

Professional Legal Education in India: Challenges and the Way Forward

Amit K Kashyap

Head, Centre for Corporate Law Studies, Asst. Prof of Law, Institute of Law, Nirma University, Ahmedabad, India

ABSTRACT

Indian Higher Education is in a continuing process of changes in orientation & methodology. Globalization has profound implications for the future of higher education in India particularly to the legal education. Inevitably, the need for raising academic standards, creating a better research environment, developing sound infrastructure, creating better career opportunities, and promoting professional advancement of academics are all central issues for formulating the necessary policies for higher education in Legal fraternity. Legal education have went through many reforms after independence but still have to do a lot for competing with international legal education. Through this paper author have evaluated the higher education in legal studies, challenges to it & way forward.

Keywords: *Higher Education, Globalization, Legal fraternity*

Higher Education in India is third largest in the world, next to China & USA (World Bank, 2010). However, institutions like IITs, IIMs & IISc were established immediately after independence but major evolving transformation started when education was transmitted from state list to concurrent list in the Constitution of India & thus making it the explicit accountability of both central and state governments. Centre coordinates and

governs the standards in higher and technical education, school education is the responsibility of the State.

The main policy making agencies for higher education in India are:

- MHRD Higher Education Department
- Central Advisory Board of Education
- State Councils for Higher Education

India's Gross Enrollment Ratio (GER) in higher education currently is 15%, which is much lower than the world average of 23% and the target of the government is to increase it to 30% by 2020 (Madhavan and Sanyal, 2012). Still there is lot to be done to make higher education accessible to commons. The University Grants Commission (UGC) was founded in 1956 to

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Address for correspondence

Centre for Corporate Law Studies, Asst. Prof of Law, Institute of Law, Nirma University, Ahmedabad, India

E-mail: amit1law@gmail.com

develop higher education in India, but still it is not able to come in race with the world average GER in last 50 years span.

A University can be set up only through a legislation passed by Parliament or a State Legislature. Alternately, UGC can confer 'deemed university' status to an institution to confer degrees. Colleges are either affiliated to a University. Professional courses & degrees of colleges and also needs to be recognized by their respective statutory body. In case of legal education, it is Bar Council of India.

Legal Education in India

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:

- ❑ The Bar Council of India (BCI) as an height body regulating the standards of the legal profession (U.P. vs. State of U.P., [1973]), and;
- ❑ The University Grants Commission as an umbrella organization for all institutions of higher education.

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 Advocates Act, 1961 under Section 7.

"7. Functions of Bar Council of India. —

(1) The functions of the Bar Council of India shall be-

(h) 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;

(i) to recognize Universities whose degree in law shall be a qualification for enrolment as an advocate and for that purpose to visit and inspect Universities 3[or cause the State Bar Councils to visit and inspect Universities in accordance with such directions as it may give in this behalf]; 4[(ia) to conduct seminars and organize talks on legal topics by eminent jurists and publish journals and papers of legal interest;

....."

Section 49 provides powers to BCI to make rules with respect to legal education & related matters:

"49. (1) [The Bar Council of India may make rules for discharging its functions under this Act, and, in particular, such rules may prescribe— 2[(a) the conditions subject to which an advocate may be entitled to vote at an election to the State Bar Council including kthe qualifications or disqualifications of voters, and the manner in which an electoral roll of voters may be prepared and revised by a State Bar Council;

(ae) the manner in which the seniority among advocates may be determined; 3[(af) the minimum qualifications required for admission to a course of degree in law in any recognized University;]

(ag) the class or category of persons entitled to be enrolled as advocates;

(ah) the conditions subject to which an advocate shall have the right to practise and the circumstances under which a person shall be deemed to practise as an advocate in a court;]

(d) the standards of legal education to be observed by universities in India and the inspection of universities for that purpose;

(e) the foreign qualifications in law obtained by persons other than citizens of India which shall be recognized for the purpose of admission as an advocate under this 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 (Law Commission of India, 2002) of the Law Commission of India in year 2002 suggested for harmonious construction of UGC & BCI powers & regulation of legal education in India through joint committees. It also recommended for examination to be conducted for enrollment of advocates in Bar. 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..." (National Knowledge Commission, 2007)

NKC further recommended for improvement of quality in legal education through establishment of independent regulatory body for dealing with all aspects of legal education ("Recommendations on Legal Education", 2008). The report somewhere reflects to recommend for more experiential learning & industry linkage to train future lawyers in better way.

Challenges to Higher Education in India

The Indian higher education sector is much diversified & has variety of problems in different scenarios.

- ❑ Low living and high thinking may be a good dictum, but educational institutions should have the minimum comforts and conveniences to enable the teachers and students to perform at the prime level. Inadequate infrastructure, particularly in the Government institutions is an immediate challenge.
- ❑ Problems of faculty shortage as there are a large number of unfilled vacancies for faculty in both universities and colleges (Sen, n.d.). Thus in various institutions present teacher-student ratio does not meet the basic academic requirements.
- ❑ Maintaining the quality of education as very few institutions concentrates on Attracting and retaining Talented Faculty members. (Sen, 2011)
- ❑ Number of university level institutions and colleges has grown up from 28 to 712 and 578 to 36671 respectively from 1951 to 2014 (Mhrd.gov.in, 2015). But still there is Rural Urban Inequality in whole nation (Tilak, J. B. 1992). The GER of rural India is much below the GER of Urban India. Moreover the condition of females GER in rural India is pathetic.
- ❑ Lack of appropriate Industry-Academia

engagements leading to unemployable graduates is big problem of majority of government colleges and universities.

- ❑ Poor Governance in Higher Educational institutions in India is also a foremost issue. This includes overlapping of governmental regulations, restrictions on sources of funding, multiplicity of regulations, lack of outcome-based recognition norms.

Challenges to legal Education in India

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 unfortunately Indian legal education has grown at pace with globalization. Globalization has posed varied challenges to legal education in India, but have brought opportunities. The Indian legal profession is perhaps among the largest in the world (Ganguli, 2015).

However in terms of ratio of lawyers to the size of the country's population, there is still much to be achieved. Legal education has changed significantly during the last quarter century, reason being globalization of trade & business. Globalization has changed dynamism of entire polity and society. Moreover FDI in education sector is allowed 100% through automatic route.

Foreign investment is also coming to India in education sector & has raised the standards of legal education in private sector. The establishment of educational institutions of global outreach & new curriculum of global standards are becoming priority of the developing country like India. Globalization of the legal profession and the apparent entry of foreign lawyers into India in the near future have posed a serious threat to the legal professionals. 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. The students are participating in international events & discussions to get global exposure & have given their contribution in international moot competitions in matters such as maritime law, international dispute resolutions,

investment law etc. To train these students up to the level to compete with students of developed countries is a great challenge for law schools there 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 184th Report (2002) in Para 5.16 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.”

The objective of global legal education is not to create lawyers who can “practice” in a number of jurisdictions but it should be incidental effect. The objective is to create trained minds who can settle cross border issues efficiently. To create this type of lawyers is a great encounter for Indian legal education system.

As per Prof. Madhav Menon, Indian Legal Faculty lacks in practice of Continuous Legal Education (CLE). CLE is a significant component in industry for professional development, better delivery of legal services & is also a measure of the accountability of the profession (Menon, 2012). This is common in countries like US & UK but in India it is at very nascent stage. As college can give them knowledge & teach them skills but practice through observation and participation is possible through CLE.

This is another challenge for Indian legal fraternity to provide continuous training to legal professionals to make them up to date with global market practices.

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 (Network, 2014). 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 (Kumar, 2007). But in India the research initiates 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 (Bench, 2015). 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 (V. M. Salgaocar College of Law, 2015). 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 (Routh, 2009). 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 & Ors¹, a 3-MEMBER COMMITTEE ON REFORM OF LEGAL EDUCATION was constituted which has discussed various challenges

¹ S.L.P. (C) No. 22337 of 2008

in 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 back foot.
- ❑ Loopholes in inspection and recognition of law colleges by BCI.
- ❑ Separate accreditation/rating system for legal institutions.

Way Forward

The law schools of the future ought to provide academic space for engaging in teaching and cutting edge research on issues of global significance (Kumar, 2007). A significant focus should be on developing the curriculum so that it meets the contemporary demands for legal services, recruitment of competent and committed faculty, establishing research and training centers, necessary financial support from the state, and creating necessary infrastructure, especially a well-endowed library.

Dr. Sarvepalli Radhakrishnan some decades ago wrote:

"Our Colleges of law do not hold a place of high esteems either at home or abroad, nor has law become an area of profound scholarship or enlightened research".

But today we have travelled a long distance since then, altering the landscape of legal education in our country. We are just marginally away from the profound scholarship and enlightened research.² The need of hour is to stress on transactional law training & clinical legal education. The curriculum in the National Law

² *Vandana Kandari vs University of Delhi* [2010] Delhi High Court, 1 DLT (Delhi High Court).

Universities should be more inclusive of social problems of India with the students being made to solve real time typical social problems (Bansal, 2015).

For continuous legal educations of legal professionals, National Law School of India University, Bangalore, has established a Chair on Continuing Legal Education with support from the International Bar Association, the Ford Foundation and the Menon Institute of Legal Advocacy Training under the guidance of Hon'ble prof. Madhav Menon to help professional development of legal professionals & law teachers. This is a great initiative for elevation of the standard of legal profession in India. A concerted action on the part of Bar the Bench and the law teachers is called for to improve the deteriorating standards of legal education (Anand, 1998). Globalization affords space for re-examining higher education systems by affording opportunity for establishing global universities with international collaborations and programs (Kumar, 2013).

Further, the Higher Education and Research Bill, 2011 which propose for setting up of a National Commission for Higher Education and Research (NCHER) for determination, coordination and maintenance of standards and promotion of higher education and research, including university education, vocational, technical and professional education has raised the expectation of reforms in legal education (Gawarikar and Pramanik, 2015). On the other hand, the Foreign Educational Service Providers' Bill as amended in 2013 may induce some world famous universities to set up their own campuses in India or enter into twinning arrangements compelling structural and functional changes in the delivery of education in other law teaching institutions (Madhava Menon, 2012).

Conclusion

National 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.

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