

LEGAL EDUCATION IN INDIA: THE FUTURE TRENDS

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ABSTRACT

Legal Education in India has undergone changes over the times. Starting from the earlier days when it was not studied as a separate branch of study, it has come to the point where every person, fulfilling the eligibility criteria set by the respective authority, can study Law and choose it as a profession, practicing or otherwise. The New Education Policy, 2020 also touches upon it and proposes certain changes in its approach. On one hand, the much-required inter-disciplinary approach demands amalgamation of various areas of study within its fold and on the other, the peculiar demands of the legal profession expect a regulatory body which not only will consist of the experts in academics but also the individuals, including professionals who are expected to evaluate the ground realities and weed the seeds out of the chaff. This paper proposes to explore the future trends that may come about when the ideas indicated in the Education Policy, 2020 are given effect to in the field of Legal education and the future trends in Legal Education in India.

Keywords: Legal Education, New Education Policy 2020, Inter-Disciplinary Approach, Amalgamation.

Introduction

Legal education in India has remained one of those areas which has seen many changes structurally but by and large, the ailments it suffers in its content, modes and medium of imparting it, persist. Though the reports submitted by various Commissions and Committees addressed the issues and recommended some solutions, nothing much could be changed. The detailed directions relating to higher education have been laid down in the Education Policy, 2020. It excludes the institutions imparting medical or legal education, from the single point regulator which will regulate all other Higher Education Institutions. However, the Policy refers to legal education in a paragraph¹ which gives an indication of the aspirations and may change the course that legal education has taken.

Covid-19 Pandemic situation has necessitated the teaching and learning process to be continued with the help of electronic media (generally a smart phone), which has proved to be effective and not so effective at the same time. This paper primarily addresses the issue of relevancy of legal education for the masses and methods adopted for imparting the same to Law classes and is limited to the future trends in these areas.

Historical Background

In India, Vedas and Upanishads can be said to be the original source of Law. Accepted as the divine texts, albeit mixed with the religious precepts, the concept of 'Dharma'² permeated the life of all human beings. 'Dharma'³ can be said to be the rules which show the path to conduct the affairs of one's life. The great Smritikara's and the jurists of the Dharmashastra's announced the message of Vedas, but

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¹ Education Policy, 2020 at 20.4

² TaittiriyaSamhita, Taittiriyanishat, p.128 - Dharma constitutes the foundation of all affairs in the world. People respect one who adheres to Dharma. Dharma insulates (man) against sinful thoughts and actions. Everything in this world is founded on Dharma. Dharma, therefore, is considered supreme.

³ Parashara Smriti, Parashara Dharma Samhita, Bombay Sanskrit series, p. 63 - Dharma is that which sustains and ensures progress and welfare of all in this world and eternal bliss in the other world. The Dharma is promulgated in the form of commands

no concrete record of formal teaching or training in law can be traced back to them. Legal rules were primarily based on either usage prevalent in the communities or the ordains of the Kings or his appointees who were persons known for their integrity and reputation of being fair and impartial.

Court systems for all matters, Civil or Criminal, were essential features of many ruling dynasties of ancient India. The Mauryas and the Mughals had an excellent secular court system.¹ The panchayat system continued to exist during the Mughal period, which had introduced the system of courts to adjudicate all types of cases. The party aggrieved by the decision of the Panchayat could prefer an appeal to the Courts which followed a formal procedure. The complexities in the justice delivery system necessitated the involvement of legal experts. The Mughal period gave way to the British Rule which brought with it the era of legislations.

In 1672, the first British Court was established in Bombay. However, the first concrete step towards the organised legal profession can be said to be through the Regulating Act, 1773 which had the provisions relating to the enrolment of advocates and Attorney-at-law to the Supreme Court which was established in Fort William in Bengal by Charter of 1774. For the first time through Bengal regulation VII of 1793 a regular legal profession for the East India Company's courts was created which paved the way for the appointment of Vakils in the courts of Civil judicature in Bengal, Bihar and Orissa. After 1857 the control passed to the British Crown. The Legal Practitioners Act, 1846 opened the legal profession to all persons regardless of their nationality or religion². The formal legal education can be said to have established in India in 1855 with the establishment of first Professorship of Law in the Government Elphinstone College, Bombay.³ In 1857 legal education as a subject was introduced in the Universities of the three presidency towns, viz. Bombay, Calcutta and Madras. It's worth noticing that the standards and qualification for admissions in law classes were not prescribed and the students could study some other disciplines e.g., geography, history, science etc. along with law.⁴ However, those who aspired for something higher than LL.B. degree had to go to England, if they could afford it. By this time various legislations were passed and the laws were being codified. The language of these statutes being English, the learning of English became prerequisite if one wanted to study and practice law. The Bar Councils Act, 1926⁵ provided for making rules relating to the qualification of the Advocates and for giving facilities of legal education and training. After Independence, the Advocates' Act, 1961 has become the focal point of legal education system and the Bar Council of India rules framed under it governs the curriculum for imparting legal education, including the infrastructural requirements of the institutions which impart the legal education, and are amended from time to time.⁶

Expectations

The expectations from the legal education as per Prof. Madhav Menon,⁷ the pioneer of modern reform in legal education, can be summarised as: the legal education has an important role in directing and moderating social change and thus it has to operate as conscience-keeper of the society. It shall manifest higher moral values, maintain high degree of competence and discipline and ensure that no section of the society is denied its access because of poverty or social status. It is also supposed to influence governmental policies on social justice issues and to prevent distortions, it has the role to correct governmental wrongs, increase efficiency, excellence and achievement in all spheres of its activities. The horizon of legal education widened. Three years degree courses (LL.B.) came in place of two years degree courses. In view of the above expectations and aspirations the Five years degree course was revived and the National Law Schools also came into existence.

Teaching Law

India is a multi-lingual country where many languages are spoken. There are various official languages in India (22 languages).⁸ Despite the fact that Article 343 (1) of the Indian Constitution specifically lays down that official language of the Union shall be Hindi in Devnagri script, the States where Hindi is not the mother tongue of people residing there, opposed this imposition of Hindi. English

¹ <http://www.barcouncilofindia.org> visited on 10th February 2021

² <http://www.barcouncilofindia.org> visited on 10th February 2021

³ J.K. Bhavnani, Legal Education in India, The Indian Law Institute, p.168

⁴ Justice A.S. Anand, "Legal Education in India – Past, Present and Future", Dr.Lokendra Malik and Dr. Manish Mishra (ed.) Legal Education in India- Essays in Honour of Prof. Ranbir Singh, University Law Publishing Co., India, 2014, p. 11

⁵ Bar Councils Act, 1926, Section 15(c) General power of Bar Councils to make rules- he giving of facilities for legal education and training and the holding and conduct of examinations by the Bar Council

⁶ Bar Council of India rules, 2008 Part IV

⁷ N.R. Madhav Menon, "Professions for the Professionals or for the People?" 1994: Law and Justice, pp. 273-274

⁸ VIII Schedule Constitution of India, 1950

which was intended to be used for official purposes of the Union only for 15 years, continues to be still in use for parliamentary proceedings, inter-State and Centre- State communications, Language of all High Courts and the Supreme Court of India also remains English¹. Even though now the Acts passed by the Parliament are bilingual, in English and Hindi, in case of doubt it is the English version that is treated as authoritative. Nonetheless, language of the Courts of Munsif, Magistrate, Civil and Sessions judges and that of the District Judge remains regional. Therefore, practically, there is a valid need for the bilingual teaching of law.

In 1902 First Indian University Commission was constituted which, amongst other things recommended that English 'tutorials' be provided to the law students. Radha Krishnan Commission, though, did not disfavour continuance of English as a medium, as it is rich in literature – humanistic, scientific and technical, but was of strong view that national and regional languages should be developed. The Bar Council of India constituted the Bar Council of India Trust² in 1974 with the object, *inter alia*, to publish case books and translation of various statutes and important text books in Hindi and other regional languages. Throughout India the medium of imparting legal education is English as per the legal education rules³ and the situation remains the same even in the Draft of Legal Education Rules, 2019.⁴ Wherever allowed by the respective Universities, the medium of instruction remains regional language, with the requirement of clearing the General English as a mandatory paper. However, the fact remains that generally the study of the English language suffers from lack of attention which it deserves. Therefore the learners find it difficult and at times almost impossible to understand its grammar and hence lack the proper understanding of it to begin with and face difficulty in appreciating the finer nuances of law.⁵ The problem relating to availability of most of the legal literature in English language only, still remains unresolved. As such laws, where interpretation of text plays a major part, cannot dispense with the English language. Additionally, globalization progress makes it all the more important that Indian legal professionals are competent in English language and are not left behind in competitive market place.

Understanding the Law – Law for the Masses

One of the most fundamental principle which has evolved over the years, make it necessary for the people to know the law of the land, that is, not only be able to read it but also understand it. The phrase, 'Ignorance of law is no excuse'⁶ expects the people who are governed by it to know it and abide by it.⁷ The idea of justice also demands that the laws must be known to those to whom they are applied to. It becomes difficult for the population to comprehend and understand the rules, laws etc. when the reading materials are not in their language. People who are expected to know the law need to be acquainted with at least the basic aspects of it at an early age in the medium of language in which teaching is being imparted at that stage. They need to be apprised of the basic aspects of Indian Constitution which remains the touchstone of all the laws in a State. Unless people understand it (law), they will not be able to use it or apply it when the need arises even in their day-to-day activities. The suffering of the population is likely to come down manifolds when they themselves will be in a position to negotiate on their own with others. It is only then that the dream of law being the protector of the weaker sections of the society will start taking shape. Knowledge of law will then empower the citizens in the true sense.

Technological Advancements

Undoubtedly, technology has advanced meats and bounds and so did its use in the recent past. Most of the population is now almost dependent on it. It will not be an exaggeration to say that it had

¹ Article 348(1) (a), Constitution of India, 1950

² The Bar Council of India Trust is a public charitable Trust created on 27th April, 1974 by the Bar Council of India for rendering services mainly to maintain professional standards and to effect improvements in legal education. The Trust was created with an objective to establish Law Schools of excellence and to promote legal research. Other objectives were to render legal aid to the poor, publish law reports, text books for students and promote welfare of the members of the profession, <http://103.25.172.19/bar-council-trust/constitution.php> accessed on 28.02.2021

³ Rules of Legal education, 2008 Schedule II – Medium of instruction: English shall be the medium of instruction in both the integrated five year and three year courses. However if any University and its any CLE allows in full or in part instruction in any language other than English or allows the students to answer the test papers in the periodical and final semester tests in any regional language other than English, the students have to take English as a compulsory paper

⁴ <http://www.barcouncilofindia.org/wp-content/uploads/2019/11/Draft-Rules-of-Legal-Education-2019>, accessed on 15.02.2021

⁵ Julius G. Getman, Indiana University School of Law, The Development of Indian Legal education: The Impact of the Language Problem, 1969

⁶ Latin Maxim - Ignorantia juris neminem excusat

⁷ Indian Penal Code, 1870 Section 76 - Act done by a person bound, or by mistake of fact believing himself bound, by law. — Nothing is an offence which is done by a person who is, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith believes himself to be, bound by law to do it

become the lifeline during the lockdown the world over, through which the information's, desired or undesired, were shared and forwarded. The governments prompted online teaching and the students tried to remain connected with their respective educational institutions and teachers. During the lockdown period of Covid-19 Pandemic, the teachers and the students used different methods, viz. Class wise WhatsApp groups, uploading YouTube lecture videos, Zoom/ Google Meet classes, webinars etc. This paper is not entering into the debate between the online mode or offline mode of teaching but it does definitely propose to look into the aspect of use of technology relating to legal education.

It cannot be denied that with the evolution of Information Technology, the world has come together not only in the sense of connectivity with each other but also the information can be exchanged and accessed at a much faster rate. The area of legal education can not remain untouched by it. The internet connectivity opens up a whole new arena for a learner and thereby its use can be of much help. The various legal databases that are available online make the research easy for the students. The legislations, case laws, articles, study materials etc. are now just a few clicks away. Loads of information can be stored, data can be accessed, re-accessed, processed, developed and used in a small space very efficiently and it saves time as well. Case management also will be easier once the law students, academicians, jurists, judges and the lawyers learn the skill.¹ Cyber forensics is also being developed and people are being trained in it to combat the ever-increasing digital wrongs, frauds and crimes.

The work which is done by using human intelligence is now being done with the use of Artificial Intelligence, like, setting reminders, suggesting articles, news of our interest etc. Now-a-days we see Artificial Intelligence at work in our daily lives. In the legal field Artificial Intelligence can be used for various purposes which will be cost and time effective, like, vast areas of research, due diligence, legal analytics, automation of documentation, intellectual property etc., in which it can prove to be very useful.

Areas of Concern

The school education system, especially in the northern rural India, still needs to be oriented towards the English language with better faculty and study materials. There is scarcity of language tutorials, be it regional language, Hindi or English, even at the level of secondary education and Higher Education. In fact, the need for the tutorials in languages should not arise in Higher education, except in cases of students who struggle with the language because of relocation or otherwise.

Most of the databases, websites etc. relating to law are in English. The Hon'ble Supreme Court's website as well as that of the High Court's report the cases in English and there is no authentic translation available. The articles on legal issues also are generally in English. Even the Bar Council of India, the regulating body at present also has a website in which English language is used. The other websites which provide various legal informations also are in English.

The Bar Council of India, which now regulates legal education in the country, has been able to achieve its goal in securing more or less the required infrastructure in some of the institutions imparting legal education. However, much needs to be done. Most of the legal colleges/ institutions continue to impart legal education exclusively through the mode of class-room lectures. No doubt, for some aspects of some subjects, the lecture may still be the preferred mode. But the legal education the world over has moved to case book/ case law, tutorials and virtual class rooms when required as modes of imparting education which are almost non existent in vast majority of Indian law colleges. With the result that students who get their LL.B. degree from such institutions/ colleges may lack the skills of independent thinking and cogent arguments.

The legal institutions generally don't have the budgets or infrastructure to provide access to the various legal databases and legal portals which can be of immense help for the students who are well versed in English language. Very few of the colleges or Universities in India have the Information and Communication Technology Laboratories or infrastructure. The libraries, back bone of any educational institution, particularly of a legal educational institution, are not automated. The e-libraries, which can benefit a law student, researcher, faculty and academician alike are also not in place.

Conclusion

Language needs to be considered in its right perspective and that is, as a medium of expression. It should not be a hinderance or a road block on the path of progress, development and

¹ A.S. Akhmetov, Bulletin of the Karaganda University, 2017, The Role of Information Technology in legal Education, <https://articlekz.com/en/article/17780> accessed on 21.02.2021

evolution. Reasonable adaptability with the requirements at hand remains need of the hour always. Thus, the medium of instruction and learning, should be bilingual. Teaching should mainly be carried out in the language which is rich from the point of view of the availability of the study or reading material. Unless we have enough reading materials of uncompromised quality in legal education field in the regional language, shifting exclusively to regional language teaching does not appear to be in the interest of our future generations. All efforts should be made to upgrade the availability of legal education study materials in the regional languages. The Bar Council of India can play an important role by encouraging translations of standard text books in the regional language. A journal in Hindi or in other regional languages can also be published by the Bar Council of India. Concerted efforts must be made by all concerned to bring up our modes of teaching to the world standards. One should also be ready to welcome the tool of Artificial Intelligence in near future. The legal educational institutions should be given the required infrastructure to integrate technological advancements in the modes of teaching which will equip the students with the tools necessary not only to discharge their functions as a legal professional, competently and efficiently, but also to encourage them to compete in the world on equal footing and excel.

