 19 May 2010. 50 Crore per year is around four times the income of the UK's highest paid barristers (even prior to adjusting for Purchasing Power Parity). This is a clear example of the inequalities in India's litigation profession.

³⁴ Statement issued by Bar Council of India on 31st Dec 2009. See also www.barcouncilofindia.org

³⁵ 26% - "Can't say"

³⁶ Source: Bar Council UK, Bar Council of India, American Bar Association

³⁷ The highest paid lawyers in India are all advocates of the Supreme Court. See *supra*. fn.33

³⁸ Which range from Rs. 50,000 to Rs. 170,000 per annum excluding living expenses –

http://www.nls.ac.in/academic_programmes_undergraduate_fee_structure2007-08.htm

³⁹ barrister and legal writer Nick Gillies.

<http://www.guardian.co.uk/money/2002/feb/03/wageslaves.careers> Online: 20 May 2010

⁴⁰ <http://www.barstandardsboard.org.uk/Educationandtraining/> Online: 30.04.10

⁴¹ All amounts in Indian Rupees were converted from Pounds Sterling on 20 May 2010 at a rate of 67.72 Rs/pound.

⁴² <http://www.targetcourses.co.uk/article/funding-your-bar-vocational-course-bvc> Online: 20 May 2010

⁴³ <http://www.lawcareers.net/Barristers/Finances.aspx>

⁴⁴ www.barcouncil.org.uk

⁴⁵ *supra* fn.33

⁴⁶ Full guide:

http://www.ncbex.org/fileadmin/mediafiles/downloads/Comp_Guide/CompGuide_2010.pdf Online: 30.04.10

⁴⁷ 2009 Statistics:

http://www.ncbex.org/fileadmin/mediafiles/downloads/Bar_Admissions/2009_Stats.pdf Online: 30.04.10

⁴⁸ See e.g.

http://www.legalnut.com/Articles/Attorneys/America's_Highest_Paid_Attorneys/ Online: 20 May 2010

⁴⁹ <http://www.bls.gov/oco/ocos053.htm#earnings> Online: 20 May 2010; converted from USD at a rate of 46.99

⁵⁰ *supra*. fn 15

⁵¹ Bar exam postponed to December, BCI tells SC,
<http://www.legallyindia.com/20100514818/Law-schools/exclusive-bar-exam-postponed-to-december-bci-tells-sc> Online: 27 May 2010

⁵² “BCI chair Gopal Subramaniam interview (part 1): We need continuing legal education” <http://www.legallyindia.com/20100419713/Interviews/bci-chair-gopal-subramaniam-interview-part-1-we-need-continuing-legal-education> Online: 28 May 2010

Research Foundation for Governance in India (RFGI) is an Ahmedabad-based think-tank that aims to research, promote, and implement various reforms to improve the legal and political process in Gujarat and across India. The organization conducts research on key issues in law and governance and hosts public events in order to raise awareness of legal and political issues, particularly among the youth who are often disengaged from the democratic process. RFGI also acts as a consultant in the implementation and development of Government reforms.

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