

Legal Education is crucial for proper judicial system of any country. There is urgent need for reform in present legal education system in India. To deliberate on this issue ProBono India ([www.probono-india.in](http://www.probono-india.in)) in association with Skillfull India (An Initiative of Vision of Tomorrow Charitable Trust, NGO) organized 1st Dr. A P J Abdul Kalam National Legal Essay Competition - 2016. Topic of the competition was Legal Education in India : Issues & Challenges. It received many good quality entries all over the India. In this book top 10 essays have been covered.

Legal Education In India

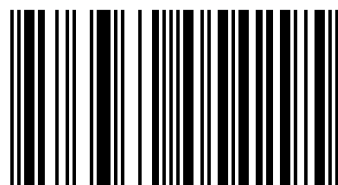


Kalpeshkumar L. Gupta (Ed.)

# Legal Education in India Issues & Challenges



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## Preface

Effective legal system is crucial part of any country. To strengthen the legal system we need quality legal education in place. There are many issues and challenges in present legal education system in India. To deliberate on this subject ProBono India in association with Skillfull India (An Initiative of Vision for Charitable Trust, NGO's) launched 1<sup>st</sup> Dr. A P J Abdul Kalam National Legal Essay Competition in October 2016. Theme of the competition was '*Legal Education in India : Issues & Challenges*'. Competition was open for students of LL.B., LL.B. (Hons), LL.M. and Ph.D. We received very good and thought provoking essays from all over the India.

This competition has given platform to all law students to share their thoughts on current legal education systems and challenges faced by them. Being one of the stakeholders of the legal education, they have highlighted many pertinent issues prevailing in present legal education system. I hope this book will help to build future legal education policy.

Jai Hind !

Date :- 5/03/2017

Place :- Surat

**Dr. Kalpeshkumar L Gupta**

Founder

ProBono India

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First of all we would like to thank Mr. Chintan Pathak (Cyber Security Consultant, Techlawyer & President of Vision of Tomorrow Charitable Trust, NGO's) of Skillfull India (An Initiative of Vision of Charitable Trust, NGO's) for extending great support in terms of sponsorship for the said essay competition. Without his ngo's support, this competition would have not been possible.

We would like to thank all the participants from all over the India for submitting very good quality of essays in the competition. Because of their effort, we have come up with this book.

We are grateful to all our members of the judging panel for taking their valuable time in evaluating all submitted essays.

Jai Hind !

Date :- 5/03/2017

Place :- Surat

**Dr. Kalpeshkumar L Gupta**

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# Legal Education in India: Issues & Challenges

**Tanya Bhilware**

University of Petroleum and Energy Studies, Dehradun

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*“...man is inwardly a soul and a conscious power of the Divine and that the evolution of this real man within is the right object of education and indeed of all human life.”*

**–Sri Aurobindo**

## Introduction

Legal education is a human science which provides beyond the techniques, skills and abilities of the basic philosophies, ideologies, analysis, and contributions all forwarded for the creation and maintenance of a just society. It is a subject of great importance in view of its dynamic role in molding and envisioning the legal system of the country, thus it is being an instrumental in the accomplishment of the encouraged objectives of justice, liberty, equality and fraternity of a sovereign, socialist, secular, democratic republic. Blackstone says legal education aims at communicating knowledge of the country as part of necessary culture of a gentleman, nobleman and common man committed in a learned profession.<sup>1</sup> The law commission also defines legal education as a science which communicates to student's knowledge of certain principles and provisions of law to enable them to enter to legal profession. Legal education is a broad concept and it means to gain knowledge and skills to become a legal professional. Law includes both professional and liberal education i.e. acquiring professional skills as well as aiming at value-oriented, socio-cultural education. A lawyer is the product of such education, which is boon for the society as he works for the benefit and welfare of the society by claiming justice for his clients in the court of law. Legal education works not only as an instrument of social control but also as instrument of social change which is necessary to create enlightened law abiding citizens, who are inculcated with the concept of human rights and values which is an essential intermediate for the change.<sup>2</sup>

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<sup>1</sup> Dr. Justice A.S. Anand; H. L. Sarin Memorial lecture, “*Legal education in India- past, present and future*”.

<sup>2</sup> S. Sethiya, “*Legal Education: A Need for Streamlining*”, 1 AIR (Journal) 1 (2008).

## Historical Background of Legal Education

Legal Education in India was traditionally been a neglected area. It was the only area where there were no fundamental changes during the last 150 years. Except for the duration of the courses, and addition of some fundamental subjects, there has not been any innovation in legal education scenario during all these years. Legal Education in India has remained mostly concentrated on the developing legal professionals in a national framework. Changes in Legal Education scenario cannot be completely understood by the various committee reports, which do not exactly follow the real changes in the legal education scenario. Legal Education has been remained as a theoretical study, with the minimum practical exposure. Empirical learning was given a back bench in real practice, and many practical courses were remained in paper rather than in content. National law school experiment in India which has to an extent revived the interest in legal education has remained snob and out of the reach of children from the middle and lower income group. During the ancient times the legal historians record instances of legal practitioners indigenously were known as 'Pleaders' or 'Niyogis' representing the parties in litigation at least from the time of Manu Smriti, a person well acquainted in Dharma Shastra and procedure of law could be appointed as the representative. Indian law was understood as a branch of Dharma. The Vedas were the original sources of law, and the Smritis disclosed the message of Vedas and Smritikars were great jurists. Although there is no record of formal practice in law, the disbursement of justice was to be done by the king on the basis of a self-acquired practice. Justice was also administered by the King through his representatives who in turn were persons of reputation and sincerity of being fair and impartial. The leading force for the King or his representative was the supporting of Dharma.<sup>3</sup>

The formal legal education in India came into existence in the year 1855 and its aim was to furnish the law students so that they can help the lower courts and High courts by enlisting themselves as Vakils or by becoming judicial officers. There was no tradition of legal research and academic legal training. The system of teaching compulsory subjects under straight lecture method was continued for almost a century. The Bar Council of India was established under the section 4 of Advocates Act, 1961 which is a statutory body to regulate legal education and profession. The first law university was established in India in Bangalore named as "National Law School of India University" (NLSIU) in the year 1985. It was the

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<sup>3</sup> Advocate T.M. Devdas, *History of legal education in India*, strippedlaw.blogspot.in, November 14, 2010.

time when LLB degree was started in India. The method of teaching was also started by tutorials, seminars, moot courts and case methods to strengthen the teaching methods. And thereafter the education of law in India has been offered by the numerous universities and in various academic levels.<sup>4</sup> With the enactment of Advocates Act, 1961 new regulations were framed for imparting the legal education in India; methods of teaching also needed a change which was purely lecture method with marginal provision for training for students, manner of conferring a degree etc. In modern times the system has completely changed and requires more progressive education structure to compete in global word with innovative ideas and research in legal field.

## **Present Scenario**

Since the past few years the roles of lawyers have been drastically changed in our society. In the changed scenario, the additional roles are conceived which demand specialized knowledge and skills which was not ordinarily available in the profession. These roles have moved away from being restricted and started moving beyond national boundaries. As a result a new category of globalised legal professionals has developed who while having a firm understanding of local legal scenario, was able to extend its principles to a global context. The growth of multi-national corporations and the growing importance of international trade relationships, and developed interdependence among states in international relations have created requirement of legal professionals who can think globally while acting in a local situation. This has constrained evolution of law schools from factories that block out academic lawyers to training schools that provide the students with the necessary skills required for the new generation law graduate. If the law schools across the world are feeling that they can longer train graduates according to their humor, but will have to face the market, and will have to provide output in agreement with the demands of the market, Indian law schools cannot remain as an exception. With all its constraints Indian Law schools will have to develop from its shell and deliver the expected output or end.

Today India is producing the largest number of law graduates and around more than fifty institutions produces more than 5000 graduates per year. The number has increased over the years and there is a broad category of professional opportunities available to the students creating the future direction of legal education immense in India. The legal world has

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<sup>4</sup> C. Rajkumar; “*Improving legal education in India*”. August 2, 2014.

changed with change in legal education system and now it is completely different from what it was before 10 years. Now the opportunities and the career options are very vast for trained lawyers and the method of teaching is also expressively improved from the past few years and making it a promising career option then earlier when it was used to be the last ground. The Bar Council of India is the present regulatory body which makes rules and regulation for the promotion of legal education in India. Law degrees are given and conferred in terms of Advocates Act, 1961 under which BCI is formed as a statutory body and given regulating power to control for both legal education and profession.<sup>5</sup> Universities are also need to be affiliated from BCI; it also prescribes rules and standards of courses of study, infrastructure necessities, eligibility for admission and is responsible for the promotion of legal education in India. According to BCI rules part IV section 4 of chapter II there are two study systems operating simultaneously. Traditionally legal education was communicated as a three years graduate degree, single degree course which is done after the completion of Bachelor's degree which is introduced by BCI in the year 1961 and other is an integrated five-year law course which is a double degree course introduced by BCI in the year 1982 which is provided after 12th standard as an alternative to three year course so that law aspirants can directly enroll themselves in the universities to avail B.A. LL.B, B.Com LL.B, B.B.A. LL.B, B.Sc. LL.B. It is an integrated course that means Bachelor's degree is done with the law degree in which student are suppose to study subjects of both the degrees simultaneously at the college and at the end only one degree is given which is the combination of both bachelor's and law degree. Apart from studying law as a discipline there are various courses which include study of law subjects that means by legal education we not only refer to study of essential law subjects but also study of applied law programs for other courses such as business law, taxation law, company law etc. By this way we can assume that legal education is also spread. In some or the other way in form of study of law subjects in other courses as well, for example- There are numerous diploma and certificate courses provided in various subjects like cyber law, taxation law, banking law, human rights and legal knowledge etc.<sup>6</sup> Students also study commercial and taxation law in commerce and accountancy at undergraduate or postgraduate level. Similarly Intellectual Property laws is being taught at undergraduate engineering level, subjects like securities law, company law etc. are taught in company secretary course and business law at business school. Hence legal education not only includes

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<sup>5</sup> Abhishek Aanand, *Legal Education and its Challenges*, [www.legalservicesindia.com](http://www.legalservicesindia.com), July 25, 2014.

<sup>6</sup> Nirmal B.C., *Legal Education in India: Problems and Challenges*, 20 IJUM L.J., 147-48 (2012).



basic in LL.B degree but also study of various other law subjects in different courses at each level which students study in various form to get knowledge of law to be applied at different scenario.

### **Constitutional Recognition to Legal Education and its Progress in India**

The Constitution of India basically laid down the responsibility of imparting education on the states by establishing the matter pertaining to education. Legal profession along with the medical and other professions falls under List III of the Constitution. However, the Union is empowered to correlate and determines standards in institutions for higher education or research and scientific and technical institutions in addition having exclusive power, inter alia, relating to educational institutions of national importance, professional, occupational or technical training and promotion of special studies or research. Authorized by the Constitution to legislate in respect of legal profession, Parliament enacted the Advocates Act, 1961, which brought consistency in the system of legal practitioners in the form of Advocates and provided for setting up of the Bar Council of India and State Bar Councils in the States. Under Section 7 of the Advocates Act, 1961 the Bar Council of India has capacity to fix a minimum academic standard as a requirement for commencement of a studies in law and under Section 7 also states that the Bar Council of India is also authorized "to recognize Universities whose degree in law shall be taken as a qualification for recruitment as an advocate and for that purpose to visit and examine Universities". Thus the Act guides on the Bar Council of India's power to prescribe standards of legal education and for the recognition of law degrees for enrollment of people as Advocates.<sup>7</sup>

### **Changed Scenario of Legal Profession due to Globalization**

About fifty years ago the concept was to produce graduates who would mostly come to the bar, while a few may go into law teaching. The Advocates Act, 1961 was enacted to achieve the said object, to require minimum standards for entry into professional practice in the courts, as stated above. But during this period and more particularly after liberalization in the year 1991, the complete concept of legal education has changed. Today, legal education has to meet not only the requirements of the bar and the new needs of trade, commerce and

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<sup>7</sup> Bharti, "Legal Education-Some Critical Issues", 1999.

industry but also the requirements of globalization. New subjects with international ranges have come into legal education. With multibillion dollar investments in the growing economies, the business activities have grown in abundant. This in turn has created more opportunities for lawyers in general. In the changed scenario, the additional roles envisaged are that of policy planner, advisor, negotiator, providing guidance, expert in articulation and communication of ideas, mediator, lobbyist, law reformer, etc. These roles demand specialized knowledge and skills not ordinarily available in the existing profession.<sup>8</sup> The lawyer of tomorrow must be comfortable to communicate with other professions on an equal footing and be able to absorb scientific and high tech knowledge. In other words, along with social science subjects, the law curriculum for the future must provide integrated knowledge of a whole sphere of physical and natural science subjects on which legal policies are now being formulated. It is here that the legal education has to take its lesson on value addition. Justice must become essential to the law curriculum and community based learning must give the needed value introduction in the making of a lawyer.

## **The Mushroom of Challenges**

The character and ability of the legal profession depends almost completely on the quality and content of the legal education that is obtained by the budding lawyers. There are a number of reasons why the standard of education in India has not reached the heights and status associated with the same as compared with the abroad. These can be broadly classified into problems related to infrastructure, curriculum, faculties and students themselves. To elaborate, the issues disturbing legal education today are as follows:

### **- Deficient Infrastructure in Legal Education**

Indian law schools have to meet the demands of the changing global society, the training which is communicated to the law students ought to be thoroughly re-examined. The law schools need infrastructure and resources equal to global universities, particularly when access to such universities is available to both our faculty and students. The law schools have to seek an impressive transformation in providing infrastructure and resources to the faculties and students. Library facilities in the law schools need to be substantially upgraded, for which huge resources have to be mobilized. Inevitably, the resources that are needed to reach international standards for providing global infrastructure for our law schools have to be

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<sup>8</sup> Halsbury's law, "*Global legal education in India: opportunities and challenges*", April 2009.

raised through library endowments and private donations. Secondly, the clinical lab, computer lab, legal aid cell, moot court room and language lab should be established in the institutions. Basically, these are the essentials requisites of Five Year law course infrastructure as per BCI rules too.<sup>9</sup> But establishments of integrated five year law colleges are so expensive that a number of burgeoning institutions could not even fulfill the basic requirements of building structures and sufficient number of law faculties. Though the institutions themselves are lacking with the availability of common factors, it is very hard to be in the compatibility of global lawyers and scholars.

#### **- Good faculty and teaching techniques**

With the dignity of the profession suffering a downfall and meager pay packages, it is no wonder that most institutions have been unable to attract good fulltime faculties. In addition, since a number of colleges have been set up lonely with a profit motive, they obviously do not spend much on their faculties.<sup>10</sup> Therefore, most of the teachers in such colleges are unqualified, part timely and engaged with the classes only in the evenings in a very careless manner. The Advocates Act was amended in the year 1979 in order to permit full time teachers to practice, thereby resulting in an abundance of part time teachers. Thus, such teachers were unable to pay adequate attention to teaching and the functions associated with it. Legal education requires a certain amount of commitment from the teacher as well and the amount a student assimilates depends on the availability of the teacher for doubt clearing and guidance. This is impossible if the teacher is part time. These colleges do not have enough selection criteria for the appointment of faculty but teaching at such colleges would count as years of experience once the teacher applies elsewhere. Moreover, most such colleges are understaffed. Since some of them are government aided, they appoint minimal faculty so that their expenses are lower and they can obtain maximum profits out of the situation. Despite a number of recommendations and suggestions, the lecture method remains the method of teaching in most law colleges.<sup>11</sup>

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<sup>9</sup> Agarwal, S.K., "*A Report on Legal Education in India-Problems and Perspectives*", (1972).

<sup>10</sup> Dr. Mohammad Farogh, "*Legal Education: Contemporary Trends and Challenges*", 1998.

<sup>11</sup> B.P. Dwivedi, "*Legal Education and Teaching Professional Ethics: Changes and Challenges*", 1(2) All India High court Cases 21 (2008).

### **- Motivation of students and the entrance examination**

When there was no system of an entrance examination, the entrance of a number of colleges mostly comprised new people who had been unable to obtain employment elsewhere and undertook the course as a temporary measure till they found other employment. Not only this, the dropout rate from these colleges is exceptionally high. In Delhi, the dropout percentage was found to be over 50%, which is quite dangerous. Therefore, the move to have an integrated course which accepts students after their XII Boards is seen to have a better effect on standards because it is perceived as captivating candidates actually interested in the field rather than those who have not managed to acquire seats in higher studies in any other field or those who have no other channel of employment. Nevertheless, the present entrance examination system does not test the aptitude of the examinee in a manner that reflects his ability to be a good lawyer. It is true that the skills required for a good advocate have to be imparted. However, they now do not even follow the general aptitude of the aspirant because they follow a set pattern. This results from the plenty of tutorials for entrance examinations which has ensured that examinees learn answers by learning, thereby achieving the examination. Thus, the students who procure admission are not necessarily meritorious but good at memorising things. Moreover, part of lack of motivation on the part of students branches from the teaching method and quality. The students find such classes boring and only attend class to fulfill the minimum attendance requirement of 66% which has been set by the Bar Council. Unless interest is generated in students, they will lose any motivation to learn the subject, thereby defeating the purpose of legal education.<sup>12</sup>

### **- Outdated curriculum and syllabus**

The UGC and the Bar Council have repeatedly requested Universities to alter their syllabus but to no use. Furthermore there is always a struggle between the introduction of new and contemporary subjects at the cost of focusing on traditionally important and essential subjects. The curriculum does not reflect the changing role of law and teaching does not take into account the social engineering skills which are necessary in a practicing lawyer today. The new scheme which the Bar Council of India seeks to suggest tackles this issue by providing for a pre law school study period of two years in a number of law connected social science subjects. The number of optional courses has been increased to include some action oriented multi-disciplinary courses. Finally a practical training session for 6 months has been

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<sup>12</sup> A. Narrain, "*Towards a Better Legal Education for the New Century*", 10(1) Student Advocate 1 (2004).

prescribed.<sup>13</sup> However, this curriculum has been criticized for not including certain subjects which are essential in the current context for lawyers like election laws or consumer protection. In addition, clinical programmes escape mention in it. Under such a scheme a student could be granted an opportunity to spend a semester at a court or other forum. Moreover, the curriculum contains syllabus for a three year course when most colleges have shifted to a 5 year course.

#### **- Medium of instruction**

A number of institutions govern education at the undergraduate level in regional languages. As a result, a number of aspirants in certain States are admitted to colleges without even having some essential fluency in the English language. Admittedly, a command on the regional language is helpful and sometimes even essential if one wants to practice in the Trial or High Courts in a particular State. However, it cannot be refused that the quality of education suffers seriously if the medium of instruction is regional. This is because the faculty has to be fluent in the language as well, which excludes the colleges from having good visiting faculty or guest lecturers from famous persons in the area. Moreover, most of the statutes, cases, law, books and all the other materials are in English. There are not enough text books in regional languages to overcome these difficulties.<sup>14</sup> Thus, not only does the student not have adequate depth of understanding of the subject but also fails to establish necessary communication skills necessary to practice the profession properly. The BCI has tried to amend this by providing that the language of instruction shall be English but if it is not then it must meet the law graduate standard in order to certify for enrollment as an advocate. Additionally, two papers on General English and one on Legal Language have to be compulsorily given under the new scheme.

#### **- Drastic differences among law colleges**

As India boasts of some reputed national law schools, there are also a number of institutions which call themselves as law colleges and freely give the degrees without bothering to give the students a suitable education. Thus the quality of students from distinct institutions is

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<sup>13</sup> G. Singh, "Revamping Professional Legal Education: Some Observations on the LLB Curriculum", 27(1) Indian Socio-Legal Journal 41 (2001).

<sup>14</sup> A.K. Avasthi, "Powerlessness of The BCI to Improve Standards of Legal Education", 46(1) Journal of Indian Law Institute 55 (2004).

immensely different because of the drastic difference in the extent and kind of education they gain.<sup>15</sup>

## **Suggestions to Legal Education**

As per various conversations with experienced, passionate and clean lawyers, the solution which we have debated and churned out is very simple as more awareness and more information about legal education in India; and encouraging, inspiring poor students to get access to high quality education. There is actually no lack of talent in India, but all we need is a rigorous approach to making law education affordable, easy and within the reach of the poor, talented students. As we've seen, legal education in India is disturbed by a number of problems, which have been attempted to be determined by the Bar Council and the UGC. However, we have also seen that the efforts of the authorities have been rendered futile due to uncooperative Governments or pressure from advocates or students. Nevertheless, there are still measures which can be taken in order to improve the standard of legal education in India.<sup>16</sup>

The Committee of three Judges was appointed by the CJI, which discussed the issue, came up with a number of suggestions which could raise standards such as; there must be an entrance test at the stage of admission to the law college in University to the affiliated colleges. Professional ethics is to be made a mandatory subject. The case method must be made compulsory and must carry more marks than theory. Necessary steps should be taken to the addition of lecture method. Student visits to court should be made mandatory in order to provide greater exposure. The examination system should be changed and norms should be fixed not only for maintaining the quality of questions but also for awarding the marks for the evaluation of answer sheets.<sup>17</sup> The Bar Council of India need to grant a license to practice to a law graduate only after he has been an apprentice for 12 to 18 months and has passed an entrance examination. Each State should establish colleges of the statute of the National Law Schools. As far as college infrastructure is concerned, the Bar Council has prescribed certain

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<sup>15</sup> C. Pillai, "Legal Education: In Search of New Vistas", 50(3) Journal of Indian Law Institute 399 (2007).

<sup>16</sup> N.K. Indraiyan, "The Challenge of Legal Education: The Current Scenario", 28(4) Indian Bar Review 107 (2001).

<sup>17</sup> A. Lakshminath, "Legal Education, Research and Pedagogy", 50(4) Journal of Indian Law Institute 606 (2008).

minimum infrastructural and other requirements for law colleges.<sup>18</sup> However, it is obvious that there will be difficulties in obtaining state of the art library and building facilities at the starting for many colleges due to the financial and other problems. Therefore, the Rules provide for a development approach in which these goals have to be achieved over a stretch of five years. It can only be hoped that the Governments and college's cooperate with the BCI so that these rules are effectively implemented. As regards quality of teaching, the Bar Council Rules propose to have at least half the teaching staff to be full time and the principal also to be full time. This is clearly because unless there is some dedication of the principal and faculty towards the cause of enhancing scholarship, increasing standards of education will be an uphill task.<sup>19</sup>

Apart from these suggestions there are some other means by which the quality of education can be given a drastic improvement. The Law Commission of India suggested the regulatory mechanisms of the Bar Council and the UGC to be coordinating. The Universities and other educational institutions suppose to be given some freedom in respect of choosing teaching methods and syllabus suitable for the local needs of students. Currently, the inspection is restricted to the infrastructure and other facilities.<sup>20</sup> In addition, the commitment of the owner to the cause of education ought also to be kept in mind while authorizing permission. Thus, entry into the area must be made more difficult. A series of conferences and workshops on teaching technologies and methods must be organized regularly for teachers by the UGC and the Bar Councils. The Universities and Law colleges must incorporate student exchange programmes and encourage teachers to visit other premier legal institutions. The selection of law teachers must rely completely on marks obtained in the LLM. The procedure must be unburdened and transparent and include a demo lecture before employment. The examination must test the qualities required for moot courts, problem solving and drafting. Strict standards must be followed in recognizing and granting affiliations to law colleges. Law colleges and

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<sup>18</sup> A.K. Avasthi, "Role of the Bar Council of India: Judicial Interventions and Suggestions", 29(3) Indian Bar Review 9 (2002).

<sup>19</sup> K.C. Jena, "Role of Bar Councils and Universities for Promoting Legal Education in India", 44(4) Journal of Indian Law Institute 555 (2002).

<sup>20</sup> N. Kumar, "Changing Paradigm of Legal Education and Profession", 32(3) Tax and Corporate Referencer 101 (2004).

university departments should be closely related and integrated with Courts and Advocates. Part time teachers from the Bar and longer court visits must be adopted.<sup>21</sup>

## **Conclusion**

The legal education should be able to meet in the ever changing demands of the society and should be thoroughly equipped to provide with the complexities of the different situations. Specialization in various branches of the law is very necessary. The requirement is of such a great dimension that sizeable or wide number of dedicated persons should be properly trained in different branches of law every year by providing competent and suitable legal education. This is possible only if adequate number of law colleges with proper infrastructure including expertise, law teachers and staff are established to accord with the situation in an appropriate manner. The area of deficiency should be located and corrections should be affected with the cooperation of competent persons before the matter gets beyond control. Reforms in legal education cannot wait any longer and that there can be no improvement in legal education unless we can convince the brilliant young people to accept teaching responsibilities in law. We need to produce a number of committed and dedicated teachers who in turn need to produce a new crop of dedicated lawyers, impartial judges and distinguished jurists. This is a tough and certainly a challenging task. As a teacher is a nation builder and only a committed and devoted teacher can produce conscientious students, honest professionals and citizens. This is what the nation in general and the legal profession in particular needs today. The real challenge in today's life is on the legal education and legal profession because people see lawyers as more equally than themselves. They regard lawyers as trained persons to use the freedom granted by the country's constitution and to show them the way and also to protect in case these freedoms are breached. So, the responsibility of legal education is very heavy, as lawyers are meant to preserve the society and act as 'healers' and have to contribute to the mankind as a whole. Betterment of legal education is directly dependent on BCI's interference through capable leadership, adequate analysis and support, including financial. BCI may be replaced by a special Standing Committee on Legal Education to the Independent Regulatory Authority on Higher Education as recommended by the National Knowledge Commission. The new body, if it arises, will ignite new expectations.

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<sup>21</sup> M.J. Rao, "*A Plea for State Law Universities and Other Reforms in Legal Education*", 6(1) Student Advocate 60 (1994).



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## Brief About Author



Tanya is 2nd year student at College of Legal Studies, UPES, Dehradun. Her areas of interest are conducting legal aid camps, writing about legal aids and spreading knowledge about legal education. Her area of interest is corporate law. She also participates in Model United Nations and Youth Parliament.

# Legal Education in India: Issues & Challenges

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*“By education, I mean an all-round drawing of the best in child and man in body, mind and spirit.”*

*-Mahatma Gandhi.*

## Introduction

*The study of laws, on conditions they are good laws, is unrivalled in its ability to improve students.*<sup>22</sup>

Law is something which governs the world and its people and is the only ultimate instrument of change. It has the potential to reform society and guarantees justice to each and every Individual. Principally, it is the basic element and facilitator of justice as the primary function of law is to maintain peace and order in society while protecting Individual rights and freedom. It serves as an important instrument for achieving socio-economic development in society.

Law, Legal education and development have become inter-related concept in modern developing societies which are struggling to develop into social welfare states and are seeking to ameliorate the socio-economic condition of the people by peaceful means. The same rule is true for India. It is the crucial function of legal education to produce lawyers with a social vision in a developing country like India. However, the Legal Education, in modern times is not confined to production of practicing lawyers alone. Today its scope and ambit has got widen up and its impact is felt in

every sphere of human life. The law being a tool for the social engineering, Legal Education can be regarded as an instrument for the social design.<sup>23</sup>

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<sup>22</sup> .Plato (c.428 – 347 BC) The Laws, bk.XII, as observed in a dictionary of legal Quotation (Universal Law Publishing Co. Pvt. Ltd. New Delhi, 5<sup>th</sup> Ed. 2004, p.110).

<sup>23</sup> .Scenario of Legal Education in India (Chapter IV), India, available at: [http://shodhganga.inflibnet.ac.in/bitstream/10603/68186/13/13\\_chapter%204.pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/68186/13/13_chapter%204.pdf)(Last Modified at December 10, 2016).

For any society, ripening of civilization is attributed through the social consciousness of the significance of law. The history of our own independence movement, if impartially written, will devote more pages to lawyers than to the votaries of any other vocation. It is well accepted proposition that the Profession of Law is a noble calling and the members of the Legal Profession occupy a very high status.<sup>24</sup>

Since Law is the foundation of every society or a nation, Legal Education of the people is a *Sine qua none*. Legal Education does not only create law-abiding citizens, but also produces brilliant academicians, visionary judges, astounding lawyers, and awe-inspiring jurists. Since Law is a means for social change and economic progress, since these four classes of men acts as catalyst for the growth of the society, the creation of these four men should be the aim of the legal Education.

The policy of Legal education should be moulded in tune with the rapid contemporary changes occurring as a result of scientific and technological development, especially by expansion of software technology.

Legal Education in India generally refers to the education of lawyers before entry into practice. Legal Education in India is offered by the traditional Universities<sup>25</sup> and the specialized law universities and Colleges only after completion of an undergraduate degree or as an integrate Degree. Legal Education derives its impetus from the economics, social and political setup of the society. Legal Education is a human science which furnishes beyond techniques, skills and competences the basic philosophies, ideologies, critiques and instrumentalities for the creation and maintenance of a just society.<sup>26</sup>

The legal education sector in India is one of the fastest growing educational sector in India. Legal education reform is taking place around the globe to make it more responsive than ever before to the legal need of the community-national as well as global and the learning needs of students to become professionally competent to play their role in our increasingly interdependent world. The interest among the students in pursuing law as a career has been steadily on the rise and this can be seen from the fact that the year 2016 saw the highest ever

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<sup>24</sup> .Iyer, Krishna V.R. "The Social Dimensions of Law and Justice in Contemporary India – The Dynamics of a New Jurisprudence", p.1.

<sup>25</sup> .“Evaluation of Legal Aid and Legal Literacy – Tools of Social Justice” Ph.D. Thesis, Sri Padmavati Mahila Visvavidyalayam (Women’s University) Tirupati, Unpublished, 2012.

<sup>26</sup> .Report of “The Curriculum Development Centre in Law”, (Vol, U.G.C, New Delhi, 1990, p.12.) available at <http://legalservicesindia.com> (Last Modified at December 10, 2016).

number of applicants to the Common Law Admission Test (CLAT) with more than **forty-five thousand students** applied for the test.<sup>27</sup>

**“To mound the nation to the pinnacle of best administration of justice we need to educate and makeover the best lawyers.”<sup>28</sup>**

Though this enthusiasm, the law students are needed to be inspired and provided with best quality of legal studies that brings about prominent lawyers to the society. For this we cannot ignore the vital role of law teacher who built, groom and improve the skills of the law students and provide the mechanism to establish sound legal system in our country.

In India, Legal education has been on the agenda of the government bodies, including The Law Commission of India, University Grants Commission, and The Bar Council of India for more than six decades and it is taking several initiatives towards improvement of legal education. Legal education has also contributed in their own modest ways to the current debate on legal education reform.<sup>29</sup>

## **History of Legal Education in India**

There are different views regarding the origin of the legal system in India. There was an intricate and comprehensive legal system in ancient India. The concept of Legal Education in India goes back to the Vedic age when it was based on the concept of Dharma. Though there was no formal education to impart law, which can be understood as such law there was ***Karma and Dharma*** was the basic grandeur for every living Individual. Training was self-acquired in matters connected with Karma. The King either used to dispense justice themselves or appoint Judges and assessors to administer justice.<sup>30</sup>

However, once British Rule was established in India, the system of dharma gradually replaced. Thus, the system prevalent in India today is yet another colonial hangover and was instituted after establishment of British Rule in India. It was only subsequent to this that efforts were started to streamline the profession. This was because only then ***Mukhtars*** and

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<sup>27</sup> Prof. V. Shyam Kishore, “The Changing Dimensions of Legal Education in India” (May 18, 2016) available at <http://www.lawctopus.com/the-changing-dimensions-of-legal-education-in-india/> (Last Modified at December 11, 2016).

<sup>28</sup> Mrs. Rajni Parmar Assistant Professor, Amity Law School, Jaipur, [rparma@jpr.amity.edu](mailto:rparma@jpr.amity.edu) (Last Modified at December 11, 2016).

<sup>29</sup> B. C. Nirmal, “Legal Education in India: Problem and Challenges”, 20 IJMLJ 139 (2012).

<sup>30</sup> Scenario of Legal Education in India (Chapter IV), India, available at: [http://shodhganga.inflibnet.ac.in/bitstream/10603/68186/13/13\\_chapter%204.pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/68186/13/13_chapter%204.pdf) (Last Modified at December 10, 2016).

*Vakils* were permitted to practice in *Mofussil courts* and they were not acquainted with the rule of law at all. Subsequently, they were replaced by pleaders who were allowed to practice at the district level by virtue of having obtained a law degree. Those enrolled were permitted to practice in any court subordinate to High Courts<sup>31</sup>. For almost a century from 1857 to 1957 a stereotyped system of teaching compulsory subject lecture method and the two year course continued. The need for upgrading legal education has been felt for long.. India is perceived as a country with a rich tradition in legal education.

In 1857, three Universities were setup in **Calcutta, Madras and Bombay**, which took the first steps towards imparting formal legal education by introducing the subject as part of their curricula<sup>32</sup>. It is necessary to have qualified lawyers in order that the rule of law is preserved. Numerous Committees were set up periodically to consider and propose reform in legal education. In the Case *Powell v Alabama*<sup>33</sup>, Hon'ble Supreme Court pontificated on the necessity of an advocate in the following words,

**“Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of council he may be put to trial without a proper charge, be convicted on improper evidence or evidence irrelevant to the issue or otherwise inadmissible. He then lacks both skills and knowledge to adequately prepare his defence, even though he may have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he may not be guilty, he faces a danger of conviction because he knows not how to establish his innocence. If that be true of men of intelligence, how many more trice is it of the ignorant and illiterate, or those of feeble intellect.”**

The same sentiment was echoed by Hon'ble Supreme Court of India in *Suk Das v Union Territory of Arunachal Pradesh*<sup>34</sup>, when it opined that the absence of legal education and awareness was responsible for the deception, exploitation and deprivation of rights and benefits of the poor. In such a situation, law ceased to be protector because the persons it protects and unaware of the protection extended to them.

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<sup>31</sup>.A. K. Avasthi, “Powerlessness of The BCI to Improve Standards of Legal Education”, 46(1) Journal of Indian Law Institute 55 (2004).

<sup>32</sup>.B. R. Nahata, “Legal Education and Profession – an Introspection”, 4 AIR (Journal) 83, 85 (2002).

<sup>33</sup>. 287 US 45 (1932).

<sup>34</sup>.AIR (1986) SC 990.

## Current Status of Legal Education in India

After Independence, the situation changed completely. In 1950, we adopted a Democratic form of Government of which rule of law became the foundational doctrine. In the Landmark judgement of *Keshavananda Bharti v State of Kerala*<sup>35</sup>, Hon'ble Supreme Court held that the rule of law is basic foundation of our democracy. Rule of law says that **“Be you ever so high, the law is above you”**. Education has wider implication. It stands for development. Education makes man perfect.

In the words of Swami Vivekananda – **“It is the manifestation of perfection already in man.”** Again, legal education makes men law-abiding and socially conscious. Legal education helps in bringing and establishing socio-economic justice. Change is the law of nature and law is the regulatory of social change. It is *Sine qua non* for the development of rule of law and a sustainable democratic order. In *Manubhai Pragaji Vashi & Ors v State of Maharashtra*<sup>36</sup> Hon'ble Supreme Court held that – **“The legal education should be able to meet the ever growing demands of the society and should be thoroughly equipped to cater to the complexities of different situations.”**

The Law Commission of India has taken preferable steps to widen the outreach of legal education, even to the remotest corners of our nation. All the public and private Law colleges are given considerable importance and the criteria are fixed for the admission procedure. Legal education in India plays a vital role because Lawyers are the backbone of the society.<sup>37</sup>

## Regulatory Bodies for Legal Education

The Legal education in India is regulated by various authorities namely, The Bar Council of India<sup>38</sup>, affiliating Universities, State Government and The University Grants Commission. The issues and challenges which law faculties are facing in India have been time and again studied. According to Law Commission of India 14<sup>th</sup> Report {1958} and 184<sup>th</sup> Report {2002}, National Knowledge Commission Report in 2007 and National Legal Council {NLKC} and the observation of Supreme Court in *The Bar Council of India v Bonnie FOI law college and Others (2008)*, apart from the decision, have some relevance on the issues

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<sup>35</sup>. (1973) 4 SCC 225 at p. 333.

<sup>36</sup>. (1996) AIR, 1 (1995), SCC (5) 730.

<sup>37</sup>. Rushda Pathan, “Legal Education in India”, 10 August, 2015, available at <http://adhrit.in/legal-education-in-india/> (Last Modified at December 13, 2016).

<sup>38</sup>. 15<sup>th</sup> Chief Justice of the United State (1969 - 86).

and challenges of law teachers and the various seminars and conferences held throughout the country. The Law Commission of India felt that **“Legal Education is fundamental to the very foundation of the judicial system”** and took the study of legal education *suo motto*.

Legal Education is influenced by a multitude of factors stated as follows:-

- 1) Governmental Policy,
- 2) The Bar Council of India (BCI),
- 3) University Grant Commission (UGC),
- 4) Affiliated Universities,
- 5) Private Governing Body of Law Colleges coming under Grant-in-Aid,
- 6) National Litigation Policy,
- 7) Developments in Legal Profession/ Curriculum Development,
- 8) Development in Legal System,
- 9) Developing a research Culture in Law Schools and Universities,
- 10) The kinds of students who gets enroll/ Methods of Teaching, Clinical Experience and Assessment of Students,
- 11) The Commitment and Caliber of the Faculty/ Measures to Attract and Retain Better Faculty,
- 12) The Infrastructure Available,
- 13) Technological Upgradation and Advancement,
- 14) Development in Other fields of Education,
- 15) The change takes place in Society.<sup>39</sup>

A critical issues in legal education in the time to come is international legal education. What is to be seen is how law schools, academicians, professionals throughout the world respond to this need. Enormous developments are taking place in the global economy. Initiatives are being taken from the top down, and quite literally, from the bottom up.

## **Opportunities and Challenges In Indian Legal Education System**

Let us consider the **Present Scenario** of legal education in India. Two Systems are operating simultaneously.

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<sup>39</sup>. Prof. Mrs. Srividhya Jayakumar, “Challenges Facing Legal Education – Some Concerns”, 31<sup>st</sup> October, 2010, [http://dspace.vpmthane.org:8080/jspui/bitstream/123456789/1643/1/Challenges\\_facing\\_LE.pdf](http://dspace.vpmthane.org:8080/jspui/bitstream/123456789/1643/1/Challenges_facing_LE.pdf) (Last Modified at December 13, 2016).

One System of Legal Education is **Three-Year Law Course** introduced by The Bar Council of India in 1967. For admission in Three-Year Law Course, a person must be a graduate having Bachelor's Degree in the discipline of Science, Arts, Commerce, Medicine or Engineering, etc. whatever an individual like to do.

Other System is **Five-Year Law Course** initiated by The Bar Council of India in 1982. This system has since been gradually adopted in various Universities and Colleges as BA-LLB, BBA-LLB, etc..... In 1987, NLS was established at Bangalore by The Bar Council of India. For admission in Five-Year Law Course, a person is admitted at the end of twelve years of Schooling, and completing the course in Five-Years.

First two years of the Five-Year Law Course are devoted to Pre-Law Course where seven compulsory subjects are to be studied, namely:

- i) General English
- ii) Torts
- iii) Law of Contract
- iv) Political Science
- v) Economics
- vi) History
- vii) Sociology
- viii) Legal Language including Legal Writing
- ix) History of Courts, Legislature and Legal Profession in India.

Remaining Five-Year Law Course is devoted to the study of law subjects only<sup>40</sup>.

A comparative study of the two systems is necessary to appreciate their respective character and competence of the legal profession depends almost entirely on the quality and content of the legal education that is obtained by the budding lawyers. There are number of reasons why the standards of education in India has not reached the heights and prestige associated with the same abroad. These can be broadly classified into issues related to infrastructure, curricular activities, faculty and students themselves. The following are some important issues that deserve serious attention with a view to promoting global legal education in India:-

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<sup>40</sup>. Justice S. P. Mehrotra (Judge), "Re – Inventing Legal Education: Challenges & Opportunities." Available at <http://www.ijtr.nic.in/webjournal/6.htm> (Last Modified on 14 December, 2016).



1. **Curriculum and Teaching** :- A few decades back, law schools in India could do well as long as their curriculum was focused on Indian law and issues relating to the country's legal system. While there was some limited study of international and comparative law, the larger focus was primarily on issues relating to the Indian legal system. This was necessary and being approached. There is indeed greater scope for improvement in promoting excellence in teaching and research relating to Indian law and to addressing the challenges facing the legal system, including the need for establishing a society that respects the rule of law and meet the challenges of globalization.

However, new and emerging law schools cannot afford to limit their focus to teaching and research on issues relating to Indian law. In fact, the appetite of Indian law students for understanding international and comparative law has significantly increased over the year, given their participation in International moot court competitions. The most challenging task is to strike a proper balance to ensure that students are taught a fair mix of courses that give them knowledge and training in Indian law, but at the same time prepare them for facing the challenges, whereby domestic legal mechanisms interact with both inter-national and foreign legal systems. This interaction is going to deepen in the year to come and our law schools must prepare themselves to face these kind of challenges.

2. **Knowledge and Faculty Research** :- Hiring of good and fully qualified faculty in colleges and universities has been a challenge in law schools in India and also abroad. Generally, the financial incentives which are offered by the private sector in India and also in 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. The issues related to the Indian Legal Education system are not only taught and researched in India but also in many other parts of the world. Growing number of Indian lawyers and scholars are involved in this effort. There is a need to have a global focus in hiring faculty for Indian Law Colleges and Universities. But of course, success will depend on the college's ability to provide the right kind of intellectual environment and financial and other incentives for India or foreign scholars to teach and pursue research in India and to contribute to its growth story.

With the development of web-based research and other online research tools and databases, there has been a remarkable transformation in the development of comparative and international law research. It is important for Law Colleges and Universities to have or provide access to legal material from jurisdictions all over the world. These need to be updated consistently to keep up with the changing dimensions of law in all societies. There is also a need to promote faculty and students, with a view to aid global knowledge relating to law and legal institutions. All this needs huge resources. It is not possible for the government of our developing country i.e. India, to support them through public funding.

3. **Programs and International experience** :- Indian Law Colleges and Universities need to consider innovation when it comes to the degree programs offered by them. At present scenario, there are two models: the Three-Year Bachelor of Law (LL.B.) programme offered by many universities in India; and Five-Year integrated B.A., BB.A, B.COM. (Hons.)-cum-LL.B. programme offered by the National Law Colleges in India, started in Bangalore. It will be useful to look at the experience of the United State and offering the Juris Doctor (J.D.) programme. Increasing many parts of the common law world are beginning to offer J.D. programmes; law schools in Australia, Canada and Hong Kong are in the forefront. And also there is an emerging trend of J.D. programmes.

There are sound justifications for offering a J.D. programme in India. It will be useful to examine whether a graduate entry J.D. programmes can be established in India. The rationale for this has been articulated thus: “The Colleges firmly believes that the Melbourne J.D. programmes, designed and taught by the school, represents the right response to the challenge of providing the highest quality legal education in the demanding and competitive international environment of the 21<sup>st</sup> century.”

4. **Interaction and Collaboration** :- The law colleges 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 consistently reinvent themselves for facing the challenges of globalization through exchange and collaboration programmes. This has different implications for faculty, students, and for the development of teaching and research programmes. In this regard, it is important to note that token arrangements of collaboration may not be helpful to the institutions involved. There is a need to

develop a shared understanding of the nature of exchange and collaborative programmes being established for them to be effective and beneficial for all the parties concerned.<sup>41</sup>

- 5. Infrastructure and Resources in Law Colleges and Universities :-** Firstly, Our law Colleges need infrastructure and resources comparable to global universities, particularly when access to such universities is available to both our faculty and students. If Indian Law colleges have to meet the demand of the changing global society, the training we impart to our law students ought to be thoroughly re-examined. Our Law colleges have to seek a dramatic transformation in providing infrastructure and resources to our faculty and students. Library facilities in our Law colleges need to be substantially upgraded, for which huge resources have to be mobilized. Inevitably, the resources that are needed to reach international standards for providing global infrastructure for our law schools have to be raised through library endowments and private donations.

Secondly, basically, the Legal Aid Cell, Moot Court rooms, Law language lab..., should be established in the institutions as these are the essentials requisites of Five-Year Law course infrastructure as per BCI norms too. But establishment of integrated Five-Year Law colleges are so expensive that a number of beginning institutions could not even fulfill the basic requirements of building structure and sufficient number of Law faculties. Though the institutions themselves are lacking with the availability of common factors, it is very hard to be in the compatibility of global lawyers and scholars.

- 6. Socio-Legal Research Perspective :-** The level of research facilities available to a Law faculty of India is not conducive to sustained research. The lack of role-facilities generates confusion, conflict as well as ambivalence towards primary role obligation calling for sustained attempts to contribute to knowledge in the field. A law Faculty unless is a dean or head of the university department or a principle of Law college gets no type and duplicate assistance. Very few knows how to type and of these not many can afford a typewriter. Availing the service of a professional typist remains for most of them a luxury. The role of Indian Council of Social Science Research can be

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<sup>41</sup>. Professor C. Raj Kumar, "Global Legal Education in India: Opportunity and Challenges", 30 April, 2009 available at <http://www.archive-jgu.in/sites/default/files/GlobalLegal30April2009.pdf> (Last Modified on 15 December, 2016).

very significant. Multi-disciplinary and Inter-disciplinary research is yet rare. A most encouraging feature in the recent times has been that the concept of Indian Law Colleges with focused research has made some profound and everlasting mark. The law community has actually acknowledged the same.

The famous Irish author **Edmund Burke** who rightly said, *“You can never plan the future by the past.”* This recommendation will put pressure on the Law Colleges and the regulators to work together to determine how best to ensure that we promote an awareness of access to justice issues among Law Students and also updates Our legal Education System so it better addresses those needs<sup>42</sup>.

### **Supreme Court Judges Stresses on improving quality of Legal Education in India**

Supreme Court judge **Arun Mishra** on 14<sup>th</sup> May, 2016 i.e. on Saturday stressed on the need to improve the quality of Legal Education in India and said The Bar Council of India should took into it.

**“Quality of education should be good. If the number of institutions or colleges is high but there is no quality, then it is useless,”** he said while speaking on challenges and future of the profession at a conference here. He also highlighted the need to clear pendency in courts and provide **“affordable justice”** to people.

Suggesting young lawyers to work hard and practice with dedication, he stressed on promoting **‘Guru-Shishya’** tradition in lawyer’s fraternity and said young lawyers and newcomers should be promoted and given adequate remuneration by seniors. Newly-appointed Chief Justice of Rajasthan High Court **Navin Sinha** said new lawyers should keep themselves updated with developments and new judgments<sup>43</sup>.

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<sup>42</sup>. Dr.RajniParmar, “Problems and Challenges of Legal Education”, (IJMSSR Vol.5, P. 9, September 2016) available at <http://www.irjcjournals.org/ijmssr/Sep2016/7.pdf> (Last Modified on 15 December, 2016).

<sup>43</sup>. Press Trust of India, “SC Judge Stresses on improving quality of Legal Education”, 14 May, 2016, available at <http://indiatoday.intoday.in/story/sc-judge-stresses-on-improving-quality-of-legal-education/1/668204.html> (Last Modified on 20 December, 2016).

## Conclusion

Access to knowledge plays a major role in shaping a law student. Absence of access to legal resources is a major problem faced by the legal institutions of the country. In a legal system where ignorance of law is not an excuse, access to knowledge of law remains a primary concern of Legal Education. It may be also 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.

The Legal Education reform raised a number of questions on which greater dialogue is needed among the vast number of Indian law teachers. There is no doubt that Legal Education in India is going through a very exciting phase. Though India has the largest population has increasingly seen barriers of gender and socio-economic strata fall by. With the legal sector in India poised to be opened up for liberalization, the opportunities for bright law graduates are immense and the new generation of law schools, particularly the private universities plays a major role for improving the standard of Legal Education in India. As a teacher is a nation builder and only a committed and devoted teacher can produce conscientious students, honest professionals and citizens. This is what the nation in general and the legal profession in particular need today.

According to Justice A. M. Ahmadi, **“We have waited long enough to repair the cracks in legal education system of this country and it is high time that we rise from arm – chairs and start the repair work in right earnest.”**

Before I finish, I must opine that any overnight solution in this regard is not possible. But, at the same time, any inclined to lay down principles are undeniably true adherence to old, traditional and existing system would be suicidal in the days ahead. So, a balance should be maintained in order to change in the existing system, so that India Legal Education can keeping in mind the necessity of Globalization. Let’s gird up the lions of our country, to make necessary changes in the existing system so that Indian Legal Education can face the global challenges.

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- 9) [http://shodhganga.inflibnet.ac.in/bitstream/10603/68186/13/13\\_chapter%204.pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/68186/13/13_chapter%204.pdf) retrieved on December 10, 2016.
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## Brief About Author



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# Legal Education in India: Issues & Challenges

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*“The Study of laws, on condition they are good laws, is unrivalled in its ability to improve students”*

- **Plato**

*“To mould the nation to the pinnacle of best administration of justice we need to educate and makeover the best lawyers”*

- **Carl Jung**

## Introduction

This artefact makes some strong scrutiny and flak about “**Legal Education in India**” that is a pondering issue in the present contemporary world. Legal education reform is taking place around the globe to make it more responsive than ever before to the legal need of the community-national as well as global and the learning needs of the students to become professionally competent to play their role in our increasingly interdependent world.

The focus of legal education reform in other parts of the world is on integration of cross-border and international dimensions of practice with the existing curriculum, with greater emphasis on problem-solving, negotiation and traditional curricular focus on litigation, use of new technology and a greater use of clinical legal education for bridging the existing gaps between theory and practice of law. This artefact focus on few noteworthy challenges and issues that are faced by the faculties and the students at large as a law graduates in the contemporary world.

In India, legal education has been on the agenda of the government for more than six decades.<sup>44</sup> Government bodies, including the Law Commission of India<sup>45</sup>, University Grants

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<sup>44</sup>Law Commission of India 184<sup>th</sup> Report. (2002). *The Legal Education & Professional training and proposals for Amendments to Advocate Act, 1961 and the University Grants Commission Act 1956*. Retrieved from <http://lawcommissionofindia.nic.in/reports/184threport-parti.pdf>

<sup>45</sup> Law Commission of India is an executive body established by an order of the Government of India. Its major function is to work for legal reform. Its membership primarily comprises legal experts, who are entrusted a mandate by the government. The commission is established for a fixed tenure and works as an advisory body to the Ministry of Law and Justice.

Commission (UGC)<sup>46</sup> and the Bar council of India (BCI)<sup>47</sup> have taken several initiatives towards improvement of legal education.

Law, legal education and development have become inter-related concepts in modern developing societies which are struggling to develop into social welfare states and are seeking to ameliorate the socio-economic conditions of the people by peaceful means. The same is true for India. It is the crucial function of legal education to produce lawyers with a social vision in a developing country like India. However, the legal education, in modern times is confined to production of practicing lawyers alone without basic knowledge on the subject because of the education that is imparted to the students in the present existing society is not satisfactory.

Today its scope and ambit has got widen up and its impact is felt every sphere of human life. The law being a tool for the social egalitarian society and legal education can be regarded as an instrument for the social design<sup>48</sup>. Since the very foundation, the bases, the education is like cat on the wall and because the base for the egalitarian society is in a relative form, the goal of achieving egalitarian society is at inferno.

For any society, ripening of civilization is attributed through the social consciousness of the significance of law. The history of our own independence movement, if impartially written, will devote more pages to lawyers than to the votaries of any other vocation.

It is well accepted proposition that **‘The profession of Law is noble calling’** and **‘The members of the legal profession occupy a very high status in the society’**.<sup>49</sup>

Since Law is the foundation of every society or a nation, legal education of the people is a *“sine qua none”*. Legal education does not only create law-abiding citizens, but also produces brilliant academicians, visionary judges, astounding lawyers and awe-inspiring jurists. Since law is a means for social changes and economic progress. These four classes of

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<sup>46</sup> The University Grants Commission of India is a statutory body set up by the Indian Union government in accordance to the UGC Act 1956 under Ministry of Human Resource Development and is charged with coordination, determination and maintenance of standards of higher education. It also provides recognition to universities in India and disburses funds to such recognized universities and colleges.

<sup>47</sup> The Bar Council of India is a statutory body established under section 4 of the Advocates Act 1961 that regulates the legal practice and legal education in India. It also sets standards for legal education in India and grants recognition to universities whose degree in law will serve as a qualification for students to enroll themselves as advocates upon graduation.

<sup>48</sup> Mehta, P.L., & Sushma Gupta. (2000). *Legal Education and Profession in India*. New Delhi

<sup>49</sup> Krishna Iyer, V.R. (1979). *The Social Dimensions of Law and Justice in Contemporary India – The Dynamics of a New Jurisprudence*. New Delhi: All India Report



men acts as catalyst for the growth of the society and their main focus is to disseminate creativity in the field of legal education.

The policy of legal education should be moulded in tune with the rapid contemporary changes occurring as a result of scientific and technological developments.

Currently, Legal education in India generally refers to the education of lawyers before entry into practice. Legal education in India is offered by the traditional universities and the specialized law universities and various law schools only after completion of an undergraduate degree or as an integrate degree. But now in the present status, the colleges and various law schools like '**National Law School**' are providing an integrated 5 years course with honors degree which is considered to be one of the vital degrees nowadays.

When looking through the history of legal education, Legal education derives its impetus from the economic, social and political set up of the society. Legal education as an human science which furnishes beyond techniques, skills and competences the basic philosophies, ideologies, critiques and instrumentalities for the creation and maintenance of a '**just**' society.<sup>50</sup> So; as these were the main genesis for the growth of law, now the law in turn has to dance according to the tune of changes in the bases.

## **Nature of Legal Education**

Without entering into the perennial debate on whether legal education is liberal or professional, there will be no use in the discussion of challenges and issues of legal education in the 21<sup>st</sup> century. It is submitted that it is a '*defacto*' combination of both.

The prime mover of this essay, agrees that legal education has a liberalizing effect but sadly our law schools have failed in training students for the legal profession and melancholy producing too much liberalizing effect in law graduates. At any rate in the present 'materialistic world'<sup>51</sup> the best brains can be attracted to law schools only.

One of the main controversial problem is that students on one hand are prepared with the legal profession by learning the concepts and theories that are laid down in various statutes, but legal education should be such which prepares students not only to memorize the

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<sup>50</sup> Advocate Devdas, T.M. (2010). *History of legal education in India*. Retrieved from strippedlaw.blogspot.in,

<sup>51</sup> Excessively concerned with physical comforts or the acquisition of wealth and material possessions, rather than with spiritual, intellectual or cultural values.

concepts and vomit that in the papers, but also to meet the economic challenges of life that awaits them around the corner but indeed follows that students should be prepared not only for playing a role in the traditional profession as a lawyer in a puckered courtroom but also must indulge in diverse other fields where the knowledge of law and training in the techniques of legal profession are required. On this understanding, legal education is a career oriented education. Adhering to this point of view, the author do not mean that legal education should be commercialized.<sup>52</sup> Rather, the author humbly submits that law schools are not commercial colleges and hence they should not go for commercialization of legal education at all.

In the present 21<sup>st</sup> century the expression “Less” plays predominantly rather than “In search of”. Through the penman enthusiasm, the law students are needed to be inspired and provided with the quality of legal studies that brings about prominent, eminent, protuberant, notable lawyers to the society by indulging in the socio-economic conditions of the people for that the education plays a very important role like including legal aid committee and teachings students about the free legal aid which in the present situation is very peculiar to learn and teach not only the illiterate but also the literate people who seems to have not learn but merely having a degree which is one of the biggest flaws in the education. So as legal students and in the legal education various other views such as economic, social, political views must be included to understand the nature of people and the problems that are faced in the day to day life. We cannot ignore the pivotal role of the teacher who built, groom and improve the skills of the law students. They provide the mechanism to establish sound legal system in our country.

At the same time one of the biggest challenge is the ‘**infrastructure of law schools/ colleges**’ has significant place where we form the expectations on the part of the lawyers as to what their practice will be and we need to open up those horizons for a much more multi-faceted set of skills and see lawyers not so much as technicians who deliver legal services but as problem solvers who can look at the problems people have from a variety of perspectives and must indulge with quotidian citizens and has to take part in their problems and has to look at the problems through sociological and economical perspective<sup>53</sup>. But the true fact lays in the oppression of insufficient and ineffective legal teachings which results in defective legal administration of Justice. Many lakhs students are being passed out of law schools every year

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<sup>52</sup> Aanand, A. (2014) .*Legal Education & its Challenges*. Retrieved from [www.legalservicesindia.com](http://www.legalservicesindia.com).

<sup>53</sup> *Scenario of Legal education in India*. Retrieved from [http://shodhganga.inflibnet.ac.in/bitstream/10603/68186/13/13\\_chapter%204.pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/68186/13/13_chapter%204.pdf)

but for the ‘**sake of name**’ they can be called as lawyers by mouth, but the real fact is that ‘**the fame, the holiness, the eminence, the glory, the prominence**’ are eroding as time passes with the changing contemporary world.

Chief Justice Burger<sup>54</sup> in his address to the American college of Trial Lawyers in Columbia observed that:

*“In some jurisdiction, up to half of the lawyers who appear in court are so poorly trained in that they are not properly performing their job and that their manners, their professional performance and their professional ethics offend a great many people. They are engaging in on the job training at the expense of their clients’ interest and the public.”*

Chief Justice Burger’s comment would hold equally good in the context of legal profession and its education in India. The author opine that it is very well said that, it is very general knowledge that a large part of the two lakhs graduates being added every year to the existing ten lakhs advocates in the country, are absentee law students who pass out from about numerous law colleges/schools. Such advocates ‘**ultimately learn at all, at cost of the poor clients and court time**’. No wonder then that this, in turn, leads to the dispute resolution machinery to be seen as a villain by the society at large<sup>55</sup>.

## **Regulatory Bodies for Legal Education**

The Bar Council of India and the Universities principally regulate formal legal education endeavouring to produce lawyers in India. The problem and challenges faced in legal education in India have been time and again studied but the conclusion is not been drawn yet it is still a contemplative issue so that the result of this is affecting the legal education of lot and lots of students with insufficient knowledge that is a necessary for the law students.

Law commission of India in its 14<sup>th</sup> report on 1958 and 184<sup>th</sup> Report in 2002 and National Knowledge Commission report in 2007 are notable apart from the several High court and Supreme Court judgments and the various seminars and conferences held throughout the country. Law Commission of India felt that “*Legal Education is fundamental to the very*

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<sup>54</sup> Warren Earl burger was the 15<sup>th</sup> Chief Justice of the United States from 1969 to 1986. The judgments which was delivered by him and decisions under him where conservatives.

<sup>55</sup>Abhishek Anand. (2014). *Legal Education and its challenges*. Retrieved from <http://www.legalindia.com/legal-education-and-its-challenges/>

*foundation of the judicial system”* and took up the study of legal education *suo motto*<sup>56</sup>. The observation of Supreme Court in *Bar Council of India v Bonnie FOI Law college & Others*<sup>57</sup>, apart from the other decisions, have some relevance on the problems and challenges of law teachers and students.

According to author opinion, the very first and basic issue with respect to legal education is the problem with law teachers, faculties and this can be broadly divided into two groups namely; one relating to teaching and learning focusing on the role of legal education in improving, legal profession, legal system and society. Indian legal system has not focused on practical skills and assessment models to make law students better prepared for the practice of law.

Aline Grenon and Louis Perretil comment: *"Law schools clearly have a duty to ensure that all their students receive a legal education which will prepare them to cope effectively with the challenges of legal practice in the 21st century. The following are ways by which this goal could be reached:*

*(a) Law schools could try to promote more effectively their international and comparative law courses; for example, efforts could be made as early as orientation week in first year law to sensitize students to the need to acquire knowledge in these fields.*

*(b) Law schools could make some international and comparative law courses compulsory.*

*(c) Finally, law schools could ensure that law courses national and (state) law systematically include a component".*

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. The primary focus of the legal education in the 21<sup>st</sup> century has to be **‘A lawyer has to comprehend the new social and economic changes in the world’** but it has failed to do so. 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 role. 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

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<sup>56</sup>Rajni Parmar. (2016). Problems and Challenges of Legal Education. *International Journal of Management and Social Science Research*, Vol 5, No.9, 53 - 57Retrieved from <http://www.irjournals.org/ijmssr/Sep2016/7.pdf>

<sup>57</sup> S.L.P. (C) No. 22337/ 2008

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<sup>58</sup>. As opined by the famous jurist, Nani A. Palkhivala, *"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 courses"*.

Michael S. Greco propounds that *"Lawyers are always going to be students, because the learning doesn't stop in law school. The irony is that when we become lawyers, we not only continue to be students, we simultaneously are teachers"*.

The study in law most certainly does not end with graduation from law school, but continues throughout the lawyer's career. A large number of lawyers perceive critical gaps between what they are taught in law schools and the skills they need in the workplace, and appropriate technologies are not being used to help close this gap. There is a recognized need worldwide, that in order to ensure a thriving legal profession within a justice system, it is essential that a programme of continuing legal education is in place. Given the deep impact globalization has had on our lives and the legal profession, there is a greater need for continuing legal education for active practitioners, legal professionals and jurists. While the concept of continuing legal education and training programs shall address the basic issues of enhanced lawyer competency, it will more importantly, keep professionals abreast with the developments in the national as well as international legal arena. The legal professionals shall get a deeper understanding and an awareness of the challenges involving the global community and the changes taking place in contemporary times.

## **Protagonist of Supreme Court**

The judiciary plays a pivotal role in framing and deciding the laws. Numerous numbers of landmark judgment meticulously conferred that the legal education has to be changed time and again in India.

The Supreme Court of India in its landmark judgment in *Deepak Sibal v Punjab University*<sup>59</sup>, has held that the study of law should be encouraged as far as possible without any unreasonable intervention. The Supreme Court has realized the importance of discrimination

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<sup>58</sup>Rajesh Bindal. Justice. (2016). *Legal Education- A Global Perspective* Retrieved from [http://highcourtchd.gov.isub\\_pages/top\\_menu/about/events\\_files/GlobalSpeech.pdf](http://highcourtchd.gov.isub_pages/top_menu/about/events_files/GlobalSpeech.pdf)

<sup>59</sup>AIR 1989 SC 493

of legal knowledge and tried to impress upon the state to appreciate the same. Manifestly the state or the standing bodies are very frequently found adopting a negative and discouraging policy regulating the legal education. When the Bar Council of India has resolved to restrict the entry into legal profession to all those below 45 years has been struck down to be unreasonable and unconstitutional in *Indian Council of Legal Education v BCI*<sup>60</sup>. This type of restraint or regulations certainly will have an adverse impact on the new entrants into legal education.

In *Bar Council of India v Aparna Basu Mallick*<sup>61</sup>, the apex court held that if the acquisition of a degree in law is essential for being qualified to be admitted on a stat roll, it is obvious that the Bar Council of India must have the authority to prescribe the standard of legal education to be observed by the universities in the country. Conditions of standard laid down by the Bar council of India as to attendance in the law classes, lectures, tutorials, moot courts, etc. must be fulfilled before enrolment as an advocate.

The Apex court in *State of Maharashtra v Manughai Pragaji Vashi*<sup>62</sup> has observed that, “The need for a continuing and well recognized legal education is absolutely essential reckoning the new trends in the world order, to meet the ever growing challenges. The legal education should be able to meet the ever growing demands of the society and should be thoroughly equipped to cater to complexities of the different situations. The area of “deficiency” should be located and correctives should be affected with cooperation of competent person before the matter gets beyond control. Needless to say that repeated and competent academics should be taken into confidence and their services availed of, to set right matters.” All of the above observations made either by the judiciary or the commissions indicate the deficiency on the part of existing system and suggest need for the alternate mode of finance and management for the restructuring of legal education system in India. The present study is focused to riposte the concerns raised by these authorities and various other stakeholders regarding the status of legal education in India. The study also aims to suggest most suitable model of public private partnership in the field of education, which have been popularly implemented in different parts of the world, giving rise to a new dimension in the area of the provision of educational services.

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<sup>60</sup> AIR 1995 SC 691

<sup>61</sup> 1994 AIR 1334, 1994 SCC (2) 102

<sup>62</sup> AIR 1989 Bom 296, (1989) BOMLR 13, 1989 MhLJ 344

## Challenges Faced In the Legal Education in The Country

### Deficient Infrastructure in Legal Education

There are numerous numbers of problems and challenges with respect to legal education, the very first challenge is the deficient in infrastructure. The law schools in India have to recognize that there is a need for creating sound physical infrastructure. There should be more funds for this and for developing research projects and other initiatives to encourage faculty members. Generally, the infrastructure of the National Law Schools is better than what exists in the law departments of traditional universities. Improvement in infrastructure should be across the board, including in universities which still produce most of the law graduates (Government Law colleges and Deemed University). University campuses should be places that can inspire students and the faculty so that they are involved in reflecting upon the various problems that confront society<sup>63</sup>. Academic freedom to think and contribute cannot be ensured if universities lack the necessary physical infrastructure and financial resources this is one of the biggest issue.

Firstly, if Indian law schools have to meet the demands of the changing global society, the training we impart to our law students ought to be thoroughly re-examined. Our law schools need infrastructure and resources comparable to global universities. Our law schools have to seek a dramatic transformation in providing infrastructure and resources to the faculties and students.

Library facilities in law schools need to be substantially upgraded, for which huge resources have to be mobilized. Inevitably, the resources that are needed to reach international standard for providing global infrastructure for our law schools have to be raised through library endowments and private donations.

Secondly, the clinical lab, legal aid cell, moot court room and language lab should be established in the institutions, this the second biggest challenge that the law schools are still pondering on this issue. As per the '**list IV of the BCI norms 2010**', bestows that these are the essentials requisites of five year law course infrastructure as per BCI norms too. But establishment of integrated five year law colleges are so expensive that a number of burgeoning institutions could not even fulfil the basic requirements of building structures and sufficient number of law faculties. Since the institutions themselves are lacking with the

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<sup>63</sup>Raj Kumar, C. (2014). *Global legal Education in India*. Retrieved from <http://www.archivejgu.in/sites/default/files/GlobalLegal30April2009.pdf>

availability of common factors, it is very hard to produce eminent lawyers with good legal education in the compatibility of global lawyers and scholars<sup>64</sup>.

### **Recruiting Good Researchers**

There is a need to fundamentally re-examine the context of legal education in the country. The present system does not sufficiently recognize the key problem with regard to legal education. **‘Lack of faculty members who are good teachers as well as sound researchers’**. There is need to identify talent among young lawyers so that they can be encouraged to consider academia as a career option. There is no doubt that poor financial incentives discourage many young and brilliant lawyers from considering career in academia. It is important to address this issue as well. But there could be other factors where improvements and changes are feasible: such as career development opportunities within the law schools, development of research infrastructure including the resource to organize and participate in national and international conferences and undertake serious research; a harmonious environment that fosters mutual respect; governance of the law schools in a transparent fashion and above all faith in the leadership of the institution that excellence will not only be promoted as a general policy but affirmative efforts will be taken to encourage and support excellence.

Globalization and the changing dimensions of the Indian economy and polity have thrown up new challenges of governance. Rule of law in all its dimensions remains the single most important challenge the country is facing. The criminal and civil justice systems are under severe stress. The role of law schools in imparting legal education and developing lawyers who are rational thinkers and social engineers is central to the future of legal education and the development of a knowledge economy in India. This can be done only if the law schools are able to attract some of the best and brightest lawyers to make a lifelong commitment to teaching, learning and research so that they are able to inspire generations of students to work establishing a rule of law society in India<sup>65</sup>.

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<sup>64</sup>Rajni Parmar. (2016).Problems and Challenges of Legal Education. *International Journal of Management and Social Science Research*, Vol 5, No.9, 53 - 57Retrieved from <http://www.irjournals.org/ijmssr/Sep2016/7.pdf>

<sup>65</sup> Raj Kumar, C. (2016, September 29).Improving legal education in India. *The Hindu*. Retrieved from<http://www.thehindu.com/todays-paper/tp-opinion/Improving-legal-education-in-India/article14783272.ece>



Another issue in the legal education is the **“Impact of the Language Problem”**

The legal education in India has a proud heritage. In the earliest days of the independence movement and during the creation of the Indian Constitution, lawyers played a predominant role among those seeking social progress. But in recent years pride in the heritage has given way to concern about the present and alarm for the future by responsible officials. There has been a growing concern that Indian lawyers are not now playing a positive role in India's development. Rather, when in private practice, they are acting in the main as technical assistants to parties interested in manipulating or avoiding the impact of existing laws and legislations. It is much more serious in a developing society where new institutional arrangements are needed to facilitate orderly change. In India the problem is made even more severe because the law and the legal system have long severed as a unifying factor in a society beset by internal divisions between religious, caste and linguistic groups<sup>66</sup>.

The leaders and the leading lawyers and the senior advocates of the legal profession in India are aware of the need for the change. At the same time, they recognize in order to change fundamentally the legal profession it will be necessary to revamp Indian legal education.

For sometimes now Indian law schools have attracted the poorest students. In almost all law schools in India the vast majority of students are unmotivated as they do not intend to practice law because the way they learn the statute and the teaching methods are absolutely crap and this fades the very idea of learning law among the students, very importantly the legal language is also poor and it is heckled by all the professors. They seek an easily obtainable advanced degree in order to improve their earning capacity in non-legal work. The caliber of law faculty has been generally poor, although there have always been a good number of distinguished exceptions, the texts undistinguished and the curriculum badly constructed. Classes have been almost entirely by lecture, stressing memorization and the ability to manipulate words. The relations between faculty and students are generally formal nowadays, there seem to be no interactive sessions between them and no way of asking doubts to the professors, the teaching methods now seems to the same as high school level where students are asked to memorize and vomit it in the papers, is absolute foulest.<sup>67</sup>

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<sup>66</sup>Pillai C. (2007). Legal Education: In Search of New Vistas.50(3) *Journal of Indian Law Institute*, 399.

<sup>67</sup>Julius Getman, G. (1969).The Development of Indian legal education: The impact of the language problem, *Journal of Legal Education*, 21,513

## Necessary Modification Required by Law Schools

The law schools are required to make strategic plans that are set out a clear vision of justice delivery and also address the emerging realities of the market. Goal of the law schools should be to build a system of legal education that:

1. **Promote an inter-disciplinary approach of law with other social sciences:**

The author's opinion is that if a person who studies law must have some proficiency in country's history, political theory and philosophy to enable him/ her in becoming agents that participate in institutional changes, according to the change in the society.

2. **Encourage proficiency in languages:**

As a penman to this article there is largely a need to command over spoken and written language, effective oral skills, diction and extensive reading are pre-requisites that go without saying. Knowledge of a foreign language is important to be lawyer in the global economy. Law students should be provided with the opportunity to learn a foreign language of their choice<sup>68</sup>.

3. **Personal Characteristics:**

Lawyers, legal executives all need good intellectual ability, the ability to assimilate and analyze facts quickly.

4. **Develop a critical outlook:**

Law teachers should switch over to what is called as '**comparative method of teaching**'. The law students should be mobilized to evaluate the existing or prospective draconian laws, participate in discussions on the latest developments and required amendments.<sup>69</sup>

5. **Encourage Clinical Training:**

'Justice' must become central to the law curriculum and community based learning must give the desired value orientation in the making of a lawyer. This concept of justice education in the field of legal education means that the law school curriculum

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<sup>68</sup>Singh, K.P (1999).Legal Education in India: Some Suggestions, *All India Report, Journal*, Vol 3, 169

<sup>69</sup>Current trends on legal education in India.(2015)Retrieved from<http://journal.lawmantra.co.in/wp-content/uploads/2015/12/51.pdf>

should entail certain programs like Lok Adalats<sup>70</sup>, Legal Aid<sup>71</sup> and Legal Literacy<sup>72</sup> and para-legal training<sup>73</sup>.

The complementary teaching methodology of learning by doing and the conventional classroom teaching, through the law schools clinics, help in developing the advocacy skills in the law students and solve most of the existing gaps in the legal education by giving a practical view to the students so that the education is surmounted from the issues and challenges. 'Mock' trials and Moot Court competitions, structured as court trail, client counselling, legal research, editing of law journals, legal drafting and conveyancing, court visits and many more. In the curriculum is one of the ideal ways to facilitate performance based education. It means of improving in students the basic skills such as the skills of critical thinking, presentation skills, participation skills, and the skill to work as a team, the leadership quality in addition to the boost in students' knowledge of law. These all contribute what is a perfect lawyer with perfect education. Who can stand alone in the bar and produce a Nobel calling to his profession.

## **Concluding Opinion**

Legal education reforms in India should go along with the encouragement of global philanthropic initiatives, improvement of infrastructure as well as revised course structure at the reciprocity of global competition, so that resources are available to maintain international standards to impart quality of education and conduct impact-oriented research.

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<sup>70</sup> The Lok Adalats (People's courts) settle dispute through conciliation and compromise. Legal Service Authorities Act 1987. The decision of the Lok Adalats is binding on the parties to the dispute and its order is capable of execution through legal process. The decision is very effective in settlement of money claims. Disputes like partition suits, damages and matrimonial cases can also be easily settled before Lok Adalats, as the scope for compromise through an approach give and take high in these cases. A Lok Adalat has the jurisdiction to settle, by way of effecting compromise between the parties, any matter which may be pending before the court, as well as matters at pre-litigative stage i.e. disputes that have not been formally instituted in any court of law.

<sup>71</sup> Legal Aid is the provision of assistance to people otherwise unable to afford legal representation and access to the court system. Legal aid is regarded as central in providing access to justice by ensuring equality before the law, the right to counsel and the right to a fair trial. Article 39A of the Constitution of India, provides for equal justice and free legal aid. The Article emphasizes that free legal service is an inalienable element of 'reasonable, fair, and just procedure, for without it a person suffering from economic or other disabilities would be deprived of the opportunity for securing justice.

<sup>72</sup> Legal Awareness also known as legal consciousness and legal literacy, is the empowerment of individuals regarding issues involving the law. Legal awareness helps to promote consciousness of legal culture, participation in the formation of laws and the rule of law.

<sup>73</sup> A paralegal is an individual, qualified by education, training or work experience, who is employed or retained by a lawyer, law office, corporation, governmental agency or other entity and who performs specifically delegated substantive legal work for which a lawyer is responsible.

The legal education should be able to meet in the ever-growing demands of the society and should be thoroughly equipped to cater to the complexities of the different situations. Specialization in different branches of the law is necessary. The requirement is of such a great dimensions that sizeable or vast number of dedicated persons should be properly trained in different branches of law every year by providing or tendering competent and proper legal education. This is possible only if adequate number of law colleges with proper infrastructure including expertise, law teachers and staff are established to deal with the situation in an appropriate manner. The area of deficiency should be located and correctives should be affected with the co-operation of competent persons before the matter gets beyond control. Reforms in legal education cannot wait any longer and that there can convince the brilliant young people to accept teaching assignments in law. We need to produce a number of committed and dedicated teachers who in turn need to produce a new crop of hard working lawyers, honest judges and distinguished jurists. This is a tough and certainly a challenging task. As a teacher is a nation builder and only a committed and devoted teacher can produce conscientious students, honest professionals and citizens. This is what the nation in general and the legal profession in particular needs today.

Legal education is a good investment which if wisely made will produce most beneficial results for the nation and catalyze the speed of development. Of late the role of a lawyer in a common law system is more than a skilled legal mechanic, who acts as a social engineer, social reformer, harmonizer and a reconciler. The legal education provided at the law schools must be transformed to the conventional and contemporary needs of the profession and society.

## **Final Thoughts**

Before I conclude I must refer to two famous quotes made by two eminent social jurist.

Alvin Toffle propounded that *“The illiterate of the 21<sup>st</sup> century will not be those who cannot read and write, but those who cannot learn, unlearn and relearn”*.

Craig Barrett opined that *“Investing in education and providing 21<sup>st</sup> century skills for students are fundamental components to the nation’s continued growth and prosperity”*.

The future shall witness a radical transformation in the content as well as methods adopted to impart legal education in India. Globalization has posed multiple challenges to the future of

legal education in India but it has provided an opportunity to challenge the *status quo*, which is an essential condition for seeking any reform.

To conclude, I would like to quote the famous Irish author Edmund Burke who rightly said, "*You can never plan the future by the past*". The time is ripe for an overhaul of legal education in India.

The legal education in the present contemporary world is still in pathetic situation so,

**“We Want To Change, We Want To See, We Can”**

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# Legal Education in India: Issues & Challenges

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## LEGAL EDUCATION IN INDIA

*“Education is the manifestation of perfection already in man”* - Swami Vivekananda.

According to Austin (1954)<sup>74</sup> “A law is a command which obliges a person or set of persons to a course of conduct”. A law in the proper sense of the term is, a general rule of action, taking cognizance only of external Acts enforced by a determinate in a political society. While the aim of education is to build character and capacity in an individual, the purpose of legal education to equip the common man to secure access to justice, which is an essential component of civilized living.

### **Relevance of Education and Legal Education In Contemporary Society :**

Education is the true friend of oneself. A true book is the soul of education. Law and Legal Education and Sanctimonious more sanctimonious are law schools are one cannot dream of a peaceful society when the law is dehorned. The education in is the summit of the multi based pyramid of education after all law does nothing more than giving the relation between the authority and power. Law teachers emphasizes on this aspects holding that in any country, it is the function of legal Education to shape and transmit more fundamentals, community perspective about the relation of authority and naked power to train specialties in all the particular skills, necessary to the effective management of processes, of authorities, decisions and to assist both in the clarifications of basic community policies about the shaping and sharing of all values and in the inventions of institutions and procedures appropriate to the recurring of such clarifying policies. In the environment of relevance of law and legal Education in modern society in post Liberalization, Privatization and Globalization era, one should understand the Institutions imparting Legal Education.<sup>75</sup>

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<sup>74</sup> Austin , “Province of jurisprudence development (eds). HLA Hart”,(1954)

<sup>75</sup> Madhavi .R, G .Manohar Rao and K. Srivasa Rao (eds), “ Legal education India challenges prospective” ,(2<sup>nd</sup> Ed) Asia Law House, Hyderabad , (2007)

Legal Education is a board and comprehensive concept. It is essentially multidiscipline and can help us in developing the human resources and idealism needed to strengthen the legal system. Law is able to contribute the national development and social change in much more constructive manner.<sup>76</sup> Dada Dharmadhikari has rightly remarked that Legal Education makes the lawyer an expert who pleads for all like the doctor who prescribes for all, like priest who preaches for all and like the economist who plans for all. It may be really being termed as an art enjoys the capacity to make a lawyer the best pleader for the public at large.<sup>77</sup>

Legal Education aims at imparting knowledge of law of the country as part of necessary culture of a gentle man, noble man, and common man engaged in a learned professions. The Law Commission of India has also made efforts to define Legal Education as a Science, which imparts to students knowledge of certain principles and provisions of law to enable them to enter to legal profession. Legal Education is a two-tier phenomenon; on the one hand it identifies subject matters such as life, technology, governance, and responsibility in a complex business organization, family relations, the penal system and on the other side there has been a call for Legal Education to transmit humane intellectual values to take client centered approaches.<sup>78</sup> Legal Education has centered on the dividing line between professional and liberal education.” The Legal Education discovers the ways and means to explain us without legal system and find out how it functions and effects of society. It denotes professional knowledge constantly growing in response to human conditions and animated by the visions of future”<sup>79</sup>.Therefore Legal education is to be imparted on scientific basis in law schools, which will be of great value to the country and exercise a very beneficial influence on the practice of law as a art. To be truer, it is an investment which if wisely made, till surely produce most beneficial results for the nation and accelerates the pace of national development.<sup>80</sup>

### **Aims of Legal Education :**

The prime object of legal Education is to produce professional lawyers. The term professional lawyer does not only cover the litigating lawyer, via: “the lawyers who are useful before the

<sup>76</sup> Gajendra Gadkar, Committee , “On the reorganization of Legal Education in the University of Delhi” ,(1964)

<sup>77</sup> Dad Darmadhikari , “ *Lawyers role in social change* ” , AIR Journal Vol 3 ,. 105, (1978).

<sup>78</sup> Agrawal.S.K , “*A Report on Legal Education in India problems and prospective*”, (1972)

<sup>79</sup> Brendon F.Brown , “ *Recent trends in United States Legal Education*, Journal of Legal Education” ,283, (1976)

<sup>80</sup> P.C. Pillai , “All India seminar on Legal Education” , Journal of Indian law institute, 75 , Vol.14 (1972)



ordinary codes that all persons trained in law, whose employment is mainly dependent on their degrees in law.<sup>81</sup> The famous statement by the committee of Legal Education of the Harvard Law School lays emphasis on the double purposes of a law school:

- (1) To train men for the legal profession,
- (2) To provide a centres where scholars might contribute to an understanding of law and government and participate creativity in their growth and improvement, purposes of legal Education, the reasons underlying them and the nexus between legal and social history; secondly, to extract the principles underlying the existing legal rules; and thirdly to point the right road for future development.<sup>82</sup>

On the recognizing of Legal Education in the University of Delhi also endeavored to reflect on the education. He has opined that the Legal Education envelops within its ambit the knowledge of the Legal Education of the theory and philosophy of law and its engineering role in the modern democratic society.<sup>83</sup>

### **Legal education is to develop two fold skills-**

- a. Effective learning- is a step involved in competently completing a number of tasks, such as interviewing a client or preparing to cross-examine a witness.
- b. Ability to remember facts client communicate.

### **Importance of law libraries in Legal Education**

Legal Education is centered around by the law libraries than the class centre. The law library stands as a function lead of legal Information in the form of books, journals, reference books, statutes, reports followed by general books.” The law library truly plays a vital role in the administration of justice. It is an institution of extraordinary social significance in a free society, inspiring the men and women of vision who devote their talents to the creation and preparation of law libraries, whose benefits reach out far and beyond the personal interests of the original creators”.<sup>84</sup> A law library is a residence of law books and literatures where one can find the required law. Academic law libraries are primarily connected to teaching and

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<sup>81</sup> Misra, S.K , “*Legal Language legal writing and general English*”, (1<sup>st</sup> Ed)Allahabad Law Agency, Faridabad ,(2008)

<sup>82</sup> Gower .L.C.B , “*English Legal training Critical Survey*” , Modern Law Review 14 , Vol.(13) , (1959)

<sup>83</sup> Gajendra Gadkar Committee, “On the reorganization of legal Education in the University of Delhi”, (1964).

<sup>84</sup> Tewari, H.N , “*Legal Research Methodology*” (4<sup>th</sup> Ed), Central Law Agency, Allahabad, (1997).

research, and these libraries also accommodate the instructional requirements of the law college curriculum. Whatever the libraries change, designing academic libraries to house law collections, was traditionally based on developing the library to house books, store microform and seats students.

### **Authorities Governing the Legal Education :-**

Under the existing scheme control over legal education is diversified: Theoretical and scientific education falls under the purview of the university law faculties and the UGC and the practical or technical legal education is in the charge of the state Bar Councils and the Bar Council of India. There is thus multiple controls over Legal Education at present. In addition in some states the States Council of Higher Education also plays some important role. An important objective of legal education is to produce Advocates to practice before law courts and thus help in the administration of justice to the common man. It is on the basis of this premise that the Bar Council has been given a say in the maintenance of standard of legal education.

Legal education in India is presently governed and controlled by the following five fold institutional net work, i.e.,

- (1) Universities imparting Legal Education ,
- (2) Bar Council of India,
- (3) University Grants Commission,
- (4) Private Educational Institutions affiliated to any university and
- (5) The Government at centre and states as the final authorities. A perusal of the functioning of all these institutions goes to show that each one has got its own problem and policies and would like to show their supremacies over the other<sup>85</sup>

### **Legal Education in India – Challenging Perspectives :-**

The significance and relevance of legal education in changing global context is emphasized. Changes caused by globalization and privatization, recommendations of Bar council of India and Knowledge Commission suggesting changes in law schools by transforming the

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<sup>85</sup> Laxminath.A , “ *Legal Education , Challenges and Perspective in a Globalized World*, in G.Shrinivas Rao,(Eds), *Legal Education in India- Legal Education, Challenged and Perspective* “ , 12,Asia Law House, Hyderabad(2007)

mechanics of curriculum development, innovative solutions, research tradition etc., were discussed. It is necessary that the legal institutes, without depending on state resources, stand in the competition with innovative teaching and research techniques so that new graduates choose teaching or bar to enrich the judiciary and faculty for achieving complete access to justice and complete justice.<sup>86</sup>

Our society is in need of a large number of lawyers and that need continues and increases in the coming years as long as we continue to be governed by the rule of law and an independent judiciary. Basically, today lawyers are necessary for the bar, for taking over as law officers in the state and in several establishments, for the subordinate judiciary, for the faculty and for modern law firms. Over 50 years ago, the idea was that lawyers were needed mostly for the Bar but that was changed substantially in recent times. In the 15 years after 1991, we have much greater need for developing specialization in several new subjects, for purpose of our courts as well as industry, trade and commerce. In terms of challenges, there are mainly in terms of perspectives, there are again several and once they are identified they can provide remedies for the present state of affairs. It is not aware of the problems and the remedies. Only there must be will to implement them effectively.<sup>87</sup> The standard of the Bar, as in other disciplines, both in law and ethics, have been deteriorated considerably in the last three decades and require substantial improvement in a big way. The foundation is the law school. If the standards of the law schools are not up to the mark, then the standards of the Bar, of faculty, the subordinate judiciary, the standards of the judiciary as a whole are bound to come down. When the nature of litigation in the courts is changing at a fast pace on the account of globalization, our lawyers and judges will not be able to deal effectively with new issues that are coming up before the courts. It will also be difficult for the modern law firms to meet international standards while helping our industry, trade and commerce. The greatest harm will then be done to the litigant public, which includes individuals and the corporate sector as well and the judicial administration as a whole. Such retrogression, in its turn, will seriously affect the proper functioning of the Rule of Law and proper governance of the country by our elected representatives and the executives.<sup>88</sup>

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<sup>86</sup> P. L. Jayanthi Reddy, "Legal Education : new Horizons" ,(2002)

<sup>87</sup> Prof. C. Sasikala and Dr. B. Manikya Rao, "Legal Education in support of Academic Law Libraries ", Asia Law House, Hyderabad , (1996).

<sup>88</sup> Jagannadha Rao, M , "Legal Education ,Challenges and perspective in a Globalised World ,in G. Shrinivas Rao,(eds), *Legal Education in India ,Challenges and Perspective*" , Asia, law house , Hyderabad , (2007)

Following are some of the challenges facing legal education in the country:

1) Physical infrastructure and financial resources:

The law schools in India have to recognize that there is a need for creating sound physical infrastructure. There should be more funds for this and for developing research projects and other initiatives to encourage faculty members. Generally, the infrastructure of the national law schools is better than what exists in the law departments of traditional universities. University campuses should be places that can inspire students and the faculty so that they are involved in reflecting upon the various problems that confront society. Academic freedom to think and contribute cannot be ensured if universities lack the necessary physical infrastructure and financial resources.

2) Need for developing philanthropic initiatives:

Philanthropy in legal education is rare. It by and large remains a state-sponsored endeavor or an unimpressive commercial enterprise devoid of high academic standards. There is an urgent need for encouraging philanthropic initiatives in promoting excellence in legal education and research in the country. Recently, the National Knowledge Commission (NKC) constituted by the Union Government in 2005 submitted its first annual report. Legal education was one of the focus areas; Philanthropy in legal education is essential for its growth and development. Every effort ought to be made by all stakeholders, including the law schools, the bar, the bench, the law firms and corporations for promoting philanthropic initiatives in legal education and research.

3. Hiring good teachers and researchers:

There is a need to fundamentally re-examine the context of legal education in the country. The present system does not sufficiently recognize the key problem with regard to legal education — lack of faculty members who are good teachers as well as sound researchers. There is need to identify talent among young lawyers so that they can be encouraged to consider academia as a career option. There is no doubt that poor financial incentives discourage many young and brilliant lawyers from considering a career in academia. It is important to address this issue as well.

#### 4. Changing Information Technology:

The form of legal education is totally transformed by the Information and Technology which is rapidly processing now. Professor Richard Susskind in his book *The Future of the law* says that we should think less of clients and of lawyers but instead of “users, legal information engineers and providers of legal information”, and that the role of lawyers should be redefined:

First, as enabling techniques and leading applications are refined, much of today’s conventional legal work will be routinized and proceduralised and then made available on the information infrastructure as a consultative service. The second dimension is potentially much more significant and this is the realization of a vast, latent legal market the countless instances in domestic and business life which benefit from legal input but where this had been impractical or too costly to achieve in the past.<sup>89</sup>

#### 5. National Knowledge Commission’s Vision of Legal Education:

NKC Report says: Legal education is a vital link in the creation of knowledge concepts in society. The need for trained law personnel in academia, litigation, corporate practice, government and civil society has increased significantly in recent years and it is estimated that demands for such trained personnel will rise far more exponentially in the years to come. There is therefore need to articulate a clear long-term vision on legal education in India guided by continuing commitment to excellence. Some of the key areas of NKC’s consideration are:

- Access to quality legal education;
- Methods of attracting and retaining a talented faculty;
- Identifying continuous curriculum development;
- Finding innovative solutions for infrastructure and administrative questions;
- Regulatory issues;
- Developing a serious research tradition that is globally competitive; and
- Formulating a culture of sustained law training that meets the needs of the different sectors of the society and economy.

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<sup>89</sup> Bernadette Griffin, *“the Law society”*, (2000).

## 6. National Law Schools and Existing Colleges: Inequalities

There are three categories of law colleges now offering legal education.

- Universities running college through their departments of law, which include both five-year integrated courses and three year post- degree courses to meritorious students securing competitive ranks in LAW CET.
- Private colleges affiliated to such universities, offering both five-year and three-year courses in merit in LAW CET and management quota irrespective of merit in LAW CET, and
- National Law Schools offering only five-year integrated B.A.LL.B Honors courses to elite sections of the society.

## 7. Intellectual Leadership:

The National Knowledge Commission also suggested freeing the Vice Chancellors from direct and indirect interventions on the part of governments and real search processes and peer judgment on choice of Vice-chancellor. The contemporary power politics should not see the post of vice chancellor for filling it with his political followers. It should be mandatory for them to understand that they have to select a deserved intellectual leader to lead a university without resorting to nepotism. A small university with manageable size, consisting less number of departments, focusing on specialization, with responsive and responsible attitude would serve a targeted purpose rather than building universities of unwieldy size and huge propositions in thousands of acres of land with hundreds of departments.

## 8. Teaching Methods:

Swami Vivekananda explained that the teacher's role consists chiefly in providing an external stimulus and in removing the obstacles to the manifestation of inner knowledge. Legal education or for that matter any education gets strengthened with effective teaching methods being adopted along with inspiring guest lectures, refreshing seminars and enduring workshops. Study of law sharpens the thinking process, but it should continue to sharpen and hone the skills of the professionals, such as teachers, advocates and judges. Interpersonal communication continues to be the best methods of teaching. Class room teaching with eye-to-eye contact with the students alone makes the communication of knowledge unhindered rather than using highly technical devises. Case law method, debate in the class room, asking

on reading material, discussing a mid-sem question paper, reliving a court room on a judgment, is piercing analysis of legislation, and the like make a class room a loving and living exercise now and then. A problem approach to understand a law, a clinical way of writing a pleading or cross examining a witness, learning from interesting anecdotes on law etc could make the class room exercise much more exciting. According to Prof. Upendra Baxi, the role of law teachers in India are,

- i. A group of teachers feels that the primary role obligation of an academic lawyers is to renovate and restructure Indian legal education.
- ii. Some law teachers feel that their primary vocation is to teach well, to be good teachers.
- iii. A section of law teachers includes those who believe that good teaching entails research and writing efforts. Teachers who so believe combine teaching with research by writing treatises and papers in the field of their teaching.
- iv. There are a few law teachers who feel their primary role obligation is to specialize in one subject area, and to contribute substantially to scholarly literature in their subjects over time.
- v. A handful of law teachers exposed to overseas influence, especially American law schools and scholarship, believe their role requires pedagogic innovations as well as offbeat, non- traditional legal writing.

Research, writing and updating the skills by reading are inevitable requirements of a lawyer, law teacher, law student and judge.

#### 9. Perform or Perish:

There is only one mantra for management gurus in the field of business and enterprise, perform or perish. For law colleges the same mantra would apply, while the mantra for a faculty gets altered as ‘publish or perish’, and for students it is – pursue or perish.

The present system of education aims merely at acquiring information and technical skills. Referring to this Swami Vivekananda said, ‘Education is not the amount of information that is put into your brain and runs riot there, undigested, all your life. We must have life-building man-making, character-making assimilation of ideas. If you have assimilated five ideas and made them your life and character, you have more education than any man who has got by-heart a whole library.

## **Constitutional recognition to Legal Education and its progress in India:**

The Constitution of India basically laid down the duty of imparting education on the states by putting the matter pertaining to education in List II of the 7<sup>th</sup> Schedule. But now it forms part of List III, giving concurrent legislative powers to the Union and the States. Legal profession along with the medical and other professions also falls under List III (Entry 26). Empowered by the Constitution to legislate in respect of legal profession, Parliament enacted the **Advocates Act, 1961**, which brought uniformity in the system of legal practitioners in the form of Advocates and provided for setting up of the Bar Council of India and State Bar Councils in the States. Under clause (h) of sub-sec (1) of Sec.7 of the Advocates Act, 1961 the Bar Council of India has power to fix a minimum academic standard as a pre-condition for commencement of a studies in law . Under clause (i) of sub-sec (1) of Sec. 7, the Bar Council of India is also empowered "to recognize Universities whose degree in law shall be taken as a qualification for enrolment as an advocate and for that purpose to visit and inspect Universities". The Act thus confers on the Bar Council power to prescribe standards of legal education and recognition of law degrees for enrolment of persons as Advocates.

## **Suggestions & Conclusion :-**

The legal education in 21st century should consider the globalization and its implications on legal field at national and international levels.

- (1) The Bar Council of India, the State Bar Councils, the State Governments, the University Grants Commission and the Universities have a great role to play for improving the standard of legal education in the country.
- (2) They should work in a comprehensive manner without any conflict. New avenues should be explored by the Bar Council of India and The University Grants Commission in the era of computer applications and information technology in the legal fields and potential uses of internet in the practice of law and legal education.
- (3) They should find out the ways and means to meet the new challenges and provide better tools of research and methodology of learning for the generations to come.
- (4) Bar Council of India, constituted under section 4 of the Advocates Act, 1961, is an apex body for the entire legal profession in India. The advocates Act, 1961, invests



BCI with wide ranging powers to prescribe standards of legal education for the practice of law.

- (5) Legal education in India should be liberated from the dominant control of the Bar Councils and entrusted to legal academics with freedom to innovate, experiment and compete globally.

Access to all; The Role of Government: it is impossible to eliminate the funding by the Government for the existing and new universities and the colleges in any context, since education is the only means of building the nation. The recommendations of the National Knowledge Commission, in this regard, deserve attention of the Bar, the judiciary and the Government. The reforms initiated in few law schools all over India have made only a small dent. However, the vision of legal education is to provide justice- oriented education essential to the realization of values mentioned in the Indian Constitution. In keeping with this vision, legal education must aim at preparing legal professionals who will play decisive leadership roles maintaining the highest standards of professional ethics and a spirit of public service. Legal education should also prepare professionals equipped to meet the new challenges and dimensions of internationalization, where the nature and organization of law and legal practice are undergoing a paradigm shift. Existing curriculum should be immediately changed as per recommendation of National Knowledge Commission. Any further delay in this regard will be suicidal.

According to me, that any overnight solution or a single step in this regard is not possible one. But at the same time, any dogmatic adherence to the old, traditional and existing system would be suicidal in the days ahead. So, a balance between these two should be maintained in order to change the entire fabric of legal education in India. Let us gird up the loins, to make necessary changes in the existing system, so that Indian legal education can be able to face the global challenges.

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### Brief About Author



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# Legal Education – When All Is Not So Well

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Legal education is the act of learning law. Learning is the act of acquiring knowledge.<sup>90</sup> Learning law is both a social science and a natural science. It is a specialized branch of learning that caters to the development of a sustainable democratic order. In a welfare state, legal education is linked to development. Legal education is also perceived as an instrument for social construction.

It is said that legal education is both professional and liberal education. As professional education, it equips law students to become legal practitioners and as liberal education it imparts cultural education making students law abiding citizens.<sup>91</sup> It also fulfills an academic objective in the creation of jurists and legal philosophers.<sup>92</sup>

Legal education is fundamental to judicial system.<sup>93</sup> Legal education acquires additional importance when viewed from a 'constitutional perspective'. It is settled position that education is part of the right to life and personal liberty under Article 21. Hence, as any fundamental right, it must be construed in the light of the directive principles under the Constitution.<sup>94</sup> Legal education is inextricable linked to Article 39 A which provides for equal justice and legal aid. Further, legal education is an essential for rule of law and is very much a part of public interest.<sup>95</sup>

## Legal Education - State of the Affairs

Development or improvement of legal education was never taken as a serious issue in India at least till the late 1980s. In fact, it has been remarked that legal education has not received

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<sup>90</sup> Bryan A. Garner(ed.), Black's Law Dictionary 9<sup>th</sup>ed (2009)

<sup>91</sup> M P Jain, M P Jain's Outlines of Indian Legal and Constitutional History (2010) 691

<sup>92</sup> N.L. Rajah , Where are our legal philosophers? The Hindu Opinion Nov. 24, 2016

<sup>93</sup> Law Commission of India, 184<sup>th</sup> Report on The Legal Education & Professional Training and Proposals for Amendments to the Advocates Act, 1961 and the University Grants Commission Act, 1956 (2002)

<sup>94</sup> *Unnikrishnan J.P. v. State of A.P* 1993 (1) SCC 645

<sup>95</sup> *Deepak Sibal v. Punjab University* AIR 1989 SC 903

proper attention as natural sciences or other social sciences.<sup>96</sup> As a result, legal education has failed to flourish as other disciplines have.

The initial set of reforms was aimed at ridding legal education of its colonial vestiges. This was followed by attempts to 'professionalise legal education'. The next phase saw attempts modernise legal education to make the study socially and temporally relevant.

Today it can be said that legal education is in a state of post-flux. The current system is the product of years of reforms. Some of these changes include introduction of integrated double degree courses as against the traditional three year degree course in 1987 and the consequent establishment of National Law Universities across the nation. In 1990, UGC developed Curriculum Development Centres to promote excellence in teaching at University level. The judiciary has also played a key role in improvement of the standards of legal education through its timely interventions.

One feature which cannot be missed is the proliferation of Centres of Legal Education.<sup>97</sup> This includes Universities, autonomous institutions, public and private colleges. In 2011-12, there were 282 law colleges and 17 Specialised Universities of Law.<sup>98</sup> The number rose to 470 and 20 respectively by 2014-15.<sup>99</sup> In 2016, 128 colleges sought approval of the Bar Council of India.<sup>100</sup> The initial scepticism towards private colleges no longer remains. Private colleges have become more of a necessity and Government has even been obligated to allow a grant-in-aid for such colleges in order to ensure access to legal education.<sup>101</sup>

The growth is in tune with the increasing demand for legal education. The number of students enrolled in law stream has increased from 1.88 lakhs<sup>102</sup> to 3.02 lakhs<sup>103</sup> in less than three years. It forms 15.38% of the total enrolment in higher education. While this could be an effect of the growing demographics, it is a clear indicator of a change in mindset of the applicants. While earlier law remained a low key option for higher education, today it has clearly become a priority.

Globalisation has put legal education into a transitional stage and this has culminated in changes inside the system. Hitherto, the aim of legal education has largely been to cater to

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<sup>96</sup> K C Jena, Role of Bar Councils and Universities for Promoting Legal Education in India 4 JILI 44( 2002)

<sup>97</sup> 'Centres of Legal Education' is defined in S.2(1)(iv), The Rules of Legal Education, 2008

<sup>98</sup> Ministry of Human Resource Development, All India Survey on Higher Education , 2011-12

<sup>99</sup> Ministry of Human Resource Development, All India Survey on Higher Education, 2014-2015

<sup>100</sup> Bar Council of India's final list of law colleges, Indian Express Sept. 8, 2016

<sup>101</sup> See *State Of Maharashtra v. Manubhai Vashi* 1995 SCC (5) 730

<sup>102</sup> Ministry of Human Resource Development, All India Survey on Higher Education ,2012-13

<sup>103</sup> Ministry of Human Resource Development , All India Survey on Higher Education ,2013-2014

domestic needs. But today, even legal profession is larger and more diverse than ever before and more unified than at any time in its history.<sup>104</sup>

The very nature of law, legal institutions and law practice are in the midst of a paradigm shift. Legal education, hence must seek to serve distinct interdisciplinary knowledge domains – law and society, law, science and technology; law, economics, commerce and management. This has lent a novel perspective to legal education and has made it multi-disciplinary in character. The frontiers of legal profession today extend beyond national borders. The Bar Council has already taken note of the need for seamless connectivity in legal profession.<sup>105</sup>

Legal education has always been in a state of dynamic transformation. Sustained and incremental efforts have been made to improve the quality of legal education. There remain no doubts of at least some improvement. Our system is not a stranger to umpteen Committee Reports directed towards improving legal education. The numerous and diverse unimplemented ideas as regards legal education is testimony to the need to revamp the legal education system at least in some respects.

Irrespective of whether legal education is in a crisis or not, there is evidently an opportunity to look critically at the components of legal education. The legal education sector requires revamping at least in some respects. Though the scope and impact of legal education has expanded manifold due to the several new avenues it has reached, there are significant challenges before the system. It requires a sincere and conscious attempt to create a system of legal education responsive to the globalised world. These challenges, more often than not take the form of constraints and a narrow vision of governance.

## **Demystifying the Governance of Legal Education**

The question of standard of legal education is closely linked to that of multiple jurisdictions over legal education planning.<sup>106</sup> There are two statutory bodies concerned with legal education in India -The Bar Council of India (BCI), the apex body concerned with the standards of legal education and The University Grants Commission (UGC) which is the umbrella body for all institutions of higher education.

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<sup>104</sup> American Bar Association, Report of The Task Force on Law Schools and the Profession: Narrowing the Gap (1992)

<sup>105</sup> Item No.2(A)/2011 (LE), The Bar Council Of India Legal Education Committee Minutes Of Meeting , 29<sup>th</sup> January, 2011

<sup>106</sup> Gurjeet Singh, Revamping Professional Legal Education 2 JILI 41 (1999 )

The BCI performs administrative, social and general functions<sup>107</sup> as regards legal profession. It is trusted with the task of salvaging the profession.<sup>108</sup> It is the pious duty of the Bar Council to protect the public image of legal profession. The State Bar Councils are under general supervision of the BCI.<sup>109</sup> It organizes seminars on topics of general interest and provides legal aid to the poor. It lays down standards of professional conduct and etiquette for advocates<sup>110</sup> as also promotes and supports law reform.<sup>111</sup> Clearly the BCI has more to do with legal profession than legal education.

The BCI plays a regulatory role *vis a vis* legal education. It is expressly entrusted with the duty to promote legal education.<sup>112</sup> This power extends to *prescribing* standards of legal education to be observed by Universities in the country.<sup>113</sup> The law degree awarded by a University must be recognised by the BCI. To that end, the BCI can visit and inspect Universities. Legal education seems to be only one among the many functions performed by the BCI.

The BCI exercises these functions through subordinate legislations. The Rules of Legal Education, 2008 framed by the BCI in consultation with the Universities and State Bar Councils contain provisions to regulate the Standards of Professional Education as well as those on inspection and accreditation of courses.

BCI performs these functions through three supplementary bodies namely, the Legal Education Committee (LEC), the Bar Council of India Trust and Directorate of Legal Education. It is also assisted by the State Bar Councils.<sup>114</sup> A Legal Education Committee with both members from the Bar Council and outside it is also conceived by the Advocates Act. It would consist of ten members, five elected by the Council from amongst its members and five non-members co-opted by the Council.<sup>115</sup>

The UGC plays a pivotal role in regulation of standards of legal education in India.<sup>116</sup> The Commission acts in consultation with Universities and adopts steps for determination and

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<sup>107</sup> *Indian Council of Legal Aid & Advice v. BCI* (1995) 1 SCC 732.

<sup>108</sup> *V. Sudeer v Bar council of India* (1999) 3 SCC 176

<sup>109</sup> S.7(1)(g) Advocates Act, 1961

<sup>110</sup> *Id.* S.7(1)(b) Advocates Act, 1961

<sup>111</sup> *Id.* S.7(1)(c) Advocates Act, 1961

<sup>112</sup> *Id.* S.7(1)(h) Advocates Act, 1961

<sup>113</sup> *Bar Council Of India v. Aparna Basu* AIR 1994 SC1334

<sup>114</sup> *Id.* S.6(1)(gg), AA read with S.7(1)(i)

<sup>115</sup> *Id.* S.10(2)(a) Advocates Act, 1961

<sup>116</sup> *University of Delhi v Raj Singh* 1994 Supp. (3) SCC 516

maintenance of standards of teaching, examination and research in Universities.<sup>117</sup> The UGC is also empowered to determine and coordinate the standard of teaching curriculum and examinations in Universities.<sup>118</sup> The mandate of the UGC is not specifically directed to cater to legal education. The Commission is designed so as to ensure standards of higher education as a whole.

#### Whose responsibility is it anyway?

Evidently there is no specialized body to deal with the needs of legal education. One conclusion that can be drawn as regards the governance mechanism of legal education is the overlap of jurisdictions between the two bodies, something not unique to India.<sup>119</sup> Neither the BCI nor the UGC by itself can cater to all requirements of legal education. The BCI and the UGC have different powers in relation to the several aspects of legal education.

#### BCI – Is it Professional or Academic?

More often than not concerns have been expressed about the ability and expertise of the BCI in dealing with the evolution of legal norms in relation to legal education. It is argued that the Advocates' Act performs only the limited function of creating lawyers. Such discussions have even mooted replacement of BCI as the apex body regulating legal education in India. In fact, such concerns are no less than unfounded conjectures.

The constitution of the Legal Education Committee is proof for the resolve of the BCI towards improving standards of legal education.<sup>120</sup> Numerous resolutions have also been passed towards improving the state of affairs of legal education.<sup>121</sup> The Supreme Court has also time and again emphasised the prominent role BCI plays as regards legal education *vis a vis* legal profession.<sup>122</sup>

There can be no iota of doubt that the BCI must remain the primary body that regulates the standards of legal education in the country. The function of the BCI in relation to legal education however must be tuned to meet the current needs of legal education. There must

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<sup>117</sup> S.12 The University Grants Commission Act, 1956

<sup>118</sup> *Prof. Yashpal vs. State of Chattisgarh* (2005) 5 SCC 420

<sup>119</sup> Dr Bagoni A. Bukar, Legal Education And Challenges Of Contemporary Developments In Nigeria, 20 International Journal of Clinical Legal Education 593 (2014)

<sup>120</sup> Rule 2(xvi) Rules of Legal Education, BCI

<sup>121</sup> See Appendix 2: Resolution passed by the Legal Education Committee, 22nd August 2009

<sup>122</sup> See *O. N. Mohindroo v. The Bar Council Of Delhi* AIR 1968 SC 888

be institutionalised association of technical experts with BCI to ensure more intricate understanding of contemporary issues while exercising powers of regulation.

#### UGC and BCI – Towards an Inclusive Interaction Mechanism

One interesting question that emerges is which body- the BCI or the UGC has greater importance in legal education. Regulation of legal education has also been perceived as a case of higher education. For instance, the National Knowledge Commission (NKC) recommended the setting up of a Standing Committee for Legal Education under the Independent Regulatory Authority for Higher Education (IRAHE).<sup>123</sup>

It has already been accepted that there is a need for coordination between the body that regulates admission to professional training and the Universities which would deal with the academic side of legal education. The consultative relationship between the BCI and UGC forms the backbone of regulation of legal education standards in India. 'Effective consultation' between BCI and Universities can be achieved by increasing the involvement of members of academia in regulating legal education.

Further, BCI and UGC share a near symbiotic relationship. BCI depends on Universities for imparting legal education which is necessary for the profession. The Rules framed by the BCI must not be arbitrary. The practical difficulties in the way of law schools must also be taken into account including availability of funds and infrastructure.

The solution is to evolve an inclusive intersection mechanism to ensure that both the bodies are equal partners in legal education. This intersection can be facilitated by Committees and the inclusion aspect can be taken care of by their equitable composition. Towards this end the Law Commission recommended the setting up of a UGC Committee on Legal Education with three faculty members common to the BCI LEC.

However, this involves creation of a Committee in addition to the extant LEC under the Advocates' Act. This may create additional difficulties in the form of bottlenecks between the two Committees which may take considerable time to resolve.

It might be a better solution to strengthen and modify the already existing mechanism. The current LEC under the Advocates' Act can itself be the inclusive intersection mechanism.

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<sup>123</sup> National Knowledge Commission, Report Of The Working Group On Legal Education available at [http://knowledgecommissionarchive.nic.in/downloads/documents/wg\\_legal.pdf](http://knowledgecommissionarchive.nic.in/downloads/documents/wg_legal.pdf)



However, in this direction there are two concerns to be addressed, namely composition of the body and its mode of consultation. At present, there is no specification as to who the five non-Bar members of the LEC are. It can be clearly spelt out. These posts should balance the roles of the Bar, Judiciary and law teachers.

As far as consultation is concerned care must be taken to ensure that all stakeholders in legal education are considered. This extends beyond Universities and the Bar to include members who represent the society be it public servants or social activists.

Whether we choose to improvise the existing mechanism or revamp by forming new bodies, a few facets must be adhered to. All the entities so involved must take an open mind as regards information sharing and deliberations. The bodies must perform their duties religiously with follow up actions. Follow up actions can be classified into two. It includes benchmarking and objective quality evaluation of CLEs along with inspection of CLEs. Rating and consequent ranking of institutes can be integrated into inspection outcomes.

The Law Commission has expressed dissatisfaction with the inspections carried out by BCI for granting permission or recognition to law colleges. It recommended that the BCI must take extreme care while granting permission and while conducting inspections. The process on inspection must be streamlined and the procedure needs an overhaul. Further, the BCI can adopt a pragmatic approach in the grant of permission to law colleges. Such permission may be allowed only after such institution has the requisite infrastructure and other facilities. It has been recommended that these are exercised in consultation with the Legal Education Committee.

The NKC had development of an Independent Rating System based on a set of agreed criteria to assess the standard of all institutions teaching law to ensure consistent academic quality throughout the country. This is yet to be implemented and reliance is largely placed on private surveys and other sources for such rating. Factors that are to be considered in such rating include the preference shown by candidates for admission to a law school, the success rate of graduates from a law school in the All India Bar Examination, the quality and extent of infrastructure and resources available at a law school and the number of publications by faculty from a law school in peer-reviewed publications.

## A Quest for Quality

In addition to matters of regulation, another pertinent issue on legal education is the quality of education. The quality of legal education concerns entry to the college, curriculum, method of examination in college and even qualification of teachers. Hence quality is not a standalone virtue. It is closely related to numerous aspects of legal education. What complicates the concept of qualitative education is the benchmark against which it must be viewed. Such benchmark is the legal profession and the needs legal education must fulfill in the changing society.

The creation of the elite National Law Schools and introduction of the Common Law Admission Test (CLAT) in 2008 were aimed at ensuring a certain threshold of standard in legal education. It has been acknowledged that there must be an independent and permanent body to conduct CLAT.<sup>124</sup> A realisation of the objectives of such screening examination would require involvement of experts. In fact, it is necessary to take effective steps at every stage of conducting the exam; including preparation of questions, key answers; hearing and declaration of merit list.<sup>125</sup>

There is a considerable gap in the quality of education between the NLSUs and other law schools. While there are islands of excellence, most centres of legal education are mediocre. It would be an irreparable mistake if we rest content with these few star colleges. Such institutions alone cannot bring an overall change in the standards of legal education. The *other* law schools are unable to offer more optional subjects due to lack of faculty. In such context, law schools may find it advantageous to engage in partnerships and consortia with other educational institutions in order to share resources and thereby offer greater opportunities to students without substantially greater financial investment.<sup>126</sup>

### Faculty –Laying the Groundwork

Any meaningful change in the quality of legal education requires a change in *approach* towards legal education. Legal education does not stand for mere teaching of law. It is a quest to understand the function of law and the role one can play in catering to societal demands

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<sup>124</sup> *Shubham Dutt v/s. Convener Clat 2015* (Ug) Exam available at <https://indiankanoon.org/doc/138204121/>

<sup>125</sup> *Shamnad Basheer v/s Union of India* available at <http://s3.documentcloud.org/documents/2303715/anti-clat-writ-petition.pdf>

<sup>126</sup> American Bar Association, Twenty Years After the MacCrate Report: A Review of the Current State of the Legal Education Continuum and the Challenges Facing the Academy, Bar, and Judiciary, March 20 2013

from law. The function legal education performs is not mere academic. Legal education is both professional education and academic learning. Undoubtedly, the prism of understanding the nature of legal education must be expanded.

Preparing fertile grounds for qualitative changes in legal education requires clearly defining the role played by the faculty. While there are institutional mechanisms such as the BCI and UGC to regulate legal education as such, the faculty lays groundwork to reap the benefits of any reforms. There is need to ensure that new blood is attracted to pursue academics as a profession.

Often, brilliant students do not enter the academic arena, thus depriving the country of a strong academic base. Hence, efforts must be made to improve the status and service conditions of law teachers. Other benefits that may be allowed include fully paid sabbaticals and adequate House Rent Allowance. Further it is also important to extend these benefits to faculty irrespective of the nature of the institution – private or statutory.

The role of the faculty is not limited to classrooms. In fact, the faculty plays a prominent role in designing the curriculum. Faculty sovereignty in designing the courses is touted as a method to ensure standard and relevance of curriculum.<sup>127</sup> Also, consultation with faculty can eliminate anomalies in the curriculum. One problem that arises as far as the curriculum is concerned is that unconnected subjects are joined in one paper.

Three more aspects are very pertinent to qualitative legal education- the syllabus, examination and pedagogy.

### Syllabus –Creation and Approach

Utmost care is to be taken in preparation of the syllabus. Law schools face a perplexing variety of competing demands for curricular reform.<sup>128</sup> The syllabus must allow for greater interdisciplinary and multidisciplinary approaches to the study of law, as well as a wider choice of specialisation for law students. The curriculum must be contemporary and more over it must be based in a wider body of social science knowledge. It must be purposeful, competitive and result oriented. The curriculum in CLEs consists of a few optional subjects or electives and a set of core subjects. The range of available electives can be expanded while

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<sup>127</sup> BCI, Report Of The Curriculum Development Committee (2010) available at <http://www.barcouncilofindia.org/wp-content/uploads/2011/08/cdc-report-web.pdf>

<sup>128</sup> A Kenneth Pye, Legal Education In An Era Of Change: The Challenge Duke Law Journal April No.2 (1987)

reorienting the curriculum for core subjects. The course must enable students to interrelate and connect the subjects studied in school with contextual problems and challenges.

The syllabi can also contemporise legal education. This requires that emerging specialities of law find place in the curriculum. This can also extend to interdisciplinary connections between law and other disciplines. While, realising this through the syllabi may sound near impossible, it can be made possible through better networking. Law colleges especially those within larger Universities can establish more effective connections with other departments. This can provide a range of practical and intellectual benefits for both students and faculty, including valuable insights about law and its relationship to other academic disciplines, particularly in the humanities and sciences.

Today, legal education has seen the emergence of subjects that transcend territorial and national jurisdictions. This requires that legal education is globalised. In the context of liberalization, privatization and globalisation, we have to keep pace with international standards. Further, the aim of legal education should be to create lawyers who are comfortable and skilled in 'dealing' with the differing legal systems and cultures that make up our global community while remaining strong in one's own national legal system.

A standardized structure and curriculum design throughout the country, if possible, can facilitate mobility of student community from one part of the country to another encouraging more national integration. In 2010, BCI set up the first Curriculum Development Committee with the aim of formulating course design in the courses. The Committee stressed on the importance of faculty autonomy in designing the courses.

There is also a need to harmonize the curriculum. The course must be customized based on the local needs and resources. However, care should be taken to ensure that students do not acquire an over-stuffed feeding due to enormous curriculum or else it will produce only more information without expanding the students' genuine insight.

Faculty may also be required to publish the syllabus they propose to follow, along with prescribed texts and resources for students. This can facilitate peer review and deliberations on the same.

### Examination

Real benefit from any curriculum can be obtained only if the knowledge is tested in an objective scenario. There is a great need to equip the examination system with ways to eliminate malpractices like copying in law schools. The nature of questions must be analytical requiring an application of law. In most institutions question papers require only a reproduction of law and cases. Such a move can ensure that students apply their independent thinking in answering them.

### Pedagogy – Shifts and New Permutations

Traditional Socrates' method of teaching cannot realise the aims of legal education. It has to be supplemented by other effective methods which consider the changing dimensions of legal education. Another teaching method that has evolved is the Langdell approach which has served the essential purpose of upgrading legal education. However, there have been arguments that it has caused the pendulum to swing too far towards abstract legal training<sup>129</sup> while ignoring the practical aspects. Conventional teaching methods are too often directed only towards academics.<sup>130</sup> Teachers must bear in mind that while most of the students may choose a professional career as a lawyer, some others may choose a judicial career or career as a legal consultant or law officer in government or an academic career.

Any teaching method must focus on experiential learning. Ideally, a combination of teaching methods including lectures, case-study methods and problem oriented exercises must be employed. Students must be involved in thought provoking discussions. Imaginative techniques including field surveys and visits can be used to expand the horizons of students. Faculty exchange programs with leading universities abroad would help in enriching the knowledge base and familiarizing faculty members with other legal systems and innovative pedagogic methods.

Pedagogy can be made more effective by use of innovative technology. Teaching need not be limited to presentations in classrooms. It must be extended to web-based technologies that permit collaboration and discussion amidst faculty and students across the country. Extensive use of networking can be made to ensure maximum dissemination of knowledge and

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<sup>129</sup> Edward J. Devitt, *Why Don't Law Schools Teach Law Students How to Try Law Suits*, 29 Clev. St. L. Rev. 631 (1980) available at <http://engagedscholarship.csuohio.edu/clevstlrev/vol29/iss4/3>

<sup>130</sup> Donald J. Weidmen in his article "The Crisis of Legal Education, a wake-up call for faculty" Vol. 47 Journal of Legal Education (1997)

information. This can be realised by complete digitization of all information available in the Indian Law Institute, Supreme Court Library, the Indian Society for International Law as well as those of all law schools, universities and public institutions in the country. Other possible avenues are captured lectures alongside live in-class workshops and computer-assisted learning exercises. While certain institutions already make use of these facilities, their potential is yet to be fully realised.

There is a certainly an overwhelming need to diversify the pedagogy. One means to make it possible is to enhance diversity of the faculty. Enhanced use of adjunct faculty, including practicing lawyers and judges can add an element of ‘realness’ to learning by inclusion of practical aspects of subjects. This can also provide depth and benefit to the curriculum at a relatively low cost. There must also be sufficient flexibility with law schools to appoint law teachers without having an LL.M degree if the individual has proven academic or professional credentials.

#### Research and Learning – Elimination and Construction

Law school can play a critical role in creation and generation of knowledge in addition to dissemination of knowledge. In fact, it has been pointed out that there is an absence of legal philosophers to answer perplexing questions of law.<sup>131</sup> Such absence owes largely to the insufficient emphasis on legal research in legal education.

A two pronged approach can be adopted to merge research and learning. First, the factors that hinder research must be eliminated and then, there must be a built in mechanism to facilitate research.

Plagiarism is a factor that affects quality of academic writing. CLEs are encouraged to assign projects where students are expected to research and write persuasive memoranda on topics.<sup>132</sup> These projects offer enormous scope for original path breaking research. However, the works are often plagiarised due to the callous attitude adopted by teachers in evaluation or lack of time for extensive research.<sup>133</sup> Also, though project papers are part of law school

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<sup>131</sup> N.L. Rajah, 'Where are our legal philosophers?' *The Hindu Opinion* Nov. 24 2016

<sup>132</sup> BCI Rules, Standards of Legal Education and Recognition of Degrees in Law for admission as advocates available at <http://lawmin.nic.in/la/subord/bcipart4.htm>

<sup>133</sup> See *Jonathan Gingerich & Aditya Singh* Writing Requirements, Student Assessment And Plagiarism In Indian Law Schools available at <https://blogs.harvard.edu/jonathan/files/2010/01/Gingerich-and-Singh-from-India-Law-News-Fall-2010-copy.pdf>

curriculum, most law schools throughout the country are indifferent to them.<sup>134</sup> The lack of awareness among students on original legal writing is another reason. Towards this end, the BCI has expressed its willingness to support law colleges to run software that checks for plagiarism.<sup>135</sup>

As far as the development of research facilities is concerned, there is a possibility that certain CLEs are at a disadvantage with respect to resource availability. This can be resolved through creation of well networked Centres to carry out research. These may take the form of Centers for Advanced Legal Studies and Research (CALSAR) with the mandate for promoting legal studies and research, and shall enjoy full autonomy. At one level, such Centre can facilitate resource- sharing among the CLEs and it can also serve as a think-tank for providing legal advice to the government.

#### Value and Skill Education – Realising the vision of legal education

What distinguishes legal education from other streams of higher education is its greater proximity and importance to the general public. Legal education must socially engage the learners and inculcate the spirit of service in them. It is said that the legal profession is an honourable and pious profession.<sup>136</sup>

Hence, the quality of legal education is not limited to attainment of academic goals. Both professionally and socially there are certain fundamental values and abilities a law graduate must possess. For instance, "Organization and Management of Legal Work" is recognised as a fundamental lawyering skill. Writing, communication skills and the ability to negotiate are other skills a lawyer must possess.

A lawyer may not be in a position to diagnose the client's problem adequately unless he has the range of knowledge and skill necessary to look beyond the client's definition of the problem and identify aspects of the problem which his client has not perceived. Also, lawyers bear ethical responsibilities as representatives of clients, officers of the courts, and public citizens responsible for the quality and availability of justice. This also extends to the skill of "recognizing and resolving ethical dilemmas" and providing at least a rudimentary training to resolve them. Hence, legal education is both ethical and responsible professional education.

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<sup>134</sup> Supriya Routh, Legal Education At the Crossroads 1 JILI 58 (2009)

<sup>135</sup> 'BCI Chairman initiates steps to stem plagiarism in legal scholarship' available at <http://www.barcouncilofindia.org/bci-chairman-initiates-steps-to-stem-plagiarism-in-legal-scholarship/>

<sup>136</sup> *Indian Council Of Legal Aid v. Bar Council Of India* AIR 1995 SC 691

There are social visions and goals legal education must achieve. The social justice aim of Indian legal education is to provide a fair, effective, competent, and accessible legal system to the citizens.<sup>137</sup> The central function that legal profession must perform is nothing less than the administration of justice.<sup>138</sup>

Thus, the main challenge facing India's legal system is to ensure that common people are able to enjoy their constitutional and legislative rights to the fullest. In this regard the primary responsibility rests with the CLEs themselves. CLEs must assess whether they are instilling academic programs with the profession's core value of justice and building in students an understanding of their responsibility to participate in public service and *pro bono* representation.

### Re-Learning the Profession

It is said that the entire future of legal profession depends on ultimate product of Law Colleges.<sup>139</sup> The changing nature of the legal profession calls for a greater focus on students' practice-readiness. There is an urgent need to bridge the gap between legal education and needs of legal profession. This requires that legal education takes the form of a clinical model of education that integrates classroom, simulation, and clinical instruction in the curriculum.<sup>140</sup> The MacCrate Report in the USA can serve as the reference point in this regard. The Report is a vital milestone that formed a directional sign for the legal profession.<sup>141</sup>

Such integration of aspects of legal profession into legal education has taken the form of 'clinical legal education'. One way to carry this forward is by setting up legal aid clinics. It has also been recommended that the setting up of such clinics be mandated as a condition for recognition of the law college. A practical examination on Research Methodology, Law Teaching and Clinical work has also been mooted.<sup>142</sup> However the problem is that clinical courses in law schools are mostly reduced to an extension of classroom learning. The low

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<sup>137</sup> Frank S. Bloch & M. R. K. Prasad, Institutionalizing A Social Justice Mission For Clinical Legal Education: Cross-National Currents From India And The United State 13 Clinical L. Rev. 165 (2006)

<sup>138</sup> *Dr. Haniraj v. Bar Council Of Maharashtra & Goa* AIR 1996 SC 1708

<sup>139</sup> *Bar Council of India vs. Bonnie FOI Law College* 2009 Indlaw SC 2106

<sup>140</sup> Terence J. Anderson & Robert S. Catz, Towards a Comprehensive Approach to Clinical Education: A Response to the New Reality 59 Wash. U. L. Q. 727 (1981).

<sup>141</sup> Thomas M. Steele, The MacCrate Report: Its Impact on Education in Law Firm Management, 23 Pace L. Rev. 613 (2003)

<sup>142</sup> UGC Curriculum Development Committee Law Report (2001) available at <http://www.ugc.ac.in/oldpdf/modelcurriculum/law.pdf>



priority accorded to practical courses should change, which again requires a change in perception of legal education.

However, it must be noted that the task of legal education is not limited to preparing students for the traditional profession. It must also enable students perform other roles in diverse fields as required. There is a need to re-learn and change the direction of legal education. Adopting a myopic view of legal education is no less than a tragedy. The need of the hour is to balance doctrinal and vocational education.

## **Concluding Remarks**

Legal education is at crosswords with the globalising world. It requires a pan-global vision with national credentials, equipped by leadership from the legal community. Law schools should be in the vanguard in recognizing that legal education does not end with graduation- that it is a lifelong enterprise. There is a need for continuing and well organised legal education reckoning the new trends in the world order.

Law schools should respond to these challenges with some self-evaluation as often these issues involve peculiar local problems. Legal education needs long term practical reforms that can be made only after consultation with all stakeholders including the faculty. It is essential that roles of the Bar, Bench and the academia vis-à-vis the regulation of legal education are balanced.

Legal education today is in urgent need of clarification, direction and creation of new ideas. What we require is a road map to locate the deficiencies and moreover to get rid of the complacency that has set in as regards legal education reforms. It is not possible to pin point a single issue plaguing the legal education system. However, many issues in combination form a formidable challenge. There are many more issues to be explored, if legal education is to have the desired 'breadth, depth and wide perspective'. The system is in need of a revolution that can enable it respond meaningfully and effectively to modern challenges.

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### Brief About Author



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# Legal Education in India: Issues & Challenges

**Kush Kalra**

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*The function of legal education thus is not only to impart legal skills but to impart an understanding as to the ends for which those skills are to be used, that is, towards a full sense of contribution the lawyers are to make to the function of law as a potent instrument for the building up and preservation of such a society.*

**Maxwell Cohen<sup>143</sup>**

*“...human history becomes more and more a race between education and catastrophe.”*

## Legal Education in India

As opposed to other forms of professional education such as medicine, engineering, management etc., legal education is both professional as well as liberal depending on its objective –acquisition of professional skills or socio-cultural education. The objectives of legal education as envisaged by the Baxi Committee are as under:

“We are unanimous that legal science is a human science, relatively autonomous of the other human, social sciences. It furnishes beyond techniques, skills and competences, the basic philosophies, ideologies, critiques, and instrumentalities, all addressed to the creation and maintenance of a just society. It is in this concern with justice in society and with attaining a just society which differentiates legal sciences from other social and human sciences”.<sup>144</sup>

The present legal education is predominantly liberal in character. However, the foundation of law as a liberal education in India is weak since after being initiated in it, the law graduate is in a dilemma as to his future. The Radhakrishnan Commission on University Education lamented the fact that “...Our Colleges of Law do not hold a place of high esteem either at home or abroad, nor has Law become an area of profound scholarship and enlightened

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<sup>143</sup> Maxwell Cohen, “The Condition of Legal Education of Canada”, 28 Canadian Bar Review (1950), p.294.

<sup>144</sup> Report of the Curriculum Development Centre, commonly known as Baxi Committee, Vol.1, University Grants Commission, 1992.

research”<sup>145</sup>. The Setalvad Commission observed: “The main purpose of university legal education seems hitherto to have been not the teaching of law as a science or as a branch of learning, but merely imparting to students a knowledge of certain principles and provisions of law to enable them to enter the legal profession”. The Commission also observed, “nor is the education in law imparted at the universities such as to fit the law graduates for the profession notwithstanding its supposed bias in favour of a professional career”<sup>146</sup>. It must be remembered that only few people can enjoy the ecstasy of learning a subject purely for the sake of such ecstasy! Education is therefore expected to be reflected in the process of life and living.<sup>147</sup>

### **Legal Education: Catering to the demands of the Legal Profession as distinct from Litigation**

It must be remembered that litigation is a part of the legal profession and is no longer the mainstay of the same. Therefore legal education must not be confined to cater to the requirements of litigative advocacy. A highly skilled professional education, without an in-depth knowledge and appreciation of fundamentals of law, is quite likely to create a completely exploitative legal profession. By definition, legal professionals have only a small domain of “presenting before a court or an authority”. The widest area of legal consultancy-advice, documentation, notarial services etc-are all outside the domain of legal professionals. In fact, members of the Bar Council and of the legal profession have never lodged their protest in any form against such methods of shrinking the area of operation meant for the legal profession through statutory processes. The Indian Advocates Act does not speak of the management of the legal profession, and has not brought the organization and management of law firms under its purview. It presumes that all professional activities are carried out at the level of individuals. Such a proposition is not only incorrect, but creates a breeding ground for inefficiency and incapacity. Since the Act has not talked about any organizational structure of the legal profession, there is no concept of limited liability, no concept of ‘lawyers collective’ beyond a partnership of 20. Further, coordination with other professionals has been made taboo. These collectively promote incompetence, incapability and inefficiency in serving the client’s total need with the clients being kept at a disadvantage of monopolistic service and the hazard of running between many service providers.

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<sup>145</sup> Menon, Legal Education in India: Status and Problems, 1983, p.9.

<sup>146</sup> Ibid pp.10-11.

<sup>147</sup> N.L. Mitra, Legal Education In India, International Conference.

Law and legal institutions are concerned with good governance. Good governance necessarily requires Rule of Law, which seeks justice and ensures a just society. This proposition fundamentally questions the ability of the Bar Council of India to lay down standards for legal education. Part of standard setting concerned with fundamentals like basic philosophies, ideologies, critiques and instrumentalities, and addresses itself to the creation and maintenance of a just society, is properly within the domain of the UGC.

### **Globalization, GATS and Legal Education**

The Law Commission has seriously taken note of the process of globalization on legal services.<sup>148</sup> Trade in legal services is essentially concerned with a member country's culture including language, procedure, and knowledge about the country's legal principles. That is the reason why a country can certainly prescribe (a) qualification requirements and procedure for enrolment as service provider, (b) technical standards to be achieved to increase the competence and ability of the service providers and (c) licensing requirements, provided that such requirements are based on objectives and transparent criteria, are not more burdensome than necessary and do not impose restrictions on the supply of these services.<sup>149</sup>

The above stipulations in GATS increase the responsibility of the BCI as well as the UGC in the charge of standardization and regulation of the system of legal education in India. Since the Advocates Act 1961 requires a qualification of law graduate to be the qualification prescribed for enrolment as an Advocate, both the UGC and the Bar Council of India now have a wider responsibility to see that the enhancement of capacity is achieved in another five years time through a new educational system. This should ensure that there is a competitive standard set in order to achieve a level playing field, especially when foreign lawyers and law firms would also strive for increasing their plan time in this country. It must be clearly understood that India is a very attractive market for all international players, be it in investment, trade in goods, in protecting intellectual property or in extending services to clients. Restrictions for entry can only be based on

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<sup>148</sup> "A third serious challenge assuming importance relates to the globalization process underway. India will have to open up its legal services sector sooner or later within the next five years. It is both challenge and an opportunity. For the second largest profession in the world to be able to provide a level playing field within the country and to encourage cross border practice among Indian lawyers, the profession has to revise policies and controls appropriately for which the time has come".

<sup>149</sup> General Agreement in Trade in Services, Art. VI and Art. VII.

- (a) Qualification restrictions,
- (b) restrictions imposed by way of experience and technical knowledge and
- (c) licensing requirements.

All these are required to be reasonable restrictions, having complete transparency and providing opportunities to all stakeholders to acquire them.

Globalization throws three challenges to all authorities connected with the legal profession and legal education. Firstly, the present legislative design for the legal profession is woefully inadequate: it restricts and discriminates. It is incapable of being standardized in core areas of professional legal education. Legal professional education especially in the financial sector and in corporate governance, is so poor that Parliament itself has allowed the accounting profession to discharge responsibilities which should otherwise have been that of legal professionals.

Legal education, which is the legitimate method of guarding the profession's interest in a nation, is completely mismanaged. Universities conducting courses do not take responsibility for their graduating products. The faculty does not design the course because it is imposed upon them. The University Grants Commission goes on debating the mythical question of law whether is an academic course or a professional course, without making an effort to improve quality. The Bar Councils, both at the Centre and the State being political identities, are incapable of standardizing the law curricula. The personal law does not empower the Bar Council to develop the ability of the profession.

The only existing debate of whether a law course should be of three years' duration or of five years' duration is a fruitless exercise. The problem is not of three year or five year courses, it is of developing a qualitative shift in the course outline, preparing study materials and designing an appropriate pedagogy.

## **Challenges in the Post GATS Era**

In the above situation therefore, legal education and its standardization face the following challenges: (i) standardizing the proper qualification inputs for the profession, (ii) compulsory professional training inputs before joining the profession and (iii) certification procedure for joining the profession. In the US, the input qualification is a degree of J.D. from an American University or an LL.M degree from an American

university if a law degree is taken from any other State. With this input, a person can work in a Law firm as a legal assistant, but cannot represent clients. The person can prepare detailed recommendatory notes, research on legal issues, prepare the case and submit the file before his senior. Such a person can, after obtaining such a degree, appear in the Bar test conducted by State Bar Councils. After clearing such a test he may get a license to practice law whereby he can represent his clients. As already stated, under the British system, a person can take the professional Bar-at-Law course with any Inns of Court or an institute, after obtaining a graduate level degree, not necessarily in law from any university. The training includes of professional skills through various practical methods.

In India, the University Grants Commission has to standardize the quality of the legal education, which includes the substantive portion of the academic curricula. The Curriculum Development Centre (CDC) has gone into the details of that exercise, but unfortunately the UGC does not enforce its writs on the universities. The curriculum designed by the CDC in its reports remains a paper tiger.

In so far as practical training is concerned, the Bar Council did not have any responsibility for the conduct of such training. Therefore, it has conveniently passed that responsibility on to the Universities by suggesting that some courses on procedural law should be compulsorily studied, and that some practical training courses should be imparted. Like American universities, therefore, Indian Universities are also taking the entire responsibility for preparing students both in respect of substantive legal knowledge as well as the procedural and practical training.

The State Bar Councils are made responsible to enroll the legal professionals straight after their graduation. There is no test conducted to standardize professional inputs. The Amendment Bill suggested by the Law Commission prescribes eight months training and a Bar examination. Such academic and professional licensing restrictions are permitted under GATS. Unfortunately, the profession has taken the challenges in a negative manner by calling strikes and agitations in some parts of the country. It is quite understandable that the profession is unprepared, both academically as well as in terms of skills, to accept the challenge created by GATS.

## Continuing Legal Education

### (a) Post Law School Legal Education for Lawyers

“Lawyers are always going to be students, because the learning doesn’t stop in law school. The irony is that when we become lawyers, we not only continue to be students, we simultaneously are teachers.”

Michael S. Greco<sup>150</sup>

Thus, lawyers’ education is as process extending over a whole career. It starts with the academic stage, extends through training in courts and continues through a mix of self-education, and learning from peers for as long as a person is involved in legal work. Aforesaid, we have stressed on the importance of the capacity to learn independently, which must be developed at the earliest possible stage, i.e. law school. It is that capacity which marks the vital distinction between education and training.<sup>151</sup>

The English legal system provides an example of an unusually ambitious and successful program that increases the proficiency of practicing lawyers: Professional Accreditation Programme. The scheme is run by a representative body of the legal profession regulating the quality of its own members. On the similar lines is the Diploma in Legal Practice in Scotland which is a three-year course of professional training and education. After graduating with a university degree in law, students who wish to enter the Scottish legal profession must complete the said Diploma. The Diploma provides law students with practical skills and knowledge, and equips them for the two-year traineeship that follows the Diploma. It is provided by university law schools but is taught predominantly by practitioners.<sup>152</sup>

### (b) Judicial Education and Training

The basic aim of [Judicial Training] is to equip the trainees not only with tools to execute their work, but to endow them with vision as to what is expected out of the system they serve. What is meant for justice? What is decision making process? What are the goals of

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<sup>150</sup> Michael S. Greco, President, American Bar Association, Keynote Address at the Fordham University School of Law Symposium: Challenges in Large Firm Practices (Apr. 15, 2005) in Clark D. Cunningham, “Legal Education after Law School: Lessons from Scotland and England’s,” 33 Fordham Urban Law Journal 1 (2005).

<sup>151</sup> Nani A. Palkhivala, *We, The People*, Manipal Power Press (2007), p.19.

<sup>152</sup> Clark D. Cunningham, “Legal Education after Law School: Lessons from Scotland and England” 33 Fordham Urban Law Journal 193.



the Constitution? What is the direction in which the law must move? What does the dictum justice according to law imply?

## 117<sup>th</sup> Report of the Law Commission of India

### Legal Education Paradigm : Use of New Technologies

New communication technologies through the Internet offer opportunities for law students, faculty and practicing lawyers to support the learning process. The Internet provides a wealth of resources and diverse communications platforms to encourage peer interaction, collaboration and feedback from teachers and others.<sup>153</sup>

Legal education should employ new technologies so that law students are prepared for their professional lives in which technology for research and communications will play an important role. It is important to teach students in a way that increases their comfort with technology and collaborative work.<sup>154</sup> Students with technological skills will be equipped to access up-to-date information and resources once they are in law practice.

Student centered, educational technology can address criticisms of the traditional teacher-centered classroom.<sup>155</sup> Technology can facilitate informal communications among law students and faculty, allowing more feedback to students and greater autonomy in learning.<sup>156</sup>

Law teachers are experimenting with virtual (online) learning experiences, both simulated<sup>157</sup> and on actual<sup>158</sup> projects. Use of online technology entails communications by students in

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<sup>153</sup> See GEORGE SIEMENS & PETER TITTENBERGER, HANDBOOK OF EMERGING TECHNOLOGIES FOR LEARNING (2009), available at [http://umanitoba.ca/learning\\_technologies/cet/IIHETL.pdf](http://umanitoba.ca/learning_technologies/cet/IIHETL.pdf) (discussing the fundamental changes in higher education due to conceptual and technological changes in teaching and learning and describing ways in which new tools (open courseware, blogs, social networks, audio and podcasting, and web conferencing) can be used in teaching and learning); see also *supra* notes 3-7 (online resources on legal education).

<sup>154</sup> DAVID LC. THOMSON, LAW SCHOOL 2.0, at 138 (2008) (describing current criticisms of legal education and asserting that law schools should use new technologies to empower students to be self-directed learners prepared for future change, that the new means of sharing and creating content reinforce collaborative approaches necessary for problem solving, that knowledge of technology is increasingly important for efficient law practice, and encouraging faculty to take the leap to experiment with new technological methods of interaction with students in law school courses).

<sup>155</sup> *Id.* at 137-140.

<sup>156</sup> *Id.*

<sup>157</sup> See, e.g., PAUL MAIARG, TRANSFORMING LEGAL EDUCATION: LEARNING AND TEACHING THE LAW IN THE EARLY TWENTY-FIRST CENTURY (2007) (discussing collaborative learning through interdisciplinary, transactional simulations in the virtual town of Ardcalloch, Scotland); THOMSON, *supra* note 45, at 97-110 (describing the use of wikis in teaching Administrative Law, the use of a "File & Serve" system in a litigation course, and the use of "CaseMap" in teaching Legal Research and Writing).

<sup>158</sup> Queensl. Univ. of Tech. Sch. of Law, Virtual Law Placement, <http://www.law.qut.edu.au/about/vll> (last visited April 17, 2009) (offering "Virtual Law Placement" in which "Students will apply legal knowledge and skills to complete a real world workplace project in a team, using online communication technologies to enable students to be virtually, rather than physically, present at the workplace and to engage with the other participants

their professional roles and voices. A legal education pioneer in the field of virtual learning environments, Professor Paul Maharg, drafted the following set of guidelines for the virtual learning experience he created: active (participatory) learning; learning to do transactions; reflection; collaborative learning; and ethical and professional learning.<sup>159</sup> These guidelines incorporate the learning principles under discussion more broadly in legal education.

In addition, law professors communicate about legal education issues through blogs. For example, American law professors share information through the Law Professor Blog Network.<sup>160</sup> These blogs provide space for sharing information and posting questions and responses to law colleagues.

## **Legal Education in India and Reforms Trends**

Law teachers in India should consider to what extent the four intersecting trends in legal education reform discussed above (1) reframing of curricular content to integrate cross-border and international dimensions of practice; (2) greater emphasis on problem-solving, negotiation, and transactional practice to balance the traditional focus on litigation; (3) connection of theory and practice through clinical legal education; and (4) use of new technologies for learning -are present in India. Are these issues viewed as relevant in India? To what extent are legal educators in India working on these issues? What innovations are occurring? What resources are available to share? A brief discussion of the Indian legal education system for those readers who are not familiar with it sets the stage for further consideration of these questions.

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in the workplace, including the workplace supervisor of the virtual placement.” Students participate in one of three projects administered by organizational partners including a charitable international social justice organization, a lawyers’ alliance, and a law firm.). At Harvard Law School, students learn about and through the medium of Internet in a Cyberlaw Clinic. Berkman Ctr. for Law & Soc’y at Harvard Univ., *supra* note 36. The webpage describes the clinic as follows:

The Cyberlaw Clinic provides high-quality, pro-bono legal services to appropriate individuals, small start-ups, non-profit groups and government entities regarding cutting-edge issues of the Internet, new technology and intellectual property. Harvard Law School students enhance their preparation for high-tech practice and earn course credit for working on a variety of real-world litigation, client counselling, advocacy, legislation, and transactional/licensing projects and cases.

<sup>159</sup> (describing key guidelines for transactional learning for design of a virtual simulation for a postgraduate professional course called the Diploma in Legal Practice at the Glasgow Graduate School of Law in Scotland).

<sup>160</sup> See Law Professor Blogs Network, <http://lawprofessors.typepad.com/> (containing links to a number of blogs in substantive law areas as well as Legal Writing Prof Blog, <http://lawprofessors.typepad.com/legalwriting/> and Clinical Law Prof Blog, [http://lawprofessors.typepad.com/clinic\\_profile/](http://lawprofessors.typepad.com/clinic_profile/)) (all last visited April 2, 2010).

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The Bar Council of India, the regulatory body over legal practice and legal education,<sup>161</sup> plays a key role defining the curriculum at law schools.<sup>162</sup> The task of regulating legal education is mammoth, as there are over 904 approved law colleges in India.<sup>163</sup>

The Bar Council of India recognizes two types of courses for first degrees in law, the three-year Bachelor of Law (LL.B.) degree for graduates holding an initial Bachelor's degree in any discipline, and the five-year joint Bachelor of Arts, Bachelor of Law (B.A., LL.B.) degree after twelfth standard.<sup>164</sup> For each of these degree programmes, Bar Council of India mandates that students take not less than twenty-eight law subjects, eighteen compulsory substantive law subjects and four compulsory clinical papers (classes).<sup>165</sup> LL.B. students take six optional papers from three or more groups of elective topics, and for a specialized and/or honours course, a student takes an additional eight papers from one group.<sup>166</sup> The list of elective course groups that may be offered is robust, including Constitutional Law, Business Law, International Trade Law, Crimes and Criminology, International Law, Law and Agriculture, and Intellectual Property Law, and a university/school may add to the subjects and groups.<sup>167</sup> Indian law schools often limit the number of electives to less than a dozen in a given semester in view of constraints in faculty expertise and other resources.

The high degree of control over the curriculum likely stems from the fact that India relies solely on a person's degree in law from a recognised University to insure minimum competence for practice for admission and enrollment of advocates by the State Bar

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<sup>161</sup> The Advocates Act, 1961, Section 7(l)(h) states that one of the functions of the Bar Council of India shall be "to promote legal education and to lay down standards of such education in consultation with the Universities in India imparting such education and the State Bar Councils." The Advocates Act, 1961, No. 25 of 1961 § 7(l)(h); INDIA CODE, <http://indiacode.nic.in/fullact.asp?tfnm=196125>.

<sup>162</sup> "Centre of Legal Education" is the terminology used by the Bar Council of India. Bar Council of India, Rules on Standards of Legal Education and Recognition of Degrees in Law for Purpose of Enrolment as Advocate and Inspection of Universities for Recognizing its Degree in Law Under Sections 7(1)(h) and (i), 24(1)(c)(iii), and (iiiia), 49(1)(af), (ag), and (d) of the Advocates Act, 1961 Made by the Bar Council of India in Consultation with Universities and State Bar Councils § 2 (2008), available at <http://www.barcouncilofindia.org/legal-education/rules-legal-edu.php> [hereinafter Bar Council of India, Rules of Legal Education, 2008]. In this article, the terms "law schools" and "law colleges" are used interchangeably and within the meaning of "Centre of Legal Education."

<sup>163</sup> See List of Approved Law Colleges (as of October 1, 2008), Bar Council of India Website, <http://www.barcouncilofindia.org/legal-education/rules-legal-edu.php> (last visited Apr. 4, 2010).

<sup>164</sup> Bar Council of India, Rules of Legal Education, 2008, *supra* note 53, §§ 4-5.

<sup>165</sup> *Id.* at sched. II, § 4. The required courses are Jurisprudence, Law of Contract, Special Contract, Law of Tort including MV Accident and Consumer Protection Laws, Family Law (two papers), Law of Crimes: Penal Code, Law of Crimes: Criminal Procedure Code, Constitutional Law (two papers), Property Law, Civil Procedure Code and Limitation Act, Administrative Law, Company Law, Public International Law, Principles of Taxation Law, Environmental Law, Labour and Industrial Law (two papers); compulsory clinical courses are Drafting, Pleading and Conveyancing; Professional Ethics and Professional Accounting System; Alternative Dispute Resolution; and Moot Court Exercise and Internship. *Id.* at sched. II, pt. mA} & (B).

<sup>166</sup> *Id.* at sched. II, pt. IICC).

<sup>167</sup> *Id.*

Councils.<sup>168</sup> Nonetheless, the highly mandated curriculum places Indian law schools at a competitive disadvantage in responding to the fast changing profession of law and global trends in legal education.

Other aspects of Indian higher education bear on discussion of the four trends. Practical training and clinical legal education in India are affected by the fact that full-time law faculty cannot practice law, though a law teacher may seek permission to appear in a particular case.<sup>169</sup> A practising advocate may teach law but teaching is restricted to three hours per day.<sup>170</sup> This effectively bans law practice by full-time faculty, a ban that affects teachers' ability to supervise legal aid by students. Another aspect is the role of university policies on various matters such as syllabus creation and student assessment on their learning in a course.<sup>171</sup> A syllabus is often created by a group of professors who teach the same subject. Grading of examinations usually involves external examiners besides the professor of the subject. This context requires collaboration among teachers and constrains an individual teacher from experimentation.

Both the National Knowledge Commission (NKC) and a high level committee governmental committee have recommended that the professional agencies, including Bar Council of India, be divested of over academic matters to allow universities to exercise control over curricular matters.<sup>172</sup> The NKC has also recommended creation of a rating system for law schools, changes in financing of legal education, measures to attract and retain talented faculty, curriculum development, changes in the examination system, measures for increasing

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<sup>168</sup> The Advocates Act, 1961, No. 25 of 1961 § 24(c); INDIA CODE, <http://indiacode.nic.in/fullactl.asp?tfnm=196125>.

<sup>169</sup> *Id.* §§ 29 (advocates to be the only recognised class of persons to practice), 32 (power of Court to permit appearances in particular cases).

<sup>170</sup> Advocates (Right to Take Up Law Teaching) Rules, 1979, § 3(1), Gazette of India, Extraordinary, pt. 2 § 3(i) (Oct. 26, 1979); Bar Council of India Rules, pt. VI, ch. II, § VII, para. 49, available at <http://www.barcouncilofindia.org/lbar-councilrules-index.php> (last visited April 6, 2010) ("An advocate shall not be a full-time salaried employee of any person, government, firm, corporation or concern, so long as he continues to practice ...").

<sup>171</sup> S. Dayal, *Legal Profession and Legal Education*, in THE INDIAN LEGAL SYSTEM 168, 173 (Joseph Minnauer ed., 1978).

<sup>172</sup> Nat'l Knowledge Comm'n, *supra* note 1; *Education Panel for Accordng Greater Autonomy to Universities*, ECON. TIMES, Mar. 30, 2009, available at <http://economictimes.india-times.com/News/News-By-Industry/Services/Education/Education-panel-for-accordnggreater-autonomy-to-universities/articleshow/4334762.cms>. But cf LAW COMM'N OF INDIA, 184TH REPORT ON THE LEGAL EDUCATION & PROFESSIONAL TRAINING AND PROPOSALS FOR AMENDMENTS TO THE ADVOCATES ACT, 1961 AT 1; THE UNIVERSITY GRANTS COMMISSION ACT, 1956, at 48 (2002) (recommending creation of a UGC Legal Education Committee to represent universities for purposes of consultation with Bar Council of India as part of its mandate to coordinate and determine standards for higher education institutions), available at <http://lawcommissionofindia.nic.in/reports/184threport-PartI.pdf>.

research at law schools, and measures to increase the dimensions of internationalization of law schools.<sup>173</sup>

## **How Legal Education can be improved**

Education creates the social climate in which the laws can operate effectively. Education not only moulds human personality, it also creates a consciousness of our responsibility towards the other members of the society. Man has a composite personality, he has immense potentialities but good as well as evil will stop while education seeks to bring out the good in man, law prevents the emergence of the evil in him, so education is an indispensable unit of mankind. There is therefore, the need for a harmony between the law and Education. These two or have to work in close collaboration and marched ahead in unison. And Law, as Hans Girls and rightly maintains, is a system of norms that regulates the behaviour of men. So that Legal Education should on one hand regulate the human Conduct and on the other hand direct them towards the development of society at large. The burden on legal Education is increasing day-by-day to promote social order.

No Society is static. Society keeps changing with the behaviour of the people. Such change may occur slowly and rapidly. Law has to regulate the behaviour of the people. When the behaviour of the people has moved away from Law with a sufficient degree of permanence tensions arise with varying results. Savigny, the father of the Historical School of Law, maintained that "The Law is manifestation of the spirit of the people, so that, it alerts with the developments of the spirit". Although he did not oppose conscious efforts at Law reforms he preached that the reform should always follow the spirit of the people: else it was doomed. But this theory is applicable only while society evolves comfortably with its legal system. Today galvonic changes are taking place, each of which can radically alter the system itself. One of such changes is the instruments for disposing of the disputes between adversaries one of whom must be in the wrong.<sup>174</sup> In the effect their function is to dispense corrective justice. But now courts have adapted the distributive Justice. i.e. In a problem all the parties involved are more or less in the right. Recently in A.P. with an agitation from the women the liquor was prohibited. When the gender discrimination in matrimonial Laws was protested the equal share to son and daughter was allotted. With these examples it is clear that Law has to adapt

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<sup>173</sup> Nat'l Knowledge Comm'n, *supra* note 1.

<sup>174</sup> See S.K.Aggarwal , " a report on legal education in India – problems and perspective", (1972)

the changes if it has to survive. It is enough to keep adapting the Law; there has to be an adaption of Lawyer's thinking.

Law will get adaptability only when the Law makers, Law teachers, promoters and the students are adaptable to changes. This adaptability can be achieved only through effective Legal Education.

As we know at present the representatives of the people failed in keeping themselves and executives in a prospective phase, the judiciary being an independent organ should equip itself with full strength to regulate the legislative and executive actions. For that, as Justice Jagannada Raju, Lokayukta, A.P., rightly maintained that "being the promoters of Justice Lawyers should be well versed in Law. As Law reflects the social ethos and play an important role in democratic and developing countries effective Legal education is an inevitable one.

Many Jurists and social thinkers emphasized the importance of effective legal education. Many opined that the harmonious blend of the mechanics of the profession and academic knowledge is needed.

Many warned that the Government policy of free Legal AID, and at present the efforts of judiciary to sweep out the corrupted politicians from the arena of Democratic Government, will be in vain if the legal education was not imparted effectively. In the present system of administration of Justice. It is an admitted fact that no scheme of Legal AID, administration of Equal Justice can function effectively without the active assistance and cooperation of the well trained members of the Legal Profession."

Many proposed globalization of legal profession. To compete with international level Law practitioners we should have enough substantial knowledge and procedural skill for that we need strong academic foundation.

Many argued that an effective legal educational system is itself an instrument of maintaining law and order in the society. It also helps in maintaining a balanced relation between the conflicting interests of the people. Indeed it is an essence of the 'social engineering'. Law is a bed rock on which the entire edifice of society is built. So the longevity of the society depends on the strength of Law. As a river can't rise higher than the source, the judiciary can't attain the culminating stage, unless the advocates in the Bar are properly trained in the

institutions. So the genetic defect in legal education is evitably reflected on the Bench and at the Bar and ultimately on judiciary. Therefore it is necessary to have sound legal educational system.<sup>175</sup>

But unfortunately, as Law Commission (1959) headed by Satelved, reported that Legal education has been facing crisis for the past 40 years, Commission pointed out many factors for the slow deterioration in the Legal Standards: some of those are lack of adequate teaching staff, increasing student population who are not very much interested in learning Law, lack of buildings, lack of adequate and minimum standard books, more number of temporary affiliated colleges, and so on.....

To make legal education socially relevant, intellectually challenging and professionally competent, one can make a number of recommendations in respect of curriculum content teaching methods, admission policies and examination techniques. Chief Justice Ahmadi in his inaugural address at the All-Indian conference of Lawyers made many thought provoking suggestions. I would like to draw attention in regard to three important suggestions he made<sup>176</sup>:-

- i. The Bar, Judiciary and U.G.C. must join hands to raise the standard of legal education in this country. As a first step in this direction it is suggested that a Legal education committee of the Bar council should be set up comprising representatives of all the three wings.
- ii. Legal Education Committee so formed must direct the concerned University to withdraw the recognition or affiliation and that would once and for all put an end to those law schools which are suffering from the above mentioned disabilities.
- iii. In every state some advisory committee should be set up with a sitting Judge of the High court being associated there with to inform and advise the legal education committee of the developments taking place in the state.

As the Justice points out in foregoing passages the Bar Associations and Universities play a dominant role in making legal education programmes successful. Now we will discuss the role of the Bar Association and University in Legal Education.

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<sup>175</sup> See N.R.Madhva Menon , “ legal education in India: status and problems”.(1983)

<sup>176</sup> The all India conference of lawyers , New Delhi ,

## **Role of Bar Association in Legal Education: -**

As the second largest Bar in the world, Indian Bar Council has a dominant role to play this matter. In pursuance of that Indian Bar Council created a Trust namely, Bar council of India Trust 1974, as an educational and research foundation with the objects of establishing one or more model Law schools, organising Legal Aid to the poor, publishing Law Books and Law reports and promoting welfare of the members of the profession. Bar Council of India trust organized many seminars on Legal Education, in 1977 at Bombay, Trust organised a seminar on "Implication of new pattern of Education (10+2+3) on Legal Education particularly with reference on entrance qualification, duration and curriculum", similarly, All Indian Law teachers Association organized a National Conference on "Legal Education" at Dharward in 1979. Many state Bar Councils [Tamil Nadu, Kerala, W.B., M.P., U.P., Bihar] responded positively to the call of the Trust and expressed the need for reforming the system of Legal Education.

In 1961, Advocates Act was passed U/s 49 of the Act the Bar Council of India has been empowered to make rules relating to the standards of Legal Education to be observed by Universities in India. Bar Council made many rules. It has made suggestions for better system but due to the lack of earnestness in teachers the effective execution of the rules failed. Many Law lectures were not qualified in JRF (or) NET exam. But still they are being appointed in law colleges because they do not and can't demand a higher remuneration from the college, the college committees will appoint for nominal amount of remuneration, which will badly affect the Law Students. So the Bar Council has to look into the college matters and see that the lecturers have completed or passed JRF (or) NET, apart from Bar Universities should also take due regard of the matter.<sup>177</sup>

Bar Councils from the beginning are very interested in implementing one year apprentice programme. Even in the beginning American Law Students served as apprentices under the practicing lawyers, where they copied, drafted legal papers, read the few books available in their office and observed their mentors in action. The impact of such training was uneven; some fledgling lawyers began their practice of law with a good back ground while most were inadequately prepared to assume the responsibilities of the profession. The practitioners lack time and interest to educate themselves, and the fact that most law practices embraced a narrow range of interest, also contributed to the poor quality of the training the youngest

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<sup>177</sup> See Advocate's Act (1961), Bar council of India trust



lawyers received. Even in India the students at present undergoing apprenticeship, as I have observed, are just imitating three seniors, they have lost their independent identity. The Natural Logical abilities with which they are endowed are being suppressed which is not warranted for the prosperity of the students and to the profession.

An immature LL.B student in courts may understand the things going on and that will have a negative impact on the student. This is something like taking a boy to a horror film, which can't make a distinction between the 'fiction' and 'reality', whatever is picturised in the film he believes them to be true and real because, he has not yet experienced the real life yet. In the same manner a student of law who has not yet seen the law in motion, can't assimilate the substantial knowledge which he has acquired in the class room and procedural knowledge which he observes now will definitely have a negative impact on him.

In my view, instead of keeping the student in confusing state of mind in courts, better involve them in free legal AID programmes. These programmes are community oriented and problem solving practical training through legal services in the school setting will give them a chance to learn the techniques of interviewing, collection of facts, appreciation of evidence, examination, cross-examination, re examination of witness in a real life situation. This will be a good academic exposure to the students. With this they will know their need to the society which is very essential at present. This will also create an optimistic view among the students.

It is the District Bar Association which is the competent and suitable body to implement this plan of action.

### **Role of Universities and Legal Education: -**

It is needless to stress the role of Universities and affiliated colleges in imparting effective legal education. The students of Law are mentally and physically attached to the Universities and colleges for considerable period of time. So these institutions will have enough time to mould the character and personality of students and impart effective Legal Education to them. Here are some of my suggestions that I feel will help in imparting effective legal education.

- i. Autonomisation of Law departments in the Universities i.e. Law department should be given funds in the beginning of the Academic Year itself, so that the Head of the Department may

spend the money according to the changing needs and to fulfill the demands of the time independent.

- ii. Like in U.S.A., the Indian Universities also allot Law student to Governmental or private agencies like the Municipal Board, the consumer council, ...etc and assign to them the tasks including field investigation, written work, participation in discussions regarding Legal matter....etc the chief purpose of such an internship is to discover how the various organization work and what enactments are mostly used in practice.<sup>178</sup>
- iii. Students should be given financial assistance and moral encouragement to participate in National and International Conferences, so that the student will have a chance to learn communication skills, and have an opportunity to interact with higher officials.
- iv. Today's LLM students are Tomorrow's Law teachers so the concentration on LLM students should be greater. LLM students should not only have command on the subject but also cultivate teaching abilities. They should learn teaching techniques so should be given a chance to take classes for LLB students which will definitely give them a lot of confidence. And basing on the class room performance internal marks should also be given to them.
- v. Paper submissions should be made mandatory for the LLM students at the National and International Level conferences
- vi. The subjects prescribed in the curriculum do not satisfy the needs of the society. New enactments should be introduced in the curriculum at least at LL.M level.
- vii. At the state level Universities should offer four common specializations they should properly be utilized by U.G.C.
- viii. A National professor should be appointed regularly by the U.G.C. This provision should properly be utilized by U.G.C.
- ix. A National Common Entrance Test should be conducted and fully equipped aided institutions alone should be given the chance to admit successful students.
- x. Universities should initiate steps to conduct campus interviews for vacancies in the public (or) private sectors.
- xi. Even recently passed LLM student are not aware of the recent developments in Law. When they are sent to the class rooms to teach they are not in a position to answer the questions from new generations.
- xii. And no amount of professional ethics is going to change the present state of affairs and the only answer is to inculcate these ethics in the behaviour pattern of the students right from the stage their induction in the institute.
- xiii. Last but not least, we should start doing research on the Indian Jurisprudence. Indian philosophical thoughts should be given a room to play making the law susceptible, so that the

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<sup>178</sup> See The Journal legal education , “ The Legal Profession in Japan and United States”

students can feel at home with philosophy of Law. When a thorough philosophical knowledge is imparted, then the students can come up with high educational standards.

But the issue is not the factum of existence of these ideas in our present papers, but the question is its rigorous implementations and the extent to which it ought to be done.

### **Conclusion: -**

Law school experiences, if they are powerfully engaging, have the potential to influence the place of moral values such as integrity and social contribution in student's sense of self. This is especially likely to take place in relation to the student's sense of professional identity, which is of course an important part of the individual's identity more broadly.

*William M. Sullivan*

I feel it is right gesture to remind you all once again the saying of Swami that "Education is not the amount of information which is put into your brain to remain there all through your life undigested. It is men making, character building and assimilation of ideas."

The BCI, state bar councils, state governments, the UGC and universities have a greater role to play for improving the standard of legal education in the country. They should work in a comprehensive manner without any conflict. They should think seriously to provide the resources, both human and financial to all law schools for qualitative legal education. The legal education in 21<sup>st</sup> century should also consider the globalization and its implementations on legal field at national and international levels. The BCI and the UGC, in the area of computer applications and information technology in the legal fields, should explore new avenues and potential uses of the Internet in the practice of law and legal education. They should find out the ways and means to meet the new challenges and provide better tools of research and methodology of learning for the coming generations. University statutes, if necessary, should be changed to bring all law colleges under a single law university. In each state a National Law School type of institution should be established. The area of deficiency should be located and correctives should be affected with the cooperation of both bar councils and universities. Needless to say those reputed and competent academicians should be taken into confidence and their services availed of to set right the matters. It is not only in the fitness of things but also the dire need of the time to introduce a five-year law course in all

recognized law schools of the country. The measures suggested in this paper, if sincerely implemented, could help in ushering a new era in quality legal education in the country.

To sum up, our legal education system needs a lot of improvement and reformation over its traditional methods in order to meet the needs and demands of the present day society. In the period of globalization, law cannot be seen in isolation. In the present day scenario of the world, events are moving fast and there should not be delay in reforms of legal education. Now the time has come to realize how to prepare our law students to cope with these rapid changes and also how to adapt our legal system to new vistas with a view to fulfilling the justice promised in the preamble to the Constitution of India. In this context, the mutual cooperation between the bar councils and the universities is quite essential.

Edmund Burke rightly said, **“You can never plan the future by the past.”** The time is ripe for an overhaul of legal education in India.

As there are laws of poetry, so there is also poetry in law. Apart from making law as interesting subject, the message for law students is:

The best poetry in law will only be enjoyed when you discover:

*Your commitment to ‘Rule of Law’;*

*Your passion for liberty;*

*Your profound concern for insidious encroachments on human rights*

*Which I perceive as the greatest danger to liberty.*

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### **Brief About Author**



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# Legal Education in India: Issues & Challenges

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## Introduction

Everything is developing at a faster rate. In this era of globalization, urbanization and modernization everything is changing almost every day. Change has become irresistible and adaptability to changing, a need. In this situation every day brings new challenges to the administration of law and justice in the country. In these circumstances it becomes necessary for every developing country- like India to have educated, disciplined and better lawyers, jurists and judges. For the attainment of which one needs such a system of legal education that could stay parallel to the ever changing complexities of society and that could both safeguard the rights of the citizens and ensure the compilation of duties by them.

*“To mound the nation to the pinnacle of best administration of justice we need to educate and makeover the best lawyers.”<sup>179</sup> (Rajni Parmar)*

### The situation today:

What happens in most countries is that half of the lawyers addressing the court are so poorly trained that their clients actually often loose cases that are strong enough to win. Not just the legal language, their manners, conduct, attitude etc. are all so depressing that it affects the administration of law, order and above all, justice at a larger level.

Law, justice and order are the sole function of judiciary and lawyers you see are the backbone of judiciary. And because they play an immensely important role in the administration of justice, law and order it is both presumed and expected that they serve their clients and apparently the nation with rational arguments. Meager argumentative, elocution and the power to persuade others will not do, in all cases. Knowledge and the ground advocacy skills are always needed. They are the one that actually draws the line between bad, good and very good lawyers. A thorough knowledge of law, when combined with wit and intellect makes one a better lawyer than the others

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<sup>179</sup> Mrs Rajni Parmar Assistant Professor, Amity Law School, Jaipur,

### How to evade this problem?

Education is the only means through which one can reach unmatched heights, excel in indifferent spheres of life, and even conquer the world and when it comes to the legal fraternity- Organized, planned and quality legal education to the students of the human race is like the planets to the solar system, stars to the sky, colors to the rainbow, light to the sun and blood to the body. It is one such wealth possessed by every educated person which is neither affected by inflation nor does it get depreciated. It can neither be stolen nor sold. It is one such asset which increases (in all respects) over time.

In fact one has rightly said, *“Education is the most powerful weapon which you can use to change the world.”* (Nelson Mandela)

Education is the torch to the right path. It is like that flame, which once ignited passes the light ahead. Wise men of their times, if are remembered today- then it is only because of the education they had. Education instills in one not just what’s in the books, i.e. knowledge of the subject matter but at the same time it also implants in one, values like- compassion , honesty, devotion, dedication, punctuality, discipline, respect towards other, and many such qualities that are actually the signs of a good person, acceptable to society. Many can be wise, smart and even clever or witty but civic sense – it is what only the educated will have, at least more than the uneducated or the less educated ones.

Years of practice, charm and skills to persuade others, wit, goodwill all of it goes in vain if there is no right education. So, simply being educated is not enough, being rightly educated is what the need of the hour is.

### **Legal Education in India :-**

The concept of justice is not ‘a once upon a time concept’, in fact it is, ‘an all-time’, ‘since the beginning’ types concept.

Legal education in India is as old as the concept of dharma in the Vedic period. Although at that time it was the king or his appointees (persons of known integrity and reputation of being fair and impartial.), who carried the process of dispensing justice, but yes this need of having a fair and just system for administration of justice was fulfilled, though with little compromises.

Traits of law, order and administration of justice have existed since the earliest beginning that one can ever think of. If one believes, then according to the Hindu mythology, the principles of justice and equality have been a part of the lives of the gods too. Not even they, could escape obligation confirming justice. *Shanidev*- the third son of *Suryadev* is renowned for he always abided by justice. No matter who it is, what position the person held, he remained unjust, fair, impartial and equal in behavior towards all. Texts like *manusmriti*, *yajnavalkya smriti*, *narsdsmriti* too are an existing evidence that the principles and concept of justice is nothing created by the after civilizations but it was there since the beginning.

## **Issues and challenges:**

### **The system of legal education in India:**

#### Three years law course:

Post-independence, it was in the wake of the need of better lawyers and better jurists that the legislature passed the Advocate's Act in the year 1961. With changing times, changing needs and changing scenario the legislature made renovations in the Act via amendments, the most prominent one of all was that made in the year 1987. It was in this year that the legislature enlisted the qualifications to be possessed for one to join the three year LL.B course.

But! But! But! Like no person is perfect and no day all good, no law can be complete. The three years course too has some minor and major flaws that in some way or other stand up as a challenge to legal education. It also in a way adds to the immoral conduct of the students. Students attending seminars, competitions and investing time in other academic activities when fail to meet the required attendance indulge in immoral practices like 'proxy' attendance. Almost every students does it at least once during their student's life.

I do not advocate eradicating the attendance system, it's needed and in colleges like RMLNLU (Dr. Ram Manohar Lohia National Law University, Lucknow), where students loose marks if they lose attendance, this attendance system is actually rank saver, because regular class-attending students get a chance to score more. But what I advocate is that along with the regular academic subject classes, there are other important activities and tasks too, that a law student needs to have a settled hand in, so the rules, regulations and even the time-table shall be set up in a way that those indulged in other academic activities either get rewarded with attendance points or at least if marked absent do not lose their



scores/grades/pointer whatever is the system, of course only after proper investigation is done. For colleges who award points for attendance there could be some system that also awards points or marks to students active in other academic events/activities or competitions. After all, when there can be sports quota, and meritorious scholarships why not academic quota?

**- Strict emphasis over attendance:**

Since the three year law course can be pursued only if one holds a bachelor's degree in any discipline, which means normally he/she is or more than 20 years of age, which I believe is an age where one becomes mature enough to decide what's good and what's not. Students at this stage are dynamic, career oriented and old enough to choose what'll be good for them in the long-run. I don't mean to say that the universities should leave their students just free to do whatever they want, regardless of the fact that they are not attending the classes, but what I want to convey is that a student should be left to spend his/her time in a way that he/she thinks would be most fruitful for him/her, reason being that not for everyone whatever is taught in the class will fetch results at the end. Maybe there is some other course, some other competition, some other publication write-up that he/she if focuses and spends time on, will fetch him/her better results. Of course a check should be put-on but attendance should be made flexible, at least for the post graduate students.

**Five years law course:**

Adopted from the western system of legal education, it was in the year 1985 that the government introduced this system of legal education in India making NLSIU at Bengaluru<sup>180</sup> (i.e. the National Law School of India University) the first law college in India providing the five year law course. Today, the top five colleges providing the five year law course are: NLSIU, Bengaluru (National Law School of India University, Bengaluru), NALSAR Hyderabad (National Academy of Legal Sciences and Research, Hyderabad), NLIU Bhopal (National Law Institute University, Bhopal), NUJS Kolkata (National University of Juridical sciences, Kolkata), and NLUJ (National Law University Jodhpur). These top five universities in the states of Karnataka, Telangana, Madhya Pradesh, Kolkata and Rajasthan respectively are manufacturing the best 300 law students of the country every year. Since, every employer wants the best, it is these five universities with greatest placement record of amongst all other

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<sup>180</sup> Then Bangalore

The five year law course gave the aspiring and willing students the chance to carry out their study in a professional course just after completing intermediate, i.e. senior secondary schooling (which was not the case earlier), but it also has some cons accompanying it. Some of which are listed below.

### **Jack of all master of few:**

According to the syllabus of the most colleges, the five years law makes the students a jack of all and master of few. Because one has to study not just law subjects but also subjects from the discipline of arts, management, commerce or whatever the discipline they choose as a part of their dual degree five year course, and that to all together. The most technical subjects including procedural laws and other like Indian Penal Code (IPC), Criminal Procedure Code (CrPC), Code of Civil Procedure (CPC), Evidence, Constitution, Administrative Law are planned and taught in a semester. Now you can think of the flaw yourself.

### **From the perspective of teachers:**

#### **i. Subjects of non-specialization:**

many a times, a teacher is forced under professional obligation to teach a subject, he/she is not specialized in. this might be good and fruitful for the teacher in the sense that he/she gets to learn a lot more while preparing lectures, but in most cases what happens is that the teacher doesn't perform to the point that he/she would have if given a subject of his/her specialization. Law is a specialized field, a field of specialization. Neither everyone can teach everything nor anyone finds joy or can perform his/her best in an area, not of interest.

There are people who might find solace in such situations while teaching a subject not of their interest, and no doubt there are multi-taskers too. but, then for a teacher, if this had to happen i.e. if he/she has to teach a subject neither of his interest nor his specialization then at the outset what is the point of doing a specialization in any subject? What is the purpose of focusing on a specific subject, for one or two long years when at the end they are to be professionally obligated to explore more, that to during such a time/ stage of their life when he/she should be allowed to dispense and share what learnt.

ii. Sabbatical leaves:

Unlike most international universities sabbatical leaves are not easily available to teachers of most universities in India. Hence, most of the times they are stuck in a situation where they have to pursue their higher education and academic aspirations keeping at stake their current position or job.

Had there been regulated, codified, legislatively controlled provisions for sabbatical leaves for teachers, I believe the scope, for both law and legal education could have expanded, and who knows we could have had better teachers, scholars, researchers, lawyers or even jurists after that.

### **From the perspective of students:**

i. No proper orientation:

Most students, especially in the five year law course land up into law from nowhere. In most cases they get themselves enrolled in the course just because they think that it will fetch them a degree in a professional course, or because it will be fun, or may be because they are hit by the stereotypical belief attached to the discipline of legal studies that, *“jo kuch nahi kar sakta, vo law karta hai”*. Many, literally many students pursuing any of the three/five year law course are enrolled because their parents found it to be fit for them. There are many students who do not know what CLAT (Common Law Admission Test) is till they enter into a law college. After completing their respective courses such students may fetch themselves job and who knows may even mint money throughout their lifetime but is money the ultimate goal? Can we call richest person as the most intellectual person? Is it that money can judge your skills, abilities, wit or wisdom? Think for yourself.

ii. Rote learning system:

The current system of legal education in India, in most universities is focused on the primitive methods of learning i.e. rote learning rarely giving an opportunity to the students to think out of the box, invent, or start something new and fresh. Students literally sit before the night of the exam, mug up like hell and next day just vomit it out on the answer sheet. There is nothing that is actually testing their intellect or inbuilt skills (which are unique and different for every other person). Their memorizing capacity and not in-depth knowledge is

tested. He/she writing the best mugged up answer scores highest and the best thinkers – they are tagged as average students.

*“Children must be taught how to think, not what to think.”(Margaret Mead)*

I personally find it very idiotic. Not because I cannot mug up things or memories like the toppers but because if tested on intellect and practical application, I might score more, or who knows I might score the highest. As children, all of us have hated this system of examination but when we become administrators or teachers or policy makers, we enforce the same old school examination procedures bluntly.

iii. No practical approach towards law:

The syllabus of most colleges is planned on theory, making the most technical subjects like Indian Penal Code (IPC), Criminal Procedure Code (CrPC), Code of Civil Procedure (CPC), Evidence, Constitution, Administrative Law, purely theoretical and hence disinteresting and boring. How can one then expect students to excel in the later stages of their having been taught this way that meagrely stimulated their interest?

Even internal assessments by the teacher (comprising a great part of the overall percentage) are done based on the theory presented to the respective subject teacher. No matter how hard you try testing whether it is copied, students find ways of bypassing and escape the hard work, rather submit a write, partly or totally belonging to someone else. Think yourself what abilities or skills are actually being tested? Copying skills, by passing skills or the thought of but never actually, truly tested research or intellectual skills?

iv. Strict emphasis over attendance

As I spoke of it earlier too as a prominent problem/issue /challenge before students – this existing attendance system restricts, most, the students to pursue the activity/ event/ goal of their choice. They try and indulge too hard in meeting the required attendance that they, be it incidentally or deliberately turn themselves ignorant towards other essential and vital activities/events/competitions like moot court competitions, seminars, symposiums, conferences, debates, etc. , that are actually such activities where a student needs to have a settled hand at. Consequentially making them lethargic, dull, book-worms and hence, making them last in the race.

v. Teachers allotted subject not of their specialization:

When a teacher is allotted a subject not of his/her specialization, he/she is not solely affected, the effect carries forward to the students. And when I say effects the students, I mean adversely affects the students, amongst which the worst is that the students are not provided with the utmost quality education from their teachers, having an option that the same teacher could actually teach them the other subject, far better than the subject that he is allotted. Self-notes, and self-study is not every body's cup of tea, in all cases. Also, there are certain subjects that need to be taught and explained by a second person, a teacher because students attend the college or classes to learn and a teacher is there to teach, after all that is his/her job, and that is for what the students are paying. Now if a teacher in this case specialized in a subject, and has a good insight over it but is professionally obligated to teach some other subject, how fair so you think it is to the students, the teacher, the subject or the system of legal education?

vi. Accessibility to e-resources:

With almost every and anything going digital, law too is untouched by digitalization. Tech experts and inventors have so far invented many apps and softwares that can allow you to explore almost any book, case, journal, manual, dictionary, lexicon, commentary, ministry reports etc., by just a click. But the drawback is that many colleges still could not provide their students with such ultra tech facilities.

Access and knowledge about sites like Manupatra, SCC online, Indiankanoon etc. will not just make research and study quick but also save time, money (spent on books) and be handy as well.

*“Whatever the cost of our libraries, the price is cheap compared to that of an ignorant nation.” (Walter Cronkite)*

Electronic gadgets are not allowed to be carried everywhere in the campus of many universities, internet is restricted in most colleges (example Banasthali Vidyapeeth, Rajasthan). Forget universities even parents throw tantrums like *“barbadd ho gaya/gayi hai, din bahr phone mein laga/lagi rehta/rehti hai, phone mein aisi kya padhai ho rahi hai?”* etc. if they find us using our phone or lap-top more than the usual.

Not just this even teachers are ignorant over how to access certain e-resources, then how can we expect the students to go digital?

### **Stereotypes customarily and commonly attached to law, law students and lawyers:**

- i. There is this stereotypical belief that is attached to most female lawyers and law students that such a Girl is not fit to marry, or better is not a 'marriage material'. If you see around self, you will for sure find a number of unmarried woman who are some way or the other attached to the field of law.
- ii. Also, there is this conception in most people's minds that, three people shall be avoided for as long as one can, and such three people include- the black-coat wearers, the white-coat wearers, and the khaki wearers. This misbelief is a result of the fear, which primarily in law relates to the time and money that is consumed throughout the proceedings, or the trials. This is some way are the result of poor legal education and it has finally led to a conception that:

*"Lawyers are liars"*

Consequently lesser number of students pursue law as field of study after completing the senior education and also may be because of the same reason not many parents like their ward to be a lawyer. Yet another hindrance to legal education.

### **Non-attending students are degree holders:**

A very common phenomenon, I would say that is practiced in India, that students who have never attended classes are law degree holders (this doesn't include distance learning programs because they are fully-fledged and fully-planned courses by eminent scholars, teachers and fellows of the renowned universities). What I am talking about here is the problem where: students who never see the face of their colleges except for exams qualify and practice. I mean is it not unfair to the students regularly attending classes, going to colleges, sacrificing their quality time, leaving their home behind just to attend college? They are affiliated colleges which only conduct exams and not classes and provide their students with professional degrees. It is due to such colleges and students that uncivilized lawyers with lame arguments stand before the court and make law and legal profession a mockery.

### **Quantity not Quality:**

Mushrooming of private law colleges is another challenge to legal education. Two decades back it was just NLSIU which was set up with a motive of providing quality education to students interested in the discipline of law. The college did not have a lucky draw or first cum first admission procedure, but a common law aptitude test (CLAT) was introduced, where admissions were given according to the applicant's aptitude. But slowly and gradually just like disciplines of medical and engineering became common in every other household, similarly with mushrooming private universities legal education too is not just provided by the NLUs (set up by the government) but a variety of other universities and colleges.

The shortcomings and repercussions attached to it are that, with the flood opening of private law universities the sole purpose of granting quality education to students is lost and a lump sum number of students most of whom are not even fit to face a judge, are manufactured every year.

In the long run what will happen is that like unskilled, countless and jobless engineers India will soon have unskilled, countless, jobless law degree holders. Thus, deteriorating the human resource of the country.

### **Conclusion:**

India is still a young country since independence and its potential cannot be doubted. What one needs to keep in mind is that the current scenario can only be changed if timely reforms are made to make the current system of education more responsive. Rather than the typical rote learning methods practical approach needs to be brought in the curriculum (although moot courts are a great endeavor, but a lot is still needed). If the author of this essay were to summarize the essay in the shortest way possible, it would be that- education is a two-way process between a teacher (or tutor) and a student (a pupil), and the teacher can produce conscientious students, honest professionals, and informed citizens only if he/ she is a dedicated teacher, determined to upgrade and enhance the current system of administration of justice.

India is an upcoming, evolving super power, foreseen to be comprising of the greatest number of youth population by the year 2025, if situations are not corrected yet, things which can change the fate of the country might get out of control.

## **Brief About Author**



Aishwarya Himanshu Singh is a confident, social and self-motivated individual with great enthusiasm. She is pursuing B.A.L.L.B. from Banasthali Vidyapith. She has a soft corner for Research & aspires to excel in the field of juridical sciences. She has also presented papers at various national and international conferences at NLSIU, NUJS, and NLUJ & RMLNLU. Her write-ups have also been selected at various international competitions.



# Legal Education in India: Issues & Challenges

**Mohammad Atif Ahmad**

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## Introduction

*“As long as the world shall last there will be wrongs, and if no man objected and no man rebelled, those wrongs would last forever.”* Clarence Darrow, a prominent American lawyer and leading member of American Civil Liberties Union aptly said the aforementioned quote. Till this world exists, the need of Law will prevail and with swiftly propagating time, the Law will reform.

The law and the legal education has always been reforming and improving itself with the need of the hour. In India, legal education has been on the agenda of the government since the independence of the country. To improve the legal education system in the country, government bodies, such as, Law commissions of India, Bar Council of India, University Grants Commission, and others have taken various initiatives. The National Knowledge Commission and a committee of three members created by the Supreme Court of India have also recommended reforms in the legal education system of the country. Legal Education is influenced by a multitude of factors, such as:

1. Governmental Policy.
2. BCI<sup>181</sup>
3. UGC<sup>182</sup>
4. Administrating body of the law schools.
5. National Litigation Policy.
6. Developments in Legal Profession.
7. Developments in the Legal System.
8. Competency of students & faculties.
9. Infrastructure.

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<sup>181</sup>Bar Council of India

<sup>182</sup>University Grants Commission

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## 10. Technological advancements.

### Indian Legal Education System

In India, legal education has been traditionally offered as a three years graduate degree. This structure has been changed since 1987. Upon the suggestion of the Law Commission of India and the Bar Council of India, specialized law universities devoted to legal education were established, the first being the National Law School of India University, Bangalore. Thereafter other law universities were set up, offering five years integrated law degree programme with different nomenclature in addition to the prevailing traditional three year graduate degree. These law universities were meant to offer a multi-disciplinary and integrated approach to legal education. It was therefore for the first time that a law degree other than LL.B. or B.L. was granted in India. These National Law School offer a five year law course, upon the successful completion of which an integrated degree with the title of "B.A., LL.B. (Honours)/ B.Sc., LL.B. (Honours)/ B.Com., LL.B. (Honours)/ B.B.A., LL.B. (Honours)" would be granted. Thereafter various law schools across the country offering five year integrated law degree programme have been established under the Advocates Act, 1961, which is a law passed by the Parliament both on the aspect of legal education and also for regulation of conduct of legal profession. Under the Act, the Bar Council of India<sup>183</sup> is the supreme regulatory body to regulate the legal profession in India and also to ensure the compliance of the laws and maintenance of professional standards by the legal profession in the country.

Numerous changes have taken place in both legal education and legal profession since then which in turn require a re-articulation of the aims and objectives of legal education. The National Knowledge Commission, while deliberating on the issues related to knowledge has made a modest attempt in this regard when it, after recognizing legal education as 'an important constituent of professional education' stated thus:<sup>184</sup>

*"The vision of legal education is to provide justice oriented education essential to the realization of values enshrined in the Constitution of India. In keeping with this vision, legal education must aim at preparing legal professional who will play decisive roles, not only as advocates practicing in courts, but also as academics, legislators, judges, policy makers,*

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<sup>183</sup>Section 7 (1) (g), Advocates Act 1961.

<sup>184</sup>National Knowledge Commission, Compilation of Recommendations on Education (Oct, 15, 2007): <http://www.knowledgecommission.gov.in/recommendations/legaleducation.asp>.

*public officials, civil society activists as well as legal counsel in the private sector, maintaining the highest standards of professional ethics and a spirit of public service. Legal education should also prepare professionals equipped to meet the new challenges and dimensions of internationalization, where the nature and organization of law and legal practice are undergoing a paradigm shift. Further, there is need for original and path-breaking legal research to create new legal knowledge and ideas that will meet these challenges in a manner responsive to the needs of the country and the ideas and goals of our Constitution.”*

As it is evident from the above, the aim of legal education is to provide justice-oriented education and produce competent legal professional to fulfil diverse legal needs at home and abroad and undertake original and path breaking legal research to create new legal knowledge and ideas to meet new challenges facing the society.

## **Development of Curriculum**

Historically, legal education was imparted in India in law departments of universities where courses were taught as three-year programmes after under-graduation resulting in the award of an LLB degree. Legal education and its importance to establish a rule of law society did not receive any serious priority or attention in these universities, although due to the sheer motivation of students themselves the departments were successful in producing many of the brightest lawyers and some of the best academics in the country. Over the years, there has been a considerable degeneration of academic standards within these law departments with little scope for innovation in the design of courses, development of appropriate teaching modules, formulation of research agenda including undertaking of research projects, and also the promotion of advocacy in lawyering. The departments also suffered from lack of independence and institutional autonomy as they were within the university system whose priorities did not always match. As a result, the ability to attract serious students with a passionate commitment to study law in all its ramifications dramatically reduced culminating in institutionalised mediocrity in law faculties across the country.

For the realization of vision, aim and objectives of legal education, curriculum is a necessary tool. With the swift flow of time, the development of curriculum must be carried out as well.

In India, national law universities and law colleges offer a three year Bachelor Law Degree (B.L/LL.B.) and a five year integrated undergraduate degree (B.A. LL.B., B.Com. LL.B.,

B.Sc. LL.B. And B.B.A. LL.B.).<sup>185</sup> The current policy of the Bar Council of India (BCI), which is the supreme regulatory body to regulate the legal profession in India and prescribe the curriculum and syllabi for undergraduate course,<sup>186</sup> has been to encourage only five year, dual degree LL.B. Programmes. A recent legal education reform document of BCI states that ‘moving forward, only five year dual degree LL.B. programme would be recognized by the Bar Council of India (BCI)’ but at the same it also adds that ‘BCI will continue to encourage three year LL.B. course for specialized areas such as Intellectual Property Rights, which are undertaken by postgraduates.’

As the matter stands now, the curriculum prescribed by BCI for each of the degree programmes LL.B. and B.A. LL.B. is mandatory for all law colleges and university departments of law. The BCI curriculum mandates students to take not less than twenty-eight law subjects, eighteen compulsory substantive law subjects and four compulsory clinical papers. They are required to take six optional papers from three or more groups of elective topics, and for a specialized and / or honours course to take an additional eight papers from one group. The list of elective groups that may be offered is robust, including Constitutional Law, Business Law, Law and Agriculture and Intellectual Property Law. In addition to this, BCI allows a university / school to add other subjects and groups to its curriculum.

There is no doubt that the establishment of the national law schools starting with the National Law School of India University (NLSIU) in Bangalore successfully challenged this institutionalized mediocrity and succeeded in attracting serious students to the study of law. In fact, the study of law has received better attention among high school leavers in the country with the introduction of five-year integrated programmes. This has brought up new issues relating to pedagogy and approach to undergraduate studies for imparting legal education for high school leavers. The national law schools that have been established in Bangalore, Hyderabad, Kolkata, Bhopal, and Jodhpur have all contributed in their own ways toward promoting excellence in legal education and research, particularly by attracting some of the brightest students to consider law as a preferred career option. But where these schools face significant challenges is in attracting faculty members who are top researchers in the field of law and can combine sound teaching methods with established track records of research. The lack of researchers in law and absence of due emphasis on research and publications in the existing law schools have led to the absence of an intellectually vibrant environment.

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<sup>185</sup>BCI, Rules on Standards of Legal Education and Recognition of Degrees in Law for purpose of Enrolment as Advocate and Inspection of Universities for Recognizing its Degree in Law, (2008).

<sup>186</sup>Section 7 (i) (h), The Indian Advocates Act, 1961.

Research can contribute significantly toward improvement in teaching and, more importantly, addressing numerous challenges relating to law and justice. If one were to look at the faculty profile of the world's top law schools, one will find that there is great emphasis on research and publications among academics. Besides teaching, they contribute in significant ways by initiating and developing research projects in cutting edge areas, by professional contributions to international organizations, law firms and corporations, and by playing an important role in government policy formulation and promoting civil society activism. Law schools and academics in India need to go a long way in developing an institutional culture that promotes and encourages research that has the capacity to foster many positive changes in society at large.

## **Issues & Challenges**

### **(I) Infrastructure and financial resources:-**

The law schools in India have to recognize that there is a need for creating sound physical infrastructure. There should be more funds for this and for developing research projects and other initiatives to encourage faculty members. Generally, the infrastructure of the national law schools is better than what exists in the law departments of traditional universities. Improvement in infrastructure should be across the board, including in universities which still produce most of the law graduates. University campuses should be places that can inspire students and the faculty so that they are involved in reflecting upon the various problems that confront society. Academic freedom to think and contribute cannot be ensured if universities lack the necessary physical infrastructure and financial resources.

### **(II) Development of philanthropic initiatives:-**

Philanthropy in legal education is rare. It by and large remains a state-sponsored endeavour or an unimpressive commercial enterprise devoid of high academic standards. There is an urgent need for encouraging philanthropic initiatives in promoting excellence in legal education and research in the country. Recently, the National Knowledge Commission (NKC) constituted by the Union Government in 2005 submitted its first annual report. Legal education was one of the focus areas; among the different issues considered as part of the NKC's consultations with law academics and practitioners were "methods of attracting and

retaining talented faculty” and “developing a serious research tradition that is globally competitive.” The NKC report noted the following with regard to philanthropic contributions: “It is clear that we have not exploited this potential. In fact the proportion of such contributions in total expenditure on higher education has declined from more than 12 per cent in the 1950s to less than three per cent in [the] 1990s...” Philanthropy in legal education is essential for its growth and development. Every effort ought to be made by all stakeholders, including the law schools, the bar, the bench, the law firms and corporations for promoting philanthropic initiatives in legal education and research.

### **(III) Measure to retain better faculty:-**

There is a need to fundamentally re-examine the context of legal education in the country. The present system does not sufficiently recognize the key problem with regard to legal education — lack of faculty members who are good teachers as well as sound researchers. There is need to identify talent among young lawyers so that they can be encouraged to consider academia as a career option. There is no doubt that poor financial incentives discourage many young and brilliant lawyers from considering a career in academia. It is important to address this issue as well. But there could be other factors where improvements and changes are feasible: such as career development opportunities within the law schools; development of research infrastructure including the resources to organise and participate in national and international conferences, and undertake serious research; a harmonious environment that fosters mutual respect; governance of the law schools in a transparent fashion; and, above all, faith in the leadership of the institution that excellence will not only be promoted as a general policy, but affirmative efforts will be taken to encourage and support excellence.

The National Knowledge Commission has gone many steps further, and recommended salary differentials within and between universities and law schools. Salary differentials, according to the Knowledge Commission, could be considered as a means to retain quality talent and also a culture of excellence. The Commission has also recommended incentives like increasing existing promotional schemes and avenues to promote faculty members, providing fully paid sabbaticals and adequate House Rent Allowance (HRA); instituting awards to honour reputed teachers and researchers at national and international levels and allowing faculty to take up consultancy assignments and legal practice in courts. With regard to opportunities in legal education that may be provided to law teachers as a means to attract

and retain talented faculty, the Knowledge Commission is of the view that these reforms “need to be introduced in a balanced, reasonable and regulated manner to ensure adequate incentivize faculty without compromising on the maintenance of consistent academic quality.”

## **Factors & Agents**

The problems and challenges being faced in legal education in India have been recognized and then analyzed. Law Commission of India 14th Report (1958) and 184<sup>th</sup> Report (2002) and National Knowledge Commission Report in 2007 are notable apart from the several High Court and Supreme Court Judgments 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" and it took up the study of legal education *suo moto*<sup>187</sup>.

### **(I) Globalization in Legal Education:-**

The advent of concepts of globalization and free economy has resulted in the countries vying with each other to grow faster and become richer. In this battle of development, India is not lacking behind. Various International Agreements are being entered into having far reaching bearing on municipal laws and giving rise to numerous commitments. There has been drastic change in the entire outlook and life style of the people. An era has dawned where specialization, computerization, electronic media, internet, consumerism, foreign investments, insurances, mergers and take-overs, etc. are becoming the order of the day. Arrival of multi-national corporations, private banks including foreign banks, etc. are throwing up new challenges before the field of trade and commerce. New problems at individual as well as social levels are coming-up. Novel methods of committing frauds and crimes including cyber crimes are coming to light. These developments have required enactment of new laws and rules in various fields including intellectual property rights, information technology, investments, banking, taxation, arbitration, environment, consumer protection etc. There is, therefore, need for experts in legal drafters, lawyers and judges having deep knowledge of the specialized fields.

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<sup>187</sup> *suo moto* – on its own motion. Generally used in Indian legal parlance.

## **(II) Traditional Legal Education:-**

Modern legal education in India was started by the British and its principal concern was to acquaint Indians with rules of law which would help the British in the administration of the country. Legal education in the pre-colonial period imparted only certain information to the students without developing critical perspectives and analytical insights among law students and was marked by the rote system. Even after the independence of the country the same age-old syllabus of courses continued without readjusting the same according to the changed needs of an independent-nation state and the goals the Indian Republic had set out for itself in the preamble to the Constitution. No wonder, the state of legal education remained unsatisfactory for many years until a fresh breeze of new thinking entered the realm of legal education and initiatives aiming at the reforms in legal education were taken at several levels.

## **(III) Legal Education & WTO Agreement:-**

As a party to the General Agreement on Trade in Services (GATS) India is duty bound to accord 'most favoured nation' status, market access and national treatment to other member countries of the World Trade Organization. As a consequence, it is not possible for the Government of India to prevent indefinitely the entry of foreign lawyers and foreign universities into India. Any misadventure on the part of the Government of India in this regard will amount to an infringement of the provisions of GATS. Both wisdom and prudence therefore demand that before foreign universities and foreign lawyers enter the domestic market, India should re-structure and re orient its legal education and legal profession to meet the new challenges in the context of globalization. In the changed scenario, legal profession requires lawyers to represent clients not only within but also outside national frontiers. Accordingly, to enable our law graduates to practice law both domestically and internationally in a highly competitive legal service market, law schools should include within their curriculum subjects like information technology, corporate law, taxation, human rights, bankruptcy laws, commercial law, women rights, alternative dispute resolution, cyberlaw etc. Students should also be encouraged to learn at least one foreign language, increase cultural familiarity with the legal systems of other countries, develop communication skills and sharpen professional skills for the purposes of transnational legal practice. Students also need to be educated about concepts like group, dispute, institution, process, function,



decision, regulation, efficiency, effectiveness etc. as part of general jurisprudence course for enhancing their understanding of cross-legal cultures.

#### **(IV) Influence of US legal education:-**

The US model of legal education continues to influence legal education in other parts of the world. Japan and Korea have moved to adopt J.D.<sup>188</sup> style graduate law degrees. In Australia, the University of Melbourne has adopted a similar approach. Efforts are underway in Hong Kong and the Philippines to adopt the US model of legal education, where the J.D. is offered alongside the LLB. If this trend continues, England will probably remain outlier with its three-year graduate programme. The globalization of legal education movement has led to the establishment of double degree programmes across national jurisdictions. The NYU<sup>189</sup> School of Law and National University of Singapore Dual Degree Programme is an example of such programmes. It offers Master of Law degree from each of the partner institutions, but is taught entirely in Singapore with NYU faculty flying in during the northern summer months. US Law Schools have moved from the old exchange programme to double degree programmes. Cornell University Law School, for example, offers double degrees in partnership with universities in France and Germany. Columbia Law School also has partners in France and Germany as well as England. NYU has partnership with Osgoode Hall Law School in Canada and the National University of Singapore. And American University Washington College of Law has partnership with Universities in Canada, Spain, France, England, the Netherlands, Hong Kong, Korea, South Africa, and Uganda.

In India, national law universities are influenced by the US model of legal education. Sooner or later double degree programmes will also be replicated in a big way here. The question that deserves serious consideration in this context is whether the goal of a global law school can be achieved by simply incorporating US ideas or there is also a need to make it global by having a genuine engagement with the people and the places that constitute today's global profession.

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<sup>188</sup>Juris Doctor

<sup>189</sup>New York University

#### **(V) Role of Bar Council of India:-**

Legal education in India is regulated by multiple agencies including University Grants Commission and Bar Council of India. Constituted under Section 4 of the Advocate Act, 1961 BCI is an apex body for the entire legal profession in India and regulates legal education by laying down minimum standards of legal education required for students, grants permission for establishment of new law colleges and performs several other functions related to inspection, recognition and accreditation. Reservations, however, have been expressed from time to time in respect of the role of BCI *vis-à-vis* legal education on the ground that being a professional body, the Council does not have both power and expertise to improve the overall quality of legal education. Today a widely shared view of legal educators is in favour of liberation of such education from the dominant control of the Bar Council. The National Knowledge Commission went further and recommended the setting up of a new regulatory mechanism under the Independent Regulatory Authority for Higher Education (IRAHE), vested with powers to deal with all aspects of legal education and whose decisions are binding on the institutions teaching law and on the Union and State Governments. The Knowledge Commission also recommended the creation of the Standing Committee for Legal Education. The Standing Committee should have a vision both of social and international goals, to deal with all aspects of legal education and to cater to the needs of the present and the future. Facing the prospects of being divested of its regulatory authority over legal education in the event of the establishment of a Commission on Higher Education and Research, which will replace UGC and other education regulatory authorities, Bar Council of India adopted several legal education reform measures. In the first place, it composed its Legal Education Committee as provided for under Rule 2 (xvi) of the 2008 BCI Rules, which provision contemplated a distinguished Professor of Law as well as the Chairman of UGC to be members of the Legal Education Committee. The Legal Education Committee contemplated the constitution of a body of experts to be associated with the BCI inspection team, the constitution of a Selection Commission for the purposes of identifying and appointing competent faculties of law colleges, as well as the provision of better salaries and facilities to law faculties. The Bar Council of India also approved the report of the three-member committee created by the Supreme Court of India in *Bar Council of India v. Bonnie FOI Law College and Ors*<sup>190</sup> and resolved in favour of the constitution of a National Legal Knowledge Council comprising legal luminaries and academicians as well as members from

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<sup>190</sup>Case No. 22337 of 2008, decided April 2, 2010.

various socially relevant fields such as technology, science, media, economics, social sciences etc. It has established the Directorate of Legal Education with the responsibility of continuing legal education, teachers training, advanced specialized professional courses, education programme for Indian students seeking registration after obtaining Law Degree from a foreign university, research on professional legal education and standardization, seminar and workshop, legal research and any other assignment that may be assigned to it by the Legal Education Committee and the Bar Council of India.

## **Conclusion**

In conclusion, the current debate on legal education and the issues related to it raises a number of questions on which greater dialogue is needed among the vast number of Indian law teachers. Globalization-induced changes in international relations have altered the nature of legal profession today and as legal profession is closely tied up with legal education, time has come for our legal educators and the regulatory authorities concerned to move forward and restructure legal education so that our law graduates can also successfully compete in the emerging global market of transnational legal service. Globalisation and the changing dimensions of the Indian economy and polity have thrown up new challenges of governance. Role of law in all its dimensions remains the single most important challenge the country is facing. The criminal and civil justice systems are under severe stress. The role of law schools in imparting legal education and developing lawyers who are rational thinkers and social engineers is central to the future of legal education and the development of a knowledge economy in India. This can be done only if the law schools are able to attract some of the best and the brightest lawyers to make a lifelong commitment to teaching, learning, and research so that they are able to inspire generations of students to work towards establishing a rule of law society in India. But while transforming legal education to meet the challenges of globalization is undoubtedly one among several considerations requiring improvements in pedagogy and curriculum in legal education the need to promote the rule of law, democracy, constitutionalism, respect for human rights and social justice and to strengthen India as a global power should remain the main drivers of legal reforms education in our country.

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## Brief About Author



The author to this essay is named as Mohammad Atif Ahmad, who is pursuing an undergraduate course BBA-LLB from Delhi Metropolitan Education affiliated to IP University. His native place is Patna which is the capital city of Bihar. The person has absorbed the insight on the challenging issues from the only kind of group of institutions whose alumnus are recognized as Xaverians across the globe. He has not only opened his windows of perspective for looking at issues but also has the above par senses to reflect the same in quality words. His fantasy has a touch of span right from composition of poetry to creating stories & stretches to diversified write ups as well. Last but not the least, he has hands on experiences with microphones for radio & television broadcasts. Radio studios are accessible to him since his childhood as a sandbox.

# Legal Education in India: Issues and Challenges

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## Introduction

Law is a living process, which changes accordingly. With change in the society, law also changes. Therefore, legal system should take in developments and advances that take place in the society and also concept of legal education should be reformed in view of such developments. Legal education should be construed such so as to meet the ever-growing demands of the society and must be thoroughly prepared to cater to the intricacies of the different situations. The vision of legal education is to provide justice-oriented education necessary to the realization of values enshrined in our Constitution of India.<sup>191</sup>

India stands integrated with the world economic order in the era of liberalization, privatization and globalization. With globalization, and also change in the society, the regulatory framework for legal education in India requires profound changes to meet the emerging demands of the consumer of legal services. To achieve this objective, there is a need for a thorough overhaul of the present curriculum prescribed in the law schools. As, the recent times have witnessed a spate in the scientific developments, therefore the curriculum crafted for the purpose of legal education should meet the current demands, developments taken place in the society so that the law should meet the growing demands of the society and students after graduation must be equipped to face certain challenges.<sup>192</sup> Legal education as an aspect of professional education has assumed considerable significance, not only in terms of the historical utility of law in society but also in the current context of globalization. The need for trained law personnel in academia, litigation, corporate practice, government and civil society has increased significantly over the last few years and the demands for such trained personnel will rise far more exponentially in the years to come. Thus, there is an imperative need to bring our current legal education and professional framework in sync with the demands and challenges thrown open by the process of globalization.<sup>193</sup>

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<sup>191</sup> Dr. Justice A.S Anand, Legal Education in India- Past, Present and Future, (1998) 3 SCC J-1

<sup>192</sup> Ibid.

<sup>193</sup> Legal Education in Globalised World: Challenges and Opportunities, (2013) PL June 67

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For many reasons, the quality of legal education remained inadequate. For this reason several attempts were made to reform the set of courses. For example, earlier several universities granted law degree like any other law degree but after 1984, an attempt was made to improve legal education thereby, establishing specialized institutions. Aim behind such reform was that the, law as a profession and legal education as a discipline was not a popular choice among students in India prior to the introduction of five year course.<sup>194</sup>

## Legal Education in Ancient India

**Ancient Period:** During the period of Ancient India, law was understood as a branch of Dharma. However, it is very challenging to construe a distinction amongst secular law and religious laws in Ancient India<sup>195</sup>. It is known that, the Vedas were the original sources of law, and thereafter the *Smritis* pronounced the message of Vedas and further *Smritikars* were great jurists. Also *Smritikars*, commentators and *Nibandhakars* [also known as essayists] were considered the legal guardians of law. King made laws were also interpreted, as a consequence, the commentators were fundamentally law-makers. *Sadachara*, were the base of legal process in Ancient India. The King, who was the head was advised by a *Sabha*, where *Sabha* had both advisory and as well as executive functions. The *parishad* was an expert committee which comprised of ministers of officials, generally Brahmans, whose role was to advise the King authoritatively on various aspects of law.<sup>196</sup>

The theory of dharma, which is of the Vedic period, can also be seen as the concept of the legal education in India. Even though there is no record of formal training in law, the dispensation of justice was to be done by the king which was solely on the basis of a self-acquired training. Furthermore, justice was also administered by the King with the help of his appointees who in turn were persons of known integrity and as well as the reputation of being fair-minded, reasonable and also impartial. The guiding force for the King or his appointee was the safeguarding of the Dharma.<sup>197</sup>

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<sup>194</sup> Ibid.

<sup>195</sup> S.K.Sharma, (1984) "Legal Profession in India" Sociology of Law and legal Profession.

<sup>196</sup> Derret J Duncan.M., "Essays in Classical and Modern Hindu Law.

<sup>197</sup> Ibid.

## Legal Education In Independent India : Historical Background

There has been a major change in India after independence, whether socially, economically, or politically, drastic changes were observed after the freedom from British rule. During the year, 1950, India had a federal form of government. The 'rule of law', which is of paramount importance, became the foundational doctrine. It became also evident that a polity based on rule of law would necessitate a legal profession adequately skilled and owning knowledge of laws and also their principles in order to maintain and preserve the legal system in India.<sup>198</sup>

Thereafter, The Advocates' Act was enacted in the year 1961, which became one of the crucial point of the legal education system which is presently in existence. The Bar Council of India (BCI) Rules, inducted under The Advocates' Act 1961, lays down the curriculum for imparting legal education all the way through India. Furthermore, Bar Council of India Rules have been governing all the relevant procedural aspects of legal education, together with, but also not restricted to, the subjects to be taught, including mode of examination which is to be conducted, the various Degrees which are to be conferred on successful students.<sup>199</sup> Afterwards, in the year 1967 it became one of the burdensome task for the three year law colleges to include all the procedural subjects into the curriculum of their law school as the scope of law is very wide in nature. The monologue lecture scheme was adopted in almost every law schools, where practical training and activities is either completely neglected or marginally implemented at the level only of Moot Courts, Court visits and legal research. Such no approach and encouragement towards practical aspect cannot be considered beneficent for lawyers in today's scheme of the legal education.<sup>200</sup> During the course of time, Rules and regulations on legal Education, which were incorporated into the pre-existing rules and regulations, have been amended from time to time keeping in view the changing needs and demands of the society.

Consequently, situation changed after the reforms in the legal education. *Currently, legal education in India is regulated by the multiple agencies including the University grants commission (UGC)*<sup>201</sup>, *the Bar Council of India (BCI)*<sup>202</sup>, *the Government and the respective universities.*<sup>203</sup>

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<sup>198</sup> Mani Agarwal & Malavika Bhandari, Continuing Legal Education for Indian Lawyers, (2010) PL December 18

<sup>199</sup> Ibid.

<sup>200</sup> Dr. Shobha Saxena, (2001) Legal Education: Modern Trends and Challenges.

<sup>201</sup> The University Grants Commission, under Section 2(f) of the University Grants Commission Act, 1956 (UGC Act) is also having power to exercise control over the Universities and affiliated Colleges.

## Issues & Suggestions

### Infrastructure

Legal education in India today must be a comprehensive education. It must tell you the urgent need for a new set of laws for adjusting to changed patterns of personal, social, political and economic relationship. Analyzing the current scenario, it can be concluded that the present legal education does not adequately fulfil the need of the society. Therefore, to find the cure we must address the problems which exist in the current scenario of legal education. *One of the primary problem that exist today is the infrastructure.* Some of the law colleges in India are functioning in deplorable conditions. Infrastructure plays a key role in every institutions. There are institutions without adequate number of *teachers*. Due to the lack or deficiency in teachers and staff, available teachers end up teaching subject which they have never taught or they themselves are thoroughly equipped to teach that particular subject. If the teacher does not take interest in that subject then students tend to take subject casually. Therefore, *it is significant that adequate number of teachers and staffs are recruited and such teachers should be competent and will-qualified for that position.*<sup>204</sup>

Furthermore, in concern with infrastructure, *one of the key issues is related to library.* Most of the institutions lack sufficient quantity and quality of the books as required. There are not sufficient books for each students for one subject. For a law student, library resources play a very vital role in the development of student's career. Be it for research paper, course related research, moot court competition, each and every student in a law school require adequate quality and quantity books for their research. Sufficient resources should be raised for planned development of library resources. With the help of adequate resources and planned library catalogue, students will be able to gain knowledge.<sup>205</sup>

### Modification in Existing Curriculum

With the advancement in the society, there is an urgent need to modify the present curriculum with the aim of meeting the demand of the society. Legal education should also prepare

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<sup>202</sup> Under Section 7(1)(h), the Advocates Act, 1961, the BCI is entrusted with the duty "to promote legal education and to lay down standards of such education in consultation with the Universities in India imparting such education and the State Bar Councils."

<sup>203</sup> Legal Education in Globalised World: Challenges and Opportunities, (2013) PL June 67

<sup>204</sup> Justice A.M Ahmadi, Repairing the cracks in Legal Education, (1993) 1 SCC J-3

<sup>205</sup> Ibid.



professionals equipped to meet the new challenges and dimensions of globalization, where nature and organization of law and legal practice are undergoing a paradigm shift. Development of society has resulted in increase in new area to study and for that reason, there is a requirement that lawyers are needed to be properly trained in different branches of law. *This calls for necessity in specializations in different branches of law.* There is a necessity that vast number of dedicated person should be appropriately trained in different branches of the law, every year by providing or rendering competent and proper legal education. Evidently, this can be achieved only if adequate number of law colleges with proper infrastructure including expertise law teachers and staff are established to deal with situation in an appropriate manner.<sup>206</sup>

The main aim of the legal education should be to craft lawyers who are contented and experienced with the different legal systems and cultures that frame our global community while remaining strong in one's own national legal system.<sup>207</sup> Students after graduating in law schools must be trained to specialize in international trade practices, comparative law, environmental law, international advocacy, gender justice, space law, conflict of laws, international human rights law, biomedical law, bio-ethics, etc. Most importantly, they must also acquire a general knowledge of American, German, Chinese, French, and Japanese law. For example, in the last 10 years in South Korea, the curriculum has been expanded to include not only the above mentioned subjects, on the other hand also international business, international civil procedure, international contracts and laws of England, America, France and Germany.<sup>208</sup>

There can be no denying of the fact that the concept of legal education can never be confined to classroom lectures and theoretical study of the law.<sup>209</sup> *Teaching of law should always be more practical in nature.* Lectures organized should be much more interactive, this will not only invite student's attention but also improve communication skills of students. Though Langdellian "case method" has been adopted in various institutions but interactive approach in lectures is still not applied. *Teachers should prepare their lecture such, which is more interactive in nature.*

*There should be concept of specialization wherein all the mandatory subjects like Indian penal code, constitution etc. of law and procedure should be taught to each and every*

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<sup>206</sup> State of Maharashtra v. Manubhai Pragaji Vashi (1995) 5 SCC 730

<sup>207</sup> Dr. Sushila, Legal Education in Globalised World: Challenges and Opportunities (2013) PL June 67

<sup>208</sup> Ibid.

<sup>209</sup> V. Sudeer v. Bar Council of India (1993) 3 SCC 176

students and subjects which are of different area for example cyber laws., in case of these subjects students should be given an opportunity to choose among those subjects in which they are interested and proper training for these subjects should be given to the students according to their interest area. However, this classification should be done only after student has completed its 3<sup>rd</sup> year. As it will make it easier for a student at that time, since by that period students are aware of various special area in law.

***‘By education I do not mean the present system, but something in the line of positive teaching. Mere book-learning won’t do. We want that education by which character is formed, strength of mind is increased, the intellect is expanded, and by which one can stand on one’s own feet.’***

**- Swami Vivekananda**

#### Encouragement towards Participation in Various Academic Activities

Furthermore, in this globalized and competitive world, the importance of legal research can never be underestimated. *Legal research is not merely an intellect enhancing exercise but it seems to offer immense promise even from a professional point of view.*<sup>210</sup> Students should be encouraged to write legal research paper. However, awareness play a very important role in this regard. There are many law students who at the time of joining a law college are not aware of research papers and various other academic exercise such as moot court competition, trial advocacy competition, and client counselling competition, judgment-writing competition, which are very important and relevant for their academic growth. For that reason, during their first semester it should be the duties of the faculties of the universities that they should organize an awareness seminar where the students should be made aware with the importance of each and every academic exercises and how participation of it can affect their resume. With the help of these awareness students can frame an idea during their first semester about various exercises and can actively participate in each one of them. This will help in choosing their interest area which will be helpful in further achieving their goal. They should be encouraged to participate in several academic exercises.

Moot court exercises are also one of the most important academic activities which are relevant in building up a personality of a student and making them ready for their practical aspect of the lawyer. It is used in law schools to familiarize students with real world

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<sup>210</sup> Prof. DR. A. Lakshminath and Dr. S.P Singh, *Legal research- Retrospect and Prospect*, CNLU LJ (3) [2013]  
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lawyering in terms of court procedure. Moot court helps to create a link between theory and practice. It requires thorough research in moot court to satisfy the judges. Moot court exercises are not only beneficial as it deals with practical aspect but also it enhances the mannerisms of the students. It helps students to put forward their points with respect.

The task of a teacher is not only to fill in the students with contents of his narration but to bring out the hidden talent in the students. The integrated students and teachers have unlimited potential for collaboration in exploring any aspect of a subject.<sup>211</sup> There is, thus, need for continuing education of the law teachers and to infuse in them the desire to do research work. Most of the law teachers join the law schools after completing their LL.B, LL.M or Ph.D. and are rarely exposed to the practical aspect of law and the courts. Such teachers impart theoretical knowledge, divorced from the practical aspects and the result is that a fresh lawyer appears quite lost in the court room. Proper means must therefore be devised so that the law teacher is required to go to law courts to gain the work experience, as this would not only enable him to have the work experience but will enable him to equip meaningfully the students who wish to join the profession.<sup>212</sup>

*Therefore, since the study of law can never be limited to class room lectures. Students should always be encouraged to actively participate in academic activities which are necessary for their future development. There should be mandate that during each academic year student should participate in at least 1-2 extra academic activities which will be beneficial when they graduate from a law school.*

### **Organizing Workshops and Seminars**

In this rapidly urbanizing society, there are several developments taking place which means that there are several advancements in law. *Each and every aspect of law cannot be a part of the main curriculum, therefore efforts should be made to organize separate interactive workshops and seminars for that area.* For example, mediation and negotiation are one of the important alternative dispute resolution mechanism. There is no need to introduce this as a separate subject, but an effort can be made to help students understand about this. This can be achieved by if a workshop or seminar is organized for this purpose. However such seminars should always be interactive in nature. For example, in case of mediation, role playing

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<sup>211</sup> Legal Education in Globalised World: Challenges and Opportunities, (2013) PL June 67

<sup>212</sup> Justice A.M Ahmadi, Repairing the cracks in Legal Education, (1993) 1 SCC J-3

exercise can be conducted wherein students can act as mediator and resolve disputes. This will also help in making student aware of the practical scenario.

*One of the important workshops which should be organized at the end of every academic year should be problem solving workshops.* In problem-solving workshops, students should be tested on the basis of their legal reasoning. At the end of every academic year such workshop should be organized where students should be given the problem on the basis of the subjects taught in that respective year. Problem should consist of facts, where different of laws are to be applied, facts can include statements of witnesses. Such problem should be drafted taking into account all the legal problems which are dealt practically in courts. Students should be asked to solve such problems with relevant legal issues involved and to apply their legal reasoning. This will help students to apply their minds and help in practically applying all the subjects which they have studied in that respective academic year. Legal education should be such which prepare the students to deal with each and every aspect of legal profession legal profession.

Rather than burdening students with assignments, projects, which does not help at all in improving legal reasoning of a student and students does not use their creative ideas. Curriculum should be designed such which encourage law students to think outside the box and actively participate in various academic exercises, thereby improving their communication skills which is one of the major concern in the present scenario. There are several students lacking communication skills, which is one of the primary requirement in legal profession.

*Therefore, keeping in view all the above points, it is important to note that **firstly**, workshops and seminars should be organized for the special field of law for example mediation, negotiation, Intellectual Property Rights (IPR) etc. **Secondly**, Problem-solving workshop should be conducted at the end of each academic year which helps the students to gain knowledge about the practical aspect of law. **Thirdly**, in spite of assignments and projects submission, students should be encouraged to take part in various academic exercises such as moot court, publication of research paper, paper presentation, essay competition and various other competitions, which helps them to broaden their perspective about law and help them think creatively, thereby enhancing their legal reasoning skill.*

## Internships

*“Training is everything. The peach was once a bitter almond; cauliflower is nothing but cabbage with a college education”*

— Mark Twain

Apart from all these activities, after the end of the academic year students should be encouraged for their internships programs. There is no better learning experience in the world than the practical experience of the subject. Apart from classroom learning, and various academic exercises, paramount importance should be given to the real internship experience. Internship experience will help students to practically apply all their theoretical study. During summers, students should be asked to intern in any organization wherever their interest area lies, it can either be with advocates and judges in courts, or law firms, legal department of any companies, NGO etc.

This will actually help student to face the real life problems and situations which arise in legal profession. Here, students can also decide their interest area and help them to choose which legal department they want to part of or which legal profession they can excel in. Legal education should be flexible in nature. Students should always be encouraged in practical participation and internship is one of the best learning experience for each and every law students.

*Therefore, students should be made aware during their first year about the benefits of internship and law schools should help their students to obtain an internship in the institution of their choice.*

## Workshops, Seminars and Training Programs for Teachers

Furthermore, learning can never be limited to students. Since law is like a living process, which changes accordingly, teachers should be made aware of the rapid growth in the process of law. Several workshops and seminar or training should be organize which improve the skills of teachers. Further, it will also enhance their interactive approach which is very important for them while delivering lectures. Exclusive seminars for teachers should be organized where they can improve their teaching skills, understand the changing dimensions of law etc. Teachers should also be encouraged to publish research paper, as it will increase their credibility as well as knowledge of that respective subject.

*Therefore, learning should never be limited to only students. Learning is a life-long process. These seminars will not only increase the credibility of the teachers, it will also help them to actively participate with students in the classroom lectures.*

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## Brief About Author



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# Legal Education in India: Issues & Challenges

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*“Education, then, beyond all other devices of human origin, is the great equalizer of the conditions of men, the balance-wheel of the social machinery.”*

- **Horace Mann**

## Introduction

Law is that one string that binds every possible act and system to it, in fact the entire society is controlled by means of this law only and any act if not in consonance with the law of the land can be questioned. The relevance of ‘law’ in the society is too much which cannot be afforded to be of improper and below competence. The competence and the potential of law can be maintained to an efficient level or brought to a better status only if the people who handle it and apply it are efficient, that is, the judges, lawyers and every official needs to be at her best to help law flourish. In fact, the role of lawyers is way too much in every aspect of administration, the role of law students being even more.

For any society, ripening of civilization is attributed through the social consciousness of the significance of law. History of our own independence movement, if impartially written, will devote more pages to lawyers than to the votaries of any other vocation. It is a well accepted proposition that the profession of law is a noble calling and the members of legal profession occupy a very high status<sup>213</sup>. This being the importance of law and the lawyers and the students, then they need to be very diligent in their approach, the intellect must be very properly shaped for this purpose. This can only be done if the root that is the legal education in the law schools which produce such people are competent and well suited for a student to be a person who can take care of the legal system and serve the purpose of being a lawyer. Legal education is not only needed to produce astounding lawyers and legal luminaries but also a responsible and well aware citizen, because, ‘Ignorance of law is not innocence but a sin which cannot be excused’, as far as producing a lawyer is concerned, the importance of a lawyer is such that the legal education condition in India is not capable of giving such an edge to a law student to meet the standards required, at least not in the case of small

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<sup>213</sup> Justice Iyer Krishna, 1979, *The social dimensions of law and justice in contemporary India: The dynamics of new jurisprudence*.

government universities far from the model National Law Universities set-up in different states. In fact, the legal profession is in a position of creating great statesmen because lawyers have an independent profession and they do not come under the influence of any other profession and; they are directly in contact with the subjects and know all the requirements and the condition of the society which needs to be improved, therefore, create best possible section for the statesmen<sup>214</sup>. For creating such lawyers the legal education system must be sound. We have seen the legal education system to be really neglected in the history, which has now indeed been built up, with the set-up of National Law University in Bangalore but still there exist some really bothering flaws in the system which range from the condition of the teachers be it the qualifications or the pay-scale to, the students who sought to enter law just because they are left with no alternative, the introduction of new programme of five-year law course, the difficulties the students face due to it and the diversion of good students from the elite NLU's to the corporate field, not fulfilling the purpose of the improvement that is done all because the litigation field appears to them as time-consuming and being a not-so-inspiring field as a career. The difficulties also arise due to too many authorities controlling the legal education field, the suggestion are also given to reduce the controlling authorities to few so that the decision making process is fast and implementation can be brought to effect soon. The need is to make the career attractive for the good students to resort to in order to have a capable student enter the field for the purpose of imparting and dealing with the justice system not to have the talent lost to the corporate sector and to redefine the guidelines for the teachers, so that they do not bar competent teachers with good communication skills from entering the teaching field merely because they do not qualify the guidelines.

The entire efforts to improve the Legal Education System, is to meet the demands of the globalizing world and to increase the potential of the law students with respect to the foreign students and corporate entities, that really being a challenge.

### **Constitutional Provisions, Controlling System and Challenges therein**

There is specifically no entry or provision in the constitution that deals with the Legal education in India but the entries 66, 77 and 78 of the list I are the ones with reference to which the parliament has enacted law with respect to regulations on the professional legal education in India. The regulation is partaken by two statutory bodies constituted under the

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<sup>214</sup> Advocate T.M. Devadas, n.d, *History of Legal Education in India: Guest Post*.



above mentioned laws, the bar council of India as the apex professional body concerned with the standards of legal profession, and the University Grants Commission as an umbrella organisation for all institutions of higher Education<sup>215</sup>. It has been held in *Bar Council of U.P. v. State of U.P.*<sup>216</sup>, that the Advocates Act, 1961, section 4 the Bar Council of India has been constituted and it is the apex body to regulate and enforce standards to be observed by the members of the Bar. It along with the State Bar Councils has to take care of all matters relating and incidental to admission, practice, ethics, privileges, regulations, discipline and improvement of the profession. But these systems are not made just for the Legal professional stream but also for the Legal Education and its betterment, the sections 7(h) and 7(i) of the Advocates Act, 1961 provide for the various functions which the Bar Council has to perform as to the regulation and control of the legal education. The Sections 10, 24, 49 of the Advocates Act deals with the Legal education and various aspects like the Committee and the selection and admission of the lawyers when graduated from a recognised university. It therefore has a status of a controlling authority for the legal education as well as was declared by the Supreme Court in *Bar Council of India v. Board of Management, Dayanand College of Law*<sup>217</sup>, after the inspection of the power of the BCI under the Advocates Act, 1961, and the rules framed there under and concluded that since, BCI was concerned with the standards of legal profession and the equipment of those seeking entry into the profession, BCI is thus also concerned with the legal education in the country.

Another governing authority is the University Grants Commission, which works as an umbrella over all the Universities and is incorporated by virtue of entry 66 of the list I and the section 4 of UGC act 1956, in *Prem Chandra Jain v. R.K. Chhabra*<sup>218</sup>, the UGC has the power to inspect and analyse the challenges and places where there is a need of reform in the working and infrastructure of a university and can suggest changes to it. It even has authority to prescribe the qualifications of teachers in the universities and it would have an overriding effect over any other legislation even by parliament<sup>219</sup>. Similar regulatory power of inspecting the infrastructure and teacher-student ratio was reaffirmed by the court in *Prof. Yashpal v. State of Chattisgarh*<sup>220</sup>.

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<sup>215</sup> Report of three member committee, 2009, *Reform of Legal Education*.

<sup>216</sup> Bar Council of U.P. v. State of U.P., 1973

<sup>217</sup> Bar Council of India v. Board of Management, Dayanand College of Law, 2007

<sup>218</sup> Prem Chandra Jain v. R.K. Chhabra, 1984

<sup>219</sup> University of Delhi v. Raj Singh, 1994

<sup>220</sup> Prof. Yashpal v. State of Chattisgarh, 2005

There has been an interference of various authorities in the administration of legal education as we see in the section discussed above, the unnecessary multiplication of statutory and other bodies is a feature common in our country and needs to be avoided. We have seen how in England professional legal education and the admission to the profession are controlled by a body consisting exclusively of professional men. There is no reason why a similar control and regulation should not be vested in the profession in India. Co-ordination between the bodies regulating professional training and the Universities with a view to ensuring minimum standards can be achieved in the manner indicated above<sup>221</sup>. In fact, the Law commission had tried to call it an effort in ‘consultation’ with each other and recommended to amend the section 7(1)(h) of the Advocates Act, 1961<sup>222</sup>, the Balance to be maintained between the power of UGC and BCI. One of the challenges being this, there are plenty which needs to be put heed to.

### **Challenges as to the Teachers and the Teaching Method**

The BCI norms do not provide adequately for the qualifications and the various aspects related to the teachers in a Law school, besides the provisions for the judges and advocates to be teachers without LLM, that too part-timers, therefore such provisions are addressed by the UGC Rules.

The first among the difficulties is the exam of NET required for the aspirants to be passed in order to start teaching, it although makes worthy a qualification but it must also be noted that any other profession be it AICTE, MCI, nursing council of India, etc. do not require such types of exam to induct teachers into the profession. Also, NET or any such exam doesn’t check the communication standard of the aspirant, which happens to be the most important quality of a teacher, a teacher is selected after an interview and is not experienced at all in the beginning, due to which the students suffer, later on the same teacher gets to the level of maturity but till then the students loose. Therefore, there is a requirement of training programmes for the teachers so that they become competent enough to build a student which has a potential. There is a requirement of full-time lecturers in universities which is not fulfilled according to the present UGC guidelines of workload and the number of subjects prescribed to be taught, there are only 3 teachers against the requirement of 16 in Mumbai

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<sup>221</sup> The 14<sup>th</sup> Law Commission Report, 1958, *Reform of Judicial Administration*.

<sup>222</sup> The 184<sup>th</sup> Law Commission Report, 2002, *The Legal Education & Professional Training and Proposals for Amendments to the Advocates Act, 1961 and the University Grants Commission Act, 1956*.

Law Colleges, with such a large workload there is really little time left for research and publication which indeed is important for a full-time lecturer thus leading to unsatisfied and deteriorating status of teachers. The teachers are not even getting proper salaries and incentives, they are given salaries ranging from rupees 5000 to rupees 20,000, without any perks and vacations, besides many times visiting faculty teaches for 75 to 100 rupees per lecture, on top of that the government doesn't give any grant and BCI keeps on adding new law colleges<sup>223</sup>, although, the BCI has taken measures to ensure that the faculty is paid according to the "Minimum Pay Scales prescribed by the UGC Pay Commission", still this difficulty persists.

Besides the above mentioned there are other matters of concern as well, the teachers need to make the students expert learners, since the entire lawyer spirit lies in not mugging up and passing the exams but also applying the same knowledge over the real life situations. Lawyering courses and clinics may be used to achieve this purpose. A law teacher can use the formative assessment process to improve the meta-cognitive skills of law students so they can transfer their learning to the new and novel situations they face in the practice of law. Law colleges need to teach them how to continue to draw upon their learning experiences during the practice of law to new situations they will certainly encounter<sup>224</sup>.

Another difficulty in this field is that there is a need of law teachers in every law school and they are working on more part-timers rather than full-timers, the brilliant students do not opt for teaching profession rather either take up corporate jobs or head to foreign universities for their LLM and they don't return. The policy makers in this wake have taken up the reduction of the LLM post-graduation programme from two to one year. The efforts to fill up such a shortage have been made by the Law firms by providing adjunct Lawyers as teachers, further the teachers from the foreign countries have been recruited by providing attractive work conditions than otherwise available and fill up the gap, Others are entering into exchange arrangements under which students and teachers are provided opportunities to learn in different environments under credit transfer arrangements. Everybody has realized that the foundation of a good legal education and brilliant students lie in the good teachers, without whom a sound legal education system is not possible<sup>225</sup>. Besides, the 184<sup>th</sup> report of the Law Commission has also expressed the need of training to the teachers and the need of these

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<sup>223</sup> Nawsagaray Nitish, n.d., *Legal Education in India: Current Challenges*.

<sup>224</sup> Kumar Rajendra, n.d., *Problems and Challenges before Law Teachers in India*.

<sup>225</sup> Menon N.R. Madhava, 2012, *The transformation of Indian legal education*.

teachers to get involved in the recommendations to the various legal policies to have more involvement of teachers in the policy making as well.

### **Challenges with respect to the students**

The students are the prime focus in the legal education debate over the competency of it. The quality of the legal education can be ascertained by looking at the students graduating to become lawyers. The challenge that arises here is that the students take up the Legal field which is not known to them until they get into it, there is no choice for law in the 10+2 courses. Further, the students come from different fields into law, therefore, the one from science won't understand the pattern of study as an economics studying arts student would, economics being the important subject in the curriculum. In fact, there is no effort made to make Law a scientific study, it is needs since, there are fields like cyber law, income tax law, various others which require special knowledge as to its understanding, there must be a curriculum set-up to suit such a need. The vast and important subjects like Cr.P.C., C.P.C. etc. are in many colleges restricted to just one semester, which is indeed very insufficient for competing such subjects. Further, various authorities ranging from Prof. N.R. Madhava Menon, to the various reports of Law Commission be it 184<sup>th</sup> or 14<sup>th</sup>, has addressed the problems of Promising students not choosing litigation as a career option, besides choosing the corporate job or making career in the foreign law firms, the difficulties in the Litigation field and large number already struggling makes it a little unattractive a field to step into, the lawyers are not serving the purpose they are built for, there being a great need for good minds into the legal field to pick it up from its present status, 'justice' lagging far behind as compared to other nations. Further, the students enter the NLUs after they get through the Entrance Exam (CLAT), they are trained by various coaching institutions which provide a plethora of material for the preparation, the study by rote makes these students get through the exams, this doesn't imply that these are the most meritorious ones but rather may imply that they are good at memorising things, leaving behind such students who had the potential but didn't go through all the coaching, away from the benefits of being in an NLU. Well, there are other factors which make the students stay on the hind foot from becoming a good learner and lawyer.

## Challenge with regards to the Curriculum

The curriculum indeed plays too important a role in the building of a proper legal system and defining the quality of a student from a legal field, there have been various discussions regarding this matter in the form of various committees and commentaries, some by the CDC (Curriculum Development Committee), some by reports like the one headed by Upendra Bakshi and many other efforts by the 184<sup>th</sup> Law commission report. The 184<sup>th</sup> Law Commission report, has, besides the enumerations of various committees has suggested that every Law college has a liberty as to the setting-up of the Curriculum according to their resources and other factors that in a regulated manner, with a set of compulsory subjects but this has proved to be a point where the law colleges have set aside following the prescribed curriculum, and prescribe the curriculum which is inefficient as to the building of a better law students.

The BCI puts up a silent approach as to the curriculum in vernacular languages and framing of the question papers in the vernacular language, the NKC (National Knowledge Commission) doesn't throw light on this either, even the question paper pattern is not same in every college, giving a different standard of measuring the potential of a student for all colleges, again a drawback. Further, the revised curriculum either by the BCI or by the university would be of not help if there is no availability of good books, no updated material on the topic taught and no open discussions and inducing and orienting environment of the law school. The questions unless won't be connected with the recent happening with regards to that topic won't be able to induce intelligent reading<sup>226</sup>. Legal education now doesn't include ethical learning to a considerate time rather is a mere formality of following the BCI rules. The legal education has become a mass education rather than a specialised training<sup>227</sup>. There must be a place for the professional ethics as a compulsory subject,

The 184<sup>th</sup> Law Commission report gives an even free hand to the colleges by recommending that the BCI must not act arbitrarily by imposing the revised curriculum on the colleges but must give a considerate amount of time so that the colleges are able to find the teachers to teach the new subjects prescribed which is although very considerate of the Law Commission but leads to colleges not obeying the rules. Although, the effort of the BCI to remove Pedagogy by introduction of new teaching techniques and to introduce the software for the detection of Plagiarism to induce genuine thoughts is appreciable, the problem lies in its

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<sup>226</sup> Jayakumar Srividhya, 2010, *Challenges Facing Legal Education- Some Concerns*.

<sup>227</sup> Dr. Massey I.P., 2006, *History of legal education*.

implementation in the colleges with fewer resources and inadequate infrastructure. The lecture system, mugging-up and other methods have been the hallmark and the teaching lacks any kind of discussion and the students' participation is merely passive, which is of no use to a student who aspires to practise in the courts, for this, the efforts of the Law Commission to implement the compulsory apprenticeship and training, value and skill development were given.<sup>228</sup>

Furthermore, the most pinching need is to have the student achieve practical knowledge of the material they are already studying in the classes, by means of attending the *Lok Adalats*, District and High Courts, Family Courts etc., the colleges must make arrangements to get the students into such activities rather than leaving the students on their own fate<sup>229</sup>. The Ahmadi Committee report in 1997 has emphasised on this aspect and recommended the practical education but owing to various cases in the high courts challenging the rule of one year internship under senior advocates, BCI has recommended four practical papers in the curriculum. As for the LLM curriculum the restricted thought process was suggested by CDC to be widened in its scope by introducing the social science to understand the interrelation of law-society and at the same time the multi-disciplinary courses to enable the students to think beyond the pool.

The entire renovation of the premise of the Legal Education in India has been analysed by the CDC, it understands the need of the hour to be, modernization of syllabi in order to make it socially relevant, multi-disciplinary enrichment of law curricula and corresponding pedagogic modifications. The CDC prepared a detailed curriculum and syllabi for a number of courses<sup>230</sup>. The most burning one being the Clinical Legal Aid facilities that would be a multi-purpose effort if formulated, would not only lead to polished practical knowledge of the law aspirant but also fulfilling the societal needs of simple knowledge about the law so as to reduce the ignorance of law by the common folk and aim at mass social justice. This is an initiative not just to "learn by doing" as according to the President, Simon Fraser University Andrew Petter but also would be an effort to bring justice to brass root levels to the deprived and clueless, giving guidance and direction. The Ahmadi committee and the 184<sup>th</sup> Law Commission report both have emphasised over the need to have a Clinical Legal education and Legal Aid Centres in Law schools and that it is a conjoined responsibility of the UGC and BCI to ensure it, but the government has not taken any satisfactory action in this regard.

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<sup>228</sup> Nawsagaray Nitish, n.d., *Legal Education in India: Current Challenges*.

<sup>229</sup> Justice Mehrotra S.P., 2008, *Re-Inventing Legal Education: Challenges and Opportunities*.

<sup>230</sup> Indriayan N.K., 2001, *The Challenge of Legal Education: The Current Scenario*.

Talking Utopian, The Student legal aid clinics may conduct surveys and prepare reports they shall send reports to the State Legal Services Authorities with copies to the legal services institutions having territorial jurisdiction and also to the District Legal Services Authorities concerned. Clinical legal Education should be given more emphasis, so that students can learn the law through experience and experience the role of law and legal in society along with acquiring professional skills<sup>231</sup>. Such efforts are nothing but appreciated, similar efforts have been made in Canada, India, South Pacific, and African Nations and most recently in Australia, the Clinical Legal Aid has been praised in the government reviews and suggestions regarding the expansion of such efforts in the Law schools have been made. This if enforced would even lead to a philanthropic legal education system, which although is rare but is most needed in present times. These are the Curriculum requirements for the Law colleges in India for the betterment of Legal Education in India itself, there should be more steps that must be taken so that the curriculum is set according to the needs of globalisation and competition with foreign nations and students.

### **The Challenge of Infrastructure, Modernisation and Globalisation**

The law colleges in India are very much in a need to have a better infrastructure. There should be ore funds involved in the development of the Infrastructure and encouraging the faculty of the law Universities in India. The infrastructure of a National Law School is very much developed as compared to the 900 traditional law colleges, the private and the deemed universities are also on the upper hand in this aspect. The environment of a law school must be inspiring to the students and the law teachers<sup>232</sup>. The number of law colleges has also increased to a drastic level; in 1955-56 there were a total of 7 University departments of law and 36 law colleges under 25 universities with 20,159 students on their rolls. However, in 1982-83 there were 302 law colleges with over 2, 50,000 students on their rolls; the number would have increased in the present times. These universities were allowed without any careful planning. It was seen as a business in 1960s and 70s, a medium of extracting profit. The private Bar gave permissions without looking at the adequacy of infrastructure, staff or books and used the permission by the Bar Council. As a result, law colleges became accumulation of Arts colleges and students who had not satisfactorily completed the required

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<sup>231</sup> Shukla Prakash Chandra, 2011, *Legal Education in India: Challenges and prospects*.

<sup>232</sup> Kumar C Raj, n.d., *Improving Legal Education in India*.

formal course of teaching in a college were also eligible for the entrance examinations<sup>233</sup>. The Law college market was open for all the players, it was just a matter of getting permission from the State government, then everything that followed was for the parties and their profits. The teams sent by the BCI for inspection checks only the infrastructure, campus etc, which would obviously present a rosy picture<sup>234</sup>. The team must look at the intent of the institute head to check as to it is meant only for the profit or for a genuine purpose. Furthermore, the universities sometimes are not having adequate funds to maintain the proper standards; this condition leads to nothing but a burden over the students in the form of the fees<sup>235</sup>. The funds invested into the higher education have reduced from 12 percent earlier to just 3 percent in 1980s. This lack of funds has landed heavily on the hiring of the teachers by the universities in metropolitan cities, or a good library and other facilities thereof<sup>236</sup>.

Another, most burning issue for which the legal education system of India needs to be improved and which is why probably such articles are invited is the wrath of Globalisation on the legal education field. The curriculum must be framed in such a way so as to meet the need that may arise for the law students after the students of India would have to compete with the students of foreign universities. In present there are ample of opportunities as new area of work are increased in wake of globalization and governance such as international trade, foreign investments, mergers and takeovers etc. which require agreements between the countries and knowledge of law of country with whom agreement is made<sup>237</sup>. Connecting the curriculum needs with the globalisation.

The NKC had made various recommendations, the report recommends the development of contemporary curriculum, which is integrated with other disciplines and also ensures regular feedback from stakeholders. The curricula and syllabi must be based in a multi-disciplinary body of social science and scientific knowledge. Curriculum development should include expanding the domain of optional courses, providing deeper understanding of professional ethics, modernizing clinical courses, mainstreaming legal aid programs and developing innovative pedagogic methods. With the advent of globalization, it has become increasingly important to include international and comparative law perspectives<sup>238</sup>. There are various bills pending in the Parliament, the Bill on National Commission on Higher Education and

<sup>233</sup> Singh G., 2001, *Revamping Professional Legal Education: Some Observations on the LLB Curriculum*.

<sup>234</sup> Lakshminath A., 2008, *Legal Education, Research and Pedagogy*.

<sup>235</sup> Nawsagaray Nitish, n.d., *Legal Education in India: Current Challenges*.

<sup>236</sup> Mukherjee Dyutimoy, 2007, *Law Schools and Legal Education in India*.

<sup>237</sup> Chandak Yashu, n.d., *Legal Education System in India*.

<sup>238</sup> Das Pradeep Kumar, n.d., *Legal Education to meet Challenges of Globalization*.



Research, would restore the university autonomy which would result into individual competition and betterment of some of the institutions, further, the Foreign Educational Service Providers Bill if implemented shall lead to foreign universities to set-up their institutions in India and this would again lead to more cut-throat competition but at the same time better knowledge delivery system<sup>239</sup>, which again suggests that globalisation is not far away from approaching the neck of legal field and affecting the job opportunities, for which the Native Legal Educational system needs to be ready.

## Suggestions

The suggestions for the improvement of the Legal education are in fact recognised by various jurists already, it is just that they have to be analysed according to their feasibility and the will of the authorities to incorporate them, the complexities of the powers of the authorities being too chaotic, Prof. N.R. Madhava Menon has expressed his opinion that, legal education in India should be liberated from the dominant control of the Bar Councils and entrusted to legal academics with freedom to innovate, experiment and compete globally<sup>240</sup>. But for the time being the efforts of the BCI and the UGC must be harmonised.

Further, there has to be a world class approach in every aspect indeed in the Indian Law schools even the traditional ones, that to be achieved by giving place to a curriculum that meets the needs of the 'to be globalised' Indian legal field, so that the native system doesn't see failure in comparison to the foreign competitors. Further, the pedagogy should be done away with, the present being the high time to do this. The curriculum must make compulsory, the Practical Legal Education, Clinical Legal Aid and professional ethics, the moot court exercises and debates and MUNs to be kept on utmost importance. The traditional teaching methods should be done away with and new methods including technology to be introduced rather than the traditional lecture method.

The teachers must be given more incentives to make the teaching field more attractive, so that the shortage of teachers is fulfilled, the need must be to fill up the gap with able teachers and training must be made compulsory to them, the suggestion of the 184<sup>th</sup> Law commission report of having adjunct teachers being considered, on the same time the qualification level fixed must not be such that the brilliant teachers are not able to get into the stream.

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<sup>239</sup> Kumar Rajendra, n.d., *Problems and Challenges before Law Teachers in India*.

<sup>240</sup> Lakshminath A., 2008, *Legal Education, Research and Pedagogy*.

Further, a proper scrutiny of the new aspirant into the legal education field, to open a university must be done to avoid unnecessary increase in the number of law colleges which just “increase the quantity without ensuring quality” and are meant just for profits.

The National Knowledge Commission (NKC) has felt a need for a rating system for all the facilities so as to differentiate between proper and unnecessary law colleges, the same should be implemented. The rules regarding the instruction in Vernacular languages should be made clear by the BCI.

## Concluding Remarks

In a nutshell, the legal education has gone only downhill since, the times before independence, till later. The revolution came in the form of setting-up of NLUs, but there still exist traditional law schools, and the olden methods and lack of facilities have made these just a production factories. With the possible competition with the foreign entities in this regard, the Indian Legal Education has to be improved, there being numerous suggestions made in this regard by various jurists and committees, the compliance and implementation remains a grey area and nothing could be done to force the system to obey these. The suggestions although are of utmost importance and if complied with shall definitely lead to betterment in the circumstances. The people in the legal field already are getting awakened and trying to improve the situations which give a relief with a belief that things shall change.

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