

# Quality of Legal Education in India: Way Ahead

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## Abstract

In ancient as well as medieval India there was no such formal recognition of legal profession and its education. Vakils during the Mughal era were usually the client representatives. However, it was only during the British era when the legal profession and its education got a formal recognition. The Regulating Act of 1773 laid down the essentials and guidelines which an individual needs to follow in order to be enrolled as advocate on rolls. A Bachelor's degree in Law [LL.B.] is the basic thing which an individual need to have in order to be designated as an Advocate. Law Schools play an important role in making of a lawyer. Therefore, we need to ensure that these institutes get special attention of the governmental authorities because it's usually the law graduates who become future leaders and social engineers, for eg: Mahatma Gandhi, Pandit Nehru, Sardar Patel etc...

The proposed paper aims to throw light upon the history of legal education in India which shall include a note upon the statutory provisions and body regulating modern legal education in India. The researchers will then be highlighting the existing problems in the Indian legal education system. At last the researchers tend to give certain suggestions which if followed shall help in raising the standard of legal education in India. .

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## **Introduction**

The quantum of development in any society of any part of the world largely depends on the kind of laws that society abounds in and therefore laws can be a very potent tool in social change. A comprehensive study and knowledge about the laws and matters related to it is imperative to contribute to the progress of a nation. But, it is very important for the laws to be modified from time to time to meet the needs of changing society. Legal education is a tool to educate individuals about the theories, philosophies and principles of law. It also helps in scrutinising the various changes occurring in the society and synchronising the laws according to these changes. The fundamental objective of providing legal education is to produce such individuals, who are skilled in the application of laws and can apply these skills in the practice of advocacy, research in law. The ulterior motive of all this is the socio-economic development of the society encompassing all the sections and strata of the society by providing proper channels.

India is a developing nation and hence the development of laws and legal education is crucial to the Indian society. Legal education in India traces its roots to the times when the dharmas and nyayas were taught. The legal profession in India has a proud heritage. In the earliest days of the independence movement and during the creation of the Indian Constitution, lawyers played a prominent role among those seeking social progress. The present 'Sovereign, Socialist, Secular, Democratic, Republic' India largely owes its existence to a number of lawyers and lawmen. Like every other institution in Indian society, higher education in general and legal education in particular is in a continuing process of far-reaching changes in organization, management, content and delivery. The basic factor in this transformation is the constitutional mandate to build a social order based on democracy, human rights and rule of law securing to all of its citizens justice, liberty, equality and dignity. Legal education in India technically means the basic skills that are incorporated in a law student before entering into the profession of a lawyer, judge, legal advisor etc. It is provided basically in traditional universities and specialized law universities and schools. The introduction of the concept of National Law Schools/Universities in 1989 by N.R. MadhavaMenon was a great step towards the rejuvenation of legal education in India. But, the motive behind this concept is not fully fulfilled and there is a long way to go to attain the goals that were set up by the pioneers of legal education in our nation. This paper endeavours to showcase the present condition of legal education in India and to put forth certain ideas that can prove efficient in ameliorating the same.

## **History of Legal Education in India**

### **Position of Legal Education in Pre-independence Era**

In Ancient India the concept of law and legal education was based upon the concept of Dharma. However there is no such official record which proves that legal education was provided at that time. The Kings either delivered justice themselves or they appointed Judges for the purpose of administering justice. These judges were not trained in law but were known for their reputation of being fair and impartial. Even during the Mughal Era we find the mention of term 'Vakils' who were although not such formally trained in law but were only client representatives.<sup>3</sup>

The Modern Legal Education of our country is based upon the British Model of Legal Education. The Regulating Act of 1773 empowered to enroll advocates and Attorneys-at-law to the Supreme Court. The Supreme Court was set up in Fort William in Bengal by a charter issued in 1774. At that point of time Indian Lawyers were barred from appearing in the British established Courts. However, the Bengal Regulation VII of 1793 created for the first time a regular legal profession for the company's courts, which allowed the appointment of 'Vakils' [Native Pleaders] in the courts of civil judicature in the provinces of Bengal, Bihar and Orissa. Subsequently rules and statutes culminating in the Legal Practitioners Act of 1846 opened up the profession regardless of nationality or religion.<sup>4</sup> The three universities originated in the Presidency towns of Calcutta, Madras and Bombay officially introduced legal education as a subject for teaching. This was in a way the commencement of the era of legal education in India. The Government Law College, Mumbai, founded in 1855, became the first law school in Asian continent.

In 1861 three High Courts were established in the Presidency towns of Calcutta, Madras and Bombay. Clause 19 of Letters Patent 1865 of the High Court of Calcutta empowered the court to approve, admit and enroll such and so many Advocates, Attorneys and Vakils as the High Court shall deem fit. This was a matter of prestige for the Native Practitioners as they were barred from practicing in the Supreme Court. Bar Councils Act, 1926 unified the two grades of legal practitioners i.e., the Vakils and Pleaders in the class of advocates. It also provided for making rules for giving facilities of legal education and training under section 2.

### **Position of Legal Education in Post-independence Era**

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<sup>3</sup> Dr Justice A.S. Anand, *H.L. Sarin Memorial Lecture: Legal Education in India- Past, Present and Future*, EBC (July 20, 2018, 6:00 PM), <http://www.ebc-india.com/lawyer/articles/9803a1.htm>.

<sup>4</sup>*Brief History of Law in India*, BAR COUNCIL OF INDIA (July 2, 2018, 3:00 PM), <http://www.barcouncilofindia.org/about/about-the-legal-profession/legal-education-in-the-united-kingdom/>.

Prior to independence there were only a limited number of law schools in our country. However, post-independence scenario changed and legal education gained prominence. In the year 1949 the Bombay Legal Education Committee was set up to promote legal education. The All India Bar Committee also made certain recommendations in 1951. The 14<sup>th</sup> Report of the Law Commission (Setalvad Commission) of India discussed in detail the status of legal education and recognized the need for reform in the system of legal education and made certain recommendations. These recommendations were accepted by the All India Law Conference [1959] and also by the All India Law Teachers Association.<sup>5</sup>

The Advocates Act was passed in the year 1961 which became the central point of the legal education system presently in existence. The Bar Council of India Rules, included under The Advocates Act 1961 provides the prospectus for imparting legal education all over India. The Bar Council of India prescribes the minimum curriculum which needs to be taught in order for an institution to be eligible for granting a law degree. The Bar Council also carries on a period supervision of the institutions conferring the degree and evaluates their teaching methodology and curriculum and having determined that the institution meets the required standards, recognizes the institution and the degree conferred by it.

Traditionally there was Three Years Undergraduate Law Courses (LL.B.) in which students got enrolled after completion of their graduation from any institution. However, due to the fall in standard of legal education certain reforms were introduced. Specialized Law Universities were established in order to raise the academic standards of legal profession in India. This decision was taken in the year 1985 and thereafter First National Law School was set up in Bangalore which was named as the National Law School of India University. This law university was meant to offer a multi-disciplinary and integrated approach to legal education. NLS offered a five years law course upon the successful completion of which an integrated degree with the title of B.A., LL.B. (Honors)" would be granted. Post success of NLS Bangalore, more than 15 National Law Schools has been established all over the country till date. The University Grants Commission approved one-year LLM courses in India on 6 September 2012 and the guideline for the same were notified in January, 2013.

### **Types of Legal Courses Offered in Indian Universities**

In India, following courses are offered by the law schools:

1. Bachelor of Laws (LL.B.) - The LL.B. is the most common law degree offered and conferred by Indian universities which has duration of three years. Almost all law

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<sup>5</sup>*Supra* note 3.

universities follow a standard LL.B. curriculum, wherein students are exposed to the required bar subjects.

2. Integrated undergraduate degrees - B.A. LL.B., B.Sc. LL.B., BBA. LLB. B.Com. LL.B. These degrees are mostly offered in the autonomous law schools having duration of five years.
3. Master of Laws (LL.M.) - The LL.M. is most common postgraduate law degree which has duration of one/two years.
4. Doctor of Philosophy (Ph.D.)
5. Integrated MBL-LLM/ MBA-LLM. -Generally a three years double degree integrated course with specialization in business law.

### **Challenges and Way Ahead**

The field of law has a primary relationship with the society. This is the main reason why every member of the society irrespective of caste, class, profession should know his/her basic rights and duties and in order to make the common masses aware about their rights and duties the tool of legal education is needed. Legal education encompasses not only preparing legal professionals in the field of law but also for encouraging research and spreading awareness amongst the common masses. Any institution can achieve success only if it moulds itself according to the changes in the society. The same fact is applicable on the institution of legal education in India. The present way of teaching is archaic and ramshackle, to put it bluntly. This is a reason why there is a considerable amount of “teaching” but no substantial “learning”. Over the years, the same system has been carried forward without any transformation in the true sense.

When talking about challenges before legal education in India, we have to deal with two arenas of legal education namely – a) spreading general legal awareness amongst the masses b) the imparting of professional legal education.

### **General Awareness**

Understanding of the legal literacy and legal awareness is the need of the hour to deal with these uncertain problems existing and rising in the society. What it is, why it is important, and how we can promote it. Majority people of India are legal illiterate and not aware of the basic rights conferred upon them by law. Substantial population of the country living in the cities, towns and villages do not know what are their rights and entitlements under the law. Even the literate people are helpless and confused when there is a violation or infringement of a right enforceable in law. Lack of knowledge about the basic legal and civil liberties,

human rights, constitutional directives, and principles and other guidelines that protect the people's dignity, liberty and freedom manifests itself in the society in the form of problems such as child labour, human trafficking, domestic violence, child marriage, dowry etc. that threatens the safety of all.<sup>6</sup>

It is the result of 'legal illiteracy' that so many atrocities like deception and exploitation are committed against the common people every day. The major concern is that they even don't know that their fundamental rights are being infringed when they are subjected to unjust acts. In order to understand the relevance of legal literacy and legal awareness, it is necessary to first fully comprehend on it. According to Canadian Bar Association, legal literacy is "the ability to understand words used in a legal context, to draw conclusions from them, and then to use those conclusions to take action." Legal literacy is commonly understood as knowing the primary level of law, information about the legal processes and then by making the people literate. The American Bar Association Commission on Public Understanding defines legal awareness is "the ability to make critical judgments about the substance of the law, the legal process, and available legal resources and to effectively utilize the legal system and articulate strategies to improve it is legal literacy." Legal literacy and legal awareness lie at the base of any effort toward legal empowerment to the people. Critical knowledge of legal provisions and processes, coupled with the skills to use this knowledge to realize rights and entitlements will empower people to demand justice, accountability and effective remedies at all levels. The legal literate people know about their rights, duties, and privileges and assert their rights and fight against the unwanted supremacy of the Executive in the country<sup>7</sup>.

The most perplexing thing is that even after the availability of ample laws and directives the ignorant masses are devoid of their rights. Article 39A<sup>8</sup>Of the Indian Constitution says that – “The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.” The Indian Parliament enacted the Legal Service Authority Act in 1987. Vision of LSA reads that ‘no one shall be denied of

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<sup>6</sup>Dr GairiangmeiMaringmei, *Legal literacy and legal awareness campaign The ways to public empowerment Part 1*, EPAONET NEWS RSS (July 6, 2018, 02:12 PM), [http://epao.net/epSubPageExtractor.asp?src=education.Human\\_Rights\\_Legal.Legal\\_literacy\\_and\\_legal\\_awareness\\_campaign\\_The\\_ways\\_to\\_public\\_empowerment\\_Part\\_1](http://epao.net/epSubPageExtractor.asp?src=education.Human_Rights_Legal.Legal_literacy_and_legal_awareness_campaign_The_ways_to_public_empowerment_Part_1).

<sup>7</sup>*Ibid.*

<sup>8</sup>CONST. INDIAart. 39A.

access to Justice for the reasons of economic or other disabilities.’ LSA aims at providing legal awareness and free legal aid.<sup>9</sup>

In every State, State Legal Services Authority has been constituted to give effect to the policies and directions of the NALSA and to give free legal services to the people and conduct LokAdalats in the State. The State Legal Services Authority is headed by Hon'ble the Chief Justice of the respective High Court who is the Patron-in-Chief of the State Legal Services Authority. And in every District, District Legal Services Authority has been constituted to implement Legal Services Programmes in the District. After many years of enacting the LSAA, 1987, there is still lack of knowledge and legal awareness amongst the general public about the said provisions provided to the citizens' free and competent legal services<sup>10</sup>.

The biggest challenge before the state is to facilitate legal literacy in the nation. This will arm the common people against any exploitation and atrocity that they are vulnerable to because of their ignorance about their rights and benefits provided to them in the constitution of India.

### **Professional Legal Education**

The provision of high quality legal education is a pre requisite to high quality legal practitioners, judges and Government law officers.<sup>11</sup>The way legal education has been structured in India appears to suggest that it is intended to provide students only with some knowledge of statutes.<sup>12</sup> The curriculum is neither helpful in shaping aspiring lawyers in their traditional roles of problem solvers nor in their expanded roles of arbitrators, counsellors, negotiators or administrators. The model of National Law Universities/Schools was considered to be in the realm of the motive behind the establishment of NLUs, as said by N.R. MadhavaMenon, was to strengthen the bar and bench and hence the entire legal network in the country. There is no doubt that the establishment of the national law schools starting with the National Law School of India University (NLSIU) in Bangalore successfully challenged this institutionalized mediocrity and succeeded in attracting serious students to the study of law. In fact, the study of law has received better attention among high school leavers in the country with the introduction of five-year integrated programmes. This has brought up

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<sup>9</sup>Saibal Chandra Pal, *Legal Service Authority Act, 1987 – A Preview of Application on Society*, TAXGURU (July6,2018, 03:22 PM), <https://taxguru.in/corporate-law/legal-service-authority-act-1987-a-preview-of-application-on-society.html>.

<sup>10</sup>*Supra* Note 13.

<sup>11</sup>L. Sanmiha, *Challenges of Legal Education In The 21ST Century*, LEGAL BITES - LAW AND BEYOND(July6, 2018, 7:20 PM), <https://www.legalbites.in/challenges-legal-education-21st-century/>.

<sup>12</sup>I.P. Massey, *Quest For Relevance' in Legal Education*, 2 SCC (JOUR) 17, 17 (1971).

new issues relating to pedagogy and approach to undergraduate studies for imparting legal education for high school leavers. The national law schools that have been established in Bangalore, Hyderabad, Kolkata, Bhopal, and Jodhpur have all contributed in their own ways toward promoting excellence in legal education and research, particularly by attracting some of the brightest students to consider law as a preferred career option. But where these schools face significant challenges is in attracting faculty members who are top researchers in the field of law and can combine sound teaching methods with established track records of research. The 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<sup>13</sup>. The teaching and learning pattern in NLUs only suggests that the education has largely commoditized in these institutions and they are in a bid to produce products, caring little about the induction of skills and sense of social responsibility in them.

The following are the challenges that the professional legal education faces in India:

#### Attracting Motivated and Interested Students

There are a few students in the nation choose law as their first career option. This is because of the low popularity of law as a profession. The maximum number of students opting for law is of the ones who failed in other enterprises. For some time now Indian law schools have attracted the poorest students. In almost all law schools in India the vast majority of students are unmotivated as they do not intend to practice law. They seek an easily obtainable advanced degree in order to improve their earning capacity in non-legal work<sup>14</sup>. Monetary benefit is the major factor that attracts students towards this profession. As a result, the institutions imparting legal education produce mercenaries. The very purpose of legal education gets defeated in this process.

#### Making the Pursuance of the Career Financially viable for all the Classes

The pursuance of law as career in the present era is designed in such a way that it 'only' attracts the students from an affluent background. For instance, the application form of the Common Law Admission Test (CLAT) costs INR 4000 for candidates of general category and INR 3500 for candidates of Scheduled Tribe and Scheduled Caste.

#### Developing a Strong Infrastructure

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<sup>13</sup>C. Raj Kumar, *Improving legal education in India*, THE HINDU (July 6, 2018, 08:10 PM), <http://www.thehindu.com/todays-paper/tp-opinion/Improving-legal-education-in-India/article14783272.ece>.

<sup>14</sup>Getman, Julius G., *The Development of Indian Legal Education: The Impact of the Language Problem*, ARTICLES BY MAURER FACULTY (July 6, 2018, 08:20 PM), <http://www.repository.law.indiana.edu/facpub/1900>.

As thought by the very name, National law universities are not nationalized institutions but are autonomous institutions that impart legal education in India. This is the reason why the grant of funds is not even in these institutions and hence infrastructural flaws are there. Apart from NLUs there are other universities that impart legal education in India. There should be more funds for this and for developing research projects and other initiatives to encourage faculty members. Generally, the infrastructure of the national law schools is better than what exists in the law departments of traditional universities. Improvement in infrastructure should be across the board, including in universities which still produce most of the law graduates. University campuses should be places that can inspire students and the faculty so that they are involved in reflecting upon the various problems that confront society. Academic freedom to think and contribute cannot be ensured if universities lack the necessary physical infrastructure and financial resources.<sup>15</sup>

#### Improving the Quality of Faculty

There is a need to fundamentally re-examine the context of legal education in the country. The present system does not sufficiently recognise the key problem with regard to legal education — lack of faculty members who are good teachers as well as sound researchers. There is need to identify talent among young lawyers so that they can be encouraged to consider academia as a career option.<sup>16</sup> The calibre of law faculty has been generally poor (although there have always been a good number of distinguished exceptions), the texts undistinguished, and the curriculum badly constructed. Classes have been almost entirely by lecture, stressing memorization and the ability to manipulate words. Relations between faculty and students are generally formal.<sup>3</sup> Even at its best the teaching has tended to emphasize orderly categorization, as has much of Indian legal scholarship. All of this has been reinforced by the external examination system and by the low prestige and pay of Indian law teachers.<sup>17</sup> It is the need of the hour to address this issue to improve the quality of legal education in the nation.

A large chunk of Indian population is unaware of the recent legal developments and the process of admission in these Indian Law Schools. Thus we need to have general awareness programs among the masses so that they no longer remain ignorant of the recent legal developments.

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<sup>15</sup>*Ibid.*

<sup>16</sup>C. Raj Kumar, *Improving legal education in India*, THE HINDU (July 6, 2018, 08:10 PM), <http://www.thehindu.com/todays-paper/tp-opinion/Improving-legal-education-in-India/article14783272.ece>.

<sup>17</sup>*Supra* Note 13.

Apart from that we also need to improve the infrastructure and faculty standards of the existing law schools [More than 1200 today]. This too will help us in improving the standards of legal education in India and would be a step in right direction.