



Research Article

NEW TRENDS IN LEGAL EDUCATION IN INDIA – A NEED FOR CHANGE

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ABSTRACT

This article makes some observations about Legal Education in India by locating it within a wider context of Legal Education reform that is taking place in various Law Schools across the world in the wake of globalization and impact of globalization induced changes in the nature and needs of Legal Profession as a result reflecting the same in Legal Education. For being both intellectually challenging and professionally relevant, legal education should be more responsible than ever before to the Legal needs of the community National as well as International, and the learning needs of students to become professionally competent to play their role in an increasingly demanding Transnationalized Legal service market. Any effort to restructure and reorient legal education to attain these goals will be an uphill task for any Law School in India.

This article begins with exploring the implications of globalization for Legal education and then turns to nature, aims and objectives of Legal Education. The article then looks at the possible changes required to be made in the existing curriculum for undergraduate Law students in order to make the Legal education more relevant and meaningful for its consumers. The focus then shifts to issues concerning methods of teaching, clinical experience and assessment of students. This article then considers issues arising from the proposal of the Bar Council of India to reduce or retain the period of Masters Programme and then builds a strong case for strengthening a research tradition in Law Schools. The article discusses Whether M.Phil in Law is mandatory requirement or not. The focus then moves to measures that are necessary to attract and retain better faculty and also to the regulatory role of the Bar Council of India in the field of Legal Education. The article concludes with some reflections on the promise of a different vision of Legal Education.

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INTRODUCTION

Today Indian Legal Education is struggling in comparison to its counterparts across the world, which belies the tremendous potential that the Indian Legal profession can unleash in the years to come. While India continues down its path of growth, it is essential that Indian education is reformed so that ultimately the Indian legal profession is strengthened to take on the challenges of the 21st century. Further, Indian Legal Education cannot be value creating only for “top of the pyramid” but Law graduates must have stringent minimum standards so that it is transformational for all Law students, irrespective of the Law school that they choose to graduate from. With more than 900 Law schools across the country the task is a challenging one; but the Bar Council of India is keen to ensure that these reforms are put in place, after consultation with stakeholders, before each Academic Year. The Bar Council of India, published on June 2, 2010, commenced with a promise to the Nation, of

‘Ensuring equality before the Law and the Supremacy of the rule of law in the Indian Democracy.’¹ The Vision Statement recognised the need to address various issues as well as the several different constituents of the Legal profession in India to fulfil this promise. Specifically, the Vision Statement identified:

- Inadequate quality of Legal education and infrastructure, and
- Lack of relevant skills training to meet with the ever-changing demands of the modern world, as two of the issues affecting the image of the Legal profession in India.

The present Law has to meet the requirements of the Society. Law has to deal with problems of diverse magnitudes and a student of Law and an Advocate has to be trained in

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¹The ‘Vision Statement 2010-2012’ of the Chairman of the Bar Council of India, published on June 2, 2010.

Professional skills to meet the challenges of Globalization and Universalisation of Law.² With the advent of multinationals in India as anywhere else, the task of Lawyers would be highly technical and an imperative need would arise to have competent Lawyers who would be trained in the right culture of Legal Education. This makes a sound case for introducing reforms in Legal Education.³

Bar Council of India⁴ and the Universities principally regulate formal legal education endeavoring to produce lawyers in India. The problems and challenges facing legal education in India have been time and again studied. Law Commission of India 14th Report (1958) and 184th Report (2002) and National Knowledge Commission Report in 2007 are notable apart from the several High Court and Supreme Court Judgments.⁵ and the various seminars and conferences held throughout the Country. Law Commission of India felt that "Legal Education is fundamental to the very foundation of the judicial system"⁶ and took up the study of legal education suo motto.

Legal Education is influenced by a multitude of factors like-

1. Governmental Policy
2. BCI
3. UGC
4. Affiliating Universities
5. Private Governing Body of Law Colleges
6. National Litigation Policy
7. Developments in Legal Profession
8. Developments in the Legal System
9. The kind of Students who enroll
10. The Caliber and Commitment of the Faculty
11. The Infrastructure available
12. Technological advancements
13. The Developments in other fields of Education
14. The Changes in the Society

Role of Judiciary

In a recent review of its undergraduate curriculum it was recommended, "There is a responsibility to educate students who will live and work in all corners of the globe as citizens not only of their home country, but also to see themselves, and this Country, as others see them". This broader vision is expressed also by the Hon'ble J. Clifford Wallace who advocates a greater globalization of judicial education to better understand Foreign Laws, and to borrow or adapt Foreign Laws where appropriate to interpret Domestic Laws and to solve new problems.

The Indian Judiciary has ruled time and again that unless there exists a grave inconsistency, all forms of domestic law, including even the Constitution, must be interpreted in a manner consistent with international law. In the landmark judgment of *Keshavananda Bharati v. State of Kerala*,⁷ Sikri, CJ held: It seems that, in view of Article 51 of the Directive Principles, the Apex Court must interpret language of the

Constitution, if not intractable, which is after all a Municipal Law, in the light of the United Nations Charter and the solemn declaration subscribed to by India. Our Supreme Court has not only interpreted the National Laws in the context of International Treaties and Conventions but has at times decided cases entirely based on such International Law in the form of Treaties and Conventions even in the absence of Formal Legislations being enacted to give effect to provisions of such Treaties and Conventions. The examples are too many; the decision of the Supreme Court in *Gramophone Co. of India Ltd*⁸ extensively relied upon several International Conventions like Convention on Freedom of Transit (Barcelona Convention); the Convention on the High Seas, 1958; and the Convention of Transit Treaty of Landlocked States, 1965. In *Union of India v Sukumar Sengupta*,⁹ the Court enforced the provisions of Bilateral Treaties of India and Bangladesh regarding 'Lease in Perpetuity' granted in favour of Bangladesh in respect of certain lands close to our border even though the agreement had not been formally ratified.

The Court inferred ratification of the bilateral treaty by the conduct of the party States. In the realm of Human rights, in which volume of decisions the Court has referred and relied upon the Universal Declaration of Human Rights (UDHR) of 1948, the International Covenant on Civil and Political Rights (ICCPR) of 1966, the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) of 1979, Convention on the Rights of Children of 1989. India though not a party to the 1951 U N Convention relating to the Status of Refugees and its 1967 Protocol and does not have a Domestic Law on the subject.

India has been hosting several thousand refugees from various parts of the world, particularly, from the neighbouring Countries such as Sri Lanka, Bangladesh, Myanmar besides several thousand Tibetans, Iranians etc. It's recognition of its active support and assistance given to the refugees within India that India became a member of the Executive Committee of the High Commissioner for Refugees (EXCOM) 1995. In the realm of Environmental Law, the Court has drawn support from a large number of Conventions and has adopted the well recognised principles like Sustainable Development, the Precautionary Principle and Polluter Pays Principle.

Reformative Measures

The reformative areas always to be concentrated are:

1. Consultations with Stakeholders in Legal Education to be conducted and completed.
2. Uniform Admission procedure for all recognised Law Schools in the Country.
3. Revised List of requirements for Accreditation of Law Schools.
4. Rules and System for Benchmarking and quality Evaluation of Law Schools.
5. Standardisation of Academic Calendar.
6. Details of Revised Curriculum.
7. Guidelines for the use of New Technologies in Legal Education.
8. Guidelines for the improvement of teaching methods in Law Education.

² S.P.Sathe, "Access to Legal Education and the Legal Profession in India" in R.Dhavan, N.Kibble and W.Twiner (ed.) Access to Legal Education and Legal Profession 165 (1989).

³ Dyutimoy Mukherjee, "Law schools and Legal education in India", in works. bepress.com http://works.bepress.com/cgi/viewcontent.cgi?article=1001&context=dyutimoy_mukherjee: visited on 20.9.2016.

⁴ Section 7 (1) (g), Advocates Act 1961.

⁵ *V Sudheer v. BCI*, AIR 1999 SC, Meerut Development Authority V Association of Management Studies 2009 (6)

SCC 71; *Dr. Krishnamoorthy v. TNDALU*, 2009 3 MadLJ 1133, Indian Council of Legal Aid and Advice v BCI, AIR 1995 SC 601.

⁶ Law Commission of India, 184th Report 2002.

⁷ (1973) 4 SCC 225 at p. 333.

⁸ (1982) 2SCC 534.

⁹ (1990) Supp SCC 545.

9. Measures for continuous Education and Skills upgrades for Faculty.
10. Standards of Faculty Evaluation.

The measures suggested here take into account the need to consider the overall situation of the Legal Profession in India, as well as the particular needs and circumstances of Law Schools. These are based on a study of the history of Legal Education in the Country, and suggestions for the reform of Legal Education made in the past by various committees, as well as discussions with several Professionals and Academicians.

Review of Legal Education in Law Schools

The Society is growing more and more complex. Technology has posed enormous challenges to the earlier system of Law and Justice. Trade has become vast and Technology oriented. A Lawyer has to comprehend the new Social and Economic changes in the World. The age old practices and tactics are no more relevant now. The Legal profession is not what it was a century or even a decade ago. Its role in the Society is different now because it has a wider set of Economic, Political and Social roles. Society has changed significantly, and changes in the Legal profession reflect those changes. Keeping this paradigm in mind, there is an emergent need to review Legal Education so that it meets the needs of the Society.

Lawyers will have to be acquainted with new tools and skills. A well administered and timely relevant Legal Education can, therefore, be said to be the only choice for the future. As opined by the famous jurist, Nani A. Palkivala, the two marks of a truly educated man are the capacity to Think clearly and Intellectual curiosity which enables him to continue and intensify the process of learning even after he has finished the Law course. Achieving the next level of paradigm for Legal Education shall not be possible without the presence of a faculty which is sensitive to the changing times. Hiring of good faculty has been a challenge in Law Schools in India and abroad.

Generally, the financial incentives offered by the private sector both in India and abroad are far more attractive than those available in the public sector, including Law Schools, for good Lawyers to make a commitment to Academia. But it is possible to attract good Lawyers to Academia by promoting a range of Educational reforms and Institutional initiatives, including better financial incentives. Globalisation has indeed provided new opportunities to address some of the challenges in this regard. Issues relating to the Indian legal system are not only taught and researched in India but also in many other parts of the world. Growing numbers of Indian lawyers and scholars are involved in this effort. There is need for having a global focus in hiring faculty for Indian law schools. Of course, success will depend on the schools' ability to provide the right kind of intellectual environment and financial and other incentives for Indian or foreign scholars to teach and pursue research in India and to contribute to its growth story.

It is worthwhile to learn from the experiences in other countries where the shortage of Teachers and Faculty has been addressed by video-conferencing of Lectures by Foreign Faculty. The Law Schools of the future ought to provide academic space for engaging in Teaching and cutting edge research on issues of global significance. The institutions ought to constantly reinvent themselves for facing the

challenges of globalisation through exchange and collaboration programmes. This has different implications for faculty, students, and for the development of teaching and research programmes.

With the background of developments in the global economy as aforesaid, India has to assume a greater responsibility as a key player by introducing a regime of progressive higher education. Within the larger debate relating to reform of the higher education sector in India, there is an urgent need to examine the situation with regard to Legal Education and how globalisation is going to impact the agenda for it. In the background of the raging debate on opening up of the Legal market for Foreign Lawyers and Law firms, the need for imparting the right skills and education not only to future Lawyers but even to current breed of Legal professionals has gained underlined importance. There are four important factors of Legal Education: Global curriculum, Global faculty, Global degrees, and Global interaction. These deserve public attention.

CONCLUSION

Having noticed various relevant aspects of the two prevalent systems of Legal Education, certain suggestions may be given.

1. Keeping in view the needs of Indian Society, it is necessary that both the systems of Legal Education, namely, Three-Year Law Course and Five-Year Law Course should be continued. However, this will require availability of adequate competent and sincere staff as well as separate infrastructures for the two systems. Expecting members of the existing staff to run both the systems is to put undue strain on them. Similarly, using the same infrastructure for both the systems creates practical problems.
2. While teaching various subjects in Pre Law Course of the Five-Year Law Course, care must be taken of the students coming from Science background in 10+2 who may not be having elementary knowledge of such subjects.
3. Certain aspects of Natural Science, Computer, etc. may be introduced in Pre-Law Course so that the students may have better appreciation of certain new branches of Law, e.g. Patent Law, Cyber Law, etc..
4. There is need to restructure the course content keeping in view the vastness and relevance of particular subjects, and the time available for their studies. Wherever necessary the subjects should be divided in two semesters. The subjects should be arranged scientifically so that easily comprehensible and interesting subjects are taught in the initial semesters, while the subsequent semesters should be devoted to the study of subjects requiring understanding of abstract concepts.
5. There should be greater emphasis on mastering basic concepts of traditional Law subjects rather than on increasing the number of new subjects to be taught. The idea is not to diminish the relevance of new Law subjects. What is to be appreciated is that once basic concepts are clear to a law student, he is able to understand any Law subject.
6. Arrangements for the students to undertake practical training, such as attending chambers of Lawyers, participating in trial proceedings, attending Lok Adalats,

etc., should be made by the institutions rather than leaving the students to manage for themselves.

7. There should be greater interaction between the practicing Lawyers and the Law teachers. Teaching of procedural Laws should be entrusted to the sincere practicing Lawyers.
8. Young Lawyers joining profession may be associated with the Legal aid programme, Lok Adalats, etc. in the early years of their practice. However, this should be done under the guidance of an experienced Lawyer.
9. Arrangements for Legal education should be made for the personnel in service so that where necessary they may get Legal education on the pattern of M.B.A.

In conclusion, it may be said that the present dual system of Legal Education with all its deficiencies provides adequate opportunities and means to meet various challenges facing the Legal education in India. There is, however, scope for further improvements so that the Legal education in India may be better equipped to meet the challenges and provide fullest opportunities to our meritorious students to grow and contribute their best for the progress of the Country. Law schools need to improve support for research and create an atmosphere that inspires students and faculty. Bright young Lawyers should be encouraged to take up teaching.

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