



Legal Education in India: Problems and Challenges

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ABSTRACT

The profession of law is quite special and unique in its own way. This is because the profession is a noble one and has a certain amount of respect attached to it. It is for this reason that Roscoe Pound referred to a lawyer as one pursuing a learned act.

If the perception of the legal profession such, it goes without saying that the quality of study and learning must meet a high standard. The prestige of the profession demands that the curriculum be of a certain rigour and high quality, requiring intense research and a commitment to the cause of justice. Legal education forms the very foundation on which graduates will build reputations not only of themselves but of the profession as a whole.

The provision of high quality legal education is a pre requisite to high quality legal practitioners, judges and Government law officers. The need for such education is felt not only in the developing and underdeveloped countries but also in the developed nations who have deemed it necessary to assess and revise curricula and methodologies of law courses with an objective to update them for meeting new challenges and needs of their societies. Such a need is much greater in India not only due to its developing status but also because of its rapid economic growth.

In this paper, the author therefore focuses on the area of legal education, its origins, the agencies regulating the same, while analyzing the lacunae in the system as prevalent today and finally suggesting certain reforms which can be brought about to enhance standards of education.

Keywords: History, Legal Education, Infrastructure, Teaching, Techniques, Improvement.

History of Legal Education

India is perceived as a country with a rich tradition in legal education, spanning back as far as the Vedic times. During this period, India was supposed to have had an intricate and comprehensive legal system. This is perhaps why the concept of legal education is based on the notion of *dharma* and is closely tied with the study of ethics. In those times there was no formal education or training in the field. Knowledge and expertise in the area was acquired through self-study and introspection.¹

However, once British Rule was established in India, this system was gradually replaced. Thus, the system prevalent in India today is yet another colonial hangover and was instituted after the establishment of British Rule in India. It was only subsequent to this that efforts were started to streamline the profession. This was because then only *mukhtars* and *vakils* were permitted to practice in *mofussil* courts and they were not acquainted with the rules of law at all. Subsequently, they were replaced by pleaders who were allowed to practice at the district level by virtue of having obtained a law degree. Those enrolled as advocates were permitted to practice in any court subordinate to the High Courts.² In 1857, three Universities were set up in Calcutta, Madras and Bombay, which took the first steps towards imparting formal legal education by introducing the subject as part of their curricula.³

¹ S.B. Sinha, "Legal Education", 29(2) *Indian Bar Review* 7, 8 (2002).

² A.K. Avasthi, "Powerlessness of The BCI to Improve Standards of Legal Education",

³ B.R. Nahata, "Legal Education and Profession- an Introspection", 4 *AIR (Journal)* 83, 85 (2002).

At the outset, the study of law could be coupled with the study of arts and was not a dedicated field of learning. At this point there were little or no standards or tests of aptitude for the course. The legal sphere received an impetus when the British, subsequent to the 1859 revolt, enacted a plethora of statutes which resulted in a legal system in India which paralleled that in the United Kingdom. These statutes were drafted in English resulting in the Court proceedings to be undertaken in English.⁴ Since most of the Indian population was rural and illiterate, they faced insurmountable difficulties in responding to the Courts. Even the urban population had trouble making sense of the web of laws that were prevailing. Therefore, there was a dire need for a class of persons educated in the area of law in order that proper access to Court was ensured.

It is necessary to have qualified lawyers in order that the rule of law is preserved. In fact, in *Powell v. Alabama*,⁵ the US Supreme Court pontificated on the necessity of an advocate in the following words,

“Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, be convicted on improper evidence or evidence irrelevant to the issue or otherwise inadmissible. He lacks both skill and knowledge to adequately prepare his defence, even though he may have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he may not be guilty, he faces the danger of conviction because he knows not how to establish his innocence. If that be true of men of intelligence, how much more true is it of the ignorant and illiterate, or those of feeble intellect”. The same sentiment was echoed by the Supreme Court of India in *Suk Das v. Union Territory of Arunachal Pradesh*,⁶ when it opined that the absence of legal awareness was responsible for the deception, exploitation and deprivation of rights and benefits of the poor. In such a situation, law ceased to be a protector because the persons it protects are unaware of the protection extended to them.

The need for able advocates therefore cannot be denied and such persons can only enter the field if there were adequate institutions to impart the necessary education and skill.

Legal education came to the forefront ever since the first Government Law School was established in Bombay in 1855. The subject has been examined by Calcutta University Commission of 1917-1919, the University Education Commission, 1948-49, the Bombay Legal Education Committee, 1949, the All India Bar Committee, 1953, the Rajasthan Legal Education Committee, 1955 and the Committee of Judges appointed by the Chief Justice of India as resolved by the Conference of Chief Justices, 1993. The last met in order to propose measures which may be taken in order to ensure that graduates acquired sufficient experience before they were entitled to practice in the Courts. Since legal teaching was undertaken by Universities and colleges affiliated to the universities and since a recognized university law degree was itself a sufficient qualification for entry into the profession, the Bar Council was under a heavy obligation to take necessary steps to enhance the prestige of the legal profession by ensuring a high quality of legal education.

Maintaining Standards

The Constitution of India initially contained the subject of education in List II of Schedule VII, thereby placing the onus of education on the States. However, this has now been moved to List III, enabling both the Centre and the States to legislate on it. The legal profession as a whole is to be found under Entry 26, List III. Nevertheless, it is the Union which has the prerogative of co-ordinating and determining standards in establishments for higher education or research and scientific and technical institutions. It also has the sole authority to legislate with respect to educational institutions of national importance, professional, vocational or technical training and promotion of special studies or research. It is in pursuance of its power regarding the legal profession that the Parliament enacted the Advocates' Act in 1961, which was the genesis of the education scheme currently in existence.

The bar council of India

In 1962, the Bar Council of India was constituted under the Advocates Act. The Act brought about a much needed uniformity in the scheme of education and provided for the establishment of the Bar Council of India and State Bar Councils. S. 7(1)(h) of the Act grants the Bar Council of India the power to fix a minimum academic standards and s. 7(1)(i) empowers it to recognise Universities which can grant degrees which would qualify a graduate to enrol as an advocate. This provision also entitles it to visit and inspect such Universities to determine whether they meet the requisite standards. Though the BCI has the function of promoting legal education and laying down standards for the same, it can only do so after effectively consulting the Universities and the State Bar Councils, which will also have an interest in the matter.⁷ In this regard the Act

⁴ M. Katju, “Legal Education in India”, 9 *AIR (Journal)* 241, 244 (2002).

⁵ 287 US 45 (1932).

⁶ AIR 1986 SC 990.

⁷ S. 7(1), The Advocates' Act, 1961.

also envisages the setting up of a Legal Education Committee comprising jurists, lawyers, teachers and so on to advise the Council on policies relating to legal education.⁸ By about 1969 the Council could enforce some uniformity and discipline in the system of legal education by giving it the status of professional education, prescribing a basic degree as an essential pre requisite for admission, evolving a uniform curricula, demanding that the course be for a minimum of 3 years and disallowing the pursuit of a legal degree along with other degree courses. The Bar Council of India Rules promulgated under the Act lay down, *inter alia*, the curriculum to be followed in various colleges, govern the procedural aspects of education like the subjects which must be taught, the mode of examination and the degree which may be conferred on students.⁹ It was mandatory for the medium of instruction to be English and if it was not then a qualifying test in English had to be cleared by the candidate before enrolment. Earlier, there was also an apprenticeship period prescribed with a senior. However, in 1969 the Government of India removed this requirement under pressure from law students. The result of this was that any person with a law degree, however obtained and from whichever college obtained could seek enrolment in the Bar. Given that disaffiliation of colleges has been rendered practically impossible, this was very problematic.¹⁰

The university grants commission

The University Grants Commission, which was set up later, has also evinced interest in rehauling the legal education scenario and has taken a number of steps in that respect in terms of adequate funding and creation of senior posts, among other things.

While the Act empowers the BCI to promote legal education and to lay down the standards of such education in consultation with the universities and state bar councils, the UGC Act, 1956 imposed a mandate on the UGC to take all such measures as they deem fit for the promotion and co-ordination of university education and for the determination and maintenance of standards of teaching examination and research in universities.

The model curriculum has been claimed as the result of interaction between the UGC and the BCI. In the mid-nineties, the BCI moved in and made striking reforms in the LLB programme with more academic inputs and practical courses. They identified papers essential for shaping professional lawyers and made these a part of the curriculum in law schools imparting professional education. However, they had laid down only the number and title of papers to be offered. The Universities were left to evolve details at their own end. To resolve the dilemma of the dual responsibility of the BCI and the UGC, now the model curriculum has been circulated by the UGC after taking into account the views of several workshops, seminars and meetings conducted in different universities on this subject.

In 1990, the UGC constituted a Curriculum Development Centre (CDC) for designing new curriculum in law with a view to promote human resources development. The CDC recognised 3 main challenges facing legal education: modernization of syllabi in order to make it socially relevant, multi-disciplinary enrichment of law curricula and corresponding pedagogic modifications. The CDC prepared a detailed curriculum and syllabi for a number of courses.¹¹

Thus, the BCI and UGC have been reasonably active and desirous of maintaining and improving the quality of education.

Lacunae in Legal Education

The character and competence of the legal profession depends almost entirely on the quality and content of the legal education that is obtained by the budding lawyers.

The Radhakrishnan Commission University Education Report states that "...our colleges of law do not hold a place of high esteem either at home or abroad, nor has law become an area of profound scholarship and enlightened research". In fact, the Commission, while comparing the Indian with the European and American systems of education and remarked as follows:

"In Europe and America, legal education has long occupied a high niche among the learned curricula. Products of the study of law have frequently risen to positions of distinction in public service or have amassed fortunes in the private practice of law or have acquired wide reputation as scholars even without entering practice. Legal education is on an elevated plane and teachers of law enjoy a high respect, perhaps higher than those of any other field of instruction. We have no internationally known expounders of jurisprudence and legal studies. Our colleges of law do not hold a place of high esteem either at home or abroad, nor has law become an area of profound scholarship and enlightened research."¹²

⁸ S. Sethiya, "Legal Education: A Need for Streamlining", 1 *AIR (Journal)* 1, 6 (2008).

⁹ K.C. Jena, "Role of Bar Councils and Universities for Promoting Legal Education in India

¹⁰ *Journal of Indian Law Institute* 555, 561 (2002).

¹¹ N.K. Indrayan, "The Challenge of Legal Education: The Current Scenario", 28(4) *Indian Bar Review* 107, 112 (2001).

¹² 14th Law Commission Report on Reforms of Judicial Administration, at 521.

There are a number of reasons why the standard of education in India has not reached the heights and prestige associated with the same abroad. These can be broadly classified into problems related to infrastructure, curricula, faculty and students themselves. To elaborate, the issues plaguing legal education today are as follows:

Infrastructure and ease of entry

The number of colleges imparting legal education has increased dramatically. Statistics show that in 1955-56 there were a total of 7 University departments of law and 36 law colleges under 25 universities with 20159 students on their rolls. However, in 1982-82 there were 302 law colleges with over 2,50,000 students on their rolls.¹³ What is unfortunate is that this rapid increase was not a result of careful planning and growth. During the 1960s and 70s legal education increasingly came to be perceived as a business, rather than an abode of scholarship. The private Bar made full use of the heightened demand for legal services to start new colleges additionally, the market was fairly open and entry accessible to all and sundry. The procedure for setting up an establishment is to get permission from the State Government. At this stage, the only inspection and assessment which occurs concerns the coffers of the interested party and the amount of land available for construction of the building. The Bar Council of India as well as the University to which the law college is affiliated can send teams for inspection also. However these inspections focus only on the building, books available and faculty.¹⁴ While these inspections, if effective, would address the aforementioned problems of infrastructure and good faculty, they often tend to ignore crucial aspects like the qualifications the Chairman or President of the Managing Committee possesses and the extent of his commitment to the cause of legal education. Thus, legal education has fast come to be perceived as a strictly entrepreneurial activity, with the entry of a large number of colleges in order to extract maximum profits out of the market, rather than to contribute to the improvement of legal education.¹⁵

During this period the Bar Council of India also had no authoritative control over the colleges. Thus, Universities perceived law colleges as a lucrative source of income to finance other activities of theirs which were unconnected to the law college or the profession itself.¹⁶

Good faculty and teaching techniques

With the prestige of the profession suffering a downfall and measly pay packages, it is no wonder that most institutions have been unable to attract good fulltime faculty. In addition, since a number of colleges have been set up solely with a profit motive, they obviously do not expend much on their faculty. Therefore, most of the teachers at such colleges are unqualified and part time and engage with the class only in the evenings in a very slipshod manner.¹⁷ The Advocates Act was amended in 1979 in order to permit full time teachers to practice, thereby resulting in a profusion of part time teachers. Thus, such teachers were unable to pay adequate attention to teaching and the functions associated with it. Legal education requires a certain amount of dedication from the teacher as well and the amount a student imbibes depends on the availability of the teacher for doubt clearing and guidance. This is impossible if the teacher is part time.

Motivation of students and the entrance examination

When there was no system of an entrance examination, the intake of a number of colleges mostly comprised young people who had been unable to procure employment elsewhere and undertook the course as an interim measure till they found other employment.¹⁸ Not only this, the dropout rate from these colleges is exceedingly high. In Delhi, the drop out percentage was found to be over 50%, which is quite alarming. Therefore, the move to have an integrated course which admits students after their XII Boards is seen to have a better effect on standards because it is perceived as attracting candidates actually interested in the field rather than those who have not managed to procure seats in higher studies in any other field or those who have no other avenues of employment.¹⁹

Outdated curricula and syllabi

The UGC and the Bar Council have repeatedly requested Universities to revise their syllabi but to no avail. Furthermore there is always a tussle between the introduction of new and contemporary subjects at the cost

¹³ 14th Law Commission Report on Reforms of Judicial Administration, at 521.

¹⁴ A. Lakshminath, "Legal Education, Research and Pedagogy", 50(4) *Journal of Indian Law Institute* 606, 620 (2008).

¹⁵ N. Kumar, "Changing Paradigm of Legal Education and Profession", 32(3) *Tax and Corporate Referencer* 101 (2004).

¹⁶ G. Singh, "Revamping Professional Legal Education: Some Observations on the LLB Curri.", 27.1 *Indian Socio-Legal Journal* 41, 46 (2001).

¹⁷ A. Narrain, "Towards a Better Legal Education for the New Century", 10(1) *Student Advocate* 1, 6 (2004).

¹⁸ K. Singh, "Legal Education in the New Millennium", 31(1) *Indian Socio-Legal Journal* 103, 108 (2005).

¹⁹ R. Singh, "A Survey of Legal Education: Delhi and Haryana", 29(3) *Indian Bar Review* 73, 81 (2002).

of focussing on traditionally important and basic subjects. The curriculum does not reflect the changing role of law and teaching does not take into account the social engineering skills which are imperative in a practicing lawyer today. The new scheme which the Bar Council seeks to propose tackles this issue by providing for a pre law school study period of two years in a number of law related social science subjects. The number of optional courses has been increased to include some policy oriented multi-disciplinary courses. Finally a practical training session for 6 months has been prescribed.²⁰ curriculum contains syllabi for a three year course when most colleges have shifted to a 5 year course.²¹

Medium of instruction

A number of institutions administer education at the undergraduate level in regional languages. As a result, a number of candidates in certain States are admitted to colleges without even having some basic fluency in the English language.²² Admittedly, a mastery of the regional language is helpful and sometimes even necessary if one wants to practice in the Trial or High Courts in a particular State. However, it cannot be denied that the quality of education suffers significantly if the medium of instruction is regional. This is because the faculty has to be fluent in the language as well, which precludes the colleges from having good visiting faculty or guest lecturers from eminent persons in the area.

Moreover, most of the statutes, cases, books and other material are all in English. There are not enough text books in regional languages to overcome these setbacks. Thus, not only does the student not have adequate depth of understanding of the subject but also fails to develop necessary communication skills necessary to practice the profession properly.²³

Drastic differences among law colleges

Though India boasts of some reputed national law schools, there are also a number of institutions which call themselves law colleges and freely give degrees without bothering to give the students a proper education. Thus the quality of students from different institutions is vastly different because of the drastic disparity in the extent and kind of education they receive.²⁴

Suggestions for improvement

As we've seen, legal education in India is plagued by a number of problems, which have been attempted to be resolved by the Bar Council and the UGC. However, we have also seen that the efforts of the authorities have been rendered futile due to uncooperative Governments or pressure from advocates or students. Nevertheless, there are still measures which can be taken in order to improve the standard of legal education in India.

The Committee of three Judges appointed by the CJI, which discussed the issue, came up with a number of suggestions which could elevate standards. They are as follows:²⁵

1. There must be an entrance examination at the stage of admission to the law college in University to the affiliated colleges.
2. Five year system of law course after class XII should be introduced.
3. Professional ethics is to be made a mandatory subject. The case method must be made compulsory and must carry more marks than theory. Necessary steps should be taken to supplement the lecture method.
4. Student visits to court must be made compulsory in order to provide greater exposure. The examination mechanism should be changed and norms be fixed not only for maintaining quality of questions set but also marks to be awarded for the evaluation of answer sheets.
5. The Bar Council ought to grant a licence to practice to a law graduate only after he has been an apprentice for 12 to 18 months and has passed an entrance examination. Each State should establish colleges of the statute of the National Law Schools.²⁶

These recommendations are quite old and most of them have already been implemented. For example, there is an entrance examination for a number of good colleges now and many have adopted the 5 year integrated course. The Bar Council has prescribed Professional Ethics as a mandatory subject in the curriculum. However, the author has already discussed the BCI's failed attempts to prescribe a period of apprenticeship before being permitted to practice.

²⁰ A.K. Avasthi, "Role of the Bar Council of India: Judicial Interventions and Suggestions", 29(3) *Indian Bar Review* 9, 23 (2002).

²¹ *Id*

²² *Ibid*

²³ C. Pillai, "Legal Education: In Search of New Vistas", 50(3) *Journal of Indian Law Institute* 399, 402 (2007).

²⁴ K. Singh, "Legal Education in the New Millennium", 31(1) *Indian Socio-Legal Journal* 103, 108 (2005).

²⁵ *Report of the Committee of Judges on Legal Education*, 1995.

²⁶ M.J. Rao, "A Plea for State Law Universities and Other Reforms in Legal Education", 6(1) *Student Advocate* 60, 69 (1994).

As far as college infrastructure is concerned, the Bar Council has prescribed certain minimum infrastructural and other requirements for law colleges. However, it is obvious that there will be difficulties in procuring state of the art library and building facilities at the outset for many colleges due to financial and other problems. Therefore, the Rules provide for a phased approach in which these goals have to be achieved over a stretch of five years. It can only be hoped that the Governments and colleges co operate with the BCI so that these rules are effectively implemented.

As regards quality of teaching, the Bar Council Rules propose to have at least half the teaching staff to be full time and the principal also to be full time. This is clearly because unless there is some dedication of the principal and faculty towards the cause of enhancing scholarship, increasing standards of education will be an uphill task.

Apart from these, there are some other means by which the quality of education can be given a drastic facelift.

1. The Law Commission of India suggested the regulatory mechanisms of the Bar Council and the UGC be harmonised. Moreover, the Universities and other educational institutions ought to be given some freedom in respect of choosing teaching methodologies and a syllabus suited to the local needs of students.
2. Currently, the inspection is confined to the infrastructure and other facilities. In addition, the commitment of the owner to the cause of education ought also to be kept in mind while granting permission. Thus, entry into the area must be made more difficult.
3. A series of conferences and workshops on teaching technologies and methods must be organised regularly for teachers by the UGC and the Bar Councils.²⁷
4. The Universities and Law colleges must incorporate student exchange programmes and encourage teachers to visit other premier legal institutions.
5. The selection of law teachers must rely solely on marks obtained in the LLM. The procedure must be unfettered and transparent and include a demo lecture before recruitment.
6. The examination must test the qualities required for moot courts, problem solving and drafting.
7. Strict standards must be followed in recognizing and granting affiliations to law colleges.
8. Law colleges and University departments should be closely connected and integrated with Courts and Advocates. Part time teachers from the Bar and longer court visits must be adopted.²⁸

Conclusion

With liberalisation of the legal sector being hotly debated issue and the advent of globalisation, it has become imperative that we produce budding lawyers who deliver a competitive service on an international level. This can only occur if we strengthen the system of legal education prevalent in India and develop a strong training ethic amongst such graduates, as is the norm in various countries like the United Kingdom.

The UGC and the BCI together took over 7 years to come up with the model curriculum which has still not been implemented. Thus, there is a need for a central agency which will monitor the implementation of the curriculum and constantly update it. This could be responsible for the preparation of comprehensive reading material. Currently, there is also no body to regulate admission in post graduate courses teaching and research in various universities. Moreover, the BCI has been armed with only a few delegated powers to improve standards. An apex body called the National Institute of Legal Education and Research could be constituted by an Act of Parliament, comprising representatives from bar councils, judiciary, UGC and universities. It should be entrusted the job of formulating under and post graduate courses and oversee its effective implementation. Every institution imparting legal education should be brought under its umbrella. Affiliation or recognition could be granted by this body.

However, though this will harmonise the functions of the BCI and UGC and fill the regulatory loopholes, this too can only be achieved if the Parliament shows an interest in enacting such a statute. Till then, one will have to wait and watch.

²⁷ Ss. 7(1)(h) & 6(1)(e), Advocates Act.

²⁸ S. Singh, "Quality Legal Education is Need of the Hour: Some Suggestions to Achieve It", 96(10) *All India Reporter (Journal)* 158 (2009).