



ORIGINAL RESEARCH PAPER

Law

A CRITICAL ANALYSIS OF THE EXISTING LEGAL EDUCATION SYSTEM IN INDIA: A WAY FORWARD

KEY WORDS: Enabling Environment, Legal Education, Legal fraternity, Reforms, Challenges.

Dr. Bhupender Kumar Jodhta

[Ph.D. (Law)], Principal, Awasthi College of Law, Ward No. 09, Nalagarh, Solan, HP 174101 Affiliated to Himachal Pradesh University, Shimla, HP

ABSTRACT

The development of any society is depends upon the existence of enabling environment for imparting legal education. Legal education have went through many reforms after independence but still have to do a lot for competing with international legal education. Therefore, it is now required that the entire system of legal education to be re-looked to produce competent law graduates. This paper analyses the status of Legal Education in India in the modern context. Examines challenges, requirements of further up-gradation & reforms and provides valuable suggestions for legal education. The paper also empathizes the re-orientation of legal education and its implementation in an effective manner for judges, law teachers and help lawyers stay current with substantive law, skills, and prepare for potentially dramatic and fast moving changes to the practice of law.

Legal education had never been at the center of country's development, right since the time of independence as compared to other disciplines which gained the attention of the intellectual and political class for the purposes of its surge towards excellence. Actuality, the legal profession was the choice of the last rank of students who failed to make it to the more sought after professions of engineering or medicine. Thus, the standards of legal education remained extremely poor and neglected.

However, with the passage of time, things improved. The establishment of the Bar Council of India, the emergence of the National Law Schools and Centers for Advanced Legal Studies proved to be milestones in the quality and advancement of legal education in the country. The 80s, 90s and the millennium witnessed this churning and the result is palpable from the birth of brilliant group of young talents who are working in the best law firms and corporates in the country and abroad, as well as joining the Bar to practice the profession.

Legal Education in India: A Critical Analyse

To acknowledge the urgent requirement to critically analyse the existing legal education system would be to identify the weaknesses in the Indian legal education and then to identify those important areas where reforms can be initiated. Following examples demonstrate sagginess of Indian legal education system:

- Lack of focus on legal research and writing.
- Inadequacy in the area of imparting negotiation skill in law skills.
- Lack of emphasis on the study of interface between constitutional principles vis- a-vis individuals and the society in the curriculum.
- Lack of engagement of students outside the classroom.
- Lack of focus on post-graduate studies at the Masters and Doctoral level in the Law Universities.

Laws for the regulation of professional legal education in India are made by the parliament of India with reference to entry 66, 67 & 78 of List I (Constitution of India), which includes two regulatory bodies namely The Bar Council of India (BCI) and The University Grants Commission (UGC). All the issue relating to admissions, practice, ethics & standards are addressed by BCI in consonance with state bar councils. The powers of BCI are also envisaged under the Act. While exercising the powers given under Advocates Act, BCI has successfully done many reforms in Legal education like introduction of five years integrated degree program in Law in 1982. This system has since been gradually adopted in various Universities and Colleges. In 1987, NLS was

established at Bangalore by the Bar Council of India. 184th Report of Law Commission of India suggested for harmonious construction of UGC & BCI powers & regulation of legal education in India through joint committees. In the year 2007, the National Knowledge Commission submitted it's for reforms in legal education & suggested for steps to be taken for justice oriented education in field of law. The report quotes that; "...vision of legal education is to provide justice-oriented education essential to the realization of values enshrined in the Constitution of India..."

Challenges to Legal Education in India in the Era of Globalization

The legal education in India is currently undergoing a transformation phase. Law as a career is going potential again in 21st Century due to globalization but globalization has also posed varied challenges to legal education in India. The Indian legal profession is perhaps among the largest in the world.

The new and emerging law schools in race of having international existence & achieving high standards cannot afford to limit their focus to teaching and research on issues relating to Indian law only & thus are giving a tough competition to existing government funded law colleges & universities. To train students up to the level to compete with students of developed countries is a great challenge for law schools these days. The most stimulating task is to attack a proper balance to ensure that students are taught a fair mixture of Indian laws & international law. Thus, an immediate challenge is to improve the quality of legal education in a vast majority of law schools in the country.

The objective of starting five year integrated law course in India was to produce good & trained lawyers through rigorous preparation who will help in reducing backlog of cases in lower courts & raise the standard of profession with a view to creating a rule-of-law society. But, they do not want to become *mofussil* lawyers going to the District Courts or Tehsil Courts. Most of these students join corporate sector where they get heavy pay-packets in the beginning itself. Thus, the objective of providing justice education stand as it is when the trained students do not join the justice delivery system.

The Law Commission in its Report have discussed the issues of higher education as: "*revolutionary changes which have come into legal education by reason of developments in information, communication, transport technologies, intellectual property, corporate law, cyber law, human rights, ADR, international business, comparative taxation laws, space laws, environmental laws etc. The very nature of law, legal institutions and law practice are in the midst of a paradigm shift.*"

Indian Legal Faculty lacks in practice of Continuous Legal Education. Continuous Legal Education is a significant component in industry for professional development, better delivery of legal services & is also a measure of the accountability of the profession.

Another issue in the slow development of legal education in India is 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 Research can contribute significantly towards improvement in teaching and, more importantly, addressing numerous challenges relating to law and justice. If one is to look at the faculty profile of the world's top law schools, he/she will find that there is great emphasis on research and publications among academics. But in India the research initiatives in legal fraternity is not at par with other disciplines.

With the globalization of legal education and research becoming a universal trend, promoting Clinical Legal Education through institutional mechanisms is the need of our times. Clinical teaching has become an integral part of legal education in most developed and developing countries. Clinical Legal Education took its roots in India in the late 1960s. But Clinical Legal Education becomes integral part of curriculum only when BCI introduced four practical papers to improve standards in legal education in late 90's. A perusal of the clinical legal education as it exists today would suggest that the "clinical" or "practical" instruction is only an extension of the classroom teaching and not practical in any real sense of the term. Therefore, it is a high time to include clinical legal education in all the specialization of legal field. Linking Clinical legal education with Legal Services Authorities and courts can play an infinite role in implementing Article 39A, Article 8 of the Universal Declaration of Human Rights & section 4 (K) of the Legal Services Authority Act. Pursuant to orders of the Supreme Court dated June 29, 2009 and October 6, 2009 in case of **Bar Council of India vs. Bonnie FOI Law College & Ors** a 3 Member Committee on Reform of Legal Education was constituted which has discussed various challenge knowledge & teach them skills but practice through observation and participation is possible through Continuous Legal Education.

The committee has submitted its report to Bar Council of India. The committee has also submitted major issues posed to the legal education in India like:

- Expertise & ability of BCI to address the demands of changing legal education in India & reform the legal education system as per contemporary requirements in sync with Information Technology & biological and scientific developments.
- Lack of funding in an area as important as legal education which is keeping the infrastructural, adequate payment to faculties & technical requirements of legal education to backfoot.
- Loopholes in inspection and recognition of law colleges by BCI. Separate accreditation/rating system for legal institutions.

There is a requirement of introducing new teaching methodologies such as engaging in debates, collaborative teaching, learning through technology and exposing law students to real-life situations would lead to a more practical approach of the legal education. Use of modern technology can facilitate informal communications amongst the students and faculty, allowing more feedback to students and greater autonomy learning. Speaking for the teaching community, Justice Ranjan Gogoi stated that if the teachers continue to remain unrecognized and marginalized then the future leadership of Bar and Bench will not be adequately equipped to meet the domestic and international challenges.

Justice Lokur, believed that for any meaningful discussion on legal education reforms, the Bar Council of India and Government of India should be brought on board so that these stakeholders could cohesively collaborate with academia and the judiciary in charting the path for new reform. Justice Kurian Joseph, believed that the Law Universities should emphasize on constructing social relevance in their legal education which according to him could well begin by operationalization of full-fledged Court in their campuses. He elaborated that such Court could be Family Court, Consumer Court or any other Court having jurisdiction over socially relevant matters. This would inculcate a feeling of familiarity and belongingness to the legal fraternity. Referring to the importance of mediation, he advocated for the commissioning of mediation centres in Law Universities as a part of legal processes which he believed may be the first step in creating socially relevant infrastructure within the legal education. He vociferously advocated setting up of a National Academy of Law Teachers at par with National Judicial Academy in other vocations in order to enhance the overall quality of legal education and continuing professional development.

Attorney General for India suggested that the faculty member(s) of excellence should teach on weekends to benefit everyone across the country. Highlighting the role of technology, he emphasized that the dissemination of education should also be promoted through video conferencing. Live streaming of arguments, if permitted by Supreme Court, especially of the important Constitution Bench cases would immensely benefit the law students and this would in turn encourage the lawyers to present their cases in a sober manner and their presentation of cases would be of much higher level.

Suggestions

- The need to implement wholly and substantially the recommendations of the National Knowledge Commission to establish a standing committee on legal education.
- Attention was drawn to the fact that, in the independent history of India, even though the Constitution has the provision in the form of Article 124(3)©, yet not even a single jurist from academia background has been appointed as a Judge of the Supreme Court.
- The need to embrace technology to its fullest extent, not only in the Judiciary but also in the field of legal education. Use of technology to be given focus in the legal profession especially, forensic science in evidence.
- The combined conferences & seminars of the Judges, Advocates Vice-Chancellors, Directors, Deans, Faculty members event should happen regularly.
- Urgent steps toward regulating high application fee of the CLAT exam and also the high fee structure of the NLUs which has a deterring effect on the rural population which remains neglected from being admitted to the prestigious NLUs.
- The issue of language as was raised by a number of the participants and though fluency in English is important in law but it should not remain the only criteria. Need for senior advocates to visit and deliver lecture in the law colleges on a regular basis. National Law University being primarily undergraduate schools with very little focus on LL.M. and Ph.D. results in declining quality of research.
- Issues flagged regarding the lack of diversity in the legal profession and the need to have equality in salaries.
- Emphasized on revising and updating the Curriculum on a

continuous basis. The curriculum in the law schools should dedicate a substantial amount of time to the skills required in the ADR mechanisms. Lawyers should be equipped to work in at least two Indian languages and for this the Law schools must teach regional language as part of the curriculum.

- The idea of a full-fledged Court functioning and attached within the premises of Law Schools would enhance and enable students to learn and absorb courtroom ethics and professional skills. Legal Aid Clinics and Mediation Centres within the campus to teach students about alternative lawyering skills.
- Sensitizing students towards social justice and use the internship opportunities to make them work at the grass root. Need to evolve a mechanism to get feedback from the students regarding the internship.
- Supported the idea of establishment of a national academy for the training for law teachers.
- To remove the Indian legal education system beyond the purview and control of the Bar Council of India.
- Greater focus needs to be given to the study of globalization and internationalisation of law.
- Implementation of National Knowledge Commission report.
- Bridging the gap between social order and legal order the law schools by using legal aid clinics, and clinical education in the communities and in the rural areas.
- A multi-disciplinary approach needs to be adopted in teaching Constitutional Law in the law universities.
- Professional education should be separated from other liberal legal education.
- Professional legal education should be rigorous. Future lawyers should be equipped to work in at least two Indian languages.
- Focus should be on teaching Alternative Dispute Lawyering Skills like Arbitration and Mediation to law students.

Conclusion

The future shall witness a radical transformation in the content as well as methods adopted to impart legal education in India. Law school model established post independent Indian legal education has done a great job in development of legal education in India with a strong commitment to improve existing legal infrastructure. Certainly, with this spirit, these schools have also phased critical changes in syllabus and structure to cater to the new generation of lawyers. We have to prepare ourselves well with the purpose of keeping pace with the current developments and to meet demands of the future. Improving legal education through model law schools was second generation reform but now the third generation reform needs to internationalization of legal education.

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.

REFERENCES

1. Anand, J. (1998), H.L. Sarin Memorial Lecture: Legal Education in India - Past, Present and Future. The Practical Lawyer.
2. Bansal, K. (2015), A Ten Point Review for Reforming Law School Education

in a Globalised India.

3. Bench, B. (2015), Clinical Legal Education: A Way towards Up-scaling Access to Justice in India - Bar & Bench.
4. Ganguli, A. (2015), Overview of the Legal Profession in India. UIA - Union Internationale des avocats.
5. Gawarikar, V. and Pramanik, S. (2015), Foreign Education Regulatory Bill - A Ray of Hope or Despair. IOSR Journal of Humanities and Social Science, [online] 20(6), pp.25-30.
6. Chitnis, S. and Altbach, P.G. (1993), Higher Education Reform in India: Experience and Perspectives.
7. Kumar, C. (2013), Legal Education, Globalization, and Institutional Excellence: Challenges for the Rule of Law and Access to Justice in India. Indiana Journal of Global Legal Studies, 20(1), pp.221-252.
8. Kumar, C. (2007), Improving legal education in India. The Hindu.
9. Kumar, C. (2007), Globalisation and legal education. The Hindu.
10. Kaul, S. (2006), Higher Education in India: Seizing the opportunity. The Indian Council for Research on International Economic Relations, pp.21-62.
11. Law commission of India (2002), 184th Report. New Delhi: Government of India, Part 1.
12. Madhavan, M. and Sanyal, K. (2012), India Infrastructure Report 2012. 1st ed. [ebook] New Delhi, India: IDFC, pp.3-15.
13. Madhava Menon, N. (2012) A Blue Paper, The transformation of Indian Legal Education. 1st ed. [ebook] Cambridge, Massachusetts, US: Harvard Law School.
14. Menon, N. (2012) Raising the bar for the legal profession. The Hindu.
15. Mhrd.gov.in (2015) Government of India, Ministry of Human Resource Development.
16. Network, L. (2014) Legal Education In India: A Reflection.
17. Recommendation on Legal Education. 2008. National Knowledge Commission's Blog.
18. Routh, S. (2009). Legal Education at Crossroads. Journal of Indian Law and Society.
19. Sen, C.A. (2016) Framework for Analyzing Demand and Supply of Faculty and the Quality of Higher Education.
20. Sen, C. (2011), A Framework for Analyzing Demand and Supply of Faculty and the Quality of Higher Education. SSRN Electronic Journal, IIM Bangalore Research Paper No.350.
21. Tilak, J. (1992), Rural-Urban Inequalities in Education. (1st ed.). Karnataka, India: Centre for Multi-Disciplinary Development Research.
22. V.M.Salgaocar College of Law (2015), Clinical Legal Education.
23. World Bank, (2010), Country Summary of Higher Education: India. [online] Washington, D.C., United States: World Bank, US.