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Academic Legal Education in India: An Analysis

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ABSTRACT

The act or process of acquiring or imparting knowledge is education. It helps prepare one self, develop, grow and in turn help develop society as a whole. Law is that branch of knowledge which any individual belonging to a nation cannot ignore and is duty bound to oblige. To follow a particular thing one should have knowledge of the same. And to gain that knowledge he has to explore and learn about it.

This paper talks about academic legal education and how India has evolved and developed in this specific field at academic level. The position of legal education, its development and career option is discussed below.

Keywords: law, Legal education, academic, University Grants Commission, Law school.

I. INTRODUCTION

Education is the passport to the future, for tomorrow belongs to those who prepare for it today – Malcolm.

Legal education in India was in a dormant state before independence. After independence India has made efforts to improve the scope of education in all fields including legal education. Lawyers were divided into categories based on their training and experience. Few were educated in England and were called as barristers. Attorneys were those who actually did not have legal training and were the clerical staff of the courts or local traders. By the pre-Independence period, attorneys began to seek legal training in England, too, meaning the legal profession in India became dominated by those with English law degrees. This affinity for lawyers trained overseas had a detrimental effect on the quality of legal education in India, as rich families sent their children off to England to become barristers or attorneys, who, on their return home, were regarded as superior to those who earned their law degree in India.

Legal education in India had reached such a sorry state that corrective action was demanded, and this began in 1948 with the government's appointment of the first commission designed to improve higher education across the board, Headed by Prof. S. Radhakrishnan, India's second

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president, it included academics drawn from a number of fields. The panel's recommendations, especially in regard to law schools, were substantial and far reaching. The commission linked the low state of legal education to the lack of strong full-time law teachers and recommended the creation of tenure appointments. The group also sought to elevate the status of law professors to equal that of, say, faculty in the arts and sciences. Commissioners insisted that law schools and law departments in universities have research capacities and adequate facilities, including law libraries, arguing this was crucial to upgrade the quality of teachers who, in turn, were critical to the success of any reforms.

The high minded efforts by scholars, law experts, politicians, academicians, lawyers and legal experts paved path for development and improvement in the legal fraternity. In 1948, a notable reform effort focused on teachers of the law, aiming to improve law schools and the lives of students in part by elevating faculty scholarship; in the decades that followed, attention went to students, their classes and qualifications, or to efforts to provide model study plans and schools.² The commission wanted research and publication to supplement not supplant teaching. To improve students' critical thinking and challenge their minds to the highest degree, teachers, too, had to be intellectually stimulated and challenged. But this initiative failed to improve the standards in India. The commission's 1948 recommendations largely were ignored and in the absence of significant legal scholarship, the standard of legal education remained appalling.³

In 1961, the Advocates Act created the Bar Council of India to "promote and support law reform" "to conduct seminars and organize talks on legal topics by eminent jurists and publish journals and papers of legal interest" and "to visit and inspect universities...." The council also was mandated to "promote legal education and to establish educational standards in consultation with Indian universities and the State Bar Councils." Further, the act empowered the council "to recognize universities whose degree in law shall be a qualification for enrollment as an advocate...."⁴ But before the council could use its powers to determine the standards of legal education and recognize law schools, conflicts arose with India's University Grants Commission Act, approved in 1956.

That earlier act had also empowered the University Grants Commission to set standards for the nation's universities, meaning there now were problems in overlap as to who regulated legal education in India. The council could recognize universities granting law degrees but those institutions did not necessarily meet the commission's standards. The council, by controlling

² S. Radhakrishnan, *The Report of the University Education Commission (1948)*.

³ *Law schools and legal education in India*, Dyutimoy Mukherjee.

⁴ *Advocates Act, 1961*

professional eligibility, could shape standards for legal education, but the commission determined what is good teaching.

The groups agreed to coordinate their efforts to improve legal education. The council appointed a curriculum committee to develop and improve the LL.B. and the LL.M. courses and to initiate reforms in the course structure of the LL.B. The council and commission worked together in this effort. This accommodation was acknowledged by the curriculum development committees the commission convened in 1988 and 2001.⁵

Both groups unfortunately focused more on the needs of students. There has been no discussion of the steps that law teachers should take to improve legal education. Little attention has gone to the need for faculty research and critical thinking or the vital part that law teachers must play in challenging students' minds, both by imparting wisdom and in helping young people to think critically. Instead, policy-makers have focused on developing courses necessary for professional training with little thought to encouraging faculty scholarship as a way to improve teaching and demonstrate to students why intellectual labor matters in the law.

The vision from 1948, that legal education needed to emphasize quality faculty who research deeply, publish often, and teach well got blurred. The council most profoundly displayed that focus on students, not teachers, with its proposal in the early 1980s to increase the time needed to earn the LL.B. to five years from the previous three-year course. The council expected this longer degree program would encourage better students to enter law school earlier and leave better prepared to practice law. To test the five-year LL.B., the council established the National Law School, Bangalore in 1986. The establishment of a model; national law school in India was not an isolated event. The suggestion for such a standard-setting institution can be traced to consultants with the Ford Foundation, an institution that made considerable investments to try to improve Indian legal education, which in turn were greatly influenced by the American law school system. But the attempt failed.

With continued political interference hindering even the best-intentioned reforms, the foundation repeated mistakes of previous reformers in focusing on improving the quality of the students while ignoring the law school faculty. Foundation consultants appeared to be unaware of the recommendations of the 1948 report on the role of a teacher.

The Gajendragadkar Committee report in 1964 on the reorganization of legal education in the Delhi University made several observations, similar to those of previous reform efforts, as to why India's legal education system was in such an abysmal state. The committee recommended,

⁵ Curriculum Development Committee, Law Report (2001)

as had the 1948 study, that students undertake three years of law school, entering with a bachelor's degree. But one notable recommendation of the Gajendragadkar committee was to set up model National Law Schools. This model was proposed in 1964 but little action occurred until 1975.

It was demanded that Indian law faculty teach critical thinking, that they force students to put material in context, and, as the reformers in 1948 had sought, wanted them to take on the key task of inspiring students to think. They believed that students best learn critical thinking, advocacy, and academic activism, not through passive lectures but by means of the case method used at U.S. institutions such as Harvard Law School. The benefits of the case method was noted but also recognized that this method was fundamentally ill-suited to India. Instead, that Indian law schools introduce a five-year, integrated LL.B. program after students had finished their primary-and secondary-schooling. Subjects like economics, political science, history, international relations, and sociology, along with the study of law be added.

An early start to the study of law would draw more motivated students, who, in turn, would pressure their teachers to improve their performance, benefiting the whole system of legal education. This was the first time in post-Independence India that there was a concrete suggestion to lower the age of law students and promote interdisciplinary teaching of law.

Opponents insisted that Indian teen-agers, who would be the equivalent of U.S. high school graduates, simply were too young and immature to choose a legal career and to commit to the five-year course of study. They also feared the teens lacked the academic skills at that age to succeed. While many clung to a three-year LL.B. program, others argued in favor of the five-year integrated program, reasoning this would bring the study of law on par with the education of other professionals like doctors and engineers. Baxi, notably wanted to set up a National Institute of Legal Education to train law teachers how to teach. The dire need in the legal Academy for research, innovation, evaluation, and standard-setting excellence was recognized. He referred to the council's failure to establish National Law Schools.⁶

II. NEW ERA IN INDIAN LEGAL SYSTEM

By the early 1960s the Indian legal fraternity had started thinking about an autonomous law school of national stature, though neither the council nor Baxi had advanced their respective reform plans. It was left to the dynamic N.R. Madhav Menon, a law professor at Delhi University, to establish India's first National Law School.

⁶ Upendra Baxi, towards a socially relevant legal education.

He, resolved that legal education had to be elevated to the high standing of teaching in other professions such as engineering and medicine. Menon thought the way to do this was to put it in the hands of an autonomous institution that would run law courses professionally, unfettered by bureaucratic and political hindrance.

He wanted to remove law schools—financially, structurally, and administratively—from the existing university system. In light of the failed Ford Foundation reform, this made huge sense. Menon introduced radical measures to create a distinct identity for the national law school, and, in a key step that Baxi had advocated, he created a five-year law degree with a rigorous clinical program. His push for that clinical component ensured that these Indian law schools would be timely and relevant, as Baxi insisted they should be. Menon's emphasis was to develop students' analytical skills and to provide them with practical training through clinics and internships. At the core of his vision was the assumption that the faculty would be of the highest caliber. Indeed, the national school was a success in terms of student quality and successful job placements and it became the prototype for several other law schools that have opened their doors since.⁷

Simply establishing the national schools has helped to change public perception about the value of the study of the law, which, in turn, has raised the caliber of law students. Most students for these law schools come from the middle-class or upper-middle class; few come from humble backgrounds but those who do receive scholarships or student aid. Jobs are the prime concern of almost all the students at these schools and this has influenced most students' choice of career paths. At the West Bengal National University of Juridical Sciences, typically 90 students out of 100 opt for corporate placements. The story is the same in the other law schools as well, where most students prefer corporate placements. Law firms in India and abroad are never in short supply of applicants who are also graduates of the best law schools in the country.⁸

But some students choose to become practicing advocates, dealing with clients and undertaking litigation. Others pursue further study, and still others become social activists, often joining non-governmental organizations. The new law schools have opened up varied career avenues for LL.B. graduates.

III. THE CONFLICTS

While many important strides have been made, including improvement in the quality of students undertaking the study of the law, a variety of structural problems still constrain India's legal

⁷ N.R.Madhava Menon, *Halting progress of Legal Education*, 2001, Pg.8

⁸ Malathi Nayak, *Law Schools Struggling To Find Jobs for All Their Students*, available at <http://www.livemint.com>

academy. Because law schools pattern themselves after the national model, which stresses continual evaluation, teachers must devote seemingly endless hours to grading piles of essays and exams, projects, and papers. The faculty work load might be manageable if student-teacher ratios were rational, but because Indian law schools are largely self-financed, they must admit large numbers of students to remain financially viable. A heavy load of administrative duties compounds that time squeeze. The crushing work load means that instructors who want to research and publish don't get the time to do so.⁹

Moreover, overburdened teachers don't have time to pursue the higher degrees that determine their promotions. For law school professors, then, little has changed since 1948. Teachers continue to be of sub-standard quality with faculty at the extremes—either those highly self-motivated and deeply devoted or those demoralized and at a dead-end. In the middle lie the average faculty members who love to teach but also want decent pay and a reasonable schedule. When they can find neither, they quit and go elsewhere, producing a constant churn of faculty that helps neither the schools nor individual students. The relentless attrition means too many faculty see law schools simply as a way-station to better jobs, meaning they also lack a vital commitment to their institutions. These conditions have produced faculties comprised disproportionately of young instructors for whom the law school is their own training ground. Students are critically aware that their teachers, from whom they must take instruction, criticism and discipline, are often close to their own age, sometimes producing an unhealthy environment in which students and faculty treat each other as adversaries.

(A) Research, Publication and teaching:

Even in a perfect world where India had surmounted all the other challenges confronting its legal Academy, scholars still would need a way to measure the quality of their research and its impact on improving teaching standards. The latest reform proposals from the working group state that research ought to be accompanied by publication in peer-reviewed journals, and, further, that an instructor's publication record should be a factor in his or her promotion, with special weight given to heavily cited articles. These recommendations are commendable as they are meant to establish India as a knowledge economy that will encourage legal scholarship and create legal scholars. At the same time, these proposals ignore realities on the ground. The average age of a student at the outset of an LL.B. program varies from eighteen to twenty years. Many law students, thus, are young and only moderately steeped in the rigors of academia. If the young people are schooled well, they have acquired academic basics, including initiative,

⁹ C. Raj kumar, Rule of Law and legal education, at pg.8

techniques to study complex issues across many disciplines, as well as ambition for a legal career and both the discipline.

The working group's recommendations, sadly, also come against the backdrop of the absence of any debate in India as to the role of college, university, and law school teachers. Contrast this relative silence with the lively dialogue in American universities on the ties, for example, between peer-reviewed publishing and good teaching. Integrative work also may help to put original research in a new context, as a legal scholar might do by interpreting data collected by an anthropologist.¹⁰

Boyer rejects the notion that anything and everything can be regarded as the scholarship of application, or service-oriented scholarship; sitting on committees or advising student-run groups cannot be regarded as the scholarship of application. Instead, such work must have a direct link with the teacher's field of study and flow from his or her professional activities. On the other hand, work that shapes public policy clearly meets the scholarly criteria. The application as well as creation of knowledge counts. As for the scholarship of teaching, Boyer regrets this area gets so little consideration or is even thought of as irrelevant, arguing, "when defined as scholarship, however, teaching both educates and entices future scholars."¹¹

Echoing Indian authorities in 1948, Boyer argues that teachers not only deliver information, they also help enable students to think critically. This means teachers themselves must develop the art of critical thinking and research. Inspired teaching keeps the flame of scholarship alive. Almost all successful academics give credit to creative teachers—those mentors who defined their work so completely that it became, for them, a lifetime challenge. Without the teaching function, the continuity of knowledge will be broken and the store of human knowledge dangerously diminished. Yet the academic divide remains, pitting advocates of research and publication against those leaning toward teaching, and in India, we, too, may be mired in this endless argument. There is a special danger for Indians, however, for we may forget to pause and assess our priorities as educators.

Law schools, in turn, may lose their good teachers and, by rewarding only research and publishing, they may undermine the art of teaching and end up commodifying rather than disseminating knowledge.¹² While value should be given to research and publication, especially as it elevates the legal Academy, great weight and reward also should go to those who kindle

¹⁰ Curriculum Development Committee Law Report, (2001)

¹¹ Ford foundation. www.fordfoundation.org

¹² Lewis Elton, Recognition and Acceptance of the Scholarship of Teaching and Learning, 2 *Int'l J. for Scholarship Teaching & Learning* 1 (2008),

the minds of tomorrow's scholars. Law schools must acknowledge that teaching also is an act of research, and they must eliminate any dichotomy between research and teaching. This divide will persist if we continue to rate publication higher than teaching, creating faculty internecine conflict.¹³

If professors are preoccupied with research and publication, then students' interest in their course work will wither, and the schools will produce dissatisfied lawyers with a poor understanding of the law. That, in turn, will affect the placement and recruitment of young people, without whom the law schools may find it difficult to survive. If students fear they won't find jobs after graduation, law schools will ultimately be unable to attract new students and remain financially viable. While Indian reformers have long argued, without empirical data, that research and publication will lead to good teaching, research conducted in America, Britain, Germany, and Australia has failed to demonstrate that connection. Instead, those studies find that research and writing for peer-reviewed publications requires a different kind of orientation by faculty, who must have the time and energy to discover knowledge and interpret it. Those may not be the same skills required for teaching, which demands patience, humility, good communication skills, and empathy. Still, as western scholars have demonstrated, because teachers must hear out students and help clarify their thinking on legal issues, good teaching can lead to good research.¹⁴ Another effort had taken with the submissions of recommendations from the working group of legal education in 2007, The National knowledge commission, Report of the working group of legal Education.

IV. CONCLUSION

Indian law schools should implement the recommendations of the knowledge commission with caution, giving proper weight to teaching as well as research and publication in peer-reviewed journals. Law schools also may wish to conduct the same rigorous peer-review of faculty classroom work, for example, by creating committees of outside experts to review and evaluate recorded lectures. Law schools should establish the criteria for assessing teaching quality based on course objectives, just as journals set standards for the papers they publish. The schools should also determine how to weight teaching evaluations in setting faculty pay. Because Indian law schools deal so heavily with undergraduate studies, teaching must be given primacy and there must be strong deterrents to those who seek only to focus on their own research and aggrandizement through publication.

¹³ Marin R. Scordato, *The Dualist Model of Legal Teaching and Scholarship*, 40 *Am. U. L. Rev.* 367 (1990).

¹⁴ William Becker & Peter Kennedy, Presentation at the University of South Australia: *Does Teaching Enhance Research in Economics?* (Aug. 5, 2004),

In the end, however, the goal must be clear—to emphasize a culture of legal scholarship in all its forms. True progress in India’s legal Academy will be measurable and remarkable when reformers embrace this holistic approach, dealing with practical realities, recognizing the needs of students and instructors, and rewarding all scholarship—teaching as well as research, writing, and publication.

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