

TRANSNATIONAL CHALLENGES FOR TOMORROW'S LAWYERS

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A. Introduction.

The ever-expanding process of globalization is bound to affect legal education system in different countries. Exchange of legal ideas and experiences should take place among different countries on this issue. It will bring different countries closer to each other on ideational plane also. Since globalization means not only shrinking of geographical boundaries but also coming together of different people, it leads to interdependence as well as conflicts and rivalries among them.

Transnational legal services are incidental to the process of globalization of world economies; the pace of technological developments has increased the need for transnational lawyers. Whereas it wasn't long ago that the lawyers operated within a comparatively small sphere of activity, today's practitioner is often required to serve a client which itself operates in multiple jurisdictions.

According to one view the legal profession has lagged behind others in globalization stakes. The "big six" accountancy firms have rapidly developed operations and networks throughout the world, whereas even the most international law firm, Baker & McKenzie falls behind the accountancy majors in terms of overall size and spread. Merchant banks and corporate advisors operate across international borders without apparent difficulty, engineers and architects work in places remote from their home environments, and of course, financial institutions of all sorts do business on a twenty four hours a day basis around the world. The growth in the transnational legal services of American and British legal firms is better because of the wider acceptance of American and English law as the appropriate law for governing the international transactions.

The present globalization is essentially, capitalist economies centric. The merits and the demerits of this kind of globalization will throw the corresponding kind of challenges in all walks of life including the professional life of lawyers. The lawyers inter-alia would face the challenges incidental to the national as well as transnational inherent natural contradictions of capitalism. Therefore, traditional training of lawyers that at present is substantially national legal system and domestic capitalism specific may not prove adequate.

B. Problems of transnational legal service provisions

There are mainly four kinds of problems involved in the transnational legal service provision i.e.

- (1) Structural,**
- (2) Management of transnational legal services**
- (3) Training and appropriate curriculum, and**
- (4) Establishing offshore infrastructures**

The problems, of transnational legal services provisions, are required to be confronted with at different levels i.e. one at the level of WTO and other to some extent at the academics level still another at the level of the provider himself. The problem, which is required to be dealt with by the academics, **to my mind should be the matter of focus for this conference**, is to develop appropriate curriculum for equipping the law students with appropriate legal knowledge and skills required for efficient transnational legal service providers. The problem which needs to be dealt at the level of the WTO to seek effective resolution of easing out the legislative and regulatory controls on transnational legal service provision around the world and to assert pressure on the respective regimes for the possible convergence of legal principles by appropriate legislative measures. The problem concerning offshore offices has to solve mainly by the respective national regimes and the service providers themselves.

(1) Structural problems

Many jurisdictions remain stringent in the sense of protecting the legal profession in those jurisdictions from incursions by foreign lawyers, however the regimes in the

advanced economies are opening up to permit the foreign lawyers to provide the legal services. The Asian jurisdictions remain probably the most restrictive jurisdictions barring the entry of foreign transnational lawyers, while this is not to say that non-Asian jurisdictions are making the practice of law by transnational lawyers easy, it is certainly the case that there is a more advanced way of thinking in many non Asian jurisdiction than exist in Asian jurisdiction.

Apart from expansion and internationalization of the business of law regard must be had to globalization of law itself. Human nature being what it is, and the needs of different communities, stationed at different levels of economic and cultural developments, it is not easy to visualize a world in which the same legal system apply everywhere, that having been said so, it is pertinent to observe that the convergence of legal principles in different jurisdictions is essential for the efficient provision of transnational legal services. Legislators and regulators are consulting with their colleagues in other counties more often than ever before and a trend, which can be foreseen, is the continued growth of similarities between laws in different places. It should therefore become easier for a lawyer in one country to rapidly understand the law as applying in the other. The WTO needs to emphasize its role to seek the easing out the restrictive and regulatory rules of some of the regimes and strive to seek uniformity in acceptance of legal principles wherever and to whatever extent it may be possible with a rather quicker pace

(2) Management of transnational legal services

The market demands its service providers whether they are lawyers, accountants or whatever to be accessible, efficient and cost effective. The international trade, investment and business generally, by its very nature involves substantial amount of money, and whenever large sums are at stake, nothing but the highest standard in providing legal services will be acceptable to those whose capital is at risk . In terms of determining the skill base of a transnational lawyer the client often, but not always relies on his reputation. A well known transnational brand name will always provide comfort to a client seeking to buy appropriate legal services. However, the reliance by a transnational legal firm only on its hard earned reputation will go only so far if the people providing the service are unable to maintain, let alone enhance, that reputation. The very challenge

facing the transnational lawyers in the international arena is the maintenance of the very high standards of legal service provision.

Generally speaking the transnational legal firms are organized into partnerships, which as they grow, tend to be populated by quite disparate personalities. The partners in medium and large firms expect that the profits each year will be distributed in full or almost entirely, the appetite for substantial investment by the legal firm itself is not strong among many partners, who would often rather take their share immediately, than wait for medium or long term investments to produce a return. The law firms are not renowned to have a substantial capital base. A challenge therefore facing all but very large firms is that of creating a culture within that firm which supports necessarily the costly investments in building of transnationally focused business. In order to conduct a successful transnational legal practice a lawyer must have the highest skill level possible, must be absolutely responsible to the needs of the client, and must be culturally aware in relation to the people with whom he needs to deal with on behalf of the client. In order to avoid potential competition from multidisciplinary practices, lawyers engaged in transnational practice should give serious consideration to formal and informal strategic alliances. Given the heavy investments required to sustain international practice, a sharing of resources can represent an excellent example of delivering growth without exorbitant expenses, and of delivering quality and timely legal services.

(3) Training and appropriate curriculum

Law functions in the inter-mix of socio-cultural values and practices of the communities, the transnational lawyers are required in some way, to some extent to be exposed and acquainted to the inter-mix of socio-cultural values of the specific legal system. For example the advocacy knowledge and the skills that may be efficient in the American legal cultural context may not be that efficient and functional in the Chinese or Indian legal cultural context. Some kind of change in the legal educational process and curriculum designs is required. The legal educators and pedagogues have to create not only the globalization-centric curriculum but also globalized legal language, and a new technology of teaching, adequately influenced by the techno-sphere, info-sphere and sociosphere. In attempting so large a scale synthesis it has become necessary to simplify

the legal principles. The ability to communicate through the globalized legal language and to co-operate in developing these legal skills becomes necessarily important. The law school that could develop the curriculum to impart these skills must learn to share this knowledge with other law schools of diverse socio-cultural and legal background. This would only be possible if some **adequate exchange programme of the faculty and the students were worked out by this conference** as between the law colleges located in diverse socio-cultural locations. Would it be possible for the teachers of this part of the world to work on the other side of the globe? The Asian jurisdictions have a huge and expanding market for every thing including legal services; the future belongs to that side of the globe. The western law colleges, I think, need to hire more legal educators from the eastern background and experience, so as, to keep and make the kind and quality of legal education relevant in the transnational context. For attracting the affluent and promising student clientele from the east, offering sufficient number of teaching positions to the legal educators of the eastern side, would be an effective marketing strategy as well as a functional method to create an appropriate academic environment for imparting transnational advocacy knowledge and skills to meet the challenges of the globalization of legal services in the near future.

I would like to suggest the development and the introduction of at least three more core curriculum courses in law schools;

- (a) Global legal (English) language and,
- (b) Course in transnational socio-legal-culture awareness,
- (c) Course in comparative legal principles.

(a) Global legal (English) language.

The Association of the Law Schools of America may make some efforts to find some agency for funding to prepare the curriculum, by a group of transnational academics, in global (English) language of law, which needs intensive and extensive research work. Preferably the English legal language could be treated as the base language to develop a course on global (English) language of law.

The legal language as such has rather a dubious reputation in the lay public, it is something, one cannot understand or at least not so easily, it is full of special technical expressions, one can get away with saying things in it, that one cannot get away in ordinary language or at least not so easily, and so on. Even the ardent defender of law and legal language will concede that this is a technical manner of using language. Technical vocabulary is simply at the heart of this manner of using language, and that the expressions in this legal vocabulary are marked by the fact that it has a technical sense and is typically but not exclusively used in a technical context. The technical expressions both define and are defined by a field of experience and activity, a class of entities, a subject matter that is the special concern of a community of language users. Therefore, the global community of legal academics need to develop a course on global (English) language be taught in law schools.

(b) Course on transnational socio-legal-culture awareness.

A carefully conceived and drafted curriculum in transnational legal cultural awareness would be useful for tomorrow's transnational lawyers. To have some functional grip and grasp on the globalized legal (English) language, principles and practices, some fair idea socio-cultural connections with law and practices of the specific community would be advisable. Hence some course development imparting the required education in transnational culture and legal cultural awareness to the students is essential. The exchange as between law teachers and students would be useful strategy in this context. Asia being a large emerging market for legal services it is therefore in the interest of the law schools here in the west, to encourage the exchange and employment of eastern law teachers. It may also help the western law schools, to have access to the Asian market for its educational products.

(c) Course on comparative laws

A course on comparative legal principles of common, civil and socialist legal principles should be developed is taught as one of the core courses to the students at the LL.B levels.

(4) Offshore infrastructures

Mainly there could be two kinds of market transnational legal service.

(a) Investment related practice needs offshore office

A close examination of those engaged in transnational legal practices will demonstrate that the *raison d'être* for the establishment of an offshore office is normally the opportunity to participate in investment related business. The substantial direct foreign investment in many countries offers many opportunities in capital raising, debt financing, investment structures, joint ventures, technology transfers, other intellectual property issues and dispute resolutions. The massive infrastructural investments taking place in many jurisdictions provide a fertile ground for the provision of value added legal services, and the experiences gained in the corporatization and privatization of government business undertaking in many countries can provide a strong foundation for the development by a law firm or a truly transnational business capability. Notwithstanding the sophistication of modern communication technology it seems to me that sustained business activity in a particular foreign jurisdiction cannot occur without the physical presence of that firm within the jurisdiction, coupled with a true commitment by that firm to provide a service within that jurisdiction.

(b) Trade related practice may not need offshore office

On the other hand it seems that in terms of trade related legal work, a lawyer can be a transnational lawyer without necessarily operating from an office away from his or her home. Those with an emphasis on international trade related businesses are less likely to require an on ground infrastructure away from home base, and are able to service their clients in an efficient and cost effective way by travel rather than going to the trouble of establishing a new office. Thus, the law firm representing say an Indian importer of a particular Japanese motorcar need not feel the need to operate an office in Japan. Certainly however, he will need to do more than be available in India, and will clearly need to visit Japan with his client from time to time as particular situations require attention and more importantly, will need to familiarize himself with his own client's business, and the culture and business ethics of the Japanese party. He will become transnational lawyer and will provide transnational legal service without having to develop the expensive on ground infrastructure required by those in the first category.

(C) Conclusions

The following conclusions may be drawn from the discussions

- (i) The globalization and the privatization is expanding the scope and opportunities for the transnational legal service providers. Trade and investment barriers are being removed and the restrictions on the legal service providers are being loosened in some of the jurisdictions and the others need to take appropriate steps to follow the same.
- (ii) The academics should respond to the challenges of the transnational legal services provision by developing appropriate curriculum in global (English) legal language, transnational socio-legal-culture awareness and course in comparative legal principles. The exchange of academic and the students should be encouraged to generate legal and cultural interaction and exposure necessary for developing into transnational lawyer.
- (iii) WTO needs to impress upon the regimes to make necessary changes, as quick as possible, in the laws, to facilitate the transnational legal service provision.
- (iv) Legal firms to strike strategic transnational alliances to make the legal service efficient and cost effective.
- (v) The trade related legal practice might not require offshore office where investment related legal might require it for efficient legal service provision.