

LAW SCHOOLS AND LEGAL EDUCATION IN INDIA

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“Legal Education is essentially a multi-disciplined, multi-purpose education which can develop the human resources and idealism needed to strengthen the legal systemA lawyer, a product of such education would be able to contribute to national development and social change in a much more constructive manner.”¹

Chief Justice A.M.Ahmadi pointed out in one of his lecture, “I think we have waited long enough to repair the cracks of the Legal Education system of this country and it is high time that we rise from our arm chairs and start the repair work in right earnest.” The reforms in Legal Education and Legal Profession have been long over due. There have been voices sometimes sharp and sometimes subdued for such reforms. Unfortunately, no serious attempt could be made. In fact so far, we have miserably failed to look into the problems of Legal Education and Legal Profession, which have been squarely facing us at our face. It is no use now putting the dust under the carpet as the atmosphere above the carpet is fairly polluted; it is high time we seriously look into these problems.

The present law has to meet the requirements of the society, which is entering into 21st Century. Law has to deal with problems of diverse magnitudes and a student of law and an Advocate has to be trained in Professional skills to meet the challenges of globalization and universalisation of law. With the advent of multinationals in India as anywhere else, the task of lawyers would be highly technical and an imperative need would arise to have competent lawyers who would be trained in the right culture of Legal Education. This makes a sound case for introducing reforms in Legal Education.

The creation of new breed of lawyer depends itself on the creation of a new teacher. All curricular revision ought to be guided by one basic criterion viz. whether current doctrine and practice in particular areas of law serve to promote basic democratic values. The promotion of these values matters more than any thing else; the heart of the matter is not re-christening of courses but the changing of aim and emphasis. Among other things, the new law teachers must make plain to student not only that there are different ways of setting disputes but many ways of getting results.

Law is conceived to be a process of dispute settlement, the law teacher must emphasis to students that such settlements ought properly to be assessed in terms of whether or not they accord with the democratic objectives of ‘authoritative’ community policy. In attempting to guide students towards the realization of basic democratic values, law teachers must themselves demonstrate scholarly commitment to self-enlightment, for it is only through analysis, clarification and exposure of their own values and prejudices that they might diminish their own danger to students.²

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¹ S.P.Sathe, “ Access to legal education and the legal profession in India” in R.Dhavan, N.Kibble and W.Twiner (ed.) Access to Legal Education and Legal Profession 165 (1989)

² R. Segal, S.R. Bhosale “Legal Education in India: Restructing and Reshaping” Indian Bar Review 1999 Dec. 26: 37-46

PRE AND POST INDEPENDENCE SITUATION OF LEGAL EDUCATION IN INDIA

When India gained its independence in 1947, its legal profession and legal teaching were thus not able to play the role they ought, by Western standards, to have played. The politician, the economist, and the engineer were expected to remake the society. The law was to assist in the form of public law and administrative law, but private law and the legal profession claimed only a small and marginal role in social change. Since independence, the situation has deteriorated further. India, with its mixed economy and its significant planning efforts, makes extensive use of laws and of regulations. Administration, however, is largely in the hands of bureaucrats in whose recruitment legal training does not carry significant weight except for specifically legal jobs; the role of the legal profession as a whole is ordinarily restricted to giving advice after trouble develops. India's elaborate written constitution, as applied to a diverse society in rapid change, would seem to require a wise and effective legal profession, but the flow of talent into the profession had declined. Before independence the lawyer had enjoyed some degree of self-determination, had frequently been educated abroad--usually in England--, and was often prominent in the independence movement. As foreign exchange became scarce, India had to rely increasingly on domestic legal education. Moreover, neither the economic rewards of the profession, nor its social standing, nor the perceived opportunities for contributing to the new and better India were such as to attract capable young men to law. India today presents the paradox--one frequently encountered in the contemporary world--of a society that makes extensive use of laws but lacks a legal profession that understands law as an instrument of economic and social architecture.

In India today there are several obstacles to the development of law as an effective instrument of social control. To begin with, many of the rules and institutions of the common law as received by India are still in varying degrees either alien to the traditional society or inappropriate for the kind of social and economic development that India is now undertaking. A more subtle difficulty, and perhaps a more crucial one in the long run, is whether India will understand some of the very basic assumptions that underlie and inform Western law. Moreover, understanding need not imply acceptance. The traditions and requirements of Indian society may call for a legal order more mediational in its nature than the common law--one emphasizing adjustment more than vindication of a rather abstract justice. These are matters that relate to economic and social realities and to philosophical and cultural traditions; in good measure, though by no means completely, they are beyond the control of the legal profession.

A further obstacle to contemporary India's understanding the potential contribution of law and of the legal profession is suggested by a sociological proposition that may have universal validity: In societies in which the law in the books does not reflect fairly accurately the community's accepted and operative values, the lawyer tends to be looked upon as a manipulator. Individuals turn to law and to lawyers when their behavior and their values are not those that are generally accepted. The law and the lawyer provide official sanction and support for such deviant behavior. Perhaps, in developing societies in which the legal profession participates fully in the process of social change, this negative evaluation of law and of the profession can be overcome. But in India, as in most developing societies, the legal profession has not so participated and the private law's role has been relatively small. The politician, the economist, and the engineer remake the society; the lawyer tends to be looked upon as a kind of manipulator or fixer who, in many ways, fails to represent society's basic values and attitudes.

In addition, in India, as in so many other developing societies, both the economic and the social service aspects of the legal profession are poor. The traditional, rural society typically gives lawyers a relatively low money income. To the extent that Indian economic life today flows through public-sector enterprises, there is also less reliance on private practitioners than is the case with private-sector enterprises. In addition, for reasons already suggested, the lawyer has not carved out for himself the creative role that is today so widely accepted in the United States. Hence, outside of successful commercial practices in the large urban centers and the more significant appellate practice, the career of law is neither particularly rewarding financially nor especially stimulating intellectually. In the modern world, men of talent seek the opportunities and challenges of service as well as financial reward sufficient to provide a reasonable degree of comfort and security. Unless a profession can provide both, talent is likely to choose other outlets. Today the typical Indian lawyer has a rather poorly paying practice in which he finds it necessary to handle all kinds of matters with little opportunity for specialization, a situation rendered still more difficult by the relative rarity of firm practice.

A final difficulty is simply the economic cost of the kind of legal education that would be required. Most understandably, independent India sought to deal first with acute problems of poverty and with pressing requirements of industrial development. Even in wealthier societies, problems of the long range and of relative subtlety are often deferred to another day; the danger is that thereby the opportunity to build solid foundations is postponed until lost, with the result that the problems that were and remain so pressing can never be solved.

LEGAL EDUCATION

While the teaching of black letter legal-doctrines is an important function of the law institute (college), it is not the only function. What is needed beyond the teaching of doctrine and technique is a system of legal training devised to 'aid' the developing lawyer to acquire certain skills of thought, goal thinking and scientific thinking. The student needs to clarify his moral values, social goals, he needs to orient himself in past trends and future goals, he needs to acquire the scientific knowledge and skills necessary to implement objectives within the context of contemporary trends. The law institutes must provide a realistic and comprehensive picture of the structure and functions of society and will also be oriented towards the implementing of a consistent and explicit set of democratic values. He will not only be lawyer for the future but also be a social technician or social engineer.³

Legitimate aim of legal education is to seek to promote the major values of democratic society and to reduce the number of immoral things. In a democratic society there cannot be a complete answer as to what constitute preferred values, unless some such values are chosen, carefully defined, explicitly made at the student's students focus of attention that the automatically applies them to every conceivable practical and theoretical situation, all the talk of integrating law and social science, or of making law more effective instrument of social is twaddling futility- the only conceivable purpose for developing an interdisciplinary approach to legal education is to use the social sciences as a medium through which to immerse the law student in certain values which are deemed to representative of the values of democracy. The student may be allowed to reject the

³ ibid

morals of democracy. The student may be allowed to reject the morals of democracy and embrace those values.

The fundamental difficulty is after all one of intellectual attitude and conception: the failure to attack legal problems functionally and its corollary, a static view of law. Social and economic change might, in time, engender the necessary changes in legal thinking. But a very long time would probably be required; legal education, by shaping the men and minds that will address themselves to the problems of law, offers the best hope of accelerating and consciously assisting the process.

The quality and style of Indian legal education that was prevailing for the last fifty years was unsatisfactory. So obviously it did not attract first-class minds as students or as teachers. Facilities, including the all-important library, are poor and not properly maintained. The Indian law teacher had to cope with a low salary and a heavy teaching load; fifteen to eighteen hours a week are normal for full-time lecturers. Where as, if a good hard working student works for 5-7 years in a High Court or other court he earns a good handsome amount at the end of the month. There is no established tradition of legal scholarship as an integral part of a teacher's life and duties. On the other hand these teachers could not participate in different projects as an advisor to guide them legally. Indeed, with the heavy teaching load and inadequate library facilities, such a tradition could hardly be supported. Many law colleges have only a couple of full-time teachers; the rest are part-time (which tends to mean no-time except for the classroom hours)⁴.

The composition of the teaching staff is unfortunate in that it tends to stifle and discourage good, younger men. The faculty takes a pyramidal form, with a large base of nontenure lecturers, a smaller group of tenure readers (roughly associate professors), and one or two professors at the apex. As a consequence, it is impossible to get at any one place a sufficiently large group of really energetic, talented teachers. Younger men of capacity who see no room at the top prefer to accept professorial status and related prerogatives elsewhere. The relatively small supply of talent is thus spread far too widely, many younger scholars of capacity going to schools where they ultimately give up the struggle for scholarly achievement. The pyramidal structure encourages intrigue and personal jealousies. It results in overloading the professor with administrative and committee duties. For these reasons, as well as others deriving from the position of law and the legal profession in society, Indian legal education has to date had few outstanding scholars, teachers, or academic leaders. Most Indian law men of first-rate ability--and India has had a significant number of energetic and talented lawyers--have preferred to make their careers at the important commercial bars, before the higher courts, or on the bench.

TRADITIONAL THINKING OF THE LAW TEACHERS

The Indian law teacher's conception of law is typically a static one, and he approaches legal education through a lecture method, emphasizing systematic presentation and verbal analysis of the existing structure of rule and doctrine. Little attention is paid either to the policies that underlie the rules or to the processes of growth and development through which the legal system adapts old rules or announces new ones. There are some tutorials and some seminars; the quality of the

⁴ 78 Harv. L. Rev. 1180, Harvard Law Review, April, 1965 Comment, LAW AND LEGAL EDUCATION IN INDIA: SOME OBSERVATIONS by Arthur Taylor von Mehren

discussion is not impressive. The students are typically poorly prepared and the teacher usually more interested in expounding than in exploring the subject. The subject matter taught is conventional; a good deal of attention is given to such subjects as jurisprudence, Hindu law, and Muslim law along with the staples--contracts, company law, torts, constitutional law, and international law.

Examinations are by external examiners. Consequently, the teacher loses a considerable degree of control over the intellectual content of his course. From a simple example we can realize the practical situation, that Salmond is still the standard diet for jurisprudence for most of the traditional law colleges. The students are more interested in cramming for the questions typically put in the external examinations than in understanding the subject; and the questions tend to represent the lowest intellectual common denominator. The system is often justified on the ground that otherwise nepotism would be rampant.

Legal education is a graduate discipline, although not all colleges require an undergraduate degree for admission. In nearly all schools the LL.B. is still granted after two/three years of study. One must then pass a University examination and, since very recent past, put in a year of apprenticeship. It remains to be seen how the apprenticeship program will work; the general feeling among the better legal educators seems to be that apprenticeship will be largely a waste of time.

At a number of traditional colleges the student body studying for the LL.B. is large often over a thousand in a batch for a particular academic year. Typically students are part-time even in so-called full-time colleges. Day-to-day preparation is usually nonexistent; the student crams intensively in the month or so preceding the examinations. A very high percentage of the LL.B. students of these traditional college students have no serious interest in a career in law. Most are there either because they were unacceptable or unsuccessful in other departments and are using the law college as a "waiting room," or because a law degree would be helpful, more in terms of formal qualifications for advancement than substantively, in their work for government and, to a lesser degree, for business. Half or more of the first-year class may fail, but the high failure rates apparently do little to improve the quality of, or the effort put forth by, those who are successful. The typical product is what might be expected; a superior scholar or lawyer in India has usually become so in spite of his legal education. Matters are considerably better on the LL.M. level. There the student body is much smaller. The failure rate remains high, but a larger percentage of the students are interested, and some work reasonably hard. The instruction is also better. The few first-rate Indian law teachers tend to put forth their best efforts with LL.M. classes.

As the preceding discussion makes clear, improvement of Indian legal education is deeply involved in a multiple chicken-egg dilemma: The opportunities open to Indian law graduates are not very attractive, but they might be if the graduates were themselves more capable. The social and economic standing of the legal profession is not particularly high, but these might improve if the profession conceived of itself as something more than a body of litigators. Law as a technique and instrument of social control is neither very well understood nor appreciated by the society, but greater insight into these matters on the part of the profession could assist in creating a climate more favorable to, and a better understanding of, the law.

LAW SCHOOLS – A NEW WAY OUT

A bold and creative decision on the part of the Bar Council of India, first to replace the three year (mostly part-time) LL.B. programme with an integrated five-year LL.B. course and secondly to try out the scheme in a model law school (National Law School) sponsored by the BCI itself. The first initiative happened in 1982 and the second in 1986. The outstanding success of the National Law School experiment invited attention from policy planners (Committee on Subordinate Legislation of the tenth Parliament recommended a Bangalore model law school in every State which has been endorsed by the All India Law Ministers Conference at Bhubaneswar in 1992), the organised bar and the Committee of Judges on legal education appointed by the Chief Justice of India (1993). The call was responded by the setting up of law universities on the Bangalore model in NALSAR at Hyderabad (1996), NLIU at Bhopal (1997), WBNUJS at Kolkata (1999) and NLU at Jodhpur (2000) HNLU at Raipur (2003), GNLU at Gandhinagar (2004).

An organised attempt by the BCI with the assistance of the National Law School to revamp the curriculum (1996), increasing the number of required subjects to be taught and introducing an imaginative component of practical training (four courses for a total of 400 marks) to be completed at the law school in the final year. Introduction (though aborted by a Supreme Court judgment) of a yearlong apprenticeship under a senior advocate as a pre- requisite for enrolment as an advocate (1996).

After the introduction of National Law School, the admission in the law course is done strictly on the basis of merit and only after 10+2 one can sit for this examination. Total number of seats in a particular stream should not exceed 100 and the student ratio is almost 1:40.

The Bar Council of India has laid down standards in terms of system, classroom teaching, practical training and skills, court visits, moot court, legal aid work, and other practical training programmes for law students. This has given a special impact to Indian legal education.

All the traditional law colleges suffer from the non-attending of classes by the student. In this matter law schools are able to overcome this problem by two ways (1) these are mostly residential colleges and (2) colleges are very much strict about attendance. To sit for the final examination every one had to have a certain percentage of attendance.

By announcing a scheme of professional entry test to be conducted by the BCI for foreign law degree holders to be able to seek enrolment under the Indian Advocates Act.

THE PROBLEMS WE ARE FACING THIS MOMENT⁵

However, the pace of change towards improving the quality of legal education was watered down by the very same Bar Council through a series of compromises adopted in the course of the last two decades. These include:

- (a) Allowing the three-year LL.B. course to continue as before side by side with the five-year integrated programme;

⁵N. R. Madhava Menon, Vice-Chancellor, W.B. National University of Juridical Sciences

“Halting progress of legal education” <http://www.hindu.com/thehindu/2001/10/23/stories/13230643.htm>

(b) Not following the distinction between professional and liberal legal education in categorizing the over 500 law teaching institutions for extending BCI jurisdiction;

(c) Reducing the eligibility criteria for admission to the professional law course; there is need to fix the age to get entered into a law college, like law school all other law colleges should fix the maximum age with in 20years for the general category students 23years for a economically backward students.

(d) Inability to mobilise funds for supporting improvements in legal education, particularly among institutions located outside metropolitan cities; the institution situated outside the metro city is suffering from various problems due to lack of fund. They could not afford a good law library. They did not have the chance to get other facilities of the metros. They could not invite good faculty for these lack of fund. On the other hand all these good faculty prefers to stay in a Metro cities.

(e) Inability to revive the pre-enrolment apprenticeship scheme or any other viable alternative to ensure minimum professional competence on the part of fresh entrants to the profession; there is need for an Minimum criteria to enter in a bar otherwise it will turn in a mess. Bar council should make some regulation for the coming law students. This can be an entrance test, and whoso ever will be able to clear the test will be competent to enter in to the bar. There is need to learn all the technical details of this profession. Other wise one can lose a case only on the technical ground. So there is need to work as assistance to a lawyer to realize and under stand all the technical details and procedure. These selection of procedure should be done by the marks obtained in the entrance examination of Bar. So there will be no dispute in the student, that he did not get an fair opportunity to get a good lawyer to under go the practical training. For this time period when a law student will under go the training as assistance he will be given a scholarship by the bar to sustain.

(f) Inability to deter full-time teachers from practicing law and thereby depriving students of the benefit of services of these teachers; after completion of the course every one had to go for the practical use of the law. So it is very important to know the practical situation from a person who is expert in that particular field. In that case none but the practicing lawyer is the best teacher. On the other hand law papers like Criminal Procedure code, Indian Penal Code, Indian Evidence Act cannot be understood except practical knowledge and practices that are followed in the court

(g) Inability to provide any meaningful guidance for institutionalising clinical teaching (of skills) and imparting education on professional ethics.

Directions for change

(h) All the experts of a particular discipline should start detailed studies on that subject. In the recent years we saw Indian Institute of technology, Khargapur come out with new course on law related to Technology and Computers. No other institutions than IIT, IISc, ISI are the best in their respective field of Science and technology and statistic. So if they start to use their intellectuals in this field then the development in law will be the unimaginable. Like wise if the Business schools comes out with different law courses on the corporate management then it will be beneficial for the corporate law field.

What are the expectations of the country and the people from law and legal services in the coming years, given the process of globalisation and transformation in the role of the state? What is the best strategy to strengthen professional legal education while promoting wider instruction in law as a liberal academic discipline? If training in skills and ethics is to be accomplished within the law school curriculum what is the appropriate model to achieve this end? How does one assess the social relevance and justice content of law teaching and what can be done to maximise those goals? What ought to be the supervisory and control mechanism to ensure accountability on the part of professional schools of law in maintaining standards of teaching, research and extension activities?

To be able to address these questions one must have an awareness of the challenges involved and the changes taking place in contemporary times. These relate to unmet legal needs of different sections of society, delay and cost in accessing justice, impact of globalisation on equality and human rights, vast technological changes especially in information and communication, the relative incapacitation of the state by market domination and the role of professions in justice, peace and development. In all these changes law and lawyers play a decisive role of facilitation, moderation and control. Law without justice is an empty shell. It is the nature of and access to institutions and procedures, which make justice possible. In structuring the institutions and procedures, particularly in periods of transition, lawyers will have to assist communities, interest groups and governments keeping in mind the requirements of equity, justice and fairness.

ADDITIONAL ROLES

The conventional role of a lawyer is to step in after the event to resolve disputes and dispense justice to the aggrieved party. In the changed scenario, the additional roles envisaged are that of policy planner, business advisor, negotiator among interest groups, expert in articulation and communication of ideas, mediator, lobbyist, law reformer, etc. These roles demand specialised knowledge and skills not ordinarily available in the existing profession. The five-year integrated programme of legal education is a modest response to these challenges as perceived in the 1980s well before the end of Cold War and advent of market-oriented globalisation. The lawyer of tomorrow must be comfortable to interact with other professions on an equal footing and be able to consume scientific and technical knowledge. In other words, along with social science subjects, the law curriculum for the future must provide integrated knowledge of a whole range of physical and natural science subjects on which legal policies are now being formulated. These areas include bio-diversity, bio-technology, information technology, environmental sciences, air and space technologies, ocean and marine sciences, forensic sciences, public health, petroleum and minerals related subjects, etc. Lawyers will be naturally called upon to specialise in assorted branches of legal practice, as it is impossible to be a practitioner on all emerging areas of legal practice.

The image of a lawyer in society as well as the self-image of the profession is not what it ought to have been given the diverse roles as stipulated above. A change is needed and it is important that the profession exists for the people and not the other way round. The way the profession is organised today also requires change to let a more rational distribution of work and to promote standards of efficiency and accountability. The way a lawyer thinks, acts and conducts him will have to change if legal services have to be a powerful tool for justice in an unequal society/world. It is here legal education has to take its lesson on value addition. Justice must become central to the law curriculum and community-based learning must give the desired value orientation in the

making of a lawyer. To give a recent example, one can say that the young law students who went to the earthquake affected districts of Gujarat seeking to carry legal services to the victims came back with impressions and experiences which would no doubt influence their professional life and shape their approach to justice. The idea being canvassed here is that professional education will have to be imbued with a spirit of social service and there is no better way of inculcating it except to expose them while studying law to real life experiences crying out for justice. The politics of legal education and the economics of legal practice should be subjected to academic scrutiny if the profession has to be saved from the practitioners themselves!

CONCLUSION

Role of a Lawyer in a social welfare liberal democratic state is not an easy task for him, nor his profession. Profession, which obligates him a sense of social responsibility and expects from him to work towards social development not only filling his own purse or coffers but shouldering a joint or collective obligation to do justice in a society. Legal education is the basic, which only would create such responsible and responsive social lawyering. Every society has its contingent demands now need to be fulfilled by an instrument of law, which is purposive human enterprise. Therefore, quality legal education is to be imparted to 'lawyers' taking into account needs of society with the changing time is to be restructured and redefined objectives and resources as well as government aid, financial and institutional, is since qua non for its sustenance and to be utilized at optimum level.

Effective reform in Indian legal education will require energy, imagination, and devotion; nor can such reform alone resolve the dilemma in which the Indian legal order finds itself. For the reasons discussed above, however, education seems the most favorable point of entry and offers greater leverage for productive change than reform at any other point in the legal order. But reform in legal education cannot succeed ultimately unless the Indian legal order as a whole moves in a complementary direction. One must hope that reforms and insights from an invigorated and reshaped legal education will help to stimulate movement in other areas of law until, in due time, the several efforts will multiply and become self-reinforcing. If challenge determines response, the enormous challenges to Indian legal education and to the Indian legal profession should produce a tremendous effort to improve legal education. So much needs to be done even to understand the problem and to fashion for India the kind of legal order that she needs. India today requires superlative legal education much more than does the West because in India a far less viable balance is struck between the society's requirements and a reasonably effective exploitation of the law's potential for contributing to the meeting of those needs.

Events are moving fast and reform in legal education cannot wait any longer. If it is moulded to sub serve the purpose of the society and to fulfill the current needs, our legal instructions will not only command respect but will also be able to play a vital role in the achievement of the common goal. Society is undergoing rapid transformation and the pace of change is likely to gather speed. In the context of change ahead, it will be important to devote thought on how to adopt our legal education to modern conditions so that the coming generation may fit in the new society that is envisaged. Legal education is an investment, which if wisely made will produce most beneficial results for the

nation and accelerate the pace of development.⁶ These are few suggestions for achieving a country for which we dream every day and night.

The legal Education and the profession have to care for the “invisible man”. The Advocate has to become socially more relevant and technically very sound if he has to survive and serve the needs of the society in the 21st Century.⁷

⁶ Dr. G.S. Pathak in Prof. S.K. Agarwal ed. “Legal Education in India, Problems & Perspectives” (1973) p. 2-3

⁷ Dr. Ranbir Singh, Director, NALSAR, “Reforms in Legal Education and Legal Profession in India” Andhra Law Times 1998 (6) 95 : 15-18