

## LEGAL EDUCATION – A GLOBAL PERSPECTIVE

### **Introduction**

A critical issue in legal education in the times to come is international legal education. What is to be seen is how law schools, academicians, professionals throughout the world respond to this need. Enormous developments are taking place in the global economy. Initiatives are being taken from the top down, and quite literally, from the bottom up. Changes in economic foundations of the world political economy are already evident. The emergence of China, India, Brazil, and South Africa as major players is being complemented by dramatic initiatives on the part of the U.S., and the European Union to radically expand the structure of global economy. Financial services, telecommunications, manufacturing, e-commerce, and investments are all areas where globalization is entrenched and continues to grow at a rapid rate. The migration of manufacturing jobs, software development positions and other employment opportunities from the United States to other countries where labour costs are lower are reported daily. Major banks, insurers and reinsurers operate on a global basis and e-commerce is no respecter of national boundaries. The global financial services market will continue to experience major growth fuelled through mergers and acquisitions. The existence of this global market and globalization cannot be ignored by any law school. Legal educators and legal practitioners will have to work in the context of this rapidly changing environment of political economy, trade, and investment. These are critical challenges for the future of the legal profession as a global force for providing structure and process for the complex world of tomorrow.

The school of thought that contends that “the transformations that are taking place are of minimal concern because lawyers are primarily concerned with domestic issues” confined within one nation’s borders is patently untenable. The rapid increase in the volume and diversification of international business transactions and international trade, technology transfer, and the international development of investment funds make it imperative that law students acquire an international perspective and understanding of law in a global context. The domestic insularity in which many lawyers in the past could practice their profession is not, in my opinion, sustainable as the inter-connectedness between countries grows. This inter-connectedness extends, of course, beyond the bounds of commerce to embrace cases and transaction involving international environmental and human rights issues and to matters as diverse as international adoptions and war crimes. Even areas of law with a strong domestic focus such as family law, estate planning and criminal law are increasingly the subject of

international issues and complications. One might add certain activities such as child pornography on the internet or the regulation of biotechnology developments such as human cloning call for a collaborative response transcending any one legal system in order to achieve an effective outcome. In a recent Harvard University review of its undergraduate curriculum it was recommended, "there is a responsibility to educate students—who will live and work in all corners of the globe—as citizens not only of their home country, but also to see themselves, and this country, as others see them". This broader vision is expressed also by the Hon'ble J. Clifford Wallace who advocates a greater globalization of judicial education to better understand foreign laws, and to borrow or adapt foreign laws where appropriate to interpret domestic laws and to solve new problems.

The Indian Judiciary has ruled time and again that unless there exists a grave inconsistency, all forms of domestic law, including even the Constitution, must be interpreted in a manner consistent with international law. In the landmark judgment of *Keshavananda Bharati v. State of Kerala*,<sup>[1]</sup> Sikri, CJ held:

*It seems to me that, in view of Article 51 of the directive principles, this Court must interpret language of the Constitution, if not intractable, which is after all a municipal law, in the light of the United Nations Charter and the solemn declaration subscribed to by India.*

Our Supreme Court has not only interpreted the national laws in the context of international treaties and conventions but has at times decided cases entirely based on such international law in the form of treaties and conventions even in the absence of formal legislations being enacted to give effect to provisions of such treaties and conventions. The examples are too many, of which a few may be mentioned.

The decision of the Supreme Court in *Gramophone Co. of India Ltd*<sup>[2]</sup> extensively relied upon several international conventions like Convention on Freedom of Transit (Barcelona Convention); the Convention on the High Seas, 1958; and the Convention of Transit Treaty of Landlocked States, 1965. In *Union of India v Sukumar Sengupta*<sup>[3]</sup>, the court enforced the provisions of bilateral treaties of India and Bangladesh regarding 'lease in perpetuity' granted in favour of Bangladesh in respect of certain lands close to our border even though the agreement had not been formally ratified. The court inferred ratification of the bilateral treaty by the conduct of the party states. In the realm of human rights, in which volume of decisions the court has referred and relied upon the Universal Declaration of Human Rights (UDHR) of 1948, the International Covenant on Civil and Political Rights (ICCPR) of 1966, the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) of 1979, Convention on the Rights of Children of 1989.

India though not a party to the 1951 U N Convention relating to the status of refugees and its 1967 Protocol and does not have a domestic law on the subject. India has been hosting several thousand refugees from various parts of

the world, particularly, from the neighbouring countries such as Sri Lanka, Bangladesh, Myanmar besides several thousand Tibetans, Iranians etc. It's recognition of its active support and assistance given to the refugees within India, that India became a member of the Executive Committee of the High Commissioner for Refugees (EXCOM) 1995.

In the realm of environmental law, the court has drawn support from a large number of Conventions and has adopted the well recognised principles like Sustainable Development, the Precautionary Principle and Polluter Pays Principle.

### **Review of Legal Education in Law Schools**

The society is growing more and more complex. Technology has posed enormous challenges to the earlier system of law and justice. Trade has become vast and technology oriented. A lawyer has to comprehend the new social and economic changes in the world. The age old practices and tactics are no more relevant now. The legal profession is not what it was a century or even a decade ago. Its role in the society is different now because it has a wider set of economic, political and social roles. Society has changed significantly, and changes in the legal profession reflect those changes. Keeping this paradigm in mind, there is an emergent need to review legal education so that it meets the needs of the society. Lawyers will have to be acquainted with new tools and skills. A well administered and timely relevant legal education can, therefore, be said to be the only choice for the future. As opined by the famous jurist, Nani A. Palkivala, the two marks of a truly educated man are the capacity to think clearly and intellectual curiosity which enables him to continue and intensify the process of learning even after he has finished the law course.

Achieving the next level of paradigm for legal education shall not be possible without the presence of a faculty which is sensitive to the changing times. Hiring of good faculty has been a challenge in law schools in India and abroad. Generally, the financial incentives offered by the private sector both in India and abroad are far more attractive than those available in the public sector, including law schools, for good lawyers to make a commitment to academia. But it is possible to attract good lawyers to academia by promoting a range of educational reforms and institutional initiatives, including better financial incentives. Globalisation has indeed provided new opportunities to address some of the challenges in this regard. Issues relating to the Indian legal system are not only taught and researched in India but also in many other parts of the world. Growing numbers of Indian lawyers and scholars are involved in this effort. There is need for having a global focus in hiring faculty for Indian law schools. Of

course, success will depend on the schools' ability to provide the right kind of intellectual environment and financial and other incentives for Indian or foreign scholars to teach and pursue research in India and to contribute to its growth story. It is worthwhile to learn from the experiences in other countries where the shortage of teachers and faculty has been addressed by video-conferencing of lectures by foreign faculty.

The law schools of the future ought to provide academic space for engaging in teaching and cutting edge research on issues of global significance. The institutions ought to constantly reinvent themselves for facing the challenges of globalisation through exchange and collaboration programmes. This has different implications for faculty, students, and for the development of teaching and research programmes.

With the background of developments in the global economy as aforesaid, India has to assume a greater responsibility as a key player by introducing a regime of progressive higher education. Within the larger debate relating to reform of the higher education sector in India, there is an urgent need to examine the situation with regard to legal education and how globalisation is going to impact the agenda for it. In the background of the raging debate on opening up of the legal market for foreign lawyers and law firms, the need for imparting the right skills and education not only to future lawyers but even to current breed of legal professionals has gained underlined importance. There are four important factors of legal education: global curriculum, global faculty, global degrees, and global interaction. These deserve public attention.

A few decades back, law schools in India could do well as long as their curriculum was focussed on Indian law and issues relating to the country's legal system. While there was some limited impetus to the study of international and comparative law, the larger focus was primarily on issues relating to the Indian legal system. This was, of course, necessary and ought to have been the approach. There is indeed greater scope for improvement in promoting excellence in teaching and research relating to Indian law and to addressing the challenges facing the legal system, including the need for establishing a society that respects the rule of law and meets the challenges of globalisation.

Assuming an acceptance of the argument that there should be a stronger focus upon and understanding of law in a global context, what steps are necessary to achieve this outcome? Aline Grenon and Louis Perret<sup>[i]</sup> comment:

*“Law schools clearly have a duty to ensure that all their students receive a legal education which will prepare them to cope effectively with the challenges of legal practice in the 21<sup>st</sup> century. The following are ways by which this goal could be reached: (a) Law Schools could try to promote more effectively their international and comparative law courses;*

*for example, efforts could be made as early as orientation week in first year law to sensitize students to the need to acquire knowledge in these fields.*

*(b) Law Schools could make some international and comparative law courses compulsory.*

*(c) Finally, law schools could ensure that law courses dealing with national and (state) law systematically include an international component”.*

There are, of course, other ways in which law students acquire international understanding, experience and knowledge of foreign laws and legal systems. Advanced degree programs, exchange and summer abroad programs, international moot court competitions and participation on international and comparative law reviews all provide valuable insights and experience. There is, however, no substitute for the formal study of international and comparative law.

### **Continuing Legal Education**

*“Lawyers are always going to be students, because the learning doesn’t stop in law school. The irony is that when we become lawyers, we not only continue to be students, we simultaneously are teachers.”*

**Michael S. Greco**

The study in law most certainly does not end with graduation from law school, but continues throughout the lawyer’s career. A large number of lawyers perceive critical gaps between what they are taught in law schools and the skills they need in the workplace, and appropriate technologies are not being used to help close this gap. There is a recognized need worldwide, that in order to ensure a thriving legal profession within a justice system, it is essential that a programme of continuing legal education is in place. Given the deep impact globalisation has had on our lives and the legal profession, there is a greater need for continuing legal education for active practitioners, legal professionals and jurists. While the concept of continuing legal education and training programs shall address the basic issues of enhanced lawyer competency, it will, more importantly, keep professionals abreast with the developments in the national as well as international legal arena. The legal professionals shall get a deeper understanding and an awareness of the challenges involving the global community and the changes taking place in contemporary times.

The English Legal system provides an example of an unusually ambitious and successful program that increases the proficiency of practicing lawyers: Professional Accreditation Programme. On the similar lines is the Diploma in Legal Practice in Scotland.

### **Conclusion:**

The future shall witness a radical transformation in the content as well as methods adopted to impart legal education in India. Globalisation has posed multiple challenges to the future of legal education in India but it has provided an opportunity to challenge the status quo, which is an essential condition for seeking any reform.

To conclude, I would like to quote the famous Irish author Edmund Burke who rightly said, "You can never plan the future by the past." The time is ripe for an overhaul of legal education in India.

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[1] (1973) 4 SCC 225 at p. 333.

[2] (1982)2SCC 534

[3] (1990)Supp SCC 545

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