LEGAL EDUCATION IN INDIA: THE MYTH AND REALTY

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Abstract

Ignorance of law is not an excuse. Understanding the law of a country is therefore inevitable. Here arises the significance of formal as well as informal legal education. However, the present legal education scenario in India is bleak. Frequent modifications and thirst for making changes for producing a new pattern made the law schools and colleges, laboratories. In this article the author narrates the existing legal education scenario in a nutshell and in conclusion made certain suggestions to improve the quality of legal education so that the students may become more responsible not only to the Bar and Bench; but also to the society.

Key words: curriculum, etiquette, legal luminaries, misconduct, pedagogy, social engineer

I. Introduction

The ancient Egyptian law, Sumerian law and the Testament that date back to 1280 BC were some of the moral imperatives for a good society. Roman law was heavily influenced by Greek philosophy, but its detailed rules were developed by professional jurists and were highly sophisticated. In medieval England, royal courts developed a body of precedent which later became the common law. In the medieval world, the Napoleonic and German Codes were the most influential. In India, from the Vedic period onwards the concept of *dharma* is the guiding force in administration, settlement of disputes and of the legal education. It is the duty of the King or his appointee to uphold *dharma*. Thus the strength of the society squarely related to the legal system and legal education. In this article the author attempts to analyse the basic objectives of legal education and the regulatory frame work in India so as to ascertain whether the existing legal education scenario is encouraging.

II. The Ancient Period

Manusmriti, narrating the importance of law states that, "King also is bound to obey the law." ² There was a comprehensive legal system in ancient India. The concept of legal education goes back to the Vedic age. The king's chief duty was the protection of *dharma*. From Ashoka onwards kings assumed the title *Dharmaraja* which was one of the names of 'Yama,' the God of death. Both Yama and the king maintained the sacred law by punishing evil doers and rewarding the righteous. ³ Though there was no formal legal education, *karma* and *dharma* was the basic grandeur for every individual. Training was self-acquired in matters connected with *karma*. The kings, either used to dispense justice themselves or appoint Judges

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¹ See generally, V.P Ramaswami Sastri (ed.), *The Kautaliya Artha Sastra* (Government Press, Trivandrum)

² Sidhi Nadhandaswami, *Manusmriti* (Sri Ramakrishna Madam, 1993), Chapter 7, Paragraphs 114 – 117; and Chapter 9, Paragraph 231 -250

³ A.L Basham, *The Wonder that Was India* (Rupa and Co., 2003), pp. 113-121

and assessors to administer justice. The *Smritikars* were great jurists. Legal disputes were settled by mediation, negotiation and some form of arbitration.

III. The Mughal and British Periods

During Mughal period, the Emperor was the head of the judiciary. As Islamic jurisprudence is derived from *Quran*, it is treated as immutable by any human agency. Akbar's standing instructions were that the judges (*Mir-i-Adal* and the *qazis*) must try to find out the facts of the cases under dispute by every possible device and that they should not be satisfied with witnesses and oaths, but pursue them by manifold enquires.⁴

The imparting of formal legal education had begun during the British period. Legal profession was introduced with the establishment of courts in Madras, Bombay and Calcutta in 1726. Lord Cornwalli's most noted work was in the field of criminal judicature. He introduced changes in the judicial system through his Judicial Plan of 1787, 1790 and 1793. Circuit courts were established. It was a moving court which moved from district to district in their respective division to try criminal cases. Mofussil Diwani Adalats were established. The legal profession was widely accepted and got momentum for the first time. Legal knowledge was a pre-requisite to be eligible to be a pleader. Bengal Regulation of 1793 prescribed the scales of fee to be charged by the Vakils. The Legal Practitioners Act of 1853 and 1879 made suitable amendments. The Bar Council Act, 1926 was passed for the Constitution of Bar Council for High Courts. It contains detailed provisions for admission and enrolment of advocates and for professional misconduct.

The Regulating Act of 1773 made a major change in the administration of justice. A Supreme Court was established at Calcutta. By Indian High Courts Act, 1861, the Supreme & Sadar Courts were amalgamated and separate High Courts of Calcutta, Madras and Bombay were established. This led to an acute need for trained lawyers; and marked the beginning of formal legal education in India. Law courses were started in the Hindu College, Calcutta; Elphinstone College, Bombay; and at Madras by 1855. Thereafter several colleges were started to impart legal education so to prepare practicing lawyers and judicial officers for subordinate courts. The formal legal education in northern India, was first ever been started in the province of Punjab in 1868. In 1874, vernacular classes in law were held to train the police personnel in the State of Travancore. The same got converted into law school and the judge of the Sadar court has been appointed as a professor of law.

IV. Legal Education in Post Independent India

The Constitution of India provides that, it shall be the duty of the Central government to fix standards of higher education. Matters relating to the standards of higher education are entrusted to the Union Government under entry 66, List I of the 7th Schedule. But education forms part of List III, giving concurrent legislative powers to the Union and the States.

⁴ R.C Majumdar, *The Mughal Empire* (Bharatiya Vidya Bhavan, 2007), pp. 537-552

⁵ Animesh Mullick, *Modern Indian History* (Wisdom Press , 2012), pp. 129-138

⁶ https://blog.ipleaders.in

⁷ http://www.liiofindia.org

⁸ https://www.icj.org

⁹ M.P Jain, Outlines of Indian Legal History (Wadhwa and Company, 2004), p.696

 $^{^{10}}$ Co-ordination and determination of standards in institutions for higher education r research and scientific and technical institutions

Legal profession along with other professions fall under List III (Entry 26).¹¹ However, the Union is empowered to co-ordinate and determine standards in institutions for higher education or research and scientific and technical institutions besides having exclusive power, *inter alia*, pertaining to educational institutions of national importance, professional, vocational or technical training and promotion of special studies or research. Under Article 30(1) of the Constitution, all minorities whether based on religion or language, shall have the right to establish and administer educational institutions of their choice. It includes professional education also.¹²

In 1974, the Bar Council of India Trust was created by the Bar Council of India as a public charitable trust to maintain professional standards in the legal profession and to make improvements in legal education; by establishing law schools of excellence and promoting legal research. In the 184th Report (2002), the Law Commission of India undertook a comprehensive *suo moto* review of the structure and regulation of the professional legal education and recommended the reintroduction of training; and examination by the Bar Council of India. ¹³ The Commission has viewed that accreditation and quality assessment of law schools in the country must be introduced by the BCI and UGC, so that healthy competition environment may be generated. The Commission is of the view that there is an overwhelming need to reintroduce appointment of adjunct teachers from lawyers and retired Judges on part-time basis. ¹⁴

The Bar Council of India established a Directorate of Legal Education in 2010 for the purpose of organizing, running, conducting, holding and administering: (a) Continuing Legal Education (b) Teachers Training (c) Advanced Specialized Professional Courses (d) Education Program for Indian students seeking registration after obtaining Law Degree from a Foreign University (e) Seminar and Workshop (g) Legal Research and (h) any other assignment that may be assigned to it by the Legal Education Committee and the Bar Council of India. The Bar Council also formed its first Curriculum Development Committee (CDC) for the purpose of facilitating Universities and institutions to formulate the course design in various courses in law and other allied subjects. The Committee has emphasized faculty autonomy in designing and conducting the courses in the University.

V. Bar Council of India - The Pivotal Institution

Empowered by the Constitution to legislate in respect of legal profession, the 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 (BCI) ¹⁵ and State Bar Councils in the States. ¹⁶ The Act defined law graduate as a person who has obtained a bachelor's degree in law from any University established by law in India. ¹⁷ The Bar Council of India has the power to fix a minimum academic standard as a pre-condition for commencement of a studies in law; ¹⁸ and to recognize Universities whose degree in law shall be taken as a qualification for enrolment as an advocate and for

¹¹ Education including technical education, medical education and universities subject to the provisions of entries 63, 64, 65 and 66 of List I

¹² PA Inamdar v. State of Maharastra, AIR 2005 SC 3226

¹³ http://lawcommissionofindia.nic.in/reports/184threport-parti.pdf.

¹⁴ 184th Report of Law Commission of India, 2002 on The Legal Education & Professional Training and Proposals for Amendments to the Advocates Act, 1961 and the University Grants Commission Act, 1956

¹⁵ Section 4, Advocates Act, 1961

¹⁶ Ibid., Section 3 See also, O.N. Mohindroo v. Bar Council of India, AIR 1968 SC 888

¹⁷ Ibid., Section 2 (h)

¹⁸ *Ibid.*, Section 7 (1) (h)

that purpose to visit and inspect Universities.¹⁹ Under the provisions of the Act,²⁰a Legal Education Committee was also established by the BCI. Though the motive behind the formation of this committee was purely academic, it contains only one personnel from academia.

The Act further empowers the BCI to make rules which may prescribe the standards of legal education²¹ to be observed by Universities in India and the inspection of Universities for that purpose. Part IV of the Bar Council of India Rules, 2009 deals exclusively with legal education. It prescribes detailed list of subjects to be taught in the class rooms and internship; and prescribes detailed curriculum of practical training and division of internal and external evaluations.

In *Bar Council of India v. Board of Management, Dayanand College of Law*²² it was held that, in the appointment of a Principal of a Law College, the Recommending Authority and the State Government shall adhere to the requirements of the Advocates Act and the BCI rules. It is therefore; clear that a candidate desiring enrolment as an advocate must fulfil the conditions set out under the relevant Rules. In *Indian Council of Legal Aid and Advice v. Bar Council of India*²³ the fixation of the age of 45 years for enrolment was held to be unreasonable and arbitrary and hence violative of the principle of equality enshrined in Article 14 of the Constitution. The question of pre enrolment examination was discussed in *Sudeer v. Bar Council of India*.²⁴ The apex court observed that, the legislature did not think it fit to clothe the State Bar Councils with the power to prescribe any pre-enrolment training and examination to be undergone by an applicant for enrolment as an Advocate on the State roll.

VI. Role of the University Grants Commission

At the time of independence, there was a big debate on standardization of higher education. Dr. S Radhakrishnan, Chairman of University Education Commission 1948, suggested for improvements in law teaching also. The report says "We think that a degree course either in Arts or Science should be pre-requisite and that this should be followed by three years of study for the Bachelor of Laws, the last year being given over to practical applications, such as reading in advocates' chambers and acquiring the art and familiarity with court room procedures, and the like."²⁵

The University Grants Commission (UGC) was established as a statutory body in November 1956 under the University Grants Commission Act, 1956. It is constituted for promoting and coordinating University education. Its regulatory character was succinctly reaffirmed by the Supreme Court in *Prof. Yashpal v State of Chattisgarh*, the court observed, each private University shall be established by a separate State Act and shall conform to the relevant provisions of the UGC Act, 1956. A private university shall be a unitary university having adequate facilities for teaching, research, examination and extension services. The programmes of study leading to a degree and/or a post-graduate degree or diploma offered by

¹⁹ Ibid., Section 7 (1) (i) See also, Bar Council of India v. Aparna Basu Mallick, 1994 SCC (2) 102

²⁰ *Ibid.*, Section 10 (2) (b)

²¹ *Ibid.*, Section 49(1)(d)

²² (2007) 2 SCC 202

²³ 1995 SCC (1) 732

²⁴ (1999) 3 SCC 176

²⁵ https://www.educationforallinindia.com

²⁶ Preamble of UGC Act 1956: An Act to make provision for the co-ordination and determination of standards in Universities and for that purpose, to establish a University Grants Commission.

²⁷ https://indiankanoon.org

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a private university shall conform to the relevant regulations of the UGC or the concerned statutory body as amended from time to time." Regulations framed by UGC prescribing qualifications for teaching staff would override and prevail over all other legislations in this regard, even the Parliamentary enactments.²⁸

In 1990, the UGC, constituted a Curriculum Development Centre (CDC) with Professor Upendra Baxi as Chairman, for designing new curriculum in law with a view to promote human resources development. The CDC recognized three main challenges facing legal education: (i) modernization of syllabi in order to make it socially relevant; (ii) multi-disciplinary enrichment of law curricula; and (iii) corresponding pedagogic modifications. The CDC prepared a detailed curriculum and syllabi for a number of courses. The aforesaid activities indicate the conjoint responsibility which BCI and UGC share towards the regulation of the standards of legal education. It is the consultative relationship between BCI and UGC which forms the backbone of regulation of legal education standards in India. Further, the Supreme Court of India has played a vital role in the functioning of legal education in India through its interventions time to time. In its landmark judgment, Deepak Sibal v. Punjab University²⁹ it was held that the study of law should be encouraged as far as possible without any unreasonable intervention. Admission to evening LL.B course cannot be denied on flimsy grounds, "a classification need not be made with mathematical precision but, if there be little or no difference between the persons or things which have been grouped together and those left out of the group, then the classification cannot be said to be a reasonable one."

VII. Role of Universities and Law Schools

Professor Michael Arthur, Vice-Chancellor, University of Leeds stated that the main function of the university, really, is to make a significant contribution to civil society. Obviously, the education that we provide to our students, preparing them for their contribution to society is a key function. We create new knowledge. ³⁰ In India there are 907 UGC approved Universities. The total number comprises 399 State Universities, 48 Central Universities, 334 Private Universities and 126 Deemed Universities. 31 As far as legal education is concerned, there are many autonomous Law Universities in India. In many States, however, the law colleges are under the control of the Universities where the institution is affiliated. In such institutions, the conduct of examinations, revision of syllabus, introduction of new subjects, etc can be carried out only with the concurrence of the concerned Universities. This makes the existing system of education largely unrelated to life and aspirations of the people; and hence there is a wide gulf between its content and purposes and the concerns of national development. The law schools are required to make strategic plans that 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 promote an inter-disciplinary approach of law with other social sciences. A person who studies law must have some proficiency in country's history, political theory, economics and philosophy, to enable him/her in becoming agents that participate in institutional changes.

²⁸ University of Delhi v. Raj Singh AIR (1995) SC 33; Prem Chand Jain v. R. K. Chhabra, AIR 1984 SC 981

²⁹ 1989 SCR (1) 689

³⁰ https://www.epigeum.com

³¹ https://www.ugc.ac.in

VIII. Pedagogy

The method of teaching law always depends upon the objective of legal education. The aim of legal education, in turn depends upon the purpose it serves in the society. It is mandatory that everyone should know the law of the land. So legal education may be given in the elementary school level; or as a graduation from a University; or as a professional degree to practice or serve before a court of law; or for a legal post in the administrative department. For a sound legal profession a sound system of legal education is the *sina qua non*. The objectives of legal education in a professional course are (a) to equip students for legal profession (b) to understand problems of the client and social issues (c) to understand legal principles and legislations (d) to provide training in mock trials and moot courts (e) develop drafting and pleading skills and (f) knowledge in professional ethics. Thus, legal education should aim at furnishing skills and competence and also to strengthen judiciary and legal profession. In a democratic country like India, the objectives of legal education are connected to social well-being. Lawyers are considered as 'social engineers'. Students are duty bound to develop perceptions and to understand the values of society and to cherish those values and culture.

Legal education must consist of the study of law as it is; the study of how law came to be what it is, and the study of the principles which must be employed to solve the problems of what the law ought to be.³² The traditional methods of legal study are lecture method, case method, discussion method, seminar method. The modern system of learning includes virtual method and Clinical method of teaching.

- Lecture method is the oldest method of teaching. It is based on the philosophy of idealism. This method refers to the explanation of the topic to the students. The emphasis is on the presentation of the content. The teacher clarifies the content matter to the students by using gestures, simple devices, by changing voice, change in position and facial expressions. Teachers are more active and students are passive but the teacher also asks questions to keep the students attentive.
- Case method is the core pedagogy of Harvard Law School since the early 20th century. Content expertise beyond the case itself is helpful but not required. To assist both experienced and new case-method teachers, each case has its own teaching plan: a flexible road-map for the instructor that suggests specific questions, strategies for eliciting key insights, and ideas for organizing student responses visually on a blackboard. For some cases, more extensive supporting documents known as "teaching notes" are available to fully brief the instructor on the relevant history and the multiple levels of questions he or she might consider.³³
- **Discussion method** is the most challenging teaching method. It is also called the Socratic Method. Teacher would engage with his students by questions and dialogue. Using discussions as a primary teaching method allows teacher to stimulate critical thinking. Teacher establishes a rapport with his students; teacher can appreciate the contributions of the student and challenging them to think more deeply and to articulate their ideas more clearly. Frequent questions, whether asked by the teacher or by the students, provide a means of measuring learning and exploring in-depth the key concepts of the course.
- **Seminar method,** a group of people coming together for the discussion and learning of specific techniques and topics. Usually there are several keynote speakers within each seminar, and these speakers are usually experts in their own fields, or topics.

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³² https://www.jstor.org

³³ https://www.hbs.edu

Several topic reviews are scheduled each day throughout the seminar, and attendees can usually make their choice of topics from among these scheduled events.

- **Virtual method** promotes acquaintance with new technological means: Law schools and universities should be able to provide e-courses on the shelves. The teachers should put course materials on the Web, conduct on-line tests/assignments and grade students. Web-sites can lead learners to virtual class-rooms. Teachers and students should be oriented to look at the Web as an information provider.
- Clinical Legal Education: In the early history of clinical legal education in the United States, most law school clinical programs were housed in "legal aid clinics" that served the local low-income population. Similarly, the earliest Australian university clinical programs established in the late 1970s were based in community legal centres. Clinical methodology is most often described as "learning through doing" that is, teaching through students' participation in various aspects of the legal process under faculty guidance and supervision. Its value is usually expressed in terms of achieving for students a greater depth of understanding about the role and work of lawyers than is possible in the traditional classroom, resulting from their personal involvement in the projects that form the core of the clinical programme.³⁴

IX. Conclusion and Suggestions

In India, law schools are "laboratories" where the BCI and the Universities are doing experiments. For almost a century from 1857 to 1957 a stereotyped system of teaching of few compulsory subjects existed in India. All law institutions followed lecture method of teaching. The 1954 Setalvad Commission Report depicted a very dismal picture of legal education. At the beginning of Post-Independence period legal education was taught as two year course after graduation of a regular degree. It was only from 1958 that many Universities switched over to three year law degree courses. Frequent changes are introduced in curriculum and pedagogy. In 1984, five year LL.B course was introduced with 10+ 2+ 5 pattern and the law colleges and Universities followed 'year or annual' scheme. Annual examinations were conducted by the Universities. In the Five year Scheme, a student has to study Arts subjects in addition to the law. Arts subjects were taught during the first two years of study. Later, in 2000, BCI has changed the course structure as Semester Scheme with internal assessment. Again based on 2009 regulations, double degree Integrated 5 year LL.B programme was introduced in 2011 to strengthen the legal education in India.

The Double Degree Five year integrated programme, was introduced to make students more interested in LL.B education by introducing non legal subjects. As per Bar Council Rule any subject can be added to LL.B curriculum like BSc, BA, B.Com, BBA, Nursing, Ayurveda, Unani, B.Tech, MBBS etc. By adding two core subjects in a course, the attention of the students will be diverted to two or more areas. The purpose of education is to acquire more knowledge on a particular subject. When one aims a particular object, it is easy to achieve; but if one aims two or more objects at the same time, chance is more for losing it. Hence, the present author feels that the present legal education is in the wrong path. Non-law subjects have become part and parcel of the Five year LL.B Degree course curriculum. The main purpose of adding non-law subjects is to equalize the total law subjects taught in the three year LL.B with five year LL.B course. This wrong policy adopted by the BCI should be changed. The five year programme should be considered as a separate entity with high standard. The curriculum of should re-drafted with law subjects only. This will give a predominance of five year course

³⁴ N.R Madhava Menon (ed.), Clinical Legal Education (Eastern Book Company, 2011) p.26

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over three year course. This change will make the five year course more attractive to the socio-economic sectors.

The worst situation in the LL.B course is the evaluation system. More than 70% of students are depending on substandard guides and short notes as study material for the University examinations. The average mark of the internal examination of a student of private/self-financing college is 24 or 25 out of 25. Detailed study in the concerned subject and class room discussion on the subjects are alien to students. Most of the Universities are still providing mercy/super mercy chance to write university examinations. The valuation process is out dated. Scoring of marks in external examination depends on the mood of the teachers. It is the high time to switch over to online University examinations. On the whole, the changes brought in last decade were 'Utopian.' There is no consistency and uniformity in the scheme of law degree. So also the method of teaching should be changed. Students should have acquaintance with real situations with the help of extension activities. The support and contributions of the senior lawyers should be made mandatory. The absence of intervention between law schools and courts as an institution of learning has been a major cause for law students being totally unaware of the actual working of the procedural codes and often feels bewildered."³⁵

In US, prior to the 18th century legal education was primarily based on apprenticeship training and self-study. From the late 19th and early 20th centuries, more and more individuals sought a university based legal education. At this time, the American Bar Association (ABA), a national association for lawyers in the United States, was founded. The ABA supported the requirement of a university legal education as a requirement for the admission to practice law. During early 1930, the ABA also began an ultimately successful campaign to make the study of law a graduate level undertaking, which ultimately evolved into a three year course of study. Professional legal education in the United States is a graduate level pursuit. The juris doctor or juris doctorate (J.D.) is the primary professional degree and is a pre-requisite to licensing for practice as an attorney in most of the United States. To enter law school, students are generally expected to have successfully completed a four year undergraduate program and received a Bachelor of Arts (B.A.) or a Bachelor of Science (B.S.) degree.³⁶ Thus, in U.S a student will qualify law graduation only after a period of 7 years (4 years undergraduate programme and 3 years J.D).

Apart from the ABA's mandatory accreditation requirements, virtually all law schools seek voluntary membership into the Association of American Law Schools (AALS) and the AALS has a variety of membership requirements. The legal education in U.S is more professional than administrative control. The mandatory recognition of the Bar Association and membership in the professional body of AALS are important. The schools are enjoying more freedom in curriculum and aiming more in achieving the objectives of legal education.

Law, legal education and development have become inter-related concepts in modern developing countries. The main function of the legal education is to produce lawyers with social vision. In India, we need a thorough change in the LL.B scheme, regulation and curriculum. Following are some of the suggestions in this regard:

- ✓ The scheme of five year LL.B and three year LL.B should not be equated.
- ✓ Priority should be given to five year course; and curriculum should be streamlined with law subjects only. Non-law subjects have to be removed from the syllabi.

36 https://www.pilnet.org

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³⁵ Lokendra Mali &Dr. Manish Arora (ed.), *The Chief Justice Speaks: Selected Judicial And Extra Judicial Reflection of Justice A.M Ahmade* (Universal Law Publishing, 2016), p.169

- ✓ Three year course should be abolished. Necessary changes may be made in the Advocates Act, 1961.
- ✓ University Examination shall be *online*. 70% of the questions are to be objective type and 30% to be problem solving. Legal education committee can contribute to the online question bank system of the University.
- ✓ Compulsory In-service training to teachers in every two years.
- ✓ Good rapport with senior lawyers of the locality; and make it mandatory to discuss the academic matters with senior lawyers and incorporate changes in the court proceedings in the syllabi.
- ✓ Teachers should be impartial and free from corruption and bias. Assure the presence of the teachers in the campus during the working hours.
- ✓ Teachers' performance appraisal shall be evaluated by the Government and Bar Council.
- ✓ College level committee headed by the Principal shall submit report quarterly to the Government and Bar Council.
- ✓ Maintain College autonomy and discipline among students.
- ✓ Members of the Bar Council shall conduct regular visits and surprise visits to the Law Colleges and Universities. Separate committee shall be constituted for surprise inspection with sufficient representation of academicians.
- ✓ A nominal fee shall be collected from the students at the time of admission to LL.B Course.
- ✓ Provide financial aid to poor and needy students.
- ✓ The service of the senior lawyers must be made available to legal education. This service shall be considered as an added qualification in the selection of judges to higher judiciary.