

Battles Around Legal Education Reform: From Entrenched Local Legal Oligarchies to Oligopolistic Universals. India as a Case Study

By Yves Dezalay and Bryant G. Garth*

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This Article focuses on battles around legal education reform, which have long played a strategic role in competing law and development efforts around the world. There are numerous books and articles now emerging to discuss what global law schools should be, what kind of teaching and clinical programs make for best practices, the quality of academic research, and the possibilities of access into the legal profession.¹ The specific institutional focus of the studies—on categories such as the bar, the solicitors branch, faculties of law and law schools, judges, or even the “legal complex”—tends to neglect processes of capital conversion that characterize the law and lawyers in different settings. The categories must be deconstructed to see what goes into the law and the legal profession. One way to see processes of transformation and capital conversion is to draw on interconnected histories that reveal similarities and differences.

* Yves Dezalay is Director emeritus, CNRS (French National Center for Scientific Research). Bryant Garth is Chancellor’s Professor, University of California, Irvine School of Law.

1. For examples of edited volumes, see *LEGAL EDUCATION IN THE GLOBAL CONTEXT: OPPORTUNITIES AND CHALLENGES* (Christopher Gane & Robin Hui Huang eds., 2016); *THE INTERNATIONALISATION OF LEGAL EDUCATION* (Christophe Jamin & William van Caenegem eds., 2016).

Our book project, from which this Article comes, focuses on three dimensions of a “legal revolution” in the sense employed by Harold Berman in his famous books on law and revolution.² Berman began with explanations of the Gregorian revolution in the tenth century and then applied the same analysis to the Protestant Reformation. In each case, he highlighted how learned capital of relatively marginal scholarly groups linked to emerging political movements and ultimately provided legitimacy and continuity for the new regime. The new law retained a connection to the established powers but also took on the new forms of capital made valuable through the state and social transformation/revolution. Legal education and learned law are thus important battlegrounds in legal revolutions.

The first dimension of the recent revolution which we focus on is a new imperial or hegemonic relationship, gaining power with respect to the older colonial relationships. It involves the ascendancy of the United States globally after World War II and especially the end of the Cold War. With that ascendancy came a revolution in the governance of the state and economy that diffused broadly throughout the world.³ The global rise of large corporate law firms is one key legal component of this revolution, which also includes deregulation and privatization.⁴

The second dimension is therefore the rise of what is often called the “financialization” of the economy, the neoliberal revolution, or the Big Bang of deregulation. One aspect of this transformation is a stagnation and relative impoverishment of the stock of public capital (which comprised state-owned companies, banks, and much less debt in the three decades after World War II) versus a huge accumulation of private capital associated with the so-called “one percent” (or more accurately one tenth of one percent) and a corresponding accumulation of government debt.⁵ The public and private fortunes are reversed.

The third dimension is a transformation seen in legal education and the legal profession. In one sense, there is a huge proliferation of law schools in many countries of the world, including the United States to some extent with about 200 law schools; Mexico,⁶ Brazil,⁷ and India,⁸ each of which has more than 1,000 faculties of law; and

2. HAROLD J. BERMAN, *LAW AND REVOLUTION: THE FORMATION OF THE WESTERN LEGAL TRADITION* (1983); HAROLD J. BERMAN, *LAW AND REVOLUTION, II: THE IMPACT OF THE PROTESTANT REFORMATIONS ON THE WESTERN LEGAL TRADITION* (2003).

3. For a more detailed discussion of the diffusion of U.S.-style economics and law, see YVES DEZALAY & BRYANT G. GARTH, *THE INTERNATIONALIZATION OF PALACE WARS: LAWYERS, ECONOMISTS, AND THE CONTEST TO TRANSFORM LATIN AMERICAN STATES* (2002).

4. The spread of corporate law firms is the focus of the Project on Globalization Lawyers and Emerging Economies (“GLEE”) at Harvard Law School’s Center for the Legal Profession. See *THE BRAZILIAN LEGAL PROFESSION IN THE AGE OF GLOBALIZATION: THE RISE OF THE CORPORATE LEGAL SECTOR AND ITS IMPACT ON LAWYERS AND SOCIETY* (Luciana Gross Cunha et al. eds., 2018); *THE INDIAN LEGAL PROFESSION IN THE AGE OF GLOBALIZATION: THE RISE OF THE CORPORATE LEGAL SECTOR AND ITS IMPACT ON LAWYERS AND SOCIETY* (David B. Wilkins et al. eds., 2017) [hereinafter *THE INDIAN LEGAL PROFESSION*].

5. See Thomas Piketty, *Public Capital, Private Capital*, *LE MONDE: LE BLOG DE THOMAS PIKETTY* (Mar. 14, 2017), <http://piketty.blog.lemonde.fr/2017/03/14/public-capital-private-capital/>.

6. See Luis Fernando Perez Hurtado, *Content, Structure, and Growth of Mexican Legal Education*,

China, with some 600 law schools.⁹ The legal professions of places such as Japan,¹⁰ Korea,¹¹ and Hong Kong¹² have also grown substantially even if relatively small compared to the others. From one perspective, the proliferation suggests a growing openness to the legal profession and an increase in the importance of law in state governance. Yet the story also parallels the story of financialization. There is a vast difference between the very few institutions at the top and the numerous institutions at the bottom.

Many of the elite public schools are relatively open on the basis of meritocratic criteria, but it is extremely difficult to get into them unless one comes from a family able to put resources into costly primary and secondary schools.¹³ And the tuitions and fees are going up for many of the public schools which compete with a new cohort of private schools that have entered the markets with the aim largely of producing corporate lawyers.¹⁴ In any event, the differences between the elite and rank-and-file are dramatic.

In the United States, for example, law professors at elite schools make triple the salaries of those at low ranked schools, and law graduates able to obtain corporate law jobs start their careers at more than double the salaries of those who start in the government or in small firms, with the gap increasing over time.¹⁵ The percentage of law graduates starting at corporate law firms of more than 250 lawyers, according to the After the JD (AJD) longitudinal study of law graduates who commenced their careers in 2000, was about 18 percent at a time of a good market in the United States, and the percentage remaining in such firms at year thirteen was about 8 percent (and there are also substantial differences between the firms that have more than 250 lawyers).¹⁶ The elite equity partners at the US firms come disproportionately from elite schools. There are therefore “magic circles” in law firms and in law schools that

59 J. LEGAL EDUC. 567, 584 (2010) (referring to more than 1,000 law schools).

7. See Oscar Vilhena Vieira & José Garcez Ghirardi, *The Unstoppable Force, the Immovable Object: Challenges for Structuring a Cosmopolitan Legal Education in Brazil*, 3 U.C. IRVINE J. INT'L, TRANSNAT'L & COMP. L. 119, 119-142 (2018) (referring to more than 1,300 law schools).

8. See Jonathan Gingerich & Nick Robinson, *Responding to the Market: The Impact of the Rise of Corporate Law Firms on Elite Legal Education in India*, in THE INDIAN LEGAL PROFESSION, *supra* note 4, at 519, 521 (referring to more than 1390 law schools).

9. See Zhizhou Wang et al., *Internationalizing Chinese Legal Education in the Early Twenty-First Century*, 66 J. LEGAL EDUC. 237, 237 (2017).

10. See Dan Rosen, *Japan's Law School System: The Sorrow and the Pity*, 66 J. LEGAL EDUC. 267, 288 (2017).

11. Jae-Hyup Lee, *Legal Education in Korea: Some Thoughts on Linking the Past and the Future*, 44 KYUNG HEE L. REV. 605, 610 (2009).

12. Carol Jones, *Producing the Producers: Legal Education in Hong Kong* in LEGAL EDUCATION IN ASIA (S. Steele & K. Taylor eds., 2009).

13. Text and notes 43-48 *infra*.

14. Text and notes 43-48 *infra*.

15. See RONIT DINOVIETZ ET AL., AFTER THE JD: FIRST RESULTS OF A NATIONAL STUDY OF LEGAL CAREERS 41-44 (2004).

16. See Ronit Dinovitzer, *Practice Setting*, in AFTER THE JD III: THIRD RESULTS FROM A NATIONAL STUDY OF LEGAL CAREERS 26, 26 (2014).

disproportionately reap the profits of business law (and also public interest law). The key lawyers arguing in the supreme court and taking major positions in government come from the same elite circles.¹⁷

We do not have specific comparable data on other countries, but the differences are certainly as great given the gaps between the leading law schools and a mass of marginal schools. Further, the numbers of those who work in the so-called corporate hemisphere are relatively smaller, and the opportunity to gain access to the large corporate law firms from non-English speaking countries depends also on knowledge of English, which relates also to one's social position and ability to travel. There are strong social, financial, and cultural barriers to entry into these internationally-oriented corporate law firms and even to the faculties of law that train their recruits.

The legal revolution that goes with the revolution in governance, involving law schools, faculties of law, and corporate law firms, can be seen more specifically as part of a contested process—with legal education as a key battleground. There are both entrenched and even embattled elites resisting the forces promoting change as well as elites using multiple positions and connections to absorb and solidify the changes. In many situations, the process of change is exacerbated by what can be seen as a relative decline in the value of scholarly capital in comparison to family and social capital. The decline makes it easier for new groups to ally with emerging but marginal scholarly communities bringing new investment in scholarship. The new system supported by the reformers is more embedded in finance and markets, and more academically selective about who obtains the key positions. It represents a key tool in reconfiguring academia and in the relation between academia and practice in different countries. The local battles about law and legal education then depend on a mix of professional and social hierarchies and relationships to hegemonic powers.

South and East Asia provide a nice setting for exploring these processes. Indeed, we focus on Asia in the larger project because it is at the core of the revolution that we wish to analyze. It combines colonial legacies embedded in powerfully entrenched and homogeneous legal hierarchies and institutions—notably the grand advocates in India, the Judicial Research and Training Institute in Korea (“JRTI”), and the Legal Research and Training Institute (“LRTI”) in Japan. More generally, in four of the five countries we focus on in the larger work, which includes Hong Kong and China as well, there is a traditional alliance between an elite bar and high judges, with academics in a largely subordinate position. There is a rise of newcomers (outsiders) both in international law firms and in local clones of US corporate law firms, building on a powerful mix of outside resources (including global finance, Ivy League campuses, and legacies of Cold War hegemony).

These new sites for the reproduction of producers and diffusion/importation of new forms of financial/legal excellence complement each other in the relative success

17. Joan Biskupic et al., *The Echo Chamber*, REUTERS: REUTERS INVESTIGATES (Dec. 8, 2014, 10:30 A.M.), <https://www.reuters.com/investigates/special-report/scotus/>.

of this offensive. The two camps and their resources are relatively well defined, but the outcome of these battles differs depending on their respective strengths in each setting. And apart from Japan,¹⁸ it seems that the old guard is mainly fighting a rear-guard battle which aims at delaying and restricting the entry to the inner core hierarchy of judicial institutions while also slowing the rise of the newcomers. In each case, in addition, defensive strategies risk backfiring and promoting a diaspora of ambitious and well-connected law graduates. The case study of India provides a particularly vivid illustration of such battles.

The general theoretical framework of this Article and the book project which will follow sees law as a cultural bank holding symbolic capital. This phenomenon is easy to see in India. The power and history of the Parsi and the Brahmins are embedded within Indian law as family capital.¹⁹ The connections to the state here as elsewhere are also part of the value of legal capital, as are connections to the leading family businesses and landowning families. Family capital can be converted into other forms of capital that become more important at particular times and in particular places, such as moving from law into economics and land into finance. Law and the institutions in the legal field provide places of exchange for capital conversion. The hierarchies within the field also determine receptivity to new forms of capital including both learned capital and family capital. The elite of the bench and bar in India are at the top of the profession and guard the temple of Indian law.²⁰ In the United States, in contrast, corporate lawyers are in the dominant role. Other countries have different hierarchies.

From the beginning of law and development in the 1950s, the US approach has been to challenge the existing guardians of the temple outside the United States in order to promote universals consistent with US hegemony. US foundations and others have sought to “modernize” legal elites to become moderate leaders in development and governance instead of conservative backers of a propertied class seen as enemies of reform development. The stories of legal education reform are therefore combinations of export efforts and import efforts that may disagree in many respects—but unite in seeking to disrupt the existing hierarchies and upgrade the quality of legal argument and legal scholarship.²¹

18. See Rosen, *supra* note 10, at 271–72.

19. See YVES DEZALAY & BRYANT G. GARTH, *ASIAN LEGAL REVIVALS: LAWYERS IN THE SHADOW OF EMPIRE* 66–75 (2010); MITRA SHARAFI, *LAW AND IDENTITY IN COLONIAL SOUTH ASIA: PARSİ LEGAL CULTURE, 1772–1947*, at 6–7 (2014).

20. See Marc Galanter & Nick Robinson, *Grand Advocates: The Traditional Elite Lawyers*, in *THE INDIAN LEGAL PROFESSION*, *supra* note 4, at 455–85.

21. On India, see Jayanth K. Krishnan, *From the ALI to the ILI: The Efforts to Export an American Legal Institution*, 38 *VAND. J. TRANSNAT'L L.* 1255, 1293 (2005) [hereinafter, Krishnan, *From the ALI to the ILI*]; Jayanth K. Krishnan, *Professor Kingsfield Goes to Delhi: American Academics, the Ford Foundation, and the Development of Legal Education in India*, 46 *AM. J. LEGAL HIST.* 447, 448 (2004) [hereinafter Krishnan, *Professor Kingsfield Goes to Delhi*]. On Brazil, see JAMES A. GARDNER, *LEGAL IMPERIALISM: AMERICAN LAWYERS AND FOREIGN AID IN LATIN AMERICA* 13, 17 (1980); Vieira and Ghirardi, *supra* note 7.

INDIA: COLONIAL PATH DEPENDENCIES REVISITED: AN EMBATTLED SENIOR BAR,
THE MARGINALIZATION OF LEGAL KNOWLEDGE, AND INTERNATIONALIZED
CHALLENGERS

Recent accounts of the Indian legal profession note the powerful position of the grand advocates, an elite of high court and supreme court barristers who operate in tandem with the elite judiciary. Galanter and Robinson note that India's grand advocates are an "elite handful of lawyers" that have "flourished in the age of globalization."²² Wilkins and Khanna note the perception among in-house counsel that "a small number of Grand Advocates . . . dominate the Indian advocacy market"—essential especially "when the stakes were high."²³ Ballakrishnen's recent report on India notes that the story of the bar is one of continuity, with familial capital remaining important and limiting entry to the flourishing elite barrister practices.²⁴ The corporate law firms, Ballakrishnen also finds, have changed. They broke somewhat with their historical path and became relatively meritocratic without the overt gender bias dominant in the bar.²⁵

The bar appears therefore to be an example of highly restricted entry—control over the market—among a relatively small group for which family capital is critical to get access to a pupillage. The top advocates reap substantial monopoly profits. The corporate bar, except for the leaders and dominant partners of the top firms,²⁶ does not do quite as well, but it too is relatively prosperous compared to those who make up the rank-and-file of the profession. And in contrast to the advocates in the bar, the corporate firms hire on relatively meritocratic grounds. In particular, they provide lucrative jobs for those who graduate from the relatively new and meritocratic national law schools.²⁷

The scholarly accounts described above each emphasize one aspect of the current situation, highlighting the contrast between the two sectors—the bar and the corporate law firms. Our account relates the two accounts and emphasizes also that the Indian legal aristocracy was built through colonialism and has always existed in a peripheral, dominated relationship. The Indian legal aristocracy has tended to be quite conservative except in relation to support for the independence movement. The great wealth of the "Nabobs of the law" prior to independence and during the golden age of the bar after independence depended on connections to the British legal core and on

22. Galanter & Robinson, *supra* note 20, at 455.

23. David B. Wilkins & Vikramaditya S. Khanna, *Globalization and the Rise of the In-House Counsel Movement in India*, in THE INDIAN LEGAL PROFESSION, *supra* note 4, at 114, 146.

24. See S.S. Ballakrishnen, *Present and Future: A Revised Sociological Portrait of the Indian Legal Profession*, in LAWYERS IN SOCIETY PROJECT 1, 16–17 (2017).

25. *Id.*

26. Interview No. 1 (Email) (July 2017).

27. See Jonathan Gingerich & Nick Robinson, *Responding to the Market: The Impact of the Rise of Corporate Law Firms on Elite Legal Education in India*, in THE INDIAN LEGAL PROFESSION, *supra* note 4, at 519, 519–47.

service on behalf of large landholders.²⁸ The conservatism of the legal elite led Nehru to accuse the bench and bar of engineering a “purloined state” characterized by attacks in the courts on Nehru’s progressive policies in the 1950s and 1960s.²⁹ The elite of the bar, with a few exceptions, resisted policies that would reduce the power of their traditional clients.

The bunker mentality adopted by the traditional legal elite, protecting itself and its market, helped to depreciate the prestige of law and legal careers. As was well documented in the 1960s and 1970s, law was not the choice of talented individuals without strong family contacts in the legal profession, despite efforts of the Ford Foundation and others to find a point of entry to improve teaching and scholarly research as a way to modernize the profession.³⁰ The best students chose engineering or medicine rather than law, with the Indian Institutes of Technology providing a well-documented point of entry for those able to excel on the entrance examinations.

Criticisms of the conservatism of the legal profession opened up possibilities for new ideas and contacts seeking to adapt to and ally with new local and global governing hierarchies. In particular, as discussed more below, entrepreneurs in law took advantage of a hegemonic restructuring that increased the relative value of U.S. made-and-exported legal expertise. The period after the emergency declared by Indira Gandhi in the mid-1970s was a key period for this entrepreneurship.

The support of the Indian Supreme Court for the emergency gave rise to a larger reformist element among the legal elite, and that opposition provided an opportunity to regain the bar’s stature. Led by entrepreneurial activists in the bench and bar, the Supreme Court itself and the senior bar improved their image with the development of public interest litigation with some assistance from the Ford Foundation.³¹ The timing also made more salient the existing momentum for reform of legal education centered at the University of Delhi. In particular, the idea of a new national law school outside of the existing law faculties gained support from Upendra Baxi’s critique and suggestions for reform, published later.³² It also drew on the successes of the Indian institutes of technology and the Indian institutes of management, themselves in part inspired by US higher education.

Baxi, the best known Indian legal academic, obtained an SJD from the University of California, Berkeley, taught in Australia, and then came back to the University of Delhi. He taught from the 1970s to mid-1990s there, served as dean and in many other capacities, and moved to the University of Warwick in the mid-1990s. His career is closely connected to the rise of public interest litigation and the development of the national law schools. The following quote taken from a recently

28. DEZALAY & GARTH, *supra* note 19, at 151–57.

29. *Id.*

30. *Id.*; see also Krishnan, *From the ALI to the ILLI*, *supra* note 21; Krishnan, *Professor Kingsfield Goes to Delhi*, *supra* note 21.

31. See DEZALAY & GARTH, *supra* note 19, at 186–188.

32. Krishnan, *Professor Kingsfield Goes to Delhi*, *supra* note 21, at 481–82; Upendra Baxi, *Notes Towards a Socially Relevant Legal Education*, 5 J.B. COUNCIL INDIA, 1975–1976, at 1, 20 (1976).

published examination of the founding of the national law schools notes the impact of Baxi and elite members of the bar and judiciary:

Justice M. Hidayatullah spearheaded the concept of a Law School on the lines of Harvard Law School, which would be led by a diverse and dedicated group of faculty and law scholars, would be autonomous in nature, completely self-financed, not take any financial aid from Government or regulatory bodies and in turn not permit their interference. The vision of Justice Hidayatullah was discussed in a number of LEC meetings. Prof. Upendra Baxi, eminent jurist who was [sic] co-opted member of LEC undertook the spadework and the entire legal education scenario of the country was set to undergo a metamorphosis.³³

The aspiration was to create an Indian version of Harvard.

After a set of events well documented by Krishnan,³⁴ N.R. Madhava Menon, a protégé of Justice Krishna Iyer, one of the leaders of public interest litigation on the Indian Supreme Court, established the National Law School of India University (“NLSIU”), the first national law school (“NLS”), located in Bangalore.³⁵ Since that time he has been one of the key promoters of legal education reform. Menon has written an autobiography of his experience as a founder.³⁶

The five-year curriculum, Menon noted, was inspired largely by US law schools and was much more rigorous than the three-year BA of the existing law faculties. The school also had very limited resources when it opened in 1987, but the Ford Foundation, which had long hoped to upgrade legal education and scholarship in India, stepped in with an \$800,000 grant “at a crucial time when the law school was finding it difficult to continue operations (i.e.1989-1994).”³⁷ The fortuitous timing of the NLSIU helped ensure its success but turned it away from the initial mandate to create a new generation of advocates aligned with public interest litigation. The first graduates emerged just after economic liberalization, and they instead eagerly embraced the new opportunities in the corporate law firms.

An international team, including Marc Galanter, William Twining, and Savitri Gunasekhere from Colombo, reviewed the achievements of NLSIU and concluded that it had “fully met the objectives of being a centre of excellence that serves as a pace setter for Indian legal education.”³⁸ The success of NLSIU then inspired the national law school in Hyderabad (officially the National Academy of Legal Studies and Research (“NALSAR”)), which opened in 1998, and then the model really took off. There are now some twenty-one national law schools spread throughout India—with varying claims to affinity with the original model. The national law schools have

33. Justice N.N. Mathur, *National Law Universities, Original Intent & Real Founders*, LIVE LAW (July 24, 2017, 7:58 P.M.), <http://www.livelaw.in/national-law-universities-original-intent-real-founders/> (emphasis omitted).

34. Krishnan, *Professor Kingsfield Goes to Delhi*, *supra* note 21, at 484–88.

35. N.R. MADHAVA MENON, TURNING POINT: THE STORY OF A LAW TEACHER (2009).

36. *Id.*

37. *Id.* at 52.

38. *Id.* at 54.

also influenced legal education outside of the NLS sector. The number of three-year LLB programs is diminishing, with relatively few prominent hold outs such as Delhi University and the Government Law College in Mumbai. Recently, for example, the Pravin Gandhi School of Law affiliated with the University of Mumbai has switched its emphasis to a five-year LLB program away from a three-year evening program.

Entrepreneurial opportunities toward increasingly influential US expertise were further enhanced by the restructuring of the Indian economy, especially under Prime Minister Manmohan Singh, bringing the end of the Indian “Licensing Raj” and opening up the economy to much more foreign trade and investment. This set of economic reforms opened space for new and expanded Indian solicitors firms and for global corporate law firms serving India from outside the country. Law firms retooled quite dramatically in relation to the transformation of the economy.³⁹ Many graduates of the national law schools moved into these firms, and students there reportedly compete now for slots within the national and global corporate law firms.⁴⁰ As Jay Krishnan noted in 2013, the law firm growth is relatively recent, reflecting the impact of the dramatic economic changes.⁴¹ Of the forty top firms named in a survey, eight started between 1991 and 1999, and fifteen began after 2000.⁴² To a certain extent, in fact, the bar complains now about the relative lack of interest among the national law school graduates in careers in the bar.⁴³

The first point is that the national law schools occupy a relatively tiny niche within Indian legal education. We are not, therefore, examining the vast majority of law faculties and law graduates. There are some 1.3 million lawyers in India, more than 1,200 law schools and faculties of law, and perhaps 45,000 law students. There are roughly 30,000 applications for the 1,500 to 2,000 positions in the national law schools.⁴⁴ The Common Law Admission Test, established in 2008, allows students to take one examination while applying to national law schools throughout the country. The process is similar in this respect to the Indian institutes of technology.

The standardized tests used by the national law schools require English proficiency, and the fees of about \$2,500 per year deter a great number of applications as well. A recent study of students at NLSIU confirms that they come disproportionately from high incomes and high castes.⁴⁵ Brahmins made up 26.5 percent of students and other upper castes 32.5 percent, with the numbers likely

39. Ashish Nanda et al., *Mapping India's Corporate Law Firm Sector*, in *THE INDIAN LEGAL PROFESSION*, *supra* note 4, at 69.

40. Gingerich & Robinson, *supra* note 27.

41. Jayath Krishnan, *Peel-Off Lawyers: Legal Professionals in India's Corporate Law Firm Sector*, 9 *SOCIO-LEGAL REVIEW* 1, 24 n.76 (2013) (explaining that the legal services sector expanded because of economic liberalization).

42. *Id.* at 20.

43. Interview No. 15, in India (Jan. 2017).

44. *See* Gingerich & Robinson, *supra* note 27.

45. CHIRAYU JAIN ET AL., *THE ELUSIVE ISLAND OF EXCELLENCE: A STUDY ON STUDENT DEMOGRAPHICS, ACCESSIBILITY AND INCLUSIVITY AT NATIONAL LAW SCHOOL 2015–16*, at 28, 32 (2016).

higher if they included those who did not report.⁴⁶ Some 30 percent of NLSIU students come from Tier 1 (major) cities, but that is a decline from 50 percent, suggesting a more provincial trend although not away from urban settings. Most students have parents that are fluent in English.⁴⁷ There are also a small number of students in the “reserved” group for “scheduled castes” and similar groups. The report suggests that those with more advantage do better in school, participate heavily in the moot court competitions, and get prestigious jobs upon graduation.⁴⁸ As others have suggested, it is very difficult to come from outside the elites and excel in law school in India.⁴⁹ Shammad Basheer’s creative and tenacious efforts to expand the chances for outsiders to gain success in the national law schools illustrate the tremendous obstacles they face.⁵⁰

Parallel to the Indian institutes of technology, the caste elites are not distinguished especially by wealth or property, but by an ability to embody the accepted meritocratic values. As a scholar of the IITs suggests, “they are able to inhabit a universal worldview precisely because of a history of accumulated privilege, a history that allows them a unique claim to certain forms of self-fashioning.”⁵¹ “Whereas at an earlier moment, status might have been more explicitly tied to caste, the social bases of merit continue to be constituted in ways that allow the same social groups to inhabit merit as an embodied ideal.”⁵² They are selected because of their achievement—which tends to coincide with caste.

The legal press in India reports on the high prestige positions that graduates obtain from the national law schools. Recently the NALSAR in Hyderabad reported as follows. Out of seventy-four graduating students, the fifty-eight who participated in the campus recruiting program all got positions. Those positions included ten Shardul Amarchand Mangaldas, six Cyril Amarchand Mangaldas, five Luthra & Luthra, four Trilegal, three AZB & Partners, two Khaitan & Co, two P&C Legal, and two S&R Associates, with a few other firms hiring one. On the in-house side, the RPG Group hired five, while ICICI Bank hired four students. Others reportedly planned to “pursue careers in academia, policy making, judicial and civil services, et cetera.” They reported offers to attend “the University of California at Berkeley . . . , the participating universities for the European Masters in Law and Economics program, the Faculty of Law, Oxford University, and Faculty of Law, Cambridge University, University of California at Los Angeles, Cornell University, and the London School of Economics.”⁵³ Some planned on taking civil service exams, and was one taking a

46. *Id.* at 28.

47. *Id.* at 35.

48. *Id.* at 14–15.

49. Shammad Basheer et al., *The Making of Legal Elites and the IDLA of Justice*, in *THE INDIAN LEGAL PROFESSION*, *supra* note 4, at 578.

50. *Id.*

51. Ajantha Subramanian, *Making Merit: The Indian Institutes of Technology and the Social Life of Caste*, 57 *COMP. STUD. SOC’Y & HIST.* 291, 296 (2015).

52. *Id.*

53. B. Varun Reddy, *NALSAR Class of 2017: Conclusion of Recruitment Process*, SCC ONLINE

judicial exam. Two reportedly were planning on becoming advocates or clerking for a court. Similar results came from the other law schools reporting in the media, including Bangalore and Gujarat NLU.⁵⁴ A dean of a more traditional law school noted that the law firms preferred to hire from the national law schools than from the traditional schools.⁵⁵

These data are somewhat misleading, however. First, many leave the law firms after a relatively short time. One observer stated that half of the graduates of national law schools leave the practice of law within ten years for other careers such as business, design, and journalism.⁵⁶ An examination of the LinkedIn members identified with the national law schools in Hyderabad and Bangalore, which seems to capture a good portion of the alumni, suggests that many are still in law firms but quite a number are in business, in-house, legal education, or alternative careers. NLSIU has 5,441 alumni listed, which no doubt includes those who have participated in a range of programs, but it is interesting that the breakdown includes many or even most in careers other than legal careers.⁵⁷ Clearly a large group is not in legal careers.⁵⁸ Of the legal component, the largest employers listed are the leading corporate law firms and the bar. The list shows a number at the top law firms and in the bar, but the numbers in relation to the number of graduates is not high. Krishnan's research on the frequency generally of individuals leaving corporate law firms—"peeling off" also suggests that graduates are not in general making their careers in the large corporate law firms.⁵⁹

As Krishnan notes, lawyers leave in part because the leading corporate law firms generally are of two types: family-dominated or dominated by a few individuals. Interviews confirmed this situation today, suggesting that there are very few "true partnerships."⁶⁰ One young lawyer in a law firm with his father in Mumbai notes that family-operated businesses often feel comfortable giving their legal work to the children of a longstanding lawyer.⁶¹ The new firms started by many of those who leave tend then to replicate the structures they left behind.⁶² Starting salaries are also relatively low. A small firm might pay 40,000 Indian rupees per month, a large one 50,000, and a few firms such as the two Amarchand firms pay some 150,000 rupees a month, producing annual salaries of \$7,500 to less than \$30,000 (often augmented to some extent with bonuses).

BLOG (May 2, 2017), <http://blog.sconline.com/post/2017/05/02/nalsar-class-of-2017-conclusion-of-recruitment-process/>.

54. See generally Gingerich & Robinson, *supra* note 27.

55. Interview No. 2, in India (Jan. 2017).

56. Interview No. 3, in India (Jan. 2017).

57. Nat'l Law Sch. of India Univ., LINKEDIN (last visited Nov. 17, 2017), <https://www.linkedin.com/school/15092875/>.

58. *Id.*

59. Krishnan, *supra* note 41, at 31–32.

60. See *id.*; see also Interview No. 4, in India (Jan. 2017).

61. Interview No. 5, in India (Jan. 2017).

62. Krishnan, *supra* note 41, at 8, 54–56.

Many who leave the law firms also seek to gain a foothold at the bar by teaming up with an established advocate. Krishna shows how difficult it is to make it that way and break into the hierarchical advocacy world.⁶³ One of the frequent observations about the graduates of the national law schools is that, after almost thirty years of producing lawyers, no graduate has become a grand advocate or a judge.⁶⁴ The meritocratic criteria of the national law schools do not so far overcome the strong familial capital required for a career at the bar, which then can lead to judicial appointments. Indeed, as discussed below, advocates promoting their sophisticated expertise can be seen as “too modern for the court” or “incapable of playing by rules” because lacking inside knowledge of the rules.⁶⁵

The world of the bench and bar also has a very strong impact on both the law firms and the national law schools, which are embedded deeply in the world of elite advocacy and the judiciary. The law firms can be divided into three general categories. The first is what *Legally India* terms the “Big Seven.”⁶⁶ The big seven law firms gained prominence or were established after economic liberalization. They include Cyril Amarchand Mangaldas, with 601 lawyers; Khaitan and Co., with 485; Shardul Amarchand Mangaldas & Co., with 430; AZB & Partners, with 375; Luthra & Luthra, with 336; J.Sagar Associates, with 302; and Trilegal, with 221. They are the most important corporate law firms. Another group is the older firms established by expatriates in the colonial era, such as Crawford Bayley, established in 1830. Other firms in this category include Little & Co., and Mulla & Mulla.⁶⁷ These were the most prominent firms prior to liberalization, but they did not move to adapt to the new situation, and a very few partners dominated the firm and the profits. They were eclipsed by the newer and more entrepreneurial firms, which also attracted more new associates because of the promise—ultimately not realized—that firms would be more egalitarian in sharing the profits and partnership places. The remainder of the corporate legal sector is comprised of many small firms serving some aspect of the corporate business. Still, the current “big seven” has a “quasi monopoly” on major transactions.⁶⁸

For all the law firms, it is necessary to have access to the leading advocates in order to be successful for clients in litigation. One of the larger firms reported the importance of access to the “face value” of the fifteen or so advocates that they utilized.⁶⁹ Nanda, Wilkins, and Fong note that the older firms survive in part because they are so connected with the elite bar. Their niche generally is the places where “old-line connections and prestige remain salient . . . for big Indian companies”—in

63. *Id.* at 38, 56–57.

64. Interview No. 6, in India (Jan. 2017).

65. Interview No. 7 (Email) (July 2017).

66. *A Ranking of India's 25 Largest Law Firms*, LEGALLYINDIA.COM (Dec. 15, 2016, 3:59 P.M.), <http://www.legallyindia.com/law-firms/india-25-largest-law-firms-by-headcount-00011130-8166>.

67. Nanda et al., *supra* note 39, at 72–75.

68. Wilkins & Khanna, *supra* note 23, at 144.

69. Interview No. 8, in India (Jan. 2017).

particular, real estate and regulatory.⁷⁰ Furthermore, “[t]hese firms also have long-standing relationships with many of India’s top grand advocates and high court judges”—“when the matter is really sensitive and the CEO needs someone he can really trust to navigate the bureaucracy or the courts”⁷¹

There are other ways that the law firms connect to the networks around the bench and bar. Two of the most prominent of the big seven law firms, each of which has very prominent women in key positions, illustrate familial embeddedness. Pallavi Shroff, a key partner in the Delhi firm of Shardul Amarchand Mangaldas & Co., is the wife of Shardul Shroff, the chair of the firm and inheritor with his brother of his father’s prominent firm. She is also the daughter of well-known retired Supreme Court Justice P.N. Bhagwati, one of the justices also most identified with public interest litigation. The Shroffs also link closely to the Gujarati community and Reliance, one of the major corporate groups.⁷² Khaitan and Co. similarly is closely connected to the Marwari community from Kolkata and Aditya Birla Group.⁷³ Further, Zia Mody, the founder of AZB and partners, is the daughter of Soli Sorabjee, another famous Indian jurist and former attorney general of India. Mody started the firm after ten years as an advocate. Reportedly she became tired of the male-dominated bar and took advantage of her University of Cambridge law degree, Harvard LLM, and family capital to start what has become one of the most successful law firms in India.

The law firm sector has grown substantially since economic liberalization, but it does not appear to be growing very much today. After an initial expansion of the corporate legal services market under liberalization, the market appears to have stagnated—perhaps in part because of the limited local opportunities and products offered in litigation.⁷⁴ The corporate law firms in varying degrees are linked up with the familial world of the elite bench and bar, even though, as we suggest below, a number of those in the corporate bar are also pressing for some change.

The connection between the elite bench and bar to the national law schools is extremely close. The governing boards of the national law schools are dominated by members of the elite of the bar and the judiciary. More generally, legal education is regulated by the Bar Council—the organ of the advocates. The Bar Council, for example, prescribes twenty-six mandatory courses, limits teaching by practitioners, and limits class size to sixty.⁷⁵ It also imposed an all-India bar examination in 2010. Leaders of the relatively marginal All India Law Teachers’ Organization argue that the Bar Council should have “no role” in the teaching program of the law schools, but there is no likelihood of change.⁷⁶ The Bar Council is still in charge.

The hierarchical connection between the judiciary and the national law schools is

70. Nanda et al., *supra* note 39, at 74.

71. *Id.* at 75.

72. *Id.* at 78.

73. *Id.*

74. *Id.*; see also Interview No. 9, in India (Jan. 2017).

75. Gingerich & Robinson, *supra* note 27.

76. Interview No. 10, in India (Jan. 2017).

even stronger. Key judges generally decide whom to hire as the dean or vice chancellor of a national law school. One vice chancellor spoke of meeting a key judge for dinner and then getting offered the position.⁷⁷ According to one knowledgeable observer, potential deans “cow-tow to the local judiciary,” forming a “small cabal.”⁷⁸ The chancellor of each school is a judge, with the chief justice of the Indian Supreme Court the chancellor of the NLSIU by virtue of the chief justice position. One critic of the NLS vice chancellors, in fact, stated that once they are appointed, they spend all their time and energy trying to gain stature within the world of the elite bench and bar.⁷⁹ The dependence of each NLS on the vice chancellor’s clout magnifies the importance of those ties. Faculties have very weak voices so that the schools are “personality driven” by the vice chancellor.⁸⁰ Interviewees noted that when a capable vice chancellor left the NLS Kolkata, for example, the school went back to the “dark ages.”⁸¹

The influence of the judiciary is quite pronounced. The ability to get local government funding, according to interviews, depends on the work of members of the judiciary who lobby their local government—which must pay some attention since they appear frequently before those judges. It is also quite clear that the funding levels for most of the national law schools are not very high, which puts pressure on them to increase tuition fees. Finally, the more recently established NLS tend to have substantial local restrictions placed on them (e.g., number of students that must be local). Recently, legislation that would reserve 50 percent of the NLSIU spots for locals has alarmed alumni.⁸²

Very high teaching loads are the norm in the NLS with the major exception currently of the NLS Delhi, which is very well funded and focused under the current vice chancellor on significantly increasing the research output. More generally, the spread of the national law schools has not substantially raised the prestige and profile of legal academics in India. Many interviewees noted that there is still no real career in legal academia. One law graduate in a different PhD program noted that there is no real job as “law professor.” It is a “dead end.”⁸³ The NLS phenomenon, others noted, did not change the faculty model of professors as just “teachers.” The “main focus is teaching” at the national law schools, even though the teaching itself is not that high quality.⁸⁴ There is “not much time for research,” and there are no “structures to build

77. Interview No. 11, in India (Jan. 2017).

78. Interview No. 15, *supra* note 43.

79. Interview No. 12, in Australia (Dec. 2015).

80. Swethaa Ballakrishnen, *Why I Am Not a Lawyer*, in LEGAL EDUCATION IN INDIA ESSAYS IN HONOUR OF PROFESSOR RANBIR SINGH (2014); Interview No. 14, in India (Jan. 2017).

81. Interview No. 15, *supra* note 43.

82. Sowmya Aji, *Karnataka to Reserve 50 Percent Seats in NLSIU for Local Students*, ECON. TIMES (June 20, 2017, 9:15 P.M.), <http://economictimes.indiatimes.com/industry/services/education/karnataka-to-reserve-50-percent-seats-in-nlsiu-for-local-students/articleshow/59239084.cms>.

83. Interview No. 12, *supra* note 79.

84. Interview No. 13, in India (Jan. 2017).

up” to promote a better position for faculty members.⁸⁵ There is little focus on the “quality of faculty” or “research agendas.”⁸⁶ The faculty of the national law schools from our observations tends to be relatively young and many faculty members do not stay in teaching. The group includes many who did not succeed in litigation and a number who are not on the “tenure track.”⁸⁷

The longstanding effort to upgrade law teaching and legal scholarly research, supported by a number of Ford Foundation initiatives beginning in the 1950s, has so far had limited success.⁸⁸ The best and brightest law graduates do not seek careers as law professors. There is a recognition among many we interviewed that more legal academics are producing research, and the number of academic scholars today is much greater than in the past. But interviewees also report that the journals are “dead” and that the advances are quite limited.⁸⁹ While many people in India can name judges or senior advocates, legal scholars, with the exception of Upendra Baxi, are unknown even in the legal profession.⁹⁰ The national law schools, moreover, are the relatively elite tip of the iceberg. There are more than a thousand other public and private schools with lower pay—including a large number of private schools that pay half of what the public schools pay.⁹¹ Only the private Jindal Global Law School near Delhi (“Jindal”), discussed below, and the well-funded national law school in Delhi appear to have a commitment to encourage scholarly productivity.

The pressure to change comes mainly from those who go abroad. Many who go become part of a brain drain, but a group of relatively young lawyers with elite credentials suggests that more are returning. As noted by one interviewee, “increasingly people are coming back,” the legal academy is more “exciting” than in the past, and many see “teaching as a vehicle” for research.⁹² They hope for a “recapturing and reinvesting of the brain drain.”⁹³ What they learned abroad and is valued abroad, however, is still unevenly recognized or even devalued in India.⁹⁴ We examine these groups below after the discussion of the bar.

THE BAR

The tightly-connected elite of the bench and bar remains at the top of the legal

85. Interview No. 14, *supra* note 80.

86. Interview No. 16, in India (Jan. 2017).

87. Swethaa Ballakrishnen, *Where Did We Come From? Where Do We Go? An Enquiry into the Students and Systems of Legal Education in India*, 7 J. COMMONWEALTH L. & LEGAL EDUCATION 133–54 (2009).

88. Lovely Dasgupta, *Reforming Indian Legal Education: Linking Research and Teaching*, 59 J. LEGAL EDUC. 432 (2010); *see also Ford Foundation: A Legacy of Social Justice*, FORDFOUND.ORG, <http://www.fordfound.org/about-us/a-legacy-of-social-justice/> (last visited Nov. 17, 2017).

89. Interview No. 17, in India (Jan. 2017).

90. Interview No. 18, in India (Jan. 2017).

91. Interview No. 10, in India, *supra* note 76.

92. Interview No. 19, in India (Jan. 2017).

93. *Id.*

94. Swethaa Ballakrishnen, *Homeward Bound: What Does a Global Legal Education Offer the Indian Returnees?*, 80 FORDHAM LAW REVIEW 2441–80 (2012).

hierarchy. It is dominated especially by well-connected elites, including Brahmins and upper castes and the Parsi elite in Mumbai.⁹⁵ The grand advocates are at the top of the hierarchy. Galanter and Robinson point out that seniority is part of this relationship.⁹⁶ Since judges face compulsory retirement at sixty-one (and at sixty-five in the supreme court), they are often younger than the senior advocates and may have looked up to or even learned their practices from them. As noted above, the elite of the bar and bench have a very strong impact on legal education, on the governance of the national law schools, on the hiring of the vice chancellors who govern the schools, on the funding of the schools, and also in providing social capital that helps make up the elite of the corporate law firms.

The bar has participated in initiatives such as the national law schools and public interest litigation that have enhanced the legitimacy of the profession and opened up to more meritocratic and high-quality entrants. But it is still a legal elite that is essentially inbred and very restrictive in entry. As noted above, the graduates of the national law schools have not had much success in this sector of the legal profession.

The conservative nature of the bar is quite evident. The attitude toward the law professors is apparently much like it was traditionally in the UK. The professors are not highly respected. One interviewee noted that professors at one NLS sought to eliminate Saturday classes in part to encourage research, and the governing board rejected the request because, in their opinion, “law professors don’t work anyway.”⁹⁷ One interviewee noted that there is a “large disconnect between academics and practice,” and the feeling of superiority is mutual.⁹⁸ The narrowness of the prevailing view of law practice is captured by a lawyer in a social science PhD program who had trouble renewing the license to belong to the bar. The authority thought that interdisciplinary academic study about law was inconsistent with the position of member of the bar.⁹⁹

The issue of the quality of the advocacy came up in a number of interviews.¹⁰⁰ From the side of the law firms, as noted above, the interviewees reported the need for the “face value” of the fifteen or so advocates that they use, but the interviewees also say that the abilities of the elite bar are “lower and lower.”¹⁰¹ The problem, in part, is that the elite advocates have too many cases. They also do not use technology in their arguments. They rely on “court craft” and “no depth.”¹⁰² A former law firm lawyer suggested a “blinkered vision of law,” that there are very few quality lawyers in the bar,

95. Sharafi, *supra* note 19; *see also* Interview No. 5, *supra* note 61 (noting the links between Parsi family businesses and Parsi family law firms).

96. Galanter & Robinson, *supra* note 20, at 455–85.

97. Interview No. 15, *supra* note 43.

98. Interview No. 19, *supra* note 92.

99. Interview No. 12, *supra* note 79.

100. Such concerns were evident also in Galanter & Robinson, *supra* note 20, at 455–85, and in Wilkins & Khanna, *supra* note 23, at 114, 146.

101. Interview No. 3, *supra* note 56.

102. *Id.*

that the bar is “mediocre,” and that “80 percent were unprepared.”¹⁰³ Interestingly, a number also of the in-house counsel studied by Wilkins and Khanna reported “great frustration with the quality of these top advocates.”¹⁰⁴

Well trained lawyers armed with the experience of Oxford, Cambridge, or US law schools, coupled with experience in an international law firm, find that they are “overtrained” for litigation in India.¹⁰⁵ The senior advocates do not have time for complex points, and it is by no means clear that, if they did, the judges would embrace them. There is no “market for top level legal argument,” in the words of a senior partner in a law firm.¹⁰⁶ Arbitration to avoid the courts is no answer, according to the same partner, because judgments must be enforced in the courts.¹⁰⁷ One young lawyer reported that he left the practice of law because of this disconnect between what he was trained for and what he could use in litigation in India.

Interviewees stated that there were some prominent exceptions among the bench and the bar. Most frequently named were two justices of the Supreme Court from prominent legal families. One is Justice Dhananjaya Yashwant Chandrachud, whose father Shri Y.V. Chandrachud was the longest serving chief justice of India. Chandrachud graduated in economics and mathematics from St. Stephen’s College in New Delhi in 1979, obtained his LLB degree from Delhi University in 1982, and obtained an LLM degree from Harvard University in 1983. The other is Justice Rohinton Fali Nariman. Nariman is the son of Fali Sam Nariman, a leading senior advocate. The younger Nariman received his early education in Mumbai, with a B.Com. degree from Shri Ram College of Commerce. He completed his LLB from the Faculty of Law, University of Delhi and then obtained an LLM from Harvard Law School. He practiced law in New York for a year as well. His career in India went fast, mixing family capital and meritocratic credentials. The bar had to amend the rules to allow him to become a senior advocate at the age of thirty-seven. He reportedly is the first Harvard alumnus to serve as a justice at the Supreme Court of India.

Family capital remains vital for careers in the bar and on the bench. The system for promotion into the judiciary is secret and subject to some criticism. Selection to the high courts and to the supreme court takes place through a closed colloquium and, as one observer noted, it results in enduring legal names that tend to be upper caste: from Mumbai, as the example of Nariman suggests, among the Parsi elite.¹⁰⁸ The impact of selection to a high court or supreme court, in addition, endures beyond retirement, since retired judges gain many influential positions related to politics and the law after their service on the judiciary.¹⁰⁹

103. Interview No. 18, *supra* note 90.

104. Wilkins & Khanna, *supra* note 23, at 146.

105. Interview No. 18, *supra* note 90. For a similar phenomenon experienced by Indians with LLMs from the US, see Ballakrishnen, *supra* note 87.

106. Interview No. 3, *supra* note 56.

107. *Id.*

108. Interview No. 12, *supra* note 79.

109. For example, Nick Robinson shows that, “In about half of Indian states, including Bihar and Madhya Pradesh, there are public ombudsmen called lokayuktas, i.e., ‘People’s Commissioners’ in

Interestingly, in a recent speech to the bar association in Mumbai, Justice Chandrachud raised some judicious criticisms about the closed nature of the bar.¹¹⁰ After praising the bar as an “assembly line of brilliance,” he talked of “our outmoded way of working” and the “perception that the bar is closed.” He lamented the talented individuals who “never went to the supreme court,” and argued that it is “an issue of grave concern” that there is “talent” with “no access to centers of power.” He stated that it was important to “open up our bar to a true meritocracy.”

The national law schools, as noted, have not provided an effective meritocratic pipeline into the elite bar. One leading lawyer with a family firm in Mumbai noted that for the leading lawyers in Mumbai, whether practicing in firms or as advocates, the likely choice of law schools would be the Government Law College (“GLC”),¹¹¹ and the same would be true for New Delhi with the University of Delhi law faculty.¹¹² The reasons are twofold: the exam threshold is difficult to pass for admission to an NLS; and the networks around the GLC are essential to success in Mumbai.

Admission to the GLC is not easy. Many are turned down. Yet several locals within the elite legal world noted that children of judges and elite advocates get in despite lacking the top credentials. One graduate noted that if one has “no connections,” it will be very difficult to find the mentors at the bar necessary for success;¹¹³ on the other hand, a faculty member says that the GLC students without connections have the time and capacity to find them.¹¹⁴ No one disputes the value of family capital in careers starting at the GLC. Similarly, neither graduates nor faculty argue that there is any real teaching at the GLC. Classes meet from 7:30 a.m. to 10:30 a.m., and busy practitioners may not show up to teach if something else comes up. There is in any event “no need to attend classes.”¹¹⁵ The students essentially spend all their time apprenticing with the advocates who congregate at the Bombay High Court one block from the GLC. There are conscientious professors nevertheless who help, for example, to organize a law review, but scholarly capital pales in importance to family capital. Interestingly, however, one faculty member reported that there were currently three GLC students at Harvard.¹¹⁶ One administrator noted that leading US schools recruit at the GLC, and that as many as 25 percent study abroad—despite the lack of academic rigor at the GLC.¹¹⁷ The social capital suffices.

The portrait of the bar reveals a legal elite that is very inbred and restricted in

Hindi. These ombudsmen are usually retired High Court or Supreme Court judges.” Nick Robinson, *Closing the Implementation Gap: Grievance Redress and India’s Social Welfare Programs*, 53 COLUM. J. TRANSNAT’L L. 321, 353 (2015).

110. Hon. Justice D.Y. Chandrachud, Address at the Sesquicentenary Event of the Bombay Bar Association (Nov. 19, 2016), <https://www.youtube.com/watch?v=mIy02Wrbt0E>.

111. Interview No. 20, in India (Jan. 2017).

112. Gingerich & Robinson, *supra* note 27.

113. Interview No. 12, *supra* note 79.

114. Interview No. 21, in India (Jan. 2017).

115. *Id.*

116. *Id.*

117. Interview No. 22, in India (Jan. 2017).

entry. There is no way to mix the legal milieu. The graduates of the national law schools, who treat their law degrees similar to the engineering graduates of the Indian institutes of technology, have to find another path of meritocracy versus a small subset of a national elites around the courts and advocacy. Further, with the growth of trade, corporations, and investment, there are opportunities for a professional class to serve the state, and big corporations, with new and more “modern” expertise. The law firms, as noted, which rebuilt their approach after the era of conveyancing and some banking relationships, are one place where some of this upgrading has taken place, but they are limited by the world of a very conservative elite bench and bar. These challengers likely circumscribe the possibilities for the grand advocates, keep them out of some new markets, and therefore limit the opportunities for new advocates to gain entry to the rarified levels now dominated by very senior advocates. Those senior advocates are still necessary for access to the higher courts, but much energy is now spent looking for ways around this path.

CHALLENGES TO THE ELITE BENCH AND BAR

The challenges and pressures for change tend to come from the outside. As noted, at least one of the top supreme court justices, with multiple degrees from abroad, has sought to modernize from within. But the highly-internationalized elite are the more general source of the change. It includes many who have studied abroad, including individuals with Rhodes Scholarships, and a number who have returned from the United States or from positions in the English “magic circle” law firms or variants in Australia. A good proportion has advanced degrees from the United Kingdom, but the United States has become more attractive for study abroad in recent years.¹¹⁸ The voices of these relatively young elites are evident in the litany of criticisms in the preceding section. As noted, a number of graduates of the NLS have teaching and research positions abroad. They, too, participate in these debates. It is indicative that a recent review article of law and social science research about India emphasizes the work of those who are from India, but work abroad.¹¹⁹ Within India, in addition, there are now clear alliances of this internationalized group with business and philanthropy promoting a modernized “good governance” within India.

The leading internationalized law firms within India are part of the offensive. One top litigation partner with experience abroad noted the impact of the bar’s narrowness. The partner argued that in transactional work the leading law firms could grow and take advantage of foreign clients and their own local and transnational expertise.¹²⁰ But in litigation they were still blocked; they could not deploy their expertise or their abilities to draw on technological innovations. This mismatch also limits the growth of the Indian legal market. Some firms are trying to build their own

118. Ballakrishnen, *supra* note 87.

119. Mitra Sharafi, *South Asian Legal History*, in 11 ANNUAL REV. L. & SOC. SCI. 309–36 (2015).

120. Interview No. 3, *supra* note 56.

in-house litigation expertise to work with, or go around, the advocates, but the possibilities of bypassing are still pretty limited.

As noted above, the earlier offensive to upgrade legal knowledge, combined with social activism, was not very successful despite the efforts of the Ford Foundation.¹²¹ The new offensive goes with, and gained momentum with, the economic liberalization that began in 1991. The professional milieu around finance and business associated with liberalization can take advantage of the mix of social capital and corporate connections, but any move into law has been blocked by the insular legal profession. This problem is evident from the relatively limited career opportunities even for the graduates of the national law schools, who tend to come from the social group with resources, but not family legal capital. The “global meritocratic” quality of the top graduates is indicated by the high number of NLS graduates who obtain Rhodes Scholarships.

There is a new, legally-educated elite, therefore, and it has its own hierarchies and trappings linked to the national law schools. But to jump anywhere past the limited extensions that this new elite status can offer (i.e. firms, global organizations, think tanks, some in-house positions), or to jump into the mainstream legal elite, requires different forms of capital. The law graduates from the national law schools have profiles similar in this respect to the graduates of the Indian institutes of technology,¹²² but they do not have the opportunity in India to mix engineering, social science, technology and law in the way that it is done in the Silicon Valley, for example.

One potential remedy for the economic liberals is to open up the legal services markets, but the Bar has strongly opposed competition from abroad within India.¹²³ There is more momentum now than in the past for a limited opening, but there are still “snags.” The opening would undoubtedly have an impact, perhaps in two ways. On the one hand, it may weaken the power of the Indian corporate law firms, since the global law firms have advantages facilitating large scale transactions. As suggested by Wilkins and Khanna, “foreign firms were more likely to handle important matters involving M&A, civil liability, and arbitration.”¹²⁴ The global firms may also attract more Indian nationals back to India because of the relative openness of those firms for advancement.¹²⁵ At the same time, as Nanda, Wilkins and Fong point out, the traditional firms founded in the colonial era by British lawyers “might actually be seen as more valuable” if the market is opened up because of their unique ties with regulatory authorities, the grand advocates, and the courts.¹²⁶

121. See Krishnan, *From the ALI to the ILI*, *supra* note 21; Krishnan, *Professor Kingsfield Goes to Delhi*, *supra* note 21.

122. Subramanian, *supra* note 51.

123. Aebra Coe, *Plans to Open Up Legal Sector in India Hit a Snag*, LAW360, (Oct. 4, 2016, 7:25 P.M.), <https://www.law360.com/articles/848269/plans-to-open-up-legal-sector-in-india-hit-a-snag>.

124. Wilkins & Khanna, *supra* note 23, at 147.

125. Nanda et al., *supra* note 39, at 106.

126. *Id.* at 109.

Many of those who go abroad become interested in research and teaching, and they increase some of the pressure within India. Many stay abroad. There are at least six individuals teaching in the United States, the United Kingdom, and Singapore.¹²⁷ As noted before, a number of them nevertheless want to “recapture and reinvest the brain drain.”¹²⁸ They overinvest in technical scholarly sophistication in part because of the challenge they face in India to break into the world dominated by the bar. Not surprisingly, they often aim their research precisely at the quality of the courts and the judiciary, seeking transparency as a way also to challenge the conservatism. As already noted, they have not succeeded in breaking down the walls. Scholarly research at the national law schools is very limited, including at the top ones, and the position of law professor is still not widely respected, and does not offer an attractive career path. There is also some upgrading in faculty credentials by emulating the British requirement for a PhD to teach at the national law schools.

Nevertheless, there are some very prominent examples of research successes, such as the research at the NLS Delhi on the death penalty, which also provide some transparency while drawing on empirical legal research approaches imported from the United States. Anup Surendranath, the law professor in charge of the project, is a graduate of NALSAR in Hyderabad with an Oxford PhD gained through scholarship assistance. His death penalty research led the chief justice of the Indian Supreme Court in 2014 to name him the deputy registrar (research) in the Supreme Court of India. According to his website, “The only other instance of an academic being invited to the supreme court for a similar assignment was almost thirty years ago, in the late 1980s, under Chief Justice P.N. Bhagwati.”¹²⁹

Other examples are think tanks created by individuals returning from abroad and well aware of the limited opportunities to deploy their knowledge and expertise. Vidhi represents a particularly notable example.¹³⁰ According to its website,

The Vidhi Centre for Legal Policy is an independent think tank doing legal research and assisting government in making better laws. Vidhi is committed to producing legal research of the highest standard with the aim of informing public debate and contributing to improved governance. Vidhi works with Ministries of the Government of India and State Governments, as well as other public institutions, providing research and drafting support at various stages of law-making.¹³¹

Vidhi also conducts independent research, including: “Judicial Reform: Research in this area takes a data-driven approach to suggesting reforms that address the problem of judicial delays.”¹³²

127. Interview No. 23 (Email) (July 2017).

128. Interview No. 19, *supra* note 92.

129. *Faculty: Dr. Anup Surendranath*, NAT'L LAW UNIV., DELHI (2015), <http://nludelhi.ac.in/pep-fac-new-pro.aspx?Id=42>.

130. *About Us: What We Do*, VIDHI CENTRE FOR LEGAL POL'Y (2017), <tps://vidhilegalpolicy.in/about-us/>.

131. *Id.*

132. *Id.*

More than thirty professionals working with Vidhi are listed on the website. The research director and founder is Arghya Sengupta, a graduate of the NLSIU and Oxford, where he was a Rhodes Scholar. His PhD at Oxford was on the independence and accountability of the Indian higher judiciary. The credentials of the group are stellar, with degrees from the national law schools, US, British, and other graduate programs, and experience which includes work with the corporate law firms.

The genesis of the group was among graduate students in Oxford, who noted the “inadequate legal research” that formed the basis of the government’s work on an Indian-US nuclear deal.¹³³ The group included two from Oxford, one from Harvard, and one from Delhi, and they believed that there was a “gap in the system.”¹³⁴ The government had high quality input on economics and policy, but not good law. This group acted to remedy the problem for the nuclear agreement, and they were successful in gaining credibility and attention despite their very young ages. They decided to build on this work and create a think tank to occupy the space of high quality legal research. They observed that there was no perceived problem in government litigation, in any event under the control of the bar, but the quality of legal expertise generally needed upgrading. They used their capital from their studies abroad and the Rhodes Scholarship, even though only in their early twenties, to find independent funding. They were successful, and began in 2013 as the “first legal think tank.” They were also very careful to avoid “advocacy” or other activities that could taint the “expertise.”¹³⁵

Suggesting some appetite for an upgrade in legal expertise as part of good governance, they succeeded in raising money not from the legal profession but from philanthropy, including substantial support from Rohini Nilekani, part of the Infosys community. Vidhi does not pay high salaries, but tries to pay roughly half of what the associates in law firms make. They work with other disciplines and other think tanks, with some circulation among such think tanks as the Center for Policy Research in New Delhi. There are also links to the national law schools and to the Jindal Global Law School. They belong to the group challenging the traditional, and conservative, world of the bench and bar.

The Jindal Global Law School is the first high profile private law school in India and also the first to focus specifically on academic scholarship.¹³⁶ It is the brainchild of Raj Kumar, a representative of the diaspora reinvesting in India. He has degrees from, among other places, Delhi, Oxford (where he went as a Rhodes Scholar), Harvard, and the University of Hong Kong. In 2009 he became the founding vice chancellor of the Jindal Global Law School. Kumar was teaching at the University of Hong Kong, and became convinced that the national law schools had not succeeded in bringing Indian legal education as far as necessary. In particular, he believed that research was not

133. Interview No. 19, *supra* note 92.

134. *Id.*

135. *Id.*

136. C. Raj Kumar, *Experiments in Legal Education in India: Jindal Global Law School and Private Nonprofit Legal Education*, in *THE INDIAN LEGAL PROFESSION*, *supra* note 4.

sufficiently emphasized. Drawing on US capital and US institutions for initial support, and drawing on the success of the private Indian School of Business, he went searching for philanthropy to build a \$100 million private law school. He succeeded, ultimately, with the Jindal grant, drawing on wealth generated from the Jindal steel empire. Still, tuition had to be set quite high according to Indian standards. It is now equal to about \$10,000 per year. The school offers a five-year LLB/BA, a three-year LLB, and a one-year LLM.

After beginning with a law school, Jindal Global University now has a business school, a liberal arts and humanities school, a communications and journalism school, and a school of international affairs. Jindal this way seeks to build interdisciplinary connections around law that are missing from the traditional faculties of law and the national law schools. Jindal has numerous relationships with schools abroad, and the faculty includes a number of expatriates. Notably, some one-third of the faculty members are graduates of one of the national law schools. Faculty salaries are relatively high for India, and there are centers focused on research. The teaching loads are not light, and the scholarly output is a little uneven, but the professors are well-integrated into the global and, especially, US scholarly worlds.¹³⁷

A third area challenging the traditional legal knowledge comes not from within the various law schools, but rather in the social science departments, especially at the prestigious Jawaharlal Nehru University in New Delhi (“JNU”). There is the Law and Social Sciences Research Network (“LASSnet”), organized by the Centre for the Study of Law and Governance at JNU, which has held a number of conferences. It draws on and challenges legal scholarly capital in several ways. The key individual organizing this network is Pratiksha Baxi, a sociologist at the Centre and the daughter of Upendra Baxi. This interdisciplinary work offers an option that law graduates may pursue to avoid the narrowness of legal scholarship and the precariousness of the law professor position.

This terrain of expertise challenging the conservatism of the elites of the bench and bar is mainly a detour around Indian hierarchies. It builds on foreign capital—especially from the United Kingdom and the United States—to push beyond the conservatism. This terrain provides some outlet for the hundreds, or even thousands, of individuals who receive good educations yet are locked out of the very conservative, and embattled, bar elite. These efforts have not touched the elite of the bar in a substantial way to date, but the aging elite of the bar faces a threat that may render their enduring conservatism and bunker mentality obsolete.

The challenge to the traditional bar, it should be noted, should not be portrayed as a meritocracy versus inherited legal positions. The challengers themselves have substantial resources from within current Indian society and from abroad. Jindal is funded by a large business, and it often takes business-generated wealth to attend. It takes resources to do well on the tests for admission to the national law schools and to build study abroad on NLS degrees. The think tanks, in particular Vidhi, also connect

137. *Id.*

to major businesses seeking to upgrade the quality of governance in India, including law. It took connections to that wealth and cosmopolitan capital—Oxford and Harvard degrees—to gain entry to those groups and build Vidhi. These approaches allow law graduates to branch out and to challenge and perhaps surround the traditional elite, but they represent a palace war mainly among elites.

Compared to the QCs in England who are embedded in oligarchy, politics, and the business class, with entry into the knowledge world of Oxford and Cambridge, the senior advocates in India appear narrow and embattled. They do not enrich and renew their knowledge, which appears to be decades behind the United States and the United Kingdom. Contrary to the relatively optimistic conclusion of Galanter and Robinson about the status of the grand advocates today,¹³⁸ that status is hardly the same as when, for example, the Parsi in Mumbai and the Brahmins in Madras were central to economic and social life on the path to independence. The bar made a comeback through the reaction to the emergency and the creation of public interest law, but the same individuals who gained credibility at that moment dominate the elite of the bar today.

The elite grand advocates, high court, and supreme court judges face challenges from those more attuned to the globally ascendant expertise and set of technologies.¹³⁹ But the embattled elite remain able to assert their influence over many of the ostensible challengers within legal education and within the solicitors' firms. The challengers are more meritocratic and less dependent on family capital, and they therefore provide a counter movement to the traditionally closed legal profession of India. But the challengers, as noted, do not represent the graduates of the more than 1,000 law schools that now exist in India. They represent a counter elite, with professional and business parents, high caste backgrounds, and resources that allow them to excel on the exams necessary to attend the national law schools or Jindal, pay the tuition, and gain the international capital necessary to mount challenges to the embedded local hierarchies.

CONCLUSION

Legal education reform in India is closely associated with the legal revolution linked to U.S.-style globalization, financialization, and the growth of private markets. The rise of national law schools and the Jindal Global Law School are part of that revolution, which involves more meritocratic entrance into the profession, upgraded legal instruction and faculty credentials, upgraded advocacy, and internationalized and interdisciplinary scholarship. The rise operates in tandem with the rise of corporate law firms linked to the new law schools. As elsewhere, this more meritocratic course, coupled with a great expansion in access to the legal profession, exacerbates inequality on the basis of access to such education, upbringing and linguistic skills essential to

138. Galanter & Robinson, *supra* note 20.

139. This is suggested also in Galanter & Robinson, *supra* note 20.

gain entry into one of the top faculties of law and to elite careers, especially in the corporate law firms. The various magic circles of the legal elite are open to only a very few with privileged backgrounds.

The revolution also meets some strong resistance, largely connected to the embattled elite in India built on family capital and entrenched in the elite judiciary and bar. The resistance of these elites helps prevent the development of academic careers, sustained legal and interdisciplinary scholarship, quality teaching, and the higher quality of legal argument and advocacy that a relatively young and internationalized legal elite seeks to effectuate. With many paths blocked for the young elite, we see them using their international capital, and connections to business and philanthropy, to build think tanks, a few pockets of interdisciplinary research, and high quality faculty in the national law schools, the internationally oriented Jindal Global Law School, and in networks in the social sciences. They represent a strong Indian challenge to the elite bench and bar, but not so strong at this point that the elite bar's monopolistic returns are threatened.

