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In Memoriam Prof. N.R. Madhava Menon and his Contribution to Indian Legal Education

CLR

R. Venkata Rao and Prakash Sharma - *An Assessment of Contribution of Professor N.R. Madhava Menon Towards Modern Legal Education: A Tribute*

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Rahul Desarda - *The Purpose of Law and Lawyers*

MNLU, Nagpur

Contemporary Law Review

Volume 3, Number I **2019**

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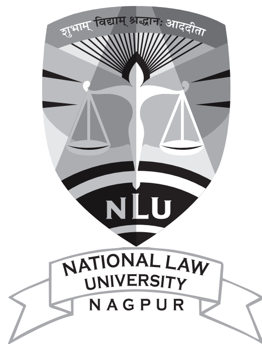
MNLU, Nagpur

Contemporary Law Review

Volume 3, Number I **2019**

Special Issue "**In Memoriam-Prof. N.R. Madhava Menon and his contribution to Indian Legal Education**"



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of

MAHARASTRA NATIONAL LAW UNIVERSITY NAGPUR

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Message from the Patron

It is a great honour for me to introduce to you the special issue of 'Contemporary Law Review', the flagship journal of Maharashtra National Law University (MNLU), Nagpur titled "In Memoriam-Prof. N.R. Madhava Menon and his contribution to Indian Legal Education". Padmashree Professor (Dr.) Neelakanta Ramakrishna Madhava Menon, Father of modern legal education in India, who inspired countless lives in his lifetime and transformed the paradigms of legal education in India, left for his heavenly abode on May 08, 2019. Prof. Menon's departure has been as heart-breaking as it is motivating for the entire legal fraternity, to strive harder and work tirelessly towards the betterment of legal education in India. This issue of Contemporary Law Review marks a reverent tribute to the academic genius, indefatigable spirit and the compassionate determination of Prof. Menon, on behalf of the entire family of MNLU, Nagpur. Through this issue, we have the honour of publishing articles deliberating on the various aspects of Prof. Menon's ideology and making suggestions to incorporate and carry forward his ideology in tackling contemporary challenges faced by Indian legal education.

A special issue dedicated to the memory of Prof. Menon's contribution to Indian legal education is intended to serve as a messenger of his ideology to younger generations of lawyers and law teachers, as well as a humble reminder to the older generations of the legal academia of their solemn responsibility of diligently pursuing Prof. Menon's unfinished agenda. Prof. Menon, our Guru and pioneer par excellence, was a guiding light for Indian legal education who radically transformed every sphere of legal education in India, ranging from curricula development; pedagogy; legal research, to continuous legal education for law teachers.

I was filled with delight to learn how lawyers, law students and legal academics across generations continue to uphold and endorse Prof. Menon's vision, as is reflected in their views as expressed in the articles authored by them. When Prof. Menon spearheaded the establishment of the first-ever National Law University in the country, he had envisioned to create an autonomous institution imparting legal education of impeccable quality and also, to mould lawyers who were as legally proficient, as they were socially conscious and compassionate towards employing their legal acumen to alleviate the downtrodden.

This special issue is only the first step made by the MNLU, Nagpur family towards the realisation of Prof. Menon's vision. We have also started making conscientious efforts towards furthering Prof. Menon's cause of clinical and continuing legal education and would continue to make relentless efforts towards the fulfilment of his unfinished agenda. I would

like to express my gratitude all authors who have contributed to this special issue of Contemporary Law Review for the homage paid by them to Prof. Menon. We are all eternally indebted to Prof. Menon for the maverick reforms brought about by him to the Indian legal education scenario. I welcome the readers to join us in paying sincere tribute to the Father of modern legal education in India. I hope that the flame of pursuit of excellence ignited by Prof. Menon remains burning bright in all of us.

(Vijender Kumar)

Editorial

Contemporary Law Review has been conceptualised with the objective of promoting legal research and encouraging legal writing in issues of contemporary relevance. The first two editions threw light on intriguing writings by authors ranging from Supreme Court Judges to undergraduate law students on a wide-ranging array of topics. This special issue is dedicated to the memory of Professor N.R. Madhava Menon, Father of modern legal education in India, who departed this life on May 08, 2019, but whose passion to transform legal education in India for the better will continue to inspire us and make us strive harder. This special issue focuses on Prof. Menon's ideology and experiments with legal education reform and his core teachings, such as clinical legal education, continuous legal education, promotion of legal research and overall enhancement of the quality of legal education.

The special issue continues this journey with the blessings of our Patron-in-Chief, Hon'ble Shri Justice S.A. Bobde, Chief Justice of India and Chancellor, MNLU, Nagpur and our Patron, Prof. (Dr.) Vijender Kumar, Vice-Chancellor, MNLU, Nagpur. The Editorial Board has been honoured to work under the guidance of these luminaries. The Journal has been enriched by the valuable insights provided graciously by Prof. (Dr.) R. Venkata Rao, former Vice-Chancellor, National Law School of India University, Bengaluru; Prof. (Dr.) Vijender Kumar, Vice-Chancellor, MNLU, Nagpur, and Mr. Arakkal Ashraf, IFS Principal Chief Conservator of Forest (Retd.) and Ex-Member Secretary, Maharashtra State Biodiversity Board, Nagpur.

Prof. (Dr.) R. Venkata Rao has co-authored with Mr. Prakash Sharma an article titled "*An Assessment of Contribution of Professor N.R. Madhava Menon towards Modern Legal Education: A Tribute*" wherein the authors observe that legal education in India witnessed radical transformation under the genius leadership pf Prof. Menon. The article is dedicated to the vision of Prof. Menon and remarks that the life of Prof. Menon is a great book of teachings, encompassing vision, values, dedication and integrity. The article is a mark of respect to the phenomenal contribution of Prof. Menon for the cause of legal education in India and abroad, and explores few of the many roles Prof. Menon played during six decades of teaching and research.

Prof. (Dr.) Vijender Kumar has authored an article titled "*Emergence of National Law Universities and Legal Education in India: Learning through*

Experiment" in which he chronicles the emergence of NLUs, as modern Gurukuls of law, starting in 1988 under the dynamic leadership of Prof. Menon and explores the transformation of legal education and profession into preferred destination in contemporary world from being an ignored profession in the past. While lamenting the loss of the academic fraternity due to the departing of the soul of Prof. Menon on May 8, 2019, the article notes that the rampant number of CLAT applicants reflects the potentiality of legal profession, as envisioned while creating first NLU; however, there is a need to strengthen the Bar, Bench and Academia linkage to improve quality of legal education and research.

Mr. Ankit Singh, in his article titled "*Role of Faculty Colloquiums in Improving Legal Education in India: A Critical Study*" discusses and analyses the importance of faculty colloquiums in enhancing the quality of legal education in India. The article gives an overview of the current legal education system of India and how intellectual practices like faculty colloquiums can boost the free flow of knowledge and quality research work as well. The article argues that for setting high standards of legal education and making a mark on the globe, it is important for policy-makers to emphasise strengthening the faculty and deepening their intellectual experience.

Prof. (Dr.) K. Vidyullatha Reddy, in her article titled "*Clinical Legal Education in India-An International Perspective*" discusses clinical legal education from an international perspective by contemplating answers to questions such as whether it emerged as a methodology of law teaching or to achieve social justice; do the law school clinics have the ability to achieve social justice; do the other stakeholders in justice delivery system intend the effective functioning of these law school clinics; do the law school clinics consider themselves as problem solvers or are they co-eminent people; what are the different models of lawyering and which should the law school clinics consider adopting; was clinical education propounded by legal realists etc.

Ms. Ritu Gupta, in her article, "*Challenges for the Indian Legal Education System in the Age of Transforming Global Legal Landscape*", notes that for any emerging economy to progress socially, it is essential for its educational institutions to be ready to lead the global changing agenda, and that social progress will not be fettered by the averseness of the lawyers to adapt. The article puts forth that it has become inevitable for India to

make its law students future ready to meet this rapid change and to compete with the broad arrays of foreign entities. The article focuses on describing the changes happening in the global legal world and its consequence on the legal education system. Also, it proposes some experimental changes in the Indian Legal Education System to meet the emerging challenges of having competent law students.

Mr. Debasis Poddar, in his article, "*Justice Education: A Desired Destination of the Menon Model*" advances arguments that pedagogy initiated by clinical legal education as per the Menon Model has had a teleological end to offer legal education as route to justice education; thereby spearheading progressive social transformation. The article points out that the Menon Model is meant to raise human resource for professional service to the court and the people; instead of tertiary service to the market; After his model, the market ought to approach qualified professionals; not vice versa; the article highlights the advantages of the same for the prospect of professional education in India.

Mr. Madhav Mallya has authored an article titled "*The Reform of Post-Graduate Legal Education in India: A Personal Narrative*" shares his personal experience while arguing for the reform of post-graduate legal education in India. The author notes that while Law schools and universities in India host several conferences on the reform of legal education, there is a marked absence of dialogue on the reform of post-graduate legal education, including the questions of appropriate pedagogy for post-graduate legal education and funding. The article highlights the main challenges to the implementation of reform in post-graduate legal education in light of the contributions made by Dr. N.R. Madhava Menon to the cause of legal education reform.

Mr. Mujahid Siddiqui, in his article titled "*Prof. N.R. Madhava Menon's Contribution towards Autonomy of Law Universities in India*" captures the contribution of Prof. N.R. Madhava Menon in the field of University Autonomy. While capturing his role from his capacity as the Secretary of Bar Council of India, to his appointment as the Vice Chancellor of India's two most prominent Universities, the article delves into his contributions to release the Universities in India from the clutches of the regulations and authorities which compromised with the freedom of these Institutions. The article also delves into the works of Prof. Menon in his various capacities as members and chairman of various Panels. The article is an effort made to

summarise the work of Prof. Menon in the area of University autonomy in India.

Prof. (Dr.) Kama Raju Chitrapu, in his article titled "*Faculty Development and Work Ethics of A Law Teacher*" explores the descriptions of competences and holistic qualities necessary for future law teachers which constitute the starting point for a wider discussion on the decisive role of beliefs and emotions in being and becoming a law teacher. The author notes that issues raised in the article should be able to contribute to a better understanding of what it means to be a law teacher and, consequently, result in improvements in the planning of law teacher training programmes.

Mr. Arakkal Ashraf and Ms. Sona Kumar have co-authored an article titled "*Clinical Legal Education - A Paradigm Shift in Legal Education to Fast Track Social Justice*" wherein the authors enunciate the role of Clinical Legal Education in the process of changing the orientation of legal education, which has been largely class-room based to a practical oriented discipline. The authors emphasise that Clinical Legal Education can play the role of a transformative tool in legal education if properly utilised, and it is a progressive educational ideology and pedagogy that is most often implemented through university programs.

Ms. Ashwini Kelkar, in her article titled "*Socio-Legal Acceptability and Recognition of Live-in Relationship in India*" explores the socio-legal acceptance of live-in relationship by analysing various factors and facets of such informal relationship in India. The article analyses the essential characteristics of live-in relationship and studies the various factors effecting and stimulating the social acceptance of live-in relationships in India and the role of consent in these relationships and marriages. The article further studies the causes for individuals to opt for such relationships instead of an arranged marriage and discusses the assistive and contributive nature of legal provisions for adoption of such informal relationship in India to cater the changing needs of the society.

Ms. Topi Basar has authored an article titled "*Assam Frontier (Administration of Justice) Regulation, 1945 of Arunachal Pradesh-Assessing: Its Lacunae and Importance*" wherein the urgent need to amend the existing Assam Frontier (Administration of Justice) Regulation, 1945 is highlighted. Arunachal Pradesh was formerly under the administrative rule of Governor of Assam; new system of governance and administration was introduced only in 1987, however, the introduction of formal laws affected

the traditional society including the functioning of original village authority. Also, the coming of Panchayat system brought politics in the village diluting its free and democratic fabric. The author argues for the said change in order to suit the needs of the present times and to rectify the legal anomaly created due to commencement of separation of judicial and executive power without eroding the power and authority of the traditional tribal council in the state of Arunachal Pradesh.

Ms. Debasree Debnath, in her article titled "*Right to Maintenance of Women in India: A Socio-Legal Study*" deals with the status of women during different periods in India and explores the need of maintenance in their life. It also elaborates the social, economic and traditional barriers which leads them to become dependent for their survival to male members of their family. The author highlights the importance of right to maintenance as an integral part of women's lives, mostly in situations when they are unable to maintain themselves. The article also examines the issues relating to Uniform Civil Code and the reasons for its non-implementation.

Mr. Rahul Desarda, in his article titled "*The Purpose of Law and Lawyers*" analyses Harper Lee's classic, *To Kill a Mockingbird*, to argue that the ultimate purpose of the legal system and lawyers is to serve the society. The article touches upon various aspects of law such as the relationship between law and society, equality before law and drawbacks of the jury system. The author poignantly puts forth that the premise of a profession is service to the society, therefore lawyers must provide affordable legal service to the marginalized and deprived communities. The article further emphasises that considering the privilege they are accorded, lawyers have a moral obligation to offer pro bono legal aid to their disadvantaged clients; empathy, ethical conduct and moral consciousness are essential in the making of an ideal lawyer. The article also propositions that to understand the true purpose of law, we have to take a step back and understand the purpose of life itself.

(Editorial Committee)

AN ASSESSMENT OF CONTRIBUTION OF PROFESSOR N.R. MADHAVA MENON TOWARDS MODERN LEGAL EDUCATION: A TRIBUTE

R. Venkata Rao♣ *and Prakash Sharma*♦

Abstract

Legal education in India witnessed radical vision because of the efforts made by the one and only Prof. (Dr.) N.R. Madhava Menon. The life of Prof. Menon is a great book of teachings, encompassing vision, values, dedication and integrity. This article is a mark of respect to the phenomenal contribution of Prof. Menon for the cause of legal education in India and abroad. The article explores few of the many roles Prof. Menon played in the course of nearly six decades of teaching and research.

Keywords: Access to Justice Education, Clinical Legal Education, Professional Skills, Restructuring, Reforms Model.

Introduction

Padma Shri Prof. (Dr.) Neelakanta Ramakrishna Madhava Menon was the finest of law teachers that India has ever produced. He remained the most acknowledged, read and recognised figure, not just amongst the Indian academia but noticed widely amongst the jurisprudents of the West.[1] Two examples would suffice to explain such entourage. He was called the 'living legend of law' by the International Bar Association (IBA) and the 'father of modern legal education' by the Bar Association of India (BAI). He maintained no conflict between 'teaching of law' and 'practice of law'. In fact while

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♦ Research Scholar, Faculty of Law, University of Delhi, e-mail: Prakash.sharma@viips.edu.

1 Frank S. Bloch and Iqbal S. Ishar, "*Legal Aid, Public Service and Clinical Legal Education: Future Directions from India and the United States*", 12 MICHIGAN JOURNAL OF INTERNATIONAL LAW,1990-1991, pp. 92-120. (Authors acknowledged and thanked Professor Menon for his valuable comments on its earlier drafts and while acknowledging the efforts of clinicians like Prof. Menon, the paper opines that "in India, clinicians are just beginning to move in a similar direction", *id* at 99). Frank S. Bloch and M.R.K. Prasad, "*Institutionalizing a Social Justice Mission for Clinical Legal Education: Cross-National Currents from India and the United States*", 13 CLINICAL LAW REVIEW, 2006, pp. 165-212. (Authors acknowledge Prof. Menon's breakthrough work on *Lok adalats* in "providing students with variety of educational opportunities", *id*. at 201). Frank S. Bloch, "*Access to Justice and the Global Clinical Movement*", 28 WASHINGTON UNIVERSITY JOURNAL OF LAW AND POLICY, 2008, pp. 111-139. (Author uses the words 'socially relevant' which are taken from the phrase 'socially relevant legal education' used by Prof. Menon to describe the essence of clinical legal education in India, *id*. at 125). Jane E. Schukoske, "*Legal Education Reform in India: Dialogue Among Indian Law Teachers*", 1 JINDAL GLOBAL LAW REVIEW, 2009, pp. 251-279. (The author discussed Prof. Menon's efforts in discussing clinical legal education as a means of educating students and providing legal aid to the poor). See also, Richard J. Wilson, "*Training for Justice: The Global Reach of Clinical Legal Education*", 22(3) PENN STATE INTERNATIONAL LAW REVIEW, 2004, p. 422.

discussing about the role and the functions of law in development process of the community, Prof. Menon treats it as a 'fascinating and enlightening inquiry' for lawyers and social scientists to engage with.[2] He further opined that restructuring and reform of any legal system, to suit the developmental efforts, would necessitate 'changes in values, attitudes, propensities and disposition of people involved'.[3]

The purpose of writing this paper is to pay homage to the great-departed soul, by remembering his well-informed contribution towards legal education and legal profession. No doubt the contribution of other jurists for the development of legal education space in India is significant. However, as an institution itself, Prof. Menon contributed significantly in creating bodies of grand success, which reflects his noteworthy and even unique contribution to modern legal education. One can read numerous excerpts from his research writings which illustrate his in-depth knowledge and far sightedness on legal education. In his edited book *Clinical Legal Education*, he argued for involving students in legal aid work.[4] The idea is to expand student's horizon during law school years, and to encourage them towards public service activity throughout their professional careers. He states:[5]

> *If law is only a matter of social control and not an end in itself, it is high time we recognise that fact and teach law not on the basis of neatly compartmentalised, symmetrical pure legal theory but as an applied science capitalizing upon the accumulated knowledge and skills of various discipline pertaining to human relations in society.*

The scope of legal education is not limited but dynamic and Prof. Menon while acknowledging the functional role of law opined that:[6]

> *Regularisation of social relationships and advancement of socio-economic reconstruction was consciously or unconsciously underplayed by both academic and professional spheres of law.*

Arguing vividly for an integrated vision for legal education, he opined that law as a subject eminently suits integrated learning 'because of the multiple roles law performs in the development of modern societies'.[7] In this regard, unlike others, he drew the true picture of how law schools ought to be. He doesn't limit the scope of National Law Universities (NLUs) to mere academics but laid a fertile ground for experimentation and innovation with special focus on activities relevant to the society. The present paper analyses and explores

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2 N.R. Madhava Menon, "*Law and Development: A Seminar Report*", 15(1) JILI 116-121 (1973), p. 116.
3 *Ibid.*, p. 119.
4 N.R. Madhava Menon (ed.), A HANDBOOK ON CLINICAL LEGAL EDUCATION, 1st ed. 1998, p. 17.
5 *Supra* n. 2, p. 120.
6 *Supra* n. 2, p. 117.
7 N.R. Madhav Menon, "*Training in Legal Education: Some Comparative Insights from Indian and American Experience*", 49(3) JILI 399-408 (2007), p. 404.

few of the many roles that Prof. Menon played in the course of nearly six decades of teaching and research.

An Institution Builder

At the time when few wanted to enter legal profession and when law degree was available cheap from variety of traditional law institutions, Prof. Menon initiated and implemented an idea that proved monumental for years thereafter. In 1985, the Bar Council of India (BCI) invited Prof. Menon to set up the country's first National Law School (NLS).[8] The BCI's brief was to create a 'Harvard of the East' through an integrated legal education programme of five years. It paved way for establishment of National Law School of India University Bangalore (NLSIU), with few rooms at Central College Campus and with a total budget of Rs.70/- lakhs (Rs.50/- lakhs from Karnataka government and Rs.20/- lakh from BCI).[9] He served NLSIU as its founding Vice-Chancellor for 12 years and made it reach to such a height which others only dreamt of.

The idea clicked and brought seriousness towards legal education in India. However, in the beginning he himself was not sure and was of the firm belief that it is next to impossible to bring any change in the existing legal education structure in India. However, through his earnest efforts 'the impossible thing happened'. He completely overturned the attitude towards study of law—from 'default option' into a 'respected' or 'success guaranteed option'. An international panel of distinguished law teachers evaluated the NLS experiment and a report which was only appreciative of NLSIU's quality academic programmes.[10] Prof. Menon completely revolutionised the narrative of legal education and brought seriousness amongst the candidates opting for law as career.[11] He brought together brilliant teachers and built an ecosystem which not only nurtured, but also credited meritocracy. Such was the effect that as on today nearly 24 National Law Schools have been established, on the lines of such 'one brave experiment'.[12]

As if the NLU experiment was not sufficient, Professor Menon repeated the feat and founded National University of Juridical Sciences, Kolkata (NUJS) and National Judicial Academy, Bhopal (NJA). For NUJS, he was invited by the West Bengal government to establish a law school in Kolkata. He served for 5 years (from 1998 to 2003) as the founder Vice-Chancellor of the NUJS. In so

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8 The idea of National Law School was first floated by Prof. G.S. Sharma, *see* G.S. Sharma, "*Some Thoughts on a National Law School for India*", 3 JAIPUR LAW JOURNAL 256 (1963).

9 Faizan Mustafa, *A Teacher, An Institution*, THE INDIAN EXPRESS, May 9, 2019.

10 The panel consists of Marc Galanter (Professor Wisconsin Law School) William Twinning (Professor, London University) and Savitri Gunasekere (Professor, Colombo University). See *Supra* n. 7, p. 408.

11 Presently, Law is amongst the most sought after course amongst younger generation. There has been exponential rise in the number of applicants for CLAT every year. In 2017, a total of 50, 676 applicants were registered. See Faizan Mustafa et al., "*Suggestions for Reforms at the National Law Universities Set Up through State Legislations*", National Academy of Legal Studies and Research, 2018.

12 *Supra* n. 9.

far NJA is concerned, the Supreme Court sought his expertise and appointed him as the founder Director of NJA till 2006.

Post retirement, Prof. Menon continued to remain active towards the betterment of Indian legal profession through active membership at various governmental or non-governmental or international bodies/institutions. Another significant contribution initiated through Prof. Menon was the formation of Menon Institute of Legal Advocacy Training (MILAT), which focuses on interactive trainings sessions for lawyers, law teachers, and legal aspirants.[13] The modules, courses and guidance MILAT as an institution has provided, in fact prompts agencies (both pubic as well as private) to seek assistance on multiple platforms. He also created and ran the M.K. Nambyar Academy for Continuing Legal Education in Kerala for developing grassroots capacity to access and use the law for underprivileged sections.[14] The academy works on a model that institutionalises methods of professional training towards professional development in all its dimensions. Besides creating institutions, he gracefully served on the Law Commission of India and other bodies and committees connected with legal education.

These institutions have laid down a platform for Indian legal fraternity to blossom. Prof. Menon opined that the coming generation of young law graduates have the potential of competing with the best of the lot. These are the ones who will shape the future of legal education in India, of course Prof. Menon did caution us to remain grounded and realise the challenges posed by globalisation process. He presented a far-reaching solution to such a concern and argues for strengthening constitutional mandate of access to justice. He gave valuable insights and suggestions on how the law colleges, BCI and Government agencies can coordinate towards enhancing access to justice for the disadvantaged groups.

The Teacher

In educating future legal educators, Prof. Menon was of the firm belief that any policy in this regard must be 'firm, forth-right and development oriented'.[15] He was sure that with the adoption of right methods one can 'succeed in inculcating the necessary perspective and initiative' amongst the future legal educators.[16] Teaching of law is not merely acquisition of information but to encourage students to think about law. In fact, he ardently advocated for law teachers to remain involved with research, especially on the impact of judgments at the grassroots level. He was of the firm opinion that law teaching is all about raising consciousness, and law schools must provide such platform

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13 MILAT is a charity educational institution registered in Trivandrum (Kerala) as a society to impart skill training among legal aspirants. It also undertakes research for law reform and development of the legal profession.

14 The M.K. Nambyar Academy for Continuing Legal Education is first of its kind in India, established jointly by the Bar Council of Kerala and the M.K. Nambyar Trust. More information available at http://www.nacleindia.in/, (visited on May 16, 2019).

15 *Supra* n. 2, p. 120

16 *Ibid*.

wherein the appropriate role of both the bar and bench in defending the right of equal access to justice is examined critically.

The human element he brought to the teaching appears to be extraordinary. For many he was the father figure, a mentor who cares and valiantly dedicates his entire life for the betterment of the students. It was sheer dedication with right attitude that made him keep going. Fali S. Nariman describes such an attitude aptly, he says thus:[17]

> *Old teachers-like old lawyers---keep going not because of the need (or the greed) for money, but simply because there is a strange but stimulating pleasure in arduous work-be it manual or mental-which for some rare individuals like Menon gives complete satisfaction.*

The onerous responsibility or the pious obligation every teacher has 'compels them to remain lifelong learners, frontline researchers and eternal problem solvers'.[18] Perhaps, he was mindful of the fact that any implementation of the legal reforms requires proper placement of personnel who manage and run such institutions. In this regard he advocated for immediate action, which would prepare legal personnel appropriately so that they can respond effectively to the changing times. He also supported the idea of establishment of a national academy for the training of law teachers.[19] Prof. Menon was of the opinion that a competent teacher helps in the realization of nation building goals.[20] He has continuously rooted for ethics education through professional development systems.

How Prof. Menon would like to be remembered as teacher? Perhaps, as a teacher who not just changed but also motivated and converted the mind-set of the younger generation to not only 'join' law teaching but also 'encourage' enough to develop some sense towards nation building. Here another essential requirement demands observance of human excellence at par with academic excellence. Recognizing the efforts, the Society of Indian Law Firms (SILF), BAI and MILAT started an annual 'Best Law Teacher Award' comprising of a lakh of rupees and a plaque instituted in Prof. Menon's name to commemorate his services to the legal profession and legal education for more than half a century.

The Role Model

Acknowledging the role of teacher, which Prof. Menon performed with immense ease, Sajan Poovayya writes, 'one book, one pen, one teacher can

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17 Fali S. Nariman, *The Lawyers Master*, INDIAN EXPRESS, May 9, 2019.

18 R. Venkata Rao, "*On Being a Teacher*", CONTEMPORARY LAW REVIEW, Vol. 2, No. 1, 2018, pp. 45-46.

19 THE HANDBOOK OF CONFERENCE OF VICE-CHANCELLORS OF NATIONAL LAW UNIVERSITIES ON LEGAL EDUCATION REFORMS, 2018, p. 95 [HANDBOOK ON LEGAL EDUCATION REFORMS]. See also A.K. Avasthi, "*Powerlessness of the BCI to Improve Standards of Legal Education*", 46(1) JILI (2004), p. 76.

20 *Supra* n. 19, p. 36.

change a student's life, Dr Madhava Menon changed an entire generation'.[21] Sriram Panchu writes:

> *Legal education in India can be classified into two categories: the years before and after the advent of N.R. Madhava Menon.*[22]

He remained constantly engaged with those working in fields close to his heart, for they received regular advice, encouragement along with a valued friendship. In fact if education is a 'technique of transmitting civilisation',[23] then Prof. Menon will surely be remembered as one who succeeded in transmitting civilisation to generations of law students.

His work ethics was unparalleled, so much so that Fali S. Nariman termed him as an 'indomitable, the selfless, the-for-ever-hard-working Madhava Menon'.[24] The far from done attitude ensured that Prof. Menon continues to not only better things but also make sure that if any lacunae remain he himself will find out measures to correct the same. Despite extra ordinary commitments, he made sure that he caters and realizes the needs of anyone associated with him, especially students. For example, while justifying use of clinical legal education in reforming legal profession, Prof. Menon argued for improving the quality of practical training in law schools. He was very much critical of proliferation of law schools in India and argued that even with plenty of lawyers available, the society is not benefited (largely due to the shortage of good lawyers). Since lawyer's incompetency 'is its own form of injustice',[25] in order to correct such lacunae he suggested special attention towards practical training.[26] Another immediate effort is to draw law graduates towards sensitising the public about their legal rights and duties. Prof. Menon emphasised on focussing two core areas, *i.e.*, education on legal rights, and education on the availability and benefits of free legal aid. He argued for organising *Lok Adalats* with the help of the local bar and bench.[27]

Beyond individuals, he continued to be the source of inspiration for institutions. His critical evaluation of existing state of affairs in legal education system and thereupon recommendations and suggestions to correct such affairs were treated wholeheartedly. He himself received serious criticism, particularly with respect to the area of interest chosen by NLU graduates. Instead of shying away or finding excuses he came up with thinking answer; he argues that if NLU graduates do not seek to practise in lower courts or do not join judicial

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21 Sajan Poovayya, *Tribute: Dr. Madhava Menon Lives On*, BAR AND BENCH, May 09, 2019, https://barandbench.com/professor-dr-nr-madhava-menon-lives-on/, (visited on May 18, 2019).

22 Sriram Panchu, *The Madhava Menon Model of Legal Education*, THE HINDU, May 14, 2019.

23 Will Durant, THE STORY OF CIVILIZATION: OUR ORIENTAL HERITAGE, 1942, p. 4.

24 *Supra* n. 17.

25 *Supra* n. 1, p.171.

26 N.R. Madhava Menon and V. Nagaraj, "*Development of Clinical Teaching at the National Law School of India: An Experiment in Imparting Value Oriented Skills Training*", N.R. Madhava Menon (ed.), A HANDBOOK ON CLINICAL LEGAL EDUCATION, 1st ed. 1998, p. 238.

27 N.R. MADHAVA MENON, *Lok Adalat in Delhi: A Report from a Legal Education* Perspective, 1985, p. 2.

positions, then instead of finding faults in methods of NLU teachings, answer needs to be sought from the profession itself. Prof. Menon writes:[28]

> *Professionalism is an attitude and a culture developed and sustained by the legal practitioners including judges. Unless they themselves put their houses in order, law schools can do little to influence changes in standards of professionalism in its ranks.*

Prof. Menon with regards to growing criticism of the judiciary for its alleged lack of accountability was concerned with the sullied image of Indian judiciary. He opines that:[29]

> *If in the initial four decades there were hardly any allegation of judicial misdemeanour, in the last two decades there have been many uninvestigated allegations of judicial misbehaviour.... While the higher judiciary in India has powers to discipline every organ of government, it is ironical that it has no effective powers to discipline its own members! Judicial accountability is inseparable from judicial independence. The challenge before the Nation is how to secure judicial accountability without impairing judicial independence.*

His straightforwardness, openness and problem-solving attitude rightly place him as a teacher extraordinaire and a human being par excellence. Very few would have the courage of conviction to make honest introspection. Fali S. Nariman, observes:[30]

> *When a great oak tree falls, the forest is never the same. India's greatest educationist has passed away and the citadel of the law is in a state of temporary eclipse. Menon was not only a great teacher of the law; he was its inspiration.*

Father of Modern Indian Legal Education

Post-Independence India saw brave efforts of reforms in education. The idea was to develop our own set up, other than the colonial. This brought first generation of legal reform into picture, which saw development of some attitude with regards to legal education and research.[31] These however, were not sufficient for a young nation and further reforms were required. Back in 1973 itself when, Indian legal education was merely developing a thought regarding reforms in the impartation of legal education, Prof. Menon in fact identified four

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28 *Supra* n. 7, p. 408.

29 N.R. Madhava Menon, "*Law and Justice: A Look at the Role and Performance of Indian Judiciary*", Address delivered at the Berkeley Seminar Series on Law and Democracy held at University of California, September 2008,

http://southasia.berkeley.edu/sites/default/files/shared/events/2008_Indian_Democracy/Menon LawANDJustice-ALook.pdf, (visited on May 19, 2019).

30 *Supra* n. 17.

31 First generation Professors R.U. Singh, G.S. Sharma, Anandjee, A.T. Markose, M.P. Jain, Ajjappa, P.K. Tripathi, Shiv Dayal, Paras Diwan.

areas wherein reforms can be looked upon.[32] He brought inter-disciplinary approach to legal education, and blended it with problem-based learning methodologies, which instantly catapulted students to higher thresholds of excellence. It is in these lines the second generation of legal reforms revolved around.[33] Thereafter as the founder of new wave in legal education, Prof. Menon identified his commitment towards professional and clinical legal education He was of the opinion that clinical legal education is closely related to the broader goals of teaching justice, particularly when it engages students to a meaningful relationship with their clients, legal institutions, and the community.

While examining the essential aspects of professional attitude, he opines that continued self-education must be the attribute of any right-minded-professional. These attributes are not inherited but are learnt, cultivated and nourished. He writes:[34]

> *It has to do with sensitivity to professional responsibility, due diligence in handling clients' affairs, loyalty to the profession, orderliness in management of tasks and commitment to quality in all circumstances.*

It was not his case that he was merely concerned for the NLUs. Having laid down the standards for legal education, Prof. Menon was critical of the state of legal education in institutions other than NLUs. He writes:[35]

> *The profession is organised like a pyramid in which the top 20 per cent command 80 per cent of paying work, the middle 30 per cent managing to survive by catering to the needs of the middle class and government litigation, while the bottom 50 percent barely survive with legal aid cases and cases managed through undesirable and exploitative methods! Given the poor quality of legal education in the majority of the so-called law colleges (over a thousand of them working in small towns and panchayats without infrastructure and competent faculty), what happened with uncontrolled expansion was the overcrowding of ill-equipped lawyers in the bottom 50 percent of the profession fighting for a piece of the cake.*

As a result of such humongous size (50%+30%) of not-so-skilled or trained segment, they get represented into professional bodies and control management of the entire profession. It is not his nature that he merely criticises for the sake of criticism, for those who knew him; there are messages and logic hidden in his

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32 *Supra* n. 2, p. 120 (The four categories were Curriculum reform, Inter-disciplinary teaching and research, Re-structuring post graduate legal education and Problem oriented examination system).

33 Second generation Professors B.S. Murthy, T.S. Rama Rao, S.N. Jain, S.K. Agarwala, S.P. Sathe, Phiroze Irani, D.N. Saraf, R.K. Misra, I.C. Saxena, M.P. Jain, Mohammad Ghouse.

34 N.R. Madhava Menon, *Raising the Bar for the Legal* Profession, THE HINDU, September 15, 2012.

35 *Ibid*.

words. If 'ill-equipped lawyers' (80%) govern professional bodies, the 'so-called leaders' (20%) also care less for what is happening to the profession. He took such a situation as a challenge and observed that 'globalisation, technological revolution and economic liberalisation' has opened up opportunities for legally trained persons to grow phenomenally. He argued for reintroduction of continuing legal education (CLE) as a concept of appreciating and developing professional competency.

In 1970's and 80's the Bar Council of India Trust organised few CLE programmes, which was well received amongst the lawyers. However, over the course of time, particularly with the drift towards mediocrity, CLE lost its much deserved charm. There are certain signs for its re-emergence. Two of such signs are: (a) The idea of specialisation in legal practice e.g. criminal advocacy, constitutional litigation, matrimonial adjudication, commercial law practice, etc. and (b) The issue of professional ethics. The first aspect i.e. (a), is taken care of (though largely through law schools in the form of strict compliance with Masters), however with respect to the second aspect i.e. (b), no training whatsoever came to be acknowledged.[36]

The CLE programmes elsewhere in the world are inculcated into the long-term professional studies, so as to bring some sense of public service to the profession, thereby to enlarge access to justice for the unprivileged section of the society. Another aspect catered through CLE programmes is the relevance and usefulness of continuing education for bettering skills in the emerging areas of legal practice.[37] Gone are the days of general practitioner, now is the time for specialists or super specialists. Competency (knowledge), accountability (attitude and value) and quality of services (skills and ability) have entered the scene. These are qualities expected from a professional and are indispensable for maintaining dignity and relevance to profession. He argues that law colleges must think beyond knowledge and must work towards application of knowledge. He opines:[38]

> *Legal education in colleges hardly teaches anything more than knowledge and that too inadequately. Some skills are acquired in early days of practice through observation and participation. CLE alone can possibly give the rest to provide competence to a young lawyer for whom professional bodies at present have no alternatives to offer. In the past, a year-long apprenticeship and a bar examination hopefully provided some insight into abilities, values and attitudes. They have been abolished and the new entrants are left to their fate!*

Prof. Menon was of the opinion that, with the changing nature of law (from diversified to highly specialised field), adequate efforts are required for the

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36 Prakash Sharma, "*Continuing Legal Education: Rethinking Professional Ethics and Responsibility in India*", ASIAN JOURNAL OF LEGAL EDUCATION, Vol. 5, No. 2, 2018, p. 152.

37 *Ibid*, p. 158.

38 *Supra* n. 34.

time-to-time-training in the form of CLE and professional development to keep oneself abreast of changes.[39] He proposed a full-fledged court functioning, attached within the premises of NLUs, to enhance and enable students to learn and absorb courtroom ethics, professional skills and alternative lawyering skills.[40] Another suggestion was the establishment of legal aid clinics and mediation centres within the NLUs to enable students practise alternative lawyering skills.[41] Initially when no institution was ready to ponder or even offer CLE programmes, Prof. Menon realised this concern and through MILAT started programmes relevant to the changing demands of the legal market. Later NLSIU, for the first time in India, established a Chair on CLE with the support from the IBA.[42] This has helped NLSIU to set up CLE centres for institutionalising CLE at all levels of the system.

Further, he argued that with continuous increase in trade and commerce, the 'character of legal profession' will change from 'litigation centric to arbitration and consultant based services'. The transformation in legal profession demands adoption of CLE facilities on the priority basis. The trend appears to be suggestive in this regard, for example, under the World Trade Organisations guidelines, legal services have obtained the status of tradable entry and accordingly multinationals (backed through developed states) are raising concerns, both at bilateral as well as multilateral platforms, to gain access to legal services market.[43] This presents opportunities for NLUs to develop expertise in legal matters with global perspective.

Further, the constant interaction of cross-border trade and investment laws calls for changes within the complexion of legal practice. Lawyers today are expected to be able to advise on transnational deals, provide foreign investors with perspectives on domestic laws and legal systems and also to resolve commercial disputes of an international nature in the court proceedings as well as before international arbitral tribunals.[44] This provides massive opportunity for Indian legal education to focus and present regional aspirations before the world. He was of the opinion that India could be hugely benefitted through the South Asian Association for Regional Cooperation (SAARC), which presents

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39 *Supra* n. 19, p. 37.

40 *Supra* n. 19, p. 94.

41 *Supra* n. 19, p. 94.

42 The NLSIU has been conducting series of CLE programmes for lawyers, judges, administrators and law teachers on identified subject areas. A variety of para legal and public legal education programmes are part of the teaching and research agenda of NLSIU and the CLE unit. In addition to this, IBA-CLE Unit undertakes conduct of CLE programmes on agreed terms, with other organisations, https://www.nls.ac.in/index.php?option=com_content&view=article&id=58&Itemid=, (visited on May 22, 2019).

43 Helmut Wagner, "*Costs of Legal Uncertainty: Is Harmonization of Law a Good Solution?*", MODERN LAW FOR GLOBAL COMMERCE: PROCEEDINGS OF THE CONGRESS OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW (United Nations, Vienna, 2011), http://www.uncitral.org/pdf/english/congress/09-83930_Ebook.pdf, (visited on May 22, 2019).

44 Sundaresh Menon, "*Transnational Commercial Law: Realities, Challenges and a Call for Meaningful Convergence*", SINGAPORE JOURNAL LEGAL STUDIES, 2013, p. 231.

an opportunity for integration of economies and convergence of legal regimes.[45] The competitive excellence gained through NLUs could be utilised in preparing a level playing field in the process of transformation. Arguing for establishments of South Asian specific needs for legal education, perhaps reveals the futuristic perception of Prof. Menon.

Concluding Remarks

The above expositions of Prof. Menon on various aspects of legal education reveal that he never tried to understand the law from the perspective of 'law in books' but always from 'law in action'. At the same time, he did not confine himself to the distorted picture of law presented by some jurists/judges or from some predetermined/selective researchers. He tried to learn the law from its original sources in its letter and spirit and after understanding theories, developed a scholarship that ultimately resulted into a meaningful legal education. This is the reason why we find that his writings quote extensively such original sources that reveal true picture of both knowledge and skill impartation.

The idea of NLUs is a cherished idea, nurtured carefully and arrived fortuitously within the landscape of Indian legal education. Prof. Menon laid down the foundations of these distinctive institutional legacies. He didn't just stop here; post NLUs he continues to address the challenges of providing access and legal services to the poor and unrepresented. In this regard he argues for immediate action to correct such an aspect of Indian legal education and emphasized on realization of meaningful legal education (at par with constitutional mandate). Indian legal institutions must realise and admire the worth of Prof. Menon, a visionary who was way ahead of times. The ever so young Professor left us at the age of 84, but the ideals, principles and a great legacy he left behind for us continues to live with us for many more generations. He did leave an impressionable image on whosoever he had ever met, and set us an example to be emulated. The need is to ensure that legal fraternity of India continues to recognize and remember the unique, historic and invaluable contribution made by one and only Prof. Menon.

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45 Prof. N.R. Madhava Menon continued a fruitful association with SAARC and in collaboration with various organisations successfully organised competitions like Prof. N.R. Madhava Menon SAARCLAW Mooting Competition and Law Students Conference and Colloquium.

EMERGENCE OF NATIONAL LAW UNIVERSITIES AND LEGAL EDUCATION IN INDIA: LEARNING THROUGH EXPERIMENTS

Vijender Kumar[♣]

Abstract

Prof. (Dr.) N.R. Madhava Menon, the father of modern Indian legal education, during his lifetime, has inspired countless lawyers and law teachers. His experiment of establishing National Law School of India University, Bangalore stimulated various state governments to establish NLU in their respective states and establishing National Judicial Academy, Bhopal giving professional training to judicial functionaries. The author has been fortunate to interact with Prof. Menon on several occasions. The author fondly remembers his first interaction with Prof. Menon in February 1999 at S.D.M. Law College, Mangalore, when the author had said that 'a successful law teacher must work thirty hours a day', and asked how is it possible, replying to which Prof. Menon explained how we can work multi-fold at a time to achieve target of thirty hours within twenty-four hours of a day. Since then the author is working tirelessly to contribute to legal education and profession. It's unfortunate, our academic fraternity has lost Prof. Menon on May 8, 2019 and it's a difficult task to find an eminent professor like him to carry forward his unfinished agenda on 'clinical and continuing legal education' while sacrificing himself for the cause of legal education. The rampant number of CLAT applicants reflects the potentiality of legal profession, as envisioned while creating first NLU and the lawyers graduating from these NLUs have brought considerable reform to legal profession. However, Bar, Bench and Academia linkage needs to be strengthened further requiring timely introspection about quality teaching and research. This paper attempts to chronicle the emergence of NLUs, as modern Gurukuls of law, starting in 1988 under the dynamic leadership of Prof. Menon and to explore the transformation of legal education and profession into preferred destination in contemporary world from being an ignored profession in the past.

Keywords: Choice Based Credit System, Extra Credit Course, Gurukul System, Law School, Institution of Eminence.

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Introduction

'Teaching' is not only dissemination of knowledge on the subject but also a test of one's persona; preparation and presentation adequately; listen intently; and answer relatively. Until recently, teaching was considered more of pious duty, a way of life led by virtues, wherein abundant wealth of knowledge was to be disseminated among the learners to a great extent in informal mode of learning rather than formal ways; however, in contemporary times, teaching is considered as a 'profession' attached with qualification, training, publication, and procedural attire; as one of the modes of livelihood. Justice K. Ramaswamy in *State of Maharashtra v. Vikas Sahebrao Roundale*[1] observed that

> *The teacher plays pivotal role in moulding the career, character and moral fibres and aptitude for educational excellence in impressive young children. The formal education needs proper equipping by the teachers to meet the challenges of the day to impart lessons with latest technics to the students on secular, scientific and rational outlook. A well-equipped teacher could bring the needed skill and intellectual capabilities to the students in their pursuits. The teacher is adorned as Gurudevobhava, next after parents, as he is a Principal instrument to awakening the child to the cultural ethos, intellectual excellence and discipline. The teachers, therefore, must keep abreast ever changing technics, the needs of the society and to cope up with the psychological approach to the aptitudes of the children to perform that pivotal role*[2].

Further, Justice P.K. Balasubramanyan in *Sushmita Basu v. Ballygunge Siksha Samity*[3] observed that

> *The profession of teaching is a noble profession. It is not an employment in the sense of it being merely an earner of bread and butter. A teacher fulfils a great role in the life of the nation. He is the 'guru'. It is the teacher, who moulds its future citizens by imparting to his students not only knowledge, but also a sense of duty, righteousness and dedication to the welfare of the nation, in addition to other qualities of head and heart. If teachers clamour for more salaries and perquisites, the normal consequence in the case of private educational institutions, if the demand is conceded, would be to pass on the burden to the students by increasing the fees payable by the students. Teachers must ask themselves whether they should be the cause for putting education beyond the ken of children of parents of average families with average incomes"*[4].

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1 *State of Maharashtra v. Vikas Sahebrao Roundale* AIR 1992 SC 1926: 1992 SCR (3) 792.
2 *Ibid*.
3 *Sushmita Basu v. Ballygunge Siksha Samity* (2006) 7 SCC 680.
4 *Ibid*., ¶ 5.

Basically, teaching is not a lucrative job; rather, in teaching process sharing of knowledge amongst the wilful disciples is the real and paramount consideration. Therefore, shifting of dynamics from passion to professional and helping next generation to the profession for survival with new outlook has changed the gambit of teaching profession in general and the legal education in particular. A teacher, who's accessible to his/her students with absolute no airs at all, strikes an instant and lifelong rapport with students; it's said that two of the greatest teachers of all time Socrates[5] and Aristotle[6] never sat on a higher pedestal while teaching their students who they called their 'cerebral extension'. A teacher doesn't just impart knowledge; he/she guides the students and shows them a direction to follow. After parents, it's the teacher who a student forever remembers or likes to forget as the case may be. Aurangzeb[7], who never liked anyone in life and even had doubts about his son's integrity, loved and respected just one person, his teacher, who taught him history and Quranic verses. A teacher is indeed a student's parental substitute. The *Gurukul* system of ancient India had 'parental substitute' at its bottom. Ishopanishad[8] calls a teacher 'one of the student's three parents'- *Ekam isthi tritya abhibhavakam*.[9]

Let's not forget that in the ancient and medieval period, learning was on the attachment theory wherein teacher and the taught lived together in a *Gurukul*- a temple of learning. A holistic learning about spirituality, social-life, professional-life, and political-life were taught with the best possible skills having no external evaluation pattern of life. But, in the modern times, learning has become too mechanical where teacher and the taught have nothing to do

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5 Socrates was a classical Greek (Athenian) philosopher credited as one of the founders of Western philosophy, and as being the first moral philosopher of the Western ethical tradition of thought. An enigmatic figure, he made no writings, and is known chiefly through the accounts of classical writers writing after his lifetime, particularly his students Plato and Xenophon… Plato's dialogues are among the most comprehensive accounts of Socrates to survive from antiquity, from which Socrates has become renowned for his contributions to the fields of ethics and epistemology. It is this Platonic Socrates who lends his name to the concepts of Socratic irony and the Socratic method, or *elenchus*. More details can be viewed at https://en.wikipedia.org/wiki/Socrates, (visited on June 21, 2019).

6 Aristotle was a Greek philosopher during the Classical period in Ancient Greece, the founder of the Lyceum and the Peripatetic school of philosophy and Aristotelian tradition. Along with his teacher Plato, he has been called the "Father of Western Philosophy". His writings cover many subjects… As a result, his philosophy has exerted a unique influence on almost every form of knowledge in the West and it continues to be a subject of contemporary philosophical discussion. More details can be viewed at https://en.wikipedia.org/wiki/Aristotle, (visited on June 21, 2019).

7 Muhi-ud-Din Muhammad, commonly known by the sobriquet Aurangzeb or by his regnal title 'Alamgir', was the sixth Mughal emperor, who ruled over nearly the entire Indian subcontinent for a period of 49 years. More details can be viewed at https://en.wikipedia.org/wiki/Aurangzeb, (visited on June 21, 2019).

8 Swami Nirvikarananda, "*Isha Upanishad*", a key scripture of the Vedanta sub-schools, and an influential *Śruti* to diverse schools of Hinduism. The text discusses the Atman (Soul, Self) theory of Hinduism, and is referenced by both *Dvaita* (dualism) and *Advaita* (non-dualism) sub-schools of Vedanta. More details can be viewed at https://www.wisdomlib.org/hinduism/book/isha-upanishad/d/doc122461.html, (visited on June 21, 2019).

9 Sumit Paul, "*A Real Teacher*", THE HITAVADA, Nagpur, June 9, 2019, p. 10.

with wellness of each other. Eventually, both of them are detached from each other wherein one is doing his/ her service towards teaching and training and the other is following the instructions as provided to him/ her in the classroom in a most formal way but only about how one can get a job of choice in life to earn maximum wealth and become a rich person rapidly. However, in this exercise both, teacher and taught, have forgotten that wealth or richness is not all about the education and it cannot bring happiness in one's life or just formal education alone cannot bring a job of one's choice. Life of teacher or taught is precious, we get it only once, either you make it, lead it in professional way, enjoy it with fullest possible success, but once; hence, how to make one's life more meaningful rather successful, it depends on the kind of education one's received in life. There comes the real job of a teacher, who without realising his own pain or sufferings in life, makes life of his disciples.

Today's law teacher is serving professionally; taking teaching as career/job; serving it as per service conditions; however, commitment/passion towards teaching among the teachers is missing. The same is happening in research as well, majority of young teachers focus on research just from an Academic Performance Index (API) scores point of view whereas they hardly concentrate on quality research or impact factors of their research in socio-legal perspectives. In such circumstances, the time has come to introspect whether 'teaching' remains passion or it has become 'profession'; and whether teachers are serving themselves or contributing in making career of their students. Further, hard-core reality of this profession, nowadays, is that most of the young qualified teachers agree to take up teaching with full commitment only at the time of entry but once their appointment is confirmed on fulfilment of probation period, suddenly over night, they become expert in their respective subject(s) and in the pretext of their expertise, they do not accept more than a subject of their choice to teach or supervise research. If extra teaching workload or administrative responsibility or extra-curricular assignments are assigned, they remind the administration about their workload, and if ignored for long, they do not mind to approach either the statutory bodies or the court to exhort their rights/claim against extra assignments. Furthermore, it becomes difficult for the administration to assign any additional work such as member of the examination committee, moderation committee, editorial committee, disciplinary committee etc., as they suddenly become too busy in their personal research or research for the funded project or providing legal advice as an expert, arbitrator, mediator, conciliator etc.

Nowadays, even at National Law Universities, teachers and taught are governed by clockwise parameters within working hours and days as per the academic calendar of these educational institutions. Whereas learning of students is not a paramount consideration but smoothly running of institution is; wellbeing of students is not but state-of-the-art-infrastructure is; contents of a lecture is not but retention of teacher is; quality research and its publication is not but number of campus placements is; hence, present teachers and taught are leading their life clueless and directionless which alarms us to think seriously on main concern of education to cater to the needs of law abiding society. Those

who think that they are the well-wishers of the legal education and legal profession and wish to maintain its novelty, tool to help the needy and access to 'Justice to All' are required to introspect towards upholding high standard and professional ethics of law teachers. Therefore, the paper explores emergence of NLUs as modern *Gurukuls* of legal education and explores changing dynamics of legal education and teaching pedagogy. It also attempts to highlight ongoing academic and administrative affairs of these modern *Gurukuls*.

Education in Ancient India

To explore as to how to improve our higher education system, the author would like to add that he sincerely believes it is extremely relevant, especially in today's all-pervading spectre of the dismal quality we see in our higher education. The author has always strongly believed that the main purpose of education is to ensure all-round development of personality, and further believes that nowhere was this aim more effectively achieved than in the *Gurukul* system of learning of ancient India. So let's briefly look at what the *Gurukul* system. The '*Guru*' refers to one who dispels the darkness of ignorance; *Guru* is a teacher.[10] '*Kula'* refers to a family or a clan.[11] '*Gurukul'* is an ancient Indian concept of education wherein the pupil learnt by residing with the teacher as a part of his family. In ancient India, after the thread ceremony was performed, at the age of eight, male children would leave their homes and their loved ones and live at the *Gurukul* for twelve years to learn at the feet of their *Gurus*. Life in the *Gurukul* was tough, full of discipline, hard work and dedication. But, at the end of their training, the students emerged as responsible individuals, well-learned and capable of facing the toughest challenges of life.

In those times, *Gurus* did not admit anybody and everybody as their 'disciples' or '*Shisyas'*. The *Guru* first took test, identified the capacity of *Shishya* (student) and only then imparted them the relevant knowledge. The *Shishyas* were in close contact with nature. Apart from learning, the *Shishya* also had to contribute in the household chores and give all the kind of assistance to '*Gurumata'* who took care of them as their mother. At the end of their training, the *Shishya* thanked the *Guru* by giving him '*Guru-dakshina*' or an offering.

In this connection, we all know the story of Ekalavya, born in a lowly family, who cut off his thumb and offered it to his *Guru* Dronacharya as *Guru-dakshina*, when he was asked to do so by his *Guru*.[12] The *Guru* occupied an exalted position and rendered guidance through teaching and personal supervision. This process was best illustrated by other examples such as in Ramayana, where *King* Dasharatha had entrusted his sons: Rama and Lakshman

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10 Stephen Jacobs, THE ART OF LIVING FOUNDATION: SPIRITUALITY AND WELLBEING IN THE GLOBAL CONTEXT, 2016.

11 Vesna Wallace, THE INNER KALACAKRATANTRA: A BUDDHIST TANTRIC VIEW OF THE INDIVIDUAL, 2001, p. 110.

12 Hansa Pathak, THE OFFERING: THE STORY OF EKALAVYA AND DRONACHARYA, 2011.

to the care of *Rishi* Vishvamitra.[13] In Mahabharata, *Lord* Krishna too studied at the *Gurukul* of Sandipani *Rishi*. The Kaurawa and Pandav princes went to the *Gurukul* of *Guru* Dronacharya.[14] Since those ancient times, the *Guru-shishya* tradition has continued in India until recently. Whether it is the learning of scriptures, different art forms, like dance, music etc., we have the examples of Ustad Allarakha Qureshi, legendary father and *Guru* of Ustad Zakhir Hussain[15], training his disciple through this way of learning. In dance form, we have Pandit Birju Maharaj, the Kathak *Guru* and his (*Shishya*) Saswati Sen, following this tradition. Similarly, the sarod Maestro Amjad Ali Khan and his two talented sons and *(Shishyas*) Amaan and Ayam have publicly declared that this Tehzeeb (way of life), from times immemorial, sustained them.

The *Gurukul* system had several great advantages: *Shishyas* (disciples) received knowledge in all subjects and developed an all-round personality at the end of the twelve-year training period, under the personal guidance and supervision of their *Gurus*; they received practical knowledge; children were taught to live in the *Gurukul* with meagre things, and thus practiced, 'Simple living and high thinking'[16]; they were close to nature: classes were held below trees in the jungle where the children felt more comfortable; *Shishyas* were imparted various skills like singing, dancing, archery, personal combat etc.; a *Gurukul* was a complete, comprehensive and integrated learning centre; and *Shishyas* were taught important values and ideals, manners and *Sanskaras* which shaped their personalities and helped them in their future life. Of course, the same system also had many disadvantages, such as, only *Shishyas* of noble families were allowed: Ekalavya, born to poor parents of lower caste who learnt archery from afar by observation, could not join; females were not allowed, so there was discrimination; the *Guru's* word was final and the *Shishyas* could not argue or put across their point of view etc. But, the advantages far outweighed the disadvantages.

This system of education created all-round human beings by teaching students everything, from spirituality, warfare to even the dynamics of dirty politics. In the words of Vijaya Lakshmi Pandit, "*education is not merely a means for earning a living or an instrument for the acquisition of wealth. It is an initiation into life of spirit, a training of the human soul in the pursuit of truth and the practice of virtue*"[17]. As rightly said by Dr. A.P.J. Abdul Kalam that, "*you cannot change your future, but you can change your habits, and surely your habits will change your future*"[18].

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13 Ananda Kentish Coomaraswamy, Margaret Elizabeth Noble and Sister Nivedita, MYTHS OF THE HINDUS AND BUDDHISTS, 1967, p. 27.

14 K.K. Sinha, Ajay Soni and Indranil Mitra (eds.), MANTHAN: ART AND SCIENCE OF DEVELOPING LEADERS, 2017.

15 Ustad Zakir Hussain is a Tabla virtuoso, composer, percussionist, music producer, film actor and eldest son of legendary Tabla player Ustad Allah Rakha. More details can be viewed at https://en.wikipedia.org/wiki/Zakir_Hussain_(musician), (visited on June 21, 2019).

16 Aruna Goel and S.L. Goel, HUMAN VALUES AND EDUCATION, 2005, p. 519.

17 Vijaya Lakshmi Pandit, THE EVOLUTION OF INDIA, 1958, p. 19.

18 Mukesh Choudhary, ARE YOU PROGRAMMED TO FAIL?, 2016, p. 60.

Upholding ancient educational identity and ideology with the professional outlook, especially in legal education and profession, National Law School emerged for the first time in 1988 in the city of Bangalore, Karnataka, in the form of National Law School of India University, Bangalore as a modern *Gurukul* for the contemporary legal education and profession wherein all the students, research scholars, faculty members and the non-teaching staff live within the campus of the University. A unique feature of modern *Gurukul* is to invite students at an early age under the slogan of 'Catch Them Young' so that they remain focused with holistic learning out of which they make their professional career. Following are the lines to explore how the first National Law School was established and evolution of NLUs came into being in India.

Evolution of National Law Universities in India

After the enactment of Advocates' Act, 1961 the Bar Council of India (BCI) came into existence. Section 7(1)(h)[19] of the said Act gave it power to promote legal education and lay down standards of such education in consultation with universities. While its first Chairman Motilal Chimanlal Setalvad, also India's first Attorney General[20] along with other stalwarts in legal profession *viz.*, C.K. Daphtary, Jagdish Swaroop, etc. were engaged in improving the standard of legal education, a notice came to be served on the Bar Council of India, by the Income Tax Department to pay tax on its revenue collected from enrolment fee. The tax planning, consequent to the Income Tax notice persuaded the Bar Council of India to seek exemption under the appropriate provisions of the Income Tax Act 1961 by creating a Public Charitable Trust, in the name of Bar Council of India Trust. Among the avowed objectives of the said trust was to establish one or more model Law Colleges in India where legal education of high standard may be imparted, publish standard law books, grant scholarships to deserving and meritorious students, establish standard libraries in Delhi and other places, publish translations of various statutes and important textbooks in Hindi and other regional languages.

As documents were required to be produced before the Income Tax Department to show steps taken towards establishment of the aforementioned model Law College, the Bar Council of India referred the matter to its statutory Legal Education Committee (LEC), constituting of 10 members-5 elected from BCI and 5 others co-opted. As a practice, out of the 5 co-opted members, one used to be former Chief Justice of India and four were eminent professors from academia. It was a well-balanced, well-meaning prestigious committee, so much so that Justice M. Hidayatullah, former Chief Justice of India in 1970, continued to be Chairman of LEC, even during the period (1979-84) he occupied the high constitutional post of Vice-President of India, along with eminent lawyers like Shri Ram Jethmalani, Shri Ranjeet Mohanty, Shri Rajendra Singh and Prof.

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19 Section 7(1)(h) of the Advocates Act 1961 reads as "*to promote legal education and to lay down standards of such education in consultation with the Universities in India imparting such education and the State Bar Council*".

20 M.C. Setalvad, *Legends of the Bar*, THE BAR COUNCIL OF INDIA, http://www.barcouncilofindia.org/about/legends-of-the-bar/m-c-setalvad/, (visited on June 29, 2019).

Upendra Baxi from academics. One of the items on the agenda of the Legal Education Committee was to consider establishment of Law colleges to fulfil the prominent objective of the Trust for seeking exemption under the provision of the Income Tax Act. Justice M. Hidayatullah spearheaded the concept of a Law School on the lines of Harvard Law School,[21] which would be led by a diverse and dedicated group of faculty and law scholars, would be autonomous in nature, completely self-financed, not take any financial aid from government or regulatory bodies and in turn not permit their interference. The vision of Justice Hidayatullah was discussed in a number of the Legal Education Committee meetings. Prof. Upendra Baxi, eminent jurist who was co-opted member of the Legal Education Committee undertook the spadework and the entire legal education scenario of the country was set to undergo a metamorphosis.

Incidentally, at the same time a Joint Consultative Committee of the University Grants Commission (UGC) and the Bar Council of India recommended a 4-year integrated Law Course after 10+2 schooling. The Legal Education Committee, in its turn, recommended establishment of Law School (mono-university of Law) with 5-year double degree integrated Law Course. As an offshoot of its mono-university recommendation, the Bar Council of India decided to scrap the earlier 3 year course which faced stiff opposition from academia throughout the country. The issue was taken up by the UGC and the BCI Joint Panel, under the Chairmanship of Prof. Rais Ahmed which approved the Law School concept, but asked the BCI to withdraw the decision to scrap 3-year degree course. Finally, in the year 1985, the BCI resolved to allow both the 3-year and 5-year law course to function simultaneously. The BCI approached almost all the state governments to help them in establishing Law School under its stewardship. None of the state governments showed any interest except the visionary Chief Minister of Karnataka, Shri Ramkrishna Hegde. Consequently, a Law School denominated as National Law School of India University (NLSIU)[22] was established at Bangalore in 1988. Shri Ramkrishna Hegde also provided 16 acres of land and a sum of Rs.50/- lakh with the Bar Council of India contributing just Rs.20/- lakh. Further, Prof. Upendra Baxi was supposed to translate the Law School vision into reality since he had indeed conceived it with Justice M. Hidayatullah and other members of the Legal Education Committee. Though he did not explicitly decline the responsibility but he had certain commitments in Delhi. After failing to find any other Professor of Law to take up the role of Director of NLSIU Bangalore, the BCI made an offer to Prof. N.R. Madhava Menon, Professor of Delhi University and a person acquainted with the goal as he was already working with the BCI as part-time Secretary of the Bar Council of India Trust. Prof. Menon accepted the challenge and the first batch of law graduates from Law School came out in the year 1993.

21 Harvard Law School is one of the professional graduate schools of Harvard University located in Cambridge, Massachusetts. Founded in 1817, it is the oldest continuously operating law school in the United States and one of the most prestigious in the world. More details can be viewed at https://en.wikipedia.org/wiki/Harvard_Law_School, (visited on June 29, 2019).

22 The National Law School of India Act 1986 (Karnataka Act No. 22 of 1986).

The NLSIU, Bangalore is only the law school in India which was set up by the Bar Council of India whereas rest of the NLUs are the creation of respective state governments.

Furthermore, another significant development was the constitution of Judges' Committee headed by Justice A.M. Ahmadi, in pursuance of the resolution of Chief Justices' Conference held in December 1993, to suggest steps to be taken to improve the standard of legal education. Justice Ahmadi's Committee recommended establishment of NLSIU type law schools in every state and also recommended re-constitution of LEC in a manner which would reflect participation of representatives from Judiciary, Bar, UGC, MHRD and other stakeholders. Thus, after one decade of the establishment of NLSIU Bengaluru; National Academy of Legal Studies and Research (NALSAR) at Hyderabad, National Law Institute University (NLIU) at Bhopal, West Bengal National University of Juridical Sciences (WBNUJS) at Kolkata and National Law University (NLU) at Jodhpur were established as autonomous National Law Universities by the respective state governments.[23] These NLUs were established on the traditional *Gurukul* system as modern *Gurukuls* of law with fully residential facility.

Following successful experiment of NLSIU, Bangalore a number of national law universities are established by the State Legislatures in the country. Whether the desired objectives are fulfilled or not is a debatable issue. But, one thing is clear that these national law universities have changed the face of legal education in the country. Certainly, quality of legal profession has improved but not to the satisfaction of the original idea or ideology. Following are these NLUs emerged on the model of NLSIU, Bangalore: National Academy of Legal Studies and Research (NALSAR) University of Law, Hyderabad[24] in 1998; National Law Institute University (NLIU), Bhopal[25] in 1998; The West Bengal National University of Juridical Sciences (WBNUJS), Kolkata[26] in 2000; National Law University (NLU), Jodhpur[27] in 2001; Hidayatullah National Law University (HNLU), Raipur[28] in 2003; Gujarat National Law University (GNLU), Gandhinagar[29] in 2004; Dr. Ram Manohar Lohiya National Law

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23 N.M. Mathur, "*National Law Universities, Original Intent and Real Founders*", http://www.livelaw.in/national-law-universities-original-intent-real-founders/, July 24, 2017, (visited on November 20, 2017). Justice N.M. Mathur is a former Judge of the High Court of Rajasthan and former Vice-Chancellor of National Law University, Jodhpur. He had been a member of Legal Education Committee of the Bar Council of India representing the Bar.

24 National Academy of Legal Studies and Research University Act 1998 (Andhra Pradesh Act of 34 of 1998).

25 The National Law Institute University, Bhopal (NLIU), was established by the Rashtriya Vidhi Sansthan Vishwavidyalaya Adhiniyam, by an Act No. 41 of 1997 enacted by the Madhya Pradesh State Legislature.

26 The West Bengal National University of Juridical Sciences Act 1999 (WB Act No. IX of 1999).

27 The National Law University Act, 1999 (Act No. 22 of 1999).

28 The Hidayatullah National University of Law Chhattisgarh Act 2003 (CHH Act No. 10 of 2003).

29 The Gujarat National Law University Act 2003.

University (RMLNLU), Lucknow[30] in 2005; Rajiv Gandhi National University of Law (RGNUL), Punjab (Patiala)[31] in 2005; Chanakya National Law University (CNLU), Patna[32] in 2005; National University of Advanced Legal Studies (NUALS), Kochi[33] in 2002; National Law University (NLUO), Cuttack[34] in 2008; National Law University Delhi (NLUD)[35] in 2008; National University of Study and Research in Law (NUSRL), Ranchi[36] in 2009; National Law University and Judicial Academy (NLUJAA), Assam (Guwahati)[37] in 2011; Damodaran Sanjivayya National Law University (DSNLU), Visakhapatnam[38] in 2009; The Tamil Nadu National Law School (TNNLS), Tiruchirapalli[39] in 2012; Maharashtra National Law University (MNLUM), Mumbai[40] in 2015; Maharashtra National Law University (MNLUN), Nagpur[41] in 2016; Himachal Pradesh National Law University (HPNLU), Shimla[42] in 2016; Maharashtra National Law University (MNLUA), Aurangabad[43] in 2017; Dharmashastra National Law University (DNLU), Jabalpur[44] in 2017; and Dr. B.R. Ambedkar National Law University, Rai, Sonipat[45] in 2012 but started working in 2018 for the postgraduate degree/diploma courses only. Further, there are some more national law universities in the pipeline which may see the light of the day in due course of time.

While invoking academic calendar by NLSIU, Bangalore in 1988, the NLSIU started on a Trimester system with three mandatory papers in each trimester, meaning thereby a total of nine papers in an academic year. However, in 1998 when National Academy of Legal Studies and Research (NALSAR) University of Law, Hyderabad had started under the leadership of Prof. (Dr.) Ranbir Singh as the founder Director of NALSAR, it invoked Semester system with five mandatory papers in each semester rather than Trimester system, after due deliberations and approvals. In the same year, National Law Institute University (NLIU), Bhopal was established but the NLIU followed the Trimester system as offered by NLSIU, Bangalore. Other national law universities that came into existence subsequently followed the NALSAR

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30 Doctor Ram Manohar Lohiya Rashtriya Vidhi Sansthan Uttar Pradesh Adhiniam 2005 (UP Act No. 28 of 2005).
31 The Rajiv Gandhi National University of Law, Punjab Act 2006 (Act No. 12 of 2006).
32 The Chanakya National Law University Act 2006 (Bihar Act No. 24 of 2006).
33 The National University of Advanced Legal Studies Act 2005 (Kerala Act No. 27 of 2005).
34 The National Law University Act 2008 (Orissa Act No. 4 of 2008).
35 National Law University Delhi Act 2008 (Delhi Act No. I of 2008).
36 National University of Study and Research in Law Act 2010 (Jharkhand Act No. 4 of 2010).
37 National Law University and Judicial Academy Assam Act 2009 (Assam Act No. XXV of 2009).
38 Damodaran Sanjivayya National Law University Act 2008 (Andhra Pradesh Act No. 32 of 2008).
39 The Tamil Nadu National Law School Act 2012 (Tamil Nadu Act No. 9 of 2012).
40 Maharashtra National Law University Act 2014 (Maharashtra Act No. VI of 2014).
41 Maharashtra National Law University Act 2014 (Maharashtra Act No. VI of 2014).
42 Himachal Pradesh National Law University Act 2016 (Himachal Pradesh Act No. 16 of 2016).
43 Maharashtra National Law University Act 2014 (Maharashtra Act No. VI of 2014).
44 The Madhya Pradesh Dharmashastra National Law University Act 2018 (Madhya Pradesh Act No. 5 of 2018).
45 Dr. B.R. Ambedkar National Law University Act 2012 (Haryana Act No. 15 of 2012).

model of an academic year with more or less mandatory paper in each semester. Whether semester system is good or the trimester system is another issue for debate; and hence, it is left to the readers or the faculty members those who are working in the two systems to deliberate upon and continue with the best one. Further, at initial stage, all NLUs have introduced attendance mandatorily in all subjects on offer during the course teaching and learning underway. But, as the time passes, some of the NLUs have relaxed attendance up to seventy-five percentages and given twenty-five percentage spaces to the students for their extra-curricular or co-curricular activities.

Since academic year 2012-2013, NALSAR introduced credit-based attendance for its undergraduate degree course, meaning thereby if a particular course is of 5 credits value wherein each credit value needs to be given sixteen taught hours, therefore, in a semester underway a teacher needs to take eighty teaching hours. Out of the eighty teaching hours, a student is required to attend sixty teaching hours and can be absent from classes for twenty teaching hours. While number of classes made credit based and attendance are relaxed up to twenty-five, the marks originally attached with the attendance, i.e., five, as part of the examination regulations, were also relaxed but clubbed with the mid-semester examination. Consequently, marks allotted to the mid-semester examination increased to twenty-five from twenty. Hence, academic value of mid-semester examination was enhanced accordingly. It seems to be good from students' point of view but we need to understand that students are missing twenty-five percent classes in each course on offer that too in a residential university where students are supposed to be present in classes either for teaching learning or for extra-curricular activities or for social outreach activities without which holistic learning is impossible. As twenty-five percentage attendances are relaxed by the Bar Council of India and consequently, twenty-five percentage attendances on credit based teaching pedagogy are relaxed by the university which may affect leaning outcome objects of the course. Though, teachers are on duty on all working days and taking classes as per the academic calendar of the university but all students are not available for teaching in the classroom. It may be a good experiment academically; however, empirical research on the learning outcomes is required in this regard keeping in view the diversity of fast, average and slow learners in a class. If this experiment is found to be good, then it should be accepted and implemented by other NLUs.

Credit System/ Choice Based Credit System

An educational institution which works on semester system wherein each semester consists of 15-18 weeks of academic work which is equivalent to 90 actual teaching days.[46] The course leading to either degree in Law, unitary (LL.B.) or on integrated double degree i.e., B.A.LL.B., shall be conducted in semester system in *not less than 15 weeks for unitary degree course* or *not less than 18 weeks in integrated double degree course, B.A.LL.B.,* with *not less than 30 Class-hours per week* including tutorials, moot court room exercise and

46 Clause 3 Sub-clause 12, UGC Guidelines on Adoption of Choice Based Credit System.

seminars. *Provided* there shall be at *least 24 lecture hours per week*;[47] a minimum number of class lecture 24+6 practical = 30 hours per week. *Provided* further that *in case of specialized and/ or honors law courses there shall be not less than 36 class-hours per week* of *B.A.LL.B. Honors including* tutorials, moot court room exercise and seminars provided there shall be at *least 30 lecture hours per week;*[48] a minimum number of class lecture 30+6 practical = 36 hours per week. Minimum weekly class program per subject/ paper shall be of with 4 Credit, four class-hours of one hour duration each and one hour tutorial/ moot court/ project work per week;[49] e.g., for 4 Credit course- 4 valid credit/ hour per week + 1 Extra credit/ hour teaching. Further, *Credit*:- one credit is equivalent to one hour of teaching, lecture or tutorial, or two hours for practical work/field work per week in a semester.[50] The credits associated with the course are called valid credits, while credits associated with comprehensive viva will be virtual credits. Total credits per semester in ordinary graduation course shall be 20 per semester. In Honors programme such as B.A.LL.B. Honors minimum credits will be on an average of valid 24-26 credits per semester. 'Regular course of study' means and includes a course which runs for *at least five hours a day* with an additional half an hour recess every day and running *not less than thirty hours of working schedule per week*.[51] Explanation on the basis of above provisions for B.A.LL.B. Honors. *Course*- each course shall be of a minimum of 4 credits with 5 hours teaching a week, class room 4 + 1 tutorial= 5. A semester shall not have less than 18 weeks. With 30 actual hours i.e., class room/ tutorials/ moot court room exercise and seminars+ 6 virtual hours i.e., practical- library, consultation, training and field visits. 6 virtual hours may be collectively used for the internship/ practical training for 3 credit per week. Valid 24-26 credits per semester, e.g., 5 course per semester of 5 credit each i.e., 25 credits per semester; 6 course per semester of 4 credit each would be 24 credit per semester; or 5 course per semester of 4 credit each with 3 credit internship/ practical training programme of 6-8 hour per week. Therefore, every course shall be taught for one hour over and above to their respective credit per week,[52] so that in case of absent of student from the course minimum requirement of credit hour can be fulfilled and finally to award a valid degree under the UGC credit system.

Changing Contours of Higher Education

In modern times, higher educational institutions are thriving on the principles of commercialism and primarily focusing on vocational courses.[53] Their commercial thrust is on training for jobs. Indeed, a large part of the curriculum is professional training; not only training for jobs but also placing their students in well-paid jobs; the point to the aspect of strong workplace-

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47 Rule 10, Bar Council of India Rules of Legal Education 2008.
48 Rule 10, Bar Council of India Rules of Legal Education 2008.
49 Rule 18, Bar Council of India Rules of Legal Education 2008.
50 Clause 3 Sub-clause 6, UGC Guidelines on Adoption of Choice Based Credit System.
51 Rule 2 (xxiii), Bar Council of India Rules of Legal Education 2008.
52 Rule 18, Bar Council of India Rules of Legal Education 2008.
53 Neelam Ramnath Kishan, PRIVATIZATION OF EDUCATION, 2008, p. 169.

institution linkages. They are narrowly focused, rather micro-specific in designing their courses and teaching and training thereupon. This narrow focus is their strength as well as their weakness. It is strength as long as there is demand for such specific nature of the courses and becomes weakness once such a demand is over. Moreover, their built-in set up or infrastructure precludes them from diversifying. They cater to the unmet demands or rather demand- absorbing from the non-university higher education sector.

Further, privatisation of higher educational institutions has its negative impact also. The students are acting as a market force. The student is the power while the faculty is weak in these private institutions. Indeed, the faculty lack the position, power and autonomy as they traditionally enjoyed at universities. In commercial private institutions, they basically serve to students and their practical orientations. These institutions mostly rely on part-time faculty, hourly based faculty, or their faculty may be drawn from full-time faculty at public universities. Thus, they do not create employment opportunities. When employing full-time faculty, they pay meagre salaries. Perhaps many such faculties have neither practical nor academic expertise and also lack training. Unfortunately, in India this trend has the full support of our government because many political leaders and industrialists own and run these colleges and private universities. Therefore, they easily get the required certificates to run these colleges without providing proper educational state-of-the-art infrastructure. So, we can claim that for these people education has today become an option to only make money rather than providing quality education to the needy and meritorious students.

This is really a shameful situation for a country like India where our past great leaders have stressed on quality and free education. There are many poor or low or medium-income people in India, who find it hard to afford this kind of education or, if they can afford it, fail to acquire quality education in return of their hard earned money. So, education today is an object of business which has its serious and negative effects on our society. The more one can pay, higher the education one can get. Every year, the number of students going for higher professional education is increasing in India and therefore, good opportunities exist for all these colleges/ universities to make money by offering various courses. In short, higher education has become a seller's market, where there is no scope of incentive to provide quality education. Quality is the key to India's future growth as 'Knowledge Economy' starts dominating.[54] It is here that the Indian higher education system is being found to be most wanting. The lack of quality, except in a handful of institutions, permeates throughout the higher education sector, be it engineering, medicine, business administration or in science, commerce, humanities, liberal arts and law. Only a handful of these institutions make the mark. So, there is an urgent need to change the basics of the education system, not its pattern, in order to revive education's real importance. Albert Einstein once said that "*education is that which remains, if*

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54 Ashok Jhunjhunwala, "*Indian Higher Education Dilemma*", http://rtbi.in/Ashok/education_link.html, (visited on November 20, 2017).

one has forgotten everything he learned in school"[55]. If what he said is true, none of us of the present generation have ever had an education!

Role of a Law Teacher in Legal Education

A teacher's role in building up minds, infusing enquiry element and igniting critical legal thinking among students is incomparable to any other profession, probably barring the parents. They are responsible for training of those who are going to be the leaders of tomorrow, on whose shoulders burdens of the country kept so that they can lighten it. For this, what is important is the qualified, competent, committed and experienced teachers who have passion for teaching. Teachers must have strong character, domain knowledge, research ability, command over language, communication skills, having patience to repeatedly explain, passive listener, personality and visionary which the students can imbibe. More importantly, a teacher must remain open for new learnings, adaptability and change. The teaching should be done in such a way that the student becomes self-sufficient and brave enough to venture into the real world with the knowledge that he/she has acquired from his/her teacher. Here, what is important is the teacher has the capability and the capacity for giving the students the knowledge that they need? But, as is widely known, it is not sufficient for a teacher to have knowledge. What is really required is that he should pass it on in its entirety in a fashion which is the best for the students. No person is born teacher, it is owned by hard work and training that makes him/her so. It is undoubtedly a difficult profession and to do justice to it means that a large portion of one's life is sacrificed on the altar of betterment of the students. It is here where the soft skills of teachers are so much important. They help the teacher to communicate his/her knowledge in the best way possible so as to enlighten the students and at the same time maintain a certain amount of dignity for himself/herself. These skills would undoubtedly increase a teacher's potential and also make him/her attain greater respect in the eyes of students. Further, professional acumenship of a teacher with high integrity and virtues especially in residential universities such as NLUs is expected more than dissemination of relevant knowledge among the students. Recently, the University Grants Commission (UGC) has come out with well-drafted professional ethics of teachers to maintain academic and administrative standards.[56]

After advent of National Law School in Bengaluru a unique problem of 'shortage of law teachers' cropped up. Keeping in view successful experiment of the first law school, other states have started establishing law school in their respective territorial jurisdiction for which lofty promises were made by the state government towards capital investment, how much money they have disbursed is an issue on which no one can argue, but no considerable efforts were made towards creating a pool of 'law teachers'. During those days, hardly

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55 Albert Einstein, THE QUOTABLE EINSTEIN, 1996.

56 Regulation 17.0 of UGC Regulations of Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education 2018.

there were any faculty recruitments or if there were recruitments; then no routine promotions were in place. And, this late-back attitude of the administrators/governments has created a vacuum of law teachers throughout the country. Today we have around 23 National Law Universities in the country but we do not have sufficient number of law professors, associate professor and assistant professor to cater the need of students. Due to shortage of competent law teachers, not only quality teaching but also quality research is suffering among all these National Law Universities.

In 1988, an experiment of Five-Year Integrated Degree Course in law {B.A., LL.B.(Hons.)} as undergraduate degree course was introduced at NLSIU, Bengaluru, due to the hard work and committed efforts of Prof. (Dr.) N.R. Madhava Menon and his team of faculty members and non-teaching staff, it was a successful experiment and the same has been introduced to create subsequent National Law Universities throughout the country. But, postgraduate and doctoral programmes were not introduced with the same enthusiasm neither by the NLSIU, Bengaluru nor by other NLUs which has created an issue of shortage of qualified, competent and committed faculty members for the entire legal education. Believe it or not, situation of recruitment of faculty members at all educational institutions offering undergraduate, postgraduate and doctoral programmes is not glossy and NLUs are also the part of the same picture. It's not fair to comment on young teachers to say that they lack expertise in the domain area of their choice but they do lack experience which cannot be achieved overnight. Further, in the traditional setup of legal educational system new curricula on emerging issues is an issue rather it's next to impossible which prohibits young talent not to explore new subjects/ issues/ contours of teaching, research and learning. At the same time, NLUs have miserably failed to produce sufficient number of good teachers. It may surprise the readers, as some of the NLUs cannot start postgraduate degree course because as per the norms of the UGC, they are not in a position to create a 'Centre for Postgraduate Legal Studies (CPGLS)' which needs certain number of professor(s) and associate professor(s) on role to offer postgraduate degree in law. Furthermore, offering one-year or two-year postgraduate degree as 'general course' or 'specialised course(s)', a university must have those experts to teach and guide students on regular basis which is not possible for some of the existing NLUs for obvious reasons. Adding fuel into fire, until now, no NLU has a separate set of experienced faculty members for postgraduate teaching and learning, in fact, they are managing postgraduate programme through teachers who are teaching undergraduate degree course by either adjusting their teaching time table or by paying extra remuneration, but certainly the main focus of teaching is at the undergraduate degree courses. Further, the existing faculty members are executing their teaching and learning pedagogy which suits undergraduate courses for the postgraduate course also. It indicates that there has been no change in the teaching and learning pedagogy among the undergraduate and postgraduate degree courses. It also indicates that the existing NLUs are not exploring or experimenting different teaching and learning pedagogy as the existing one does not ignite critical thinking among students/scholars.

Consequently, a quality learning outcome from the postgraduate teaching and learning suffers a lot. Hence, the entire legal education system has come to a point where UGC has to take a serious call upon the issue and direct all universities to recruit faculty before starting postgraduate degree programme. Therefore, we all need to introspect into the existing postgraduate teaching and learning process and rethink about producing quality teachers to cater to the need of buddying lawyers graduating from not only NLUs but also other colleges, law departments and universities throughout the country.

Another unique issue these national law universities are facing is that unlike earlier, nowadays the students are joining these NLUs 'by choice', on completion of 10+2 standard or equivalent qualifying exam, through qualifying national entrance test conducted by Consortium of NLUs except NLUD as it conducts its own all India entrance test. This trend indicates that academic demands of these prospective students are plenty and to meet and satisfy their academic acumenship is a daunting task for law teachers. Unless a law teacher is well equipped in qualitative and quantified research base of teaching, he or she neither can survive in the classroom nor satisfy academic demand of these budding lawyers. Further, in most of the national law universities, core teaching for mandatory and/ or optional or elective courses is done by the teachers who are basically the product of either law departments and/ or law colleges of state university or central university but not from the national law universities, exceptions apart. Therefore, an amount of dissatisfaction among the teachers and students has emerged which needs to be looked at the institutional level. Just because of casual teaching and learning gap between the teachers and students an academic discipline has become focal issue of discussion in these national law universities. Hence, paucity of law teachers is a challenge to these national law universities.

Quality Research

Research, whether socio-legal or socio-economic and legal or pure legal, has been a serious concern among the law teachers and students in all the national law universities which is supposed to be the focal academic object behind creation of these law school; nowadays it has lost its glory. The original creators of these law schools were of the opinion that these law schools being research oriented 'teaching and learning' centres may produce lawyers who would be socially relevant, technically sound and professionally competent but it remains a myth as the students of these law schools do not connect themselves with the real society and study law in isolation- classroom. They focus more on interpretation and application of law at the appellate level rather than touching roots of litigation at the taluka or district or village or tribe level. Therefore, graduates from the existing NLUs are academically oriented products who do not possess desired professional competency to start their career as litigating lawyers at the trial court or appellate courts. Hence, basic tenants of litigation such as fact finding, drafting of FIR, understanding of medical report, post-mortem report, charge sheet of the police or the court, quality pleadings, learning and appreciation of original evidence, etc., are not learnt by these students at the law schools which reflects in their understanding of facts, law,

and research which is not empirical in nature, hardly reflects on impact factor or execution. It's a fact that these students do a lot of research publication reflecting their skills but superficial more than in-depth one. A plethora of e-data base/ digital resources/ on-line data base/ remote access of library resources has taken over reading habits of the students, research scholars and faculty members. Present academic-curricula exhibits classroom teaching focuses more on theoretical aspects of learning rather than practical oriented learning. Hence, quality research at these law schools has become a challenge though some of the law school are doing well on funded projects but research based teaching and learning suffers a lot. Modern '*Gurukuls* of Law' (NLUs) are supposed to provide holistic legal education to their students but the experience of three-decades indicates that a complete lawyer hardly comes out with a graduation degree. Majority of the graduates from these '*Gurukuls'* opt their career towards corporate associateship rather providing qualitative litigating services to the needy, underprivileged, and marginalized litigants of the country. Therefore, primary idea of establishing NLUs is shuttered by the graduates running towards monetary gain *via* employing themselves in corporate world.

Quality Teaching

Courts and lawyers hold a prominent place to meet the ends of governance envisaged by the Constitution of India. Legal education remains the bedrock of strong foundation of the Indian State. But, the state of affairs in legal education was quite chaotic in post independent India. Dr. Radhakrishnan, an eminent educationist and former President of India, expressing his displeasure about the system stated 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...*"[57]. So steps were taken to improve the standards of Indian legal education and introduced necessary reforms. The establishment of the National Law School at Bangalore under the dynamic leadership of Prof. Menon was also driven by a similar intent. The National Law School was an experiment to nurture pedagogical and curricular innovation that could be replicated elsewhere in the country.[58] In this regard three specific matters deserve special mention (a) emphasis on using the case-method of teaching; (b) encouraging the faculty members to engage in cooperative teaching-learning environment; and (c) introduction of optional papers in the curriculum. Each one of them is discussed below with a retrospection of its impact in the overall Indian legal education.

(a) Case-method

Case-method or as popularly called 'Langdellian Method' after its inventor Christopher Langdell Dean of Harvard University Law School is a dominant pedagogy in US legal education.[59] It is regarded as a beneficial method of

57 A.S. Anand, "*Legal Education in India-Past, Present and Future*", 3 SCC (Jour) 1 (1998).

58 See Preamble of the National Law School of India Act 1986.

59 Margaret Martin Barry et al., "*Clinical Education for This Millennium: The Third Wave*", 7 Clinical L. Rev. 1 (2000), p. 3.

instruction for law students because it introduces them to an analytical, systematic and intellectually challenging approach to study of law[60] and help to develop in the students the important skill of "*thinking like a lawyer*"[61]. From its inception at National Law School, Prof. N.R. Madhava Menon unhesitatingly called upon his small team of faculty members to embrace this pedagogy to teach law. He realized that to inculcate analytical ability and intellectual sophistication of legal advocacy in students' use of case-method is inescapable. To facilitate teaching by using case-method, the faculty members had designed course outline and reading materials consisting digested versions of relevant statutory provisions, judicial decisions and secondary readings. These reading materials were mandatorily followed in every class with assignments and research exercises for students on every topic. The selection of the materials was done after a careful survey of large volume of literature on the subject and its arrangement was compatible with what is known about cognitive processing- the way people think, or more accurately, the way human brain operates in learning process. It was made mandatory for every faculty member to present their course outline, reading materials and teaching methodology before an audience consisting of their peers and external domain experts for critical review and feedback. Orientation programmes for the faculty members were organized regularly with experts drawn from national and international academia to share their experience of using this pedagogy. Prof. Menon after taking upon the Vice-Chancellorship of the National University of Juridical Sciences at Kolkata also introduced the same approach. The National Law Universities that were established latter following the Bangalore model also imitated this approach but over time the rigour and seriousness with which it was used in the initial days was lost. Only few law teachers use this method in its actual spirit; however, it is not anymore the principle pedagogy even in the Bangalore National Law School. Also very little of this great experiment that made learning at National Law School unique and attractive to students is documented for future generation to learn from.

(b) Cooperative Teaching

Prof. Upedra Baxi in his path-breaking report in 1975[62] had stressed upon the need for modernizing legal education and embracing a more socially relevant curriculum. He emphasized that with time role of law and lawyers have evolved and in the contemporary era lawyers are not seen as pleaders and solicitors only, but architects of social structures, designers in the frameworks of collaboration and specialists in the high art of speaking to future. Therefore, he proposed that to meet these needs in training future lawyers as social

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60 *Ibid*.

61 See Stephen Wizner, "*What Does It Mean to Practice Law 'In The Interests of Justice' in the Twenty-First Century?*" The Law School Clinic: Legal Education in the Interests of Justice, 70 Fordham L. Rev. 1929(2002). (The term stated a learning technique central to which was an abstract, hypothetical, deductive, critical thinking skills and discouraging memorizing of rules and doctrine).

62 Upendra Baxi, "*Towards a Socially Relevant Legal Education, A Consolidated Report of the University Grant Commission's Workshop on Modernization of Legal Education*", 1975-77.

engineers' adopting a multidisciplinary curriculum is inevitable. Accordingly, Prof. Menon in the National Law School at Bangalore chose to introduce a curriculum which had a purposeful integration of various other disciplines which are essential to cultivate effective understanding of law and its role in the society.

Further, to strengthen this integration Prof. Menon evolved an innovative teaching technique called co-operative teaching. Co-operative teaching method required law teachers to collaborate with colleagues from other disciplines, e.g., social sciences and humanities and develop their course in a manner that provides opportunities for students to learn legal rules and principles from an interdisciplinary lens. This integration was not just limited to regular courses and day to day teaching only. But, new courses were developed, e.g., Law and Poverty, Science Technology and Law, Law and Economics, Law and Forensic Science, Law and Human Development, Law and Social Change, Disaster Management to name a few. These courses were totally interdisciplinary in nature and cooperative teaching was used as the principle pedagogy with faculty members from law and other disciplines jointly interacting in the class. Field experience was also an integral component of the teaching. This was a revolutionary change brought forward because the tradition of legal education has been long driven by an individual teacher-centred classroom with the teacher at focal point of all teaching-learning activities. In comparison cooperative teaching method drew on a group orientation to advance the teaching-learning process with multiple teachers collaborating to give a more holistic educational experience to the students. This pedagogy had some of the values of competitiveness and individualism of traditional education, yet aimed to place group success ahead of individual achievement. Prof. Menon's efforts to develop a cooperative pedagogy to teach law with a multidisciplinary approach in the National Law Schools at Bangalore and Kolkata received global appreciation. It has been observed in education literature about cooperative teaching model by enhancing cooperative interaction of group of faculty members enlarges and enriches the accuracy and vividness of statement and thought.[63] But, due to lack of necessary administrative and logistic support and enthusiasm among the faculty members in the post Prof. Menon's era, cooperative pedagogy has faded away. Although the National Law School model has succeeded and widely replicated but one of its strongest pedagogical innovation has become a redundant art completely in the contemporary generation.

(c) Optional Papers

Indian legal education has long been criticized for not promoting culture of research oriented education. The institutions teaching law were not having any drive to encourage its faculty and students to undertake serious academic scholarship and there was barely any original and quality research produced. The curriculum had no opportunity for the students to engage in research

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63 Edward R. Shapiro and A. Wesley Carr, LOST IN FAMILIAR PLACES: CREATING NEW CONNECTIONS BETWEEN THE INDIVIDUAL AND SOCIETY, 1991.

oriented learning. The evaluation was plainly based on the performance in end term paper where questions were asked to test their memorizing capacity. However, Prof. Menon had always advocated for promoting research and academic scholarship in Indian law schools. To incentivize research based education in the National Law School at Bangalore for the first time 'Optional Courses' were introduced in the curriculum to nurture a culture of research intensive legal education. These courses unlike the compulsory courses had less class based teaching and more research work. These courses were offered as specialized and in emerging areas of law and the enrolled students were required to undertake research assignments and give seminar presentation before the course faculty. The entire evaluation of these courses rested on their performance in the research activities. Since the optional courses were in specialized and emerging subjects of law and allied issues these student research papers became invaluable resources and lot of them got published in prestigious peer-reviewed and academic journals which gave great satisfaction to both the student and course supervisors. These courses also promoted multidisciplinary approach to teaching and research in law schools. With the advent of liberalization, privatization and globalization legal profession evidenced the demand for super-specialized lawyers to make it competitive in the global legal market. The optional courses also served this purpose well. Although with time and expansion of the National Law School education model the popularity and number of optional papers have increased manifold. In the Bangalore and Kolkata National Law University nearly forty percent of the curriculum of undergraduate law degree course is composed of optional papers. The number is more or less similar in other National Law Universities and many Private Collages. The Bar Council of India recommends for undergraduate law degree course curriculum a minimum of six optional papers to be offered.[64] This is a very positive outcome but on the hind side the research intensive approach to the optional papers has been largely compromised. The optional papers are today taught like any compulsory paper, and their evaluation model largely similar to compulsory courses. The importance of research in these courses has lost its significance.

Elective Papers and Teaching Assistantship

NALSAR University of Law, Hyderabad started offering elective papers in two-fold teaching and learning mode. Wherein some of the elective papers are taught papers and others are the seminar papers. While introducing such an experiment, the faculty members were clear about the amount of teaching and research was required for these electives and accordingly students were made aware about their negatives and positives. So far so good, these elective papers are doing well but this experiment is not adopted by other NLUs baring few of them. Furthermore, NALSAR also started offering teaching assistantship to the senior students of undergraduate and postgraduate degree programmes. In this

64 Bar Council of India Rules, 'Part-IV Rules of Legal Education', Schedule-I Part-II(C) which reads as "*Not less than six papers from any of the following groups (Paper 2 to 30). However, a University is free to take only a few common options for the purpose of LL.B. course without any specialization*".

process, the students who wish to develop their teaching learning skills or wish to make academic as career opt for teaching assistantship in the subject of their choice wherein they are attached with the course teacher(s). While core teaching in a given subject is done by the course teacher(s), the tutorial classes, as supplementary classes, are taken by these tutors that indeed reflects in the regular academic teaching calendar that who is taking tutorial class and in what subject within the regular time-table. These teaching assistants are given exemption in one of the projects; they supposed to do during the semester underway. Their teaching skills are evaluated by the students who are taking tutorial and the core course teacher(s). an average mark or grade obtained by the teacher assistant in the assessment of the students and the teacher concern reflects as the marks or grade obtained by them against the project which was exempted in lieu of tutorial. This exercise of the administration makes a difference in understanding of slow learners in any subject and the students appreciate tutorials. Therefore, this experiment too is working well in many folds at NALSAR but other NLUs have not adopted or accepted this experiment to improve teaching and taught learning.

Extra Credit(s) Course

With advent of five-year integrated undergraduate degree course in law, a new kind of theory and practice infusion was invoked in Indian legal education. The institutions offering these courses were supposed to integrate conceptual understanding of social sciences, humanities and law papers with practical oriented teaching and learning in the classroom. Many experts' committees under the supervision of the Bar council of India have suggested different kind of options to make legal education more effective in terms of professional requirements boosting speedy disposal of litigation with upholding core spirit of justice delivery system in the country. Keeping trial advocacy in view, the Bar Council of India had made it mandatory for all educational institutions offering five-year integrated degree course, moot court exercise during initial years of the course. The sole object of this mandate was to train 'young minds' towards litigating professional career on successful completion of the course. But, the experience of three decades of NLUs in existence indicates that most of the law graduates from these NLUs do not opt for trial advocacy as career, rather prefer to make their career with law firms or corporate houses or practice at the appellate level.

Each National Law University is an autonomous institution imparting legal education as per their course curriculum, besides other venues. They have adopted existing norms of the Bar Council of India and the University Grants Commission through their statutory bodies on unique parameters rather than uniform parameters, may be promoting local dynamics of socio-legal issues. As some of the NLUs made moot court exercise as integral part of their mandatory courses and others promote moot court activities as additional learning while focusing on mandatory course but supported with finance and academic weightage. Whatever be the option on promoting moot court activities, these activities are the prime academic exercises at all NLUs, but the kind of professional culture thriving leads the mooters only to the appellate advocacy.

Though it is not to be taken in its negative sense, a large number of students, due to many diversities among them, are left in dark and they do not understand the way they need to lead their career after making efforts for five long years and their parents have paid fee for their learning. Keeping in view the present state of affairs of huge junk of pending litigation in the country, the NLUs have to redesign their academic curriculum to promote trail advocacy through extra credit courses on tailored made contents.

Most of the NLUs have duly approved list of extra credit courses or an authorisation to the academic dean/ vice-chancellor by their statutory bodies to offer these credit(s) by the experts from the bar, bench, academia and/or industry including law firms, corporate houses, public undertakings etc. In some of the NLUs, this practice is thriving and students are benefitted to a great extent, but the nature of courses offered through this method is not converting desired learning into real advocacy or practice or bridging gap between theory and practice. In general, teaching-learning theory, concepts, basics of law, application of law and interpretation of law are promoted at the NLUs, but connecting facts to law or finding of facts, appreciation of facts and evidence, understanding of exhibits attached with petition/suit, formation of facts, connecting them to law within its domain, drafting of FIR, understanding of medical report, post mortem report, learning about chief-examination, cross-examination, etc. are not taught through these extra credit(s) courses. As the author understands, the facts oriented facets of litigation are supposed to be taught to the students in the classroom through clinical courses with desired academic weightage, but in practice, the clinic courses are to a great extent restricted to alternative dispute resolution mechanism and/ or international trade law/ international arbitration law etc.; and hence, not moving beyond. It means the clinic courses are left to the mercy of few teachers or the academic administrators, who either teach these alternative mechanism of a particular nature of dispute resolution or promote their expertise on alternative mechanism rather than connecting classroom teaching and learning with practical aspects of core litigation, speedy resolution mechanism, or bridging the gap between theory and practice. This could be one of the reasons, why NLU graduates do not join trial advocacy and prefer appellate advocacy.

Therefore, NLUs have to design extra credit courses with the help of the members of the bar, bench, law firms, corporate house, and of course academia based on basic learning of trail advocacy and leading it to different career options. In the same way, if some of the best lawyers from different courts, domestic or abroad, judges- sitting and retired and experts from industry are invited to the classroom, the author is confident that teaching and learning among budding lawyers would be more relevant in the modern legal professional arena and students will pay more attention.

The Way Forward: NLUs for Nation Building

Institution of Eminence (IoE)- Current status of academic affairs at these NLUs is suffering with a unique syndrome, i.e., ‘think globally and perform locally’. The original idea of creation of National Law School in 1988 was on

the lines of Harvard Law School envisaged by Justice M. Hidayatullah and others but it has become a part of Indian legal history. As no NLU has reached in thirty years to the status of 'institution of eminence in law', though establishment of IITs, IIMs, AIIMS etc., have been successful experiments and have achieved a lot. But, as the time passes and success of first generation of NLUs were seen, the state governments started having eyes on these law schools as they were not directly under their control but of the Judiciary, the Bar Council of India and the State Bar Councils. There have been a lot of amendments into the original Acts of these law schools wherein local reservations were introduced and not only in the admission but the same have been done in recruitments also. The state governments have taken the plea of capital investment behind introduction of reservation and they try to intervene through GRs in core functioning of these law schools. In doing so, there is nothing wrong, state government can do so but the sole purpose of NLUs establishment has lost its significance. Most of the existing NLUs are working as normal state university where no academic, administrative and financial autonomy exists. In such a situation, thinking global ranking in terms of teaching pedagogy, research innovations or globalisation of legal profession is nothing but a nightmare; even ranking by NAAC and/or NIRF has become distant dream. Some of the NLUs are provided category 'A' or 'B' ranking but still they do not have full autonomy in term of appointments of eminent professors, research scholars, international resident scholar, etc. Hence, to get Institution of Eminence[65] (IoE) is far reaching assignment for existing NLUs. Therefore, top level educational regulatory bodies are required to take stock of situation, introspect and re-design regulatory framework accordingly.

Creation of Human Resources- NLUs have failed to promote cutting edge socio-legal research though it has been one of the objects of all the NLUs which find a place in their statutes but somehow quality research has not been taking seriously. Non-serious state of affairs leads to postgraduate and doctorate programmes failure wherein creation of law teachers has never been on priority agenda of the NLUs. In India, there is no training for law teachers, these NLUs too are preparing law teachers without much focus on their academic credentials though contributing to national knowledge economy. Without well trained research scholars, no institution becomes an 'institution of eminence' and also cannot contribute in future policy think-tank. Therefore, time has come where these NLUs need to introspect about original ideals of creation of these NLUs and need to improve teaching, research and innovative course curriculum to become 'Harvard of the East'.

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65 The Union Cabinet had approved UGC's 'Institutions of Eminence Deemed to be Universities Regulations 2017' in August 2017. The regulations are aimed at creating an enabling architecture for 10 public and 10 private institutions to emerge as world-class institutions, since the country has little representation in international ranking of educational institutions. The private IoEs can also come up as greenfield ventures, provided the sponsoring organization submits a convincing perspective plan for 15 years. The IoEs are proposed to have greater autonomy compared to other higher education institutions. Vide THE INDIAN EXPRESS, Nagpur, Friday, August 3, 2019, p. 10.

Socially Relevant and Community Outreach- A well-groomed lawyer who is 'socially relevant, technically sound and professionally competent' is the right torch bearer, who can build a bridge between society and the NLUs. As every human being has a debt/obligation towards society (*Samajrina*) in the same way each NLU has a debt/obligation to serve society through its social outreach programme. Legal Aid Cell is such tool through which NLU can serve society. Legal aid and advise are incorporated in regular curriculum of undergraduate degree programme by the Bar Council of India. It has been promoted by the National Legal Services Authority of India, State Legal Services Authority, District Legal Services Authority and almost all the NLUs have Legal Aid Cell in existence. In spite of all these regulatory mechanisms in place, free legal aid/advise/services are far from the reality. Some of the NLUs are having separate head in their annual budget, and legal aid cell in place but due to indifferent attitude of faculty and students these services have become non-functional. Faculty members, who are teaching clinical papers are the ones who are made sole in-charge of these legal aid cells but other colleagues hardly come forward and carry forward the national agenda on 'free legal aid/advise and justice to all'. Prof. Menon tried his best to connect law students with real India which lives in village and tribal areas but this idea of him could not see much success. As most of the graduating students do not opt litigation as career; hence, they do not pay much heed to understand pain of marginalised, underprivileged and the poor citizens of India who either fail to have access to justice or not getting timely justice but suffer in silence.

Alternative Litigation Options- The litigating mind set of legal professionals do not think out of the box and adversarial adjudication mechanism remains in place. Though since 1996 alternative dispute resolution mechanism has been put in place yet it remains individualistic resolution system and not becoming institutionalised. Some of the NLUs are offering ADR as specialised course at the postgraduate degree level, one clinic paper and an elective paper at the undergraduate level but these papers are not promoted as career oriented course. After graduating, these budding lawyers register themselves with the local Bars but there is no system in place wherein any graduating candidate can register himself/herself for advocating/ promoting or leading his/her career in ADR practice. As it has become rehabilitation for the retire bureaucrats, judges and few subject experts who provide their services as per their choice. Hence, no institutional mechanism is in place to regulate even their working. Therefore, the higher education regulators are earnestly requested to design ADR as an appropriate dispute resolution mechanism with adequate regulatory system so that a huge pendency in regular courts in India is partly taken care of by the ADR advocacy. Further, family litigation which needs special skills under the provisions of the Family Courts Act requires desire attention on the part of academic councils/administrators of the NLUs wherein students who desire to lead their career in family litigation are to be promoted. In civil courts there is formal litigation system works wherein in family courts less formal and more of

conciliation or reconciliation system works which needs different kinds of skills in family litigating lawyers. So let there be a separate category of family litigating lawyers with separate registration with the local bars on the same footings as the family court judges with different adjudication skills are introduced by the Family Courts Act.

Limited Number of Takers- NLUs in existence are having a limited number of seats for undergraduate and postgraduate degree programmes and the same is the case for doctoral programme wherein few thousand candidates are accommodated in these programmes. All the students on role are required to reside in the Hall of Residence provided by these NLUs. Keeping in view the number of candidates appear in Common Law Admission Test (CLAT) and the candidates who could not chose legal education and profession as their first preference in life, but later on they wish to try to lead their rest of life in legal profession, are not getting chance to study at these NLUs. Therefore, degree, diploma, certificate courses must be offered by these NLUs to them who do not get admission in first or second preference of legal education in life. First generation of NLUs have started providing these course online, offline, distance mode etc., but these courses were not properly either launched or could secure due recognition from the regulators such as the UGC in advance. Non-recognition or non-advance approval from the regulators made these NLUs to either cut short or stop offering these courses. Thereafter, the UGC comes with well-designed regulations for educational institutions offering such kind of courses through distance mode. In this exercise, no new NLU can offer such kind of degree, diploma or certificate course unless recognised or approved by the UGC on fulfilment of certain parameters. Hence, in this exercise, a huge lot of deserving candidates on contemporary issues could not get to study or develop expertise on such cutting-edge issues.

Happiness Index and Wellness Concern among Students- NLUs are professionally designed legal educational institutions wherein academic rigor is much more than a normal law college. The students are too much busy in their academic curricular and co-curricular, extra-curricular and social-outreach activities. In addition, they are also made part of legal aid services and organising seminar, conference, debate, moot court competitions. Most of the NLUs are having Health and Wellness centre with basic counselling and medical etc. facilities but in spite of all these facilities in place, some students still indulge in to drug, alcohol, toxic substance etc. Once any student becomes habitual of any substance, he/she finds excuse of not attending classes, academic assignments etc. which impact adversely academic performance. The NLUs being residential universities, such students are easily identified by the house keeping staff, warden, members of proctorial board, or by the faculty members. Though the universities are having corrective measures in place but the age of the students is such as they don’t either avail the facilities or trust the system. In such circumstances, responsibility comes on the administration to

look after the wellbeing of such students and provide them timely and suitable counselling or medical assistance.

Lack of Job Opportunity- by this time around two dozen NLUs are in place with reasonable infrastructure, faculty strength and library resources but the state governments or for that matter the union government have not created job opportunities in public sector, befitting speed of establishment of these NLUs, for the graduating lawyers from these NLUs. Neither the members of the Bar nor the judiciary nor the academia appointing these well-groomed products from NLUs with reasonably designed salary package; hence, they have left for the law firms or corporate houses or the public undertaking sector. Students, those are from well do family either they go abroad for higher education or join foreign law firms. Barely graduating lawyers get into litigating career or to appear for union public service or provincial services. In such situation, the bar, bench, academia, government are supposed to introspect on the issue and should try to absorb these budding lawyers immediately on completion of their graduation. The state governments can also design provincial services, legal, quasi-legal and administrative, to absorb these well-finish products at the early age so that a considerable amount of litigation can be reduced, as the government is the biggest litigating agency in the courts.

Interlinkage Between Academic Institution and the Judiciary- another area of concern which remains unfulfilled is interlinkage between academic institution and the judiciary where well known law teachers can act as amicus curie. For example, a brief was submitted to US Supreme Court by Ronald Dworkin, Thomas Nagel, Robert Nozick, John Rawls, Thomas Scanlon, and Judith Jarvis Thomson on the matter of constitutionality of statutes prohibiting assisted suicide.[66] The court in its judgement didn't accept the position taken by these groups of legal philosophers on the issue in question. But, it profoundly acknowledged their contribution in guiding the court in arriving to its final opinion. Further, it was a split decision of 5:4. The Supreme Court Judges dissenting with the majority strongly advocated the stand of these philosophers. Ronald Dworkin wrote the introduction of this brief.[67] In India many a times, academic works have been refereed by the High Courts and the Supreme Court but academic review of judicial pronouncements before they being pronounced or pre-final judgment dialogue between the courts and academia culture with professional outlook has not been developed. Therefore, such kind of an academic-judicial linkage is required to be fostered in India too.

While concluding the paper, author emphases on certain parameters to improve quality research, innovative teaching and connecting teaching with employability. These parameters include 'access, equality, quality, research, excellence, skills and employability, global facilitations and digital initiatives' to name few which are to be promoted at the institutional level. Healthy

66 https://cyber.harvard.edu/bridge/Philosophy/philbrf.htm, (visited on August 3, 2019).

67 *Ibid*.

academic atmosphere in academic areas of residential NLUs is to be promoted and leaving comforts with sports; physical exercise and health care are to be looked after seriously. In such a mission, faculty members, research scholars, and students are to be involved so that in residential universities such as NLUs holistic learning becomes a reality and well-groomed final product is sent to court, industry, or society. Such kind of learning was inspired and further cemented by Prof. Menon's visit to MNLU, Nagpur on February 18, 2019 as the Chief Guest of Orientation Programme for Ph.D. Scholars, he opined that "*hard and smart research work is the key to success"*. Further, while interacting with faculty members he opined that *"it is hard to find teachers, and that teachers who are not dedicated to fulfilling the vision of the university may be weeded out*".

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ROLE OF FACULTY COLLOQUIUMS IN IMPROVING LEGAL EDUCATION IN INDIA: A CRITICAL STUDY

Ankit Singh♣

Abstract

Contemporary legal education in India has undergone many changes. The ever-growing demands of the legal profession make it imperative for law educators to tune their regimen in a way that promotes rigorous intellectual exercise and exposure. Producing dedicated law professionals should be the aim of law institutes of India. For serving this purpose, it is important that the intellectual resources of an institute are up-to-date. One of the major intellectual resources of any educational institute is its faculty. Training and skilling of faculty members through various mechanisms is one of the most important aspects of a law institute.

In this context, the author discusses and analyses the importance of faculty colloquiums in enhancing the quality of legal education in India. The article gives an overview of the current legal education system of India and how intellectual practices like faculty colloquiums can boost the free flow of knowledge and quality research work as well. For setting high standards of legal education and making a mark on the globe it is important that policy-makers lay more emphasis on strengthening the faculty and deepening the intellectual experience.

Keywords: Faculty Colloquiums, International Trends in Legal Education, Faculty Strength, Legal Research.

Introduction

Sharing knowledge (both specialised and general) for the collective benefit of the stakeholders is the cornerstone of any successful education system. In this regard, regular meeting of faculty members of a law institute to deliberate on a particular topic or subject is extremely crucial for perpetual fine-tuning of institutional discourse.

A colloquium is usually categorised as a seminar or academic meeting of individuals to discuss a given subject. It consists of lecturer who leads the discussion and solicits input from other participants to bring about fruitful outcomes. As mentioned, a colloquium takes place in an academic setup rather than for a business or commercial purpose.[1] All academic endeavors such as conferences, seminars, symposiums, colloquiums differ from each other very minutely. Here, we discuss the importance of periodical colloquiums of internal faculty of law institutes in the upgradation of knowledge-sharing system. A

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1 https://www.merriam-webster.com/dictionary/colloquium, (visited on May 21, 2019).

colloquium carries different meanings in different educational setups but for the purpose of this paper we shall interpret it as a formal and academic meeting of faculty members to discuss the emerging topics in law and legal education.[2]

Regular faculty colloquium is not a new concept. Many prestigious institutes including law universities and colleges organize colloquiums wherein faculty members deliberate on various relevant topics. However, it is still very important to mobilize the idea of conduction of regular colloquiums in many law institutes of India.

Faculty: The Real Strength of Law Institution

In any law institute, we can never measure the importance of two prime intellectual resources *i.e.* the library and the faculty. It is equally important that both resources are updated and tuned to the emerging demands of the industry.

In contemporary times, fostering legal education is much more than delivering lectures, presentations and assignments. The real strength of any law institute lies in the dedication, commitment and knowledge of its faculty. Members of the faculty should be committed to perpetually improve themselves in order to cater to the academic needs of the students. Intellectual depth and strong character are the two paramount qualities of a good faculty.

Apart from qualification, experience and inherent academic talent, the zeal to introduce something new and innovative to the system is the trait of a good faculty. The dynamic nature of law demands updated knowledge of law and allied matters. Regular and fruitful discussions among colleagues about various domains certainly improves the quality of academic content.

Continuous content development and effective delivery are the key points of any effective discourse. One of the means to ensure this is upgradation of knowledge through mutual or collective discussions. This is a widely adopted practice across many universities of the world and in India. However, this practice still needs to make its way into many law institutes of our country as a basic part of the system and it is only possible when the educators understand its pertinence.

Casual approach towards legal education in many law institutes of the country that are charging exorbitant fee from the students is one of the gravest issues we are facing right now. Faculty members are taking their job for granted and their contribution to the innovation in teaching methodology is almost negligible. This warrants a paradigm shifts in the system. Introspection and self-revelation are required first and foremost in order to ignite a change. It is crucial for the faculty members to acquaint themselves with the progressive needs of the legal profession and devise their academic content accordingly.

Faculty Colloquiums: Dimensions and Approaches

Faculty colloquiums provide extensive room for constructive discussions that may touch upon many relevant subjects pertaining to academic enhancement. The aim of any academic discussion is to developing keen

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2 https://www.vocabulary.com/dictionary/colloquium, (visited on May 21, 2019).

insights into a matter and to come up with better methods to tackle existing concerns.

Expanding the exposure of faculty members to emerging trends, methods and techniques is one of the key roles played by a colloquium. However, it is important to design the format of a colloquium in such a manner that it promotes quick dissemination of relevant knowledge among the participating faculty members.

Factors that Facilitate Faculty Strength

Recent trends in modern legal education demand that the faculty members are equipped with upgraded tools of academic delivery. Following factors may contribute to the same:

(i) Comprehensive discussions on improvement of research quality, projects and other evaluation methods;

(ii) Mutual sharing of knowledge pertaining to current trends in law and polity of the country which in turn would be helpful for the students as it would enable them to be up to date with the developments;

(iii) Deliberation on syllabus structuring, content development, assessment scheme, teaching methods, etc.;

(iv) Introducing innovative and creative learning methods coupled with regular debates and deliberations on burning issues; and

(v) Assigning practice-based projects to the students and evaluating them on the basis of acquired skills and knowledge.

All the above factors and many others may be instilled in any educational system by conducting regular faculty colloquiums and setting relevant agenda for a given session. Regular meeting of faculty members on pertinent issues for the improvement of academic content and delivery must be the central idea of governance.

International Trends in Legal Education: Awareness and Access

Legal education around the world, especially in the European Countries and United States has taken gigantic strides and is a model for all the developing nations. Modern teaching techniques and skills of the faculty members and various universities are adding immense value to the legal fraternity.

Indian law institutes must make efforts to collaborate with foreign universities that are doing exceptionally well in the domain of legal education in the form of student exchange programs, faculty exchange programs, conferences, faculty development programs, etc.

Faculty colloquiums with foreign professors as guests certainly have the potential to play a key role in the overall development of new and inexperienced faculty members. Exposure to new teaching methodologies, ways to tackle learning barriers, methods to intellectually stimulate the classroom environment and to conduct substantial legal research are some of the skills that get instilled through such colloquiums.

Importance of Faculty Colloquiums in Legal Education

As we have already understood the nature and dimensions of a faculty colloquium, let us explore the role faculty colloquiums can play in the overall quality enhancement of legal education.

Growth of Faculty

As a faculty member engaged in imparting legal education, it is extremely important to familiarize oneself with the contemporary trends with the subjects with which one is dealing. It is generally considered to be a healthy practice to be a part of informal faculty-room discussions on various topics but a comprehensive and moderated deliberation on a selected topic in which all the faculty members provide input may certainly add value to the existing content.

A pre-decided date for a colloquium inspires the participating faculty members to do research on the decided topic which may put further research ideas and broaden their horizon. It also instils a sense of contribution in an individual which a good signal in the academic field, or any field for that matter.

Assigning a faculty member, the job of leading the discussion in a colloquium develops a sense of confidence and responsibility. The ideal frequency of holding a colloquium would once in every fortnight. That would give sufficient period for preparation and conditioning to the faculty members.

Collective knowledge sharing on regular basis certainly provides an edge to an academician in terms of both content and delivery. The only prerequisite is that colloquiums are taken seriously. They must be considered as an integral part of the academic curriculum. We must remember that in any educational institution it is not only the students who learn, it is equally important for the faculty members to learn new things about subjects and teaching techniques.

Growth of Students

An ideal law student is always aware of the current happenings around the world. He/She tries to study and understand law using various innovative methods. At the same time, he/she expects his/her institution to provide him/her with requisite intellectual resources to support his/her efforts. Therefore, apart from the library, it is also necessary that the faculty members are trained in a manner so as to cater to the growing needs of law students. Keeping pace with the emerging trends in contemporary legal education is a pretty engaging job which requires persistent efforts. Faculty colloquiums focusing on the same may be conducted to keep the faculty members up to date.

A trained and confident faculty always contributes to the overall growth of the students by creating a healthy and effective atmosphere inside and outside the classroom.

A formal interaction in the form of a colloquium between senior and junior faculty members helps a lot in experience-sharing which consequently helps in the overall improvement of academic environment of an institute which

ultimately benefits the students. A faculty colloquium may extend in any dimension of growth which is conducive to the growth of the students.

Growth of the Institution

Any law institute is built by the dedication of its faculty and students. There are certain factors like faculty-student dynamic, classroom environment, quality of academic content and delivery and level of discipline that decide the overall output.

Faculty colloquium focusing on well-designed plan for improving output quality of an institute is a great option. Regular discussions on both academic and administrative subjects would help the faculty to contribute comprehensively and enhance the quality of institutional output.

The standard of a law institute is evaluated on the basis of the following:

(i) Library;

(ii) National Ranking and Accreditation;

(iii) Faculty;

(iv) Research;

(v) Training and Placement Cell;

(vi) Infrastructural Amenities; and

(vii) Industry Interface

Strength of the faculty is certainly a major contributing factor and steps need to be taken at institutional level to ensure the same. Regular colloquiums provide a platform to the academic minds to deliberate on issues that are vital to the progress of the institution.

Legal Research and Role of Colloquiums: The Nexus

Producing good research and academic outcome is one of the major roles of law faculty. Dynamic nature of law demands continuous study of the contemporary socio-legal trends in order to produce beneficial output.

Regular interaction of faculty members in formal academic environment on various issues spurs fruitful discussions and creates pathways for further research. Discussions on various ways of conducting effective research may also be discussed thoroughly in order to help the faculty members who are relatively new to the field.

Good research and academic growth of a faculty member are related very closely. Faculty colloquiums provide an opportunity to the faculty members to hone their analytical and interpersonal skills. This helps develop critical thinking in law teachers which provides an academic edge.

Finding new knowledge and improving upon existing ideas and concepts are the fundamental purposes of any research. Exploring new ideas and methods through comprehensive academic discussions is one of the main duties of academicians.

Aspects of Colloquium that Boost Legal Research

Colloquiums that primarily focus on the promotion of prolific research activities by the faculty members should be organized on a regular basis. One vital role that faculty colloquiums play is that they create pathways to new academic horizons by inducing discussions on topics that are booming in the legal sector. However, the willingness to become aware and discussing it should be present in the faculty members in order to make any academic endeavour (like colloquiums, seminars, symposiums, etc.) a success. Therefore, it is extremely crucial that faculty colloquiums focus on the following in order to promote beneficial legal research:

(i) Emerging domains of law and scope for further study;

(ii) Modern research techniques and methods;

(iii) Enhancement of knowledge of faculty members;

(iv) Mutual sharing of new knowledge among faculty members; and

(v) Soliciting research projects from renowned organizations

Apart from inspiring faculty members, these colloquiums also improve the classroom environment when it comes to research, critical thinking and analytical approach in the classroom as an aware faculty would be in a position to discuss any topic in a multi-dimensional manner.

Faculty Involvement and Legal Research

Every colloquium must aim at garnering comprehensive inclusion of all faculty members when it comes to accelerating legal research. A systematic legal research on any subject or in any area involves well-formulated steps and techniques. In order to accomplish something significant the researcher must be well-versed with his resources and limitations. The involvement of faculty members in research-based colloquium ensure constructive participation and beneficial knowledge sharing. It is also important that the faculty members be aware of the contemporary trends across the globe pertaining to legal research. Therefore, access to open sources such as international journals, manuals, books, etc. during a colloquium is always helpful.

Regular colloquiums coupled with formal training of faculty members in legal research is an asset for any law institute. In order to ensure faculty involvement in legal research colloquiums following steps may be undertaken:

(i) Provide opportunities on circulatory basis to all faculty members to come up with their idea of research and methodologies and share it on a common platform so that it can be open for deliberation;

(ii) The institution or the head of the department, by means of official resources, should provide incentives to every faculty member who comes with an innovative idea at a colloquium;

(iii) Some colloquiums may be led by professional legal researchers to conduct enhancement research training of the faculty members which would add significantly to their academic profile; and

(iv) Colloquiums should also focus on inter-disciplinary and multi-disciplinary research systems to increase the interest of the faculty members and to promote cross-disciplinary work in the institute.

Therefore, it can be contended that faculty colloquiums may be a very effective mechanism to promote valuable legal research that would add value to both faculty and the institution.

Colloquiums Around the World: Lessons and the Way Ahead for Indian Legal Education

In this section, the author will overview notable colloquiums that are organized in various renowned universities to improve legal education across the globe:

Northwestern Pritzker School of Law

It adopts an efficient mode of cross-institutional learning wherein the faculty members and students meet with visiting luminaries and scholars. The colloquium series is organised in various advanced domains of law that include Constitutional Law, Taxation, Environmental Law. Public Law and Soshnick Colloquium on Law and Economics.[3]

Berkeley Center for Teaching and Learning

Berkeley provides a year-long colloquium (known as Teaching Excellence Colloquium) for new faculty members in order equip them with knowledge, tools and inspiration in education. It promotes consorted peer sharing of multi-disciplinary perspectives. It also includes group-based studies and peer observations of classroom teaching.[4]

School of Law, Boston University

It hosts a colloquium on Gender, Law and Policy that is aimed at analysing emerging issues in gender justice and policy through extensive presentations followed by deliberations. Various renowned scholars are engaged in research under this colloquium and regularly interact with interested faculty members and students that are enrolled in the colloquium on pertinent issues.[5]

School of Law, New York University

Colloquiums are organized in form of a meta-seminar in which rigorous intellectual discussions and exercises are conducted. The faculty members and students interact to explore the most advanced and multi-dimensional intellectual experience in legal education. In NYU, a colloquium significantly deviates from lecture method and eliminates the dividing line between a teacher and a student. The goal is to promote free flow of ideas and ensure joint pursuit of for intellectual excellence. It consists of a series of workshops on a particular topic. Faculty members and students sit together and extensively deliberate on any recent paper by a renowned scholar on the pre-decided subject. The

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3 http://www.law.northwestern.edu/research-faculty/colloquium/, (visited on May 20, 2019).

4 https://teaching.berkeley.edu/programs/teaching-excellence-colloquium, (visited on May 20, 2019).

5 https://www.bu.edu/law/faculty-and-staff/colloquia-workshops/, (visited on May 20, 2019).

following day a meeting is organized with the author of that particular paper to which other visiting faculty members and guests are also invited. This provides a multi-dimensional approach to discussing a subject.[6]

Law School of the University of Chicago

A paper-presentation based colloquium (known as the Scholars' Colloquia) is organised every year to promote legal research and development. These colloquiums are conducted in a strong academic setting and provide an opportunity to scholars from across the world to share their work with other and also contribute to the progress of other scholars.[7]

These were some of the leading examples of faculty colloquiums which have been playing a significant role in the advancement of legal education.

Indian law institutes have to take proactive steps in order to improve legal education in the country and perspectives from elite institutions always help. Incorporation of techniques, methods and processes into the Indian legal education system is a tedious task but a rewarding one, without a doubt.

Conclusion

Educating the students commences with educating the teachers. The more skilled and trained a law faculty is the more advantageous it would prove to its students and to the legal profession as a whole. Therefore, importance of training endeavors in law institutes such as faculty development programs, seminars, workshops and colloquiums cannot be emphasized enough.

Indian legal education system has been going through a process of transition for the past couple of decades. With the setting up of National Law Universities in various states (in some states like Madhya Pradesh and Maharashtra there are more than one National Law Universities) the quality of legal education and research has taken giant steps ahead. At present, there are 19 National Law Universities in India that are taking legal education in India to impressive heights of excellence.[8]

There are other premier universities that are offering courses in law with curricula inspired by elite law institutions across the globe. All the modern law teaching methods and research techniques have been adopted and practiced in many Indian law schools. However, there is still a long way to go if we have to meet global standards of legal education and the benchmarks already created.

Relatively new law schools of the country should follow the standards being integrated by renowned law institutions of the country. Faculty colloquiums bearing various designs and dimensions are organized in almost all leading National Law Universities of the country. Leading law schools of the country should consider it their duty to bring the nascent ones on the same page to ensure collective enhancement of quality of legal education across the country.

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6 https://www.law.nyu.edu/academics/colloquia, (visited on May 20, 2019).
7 https://www.law.uchicago.edu/summerschool/students/colloquia, (visited on May 20, 2019).
8 https://www.theopusway.com/list-of-17-nlus-in-india/, (visited on May 21, 2019).

Emerging law colleges – both private and government – should first start with understanding the role and importance of faculty colloquiums so that they are in a position to organise them as per their requirement. The inspiration of improving the standards of discourse at a particular institution should come from the stakeholders and educators.

The University Grants Commission (UGC), the Bar Council of India (BCI) and other bodies of government working in the field of educational advancement of the country should lay emphasis on promoting critical approach and analytical thinking among law faculty. It is important to integrate colloquiums (like the ones discussed above) in the system to ensure free flow and mutual sharing of knowledge among the teachers and students.

As discussed above, there are many areas in which faculty colloquiums can be of immense help as there is nothing more fruitful in an educational institute than free flow and mutual sharing of knowledge. The only requirement is proper conception and implementation of a colloquium across the law institutes of the country.

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CLINICAL LEGAL EDUCATION IN INDIA-
AN INTERNATIONAL PERSPECTIVE

K. Vidyullatha Reddy♣

Abstract

Clinical legal education remained a challenge even to the best legal education institutions in India. The efforts made by the Indian legal education institutions in this direction need not be doubted; however, there are still many gaps which need further interrogation. This requires us to consider the emergence, objectives and the purpose of the clinical legal education. The important questions such as whether it emerged as a methodology of law teaching or to achieve social justice; do the law school clinics have the ability to achieve social justice; do the other stakeholders in justice delivery system intend the effective functioning of these law school clinics; do the law school clinics consider themselves as problem solvers or are they co-eminent people; what are the different models of lawyering and which should the law school clinics consider adopting; was clinical education propounded by legal realists etc. these questions and the debates surrounding them informs us ineffectively designing clinical programs and clinical courses. The paper attempts to discuss the above concerns drawing from the international experience. Prof. Madhav Menon is a proponent of clinical legal education; he emphasised on its importance and his pioneering contribution to clinical legal education in national law schools and beyond prompted me to write this paper in his memory.

Keywords: Cause Lawyering, Case Method, Legal Realism, Ordered Practical Experience, Rebellious Lawyering, Proceduralist Lawyering, Elite-Vanguard Lawyering, Grassroots Lawyering.

Introduction

I am writing this paper as a tribute to Prof. Madhava Menon so I thought it is important to consider his views on clinical legal education and their impact on clinical legal education in India. I have not worked directly under his leadership; however, I had the opportunity to learn from him indirectly. I am only recollecting two of his statements on clinical legal education and legal aid which I have come across. One is once in a seminar on legal aid and clinical legal education at National University of Juridical Studies (NUJS), Kolkata[1], he said and I quote :

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1 National Conference on Legal Aid Organised by National University of Juridical Studies (NUJS) Kolkata, February18 and 19, 2011.

> *I taught criminal law at Delhi University for many years, however after the legal aid was initiated at our University and after I made few visits to prison and learning practically from that experience my teaching improved remarkably and I thought my earlier teaching was unworthy.*

I am quoting from my memory it may not be actual reproduction but it was the essence of his statement. The second one which I wanted to remind here is when he came to our University (NALSAR) as a member of the University General Council[2] he suggested that :

> *B.A.L.L.B.(Hons.) Students should complete their class room study in four years and fifth year should be dedicated to practical learning, field studies, teaching assistants etc. based on their interest. He argued that fifth year should be left to learn the law by practicing i.e. clinical legal education.*

We need to carefully consider his views because now we cannot seek any clarification on his opinion we can only try and foresee the thought behind the statement and the merits and demerits of that visionary legends opinion. Whether I can elucidate his thoughts properly and justify the thought and vision of that legend is a challenge, however it is worth to make loud thinking of the thought behind his vision rather than leaving his views forgotten.

Clinical Legal Education in India

The Clinical Legal Education in India, when we look at it from the perspective of the Bar Council of India it is clear that Bar Council of India considers clinical courses as courses meant for practical training and for the social justice it suggests establishment of legal aid cells in all legal education institutions. So in India law schools thought a functional legal aid clinic will boost clinical legal education as well as the cause of social justice because it provides students opportunity to learn practical aspects with real case situations. It is not largely successful in India due to the huge financial burden it will have on law schools and the age old systems of the justice delivery which kept the students away from these activities.[3] Added to these many law scholars and professors believe that like other departments of Universities law department also should engage itself in class room teaching, research, publication and other ways of transmission of knowledge besides other University objectives which are not necessarily similar to the clinical legal education objectives. Some would even believe it as an intrusion into others spheres of activity, *i.e.*, advocates and judges. In this regard it is important to understand the historical development of clinical legal education to ascertain its role properly.

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2 NALSAR University of Law General Council Meeting held on March 18, 2017.

3 For more elaborate discussion on Clinical legal education in India refer to K. Vidyullatha Reddy, "*Clinical Legal Education in India: Issues and Challenges*", CONTEMPORARY LAW REVIEW, Vol. 2, No. 1, 2018, p. 205.

Historical Development of Clinical Education

When we look at the historical development of clinical education it is important to understand whether it emerged as a methodology of law teaching or did it emerge to engage with society to further the cause of social justice. If the answer is first, then clinical legal education objective will be different than the one if the answer is second one. Many scholars argue that clinical legal education emerged as a blend of both i.e. to further the cause of social justice and as a methodology of law teaching. Stephen Wizner analysed the historical development of clinical legal education in American law schools.[4] Initially, legal education in American law schools was based on class room teaching where teachers would teach the legal principles and students would learn from class room teaching and treatises. It was based on study and memorizing legal principles. This was changed with the invention of case method of law teaching by Professor Christopher Columbus Langdell, Harvard Law School faculty. Langdell's method required students to think like lawyers by analysing appellate court decisions and their future impact on similar cases. This method has completely abandoned the earlier method and it started to interrogate students on the basis of case law analysis popularly also known as Socratic Method. Case method and Socratic Method completely changed the methodology of law teaching in American law schools which spread to other countries as well. This happened in early 1900 so it is more than decade old now and time tested method. National law schools in India proved successful in providing quality legal education surpassing the centuries old traditional Universities' legal departments as they followed the Case method and Socratic method of law teaching while the traditional law departments in India were following the old methodology which prevailed in American law schools also before the advent of the Case method and Socratic method. In 1930's a group of faculty from Yale Law School, Columbia Law School and one or two from other law faculties developed a new approach which they called "*legal realism*". According to them, law is dynamic hence studying past judicial decisions to predict the future outcome need to be replaced as it assumes law to be static and not dynamic. As law is dynamic they encouraged students to think and study why the law came, whose purposes it served, what it was and what it should be. They argue that real life and social conditions shape law and that law should respond to social needs so they thought legal education should reconcile theory and practice. All the proponents of legal realism argued that practice requires theoretical understanding hence it blossoms theory and theories should inform practice. Prof. Karl Llewellyn of Columbia Law School a proponent of legal realism criticized the then existing method of law teaching in American law schools and argued for its replacement with what he called as *Ordered Practical Experience*[5]. This ordered practical experience is the basis of what we call clinical legal education today. However, it was in early 1970's that clinical legal education entered into American law schools and within few years many law

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4 Stephen Wizner, "*The Law School Clinic: Legal Education in the Interests of Justice*", FORDHAM LAW REVIEW, Vol. 70, 2002, p. 1929.

5 *Ibid*, p. 1932.

schools in America had law schools' clinics. In all law school budgets in America financing clinical programs are included on permanent lines.[6] These clinics represented the underprivileged clients, the students are exposed to the social problems, they learn to apply theory through representation, they learn to seek social change, and they also learn the challenges and limitations in implementing the law. Legal education adopting clinical methodology results in converting legal education into justice education. It is clear that clinical legal education emerged as methodology of law teaching; however, the methodology resulted/necessitated in social interaction and furthering social justice. So the objectives of clinical legal education were broadened.

Law Schools' Clinics

The next question that emerges, whether law schools' clinics have the capacity to solve the problems. Clinical legal proponents assumed that law school clinics will be able to guide the people/clients and represent the underrepresented and further the cause of social justice. However, it was observed yet times they served more to educate the students the problems in law enforcement and how the justice is done by other ways than by legal representation. It was observed in a law school clinic in Israel that students persuasion of a client's case resulted in learning the hurdles in distributive justice caused by positive law enforcement.[7] In that case a woman who was abused by her husband moved out of her home with her children occupied a vacant public house and applied to the local administrators for allotment of the same house. Her application was rejected by the administrators as she does not fulfil the requirement i.e. applicant should be a divorcee/ widower and she cannot be an illegal occupant. She filed for divorce but that was pending and being an illegal occupant of the house the administrators rejected her application. Law school students filed case and appealed till the Supreme Court. The court sympathised with her but did not order the administrators to allot her the house. While the case was pending she got divorced and thereafter she made a fresh application for a different house. The administrators accepted her new application and allotted her a new house because by then she qualified the two conditions i.e. she is a divorcee and she did not occupy the house she is seeking allotment. So the students got to learn the challenges in pursuing just causes, problems with civil disobedience and effective representation but could not provide required relief to the client.

This brings us to the next question whether law school clinics should focus on client representation, or should they focus on furthering the cause of social justice. In this direction one very important influence on the American law school clinics was the book of Gerald Lopez on Rebellious Lawyering[8]. Lopez argues that accepting or thinking lawyers as preeminent problem solvers is very

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6 *Ibid*, p. 1934.

7 Neta Ziv, "*Lawyers Talking Rights and Clients Breaking Rules: Between Legal Positivism and Distributive Justice in Israeli Poverty Lawyering*", CLINICAL LAW REVIEW, Vol. 11, 2004, p. 209.

8 Anthony V. Alfieri, "*Rebellious Pedagogy and Practice*", CLINICAL LAW REVIEW, Vol. 23, 2016, p. 5.

elitist and paternalistic approach. He argues that this approach has created problems as they try to solve the problems as a technician without understanding the ground realities and hence fail to change what they hope to change. This approach makes clients completely dependent on the lawyers and he claims that this approach of treating lawyers as heroes is institutionalised by the law school clinics. Lopez states that this has led to underscoring the client's non legal concerns resulting in complete neglect of the client. Lopez concept of rebellious lawyering envisions legal practice as diverge and broader than the formal client centred lawyering. He argues that lawyers should treat themselves as co-eminent people and should collaborate to solve the problems of their clients. His approach reconstructs the role of lawyers which includes placing importance to client's perspective, developing strategies with community participation etc. Lopez's vision challenged the prevailing dominant legal education process.

Rebellious lawyering invoked the attention of legal educators to consider it as a form of Clinical Pedagogy to translate theory into practice in institutional contexts. This required new rebellious vision for monitoring law school clinics. Let us consider how radically this is different from traditional clinics taking from the example of earlier Israel law clinics efforts to represent the homeless women. Clinical Pedagogy following rebellious lawyering techniques would consider studying the impact on health, education, finance and neighbourhood safety of the homeless women and her children along with similarly placed other people and its impact on public and private housing. They would consider developing authentic reports, providing media coverage to the problem; develop movements in support of them etc. besides representing their cause legally. This would help in the long term in policy making and provide larger benefits to the community and administration.

Different Categories of Lawyering

The next question that arises is how different rebellious lawyering is from cause lawyering. It is difficult to define Cause lawyering[9]. Cause lawyering is supposed to be a blend of morals and law. The difference between a cause lawyer and a general lawyer is, a general lawyer will try to help his client within the sphere of law while a cause lawyer employs his skills to further a cause and helps his clients. Cause lawyers locates clients or finds clients that serve the purpose of furthering the cause he is persuading. Cause lawyers are morally activist lawyers. Thomas M. Hilbink analyses cause lawyers under three broad categories: (1) Proceduralist Lawyering, (2) Elite-Vanguard Lawyering and (3) Grassroots Lawyering. The Proceduralist Lawyering assumes legal system as fair and strives for ascertaining procedural justice and believes in legal representation as a solution. The Elite/Vanguard Lawyering assumes that structural understanding of ills is essential to ensure substantive legal justice. They are driven by cause and assumes lawyer as a leader to solve the cause through the clients found by them. The Grassroots Lawyering assumes law as

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9 Thomas M. Hilbink, "*You Know the Type ...: Categories of Cause Lawyering*", LAW AND SOCIAL INQUIRY, Vol. 29, No. 3, 2004, p. 657.

an oppressive force they believe that solution lies in political response and they believe that lawyer's participation along with clients is essential to achieve political success. Rebellious lawyering opens up the different options and believes in lawyering as a collaborative effort of co eminent people including lawyer. Cause lawyering is an evolution which emerge through the selection of those options and their exercise. In all both have many similarities and dissimilarities which are worth of academic debates.

Whatever may be the different categories and models of lawyering which inform clinical pedagogy one fact which is certain is that every law school clinic should be an ethical law office.[10] Prof. Peter A Joy argues that for every law student the first lawyer he encounters are his law school Professors and the students' negative views on lawyers which he may have drawn from the movies or from any other experiences have to be dispelled and the crystallisation of a good image and the motivation to persuade the same should be instilled by the law school. The law schools cannot underscore their responsibility to imbibe ethics and values among the students more so the law school clinics. He argues that every law school clinic should be a model ethical law office from where student should learn and inculcate ethical responsibilities in their future persuasion.

The next major question that comes from all these is whether other sections of the society such as politicians, administrators, lawyers and judges do they want these law school clinics to function very effectively and is it possible for the clinics to completely overcome all the injustices in the society. Prof. Peter A Joy presents the difficulties of a successful law clinic.[11] Tulane Environmental Law Clinic which was managed by faculty and students took up action on behalf of community groups and environmental organizations against Shintech chemical plant which was proposed to be located near a lower income community. The clinic challenged the permits and the business group and politicians called the opposing clinic people as *Modern day vigilantes* and *Storm troopers*. The business groups and politicians lobbied and amended the Louisiana Student Practice Rules to ensure that students become ineligible to represent their clients. The lobbying went up to the level of persuading Supreme Court judges who were supported by these groups during the judge's selection campaigns which led to the amendments according to some news agencies. If similar situations were to crop up in Indian law school clinics can we garner the requisite support from the government and University governing bodies to withstand the functioning of the clinics? Can we expect our judiciary which was largely activist in furthering many causes stand up to support the clinic activities? Should we expect our clinics to rise to that level while many law schools are still struggling to even do the basic component properly as envisioned by Bar Council in its curriculum? All these depend on the individual law school teachers and their administrators. We need administrators with

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10 Peter A Joy, "*The Law School Clinic as a Model Ethical Law Office*", WILLIAM MITCHELL LAW REVIEW, Vol. 30, 2003, p. 35.

11 Peter A Joy, "*Political Interference with Clinical Legal education: Denying Access to Justice*", TULANE LAW REVIEW, Vol. 74, 1999, p. 235.

vision and courage who can guide the clinics functioning and maintain the balance between education and social justice while protecting their school from unwanted external intrusion and ensuring its dignity. Financial implication of course remains a major hindrance in proper functioning of many law school clinics. While traditional law departments which charge very nominal fee may find it even more difficult national law schools may consider it in view of the higher fees they charge. It again brings forth the suitability of national law schools which have a diverse student body as opposed to traditional legal departments which generally admits local students.

Concluding Remarks

To conclude the learning from the international experience discussed above we can state that American law schools have moved ahead from Case method and Socratic Method including clinical legal education model. Indian law schools are still struggling to properly include clinical legal education as a method of law teaching. They are struggling to understand the social justice challenges and to create the blend or if required to differentiate between the both. If I were to elucidate Prof. Madhava Menon's two statements now I would think that his first statement which he made in 2011 urged the National Law Schools to create and run a functional legal aid clinic and his second statement made in 2017 urged the law schools to broaden the objectives of clinical legal education to make them functional in Indian context. To broaden the objectives of clinical legal education the discussion made by me above may be helpful to design and implement it in the context of individual law school.

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CHALLENGES FOR THE INDIAN LEGAL EDUCATION SYSTEM IN THE AGE OF TRANSFORMING GLOBAL LEGAL LANDSCAPE

Ritu Gupta♣

Abstract

Globally, there is a kind of transnational legal education sector developing which operates in an increasingly complex and interdependent global environment. In such dynamic environment emerging economies are striving to create world class institutions of higher education for the 21st century knowledge economy. The traces of these changes can also be seen in proliferating culture of elite law schools in India. However, these changes have very little mark as compared to its global counterparts. For any emerging economy to progress socially, it is essential for its educational institutions to be ready to lead the global changing agenda. Social progress will not be fettered by the averseness of the lawyers to adapt. So, it becomes inevitable for India to make its law students future ready to meet this rapid change and to compete with the broad arrays of foreign entities. In this background this article describes the changes happening in the global legal world and its consequence on the legal education system. Also, it proposes some experimental changes in the Indian Legal Education System to meet the emerging challenges of having competent law students.

Keywords: Legal Education, Legal Industry, Enhanced Practitioner, Legal Knowledge Engineer, Legal Data Scientist, Legal Risk Manager.

Introduction

Worldwide, there is ongoing debate on the changing landscape of legal education system. These changes include global business environment, technological and process innovation, the emergence of new entrants in the legal market, such as individuals, multinational corporations, and Non-Governmental Organisations (NGOs) and wider agendas revolving around the regulations.[1] These global trends have changed the dynamics of legal profession as well as education. As a result, innovation in legal services and at the curriculum level has become the key to excel in the system. Many foreign Universities have already started adjusting themselves to this changing landscape in the legal market.[2]

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1 Richard E. Susskind, TOMORROW'S LAWYERS: AN INTRODUCTION TO YOUR FUTURE, 2nd ed. 2017, p. 44.

2 For example, 'The European-American Consortium for Legal Education' (EACLE) is a cooperative network between ten European and American law faculties for the advancement of the knowledge related to legal systems on both continents.

At the outset, it is worth noting that the legal service industry is changing remarkably and it is predicted that the change has and will continue to manifest in different ways across different tranches of work.[3] According to Professor Richard Susskind, future is going to create many new forms of legal services for those lawyers who are adequately adaptable to changing market conditions.[4] This growth is mainly driven due to globalisation, advancement of technology and liberalisation of regulations urging law firms and educational leaders around the world to envision future opportunities. For an emerging economy like India, these transformations are equally important. The key reason is that in the recent years India has adopted a series of regulatory reforms that have opened its economy to the global market that were earlier closed to private entities.[5]

In 2017, in order to liberalise the legal market, the Government of India had revoked a ban on the practice of foreign law firms from Special Economic Zones (SEZs).[6] The latest step in this direction is that Indian Supreme Court has directed Bar Council of India to frame rules governing foreign firms entry in India.[7] Meanwhile, the Supreme Court has opened the door of entry for foreign law firms on a temporary basis to advise clients, and to conduct international arbitrations in India.[8] The impact of these regulations is going to be farfetched. Among other important changes, it is possible that the multinational companies that would have their operations in the Indian market would want in-house lawyers to support their Indian operations in the same way that their current operations are supported in their own established markets.[9] This change will encourage Indian companies to upgrade their in-house counsel function and expand their operations into new market specially market such as the USA and UK, where the regulatory environment is both complex and challenging. This process of diffusion will further be spurred by the globalisation of knowledge.[10]

Various scholars have observed that international regulations play an active role in administering the affairs of companies to compete in the globalised economy.[11] This, as a result, increases the demand for the kind of knowledge about law, regulation, and the institutions of national, regional, global

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3 *Supra* n. 1, p. 8.

4 Richard Susskind and Daniel Susskind, THE FUTURE OF THE PROFESSIONS: HOW TECHNOLOGY WILL TRANSFORM THE WORK OF HUMAN EXPERTS, 1st ed. 2015, p. 133.

5 Jagdish Bhagwati, IN DEFENSE OF GLOBALIZATION: WITH A NEW AFTERWORD, 1st ed. 2007, p. 13.

6 Special Economic Zones (Amendment) Rules 2017, http://www.egazette.nic.in/WriteReadData/2017/173521.pdf, (visited on March 29, 2018).

7 *Bar Council of India v. A.K. Balaji*, 2018 (3) ABR 782: AIR 2018 SC 1382: 2018 AIR (SCW) 1382.

8 *Ibid*.

9 David B. Wilkins, et al., (eds.), THE INDIAN LEGAL PROFESSION IN THE AGE OF GLOBALIZATION, 1st ed. 2017, p. 117.

10 *Ibid*, p.118.

11 Daniel W. Drezner, ALL POLITICS IS GLOBAL: EXPLAINING INTERNATIONAL REGULATORY REGIMES, 1st ed. 2007, pp. 5-7.

governance.[12] Based on such demand, companies look for the lawyers who are capable of engaging in sophisticated analysis of legal and non-legal solutions together. To find lawyers with appropriate skills, law firms have generally not turned to practicing advocates, but instead have hired freshly passed out law graduates.[13] All these changes are creating many challenges to the future of legal education in India, and at the same time they are also providing an opportunity to challenge the *status quo*. This article analyses the global changes in the field of legal education and its impact on Indian legal system. This is an attempt to throw light on Indian law schools, types of useful skill set and curriculum that might help preparing the students to have the desired legal expertise in the enhanced transnational legal market.

Changing Global Legal Landscape

There are three major global trends in the legal landscape that are creating challenges for legal education. These are technology, globalisation, and liberalisation of regulation.[14]

Technology

Technology is now pervasive in our life. Consider the approximate number of active users of mobile phones (five billion),[15] the internet (four billion),[16] and of social media (three billion).[17] Consider also that after China, India ranks second[18] globally in terms of internet usages. According to a study of IBM, globally we are creating 2.5 quintillion bytes of data every day.[19]

It is notable that this exponential growth in information technology has created an impact on legal profession, especially in the area where practice can be standardized and routinized.[20] For example, earlier in New York, first-year associates used to perform the review of complex and large litigation documents at the cost of $160,000/- a year. But now, similar document review is being done by legally trained personnel in Legal Process Outsourcers (LPO) in Mumbai or Cape Town almost at one fifth price.[21] Law firms are leveraging the

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12 *Ibid*.

13 *Ibid*, p. 519.

14 John Flood, "*Legal Education in the Global Context, Report for the Legal Services Board*", 2011, http://www.legalservicesboard.org.uk/news_publications/latest_news/pdf/lsb_legal_education_report_flood.pdf, (visited on January 30, 2018).

15 WE ARE SOCIAL DIGITAL REPORT 2018, https://wearesocial.com/us/blog/2018/01/global-digital-report-2018, (visited on January 31, 2018).

16 *Ibid*.

17 *Ibid*.

18 https://www.internetworldstats.com/top20.htm, (visited on March 31, 2018).

19 IBM Marketing Cloud, "*10 Key Marketing Trends for 2017*", 2017, https://www-01.ibm.com/common/ssi/cgi-bin/ssialias?htmlfid=WRL12345USEN, (visited on March 31, 2018).

20 *Supra* n. 1, p.61.

21 Mary Lacity and Leslie Willcocks, "*Legal Process Outsourcing: LPO Provider Landscape Report*", 2012, http://outsourcingunit.org/publications/LPOProvider.pdf., (visited on March 31, 2018).

power of technology majorly for the document production.[22] There are some legal companies that are utilising this opportunity in creating automated platforms for documentation and contract formation. For example, Radiant Law, a UK firm, has built a system to cut down the time-consuming process of closing and modifying the contracts.[23] Indian firms, too, are looking into this potential treasure of innovative assistance to aid their internal activities. 'Cyril Amarchand Mangaldas' is the leading law firm in the country, that has adopted Artificial Intelligence (AI) technology for certain legal process activities.[24] 'Casemine' is another legal research and analysis platform, that has introduced Artificial Intelligence (AI) to make research more in-depth and comprehensive.[25] Looking beyond back-office administration and e-working, now technology has reached the courts too.

In UK and USA, e-filing and advanced online dispute resolution has become increasingly popular. All these changes are creating a demand for the 'enhanced practitioner', who can work with the modern techniques of standardisation and computerisation.[26] As a result, there is a rapid increase in the number of law schools promoting legal technology competence in their curriculums. For example, many of Australian law schools are making an advancement towards providing students with practical exposure to legal technology tools and incorporating technical literacy in their syllabi.[27]

The University of South Australia is offering the innovative 'Cyber Law' elective course covering the areas of data security, data integrity, coding and electronic evidence.[28] Melbourne Law School has started a 'Law Apps', an elective subject where law students need to design, build and release a website that can provide to the non-lawyers fast and cost-effective solutions to standard legal problems.[29] Also in some countries technology developers are supporting law schools in embracing advanced information technology. For example,

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22 G. Mitu Gulati and Richard Scott, "*The Three and a Half Minute Transaction: Boilerplate and the Limits of Contract Design*", COLUMBIA LAW AND ECONOMICS WORKING PAPER, Vol. 407, http://dx.doi.org/10.2139/ssrn.1937900, (visited on January 29, 2018).

23 *The In-House Guide to LawTech for Commercial Contracts,* COMMERCIAL CONTRACTING OPTIMISATION SERIES, https://radiantlaw.com/uploads/files/Radiant%20Law%20In-House%20Guide%20to%20LawTech.pdf, (visited on March 31, 2018).

24 Shaji Vikraman and Khushboo Narayan, "*Cyril Amarchand Mangaldas to be Asia's First Law Firm to Employ AI for Legal Work*", 2017, http://indianexpress.com/article/business/companies/cyril-amarchand-mangaldas-to-be-asias-first-law-firm-to-employ-ai-for-legal-work-4499676/, (visited on January 29, 2018).

25 *Story of CaseMine, NCR based startup that's disrupting Indian legal system using AI*, https://www.analyticsindiamag.com/story-casemine-ncr-based-startup-thats-disrupting-indian-legal-system-using-ai/, (visited on February 20, 2018).

26 *Supra* n. 1, p. 141.

27 Stefanie Garber, "*Technology in legal education,*" LAWYERSWEEKLY, https://www.lawyersweekly.com.au/opinion/19243-technology-in-legal-education, (visited on July 28, 2018).

28 *Ibid*.

29 Melbourne Law Masters Student Association, *Melismata,* (2014), https://law.unimelb.edu.au/__data/assets/pdf_file/0007/1595500/Melismata-Issue-2-November-2014.pdf, (visited on July 28, 2018).

'Neota Logic', an Artificial Intelligence software platform, is collaborating with law schools in Australia and not-for-profit legal services organisations to develop and implement specialist websites as part of their learning.[30] Similarly, Chicago-based legal technology company 'kCura', through its software 'Relativity', has launched an 'Academic Partners' program with over 50 US law schools.[31]

In India, this trend is yet to be seen. Technology has not yet penetrated in our legal education system substantially. While computer-based learning environment is in use, its role is simple and limited.[32] Law is still widely taught with traditional techniques. Law teachers are required to be fully exposed and trained to exploit the potential e-learning platforms. They need to adopt these new learning platforms at a faster rate to keep themselves in competition with other private providers. Also, law schools must collaborate with media and IT professionals to help implement this development.

Globalisation

Globalisation is remodeling almost every sector of the world's economy including the market for legal services. India's legal profession was transformed by the 'global shift' in 1991, when the process of moving from an essentially closed state-controlled economy to foreign investment had started. This shift in India's economy has produced a new 'corporate legal hemisphere'[33] that is playing a gradual important role in the Indian legal profession and in its capacity to influence in the new global order.[34]

In past few years, Indian corporate law firms have surfaced as a small yet economically important and growing part of national and international legal sector.[35] After a quarter century of liberalisation, there are more than 150 Indian Firms that specialise in providing services to corporate clients, the largest of which employ several hundred lawyers and have multiple offices within Indian, and even some abroad.[36] This shift has also fueled a growing demand for new laws, regulations, and administrative apparatus to facilitate the interface with the broader global economic and political environment.

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30 Neota Logic, *Neota Logic Sponsoring Australia's Largest Legal Industry Hackathon,* 2017, https://www.neotalogic.com/2017/08/03/neota-logic-sponsoring-australias-largest-legal-industry-hackathon/, (visited on January 28, 2018).

31 Press Release, *kCura Launches Relativity Academic Partner Program with 50 Schools*, PR NEWSWIRE (Chicago), October 20, 2015, https://www.prnewswire.com/news-releases/kcura-launches-relativity-academic-partner-program-with-50-schools-300162280.html, (visited on July 28, 2018).

32 e-PG PATHSHALA is an MHRD initiative, under its National Mission on Education through ICT (NME-ICT) where e-content in 77 subjects at masters' level is developed. Also, there are some commercial Indian publishers that have developed databases for the purpose of providing support to Indian legal research, such as Manupatra and SCC Online. Now-a-days there are many law schools that have started posting their Journals and syllabi online.

33 *Supra* n. 9, p. 5.

34 *Supra* n. 9, p. 3.

35 *Supra* n. 9, p. 519.

36 RSG India Report, 2017, http://rsg-india.com/roving-rsg/press-coverage-key-themes-2017-rsg-india-report, (visited on January 29, 2018).

In such a new legal and regulatory environment, there is a need of lawyers who can work in increasingly demanded corporate law fields such as mergers and acquisitions, project finance, securities, and initial public offerings.[37] This demand of cross-border transaction have required the law firms to adapt themselves in ways that were relatively unknown in recent past. Now-a-days, the legal practitioners are becoming internalised into decision making process of their corporate clients and working as a deal manager[38] and a trusted advisor.[39]

This requires varied skills, including a deep understanding of the transaction and its individual elements and an appreciation of various legal regimes in jurisdictions across which the transaction is spread. Lawyers involved in cross-borders' corporate transactions need to have adequate training in managing inbound and outbound deals. Especially in outbound deals, lawyers require to be familiar with laws and practices in the target local jurisdiction, and also need to be aware of the issues related to cultural sensitivity. All these additional skills, which operate as a significant differential in current globalised legal world, are not in adequate supply.[40] Only few of the elite law schools have slowly begun to adapt their curricula to prepare the next generation of Indian lawyers to work in the new corporate hemisphere.[41] But these changes must be brought at a larger level.

Liberalisation: A Shifts in Regulations

In most countries, historically speaking, only lawyers with appropriate law degree have been permitted to provide legal services to clients. Laws and regulations have stipulated who can be a lawyer, who can run a legal business, and the kind of services they can provide.[42] For that reason, it has been criticised that the legal profession has an untenable monopoly and is anti-competitive in practice. In turn, many have pushed an idea for easing the laws and regulations that govern the traditional legal service system.[43] This is a call for liberalisation.

In England and Wales, the call of these campaigners was answered as long ago as 2004, with the publication of an independent review called as 'Clementi Report'.[44] Sir David Clementi (an accountant and not a lawyer) had been

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37 *Supra* n. 9, pp. 170-205.

38 *Supra* n. 9, p. 186.

39 For example, the latest trend in India is gradually emerging whereby Indian companies are willing to embark on a cross-border mergers and acquisition without the assistance of an investment bank. Companies are building up substantial in house commercial capabilities, especially when they are active in cross border mergers and acquisitions market. The absence of an external investment bank makes the role of the law firm on the transaction somewhat more onerous as the corporate client may look to the law firm for hand holding on commercial matters as well.

40 *Supra* n. 9, p. 189.

41 *Ibid*.

42 In India, it is the Bar Council of India that regulates legal profession.

43 *Supra* n. 1, p. 6.

44 David Clementi, "*Review of the Regulatory Framework for Legal Services in England and Wales Final Report",* 2004, http://www.avocatsparis.org/Presence_Internationale/Droit_homme/PDF/Rapport_Clementi.pdf, (visited on January 19, 2018).

appointed by the Lord Chancellor to review the regulatory framework for legal services. Meeting and responding to concerns about restrictive practices in the legal profession, he recommended considerable liberalisation.[45] This led directly to the enactment of Legal Services Act 2007 which, amongst many other provisions, permits the launch of new types of legal businesses called 'alternative business structures'.[46] The purpose of this system was to open the ways for non-lawyers to own and run legal businesses; to allow external investment, such as private equity or venture capital, and it let the non-lawyers to become owners of law firms. These kinds of development are of deep significance and represent a major deviation from conventional legal services. As new legal marketplace gain prominence, clubbed with new mechanisms of technological delivery, their demand may increase adding a need for new skill sets and their training.

In India, non-law graduates are generally barred from practicing legal profession.[47] However, some big companies like EY, KPMG, PwC and Deloitte are providing their advisory services through chartered accountants, especially in tax laws.[48] On the other side, legal firms are also diversifying their practice into forensic operations[49] and undertaking commercial diligence and investigations for their clients. These changes show that the line between lawyers and non-lawyers is getting blurred and indicating that market of legal service is going to be more competitive. In the scenario where Government is taking steps to liberalise legal profession by opening an entry for foreign firms, this competition will further be enhanced.[50] But this competition is good for everyone from lawyers to students to the consumer of legal services. The reason is that by the modernisation of Indian economy and growth of enterprises the need of legal and ancillary services will increase. This indicates that legal market is far from efficient and there are a great number of opportunities for offering legal services in modern, economic, and more client-friendly ways. For all of these, it is required to have skills of business managers rather than holding only a law degree. Therefore, for the new generation of Indian lawyers, there exist increased opportunities creating a need of stronger entrepreneurial spirit in the legal market.

In the coming time, to establish a successful legal entity, therefore, having a fine legal mind will not be sufficient. Tomorrow's lawyers will need to develop various softer skills to win new clients and keep them happy.

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45 *Ibid*.

46 Judith A. Mcmorrow, "*UK Alternative Business Structures for Legal Practice: Emerging Models and Lessons for the US*", GEORGETOWN JOURNAL OF INTERNATIONAL LAW, Vol. 47, 2016, pp. 665-708.

47 Section 24 (2) of the Advocates Act 1961.

48 Maulik Vyas and Sachin Dave, "*Turf War: Law firms take on Big 4 - EY, KPMG, PwC and Deloitte expansion*", THE ECONOMIC TIMES, September 14, 2015, https://economictimes.indiatimes.com/industry/services/consultancy-/-audit/turf-war-law-firms-take-on-big-4-ey-kpmg-pwc-deloitte-expansion/articleshow/48949990.cms, (visited on January 19, 2018).

49 *Ibid*.

50 *Ibid*.

In summary, globalisation, liberalisation of regulations, and technology is driving huge and irretrievable change in the way that lawyers work. These changes are creating a new legal landscape. Due to above changes it is predicated that in years to come, the demand of traditional lawyers will reduce as compare to today. Clients will not prefer to pay expensive lawyers for work which will be available at affordable price from the people with reasonable subject knowledge, supported by smart systems and standard processes. This prediction does not indicate the end of lawyers completely, but it does point to a requirement of less traditional lawyers. Simultaneously, when systems and processes play a more pivotal role in law, this opens the possibility of important new forms of legal profession and ancillary services.

Prospects for Future Lawyers

The Enhanced Practitioner: As the economy liberalises, there will be a need for the 'enhanced practitioner', a skilled, well-informed yet not an expert lawyer, who will be asked to supply services enhanced by modern standardised techniques and computerisation.[51] These enhanced practitioner will mostly act as a legal assistant to the expert trusted adviser, for those jobs that require a lawyer but not essentially a pricy specialist.[52]

The Legal Knowledge Engineer: When the computerisation of legal services take place, the demand of talented lawyers will increase for organising and modelling large quantum of complex legal materials. During this process different segments of law will be analysed, distilled, and captured leading to standardisation of working practices.[53] Developing legal standards and procedures, and organising legal knowledge in computer systems, is inevitably a job of legal research and legal analysis.[54] If a modern legal establishment wants to compete on the strength of its digital standards and systems, then it must have lawyers engaged in building them. These lawyers will be legal knowledge engineers.[55]

Legal Data Scientist: With the growing significance in law of machine learning[56] and predictive analytics,[57] there will be a corresponding need for data experts who are masters of the tools and techniques that are required to capture, analyse, and manipulate large quantities of information.[58] The 'legal data

51 *Supra* n. 1, p. 134.

52 *Supra* n. 1.

53 Tom M. van Engers, "*Legal Engineering: A structural approach to Improving Legal Quality"*, 2004, https://link.springer.com/chapter/10.1007/1-84628-224-1_1, (visited on January 19, 2018).

54 Jacob, Kai, Schindler et al. (eds.), LIQUID LEGAL: TRANSFORMING LEGAL INTO A BUSINESS SAVVY, INFORMATION ENABLED AND PERFORMANCE DRIVEN INDUSTRY, 2017, p. 408.

55 *Supra* n. 1, p. 163.

56 Harry Surden, "*Machine Learning and Law*", 89 WASHINGTON LAW REVIEW 87, 2014, http://scholar.law.colorado.edu/articles/81, (visited on January 19, 2018).

57 Jeff Pfeifer, *How Analytics Is Shaping the Current and Future Practice of Law*, June 2017, http://www.lawjournalnewsletters.com/sites/lawjournalnewsletters/2017/06/01/how-analytics-is-shaping-the-current-and-future-practice-of-law/, (visited on January 19, 2018).

58 *Supra* n. 1, p. 140.

scientist' will seek to identify correlations, trends, patterns, and insights both in legal resources and in non-legal materials.[59] Again, they will be inter-disciplinary specialists, with knowledge not only of relevant systems but also the law and legal service. A strong background in mathematics, programming, or natural sciences will help here.[60]

Online Dispute Resolution (ODR) Practitioner: The Online Dispute Resolution (ODR)[61] practice started with the advent of online courts and advanced online dispute resolution as common mechanisms for the settling of disagreements, there will be call for practitioners in this emerging world.[62] These specialists will advise clients on how best to use online services and will be experts in settling disputes conducted in electronic environments.[63] Litigators need not appear in courtrooms or even in virtual hearing rooms to add value. But they will need to develop new skill sets which can help their clients who are involved in online courts and ODR in a demonstrably better position than if they use these systems on their own. New careers will also open for e-negotiators and e-mediators; those individuals whose intervention and adjudication will actually be required in the ODR process.[64]

Legal Risk Manager: Legal risk manager means the lawyers who can help in identifying or mitigating the organisational risks.[65] These organisational risks are basically the legal risks including operational and reputational risk.[66] Currently, there is scarcely a law firm in the world that has acknowledged this need and developed a sophisticated range of processes, techniques, or systems to help their clients identify, assess, quantify, monitor, and control the plethora of risks that confront them.[67] Legal risk managers will be proactive whereas the conventional legal service providers are reactive in nature. The focus of legal risk managers will be on forestalling the needs of those they advise and pre-empting their legal problems. Their preoccupation will specifically deal with the potential pitfalls and threats to the business.[68] Legal risk managers will carry out the jobs, such as reviewing of legal risk, litigation readiness assessments, analysis of contractual commitments and compliance audits. This will not be a

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59 *Supra* n. 1.

60 *Supra* n. 1.

61 Doug Leigh and Frank Fowlie, "*Online Dispute Resolution (ODR) within Developing Nations: A Qualitative Evaluation of Transfer and Impact*", 2014, file:///C:/Users/Ritu%20Gupta/AppData/Local/Packages/Microsoft.MicrosoftEdge_8wekyb3d8bbwe/TempState/Downloads/laws-03-00106%20(3).pdf, (visited on January 20, 2018).

62 Mohamed S. Abdel Wahab and M. Ethan Katsh (eds.), ONLINE DISPUTE RESOLUTION: THEORY AND PRACTICE: A TREATISE ON TECHNOLOGY AND DISPUTE RESOLUTION, 2012.

63 *Supra* n. 1, p.140.

64 David B. Lipsky and Ariel C. Avgar, "*Online Dispute Resolution Through the Lens of Bargaining and Negotiation Theory: Toward an Integrated Model*", UNIVERSITY OF TOLEDO LAW REVIEW, 38, 2007, pp. 47-88.

65 Andrew M Whittaker, "*Lawyers as Risk Managers*", BUTTERWORTHS JOURNAL OF INTERNATIONAL BANKING AND FINANCE LAW, 2003, pp. 5-7.

66 *Supra* n. 1, p. 72.

67 Bryan E. Hopkins, LEGAL RISK MANAGEMENT FOR IN-HOUSE COUNSEL AND MANAGERS, 2013, p. 241.

68 *Supra* n. 1.

side- show for the legal profession rather it will fundamentally alter the way that clients administer their legal affairs.

Some of the abovementioned jobs are already being offered and undertaken in some advanced firms and departments in India. For example, recently, the 'Big 4' (Deloitte, KPMG, PwC, and EY) have begun an emphatic return to the Indian legal world.[69] Particularly after introduction of GST, they have enjoyed several hundred million pounds worth of annual fee income from the legal services that are offered in conjunction with their tax work.[70] Also, two of the largest legal businesses, Thomson Reuters[71] and Reed Elsevier[72] have diversified over the years and are clearly ambitious and acquisitive in the fields of legal technology, legal knowledge engineering, and online legal services. These businesses employ legions of lawyers and armies of software engineers. They are commercially ambitious, high-tech, and experienced in carving out new market space. They recently bought a leading document automation platform[73] and they have great armies of technologists. Accordingly, they can offer a wide range of careers in tomorrow's legal sector. Further, some of the young lawyers who are keen to pursue careers as legal knowledge engineers are providing online legal services. They are legal-tech start-ups. Currently, there is a range of independent legal-tech businesses in India-such as Akosha.com, Termsheet, Lawrato and Indiafiling are some of them going ahead with exciting new products and services.

Need to Respond to Changing Market: Training of the Lawyers

The expected growth across different sectors in legal profession is exerting a great pressure on Indian legal education to meet these changing skill-based demands. Just before liberalisation, anticipating the changing needs, the Bar Council of India took steps to reform legal education system with the establishment of the first National Law School in Bengaluru in 1987. This was well-supported by other reforms in pedagogy, curriculum and teaching methods, entrance criterion, accreditation of law schools and so on so forth. Today again, similar need is arising due to changing global environment which warrants significant reforms in current legal education system. Such reforms should not only be limited to meet the current need but also to think a step ahead which can give India an edge over other countries. Some of the reforms can be integration of information technology with law; incorporation of big data and artificial intelligence in the curriculum; partnership of law schools with IT firms in the field of research; strengthening of the existing law courses with the knowledge of other fields such as finance and risk assessment, etc. Government needs to

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69 Anubhav Pandey, "*Big Accountancy Firms in India Have Their Captive Law Firms. Is This Legal in India?*", I PLEADERS, August 9, 2017, https://blog.ipleaders.in/big-accountancy-firms-india-captive-law-firms-legal-india/, (visited on January 19, 2018).

70 *Ibid.*

71 *Supra* n. 1, p. 149.

72 *Supra* n. 1, p. 149.

73 Sterling Miller, "*The Future of Artificial Intelligence*", 2017, https://static.legalsolutions.thomsonreuters.com/static/pdf/S045388_2_Final.pdf, (visited on January 19, 2018).

play the role of catalyst in bringing such reforms by providing more autonomy and space to the law schools. Such reforms will help in preparing more flexible, team-based, technologically equipped, commercially astute, hybrid professionals, who are able to transcend legal and professional boundaries.

Conclusion

To conclude, it can be safely assumed that, legal education is at the metaphorical cross roads. The approaching liberalisation of the Indian legal service market and the likely entry of foreign law firms is a small example of how globalisation is likely to reshape the Indian legal landscape in future. The only differentiator will be the identification of more reforms other than the above discussed and the speed of the implementation of the same. As it is rightly said that justice delayed justice denied, in the same way, reforms delayed can deny India's entry at global platform.

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JUSTICE EDUCATION: A DESIRED DESTINATION OF THE MENON MODEL

Debasis Poddar[♣]

Abstract

Since inception of the new-generation experiment in legal education with the National Law School of India University, Bengaluru (NLSIU), the contemporary history of professional education initiated rolling on to spearhead excellence and the ordeal is on with proliferation of similar institutional entrepreneurship. In the anxiety of competitive edge, few, too few follow legacy of the model invented by N.R. Madhava Menon: the legacy vis-à-vis experiments with curricula, discipline, pedagogy, and the like. Minute prospect and consequence of (t)his model apart, Menon redefined the philosophy of professional education at NLSIU. What went spread over far and wide as trendsetter for the contemporary legal education is the letters of institutionalism, more so for 'National'. Spirit of the NLSIU legacy but lies elsewhere. A practising lawyer-turned-educator by default, Menon has introduced a model to prepare well-baked product for the bench and the bar alike. At the same time, however, he brought in sense of social responsibility otherwise getting dwindled in the contemporary professional lifeworld. Not without reason that there is emphasis upon clinical legal education and legal aid clinic alike. In its essence, the author advances arguendo with the reasoning of his own, that pedagogy thereby initiated has had a teleological end to offer legal education as route to justice education; thereby spearhead progressive social transformation. The Menon Model is meant to raise human resource for professional service to the court and the people; instead of tertiary service to the market. After his model, the market ought to approach qualified professionals; not vice versa. Sonner such internal legacy of the model earns appreciation is better for the prospect of professional education.

Keywords: Higher Education, Professional Values, Classroom Pedagogy, Socratic Method, Institutional Model.

Introduction

> "*Knowledge will forever govern ignorance; and a people who mean to be their own governors must arm themselves with the power which knowledge gives*."
>
> -James Madison[1]

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1 James Madison, LETTERS AND OTHER WRITINGS OF JAMES MADISON, Vol. 3, 1st ed. 2013, p. 276,

Understanding the model introduced by Prof. Menon requires understanding in the history of legal education of his time and space. Born in 1935 at the then city of Trivandrum (now, Thiruvananthapuram) in coastal Kerala, Prof. Menon obtained his law degree in 1955; from Government Law College. He was a practicing lawyer until he shifted to New Delhi for civil services. At last, he joined Faculty of Law, Aligarh Muslim University, to serve legal academics for three decades (1968-1997); thereafter, in the West Bengal National University of Juridical Sciences Kolkata (WBNUJS) and in National Judicial Academy Bhopal (NJA) respectively (1998-2006). The cursory glance upon his whereabouts mentioned above appears imperative to map his major focus upon the bar and the bench besides his contribution to legal education. Not without reason that vision statement for the NLSIU- as reflected in its statute- is clear and unambiguous on its commitment to the society:

> *The Objects of the School shall be to advance and disseminate learning and knowledge of law and legal processes and their role in national development, to develop in the student and research scholar a sense of responsibility to serve society in the field of law by developing skills in regard to advocacy, legal services, legislation, law reforms and the like, to organise lectures, seminars, symposia and conferences to promote legal knowledge and to make law and legal processes efficient instruments of social development, to hold examinations and confer degrees and other academic distinctions and to do all such things as are incidental, necessary or ·conducive to the attainment of all or any of the objects of the School.*[2]

At bottom, what went reflected was the vision of his generation, very first generation of the lawmen with lived experience of the Republic getting born and with aspiration *vis-à-vis* 'Tryst with Destiny', to offer service for the public good, thereby, carry forward the legacy predecessors in the profession set during their movement for independence. A witness of the poverty of legal education and consequent syndrome in the profession, as a learner turned practitioner in himself, Menon did zero-in the genesis of the crisis in the Indian legal system. While called for, he identified those systemic loopholes and thereby fixed the leakage left out, by courtesy want of vision in hitherto legal education. The reform thereby initiated, however, was not easy to bring in amidst the mediocrity. Even after him, there are many miles ahead for legal education toward justice education. The purpose of this effort lies in articulation upon characteristics of the given legacy, thereby, accelerate the model reach its destination.

A two-way approach went employed by the author to articulate upon the given legacy: (i) from the disciplinary domain of education; (ii) from the disciplinary domain of law. Besides, relevance of the value system as a critical

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https://babel.hathitrust.org/cgi/pt?id=yale.39002007292239;view=1up;seq=342, (visited on May 26, 2019).

2 Section 4(1) of the National Law School of India Act 1986.

qualifier underwent minute inquiry to add value to the contemporary legal education.

Higher Education Turned *Ad Valorem*

Since time immemorial, education has had hyperlinks to value system of the given time and space; more so for higher education in social science discipline and legal education appears no exception to this end. No wonder that almost all hitherto political regimes, irrespective of political colour, left no stone unturned to use education to get the young generation socialised to their respective political agenda. As a social being of his time and space, Menon formulated his institutional model to groom workforce for the bench and the bar; those with commitment to the legacy of service to the society, rather than aspiration for pecuniary interest out of professional service to the litigant in isolation. He did carry forward the given educational philosophy to exert political socialisation as praxis to get next generation lawyers charged with the politics of *pro bono* advocacy toward nation-building agenda of the Republic. Thus, the phrase ‘National’ finds maiden place in the nomenclature of NLSIU emerged from the spirit of reconstruction, poles apart from the contemporary nationalist rhetoric. At bottom, perhaps, he engaged experiment upon legal education, as it went elsewhere with similar pedagogic agenda:

> *An instrument designed to measure orientation toward public dependency was administered to an entire class of social work graduate students on their first day of graduate school and again immediately prior to graduation. The findings suggested that selective processes and graduate education should combine in order to produce a professional social worker who has a favourable orientation toward public dependency.*[3]

Likewise, Prof. Menon recalibrated the then ecosystem for capacity building of professional service providers to carry forward nation-building entrepreneurship of the Republic in time ahead. Whether and how far the legacy went followed by similar institutions with parental patronage of state apparatus across the country or, even by the NLSIU after Prof. Menon constitutes altogether divergent discourse and uncalled for in this effort. Instead, appreciation of his model constitutes crux of this effort. Also, the landscape of higher education, professional education in particular, underwent metamorphosis in the wake of liberalisation-privatisation-globalisation with a corollary consequence that, exceptional cases apart, the contemporary crowd of students in higher education are primarily driven by the mundane material agenda to float in the competitive market after the programme. Thus, way back in late 1990s, empirical survey report in the West reflected upon the trend: that social responsibility of students appears getting dwindled while so called career

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3 George R. Sharwell, “*Can Values Be Taught? A* Study of Two Variables Related to Social Work Graduate Students Toward Public Diplomacy”, JOURNAL OF EDUCATION FOR SOCIAL WORK, Vol.10, No. 2, 1974, p.105, https://www.jstor.org/stable/23038404?seq=1#page_scan_tab_contents, (visited on May 26, 2019).

aspiration appears on its rise. While this is a trend seen for those in general education, the same ought to get manifold for those in professional education:

> *Comparing attitudinal changes over a two-year period, the hypothesis that those who attend university are more likely to move in a liberal direction was not strongly supported. Those attending university did become significantly more supportive of civil liberties, but changes in the direction of greater tolerance and greater support for social welfare were not significant. Contrary to expectations, those not attending university significantly increased their tolerance over the two-year period. Those who attended university became significantly more favourable to a competitive economy, while the change in attitudes towards competitiveness among the non-attenders was not significant.*[4]

Albeit not exclusive, one among major systemic qualifiers operative behind the trend lies in the phenomenal rise *vis-à-vis* cost of higher education; more so in contemporary professional education; something to get students motivated chase the cost so incurred as investment. Thus, throughout the programme, they are engaged in hot pursuit to get the investment back at earliest convenience. Consequently, whatever words of wisdom may get shared in good faith, they ought to fall in deaf ears with *de minimis* impact upon immediate choice set to them. Menon could resist majority of his students, albeit not the batch in its entirety, from falling prey to market-driven forces. Accordingly, both NLSIU and WBNUJS carry forward the legacy in pursuit of *pro bono* advocacy; thereby escaped pitfalls of getting trapped to market economy while similar institutions elsewhere- wherever there is priority to produce corporate fodder- are getting trapped to crisis. Due to proximity to the legacy of Menon, NALSAR and NLU Delhi emerged as premier institutions across the country. His institution-building entrepreneurship getting initiated in mid 1980s, Menon suffer from no dependency syndrome *vis-à-vis* corporate placement, etc.; something non-existent in his time, yet arrived at thereafter as coincidence with simultaneous arrival of the students of NLSIU to the market. In practice, law firms, etc. went trendy by them with newer potential to the market.

With the passage of time, however, majority of law schools picked up external legacy set by Menon, e.g. infrastructure, internship, placement, and the like, more than his internal legacy, e.g. curricula, discipline, pedagogy, etc., getting gradually set aside. Spiritual legacy of Menon thereby went eclipsed by material legacy. Consequently, despite occasional visit of Menon himself to law schools, perhaps out of his courtesy, few- too few- law schools could emerge anywhere nearer to the premier law schools; the way visits of Gandhi across the country in itself could not turn India Gandhian. Also, the model introduced by

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4 Eric Mintz, "*The Effects of University Education on Political Attitudes of Young Adults*", THE CANADIAN JOURNAL OF HIGHER EDUCATION, Vol. XXVIII, No. 1, 1998, pp. 25-27, https://files.eric.ed.gov/fulltext/EJ565304.pdf, (visited on May 26, 2019).

Menon is no static plan of action except a set of non-negotiable standard criteria; to quote veteran opinion:

> "*... the mix of motivated student and faculty overseen by a Vice Chancellor to whom dedication and discipline came naturally produced results which made the Bar, Bench, law firms and other users sit up and take notice*".[5]

Stakeholders apart, his model speaks nothing but combining educational principles and institutional pragmatism together. Therefore, after Menon himself, had he given the institution-building responsibility nowadays, the institution of his dream would have been different. What Menon suggested: institution-builders ought to read writing of the wall and respond to call of the time rather than getting stuck to something; rather than getting obsessed toward the model even if introduced by Menon himself.

Higher education in law schools thereby turned *ad valorem*[6] *via sui generis* routes: (i) premier law schools create comprehensive value; (ii) others create piecemeal value; thereby settle standards for themselves on their own. The given value judgment plays critical qualifier during admission through the Common Law Admission Test (CLAT). While aspirants with top ranks struggle to get into premier law schools, law schools with average ranks hardly find students from CLAT; thereby throw their admission open to fill in vacant seats. Admission of students from the market at random has had potential risk to indulge in compromise with standards; something to stand reflected in due course; with clandestine impact upon the system.

Values in the Professional Education

The most candid departure from the model lies in erroneous principles and practices; something far from basic values of the model. The model traversed toward excellence out of its collective spirit; all taken together. Menon himself spoke after four decades from the inception of NLSIU:

> *What made National Law School a class different from the rest is not just its curriculum or its leadership but the work culture and the sense of accountability the faculty cultivated to give a fair trial to a new experiment.*[7]

Besides, Menon came down upon fault lines of the model on his own; something exemplary while professional sycophancy getting endemic. For instance, irregularity in quality research- one among major concerns- went

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5 Sriram Panchu, "*The Madhava Menon Model of Legal Education*", THE HINDU, Comment, May 14, 2019, https://www.thehindu.com/opinion/op-ed/the-madhava-menon-model-of-legal-education/article27119098.ece, (visited on May 26, 2019).

6 '*Ad Valorem*' means 'according to value', BLACK'S LAW DICTIONARY, 4th ed. 1968, p. 58, http://heimatundrecht.de/sites/default/files/dokumente/Black%27sLaw4th.pdf, (visited on May 26, 2019).

7 Exclusive interview of Prof. N.R. Madhava Menon, CAREERS360, February 24, 2016, https://law.careers360.com/articles/%E2%80%98bring-in-specialization-check-dilution-of-standards-says-nlsiu-bangalore-director, (visited on May 26, 2019).

identified by Menon himself. Also, aware of inbuilt limits of his model, Menon mooted the idea of Council of Legal Research to get constituted; in the line of Indian Council of Social Science Research (ICSSR); thereby left evidence of minute introspection upon the given model:[8]

> *Research has to be brought on the mainstream of legal education for which resources are necessary. There should be a Council for Legal Research at the national level on the lines of the Indian Council of Social Science Research, which should finance cutting-edge research by law universities and other law teaching institutions.*

Indeed, primarily meant for dissemination of knowledge with pedagogic technology, law schools are yet to earn reputation for quality research. With the given workload, faculty has had constraint of time. With the given pedagogy, however, the ecosystem is built to engage the students in research without compromise with quality; at least in premier law schools.

Despite law schools are primarily teaching institutions with hard-earned reputation to their credit, Menon went critical to call a spade a spade; thereby saved law school governance from complacence. Introspection upon the lapse *vis-à-vis* human resource in legal education went initiated thereafter, followed by the institutional experiments with One-Year LL.M., integrated LL.M.-Ph.D., etc. Indeed, few of them went in vain; but not the spirit of experiment Menon flagged-off to keep effort for excellence alive:

> *On the negative side, one must mention the paucity of competent teachers even in the best of law schools to guide the growing body of motivated students. There are vacant positions in every law school. Bright law graduates do not join post-graduate studies in Indian law schools nor are they attracted to teaching and research positions in them. Many of them migrate to U.S. and U.K. law schools for LL.M. education and either do not return to India or agree to take up teaching positions in India.*[9]

Likewise, Five-Year integrated B.A.LL.B. conceptualised by Bar Council of India was a brainchild of men including Menon way back in early 1980s; but went delayed and subsequently initiated by NLSIU in mid 1980s to set the pace of legal education:

> *The Five-Year Integrated LL.B. programme thus developed was prescribed by the BCI to be the only BCI-recognized law course beginning in 1982. Due to resistance from some sections of the bar and some universities, the Bar Council soon revised its own regulations and allowed both streams (three-year post-graduate LL.B. and five-year post-higher secondary integrated*

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8 *Ibid*.

9 N.R. Madhava Menon, "*The Transformation of Indian Legal Education- A Blue Paper*", HARVARD LAW SCHOOL PROGRAM ON THE LEGAL PROFESSION, 2012, p. 7, https://clp.law.harvard.edu/assets/Menon_Blue_Paper.pdf, (visited on December 16, 2019).

> *LL.B.) to be run by colleges and universities according to their choice.*
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> … … …
>
> *In the above context, the Bar Council of India developed a strategy of sponsoring a model law school with university status to act as a pace-setter for legal education reforms envisaged by its five-year integrated LL.B. curriculum. This initiative led to the birth of the first National Law School at Bangalore in 1986.*[10]

Back to the discursive domain, values in professional education poses a conundrum: whose value should the law schools carry forward in course of professional education? On one side, there is moral value: that, as a social institution, education ought to serve public good. On the other, there is but utilitarian value: that profession ought to serve private gain; so far as livelihood interest is concerned. The model initiated by Menon could strike functional balance between these two otherwise competing claims. What he brought in was synergy of Clinical Legal Education (CLE) and Legal Aid Clinic (LAC) as corollary to one another.

The synergy of these two otherwise unconnected experiments with clinical practices played critical qualifier to get the next generation lawyers regimented for public good; followed by *pro bono* advocacy with means and methods of clinical practice to serve the purpose of justice education. The functional balance apart, something to revert back in the next part of this effort, values in the institutional lifeworld went elevated by Menon to its height:

> *There was no occasion during my twelve-year tenure as the head of NLSIU when I had to close down the institution or take disciplinary action against any of the administrative staff. It speaks volumes on the discipline and work culture of the staff, students and teachers and reveals the secret of the success story that was NLSIU.*[11]

The state of affairs ought to get noted by law schools while unrest is by and large part of institutional lifestyle to reach the newer low here and there at regular intervals and to such extent that the then NLSIU appears utopic; whether and how far NLSIU continues earlier values in recent times is a point apart. Another trend is in the offing: dragging institutional rivalry to public and often than not through circuitous routes, e.g. petition for information, etc., under the Right to Information Act 2005, petition to the Chief Justice, etc. in the capacity of Chancellor of law school concerned; mass petition to Visitor of the law school concerned, press release on contentious issues, etc. to name few among them. Indeed, *prima facie* innocent on the count of democracy and access to justice, all these but reflect upon larger crisis, e.g. want of transparency, want of connect between stakeholders, want of good faith and trust upon the system, and

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10 *Ibid*.

11 S. Suryaprakash (ed.), THE STORY OF A LAW TEACHER: TURNING POINT (MEMOIRS OF PADMASHREE PROF. N. R. MADHAVA MENON), 1st ed. 2009, p. 51.

the like. In contrast, Menon called for a sharp rise in the tuition fees in NLSIU without tantrum. To quote him verbatim:

> *When the situation became really grim three years into the programme, I decided to write to all the parents of the entire body of students giving a detailed account of income and expenditure for the previous three years and asking for their support to a steep increase in tuition fee. ... It was a pleasant surprise for me and many others that it was accepted gracefully by all without exception. ... Parents wrote to me saying that for the quality of education their wards were getting, they would be prepared to pay even more if another increase would become necessary.*[12]

Irony of fact, standard operating procedure of the law schools appears opaque enough. The merit of the so called Menon Model is not hidden in the subsoil of NLSIU and WBNUJS but in the given ecosystem; something getting gradually trivialised while the external concern for infrastructure, internship, placement, etc. getting prioritised to get political economy of such institutions afloat. NALSAR and NLU Delhi apart, most others are yet to grapple with academic and administrative standards of NLSIU; except nascent law schools: too early to get judgmental about the potential standards these new entrants may usurp in time ahead.

Legal Education to Justice Education

Among all the variants of his internal legacy, the effort to spearhead justice education ought to make Menon memorable in the history of legal education across the country. He put his effort in two parts: (i) curricular; (ii) extracurricular; thereby, engaged next-generation lawyers in the pedagogy with potential to impart justice education. In curricular part, he combined case method and Socratic method together. Besides, in extracurricular part, legal aid clinic and clinical legal education are put together. In curricular part, the combination offered exposure to students about judicial process. By the synergy of these two clinics, e.g. legal aid clinic and clinical legal education taken together, his students and the underprivileged both went benefited. On one side, in legal aid clinic, students went benefited on two counts: (i) they grappled with cases happening in real life and real time; (ii) all these cases reached students on their own. On the other, in clinical legal education, students went benefited on two counts: (i) they received exposure with practical sides of legal education, i.e. how to grapple with practice and procedure of several courts vis-à-vis substantive cases in the jurisdiction concerned; (ii) At the same time, they went exposed to ancillary aspects of litigation, i.e. extra-legal means and methods around the litigation practice with nitty-gritty. Two clinics thereby represent two sides of the same coin.

The underprivileged went benefited on several counts: (i) perhaps for the first time in the history of adversarial justice in India, their hitherto unheard cases went heard by the court with attention due to them; (ii) compared to the

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12 *Ibid*.

unprofessional service of semi-skilled lawyers they are constrained to hire from the vicinity, they received professional service of energetic students under supervision of the *pro bono* lawyers engaged by NLSIU; with patronage from the Bar Council of India and Government of Karnataka; (iii) besides remedial measures for those who suffered setback, legal aid clinic offered legal literacy camps to the community with preventive object to boost capacity-building in legal awareness for the underprivileged lest they may get stuck to circumstances with potential to drag them to the court. Thus, prevention and cure taken together, legal aid clinic went handy for the underprivileged assert their rights; thereby brought Article 39A of the Constitution to life. Thus, with lived experience, students could connect their countrymen at better ease otherwise difficult for them. Indeed, the then NLSIU students excelled in courtroom practice.

Back to the classroom pedagogy, Menon combined case method and Socratic method together. On one side, besides theoretical framework of the given law subjects, effort was on from his side to introduce case studies method- wherever applicable- to keep students' appreciation of the given subjects holistic; with their performance applied. At bottom, he repeated a century-old experiment- what Langdell performed in Harvard in 1880s- in the given pedagogic laboratory of NLSIU in 1980s:

> *Professor Langdell had, I think, no acquaintance with the educational theories or practices of Froebel, Pestalozzi, Seguin, and Montessori; yet his method of teaching was a direct application to intelligent and well-trained adults of some of their methods for children and defectives. He tried to make his students use their own minds logically on given facts, and then to state their reasoning and conclusions correctly in the classroom. He led them to exact reasoning and exposition by first setting an example himself, and then giving them abundant opportunities for putting their own minds into vigorous action, in order, first, that they might gain mental power, and, secondly, that they might hold firmly the information or knowledge they had acquired. It was a strong case of education by drawing out from each individual student mental activity of a very strenuous and informing kind.*[13]

Besides, Menon put emphasis upon the Socratic method to get his students guarded against the potential lapse available in the case method, i.e. getting students reduced to court birds in rhetoric sense of the term: to worship the court of law as the church and getting judicial pronouncements as sermons of priests. Accordingly, he employed 'hub-n-spoke' discussion within the classroom, otherwise known as Socratic method, thereby ascertained liberal democratic culture India looks forward.

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13 Charles W. Eliot, "*Langdell and the Law School*", HARVARD LAW REVIEW, Vol. 33, No. 4, 1920, pp. 523-524, https://www.jstor.org/stable/pdf/1328031.pdf?refreqid=excelsior%3A52954775506513cd16a4322006cc0967, (visited on May 26, 2019).

Perhaps due to coincidence of his experiment with the advent of new economic policy in India, NLSIU went reduced to an institution with productivity of corporate fodder on annual basis. All premier law schools by and large suffer the same fate nowadays. Indeed, initiated with radical objects, with the passage of time, NLSIU is but reduced to another elite hub; in line of premier IIMs and IITs around:

> *With a vast residential campus, an emphasis on academic rigour and selection of students through the highly competition Common Law Admission Test (CLAT), National Law School, which is sometimes wishfully referred to as the 'Harvard of the East', is without doubt elite and exclusive. ... A team of students, currently studying at the NLSIU, carried out a diversity census to assess demographics of the student body and found that the composition of its students is also elitist and exclusionary.*[14]

Well aware of the given character of law schools, in his final years, Menon initiated to get the effect neutralised by newer institutions and devoted him to carry forward his original commitment towards rule of law through getting social justice promoted for the underprivileged. Two such institutions with express mandate to this end are:

(i) Menon Institute of Legal Advocacy Training (MILAT)
(ii) Nambyar Academy of Continual Legal Education (NACLE)

Through his boost in capacity-building programmes of existing lawyers in practice, Menon had aspiration that these two will supplement the given agenda of his effort in law schools; besides capacity-building programmes of existing judges in the NJA; thereby turned the cycle full to bring in social transformation though legal education. Whether or how far the same is brought to fruition is a point apart.

Besides his institutional restatement, Menon brought in curricular addendum- if not corrigendum- to take students to their grassroots; thereby make them rooted to soil. In the proposal mooted by Menon in a workshop at Bilaspur in 2013, the fifth year went dedicated for optional subjects to cater to rural and tribal needs in the country; something hardly heard by the audience, except those who still listen to his wisdom:

> *In the last few years, Menon acknowledged that there are problems in the current structure of legal education and the national law universities ... and therefore proposed alternative legal curriculum to cater to the litigation needs of rural and small towns ... proposed that the fifth year of the undergraduate law degree should be devoted to experimental*

14 Chirayu Jain et al., "*On Diversity and Inclusion in the Harvard of the East*", HINDUSTAN TIMES, December 21, 2015, https://www.hindustantimes.com/education/on-diversity-and-inclusion-in-the-harvard-of-the-east/story-O0j7WacuQ1YK2S0UaKlb4M.html, (visited on May 26, 2019).

> *learning through social justice and legal aid clinics in rural and tribal areas.*[15]

In several routes, he brought in reforms in legal education to facilitate pedagogues with myriad means and methods to reach desired ends of justice education; something to carry forward rule of law and democracy. His life reflects upon his message that the law is not an end in itself but a conveyance toward justice for the underprivileged. Down the line of thought, there lies synergy between '*A Theory of Justice*' by Rawls and the institution-building praxis of Menon since both put the priority upon those who are put to disadvantage.

In its discursive domain, the idea of justice education appears omnipresent; and not necessarily limited to legal education as such. Thus, a(ny) systematic pedagogic effort to transcend the exclusive realpolitik is justice education. For instance, programmes of the Pratichi Trust and the IDIA initiatives: all carry forward the legacy of Menon toward justice education:

> *The IDIA Project seeks to empower marginalised communities by fostering access to the leading law schools, along with sensitisation and intensive training programs, IDIA will also attempt to drive policy in the area of 'inclusive' legal education and 'diversity' within law schools and the legal profession.*[16]

The original vision of Prof. Menon and the present position of law schools taken together, juxtaposition went apparent on the face of record. A not so apparent reason, perhaps, lies in the gradual departure of his colleagues from NLSIU with the passage of time who joined hands with Menon to build the institution. While the same may be the case for NLSIU and WBNUJS, exceptions apart, there may be others with little or no idea of what Menon thought- or any sundry model- yet replicated NLSIU for replication in respective states; thereby emerged as another law school with systemic mediocrity; something the law school movement is pledged to set aside.

In Lieu of Conclusion

Whether the leaders shape the environment, or the environment shapes the leadership? In a facilitation ceremony for Menon, with cue from *the Mahabharata*, Jayagovind- as his colleague in NLSIU from day one- confirmed that Menon decisively influenced times and circumstances he lived in.[17] With no scepticism upon his leadership ability in the institution-building process, it is but two-way process. The capability of Menon went influenced by historic times; the movement for independence of India, followed by freedom at midnight, call for nation-building process; institution-building process is

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15 Faizan Mustafa, "*Madhava Menon has demonstrated that every single individual matters, can bring about change*", THE INDIAN EXPRESS, May 9, 2019, https://indianexpress.com/article/opinion/columns/a-teacher-an-institution-n-r-madhava-menon-dead-5717861/, (visited on May 26, 2019).

16 'IDIA' stands for Increasing Diversity by Increasing Access, https://idialaw.com/, (visited on June 1, 2019).

17 https://www.youtube.com/watch?v=7jSax5YNtFI, (visited on May 26, 2019).

corollary to the same, above all, the Nehruvian aspiration toward tryst with destiny; to name few among them. There lies brief history of a Menon in the making: lawyer to bureaucrat to educator to institution-builder; thereby get legal education redefined while called for. Thus, turning point in the story of a law teacher was call of the time as well. with such reasoning behind, the author hails Menon as a creature of history who recreated history after the given need of his time. The model he initiated may not correspond to changing needs of the hour nowadays. However, the spirit of his model lies in fundamental components of the given model: pedagogy, prudence, pragmatism, etc., and the same remain relevant for the posterity. Sooner the law school movement follow the given legacy appears better for survival in the wake of competitive market in India.

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THE REFORM OF POST-GRADUATE LEGAL EDUCATION IN INDIA: A PERSONAL NARRATIVE

Madhav Mallya[♣]

Abstract

This short essay is my personal endeavour arguing for the reform of post-graduate legal education in India. Law schools and universities in India host several conferences every year on the reform of legal education. While these meetings are a sincere effort to reform various lacunae which plague Indian legal education, there is a marked absence of dialogue on the reform of post-graduate legal education, including the questions of appropriate pedagogy for post-graduate legal education and funding. As students increasingly opt for research-based careers such as academia and policy reform, these questions become even more relevant. This essay will be divided into two parts. The first part will critically document the history of legal education in India from 1947 to the present date, examining the reasons why postgraduate legal education was neglected. The second part will focus on two key areas of reform- pedagogical method and funding. The paper will conclude highlighting the main challenges to the implementation of reform in post-graduate legal education. I dedicate this paper to the late Dr. N.R. Madhava Menon. I found it difficult to agree with several of his approaches to legal education. I however, admired his dedication, energy and enthusiasm for the cause of Indian legal education.

Keywords: Legal Education Reform, Post-graduate Legal Education, Pedagogy, Legal Academia, National Law University.

Introduction: A Brief History of Legal Education Reform in India

I graduated with my first degree in law from the Symbiosis Law School, Pune in 2010. Since then, over the course of several visits to my alma mater to speak at seminars or judge moot court competitions, I have observed a marked change in pedagogy, syllabus and research culture. At the undergraduate level, students of the three year and five-year law programme are required to write research papers and present their work to their peers, as a part of the overall grading system. This system did not exist at my time there as a student. In fact, as a faculty member and researcher at various universities across the country, I have observed that changes in pedagogical technique, encouragement of research and publication, and curricular reform have all focused on a first degree in law i.e. the LL.B. (usually the five-year law programme) and not on post-graduate degrees such as Ph.D. and LL.M.

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At the Doctoral and Master's levels, while there is a very strong and energetic emphasis on reading, research and writing, there does not appear to be a strong institutional emphasis on producing original thought. Scholarly ideas are often rehashed and bright students at the undergraduate level choose to pursue post-graduate studies abroad, rather than at Indian universities. These trends are not surprising, given that the focus of legal education reform has been the undergraduate five-year programme. Moreover, there has been inadequate encouragement of faculty development, research and publication in Indian law faculties, which has an obvious and inherent link with the neglect of post-graduate studies within these faculties. This section explores the reasons behind these deficiencies in Indian legal education.

The reform of legal education in India after 1947 began with an effort to 'Indianise' legal education, followed by endeavours to reorganise the curricula and pedagogy of professional legal education in the Nineteen Sixties and Seventies, followed by efforts to modernise and reform the curriculum and implement structural reforms in legal education to make it a more socially relevant discipline.[1] However, in the midst of these endeavours, the development of legal academia was substantially neglected. In the nineteen fifties, the Ford Foundation, one of the world's leading philanthropic institutions based in the United States began focusing on the development of legal education in India, inspired in part by its lengthy and detailed, rights-based Constitution which came into effect in 1950 and by the fact that India, economically poor, sought to embrace political and legal principles that had long been valued in the United States.[2] A number of respected American Law Professors[3] were hired as consultants, given the responsibility of travelling to India, assessing the legal education environment and providing recommendations to both the foundation and the Government of India on how to improve the country's legal education system.[4]

In what has a significant connection with the dominant theme of this paper, a consensus developed among these American academics that India's distinctive history, traditions and legal profession- not to mention its economic struggles and political climate-would make it difficult for the American law school model to thrive in the Indian environment.[5] All these visiting consultants urged the foundation that India was not the United States and that it was unfair to measure and evaluate the progress of Indian legal educational institutions through a

1 K.I. Vibhute, "*International Law in India-Developing Curricula and Teaching: Some Reflections*", SINGAPORE JOURNAL OF INTERNATIONAL AND COMPARATIVE LAW, Vol. 5, 2001, p. 388.

2 Jayanth K. Krishnan, "*Professor Kingsfield Goes to Delhi: American Academics, the Ford Foundation, and the Development of Legal Education in India*", AMERICAN JOURNAL OF LEGAL HISTORY, Vol. 46, 2004, p. 447.

3 Carl.B.Spaeth, Stanford Law School Dean; Herbert Merillat, Lawyer and Historian; Arthur Von Mehren, Professor of Law, Emeritus, Harvard Law School; Kenneth Pye, Georgetown University Law Centre; Robert Cole, Professor of Law, Boalt Hall, Berkeley, *inter alia*.

4 *Supra* n. 3, p. 448.

5 *Supra* n. 3, p. 448.

western lens and that any change had to come from within India.[6] Only those who knew India's culture, colonial and post -colonial history, and the intricate legal system could make any difference.[7] The reform of post-graduate legal education in India began in 1948 with a focus on faculty development, critical thinking, research and publication with the government's appointment of the first commission designed to improve higher education across the board.[8] However, the commission failed to address systemic failures within the Indian legal academy, such as the lack of promotional avenues for faculty, abysmally low pay and inadequate secretarial assistance.[9] Moreover, further reforms in the 1960s and 1970s focused more on the needs of students by tackling curriculum development, rather than on concentrating on fostering intellectual scholarship within the legal academy.[10]

From a rationalist perspective, it is certainly not difficult to appreciate the reasons behind the lack of emphasis on scholarship and research within the Indian legal academy right after independence. India was a new struggling economy with limited resources and acute food scarcity till the 1960s. Governance in India, run largely on socialist principles till the nineteen nineties, placed more emphasis on the equitable development and economic security of its population, the result being that scant resources could not be spared for development of the academy, even if policy makers wished to.[11] Indeed, consultants from the Ford Foundation found that Indian legal scholars, who were not affiliated with Ford, had their own innovative ideas on how to improve the country's legal education system.[12] However, many Herculean obstacles existed with the Indian environment including irregular class timings, low attendance rates by students who faced little if any disciplinary action, poor testing methods by instructors, inadequate facilities, outdated curricula and second rate instructors who were paid below-average salaries[13] as well as distrust between the Indian government and the legal community.[14]

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6 *Supra* n. 3, p. 472.

7 *Supra* n. 3, p. 472.

8 Lovely Dasgupta, "*Reforming Indian Legal Education: Linking Research and Teaching*", JOURNAL OF LEGAL EDUCATION, Vol. 50, No. 3, 2010, p. 434.

9 *Ibid,* p. 435.

10 *Supra* n. 8, p. 437.

11 It also cannot be discounted that India was attempting to rejuvenate itself from the colonial hangover and was concentrating on developing its own system of courts along with jurisprudence and law reform in many areas of law vital to the new country such as land reform, personal law and property. As such, India needed practicing lawyers who could contribute to the development to this new legal system not only in urban India but across the vast rural hinterlands where rights and liabilities had assumed new meaning with the coming into being of the new country. Therefore, to a certain extent this led to the neglect of academic endeavours.

12 *Supra* n. 3, p. 448.

13 *Supra* n. 3, p. 452.

14 *Supra* n. 3. Krishnan highlights that there was distrust between lawyers and judges on one hand and Indian politicians on the other since politicians accused these two groups of impeding the state's ability to grow and carry out its economic and social policies. Lawyers had won a series of court-cases challenging the government's attempts to enhance its power.

Perhaps the most significant development in Indian legal academia has been the introduction of the five year integrated B.A.LL.B.(Hons) system, which commenced with the coming into being of the National Law School of India University (NLSIU) at Bengaluru in 1987, an independent legal institution not affiliated to a university.[15] The ideas for such an institution were borne out of the recommendations of Gajendragadkar Committee on Legal Education in 1964, which advocated the creation of 'separate [law] institutions' unhindered by bureaucratic university structures.[16] A decade later this idea was again mooted by Dr. Upendra Baxi[17], India's foremost legal academic, only in passing but questioning whether the existing law school curriculum ignored questions of social relevance specific to India such as 'agricultural reform', 'under privilege', 'destitution' *et al* [18] along with courses that focused on theoretical principles and tested analytical abilities.[19] In what was an extremely pertinent observation, Dr. Baxi also questioned whether the American case method approach to teaching was appropriate in the Indian context, where the professor saw himself primarily as a *guru*[20] in the classroom, imparting lectures to students through traditional methods. He believed in an environment where law teachers were already thought of as second- rate and felt enormous insecurity, it was unsurprising that they did not allow the case method approach to run freely in the classroom.[21] This was also compounded by the fact that casebooks used, and library facilities were inadequate.[22]

While Dr. Baxi argued lamented the sad state of Indian legal education, he argued for reforms that would keep the bigger picture in mind, namely to educate students about the problems and challenges facing their nation, a broader perspective that is common in teaching in advanced countries.[23] He demanded that Indian law faculty teach critical thinking through interdisciplinary and multidisciplinary perspectives, that they force students to put material in context and echoing the first commission[24], stated that faculty needed to take on the key task of inspiring students to think.[25]

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15 *Supra* n. 3, p. 481.

16 *Supra* n. 3.

17 Professor of Law, Warwick Law School, Former Vice Chancellor, Delhi University.

18 *Supra* n. 3, p. 482.

19 *Supra* n. 3.

20 The Indian *Guru-Shishya* (Teacher- Student) tradition and relationship where the teacher was considered the giver of knowledge and the student was considered the recipient of knowledge. A Guru was meant to be a repository of knowledge.

21 *Supra* n. 8, p. 440. Professor Baxi argued that the case method could not be simply successfully transplanted into India since there were several intellectual and material prerequisites for any version of the American case-method, which were simply lacking in India including lack of ability of a teacher to admit ignorance about issues which may come up in class discussion, linked to teachers seeing themselves as *Gurus*.

22 *Ibid*.

23 *Supra* n. 8, p. 440.

24 *Supra* n. 8, p. 440.

25 *Supra* n. 8, p. 440.

The late Dr. N.R. Madhava Menon[26], the founder of the five year law programme and NLSIU, Bengaluru, took Dr. Baxi's criticisms into account as he contemplated starting a 'fresh' institution not wedded to the traditions of a university.[27] Inspired by public interest developments in both India and the United States, he sought to build a law school independent of the bureaucratic hurdles in the Indian University system.[28] Getting the necessary permissions from governing bodies, Dr. Menon spent 1986 and 1987 recruiting faculty for his new law school based on an international search and rigorous selection procedure.[29] The new curriculum emphasised writing, research and analysis[30] as well as interdisciplinary pedagogy.[31] In fact, the pure lecture method was eschewed.[32] Students were also admitted on the basis of a highly competitive entrance examination based on the American Law Schools' Admissions Test which required a written application essay and interview,[33] something which had never been seen in Indian legal academia.

By the end of the twentieth century, NLSIU was leading law school in India, emphasising pedagogy, analytical rigor, clinical training, and public service[34]. Today the five-year law degree has been replicated in public and private law schools across the country. The graduation of the first class of the NLSIU coincided with India's economic liberalisation in 1991.[35] The change in the economy opened up several opportunities for these well trained lawyers, with NLSIU students finding employment in the corporate legal sector, with few actually pursuing the envisioned goal of increasing the number of capable public interest attorneys,[36] a phenomenon which has led to much alarm as far as the question of access to justice is concerned.[37]

Unfortunately, even with several National Law Schools and eminent private law schools across the country, the core emphasis of Indian legal education remains the five-year integrated LL.B. Degree. Post-Graduate Degrees in law are neglected even within the national law schools, who desire to attract talent

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26 Founding Vice-Chancellor of National Law School of India University, Bengaluru and Chairman, Menon Institute of Legal Advocacy Training, Thiruvananthapuram.

27 *Supra* n. 3, p. 483.

28 *Supra* n. 8, p. 442.

29 *Supra* n. 3, p. 488.

30 *Supra* n. 3, p. 489.

31 *Supra* n. 3. Deepa Badrinarayana, Associate Professor of Law, Dale. E. Fowler School of Law, Chapman University observes that the examination system within the university was unique in itself. Students were required to take two exams, write a research paper and defend the paper before a panel of professors before each exam. She also observes that critical thinking was inculcated in several courses by multiple professors, with different viewpoints, who co –taught classes. Deepa Badrinarayana, "*India's State of Legal Education: The Road from NLSIU to Jindal*", JOURNAL OF LEGAL EDUCATION, Vol. 63, 2013, p. 522.

32 *Supra* n. 3.

33 *Supra* n. 3, p. 490.

34 *Supra* n. 3, p. 493.

35 *Supra* n. 3.

36 *Supra* n. 3.

37 N.R. Madhava Menon, "*The Transformation of Indian Legal Education- A Blue Paper*", HARVARD LAW SCHOOL PROGRAM ON THE LEGAL PROFESSION, https://clp.law.harvard.edu/assets/Menon_Blue_Paper.pdf, (visited on December 16, 2019).

right out of high school through the competitive entrance examination and prepare them for legal practice. Again, though institutions like the NLSIU have adopted excellent pedagogical approaches and methods of critical reasoning, they seem to have failed to place an emphasis on developing students for a career in research and academia,[38] reflecting the broader Indian mindset that a career in teaching is not desirable or financially lucrative, which in turn influences educational reform. This leads to a vicious cycle, where aspiring teachers and law researchers are not well trained and are taught to believe that their contribution is not important to the development of legal academia and research, in the context of legal and social development.

Key Areas for Reform

Pedagogical Method Relevant to Post-Graduate Legal Studies: The Training of Graduate Students as Potential Professors of Law

Prof. Daniel Mathew[39], a former colleague at the National Law University, Delhi has highlighted in a recent paper[40] that post-graduate students of law are forgotten entities within the Indian legal education system.[41] He highlights that at present there is no clarity as to the specific and particular skills that a master's programme imparts to those enrolled and all dialogue happens in the context of undergraduate studies[42] with barely any discourse on what these skills might be for student's pursuing master's degrees.[43] He goes on to say that a dangerous conclusion that postgraduate degrees are required only for 'teaching' as opposed to 'practice' has developed in the Indian legal academy which has had a determinative effect on the structure and content of the master's course.[44]

Prof. Mathew acknowledges the difficulty that post-graduate students of law in India face when they are expected to make the transition from students to teachers or researchers without a heavy focus on the interdisciplinary study of law.[45] The very same pedagogical techniques of critical analysis, interdisciplinary study and case method which are applied to undergraduate law courses within the national law schools and other five year law programmes can be applied to post-graduate legal education as well.[46] India as a country has the

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38 Shuvro Prosun Sarkar et al., "*Visualizing Third Generation Reform of Indian Legal Education*", Shuvro Prosun Sarkar (ed.), LEGAL EDUCATION IN ASIA, 1st ed. 2014, p. 257. The authors quote Professor Menon who states (in 2010) that the national law schools are outmoded in curriculum and methods. I connect this assertion with my argument that National Law Schools have failed to intensively prepare students for a career in research and academia. This is of course, subject to debate. However, I am of the opinion that an adequate number of graduates do not join academia.

39 Assistant Professor of Law, National Law University, Delhi.

40 *Supra* n. 1, p. 9.

41 *Supra* n. 1.

42 *Supra* n. 1, p. 13. The impression that most five-year law programmes give is that their emphasis is on developing the skills of undergraduate students for corporate placements. There is little emphasis on developing careers in legal academia.

43 *Supra* n. 1.

44 *Supra* n. 1, p. 11.

45 *Supra* n. 1, p. 13.

46 *Supra* n. 1.

advantage of being socially and culturally pluralistic and both teacher and student can take advantage of varied background knowledge of varied legal, sociological and economic circumstances in order to create an enriched narrative to provide context to legal education. My idea of using India's varied and rich legal, social and economic pluralism as a background to initiate interesting discussion was inspired by Martha Nussbaum's[47] paper entitled 'Cultivating Humanity in Legal Education'.[48] While arguing that law schools need to prepare students to be citizens of an increasingly interlocked and interdependent world, Prof. Nussbaum highlights three core values which legal education must pursue: Socratic Self Examination, World Citizenship, and the Narrative Imagination. Professor Nussbaum's analysis consists of factors core to the development of legal reasoning and thinking, writing and research.[49]

Socratic self-examination is the capacity for critical examination of oneself and one's traditions, meaning a life that questions all beliefs and accepts only those that survive reason's demand for consistency and justification.[50] Professor Nussbaum links this assertion to rhetoric and sophistry in legal writing and while stating that while it might be good for young lawyers to understand the difference between sophistry and Socratic philosophy and be concerned with the truth rather than with just winning, asks what changes in the structure of legal education might promote these values.[51] In response to her own question, she says that more attention should be given to paper writing in basic courses where the paper writing is carefully assessed and criticised.[52] Likewise, World Citizenship implies going beyond the sphere of comparative law and thinking about the study of different areas of law in an interdisciplinary fashion[53] and narrative imagination argues that students of law need to stimulate their imagination and attempt to place themselves in the shoes of persons, entities or characters affected by a legal problem and to understand the human meaning of a situation.[54] Knowledge is inert without the ability to make situations real inside oneself.[55] I link these core values to Professor Nussbaum's analysis of Seneca[56], who states that an education is truly 'liberal' only if it 'liberates' the student's mind, encouraging him or her to take charge of his or her own thinking, leading the Socratic-examined life.[57]

The question which assumes relevance in the context of 'liberating' a student's mind is whether post-graduate legal education in India strives to fulfill this goal with the aim of taking students beyond the traditional realm of practice

47 Ernst Freund Distinguished Service Professor of Law and Ethics, University of Chicago.
48 Martha Nussbaum, "*Cultivating Humanity in Legal Education*", UNIVERSITY OF CHICAGO LAW REVIEW, Vol. 70, 2003, p. 265.
49 *Ibid*.
50 *Supra* n. 48, p. 269.
51 *Supra* n. 48, p. 273.
52 *Supra* n. 48.
53 *Supra* n. 48, pp. 275-277.
54 *Supra* n. 48, p. 278.
55 *Supra* n. 48.
56 *Supra* n. 48, p. 267.
57 *Supra* n. 48, p. 273.

of law and encourages them to think in terms of legal and policy reform through a diversity of careers. I believe that to start with, encouraging professors of law in post-graduate legal programmes across the country to start adopting the core values as suggested by Professor Nussbaum, along with the case method and intensive classroom discussion would be ideal. Simultaneously professors of law should be encouraged to believe that their students come from different and varied backgrounds and have stories to bring to the table. There should also ideally be an increased emphasis on clinical legal education with post-graduate legal programmes.[58] Unfortunately the development of clinical legal education is still at a stage of infancy in India and it occupies a low priority within syllabi. Most students, including me during my undergraduate days, viewed clinical legal education as an easy way to obtain grades without much effort. Of course, this a reflection of the neglect given to narrative and social discourse in Indian legal education.

The goal of NLSIU, Bengaluru was to teach law in an interdisciplinary manner- with a focus on how social science and empirical research intersected with law.[59] I see a strong connection with Prof. Nussbaum's core values and Dr. Menon's ideals. As shall be outlined as this essay progresses, confronting the pedagogical challenges which exist in classrooms in law schools across India will be a formidable task, requiring not only a change in institutional policy but in the thinking and attitudes of the stakeholders in legal academia across India, something which can only be achieved with slow and patient steps.

There is an inherent connection between the present lack of dialogue in Indian legal academia about the role of graduate students as potential professors of law and the lack of training and opportunity to create avenues of critical thinking and consultation provided to contemporary professors of law. Therefore, if professors of law are not provided adequate sensitisation and training along with the ability to engage in debate, there would be an obvious impact on academic ambitions of graduate law students. The roots of this structural deficiency lie in the neglect given to the development of teacher training in India, not just in the legal academia, but across several fields. At this juncture, I would like to narrate a personal experience. At present the minimum standard required for the eligibility to become faculty are prescribed by the University Grants Commission (UGC). With the aim of ensuring that only a meritorious candidate should become a faculty member, the UGC conducts a qualifying objective examination, called the National Eligibility Test (NET) that would rigorously evaluate the aptitude and competence of each candidate.[60] This examination also determines entry into Ph.D. programmes.

I have had the opportunity of answering this examination several times, with no success. The entire exam was objective in nature with no components to test

58 *Supra* n. 1, p. 9. Daniel Mathew Highlights the Need for Practical Training and Clinical Legal Education at the Postgraduate Level Which Would Develop Skills Pertaining to Client Interviewing, Counseling, Research, Investigation, Drafting and Advocacy.

59 *Supra* n. 3, p. 489.

60 *Supra* n. 1, p. 4.

legal writing and analysis.[61] Answering the exam was an exercise in frustration since most of the questions were based on memory skills and not analytical reasoning There wasn't an intellectual angle to the examination. Daniel Mathew observes that testing a potential candidate in this manner seems futile and with no overarching objective, the entire exam becomes a memory test, in short, an exercise in rote learning.[62] It is therefore not surprising that there is a severe disparity between what is desired and what is finally obtained in terms of quality of faculty.[63] Yet this examination continues to be a determinant in hiring faculty for tenured positions, despite serious reservations being expressed about the link between teacher certification through NET and effectiveness in teaching.[64] The NET exam reflects a very serious lack of attention given to the development of teacher training skills within Indian education system. I have often questioned this exam and wondered whether a rigorous doctoral application system complete with training in critical writing and thought, along with the requirement for publication would instead be a suitable alternative. Of course, that would give rise to the question of funding dealt with in the subsequent subsection, but nevertheless, there is certainly room for thought. Most law faculties in India, including the national law schools, have an entrance examination for admissions into Ph.D. programmes, along with the submission of a research proposal. In place of an examination, rigorous focus on an original research proposal with a literature review would perhaps be more suitable.

Another serious institutional limitation plaguing Indian law faculties is the lack of dialogue with faculties to discuss pedagogy, research, innovative thinking and classroom method, as well as discussion about the role played by professors of law in the general functioning of society at large. Collaboration by law teachers to reflect on their teaching, objectives, methods and assessment tools is necessary to bring about reform of Indian legal education.[65] Common concerns of law teachers include professional development in teaching skills, legal educational planning, and development of teaching materials and library resources.[66] The absence of institutional infrastructure for sustained professional interaction among law teachers impedes the pace of progress in the legal education sector.[67]

For law teachers to prepare students for practice both in the context of India's own socio-economically complex society and in the framework of inter-related legal systems and societies, teachers must assess the learning objectives they have for their students and rethink the curriculum and pedagogy to achieve those objectives.[68] I draw upon Professor Nussbaum's core values here which also establish a significant connection liberalised intra faculty discussion and

61 *Supra* n. 1.

62 *Supra* n. 1.

63 *Supra* n. 1.

64 *Supra* n. 1.

65 Jane E. Schukoske, "*Legal Education Reform in India: Dialogue Among Indian Law Teachers*", L. Malik and M. Arora (eds.), LEGAL EDUCATION IN INDIA, 1st ed. 2014.

66 *Ibid*.

67 *Ibid*.

68 *Ibid*, p. 278.

classroom discussion. Moreover, graduate students must be recognised as stakeholders in faculty discussions on pedagogy and critical thinking.[69]

I will briefly allude to a present ongoing debate in Indian legal academic circles regarding the importance of publication of research for teachers of law, amid their teaching schedules. Both Professors Daniel Mathew and Lovely Dasgupta[70] are of the opinion that the pressure to research and publish in a system that rewards publication but does not incentivise teaching, could lead to the neglect on the emphasis of teaching skill and end up commodifying rather than disseminating knowledge.[71] Dasgupta refers to the arguments of Ernest L. Boyer[72], who in his influential report prepared for the Carnegie Foundation for the Advancement of Teaching, took issue with the traditional deference given to research and publication.[73] He argued for a broader view of academic work stating that teaching shapes both research and practice, regretting that the area of teaching got very little consideration or was even thought of as irrelevant.[74] According to Dasgupta, he echoed the 1948 commission in saying that teachers not only deliver information, but they also help students to think critically, which *implies* that teachers must themselves develop the art of critical thinking and research.[75]

The question which arises here is that of priority for educators.[76] Should it be assumed that a good teacher of law is one who publishes regularly as well? As a graduate student at McGill, I realised that my professors published regularly and taught relatively large classes and seminars as well. I therefore fundamentally fail to grasp Boyer's arguments, echoed by Professors Dasgupta and Mathew in the context of the Indian legal education scenario where though given importance, publication has still not reached a certain required level of rigour and excellence.[77] The ability to develop critical reasoning to teach and encourage a class to think, often comes from engaging in intensive writing. Of

69 *Supra* n.1, p. 9.

70 Assistant Professor of Law, National University of Juridical Sciences, Kolkata.

71 *Supra* n. 8, p. 447; *Supra* n. 1, p. 6, puts forth similar arguments.

72 (1928-1995), Formerly U.S. Commissioner of Education and Chancellor of the State University of New York. Author of "*Scholarship Reconsidered: Priorities of the Professoriate*" prepared for the Carnegie Foundation for the Advancement of Teaching, 1990, http://www.umces.edu/sites/default/files/al/pdfs/BoyerScholarshipReconsidered.pdf, (visited on December 16, 2019).

73 *Supra* n. 8, p. 445.

74 *Supra* n. 8, p. 446.

75 *Ibid*.

76 *Ibid,* p. 447.

77 In support of my arguments I would like to cite the lecture of Paul C. Weiler, "Past and Future in Canadian Legal Education: Personal Reflections" (Delivered at the Special Convocation celebrating the opening of the Begbie Building, Faculty of Law, University of Victoria, 15 November 1980). Paul C. Weiler is the Henry J. Friendly Professor of Law, Emeritus at the Harvard Law School. He argued that Canadian Law Schools must adopt, firmly and systemically than was presently the case, the practice of requiring a demonstrated capacity for innovative legal scholarship as the *sine qua non* for a tenured appointment, since Canadian law schools had not moved nearly far enough in that direction. I would like to place his arguments in the Indian context, as Indian law schools yet have a long way to go in terms of the pursuit of excellence in scholarship.

course, there are institutional limitations, such as the lack of funding, which discourage professors of law from undertaking further research and writing. However, Indian legal academia cannot afford the luxury, at least at its present stage of development of arguing that the requirement to publish is detrimental to teaching. We have not yet reached that level of sophistication and advancement in legal academia!

Funding

Reform and innovation within the research culture of Indian legal education and pedagogical practice has inherent connections with the question of funding and academic salaries and benefits. Both the development of new pedagogy and the training of faculty, as well as capacity for research and publication depend upon financial support and funding, not only to aid and develop faculty development initiatives, but also to provide incentive to research. It is more affordable for Indian legal scholars to finish a doctoral degree abroad at a university which offers funding, since the level of funding offered by Indian law faculties and universities, including national law schools is very low. Often doctoral students at Indian law faculties must undertake full-fledged careers in law while writing a thesis to keep home fires burning.

Due to obvious economic and financial reasons, I cannot argue that Indian universities ought to provide the same level of funding as those in North America. I also cannot discount the fact that numerous universities, including the national law schools, do provide hostel facilities and subsidised meal plans to their students. However, my argument here goes beyond the mere question of funding and examines the lack of funding from the point of view of the effect it has on research and pedagogy. Unless aspiring doctoral candidates and researchers are given incentives, it would be difficult to attract worthy individuals with a genuine passion for research and teaching into academia. In a Blue Paper titled 'The Transformation of Indian Legal Education', presented at Harvard Law School, Prof. Menon rues the paucity of competent teachers even in the best of law schools in India to guide a growing body of motivated students.[78]

While it cannot be denied that the salaries and perks as received in an academic institution would not be able to match up to those received in a corporate firm, efforts must be made to reduce the gap as much as possible. Professor Mathew highlights the efforts of the Sixth Pay Commission of India[79] in attempting to improve the salaries of professors.[80] However, the payment of adequate salaries to professors of law cannot compensate for the lack of funding and research grants to undertake innovative and possible path-breaking research.

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78 *Supra* n. 38. The University Grants Commission (UGC) recently announced an increase in research fellowships. However, these fellowships do not exceed Rs.35,000/-, https://www.indiatoday.in/education-today/news/story/ugc-notifies-hike-in-jrf-srf-research-fellowships-1542080-2019-06-04, (visited on December 16, 2019).

79 An organisation set up by the Government of India, in order to give recommendations in regard to the salaries of government employees.

80 *Supra* n. 1, p. 5.

The National Knowledge Commission (NKC), constituted in 2005 as a high-level advisory body to the Prime Minister of India has called for a change in funding practices. It has provided certain recommendations regarding measures required to attract and retain talented faculty[81] and the financing of legal education.[82] It has also advised the setting up of four autonomous, well-networked Centers for Advanced Legal Studies and Research (CALSAR) to carry out research and act as advisory think-tanks to the government. The NKC statement also outlines heavy funding requirements for these institutions which would also provide interdisciplinary legal education and continuing legal education for faculty. However, the drawback of this system is that it still does not address the endemic issue of the lack of funding for research scholars within universities and law faculties.

Conclusion

While writing this paper, I encountered the numerous historical, pedagogical and cultural limitations which challenge Indian universities from developing into centers of critical legal reasoning and pedagogy. I also noticed an unfortunate lack of scholarly literature and policy frameworks on the development of post-graduate legal education, though the development of legal education in general including the development of faculty skills, development of pedagogy and curriculum development have been given significant attention. The NKC recommendations regarding legal education highlight the need for curriculum development, clinical courses, innovative pedagogical methods and multidisciplinary study, *inter alia*. They also highlight developing a research tradition in law schools and universities which include courses in methodology for graduate students, faculty seminars, incentives for research which include rationalizing the teaching load and providing for faculty sabbaticals to further research objectives and improving access to database and materials.[83] Reforms suggested by the Bar Council of India [84] and the 184th Law Commission of India Report[85] do mention the development of faculty, pedagogy and

81 The NKC has called for improving remunerations and service conditions and reducing salary differentials between traditional universities and law schools. It also calls for suitable promotional schemes for meritorious faculty members. https://nationalknowledgecommission.wordpress.com/category/recommendations/legal-education/, (visited on December 16, 2019).

82 The NKC urges central government funding for endowment chairs and also for scholarships for underprivileged students.

83 *Supra* n. 81.

84 The Note on Proposed Directions for Reform under the aegis of the Bar Council of India recommend greater interdisciplinary and multidisciplinary approaches to the study of law as well as measures to ensure all faculty members are paid according to UGC norms. The note can be found at http://www.barcouncilofindia.org/wp-content/uploads/2010/07/LegalEducationReformRecommendations.pdf, (visited on December 16, 2019).

85 The 184th Report of the Law Commission of India on The Legal Education and Professional Training and Proposals for Amendments to the Advocates Act 1961 and University Grants Commission Act 1956, Ministry of Law and Justice 2002. While the 184th Law Commission of India report deals with the improvement in the pedagogical structure of legal education, it does not specifically address the needs of graduate students. For more details, visit,

curriculum as objectives; however neither of these documents specifically address the needs of post-graduate students.

I toyed with the idea of providing recommendations as a conclusion to this paper. However, I have come to the realisation that all significant methods and modes of reform have already been laid out, however, Indian legal education reform is lacking in means of implementation. Almost half a century after the Ford Foundation's endeavours, their realisation that the American legal education model cannot be transplanted into India still holds true. It is not that the values and methods followed in North America can never be implemented in India. In fact, we have already implemented certain pedagogical techniques and structures in the national law schools. However, it will be a slow process, with a graduate change in attitude and thought. Therefore, I believe that the single greatest challenge which lies before us is attempting to create dynamic and innovative frameworks which would allow for the implementation of numerous reforms already on paper. To this extent, I argue the policy documents which I have cited in this paper have been well intentioned but idealistic. I also admit that as of now, thinking about the methodology of implementation of the recommendations cited in this paper is a formidable challenge for me. Policy reform in India involve substantial bureaucratic, economic and sociological hurdles.

As I conclude, I would like to take inspiration from Paul C. Weiler's lecture titled 'Past and Future in Canadian Legal Education: Personal Reflections' where he highlights the immense development of Canadian legal education from the nineteen fifties to the nineteen seventies. He observes a transformation from classes taught by active practitioners who had little or no time for classroom discussion or for an out of class dialogue with students to a rich and varied curriculum and a perceived need for specialisation and advanced study, involving in-depth research and writing by the student. He also observed an emphasis on classroom participation in an intellectual exchange through an emphasis on the problem-solving method.[86] It is important to adopt a balanced view, acknowledging the deficiencies and limitations of the Indian legal educational system, while charting out a path for reform. No doubt, this would require immense thought and deliberation and creation of a completely new model of legal education, with an intensive revamp of the present system. Moreover, it is essential that young aspiring academicians like me, direct a portion of our thought process and writing towards policy related reform and attempt to actively participate in the public reform of legal education. If we do not, our privilege as academicians and scholars is rendered nugatory.

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http://lawcommissionofindia.nic.in/reports/184threport-parti.pdf, (visited on December 16, 2019).

86 *Supra* n. 81.

PROF. N.R. MADHAVA MENON'S CONTRIBUTION TOWARDS AUTONOMY OF LAW UNIVERSITIES IN INDIA

Mujahid Siddiqui[♣]

Abstract

This study captures the contribution of Prof. N.R. Madhava Menon in the field of University Autonomy. While capturing his role from his capacity as the Secretary of Bar Council of India, to his appointment as the Vice-Chancellor of India's two most prominent Universities, this study delves into his contributions to release the Universities in India from the clutches of the regulations and authorities which compromised with the freedom of these Institutions. The article also delves into the works of Prof. Menon in his various capacities as members and chairman of various Panels. The article is an effort made to summarise the work of Prof. Menon in the area of University autonomy in India.

Keywords: N.R. Madhava Menon, Central University, Legal Education, Autonomous University, National Law University.

Introduction

Looking at mushrooming growth of the autonomous National Law Schools in the country which stands at 21 today, and still continuing to grow, it shall be pertinent to trace the historical development of these Institutions, which have brought in significant change in the Legal education in India. The enactment of the Advocates Act in 1961 was the most remarkable event in the history of legal education in India. It brought in the much needed parity amongst the legal practitioners across the country where the designation of 'Advocate' was accorded to the legal practitioners who were till then known by several names including Vakils, Mukhtars before the subordinate courts and Solicitors or Barristers before the High Courts. Another major provision[1] under the Advocates Act was the establishment of Bar Councils in every state as well as the Bar Council of India (BCI). This was primarily intended to institute the standards and norms for the qualification of the legal practitioners and as a result the Bar Council of India was empowered to set the standards of Legal education in the country as also to provide recognition to the universities whose degrees can be acceptable qualification for registration as legal practitioners in the Bar Councils.

Thereafter a need was felt to develop and restructure the legal education in India, which till then was clearly lacking in content and form of delivery of the knowledge of law. Rudimentary and primeval form of teaching was prevalent

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1 Sections 7(1)(h), 7(1)(i), 10, 15 and 49 of the Advocates Act 1961.

which was grossly inadequate[2] to serve the purpose of the times in the post independent India. It was at this time that some of the prominent institutions took up the cudgels of introducing the reforms in the legal education. The assistance of the Ford foundation in establishing the Indian Law Institute (ILI) in the year 1956 was one of the first major steps in the creation of a truly professional legal educational institution in India.[3] Around the same period some of the prominent institutions in India such as Aligarh Muslim University, Banaras Hindu University, Delhi University began to deliberate the curriculum, the teaching and assessment methods as was practiced during those times. The transformation brought in by these deliberations was evident from the fact that the two years bachelor's degree in law course was gradually replaced by the three-year degree course. Thus began the period of paradigm shift in the legal education.

Development of Autonomous National Law Schools

The development of concept of National Law schools finds it first mention in the report of the Committee formed by the Delhi University in the year 1964, which was made to give recommendations for revising the curriculum as well as the mode of delivery of legal education in Delhi University. The Committee was chaired by Justice Gajendragadkar, which in its Report[4], *inter alia*, suggested the setting up of a model institution in order to carry out much needed experimentation on legal education. The idea gained momentum from this point forward and an elaborate discussion the need for establishing the National Law Schools was mooted at a Seminar held in Pune in the year 1972 which deliberated upon the Indian Legal Education, which was reported in the article published[5] in the same year. The idea of establishing National Law School also faced certain amount of criticism[6]. It was argued that such institutions would ultimately cater only to the requirements of rich and urban elites and shall be devoid of any specific training in socio-cultural contexts which is deemed necessary for legal professionals. During this period several workshops were organised by the University Grants Commission (UGC) for making Law curriculum more socially relevant. This culminated in the Report by Prof. Upendra Baxi submitted in the year 1979 which mentioned about the creation of such institutions.[7]

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2 Arjun P. Aggarwal, "*Legal Education in India*", JOURNAL OF LEGAL EDUCATION, Vol. 12, No. 2, 1959, pp. 231-248.

3 Jayanth K. Krishnan, "*Professor Kingfield goes to Delhi: American Academics, The Ford Foundation and the Development of Legal Education in India*", AMERICAN JOURNAL OF LEGAL HISTORY, Vol. 46, No. 4, 2005, pp. 447-498.

4 Report of the Committee for Reorganisation of Legal Education at the University of Delhi (1964).

5 Rahmatullah Khan, "*National School of Law–A Proposal*", JOURNAL OF INDIAN LAW INSTITUTE, Vol. 14, 1972, pp. 590-594.

6 S.P. Sathe, "*Is a National Law School Necessary?*", ECONOMIC AND POLITICAL WEEKLY, Vol. 9, No. 39, 1974, pp. 1643-1645.

7 "*Towards a Socially Relevant Legal Education*": A CONSOLIDATED REPORT OF THE UNIVERSITY GRANTS COMMISSION'S WORKSHOP ON MODERNIZATION OF

Meanwhile, an important development took place which further provided impetus to the formation of the National Law Schools. The Income Tax department served a notice to BCI for recovery of Income tax from the fee received from the enrolment of Advocates. In order to seek exemption from the income tax, the BCI created a Public Trust by the name of Bar Council of India Trust. Among other objects of the trust was the establishment of the model colleges across the country. The BCI at that point was headed by M.C. Setalvad, one of the legal luminaries of his time, which decided to form a Legal Education Committee (LEC). The LEC was entrusted with the responsibility of carrying out the objects of the trust. The Trust was chaired by former Chief Justice of India, Hon'ble Justice M. Hidayatullah, who had obtained his Masters in Law form Cambridge University. Hon'ble Justice Hidayatullah pursued the idea of formation of National Law schools on the lines of Harvard Law School[8]; He mooted the idea of Autonomous Institutions which shall not accept any grants from the government and subsequently shall not be restrained and interfered in its functioning by any regulatory body.

Prof. Menon as a Pro-active Participant in Establishment of Autonomous University

During the early 80's, the BCI approached many state governments to support them in establishment of National Law Schools, to which most of the states gave a cold shoulder. Shri Ramkrushna Hegde, the then Chief Minister of Karnataka, took interest in formation of such an Institution and offered a grant of Rupees Fifty Crores, along with sixteen acres of Land. The BCI supported by providing a grant of Rupees Twenty Crore and thus began the journey of formation of First National Law School in India in Bengaluru in the year 1986. The University christened as National Law School of India University (NLSIU) Bengaluru, and established by means of an Act passed by the Karnataka State Legislature. Then arose the question of who shall provide the leadership to such an Institution, which was not only unique in character but was touted to be the torch bearer of the academic revolution in the legal education in India.

Prof. Madhava Menon was then serving as Professor of Delhi University; he was also holding the charge of Secretary of BCI. There was no better choice than Prof. Madhava Menon to lead the University, who was well acquainted with the thought behind the Institution; he was given the charge as Director of the newly formed Institution. Prof. Menon had the vision and the idea to create the first of its kind University, with meagre means and abundant hard work. He began the work from a temporary campus and the process of formulating Curriculum and recruitment of faculty and establishing Institutional framework to create an autonomous body, free the clutches of regulatory bodies[9]. He

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LEGAL EDUCATION, 1979, https://www.ugc.ac.in/oldpdf/pub/report/1.pdf, (visited on December 16, 2018).

8 N.N. Mathur, "*National Law Universities, Original Intent and Real Founders*", https://www.livelaw.in/national-law-universities-original-intent-real-founders/, (visited on December 13, 2019).

9 S. Surya Prakash (ed.), TURNING POINT: THE STORY OF A LAW TEACHER-MEMOIRS OF PADMASHREE PROF. N.R. MADHAVA MENON, 1st ed. 2012.

received support from BCI, the state government as also from the Ford Foundation for construction of the new campus in the outer periphery of Bengaluru City. One of the foremost step in the direction of providing autonomy to the Institution was giving it the character of a University, so as to ensure complete control over its academic and administrative decisions, including design of curriculum and recruitment of faculty members.

Prof. Menon had to face many challenges in building the institution from the scratch, but his major challenge was to introduce the academic rigour in the teaching of law. His efforts were more directed towards building an institution of excellence, then merely a different from the league University. Prof. Menon's vision of transformation of legal education in India was not without resistance. When he proposed the Five-Year Integrated LL.B. Programme for the first time he faced quite resistance from none other than Prof. P.K. Tripathi an eminent professor of Delhi University at that time, who wrote an article in the Hindustan Times, with differing opinion on the Integrated LL.B. and supported Law degree as a secondary option after obtaining the first degree. Prof. Menon not just took the criticism[10] in his stride but ensured that he put up a strong defence to support his propositions. His strong belief in his ideas and his concerted efforts indeed resulted in establishment of NLSIU as a truly autonomous institution which within no time was recognised for its credentials as an Institute par excellence. This was the beginning of the establishment of quality legal education institutions which was replicated by many states in the years to come. It was a model that Prof. Menon presented to the sceptics and benefactors alike, which laid the solid foundation for establishment of Autonomous Law Universities India.

During the visit to NLSIU, Bengaluru, the then Chief Minister of West Bengal was impressed with the functioning of the University and the phenomenal success it made in attracting some of the best students from across the country. Acknowledging his ability to build institutions with global recognition, Prof. Menon was invited Shri. Jyoti Basu, to help establish such an institution in the state. Prof. Menon accepted this assignment and his nomination as the founder Vice-Chancellor of West Bengal National University of Juridical Sciences (WBNUJS). Here also Prof. Menon insisted on Autonomy and no government interference in the functioning of the University.[11] In spite of the state government providing grants to WBNUJS, it provided both financial and administrative autonomy to Prof. Menon, which led to establishment of yet another autonomous Institution. The WBNUJS was so uniquely modelled by Prof. Menon that its financial dependence on the government was progressively reduced and its recurring expenses were completely funded by the student's fee, consultation works and grants received from philanthropies.[12]

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10 P.K. Tripathi, "*Five-Year Law Course*", HINDUSTAN TIMES, December 24, 1983.

11 Arjun Agarwal, "*Legislating 'National' Out of National Law Universities in West Bengal*", THE WIRE, December 13, 2018, https://thewire.in/law/legislating-national-out-of-national-law-universities-in-west-bengal, (visited on December 13, 2019).

12 *Ibid*.

The growth in Autonomous Law Universities received a further boost after the Conference of Chief Justices in the year 1993, which passed a resolution to appoint a committee under Justice A.M. Ahmadi to recommend the measures for improvement of standards of legal education in India. The committee studied the functioning of NLSIU and was impressed with the work done by the University under the able administration of Prof. Menon. As a result, the committee recommended formation of more autonomous institutions on the lines of NLSIU. This resulted in establishment of autonomous Universities at Hyderabad, Bhopal, Jodhpur and Kolkata.

Prof. Madhava Menon's Conviction in the Autonomy of Universities

Prof. Menon's views on autonomy are truly reflected in his address on the foundation day of DSNLU Vishakahpatnam in 2016.[13]

> *It is important for the success of this programme to let professional colleges of law the autonomy they deserve to experiment and modify the four compulsory Practical Training courses in the BCI curriculum supported by a suitably modified optional curriculum. Bar Council of India should restrain from imposing uniformity on all professional institutions. The country is full of diversities, the legal services needs of the people are different in different regions and the legal profession is increasingly becoming diversified in terms of demand for legal services. In the circumstances, diversity is a virtue and must be cultivated rather than inhibited in the name of uniformity. (sic)*

Prof. Menon had proposed to make the professional law colleges more autonomous and with freedom to not follow the uniform syllabus as imposed by the BCI. He interpreted the role of law schools in light of the Constitutional mandate and drew parallel with the constitutional freedom and the mandate of the constitution to provide justice to the masses and not just the settlement of disputes. Prof. Menon exhibited in instilling a sense of autonomy not just in the institutions that he served, but in his thoughts too, whenever he found an appropriate opportunity to express his opinion. He refused to be bound within the confines and controls of the regulatory bodies and minced no words when it came to demanding autonomy. Another noteworthy contribution of Prof. Menon in the area of University Autonomy came in the form of report which he submitted to the Ministry of Human Resource Development, Government of India, while he was the Chairman of the Committee for proposing the policy for autonomy of central educational institutions. He proposed removal of extensive control over the Central Universities by the government. The Report stated:[14]

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13 Prachi Shrivastava, "*Prof. Madhava Menon Asks to Split Law Courses, Law Unis to Step Up and More in DSNLU Foundation Day Speech*", LEGALLY INDIA, October, 4 2016, https://www.legallyindia.com/lawschools/prof-Madhava-menon-asks-to-split-law-courses-law-unis-to-step-up-more-in-dsnlu-foundation-day-speech-20161004-8017, (visited on December 13, 2019).

14 Urmi Goswami, "*Reduce Extensive Outside Control on Central Institutions: HRD Panel Economic Times*", THE ECONOMIC TIMES, Sunday, March 20, 2011,

> *There is a need to free universities and central educational institutions from extensive control from outside for which statutes establishing them have to be revisited. Clauses subversive to institutional autonomy need to be repealed or modified to enable institutions to function with freedom and accountability.*

The report further made suggestion for the removal of the office of visitor from the Central Universities and granting the powers of the visitor to the Chancellor. It is worthwhile to note that the visitor of the Central University which is the President of India is vested with extensive powers, including those of appointment of Vice-Chancellors, executive councils and several committees. These recommendations made by Prof. Madhava Menon panel further establishes his views as a great proponent of liberating the Central Universities from the controls and paving the way for grant of autonomy to the Central Universities in India.

Conclusion

The above discussion captures, in essence, the views and ideas of Prof. Madhava Menon on the University Autonomy and his firm belief in removal of the existing regulatory and government control over the Universities and Institutions in India. His work in the area of University autonomy is extended much beyond what is covered within this short article. The scope of work done by Prof. Menon in the sphere of autonomy of Universities extends in many more ways in his capacities as member and chairman of numerous other committees and panels instituted by the government.

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https://economictimes.indiatimes.com/dateline-india/reduce-extensive-outside-control-on-central-institutions-hrd-panel/printarticle/7745973.cms, (visited on December 13, 2019).

FACULTY DEVELOPMENT AND WORK ETHICS OF A LAW TEACHER

Kama Raju Chitrapu[♣]

Abstract

The diversity and complexity of the post modern era places new and important challenges on legal education landscape, engaged scholarship and professional responsibilities of a law teacher skills. The critical and crucial role that personal dispositions have for professional comprehensive learning needs to be better understood and acknowledged. Law Teacher training programmes need to focus more on objectives such as promoting clinical legal education conflict literacy, self awareness, empathy, leadership and collaborative skills, i.e. taking into account not only the cognitive but also the social and emotional aspects of human development. In this article, exploring the descriptions of competences and holistic qualities necessary for future law teachers constitute the starting point for a wider discussion on the decisive role of beliefs and emotions in being and becoming a law teacher. Issues raised here should be able to contribute to a better understanding of what it means to be a law teacher and, consequently, result in improvements in the planning of law teacher training programmes.

Keywords: Professional Responsibility, Teaching Skills, Role Model.

Introduction

In Memoriam-Prof. N.R. Madhava Menon and his contribution to Indian Legal Education, must of necessity, focus on the subject of professional responsibility of Law teachers. In the Council on Legal Education for Professional Responsibility (CLEPR)'s educational world, clinical legal education is not an end in itself, but rather a means to achieve a broader educational goal i.e. the teaching of professional responsibility. It was not accidental that the word 'professional responsibility' was embodied in the name of this organisation which, under William Pincus's leadership, promoted direct client contact as the critical element in clinical teaching. If one believes, as I do, that a central mission of legal education should be to convert bright students into responsible professionals, then it is essential that students, under appropriate supervision, assume personal responsibility for their advice and actions, rather than remain in the passive classroom atmosphere where, in the final analysis, the professor is responsible for almost everything. This paper is an attempt to analyse the need of teaching profession in contemporary Indian legal system.

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Professional Responsibility

Skills can be taught by simulation. Responsibility is taught by the process of being responsible. Important as clinical legal education is to the teaching of professional responsibility; another aspect of a student's legal education experience may be even more important-the learning of professional responsibility through the conduct of law professors. They often provide students with their first close contact with the legal profession. Despite the 'professional responsibility explosion' in legal education, a development of the post-liberalisation era, very little attention has been paid to professional responsibility questions as they affect the law professor. In that respect, law teaching is one segment of the legal profession that remains 'uncoded'. There are compelling reasons why a code of professional responsibility should exist for law teachers, comparable to that which guides practicing lawyers and judges. Professional standards established by law teachers, by their conduct in and out of the classroom, are the most effective learning tools to impart professional responsibility issues to students. We teach best by example, and nothing which the law teacher says in class with regard to professional standards can equal in impact the effect of the professor's own conduct.

Law teachers are in most instances the first professional role models the student encounters in his or her legal career. When entering law school, the student takes very seriously the admonition, usually uttered by the dean at the orientation program, that law school marks the first step of a professional career.

The law teacher is more than the successor to the college professor at the lecture podium. He/She is usually the first example of the successful professional encountered by the law student. Moreover, the student quickly learns that the law teacher must have had a high degree of professional success in order to have earned a position on the faculty of a first-rate law school. Conduct which might be forgiven in other teaching disciplines as the accepted eccentricities of academics should not be tolerated if practiced by law professors, who have the obligation to set high standards of professional responsibility.[1]

Role Model

Unfortunately, the role model projected by the successful law teacher does not necessarily embody those qualities which good lawyers must possess. Before legal education became the exclusive domain of professional schools, the practicing lawyer, for better or worse, taught standards of professional responsibility by the manner in which he or she performed the practicing lawyer's tasks. Thus, the skills, standards and attitudes of the practitioner were also those of the teacher, because the practitioner fulfilled both roles. The development of university-based professional schools as the core of legal education created a situation in which the classroom, not the law office, was the

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1 Norman Redlich, "*Professional Responsibility handbook of a Law Teachers*", CLEVELAND STATE LAW REVIEW, Vol. 29, 1980, p. 694.

principal teaching forum. Indeed, the separation of law teaching from law practice meant that law school faculties were often composed of men and women who had consciously rejected the professional attitudes of the practitioner in order to pursue a very different set of daily practices and career goals.

In academe, law teaching often involves skills and attitudes on the part of the teacher that may be poor role models for the student to emulate as he or she moves into the practice of law. The overwhelming emphasis in law teaching has been on the development of analytical skills through the case method. Even with the growth of clinical legal education, the development of problem method courses, simulated advocacy programs, and seminars, the classic pose of the successful law teacher remains that of one standing before a large class, leading a Socratic discussion built around a decided appellate case, during which the student is taught to 'think like a lawyer'. Law teachers properly denounce the 'Paper Chase' model as a grotesque exaggeration, which it probably is. But while Prof. N.R. Madhava Menon may be a caricature of the successful law teacher, cartoon caricatures often bear some relationship to observable physical traits. Generally, the successful law teacher is a master of the quick repartee, which often proves far more effective in a classroom than the careful reflective 'mulling-over' of a problem. Students value the rapier-like thrust of the professor's sharp mind (provided one is not the victim) and will feel uneasy in the presence of a law teacher who prefers to 'think around' a problem, thereby making the class a little dull even though the teacher is probably approaching the issue as would the experienced practitioner.

The case method, with its emphasis on principles of law rather than facts, leads to a teaching environment in which theoretical constructs are considered far more important than facts. Cases are selected for casebooks because they illustrate new legal principles, and rarely because they demonstrate how changing facts will affect the application of those principles. Moreover, professors may spend little time, if any, reflecting on how the results of the case affects the actual parties to the litigation. In such an environment, law teachers will inevitably project themselves as being far more concerned with legal principles and reasoning rather than operative facts or results. It is then but a short, and devastating, step to the conclusion that sharp thinking is far more important than careful preparation.

Similarly, students may conclude that the real objective is the demonstration of one's mental agility rather than a successful resolution of a real problem for a real client. It is probably an exaggeration, but only a mild one, to say that law teachers talk for a living, while practicing lawyers listen. In an effort to develop certain skills in students, a law teacher assumes a role which, if copied by students will impede their progress as lawyers. There is all the more reason, therefore, for law teachers to think about how they conduct themselves. If the teacher's normal classroom role requires the development of a set of skills and attitudes which are different from those required in the practice of law, this tendency could be counterbalanced by the development of a set of standards of professional conduct which, if followed by the law teacher, can project a

professional image which law students should properly emulate. Students should discover for themselves that the professor who, in class, may find it necessary to expose a student's sloppy thinking with a sharp comment, or to enliven a lethargic class with caustic wit, is the same professor who keeps appointments and respects the intellectual integrity of the student during an office visit.

Failure to do so will create a model for success which the student, and the student's future clients, will come to regret. What are the essential ingredients of the proposed code of professional responsibility for the law teacher? First, the law teacher should take seriously the subject of ethics and professional responsibility. For too long the law teaching profession regarded the entire area of professional responsibility as academically unimportant and lacking in intellectual rigor. Even worse, teachers often yield to the temptation of evoking a guaranteed laugh from the class by pointing out how some ethical standard can be ignored with impunity.

A class of first-year law students, for example, can easily be impressed by a professor's imitation of a lawyer who skilfully crosses the line between the rendering of legal advice and the suborning of perjury. The routine is familiar: 'Now before you tell me what was in your mind at the time you gave that gift to your children, I would like you to know the factors which courts have considered in deciding whether a gift was, or was not, in contemplation of death'. Law students will pay for their legal education in a coin far more precious than tuition if they are constantly exposed to a cynical attitude toward ethical issues on the part of law teachers. One does not have to be a fuzzy-minded impractical idealist in order to convey to students a sense of the importance of adhering to ethical standards. Students can accept the fact that there are difficult borderline questions, and a professor should realistically expose them.

Edmond Cahn wrote, 'Doubt about dusk is not doubt about noon'[2]. If a law teacher conveys the impression that the only difference between dusk and noon is a matter of degree, rather than a difference in moral values, legal education can corrode, rather than develop, the ethical fibre of the law student. Second, law teachers should insist on students adhering to professional standards. Law school generally requires little more of students than that they do well on a written examination. This has very little to do with professional responsibility. Students should be in class on time and be prepared, or should have the courtesy of explaining to the professor why the preparation on a particular day was not possible. It is dangerous for students to assume that, in the practice of law, a brilliant brief or argument will compensate for sloppy preparation. Too often we create that attitude by the manner in which we excuse irresponsible conduct throughout a semester provided the student manages to write a good exam, which we proceed to reward. Third, the essential quid pro quo for insisting on high professional standards on the part of the student is for the law teacher to demonstrate respect for students and for their time. Professors should start and

2 E. Cahn, THE PREDICAMENT OF DEMOCRATIC MAN, 1st ed. 1961, p. 77.

end their classes on time. They should be prepared, or explain why they could not be.

Law teachers should keep appointments with students as meticulously as would a successful lawyer with a valued client. Classes should not be juggled for the personal convenience of law teachers. Only a most compelling necessity should warrant imposing on students the inconvenience of re-scheduling classes. Of perhaps greatest importance to students, grades should be turned in on time. This is a clear professional responsibility of law teachers, and they should take care to block out sufficient time to enable them to meet whatever deadline is established by the school. Law teachers should respond to the views of the students with the courtesy and respect accorded to fellow professionals. It is possible to be demanding and intellectually rigorous without being demeaning. And law professors should be available to students, after class or at reasonably certain hours, to discuss matters of substance arising from the class discussions or research projects.

In addition, law teachers should be available to discuss other projects relating to a student's work at the law school, such as work on journals or other publications. Respect for one's faculty colleagues is an important aspect of a law teacher's professional responsibility. Through the example of their professors, law students should develop habits of courtesy and respect for fellow lawyers. Why is it that law teachers who, if they were practicing law, would respond to another lawyer's views with carefully reasoned and polite replies will, nevertheless, display a surprising lack of civility in intra-faculty disputes? There is little excuse in any academic institution for the petty bickering of faculty politics. In a professional school, which seeks to set standards for the future conduct of lawyers, there is a particularly heavy responsibility on the part of the faculty to debate differences openly, civilly and without rancour. This is, after all, what we expect of participants in the adversary system. We should not expect less of law teachers. Law teachers should not only have respect for the views of other faculty members, but also for the programs in which their colleagues may be involved. This does not mean that the programs should not be critically questioned. But a law professor teaching a traditional course should not view clinicians, writing instructors, or trial practice teachers as second-class citizens. All are engaged in the academic enterprise.

If we want students to perform all of their professional tasks at a high level, whether it be a simple eviction case or a complex antitrust matter, then we should develop in our students a respect for excellence and integrity in the performance of work, whether it be classroom teaching, scholarship, or clinical teaching. While teaching students 'to think like lawyers' may represent the mental mother lode of a lawyer's career, those other lawyering skills such as client interviewing, fact-gathering and preparation, writing and advocacy skills are essential in order to mine that resource. Respect for those engaged in imparting those vital skills reflects a respect for the lawyering profession as distinct from a respect for academic excellence alone. A law teacher who glorifies mediocre scholarship because it is a lofty endeavour, but who scorns

the teaching of lawyering skills as pedestrian, will produce students who will be bad scholars and bad lawyers. Neither their ideas nor their skills will be worthy of attention. Law professors have important institutional commitments, of which teaching and scholarship are paramount. Not every teacher can be a productive scholar, but all of them must fulfil their teaching responsibilities and obligations to students. The extent to which they should be expected to fulfil other institutional obligations will often be a function of their scholarly contributions.

In general, some meaningful service on committees should be expected of everyone, but productive scholars make an institutional contribution by their scholarship and may properly be expected to contribute less in other areas. Also, members of the law school faculty should participate in programs and public functions of the school. Students will not develop the habit of commitment to the profession and to its institutions if their professors ignore law school activities, or if professors are never seen in the audience, but only on stage. At the same time, law school deans have a particular responsibility to adjust the institutional demands which may be made on faculty members in order to encourage productive scholarship, the development of new courses and the improvement of teaching techniques.

Law professors cannot be expected to fulfil their professional obligations without the support of their deans. Finally, we must address the sensitive question of outside professional activity, including the earning of income through private practice. Law professors acquire considerable benefit from their institutions, including the ability to use one’s status as a law professor to earn outside income. A law professor’s schedule is sufficiently flexible so that large blocks of time can be available for outside practice if the professor skimps on such obligations as scholarship, meeting with students, or general presence around the law school.

Most universities impose general limits on the amount of time that a faculty member may spend on outside pursuits. These rules should be respected. Rather than focus exclusively on the amount of time that a law teacher spends on outside work, however, I prefer to approach the issue in terms of the law teacher’s primary professional responsibilities. A law teacher should never engage in outside work at the expense of his or her performance as a teacher or a member of law school committees. Nor should such outside work diminish the law professor’s availability to students at reasonable hours for reasonable periods of time. I do not believe that outside work by teachers should be condemned, or even discouraged. In many instances it may be an important function of the law teacher’s professional development and may contribute significantly to the knowledge and attitudes which the teacher brings to the classroom. Moreover, as inflation generates intense financial pressures on all teachers, outside work by law teachers may become an inevitable, if troublesome, component of the financing of legal education. But it should be conducted so as not to undermine the essential responsibilities which every teacher owes to his or her institution. Too little attention has been paid to the quality of a law teacher’s outside activities. Remember, Ethical Consideration

2-25 establishes, as an aspirational goal, that lawyers engage in some pro bono activities.[3] Law professors should set an example for future lawyers by devoting a portion of the time spent on outside work for activities which are not of a money-making nature. Law reform, improving the administration of justice, serving the disadvantaged-these tasks can be performed by tax and corporation law teachers as well as those teaching constitutional or poverty law.[4]

Law teachers should also be aware that whenever they engage in outside practice, it is highly likely that someone, either the law teacher, the client, or a law firm, is benefiting from the professor's affiliation with a law school. This may raise certain questions concerning the positions that the law teacher takes in litigation or other forms of representation. I do not suggest that law teachers refrain from asserting positions they believe in, as long as they identify those positions as their own. I do suggest, however, that law teachers should recognise that they have more freedom than do their practicing-lawyer colleagues in picking and choosing cases and clients. Law teachers earn their livelihood primarily from their law schools and not from private practice. This economic fact should have some effect on the cases a law teacher accepts. Specifically, a law teacher who lends his or her name and, indirectly, that of the teacher's law school, to a legal cause should be prepared to accept an identification with that cause, more so than would a private practitioner. Often these cases include legal issues or principles within the professor's area of expert knowledge and personal concern. Sometimes the unpopular client is having difficulty obtaining counsel. But a law teacher who handles the tax work of a wealthy distributor of pornographic films should consider whether, in light of the wider range of choices available to the professor than to the private practitioner, such representation is an appropriate use of the law teacher's specialised knowledge.[5]

Conclusion

It is not enough to think about the professional responsibility of the individual law teacher. There are derivative institutional concerns. The very flexibility inherent in the law school's structure increases the opportunity and temptation for professors to neglect their institutional responsibilities.

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3 Ethical Consideration 2-25 reads, in part, "Every lawyer, regardless of professional prominence or professional workload, should find time to participate in serving the disadvantaged", https://www.law.uh.edu/libraries/ethics/EC/ec%202-25.html, (visited on February 16, 2019).

4 ABA, Code of Professional Responsibility EC 2-25, 1978. *See also*, Association of the Bar of the City of New York, Report of the Special Committee on the Lawyers Probono Obligations (1980), https://archive.org/details/ABAMODELCODEOFPROFESSIONALRESPONSIBILITY, (visited on February 16, 2019).

5 *Ibid*. ABA, Code of Professional Responsibility EC 2-26, 1978 provides: "A lawyer is under no obligation to act as advisor or advocate for every person who may wish to become his client; but in furtherance of the objective of the bar to make legal services fully available, a lawyer should not lightly decline proffered employment. The fulfilment of this objective requires acceptance by a lawyer of his share of tendered employment which may be unattractive both to him and the bar generally."

Moreover, outside activities are the source of recognition and status, bestowed by fellow members of the academic community, including students, thereby further encouraging neglect of the law professor's primary responsibilities. We should, therefore, consider the institutional responsibility of the law schools to develop and enforce standards which can guide professors in allocating their time and energies. A formal mechanism of enforcement, comparable to what exists for practitioners, is hardly consistent with accepted standards and practices of academic life. I do not suggest any such formal arrangement. Moreover, techniques will vary from school to school. Perhaps faculties can start by agreeing upon standards of professional responsibility for each other, with the understanding that peer pressure and moral persuasion will be the principal means of enforcement. Deans might also consider some accounting of the time spent by faculty members on outside practice. The publicising of standards of professional responsibility to students and other members of the law school community would be another method of moral persuasion.

Increased institutional recognition for the outstanding performance of a teacher’s primary responsibility of teaching, writing, and student attention might counter-balance the status to be gained from outside pursuits. The awarding of named chairs on the basis of these factors would be helpful. The Bar Council of India (BCI) and the Association of Indian Law Schools should include in their respective standards a requirement that law schools establish standards of professional responsibility for teachers and devise some method of enforcing them. The specific context of these standards, and the manner of enforcement, should be left to the law school. We have come to realise the truth of Prof. N.R. Madhava Menon’s message that the central mission of legal education is to push the frontiers of research in law and the teaching of law with professional responsibility. As with most educational goals, success or failure depends primarily on the teacher, whose role-model function has been too long ignored.

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CLINICAL LEGAL EDUCATION- A PARADIGM SHIFT IN LEGAL EDUCATION TO FAST TRACK SOCIAL JUSTICE

Arakkal Ashraf♣ *and Sona Kumar*♦

Abstract

Clinical Legal Education (CLE) programs aim to provide pro bono services to the community while educating the next generation of lawyers about social justice, by encouraging them to champion the cause of pro bono legal service. Clinical Legal education can thus be termed as a pedagogical tool which can be modulated in such a way as to engineer social justice by integrating with legal education and by orienting the budding lawyers to the socially relevant causes which is the need of the hour. Thus Clinical Legal Education can help to change the current teaching methodology, to one which is more practical oriented in contrast to the present system of class room teaching, by balancing theory with practical knowledge. In a nut shell, Clinical Legal Education aims to create young legal minds who are exposed to the real life situations in the field where people are deprived of their basic rights and are trained to empathise with them by inculcating in them the value of providing pro bono legal service to the poor and needy, even before formally entering the profession. It is part of the process of changing the orientation of legal education, which has been largely class-room based to a practical oriented discipline. Thus, Clinical Legal Education can play the role of a transformative tool in legal education if properly utilised. Clinical legal education is a progressive educational ideology and pedagogy that is most often implemented through university programs.

Keywords: Clinical Legal Education, Legal Aid, Social Justice, Reforms, Summative Evaluation, and Rubric Method.

Introduction

Clinical Legal Education aims to provide free access to legal remedies to the needy while at the same time intends to impart practical training about the importance of social justice to the students of law. Exposure to clinical legal education has acquired immense importance in every sphere of legal profession, especially in the case of imparting the right kind of legal education to the students of Law. Law as a profession, has its own sanctity, which is based more on practice rather than on theory alone.

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Clinical legal education simply means learning by doing. The association of the term clinic with legal educational institutions came into existence during 1960s and 1970s in USA, Britain, Canada and Australia. Since then, the term clinical legal education has come to include legal representation, legal advice, community legal education, legal aid services and the establishment of clinical programs. Basically, the clinical legal education programmes developed as an offshoot of explicit social justice agenda as a response to the lack of availability of legal services for the poor, marginalised and disadvantaged group of the society. Clinical legal education programmes aim to provide *pro bono* services to the community while educating the next generation about social justice, democracy and the need for providing easy access to legal aid for the poor and needy so as not to deprive them of the principles of natural justice and also for maintaining Rule of Law in the society.[1] Slowly and gradually, the concept of clinical legal education has expanded across the globe with the realisation that it is necessary to bridge the gap between theory and practice while imparting legal education.

Role of Clinics

Clinical legal education extends opportunities for the students and the faculty to engage with the communities directly as well as the issues and problems faced by them. India is a large country with a huge population, majority of which is illiterate and living in abject poverty in the rural areas with little awareness about the legal system prevailing in the country and lacks even basic information about the rights guaranteed to them by the Constitution of India. Even if the members of the society become aware of their rights, then also many of them will not be in a position to afford it or get it accessed through the courts because of their social and economic limitations.

Lack of knowledge about the basic legal structure of the country, the constitutional remedies available, the criminal and civil systems, application of human rights etc. and other directive principles, including guidelines that protect the people's dignity, liberty and freedom manifests itself in the society in the form of various problems such as child labour, human trafficking, domestic violence, child marriage, dowry death, judicial custody etc., that threatens the safety and security of all and create hindrances towards maintenance of peace, harmony and security in the society. Legal awareness and legal literacy forms the basis of any effort towards legal empowerment. Critical knowledge of legal provisions and processes, coupled with skills to use this knowledge to realise the rights and entitlements will empower people to demand justice, accountability and effective remedies at all levels.

Under such circumstances, these clinics were compelled to take proactive steps to bridge this gap by working in consonance with various universities, colleges and law schools across the country by initiating *pro bono* actions. In this regard, it is very aptly remarked by Supreme Court in *Air India Statutory Corporation v. United Labour Union*,[2] that "*social justice is a dynamic devise*

1 N.R. Madhav Menon, CLINICAL LEGAL EDUCATION, 1st ed. 2016, p. 1.

2 AIR 1997 SC 645.

to mitigate the sufferings of the poor, weak, dalits, tribals and deprived sections of the society and so elevate them to the level of equality to live a life with dignity of person. Social justice is not a simple or single idea of a society, but is an essential part of complex social change to relieve the poor etc., from handicaps, penury, distress and to make their life livable, for the greater good of the society at large". In a developing society like ours, where there is vast gap of inequality in status and of opportunity, law is a catalyst, a rubicon to the poor to climb the ladder of social justice. The Constitution therefore mandates the State to accord justice to all members of the society in all facets of human activity. Social justice and equality are complimentary to each other and therefore remains vital. Rule of law, therefore is a potent instrument of social justice to bring equality. Accordingly, Article 39-A[3]of Constitution of India directs the State to ensure that the operation of the legal system promotes justice, on the basis of equal opportunities 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 citizens by reason of economic or other disabilities. Legal Aid and speedy trial have been held to be fundamental rights under Article 21 of the Constitution available to all prisoners and enforceable by the courts as held in *H.M. Hoskot v. State of Maharashtra*[4]. The State is under a duty to provide lawyer to a poor person and it must pay to the lawyer his fee as fixed by the court as was held in *Husssainara Khatoon v. Home Secretary, State of Bihar*[5].

Therefore, it has been observed that clinical legal education has a wider goal to attain, to enable the law students to understand and assimilate responsibilities as a member of a public service in the society and as administrators of law to be instrumental in bringing reforms in law, thriving to attain equitable distribution of the legal services in the society and to understand the need for protection of individual rights and of the society as a whole.

Insight Stimulation through Clinical Legal Education

Clinical legal education is a term which provides opportunities for learning, focused on enabling the law students to understand how the law works in action. The legal educational clinics if organised properly can provide first hand practical experience to the aspiring law students and through this mechanism they can gain sufficient information and knowledge and practical experience. Clinical system only can also provide opportunity for understanding the co-relation between law and its application into real life situations during the learning stage itself.

The terminology 'Clinic' is the same as that is used in medical practice where diagnostic techniques are applied for proper diagnosis and for providing treatment to the patients so as to give them relief from their ailments. Similarly, in legal education parlance, clinical legal education is the only way out where theory and practice can be brought together by creating a system where the law

3 Added by the Constitution (Forty-second Amendment) Act 1976.
4 AIR 1978 SC 1548.
5 AIR 1979 SC 1322.

students can be taught the importance and the need for providing *pro bono* legal service to the needy members of the society in an informal way. It has been stated that clinical legal education is a boon to advocacy.

It has been observed that mostly Indian law schools do not have formal clinical legal education programs while many schools have but in the form of 'legal aid cells' that are neither directly supervised nor formally incorporated into the curriculum and are often voluntary student run organisation with some self-motivated faculties.

Connecting Legal Education with Legal Aid

The first step towards the introduction of legal aid took place in the year 1924, when a society called Bombay Aid Society was set up. Thereafter during the post-independence period, various independent State Legal Committees were set up. In 1958, the 14th Law Commission Report was published which after examining the various aspects of the judicial administration and its reforms, strongly advocated for speedier and less expensive justice. In 1971, a Committee constituted under Justice P.N. Bhagwati, recommended that legal aid and legal advice are to be taken into consideration as a matter of right. During 1973, Justice V.R. Krishna Iyer Committee's Report highlighted the importance of legal aid by stating that legal aid should reach the common people as well as each and every member of the society. There after certain efforts were initiated towards listing the classes of people who were really in need of legal aid in and around our society. The year 1977 is most remarkable in this direction as National Judicature Report was presented with focus on the need for framing legal service programmes by taking into consideration the socio-economic conditions that was prevailing in the country. It also prescribed the establishment of National Legal Services Authority (NALSA).

The government introduced the Legal Services Authorities Act in 1987.This Act established legal service authorities at three different levels- National (hereinafter NALSA), State and at District levels to help bridge the need for legal representation especially for those who cannot afford it. In 1981, the Government of India appointed a Committee for Implementing Legal Aid Schemes.[6] In this respect, the Report of the Law Commission of India 2002 is very important as the Commission considered Clinical Legal Education as one of the mandatory requirements for legal curriculum[7]. Since then various activities are being under taken by various universities, colleges and law schools across the nation towards achieving this goal.

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6 In order to achieve the objects of the clinical programme, NLSIU offers a wide range of opportunities in clinical programmes, compulsory as well as optional, to the students. At present the compulsory clinical courses are – (a) Client Interviewing, Counselling, and Alternative Dispute Resolution methods (b) Litigation Clinic (c) special Clinic integrated with compulsory placements of two months from III year to V year of the 5 year LL.B. course. The optional components of the scheme include (a) Moot Court (b) Legal services clinics; (c) community- based Law Reforms Competition. In addition to the above, NLSIU curriculum course on Professional Ethics and Law Office management taught with assistance of legal practitioners.

7 http://alsonline.amity.edu/docs/alwjlegkk.pdf, (visited on February 18, 2019).

The Bar Council of India, constituted under the Indian Advocates Act 1961, is entrusted by Parliament with the responsibility to prescribe and maintain high standards of legal education in consultation with State Bar Councils and the Universities teaching law. In exercise of this responsibility, the Council has been laying down rules from time to time by giving the broad goals of the legal curriculum, its content and methods for the universities and law schools to follow.

The legal education system introduced in the late 1960s did not have practical training as such, but glimpses of clinical legal education could be seen during this period. It has been observed that between 1979 and 1986, sixty universities, colleges and law schools have set up legal aid clinics as voluntary, extracurricular programme and while a very few institutes introduced this as part of regular curriculum.

It is pertinent to note that time and again, efforts were undertaken to improve the system and methods of imparting legal education in our country. Though late in comparison to the other developed countries, India has also accepted the fact that legal education is not possible without the two critical components i.e.; theoretical as well as practical. Both the components are equally essential for the aspiring lawyers to perform well in the ever-increasing challenges faced by legal professionals in the contemporary times. Accordingly, efforts were initiated, as discussed above, to improve the legal education system in our country with the addition of clinical legal education methods. But the term clinical legal education is neither easy to define nor simple in its application by taking into consideration all its facets.

Prof. Richard Grimes defines a law clinic as "*a learning environment where students identify, research and apply knowledge in a setting which replicates, at least in part, the world where it is practiced*".[8] Here, the term experiential learning refers to an approach to education in which the students are exposed to real or realistic legal issues and problems.

Thus, it has been realised that clinical legal education is a method to engage students in a whole range of learning objectives which become necessary to think and to act like a lawyer, especially when the students have to deal with real life situations in a legal aid clinic. Thus, efforts are required to generate interest which can be further cultivated and nurtured by clarifying the requirements of skills and ethical values needed to develop a sense of responsibility and for building the confidence of students. The higher level of learning expected through clinical system is extremely difficult to achieve in the traditional system of teaching or class room teaching. Clinical methods help in sharpening the various skills required by the budding lawyers. Therefore, this method has been adopted by various Universities, colleges and law schools. On this particular point it is worth noting that for the first time, for the financial year 2018-19 government has provided financial aid to existing legal aid clinics

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8 Richard Grimes and Jenny Gibbons, "*Assessing Experimental Learning-us, Them and the Others*", INTERNATIONAL JOURNAL OF CLINICAL LEGAL EDUCATION, Vol. 23, No. 1, 2016, pp. 107-136.

which are associated with Universities and their respective District Legal Services Authority. The yearly calendar for the curriculum also mentions the specific areas to be taken up by Universities or law schools in various forms which can be in the nature of socio-legal awareness programmes, workshops, seminars, debates, mock trials etc. to achieve the goals of legal aid curriculum.

Need of Active Participation of Law Aspirants

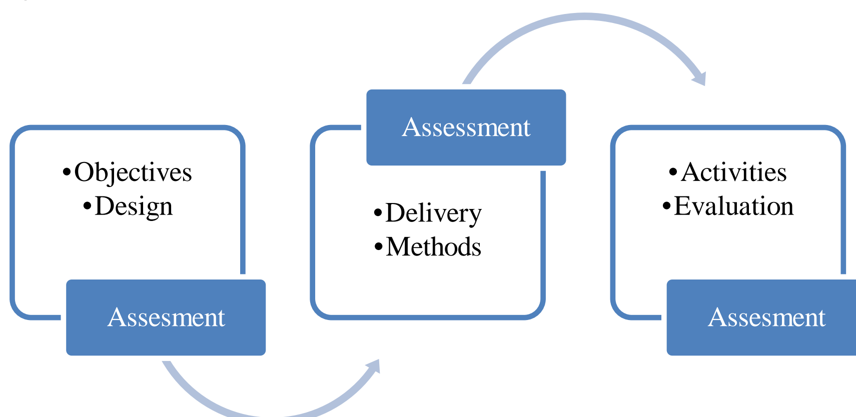
The present day students are often termed as tech-savvy who are well versed in using all types of techno gadgetries with which we all are surrounded. As they have wider exposure to the happenings and latest developments taking place all round the world at their fingertips thanks to the internet, the present-day law students are already very mature and knowledgeable as compared to earlier students. Although the motivation and commitment to the profession may be different from individual to individual, it may be generally assumed that they are being prepared in the law schools for entry into a highly competitive professional career. The current scenario is also of encouraging innovations in the delivery of legal services which can be done through clinical legal education only and students could even assist in identifying new ways of working in order to improve access to justice, particularly through technological developments. In this background, it is high time a review of clinical legal education is taken in right earnest.

Introduction of Summative Evaluation System

It is an accepted fact that law is dynamic and not static. Accordingly, a large number of changes have been incorporated in the syllabus for legal education and many new subjects have been added from time to time to meet the requirements of ever-growing professional challenges that will have to be faced by the new bunch of emerging lawyers. At the same time, many new developments in the valuation of LL.B. examination by introduction of credit system based on the performance of each and every individual student, have been introduced. In most of the universities, colleges and law school's basic formative system of evaluation is still followed, which means and includes any form of classroom interactions that generate information on student learning, which is then used by the faculty and students to fine-tune their teaching and learning strategies respectively during the teaching/learning process. To bring about improvements in the system, it is felt that there is a need to introduce summative evaluation/assessment system which is used to evaluate the theoretical learning, skill acquisition and academic achievements as well. Thus this acts as a method of judging the worth of the program at the end of the program activities i.e.; the system in which the focus is on the outcome. This method is considered to be more suitable to identify possible problems, assess performance of students, seek resolution to problems faced and appropriately adjust the strategic planning process to meet current needs and future expectations. Thus summative evaluation provides quantitative data and is focused on outcome which is one of the requirements for improving clinical legal education as is further narrated in the form of figure.

The objectives of the clinical legal education, are required to be pre-designed with proper structure in terms of the purpose for which the programme is designed. Clear ideas should be defined as to how the said programme will be executed or delivered along with the methods which will be utilised during performance or execution of clinical legal education. Not only this but also the activities to be undertaken should be properly designed for e.g.; street plays, workshops etc. This approach will help in assessing the students at each stage of their performance, their involvement in the program as well as their urge for gaining knowledge which can be very well understood in a structured format. This will help in the successful performance of clinical legal education on one hand and on the other hand for providing appropriate assessment tools for assessing the performance of each and every individual according to their involvement at each particular level.

Thus, assessment is a concurrent as well as ongoing process designed to monitor and improve the learning capacity of the students. The faculty should try to develop explicit requirements of what students should learn which may be termed as student learning outcome where students are required to perform at each outcome along with the method to assess how well students perform at each level. The result can be used to improve student's learning proficiency at each level or at each outcome while designing further programs for clinical legal education.



Rubrics Method

Rubrics provide the criteria for assessing the student's work.[9] They can be used to assess virtually any programme of clinical legal education or behavior such as oral presentation, group activities etc. as part of clinical program. There can be self-assessments by students, or by others in a structured form and even by supervisors if any, and/or external reviewers. Rubrics can be used to clarify the expectation of students, to provide formative feedback to students, to grade students and/or assess courses and programs which will slowly and gradually add improvements in each and every component of learning process through clinical legal education.

9 Archive,pbl-online.org>bloomsrubrics, (visited on May 24, 2019).

Conclusion

CLE as a tool for imparting practical oriented teaching method in comparison to class room teaching will go a long way in creating a new breed of lawyers, in whom the need for providing speedy as well as fair and equitable justice to the poor, downtrodden masses will be deeply ingrained. This method will help to usher in an era of social justice where no one is deprived of their rights guaranteed by the constitution. CLE is essential for preparing the law students to understand and practice law effectively due to the exposure gained and also to ingrain in them a sense of empathy for the deprived by offering *pro bono* legal services. However, CLE method needs more involvement by the law schools and faculties by providing the right mix of classroom and practical training. To make the concept really effective, there should be wholehearted co-operation between the legal faculties, practicing lawyers and bar councils where by the law students can be given adequate practical exposure by enabling them to face real life situations and cases. Such a scenario will train the young lawyers to offer their services for providing social justice and justice to all with a sense of empathy. This will go a long way in improving the legal system prevailing in our country. Better trained lawyers with a sense of empathy can change the very face of the Indian legal profession and make it shine brighter than ever before. As very correctly stated by Justice P.N. Bhagwati, the lawyer should be a social engineer striving to achieve social justice in a very effective way. It is necessary to emphasise that the purpose and scope of legal education must be to prepare students for the practice of the profession of law. Therefore, the law and legal education which together constitute the backbone of society should change according to the changing needs and interests of the ever-changing society. Clinical legal education requires specialised experience than class room teaching. The time frame of curriculum become difficult to maintain unless a proper balance is achieved between class room teaching and clinical teaching. There are many things which are good for clinical experience by enabling the students to understand experientially how the law works in practice, what are the specific needs of the members of society etc. Hence clinical education must be included as a part of curriculum. Not only this but also the assessment method should be made more specialised by providing weightage to each and every stage of learning and performing process through clinical legal education.

In order to bring about the requisite reforms in clinical legal education, the need of the hour is mutual collaboration amongst different stakeholders such as between the lawyers teaching at law schools and practicing lawyers, the law schools and the bar councils, etc. Even the law firms have an active role to play in this direction and in coordinating with the law school clinics.

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SOCIO-LEGAL ACCEPTABILITY AND RECOGNITION OF LIVE-IN RELATIONSHIP IN INDIA

Ashwini Kelkar♣

Abstract

Live-in relationship is one such practice which is revamping the old and recognised concept of marriage. Such relationships are contemplated to be against the established and practiced essence of the society. This cultural conflict between the traditional norms and the modern norms is creating a rift in the moral and ethical fabric of the society. This paper is an attempt to explore the socio-legal acceptance of such informal relationship by analyzing various factors and facets of such informal relationship in India. First, the paper analyses the characteristics and essentials of live-in relationship. Secondly, paper attempts to study the various factors effecting and stimulating the social acceptance of live in relationships in India and the role of consent in these relationships and marriages. The paper also attempts to study the causes for individuals to opt for such relationships instead of an arranged marriage. Thirdly, the paper discusses the assistive and contributive nature of legal provisions for adoption of such informal relationship in India to cater the changing needs of the society. Lastly, the paper analyses the issues and challenges relating to social acceptance of live-in relationship in India.

Keywords: Live-in Relationship, Cohabitation, Social Acceptance, Morality, Consent, Marriage.

Introduction

The institution of marriage is considered to be the central unit of a family which has an enormous influence on the Indian society. Over the centuries, marriage has been overwhelmingly accepted as a practice towards the development of the society and the very peaceful existence of individuals by portraying and shaping the respective roles of husband, wife and their children in our society.[1] Contrary to the established practice, relating to formation of family through marriages, contemporary India is witnessing a major shift from the traditional and accepted institution, to the informal and unaccepted form of relationships. These relationships are governed by lack of commitment as opposite to the relationships in marriage, this leads to a lack of social and moral sanctions of the society. The role of marriage in a society has become blurred with the rise in the number of such practices between unmarried partners.[2] This

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1 Flavia Agnes, FAMILY LAW: MARRIAGE, DIVORCE, AND MATRIMONIAL LITIGATION, 1st ed. 2011, pp. 1-4.

2 Arland Thornton et al., MARRIAGE AND COHABITATION, 1st ed. 2007, p. 6.

research analyses the concept of live-in relationships in the light of socially and legally accepted formal relationship between two adults.

In India, most of the marriages are arranged and parents have the right to choose a partner for their children and the concerned adults do not have a right of choice and consent in deciding their life partner. In order to explore the compatibility before marriage, people are opting for non-marital cohabitation which is becoming an accepted practice in the contemporary India. The word 'cohabitation' is used almost in all other countries for the informal institutions other than marriage. Cohabitation means an arrangement where two adults live together in absence of a formal relationship in the form of marriage.[3] In India, the term which is commonly used for such relationship is 'live-in relationship'. It is hard to find the social acceptability and recognition of live-in relationships in small cities, but on the other hand, in metro cities, they are gaining popularity day-by-day. The cohabitation among the adults with consent and choice may be immoral for a major section of the society, but is not illegal in the eyes of law. Thus, the importance and role of consent in a marriage and a live-in relationship is highlighted in this study.

Institution of marriage regulates the sexual behavior of the adults in the society. On the other hand, in a live-in relationship, the partners are free to have sexual choices without any inhibitions involved in a marriage. Marriage obligates the spouse to have sexual conduct only with each other while live-in relationship does not create such an obligation on the live-in partners. The apparent shift from marriage to live-in relationship can be understood by analysing the role of sexual consent. Thus, the sexual autonomy and the morality of an individual differs in case of marriage and live-in relationship, but a large section of the society accepts the sexual conduct in the course of marriage as it regulates the sexual behavior of the spouses and considers it morally correct in the society.

However, the court has provided legal protection to these informal relationships and has equated these relationships to the traditional institution of marriages. Judiciary has time and again made an attempt to grant legitimacy to such relationships by keeping in view the various social and legal factors associated with the incidents of such relationships. Although, a comprehensive legal framework in India on live-in relationship is unavailable, but partners are choosing to cohabit without getting married. There are several incidents of such relationships which requires a study with a holistic approach to analyse the characteristics of live-in relationships and its effects in the contemporary era. The progressive approach followed by the courts is setting a precedent for modern India in terms of forming a new kind of family. But, only giving protection to these relationships will not solve the problem, modern India needs an overall acceptability of these relationships making it equivalent to marriage. The unaddressed issues relating to the social acceptance and recognition still persists and thus the law needs to have a broader perspective to tackle the prevalent problems. The study is limited to the Indian laws and the societal

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3 Bryan A. Garner (ed.), BLACK'S LAW DICTIONARY, 10th ed. 2014, p. 316.

outlook for these relationships. This research paper studies the present protection provided to the partners in such relationships and the lacunae in laws which fail to consider many other socio-legal aspects.

Concept of Live-in Relationship

Live-in relationship is consensual non-marital relations between the two adults.[4] This relationship is between two heterosexual adults which may either be 'by choice' or 'by circumstance'.[5] The partners tend to opt for such relationships to avoid marital obligations. A lot of these changes in the mutually agreeable cohabitation are influenced by the western countries where the institution of family has different roots.[6] This institution is a convenient set up to know the partners before marriage or sometimes such relationships are also opted by the older partners to have a companion in their old age. Although it is an evolving practice, society at large has not granted recognition to such relationships and hence, there is a societal taboo attached with this institution. The live-in partners are shunned down by the society because of their mindset which considers that only a formally solemnised marriage is moral in nature. In India, the decision of marriage is mostly taken by the parents and the family of the individual. The contemporary India is witnessing an individual centric society where the personal choices of individuals are given priority over the society. The reasons for the partners to practice a live-in relationship may vary depending on the circumstances and the personal choice of each individual. The factors responsible when two individuals decide to cohabit includes legal and marital obligations, property issues, not able to get out of previous marriage, desire of testing the compatibility and companionship, etc. The reasons behind cohabitation are best known to the partners, but one thing which is unambiguous is that they lack adequate legal protection and are left empty-handed,[7] as compared to a marriage in a majority of the cases.

Live-in relationships are increasing day-by-day, especially in the metro cities and therefore, the present research is of vital importance in the contemporary India. Given the fact, that live-in relationship is not defined under any law in India, there are many unidentified issues surrounding live-in relationship and its impact on the social fabric of the country. A major section of the society considers these relationships to be a violation of morality and a threat to the institution of family. Therefore, when two consenting unmarried adults want to live and cohabit, they are compelled by societal pressure to hide the true nature of their relationship and pretend to be married which perpetuates the shame and stigma surrounding live-in relationship. Society regards the live-in partners as infectious to the ideological and the accepted set up of marriage. The notion that

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4 Wazida Rahman, "*Live-In Relationship and Status of Women in India*", INTERNATIONAL JOURNAL OF LAW AND LEGAL RESEARCH, Vol. 3, 2016, pp. 207-212.

5 Vijender Kumar, "*Live-In Relationship: Impact on Marriage and Family Institutions*", 2012 4 SCC (J)-19.

6 Wolfram Muller-Freienfels, "*Cohabitation and Marriage Law- A Comparative Study*", INTERNATIONAL JOURNAL OF LAW AND FAMILY, Vol. 1, 1987, pp. 259-265.

7 Anna Stepien-Sporek and Margaret Ryznar, "*The Consequences of Cohabitation*", UNIVERSITY OF SAN FRANCISCO LAW REVIEW, Vol. 50, 2016, p. 76.

live-in relationships are disrupting the ideology of the society is to be put under scrutiny. But, these informal relationships give an opportunity to the current generation to look beyond the established notions of a marital institution and adopt those informal relationships which gives a better scope for understanding the partner. The modern conception of family questions the very existence of marriage in the light of union of two people to cohabit.

Multi-faceted Approach of Live-in Relationship

The term live-in relationship has been interpreted by the courts as well as by different authors in different sense, but there is no clarity on the definition of the concept and also the present laws in India are insufficient towards defining live-in relationships. Pre-marital informal relationships between two individuals has its significance and uniqueness in the contemporary era. Thus, the need of defining live-in relationship and its essentials is of paramount importance in the present modern society. The concept of live-in relationship is although not new in India, the difference lies in the fact that people have started sharing their private and intimate life openly in the society. The growing instances of such informal unions in contemporary India require the law to describe and define the term live-in relationship.

Although, the term 'live-in relationship' has not been defined under prevalent laws in India, there have been growing instances of these kind of relationships owing to factors depending on the individual choices. There can be several reasons for two people to live together without being tied to the institution of marriage and without getting sexually involved with each other. The approaches of live-in relationship can be categorised in following ways:

Firstly, the partners who are involved emotionally with each other but do not want to fulfill the marital obligations, and hence, choose to live together without getting married. They may never want to marry with each other and prefer to live together without complying to the formalities attached with marriage.

Secondly, many old people also need a companion in their life, especially the ones who have lost their soul-mates due to the dissolution of marriage either by a decree of divorce or by the death of one of the spouses. The belief that only the youth is involved in these relationships is not true. The elderly people, who are lonely, depressed, divorced, or whose spouse has died may also need a partner. Recently, few organisations have taken initiatives for the welfare of the elderly by helping them in finding a companion in their old age. An NGO '*Vina Mulya Amulya Seva*' was launched in Ahmadabad in the year 2001 by Nathubhai Patel.[8] The NGO helps the elderly people find their ideal matches not for marriages directly, but to test each other's compatibility before they decide to marry or cohabit in a live-in relationship. A person cannot live lonely, and therefore, a companion to share the joy, love, laughter, and sorrows is always a welcome step for these elderly people. Initiatives by such organisations provide assistance to these elderly people to find the partners. In a

8 Riddhi Doshi, "*City's Senior Can Now Find a Live-in Partner*", HINDUSTAN TIMES, https://www.hindustantimes.com/mumbai/city-s-seniors-can-now-find-a-live-in-partner/story-o1UZUkf454OtX2c3WSREBJ.html, (visited on March 23, 2019).

country like India, where cohabitation is a societal taboo and mostly unheard of, especially for elderly people, such organisations are initiating unusual and eccentric approaches for people who are in dire need of companionship.

Thirdly, there are instances wherein the partners have love and respect for each other and also are involved sexually in their relationship, and want to test their compatibility with each other before getting married.

Fourthly, there are live-in relationships due to 'by circumstances' in which both or one of the partners is under an impression that a valid marriage persists between them and they are also recognised by the society as a husband and wife.[9] This categorisation of the approaches of live-in relationship is non exhaustive in nature and there might be wide range of other reasons for two people who do not want to marry and live under such relationships. Therefore, it is imperative to understand these relationships from a multi-dimensional approach and not just as a threat to the society.

Social Menace Towards Live-in Relationship in India

In order to understand the social menace attached to live-in relationship in India, it is imperative to understand the coherence between society and its importance in shaping the laws. The dynamics of the society are evolving with the changing nature of various factors related to individual's belief such as religious, moral, ethical, etc.[10] Thus, society encompasses collective factors influencing the laws, but law remains merely an ineffective textual document until and unless the society positively accepts and adhere to it. Live-in relationship has been considered as the transformation of the institution of marriage.[11]Marriage and live-in relationship differs primarily on the ground of social recognition. In a marriage, there are specific societal norms eventually leading to the legal norms which the spouse need to follow. Earlier, such relationships which involved cohabitation outside the wedlock were considered shameful by the society.[12] Live-in relationship is a means through which two individuals get to know each other before they actually get married. The basic purpose for opting a live-in relationship is its non-binding nature i.e. walk-in and walk-out relationship.[13]

The main hindrance behind the societal taboo attached with the practice of live-in relationship is the mindset that it promotes pre-marital sexual relationships.[14] Another reason for non-acceptability of live-in relationship is the cultural disagreement between the society and the individual choices. Hence, any law recognising live-in relationship will not be accepted by the

9 *Supra*, n. 3.

10 Brian Z. Tamanah, "*The Primacy of Society and the Failures of Law and Development*", CORNELL INTERNATIONAL LAW JOURNAL, Vol. 44, 2011, p. 219.

11 Arlene Skolnick, "*The Social Contexts of Cohabitation*", AMERICAN JOURNAL OF COMPARATIVE LAW, Vol. 29, 1981, pp. 339-342.

12 Marsha Garrison, "*Non-Marital Cohabitation: Social Revolution and Legal Regulation*", FAMILY LAW QUATERLY, Vol. 42, No. 3 2008, pp. 309-313.

13 *Alok Kumar v. State (NCT of Delhi)* 2010 SCC OnLine Del 2645.

14 Parul Bhandari, "*Pre-Marital Relationships and the Family in Modern India*", SOUTH ASIA MULTIDISCIPLINARY ACADEMIC JOURNAL, Vol. 16, 2017, pp. 2-3.

society causing jeopardy to the social and the emotional well-being of the partners in such relationships. It is also believed by the society that the legal recognition to live-in relationship may also lead to an increase in the honor killings, as a pre-marital sexual relationship is not considered as morally correct by the society. The increasing number of live in relationship may also have a great threat to the concept of marriage and the entire moral and social fabric of the society.

According to Lord Devlin, the morals should not be left in the realm of private individuals alone; rather there is a collective public morality which the society should enforce by enacting laws that forbid immoral behavior.[15] If society does not do so, its moral order will collapse resulting in the ultimate destruction of the society itself. Lord Devlin himself understood and accepted that morality would depend on cultural relativism.[16] However, applying these principles of morality based on collective public opinion may cause jeopardy to the live-in partners. In the contemporary era, morality of the society depends on the individual choices and their perception. Although, live-in relationship may be immoral for one section of the society, but there are people who desire to have such relationships. Thus, the cultural stigma should be analysed with respect to the Indian heterogeneous society and not only with respect to an individual alone.

Therefore, it has to ascertained that whether two adults require the societal acceptance and approval before they can make their choices which are personal in nature. The problems faced by the live-in partners due to the non-acceptability of society is a serious matter of concern for the development of the society. There are instances where, the live-in partners are denied by the society to reside with them, once their identity is revealed to the society. Further, they have to pretend that they are married which ensures them a dignified and respected place in the society. Thus, the influence of the society over individual choices is a matter of debate in the recent times.

Regulation of Sexual Behavior in Marital and Live-in Relationship

Every society considers sexual relationship within marriage as sacrosanct.[17] The influence of the society over the sexual life of an individual cannot be denied. Since time immemorial, society has exercised enormous control and dominance over the sexual choices in a marital or a non-marital relationship. Over the centuries, Sexual behavior of the spouses are governed and regulated by the institution of marriage. However, the contemporary society is no longer restricted to the conventional approach towards sexual choices within a marriage and gradually started accepting such choices in the informal

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15 Patrick Devlin, THE ENFORCEMENT OF MORALS, 1st ed.1959, pp. 129-135.

16 *Ibid.*

17 Amarjeet Singh, "*Regulation of Human Sexual Behavior, Sex Revolution and Emergence of Aids- A Historical Perspective*", BULLETIN OF THE INDIAN INSTITUTE OF HISTORY OF MEDICINE, Vol. 27, 1997, pp. 63-74.

relationships. This results in a challenge for sexual morality of marriage in today's era where new form of relationship is emerging in the society.[18]

In order to understand the regulation of sexual behavior, it is necessary to understand the relation between sexuality and the norms for sexual behavior in a society. Society considers physical intimacy to be a sacred act that needs to be performed within the boundaries of a marriage. It inflicts harsh sanctions on those who do not follow the expected normative sexual norms within a marriage.[19] Therefore, the society does not respect live-in relationship as it does not fall within the purview of normative sexuality and marital relationships.

Nowadays, society has become open and progressive, wherein, the boundaries of sexual activities are no longer adhered only to marital relationships. Similarly, with the increase in the practice of live-in relationship, regulation of sexual behavior by society has become ineffectual. It has been considered by many scholars that live-in relationships are gaining popularity due to the demand of individuals to get an opportunity to decide about their sexual relationships free from the generally accepted norms of the society. As a result, in an individualistic society, societal interference in an individual's life has become minimal with the changing times.

Live-in Relationship and Tribal Communities in India

Live-in relationship is considered as a recent practice in Indian context, but few tribes in India have also been practicing live-in relationship in different forms for many years. The tribes of *Oraon*, *Hunda* and *Ho* in Jharkhand have a tradition of live-in relationship, if the partners are not able to organise a wedding feast for the entire village. The woman in these relationships is known as *Dhukni* which is a derogatory status for her. As per the traditional norms, society accepts the male and female partners to cohabit without getting married. An NGO 'Nimitta' organised a mass wedding of the 132 live-in partners to get them the societal acceptance as a husband and wife.[20] Such practices reflect the mindset of the society at a large extent wherein live-in relationship is treated as a form of punishment for this tribe. The societal taboo and the stigma attached with this informal set up lacks the recognition in the society. But, the choice of marrying a person should not be out of pressure from the society but it should be with their choice and consent. In *Shafin Jahan v. Asokan K.M.*,[21] the Supreme Court held that, the right to marry is an individual's personal choice to marry and choose a life partner is not a matter of faith but a personal volition

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18 *Ibid*.

19 Ratna Kapur, "*Postcolonial Erotic Disruptions: Legal Narratives of Culture, Sex and Nation in India*", COLUMBIA JOURNAL OF GENDER AND LAW, Vol. 10, 2001, p. 339.

20 Debjani Chakraborty, *No Feast, No Marriage: Tribals Forced into Live-ins*, THE TIMES OF INDIA, https://timesofindia.indiatimes.com/city/ranchi/no-feast-no-marriage-tribals-forced-into-live-ins/articleshow/67535686.cms, (visited on March 19, 2019).

21 (2018) 16 SCC 368: AIR 2018 SC 1933.

which should be respected and recognised by the society.[22] The above opinion is also supported by the Universal Declaration of Human Rights.[23]

The *Garasiya* tribe in Rajasthan has also been practicing live-in relationship for thousands of years known as *Dapa*.[24] This practice is backed by the social sanction and the live-in partners are not judged for leading their personal life as per their wishes and are treated with dignity and honor. The tribes of *Bastar* region in Chhattisgarh also follow a tradition known as *Pethu* which is a form of live-in relationship.[25] The *Baiga* tribe of Balaghat district in Madhya Pradesh follows the practice of live-in relationship as they cannot afford the expenses which have to be incurred for a traditional marriage.[26] The institution of marriage prevails in these tribal communities as well, but due to different circumstances and customs governing these tribes, people started practicing live-in relationship in recent times.

Some of these tribes, for their liberal approach towards accepting live-in relationships, may be considered as an ideal example for the contemporary Indian society. However, the reasons and the factors governing relationships of these tribal people are different based on circumstances and their own tribal practices. In most of the tribes, the reason for not marrying and having a live-in relationship is due to the financial condition of those tribal members.[27] The tribes follow certain customs and traditions which may not be applicable to the other communities, but the best practices need to be adopted for the developed of civilised society.

Role of Consent *vis-à-vis* Individual Choice in Live-in Relationship in India

In Indian society, marriage is largely based on an arranged set up, in which the parents choose the life partner for their children.[28] An arranged marriage is an institution in which, generally, bride and groom do not choose each other for marriage, but are determined by their parents, family member and relatives.[29] The marriages in the contemporary India can be characterised as 'Cooperative Traditional Pattern'[30] as opposed to the traditional pattern. In a Cooperative Traditional Pattern of marriage, the individuals with the consent of their parents

22 *Ibid*.

23 Article 16 of the Universal Declaration of Human Rights 1948.

24 Swati Parashar, "*Development's New Ally in Tribal India: Sabka Vikas, Sabka Vivaah*", THE INDIAN EXPRESS, https://indianexpress.com/article/opinion/developments-new-ally-in-tribal-india-sabka-vikaas-sabka-vivaah-5082682/, (visited on March 20, 2019).

25 *Ibid*.

26 *Ibid*.

27 Rabindra Nath Choudhury, "*Poverty Makes Tribal People to Opt for Live-In Relationship*", THE ASIAN AGE, https://www.asianage.com/world/asia/140817/pti-copter-set-to-drop-pamphlets.html, (visited on March 22, 2019).

28 Terree McGovern, "*Modern Matrimonial Matters in India*", WOMEN LAW JOURNAL, Vol. 70, 1984, p. 20.

29 Cuo-Mi Ciren et al., "From *Arrange Marriage to Autonomous Marriage: Marriage Liberalization in India, Ancient Rome, United Kingdom and China*", INTERNATIONAL JOURNAL OF HUMANITIES AND SOCIAL SCIENCE, Vol.6, No. 1, 2016, p. 114.

30 Aisha K. Gill and Sundari Anitha (eds.), FORCED MARRIAGE: INTRODUCING A SOCIAL JUSTICE AND HUMAN RIGHTS PERSPECTIVE, 1st ed. 2012, pp. 1-10.

and families are allowed to meet few times before their marriage. But, they are not given sufficient time to know their partner, and hence, are pressurised to marry soon.

In most of the cases, the institution of an arranged marriage does not provide enough time to the individuals to test the compatibility of their partners before marriage. On the other hand, live-in relationship provides the opportunity to the partners to test the level of intimacy, love, compatibility, companionship, and understanding with each other. It is not necessary that the partners living in such relationships will marry in every case. They may avoid marrying at all and may remain in such relationships without following the traditional notions involved in a marital set up.

The Hindu Marriage Act 1955 prescribes that the consent of girl and boy is one of the main factors for a marriage.[31] It deals with the concept wherein consent needs to be understood in a broader sense in the light of a marital relationship and the role of the adults in it. It is imperative to understand the significance of consent of two individuals for an arrange marriage. Consent of an individual is fundamental criteria to start a new relationship with another person. Thus, mere cohabitating may not be an expressed consent but, there is an implied consent. Section 5 of the said Act deals with the soundness of mind of an individual to give a valid consent for a marriage. However, in most of the cases, when the parents choose life partners for their children, the legal provision seems to be diluted. Further, Section 5 (iii) of the said Act does not lay down consent as a necessary condition for a marriage. It only talks about the age of a bridegroom and the bride to be twenty-one (21) years and eighteen (18) years respectively. Therefore, there is a narrow interpretation of the afore-mentioned legal provision, as it only uses the terms 'incapable', 'unsoundness of mind' and 'mental disorder'. It also categorises and classifies groups, based on the same footing of the 'persons intending to get married'. In *X v. Union of India,*[32] it was held that, such classification is violative of Article 21 of the Constitution of India and restricts the ambit of a valid consent under the Hindu Marriage Act 1955. Consent, in a marriage, is thus considered as deemed consent wherein it assumes the willingness of individuals to marry without giving them a reasonable opportunity and choice. The consent in a marriage should be an integral part and thus seizure of this right leads to a forced marriage.[33] The Supreme Court in *Shakti Vahini v. Union of India*[34] held that, "*choice of an individual is inextricable part of dignity, for dignity cannot be thought of where there is erosion of choice*".[35]

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31 Section 5(ii)(a) of the Hindu Marriage Act 1955.

32 Writ Petition (Civil) No. 327/2018, https://www.sci.gov.in/supremecourt/2018/13701/13701_2018_Order_07-May-2018.pdf, (visited on April 20, 2019).

33 Serena Nanda, "*Arranging a Marriage in India*", Philip R. DeVita (ed.), DISTANT MIRRORS: AMERICA AS A FOREIN CULTURE, 4th ed. 2015, pp. 125-128.

34 AIR 2018 SC 1601.

35 AIR 2018 SC 1601, p. 1602.

The reason behind the forced marriages in India is that the parents have autonomy over the relationships of their children. The right to choose a partner to marry rests with the parents in a majority of cases.[36] The parental autonomy believes in the notion that they have a right over their children in respect of every crucial decision of their life.[37] The right to marry, therefore, falls within the purview of the parental autonomy, giving no realistic opportunity to the child to choose a life partner for marriage. Hence, this gives rise to forced marriages in India, making the role of consent in a marriage trivial in an individual's life. On the other hand, in a live-in relationship, parents do not get a right to choose the partner for their child, which disturbs and distresses the parental autonomy and therefore, such relationship encounters defiance from the family and the society as well.

Marriage requires validation of the parents, family members, relatives and the society which highlights the fact that even in the contemporary India, we have failed to respect the individual's right to choice. The non-acceptability of live-in relationship by the society, is primarily, due to the perception of the society that, choosing a partner brings dishonor to the family.[38] The rigid social structure possesses a threat to the individual autonomy by making them devoid of their fundamental choices in life. The importance of individual autonomy and the respect for private spheres of an individual was reflected in the landmark judgment of the Supreme Court in *Joseph Shine v. Union of India*.[39] The consent and individual privacy to determine a partner for any relationship should completely rest with an individual. The decision to spend a life with a person must be a choice of an individual without any pressure from the family or society. The consent of individual has to be respected without restricting them to the recognised practices. Hence, contrary to the established formation of a family through marriage, the contours of live-in relationship are challenging the present practice of marriage.

Judicial Response Towards Live-in Relationship in India

The judiciary has been a torch bearer for the issues and challenges concerning live-in relationship in India. However, the approach of the courts in dealing with the practice of live-in relationship is a matter of debate. The court applies same rights and obligations to any relationship resembling the institution of marriage as presumption of marriage. But, it eventually may create a negative impact on live-in partners, as in most circumstances, relationship in the nature of marriage are not based on the consensual rights of the partners. There are several other factors stated by the court to be kept in mind while dealing with

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36 Joan. L. Erdman, "Marriage *in India: Law and Custom*", LAW AND THE FAMILY, Vol. 5, 1981, p. 50, https://heinonline.org/HOL/Page?collection=journals&handle=hein.journals/ulred5&id=93&men_tab=srchresults, (visited on April 19, 2019).

37 Marjorie Uzquiano, "*Parental Autonomy and the Role of The state: Arranged Marriages in India*", INTERCULTURAL HUMAN RIGHTS LAW REVIEW, Vol. 6, 2011, pp. 427-431.

38 Pratiksha Baxi, "*Habeas Corpus in the Realm of Love: Litigating Marriages of Choice in India*", THE AUSTRALIAN FEMINIST LAW JOURNAL, Vol. 25, 2006, pp. 59-62.

39 AIR 2018 SC 4898: (2019) 3 SCC 183.

the cases related to live-in relationship. In *A. Dinohamy v. W.L. Blahamy*[40] the Privy Council held that if the couple was living together for a long period of time, the presumption would be that they were legally married unless proved otherwise. One of the very first cases, which recognised live-in relationship was *Badri Prasad v. Dy. Director of Consolidation*[41] in which the Supreme Court held that a presumption of marriage will arise if the partners were living together for 50 years. Further, the court gave legal validity to that live-in relationship by observing that "*law leans in favor of legitimacy and frowns upon bastardy*".[42] The Supreme Court in *D. Velusamy v. D. Patchaimmal*[43] has laid down certain essentials which constitute a live-in relationship or a relationship in the nature of marriage. One of the most important essential laid down was that, society should consider the partners to be married. This case highlighted the importance of the society in accepting and recognising live-in relationship.

In *Indra Sarma v. K.V. Sarma*[44] the court gave importance to the societal perception and its outlook for live-in relationship. The court held that, "*being in a relationship is a personal choice of an individual and should not be looked down by the society*".[45] Live-in relationship consists of all the elements similar to marriage such as love, companionship, financial liabilities of the partners, children, affection and care, etc. which are required for partners to protect their interests. However, the difference arises, only when there is no acceptance by the society in case of live-in relationship while marriage has a social foundation backed by the legal protection to the spouse.

In *Shampa Singha v. State of West Bengal*[46] the Calcutta High Court held that the cohabitation which is consensual between two adults is not a crime and is guaranteed under Article 21 of the Constitution of India which protects the right of self-determination. In another landmark judgment of the Supreme Court of Inida,[47] it was observed that, "*the couple can live together even outside the wedlock if they have consent for that relationship. The* '*right to choice*' *should be of paramount importance in a person's life and it cannot be curtailed by anyone*".[48]

In India, the 'domestic relationship' has been defined as any relationship where two people have lived under same roof and hence, their relationship will be considered as a relationship in the nature of marriage.[49] The courts have interpreted the Protection of Women from Domestic Violence Act 2005 and other personal laws to mean that the relationship, which is in the nature of marriage, will be a live-in relationship. Thus, the Protection of Women from Domestic Violence Act 2005 was an attempt of the law-makers to include even

40 AIR 1927 PC 185.
41 AIR 1978 SC 1557: (1978) 3 SCC 527.
42 *Ibid.*
43 AIR 2011 SC 479: (2010) 10 SCC 469.
44 AIR 2014 SC 309: (2013) 15 SCC 755.
45 *Ibid.*
46 2019 SCC OnLine Cal 153.
47 *Nandakumar v. State of Kerala* AIR 2018 SC 2254: (2018) 16 SCC 602.
48 *Ibid.*
49 Section 2(f) of the Protection of Women from Domestic Violence Act 2005.

those relationships in which the persons are not married and living under circumstances where the society considers them married. Thus, this was a worthy endeavor to solve the issues to some extent of cases involving live-in relationship. However, the said Act is not comprehensive to deal with all the issues involved in a live-in relationship.

The courts have clearly given recognition to live-in relationship which was in existence for a long period of time. The concern remains in circumstances, where the period of cohabitation cannot be decided and the society does not accept these partners as married. It has to be kept in mind that, whatever may not be morally correct for the society at present may be moral in the future. If an institution is not moral in view of the society, it does not necessarily mean that it's illegal in its nature. Therefore, the courts in such cases have to apply the modern outlook with respect to these informal unions, because applying the traditional and old doctrines of marriage and family laws will not serve the purpose in the present scenario. The partners in live-in relationship fall prey to the mindset of the society. It can be said that, law and society can never run in abeyance of each other and hence, needs to be complementary and supplementary to each other. Thus, laws require to meet the advances in the social behavior keeping pace and the balance between tradition and the modernity.

Conclusion

The author in this research has highlighted the importance and role of the society in the private sphere of an individual's life. The societal perception is indispensable and needs to be taken into consideration when the laws are framed. The society has over the ages been a dominant force in determining the norms for the sexual behavior in a relationship. The deviation from these recognised norms by adopting the practice of live-in relationship is creating a conflict between the traditional values and the modern values of the society. Live-in relationship in the Indian context, is becoming a common practice which was earlier an exception in the society. Live-in relationship provides freedom and prior informed consent to the partners about the kind of relationship in which they want to live. It needs to be understood by the society, that the individual choices and consent are the backbone of a relationship between two individuals. The mode of attainment of a partner in life may be through a marriage or live-in relationship. But, the individual's requirement for love and companionship in their life cannot live in isolation. But, in case of a live-in relationship, the adults who desire to get into these relationships with their consent and choice are not respected by the society.

The concept of arranged marriages in many instances of marriage takes away the fundamental right of a person to choose a life partner making the marriages forced in their nature. The consent of the individuals in a marriage is not considered to be of prime value in our society. Hence, the society considers live-in relationship as a challenge to the foundation of traditional principles of marriage. There is an urgent need for the law-makers, experts in family law and the academicians to take into account the importance of the valid consent and to

broaden its horizons and interpretation under the personal laws. The deemed consent for marriage by the individuals under the parental pressure is a violation of the choice of an individual. Whereas a live-in relationship respects the choice and consent of the adults who want to live together.

Live-in relationship lacks commitment in many instances and are viewed as the breakdown of family. However, the law cannot turn a blind eye towards this issue as there are growing instances of live-in relationships in today's era. The laws which are monochromatic in vision and inspired from a limited panorama will not have longevity. Thus, the laws should be robust keeping in mind the balance between social and legal factors as per the needs of the contemporary India. The fundamental issue which is analysed in the research paper is that the laws should follow the principles of modern personal laws which are largely individualistic in nature. It will be a fallacy to not give status and rights to live-in partners by the law-makers. Therefore, it becomes crucial to contemplate a comprehensive legislation which will ensure that the rights of them are protected under the umbrella of personal laws in India. Hence, the laws should be amended keeping in view the changing dynamics and personal choices of individuals in modern personal life. The inclusion of live-in relationship under the scope of personal laws will be a pragmatic approach for solving the complexities revolving around these relationships.

The author has clearly advocated and reflected that the practice of live-in relationship and the partners involved in these relationships have been granted legitimacy by the judiciary and it has been a constant guiding light in terms of bringing a coherence and clarity relating to the practice of live-in relationship in India. However, the morality attached with the institution of marriages in India is still unopposed by any other form of relationship. The belief that, giving equal rights to partners in live-in relationship similar to a marriage would disgrace the institution of marriage, has to be critically evaluated. But, times are changing and thus, the society also has to change for its betterment. The society needs to become individualistic instead of following the age old practices which have created a blockage in the minds of people. Hence, if live-in relationship is accepted by the society, a day might come when the lawmakers will define these relationships and the rights attached thereto.

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ASSAM FRONTIER (ADMINISTRATION OF JUSTICE) REGULATION, 1945 OF ARUNACHAL PRADESH-ASSESSING ITS LACUNAE AND IMPORTANCE

Topi Basar♣

Abstract

Arunachal Pradesh formerly NEFA is a multi- tribal State having 25 major tribes and about 100 sub-tribes. For long it was under the administrative rule and control of Governor of Assam. New system of governance and administration was introduced only in 1987 when Statehood was conferred on Arunachal Pradesh. Traditional village council to adjudicate upon disputes of the local tribe is a valued age-old system amongst all the tribes. The introduction of formal laws and procedures have affected the traditional society including the functioning of original village authority. The coming of Panchayat system brought politics in the village diluting its free and democratic fabric. The customary laws and its continuance depend on strong and vibrant village authority with adequate power and jurisdiction recognized by the law of the land. There is an urgent need to amend the existing AFR 1945 in order to suit the needs of the present times and to rectify the legal anomaly created in the AFR due to commencement of separation of Judicial and Executive power without eroding the power and authority of the traditional tribal council.

Keywords: Assam Frontier Regulation, North East Frontier Agency, Traditional Tribal Councils, Customary Laws.

Introduction

Prof. N.R. Madhava Menon, the architect of free legal aid and services had opined:

> *The Constitution promises to all its citizens equality of status and opportunity, as well as equal protection of the law. Finding that large sections of the poor are unable to fulfil their basic needs even after decades of democratic governance, the Supreme Court sought to interpret socio-economic rights (Directive Principles) as civil and political rights (Fundamental Rights), compelling the state to come forward with laws empowering the poor with rights enforceable under the law. The National Rural Employment Guarantee Act 2005, the Right to Education Act 2009 and the National Food Security Act 2013 were promising initiatives in this direction. However, the poor continue to be at the receiving end of an indifferent administration because of the difficulties in*

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> *accessing justice through conventional legal aid. Therefore, we need an alternative delivery system with a different model of legal service providers in rural and tribal areas.*

The proposition of alternative delivery system in rural and tribal areas as propounded by Prof. Menon makes it imperative to understand the customary practices and local laws for a clear legal and judicial perception of the customary laws as this form of justice delivery mechanism is still prevalent in tribal areas.

Referring to the classical Greek Poet Pindar's Maxim, *Custom is the King of all*[1] makes us wonder at the cultural and legal basis and relevance of custom in the present day context. Custom is a long-held practice, usage or belief which is immemorial and passed down the generation (inter-generational nature); it is mostly oral in form and it originates within a community. Custom is integral to cultural identity and ethnicity of a given community.[2] Custom governs the social life of a community in varied ways. Consequently, customary laws develop which is a set of rules considered binding by the members of the society. Characterised by acceptance and obedience by the members of a community due to fear of punishment or social condemnation wherein acceptance is a norm and disobedience a rarity. Hence, content of customary law is derived from a particular practice or belief. Since customary laws originate within a given society, its legal validity is conferred by the society generally.

The objective of this paper is to highlight the operation of customary laws and practices in Arunachal Pradesh with special reference to the provision under the Assam Frontier (Administration of Justice) Regulation 1945 (herein after referred 'AFR') in the present context and the way forward to carry on the good practices of local laws and procedures. Further, considering the present status of judiciary being separated from executive in the State of Arunachal Pradesh (herein after referred 'AP') there is a need to streamline the judicial functions of *Gao Buras* (hereinafter referred GB) so as to suit the present context with a view to maintain the balance between their role as *Gao Buras* appointed under the provision of AFR and also at the same time to keep in mind, the modern general laws while dealing with the justice delivery system.

Sources of Law in India

Constitution, Legislation and Judiciary recognised the Customary laws. Even the custom is a recognised source of law in International law. According to H.L.A. Hart "*Customary Law is what the people say it is.*" Often, the Courts recognise particular custom as valid by taking cognizance of the internal viewpoint of the given community where it has the force of law. Hence, the ultimate test to determine whether a custom has the force of customary laws or not lies with the community where it has originated and where the norms get created. All customs and practices to be recognised as customary laws must

1 David J. Bederman, CUSTOM AS A SOURCE OF LAW, 1st ed. 2010, pp. 8-9.

2 Walter Fernandes et al., TRIBAL CUSTOMARY LAWS IN NORTHEAST INDIA: GENDER AND CLASS IMPLICATIONS, 1st ed. 2008, pp. 10-12.

have two essential elements (general acceptance and obedience) the reason being conflict in customs and practices will not give rise to identifiable or clear customary laws as it will lack the force of law.

Nature of Customary Laws

It is diverse in context of Arunachal Pradesh for e.g. as many customary laws as the number of tribes. It is inherently dynamic for it evolves with time. Loose and undefined (due to uncodified nature as not compiled or written down). Flexible and not static, no fixed principles. Decision is based on reasonableness, past and present customs, clan and kinship, mutual understanding and settlement. The Courts of India have recognised custom as law only if the custom is- 'ancient or immemorial' in origin, 'reasonable in nature and continuous in use', and 'certain'. The Courts have interpreted 'ancient or immemorial' to mean that for a custom to be binding it 'must derive its force from the fact that by long usage it has obtained the force of law'. A custom also 'derives its validity from being reasonable at inception and present exercise'. Lastly, a 'certain' custom is one that is 'certain in its extent and mode of operation' and invariable.[3]

Constitutional Perspectives and Political History

Article 13(3)(a) of the Constitution of India defines 'law' includes any custom or usage having in the territory of India the force of law. Custom is recognised as a major source of law under the Indian legal system. Article 13(1) of India's Constitution provides that when the Constitution entered into force, all previous laws that were inconsistent with the Constitution were considered void. India's Constitution also provides protection of tribal indigenous communities and their customs through Articles 244, 244-A, 371-A, and the Fifth and Sixth Schedules. The Fifth and Sixth Schedules provide for a system of 'Scheduled Areas' or tribal regions, which are designed to protect the interests of listed indigenous communities or 'Scheduled Tribes'. [4]

The British had enacted separate Laws like the Government of India Act 1870, the Bengal Eastern Frontier Regulation 1873, the Scheduled District Act 1874, the Assam Frontier Tract Regulation 1880, the Assam Forest Regulation 1891, the Chin Hills Regulations 1896, and the Assam Frontier (Administration of Justice) Regulation 1945.These laws do not allow permanent settlement of any non-native in the State of Arunachal Pradesh and also cannot acquire property rights. These pre-existing Constitutional laws are still in place due to cultural, ethnic and strategic considerations. When the Constitution came in to force on January 26, 1950, this area, which was till then known as 'excluded area' came to be known as 'tribal area' under para 20 of the Sixth Schedule. The territory comprising the tribal area like Mizoram and Arunachal Pradesh acquired the status of Union Territory in 1972 by the provisions of North-Eastern Re-Organization Act 1971. Arunachal Pradesh acquired Statehood in 1987. Interestingly, through fifty-fifth Constitutional Amendment Act 1986

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3 T. Neishoning Koireng, UNWRITTEN CUSTOMARY LAW OF NORTH EAST INDIA, 1st ed. 2011, pp.15-17.

4 M.P. Jain, INDIAN CONSTITUTIONAL LAW, 8th ed. 2018, pp. 205-206.

w.e.f 20-2-1987, Arunachal Pradesh hitherto NEFA was taken out from the Sixth Schedule and placed in Part XXI under Art.371 H, vesting special responsibility upon the Governor in maintaining law and order in the State and comprising a Legislative Assembly at the same time. As a result, the State of Arunachal Pradesh enjoys no special status unlike Nagaland which enjoys special protection of its customary laws nevertheless the British enacted laws like the Assam Frontier (Administration of Justice) Regulation 1945 (hereafter AFR) which is still in force.

Pre-AFR Customary Laws for Adjudication by Traditional Village Councils

In Arunachal Pradesh traditional village councils of all the tribes comprising of 25 major tribes in terms of its population and more than a hundred sub-tribes were in existence since time immemorial. In the absence of express written records and historical accounts it is not possible to specify its exact date of origin. Generally, it can be said that when the concept of settled village and agriculture developed, the indigenous village councils took birth naturally. The wise and able elder of the village naturally commanded respect and became an authoritative figure of the village due to his wisdom, justness and undisputed power he wielded. The society mainly practiced oral dispensation of justice with strong leaning on supernatural and tribal ethos of natural justice and application of recognised customs and practices within the community. It was not uniform across all the tribes. Besides some common practices, diverse tribal village councils are highly pluralistic in nature. These unique traditional village councils like *Buliang* (*Apatani*) have managed to hold its sway at the village even during the post independent era because its continuance is eminent for the existence and welfare of these people.[5]

Evolution of AFR

The territory, which forms the present Arunachal Pradesh was not under any formal system of governance till a notification was issued in 1914 by the Government of India, Foreign and Political Department. It stipulated that the Assam Frontier Tracts Regulation of 1880 would extend to the hills inhabited or frequented by the frontier tribes. With the extension of the Regulation, the hill areas were separated from the then Darrang and Lakhimpur District of Assam, and as a result the North East Frontier Tracts were created. These Tracts, which evolved to become the North East Frontier Agency (NEFA) in 1954.The British India administration did not intend to disturb the customary laws, traditions, customs, usages, conventions and social practices of the people of these Tracts. This was probably a reason that the existing traditional forms of village administration, which were carried through Village Councils, were allowed to function without much interference. By consolidating and combining the earlier two set of Rules and Regulations (Administration of Justice) issued in 1914 (under the Scheduled Districts Act 1874) and 1937 (under the Government of

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5 Hina Nabam Nakha, CUSTOMARY LAWS OF THE NYISHIS INSTITUTIONS PROCESSES CHANGE AND CONTUINITY, https://shodhganga.inflibnet.ac.in/handle/10603/205574, (visited on May 18, 2019).

India Act 1935) into one, namely, the Assam Frontier (Administration of Justice) Regulation 1945. These set of three Rules and Regulations issued in 1914, 1937, and 1945 by the British India Government furnished the constitutional basis for administration of justice in the territories, now included in Arunachal Pradesh.

Significance of AFR

Originally the AFR was enacted for the smooth administration of justice in the frontier tracts of Assam comprising of Balipara, Lakhimpur, Sadiya and Tirap Frontier Tracts. The AFR was introduced to ensure that a vast majority of disputes and cases, both civil and criminal were adjudicated in accordance with the prevailing codes of the tribal communities. The British knew well that total imposition of formal laws directly on tribal society having its own traditional customary legal institutions would be detrimental but the need for legally strengthening this system and to give a formal shape to it was necessary. Whether the AFR has strengthened the age old traditional village councils or eroded this institution is a question of great importance. The implementation of AFR has had large implication on the erstwhile traditional village councils of the tribes in various ways. The main significance of AFR lies in the fact that it recognises the customary laws and practices of the tribes and through this age old customary laws and practices are being enforced even at the time when the general laws are applicable in all other fields. As an only legal instrument to give legal validity to customary laws and practices, AFR holds an important position amongst all the other legislations.

Basic Features of AFR

Under the AFR [6], the Deputy Commissioner is empowered to appoint such persons as he deems fit to be the members of a village authority. However, no qualification and any other condition is mentioned therein. The key features of AFR are:

(a) Functions of Village Authority (Gao Buras/Buris)

(i) To perform the Police function *i.e.* the ordinary duties of police in respect of crime shall be discharged by the village authorities like maintenance of peace and order;

(ii) To watch and report on any bad or suspicious character and apprehend them;

(iii) The inhabitants of the Village shall apprehend any offender of heinous offence and inform the Village authority about the commission of any heinous offence;

(iv) To report to the DC or AC as soon as possible about all crimes, deaths and serious accidents occurring within or beyond their jurisdiction which are likely to affect the public peace and to arrest and deliver up offenders to the court having jurisdiction to try them;

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6 The Assam Frontier (Administration of Justice) Regulation 1945 (Regulation 1 of 1945).

(v) A village authority may pursue beyond their jurisdiction any offender or bad or suspicious character whom they consider it necessary to apprehend;

(vi) When a village authority is unable to arrest an offender, they may apply to the DC or an AC or any officer empowered to make arrests;

(vii) All inhabitants of the tracts are bound to aid the village authority in apprehending offenders and in maintenance of order and are liable to fine for failing to give such assistance. (not exceeding Rs.500/-); and[7]

(viii) For any misconduct in the exercise of function of village authority, be punishable with fine which may extend to Rs.1000/- or an imprisonment up to six months on conviction by the DC or an AC. However, misconduct is not defined.

(b) Criminal Jurisdiction Vested with the DC, AC and the Village Authorities

(i) *Jurisdiction of Village Authority:* The village authority may try any case involving any of the under mentioned offences in which the person or persons accused is or are resident within their jurisdiction like theft including theft in a building, mischief not being mischief by fire or any explosive substance, simple hurt, criminal trespass or house trespass, assault or using criminal force.[8]

(ii) *Powers of Village Authorities :* A village authority may impose a fine not exceeding Rs.3000/- for any offence which they are competent to try, and may also award payment in restitution or compensation to the extent of the injury suffered; such fines and payments may be enforced by seizure of the property of the offender.[9]

(iii) *Disposal of Cases by Village Authorities and Powers to Compel Attendance:* The village authorities shall decide all cases in open durbar in the presence of at least three independent witnesses from the side of the complainant and the accused. They are empowered to order the attendance of all the foregoing and of the witnesses to be examined in the case, and to impose a fine not exceeding Rs.200/- on any person failing to attend when so ordered.[10]

(iv) *Appeals from Village Authorities:* Any party aggrieved by a decision of a village authority may appeal within thirty days to the Assistant Commissioner who on receipt of such appeal, shall try the case de novo.[11]

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7 Section 12(2) of the Assam Frontier (Administration of Justice) Regulation 1945.
8 Section 19 of the Assam Frontier (Administration of Justice) Regulation 1945.
9 Section 20 of the Assam Frontier (Administration of Justice) Regulation 1945.
10 Section 22 of the Assam Frontier (Administration of Justice) Regulation 1945.
11 Section 24 of the Assam Frontier (Administration of Justice) Regulation 1945.

(v) *Appeals from Assistant Commissioner:* An appeal shall lie from an original decision of an Assistant Commissioner to the Deputy Commissioner.[12]

(vi) *Appeal to the High Court:* An appeal shall lie to the High Court against sentences of three years' imprisonment and upward and sentences of death or transportation. In other cases there shall be no right of appeal, but the High Court may entertain an appeal [by special leave].[13]

(vii) *Power of Revision:* The High Court or Deputy Commissioner may call for the proceedings of any officer subordinate to it and reduce, enhance or cancel any sentence passed or remand the case for retrial but no offence shall be punished by a sentence exceeding that warranted by law.[14]

(viii) *Recording and Reporting of Proceedings by Village Authorities:* The proceedings of the village authorities need not be recorded in writing, nor shall it be necessary that examinations before the Deputy Commissioner, Assistant Commissioner be signed by the parties examined but the Deputy Commissioner, Assistant Commissioner may require the village authority to report their proceedings in any way which appears suitable. There shall be no preliminary enquiries by regular or village police unless the Deputy Commissioner or Assistant Commissioner sees fit to direct one.[15]

(ix) *Suspension and Remission:* The President may commute any sentence of death and the Administrator may commute any one of the following sentences for any other mentioned after it: death (imprisonment for life), confiscation of property, rigorous imprisonment, whipping, simple imprisonment, fine.[16]

(c) Civil proceedings

The AFR vests civil justice powers upon the DC, the AC and the Village authorities. The DC may try suits of any value. The AC may try suits not exceeding Rs.5000/- in value.

(i) The DC and AC shall in every case in which both parties indigenous to AP endeavor them to submit to arbitration by a panchayat (it should be village authorities).[17]

(ii) In cases in which neither or only one of the parties is Indigenous to the Union Territory of Arunachal Pradesh, the Deputy Commissioner or Assistant Commissioner may with the consent of both parties order that the case be referred to arbitration by a panchayat.[18]

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12 Section 25 of the Assam Frontier (Administration of Justice) Regulation 1945.

13 Section 26 of the Assam Frontier (Administration of Justice) Regulation 1945.

14 Section 28 of the Assam Frontier (Administration of Justice) Regulation 1945.

15 Section 32(b) and (c) of the Assam Frontier (Administration of Justice) Regulation 1945.

16 Section 35 of the Assam Frontier (Administration of Justice) Regulation 1945.

17 Section 38(1) of the Assam Frontier (Administration of Justice) Regulation 1945.

18 Section 39 of the Assam Frontier (Administration of Justice) Regulation 1945.

(iii) The village authorities shall try all suits without limit of value in which both the parties are indigenous to the State and live within their jurisdiction and which are not submitted to arbitration.[19]

(iv) The village authorities shall have power to order the attendance of the parties and of witnesses and to fine up to a limit of Rs.500/- against persons failing to attend when ordered to do. Including, Power to award costs and compensation up to Rs.5000/- for unfounded or vexatious suits.[20]

(v) To appoint one or more assessors to assist them.

(vi) All suits tried by the village authorities shall be decided in open durbar in the presence of the parties and at least three independent witnesses.

(vii) The village authority shall carry out the decision forthwith after it is pronounced unless party intends to appeal against it.

(viii) Any person aggrieved by a decision of a village authority may appeal to the AC in suits not exceeding Rs.500/- in value and to the DC in suits exceeding that value. If such an appeal is filed, a record shall be made of the matter in dispute and of the decision of the village authority. The appellate court shall, if necessary, examine the parties, and, if the decision appears to be just, shall affirm and enforce the decision as its own. If the appellate court sees grounds to doubt the justice of the decision, it shall try the case *de novo* or refer to a panchayat; in any case so referred, the provisions of Section 38 shall apply as if the parties had agreed to submit to arbitration.[21]

(ix) An appeal shall lie to the High Court from an original decision of the DC if the value of the suit is not less than Rs.500/- or if the suit involves a question of trial of rights or custom or of the right to or possession of immovable property.[22]

(x) High Courts Powers of Revision- The High Court may on application or otherwise call for the proceedings of any original case or appeal decided by the DC and not appealable under this Regulation and may pass such orders as it may deem fit.

(xi) No pleader shall be allowed to appear in any case before the village authorities.

(xii) No pleader shall be allowed to appear in the court of the Deputy Commissioner or AC except with the DC's permission.

(xiii) The High Court may by special leave permit any pleader to appear in any case before it.

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19 Section 40 of the Assam Frontier (Administration of Justice) Regulation 1945.
20 Section 41 of the Assam Frontier (Administration of Justice) Regulation 1945.
21 Section 46 of the Assam Frontier (Administration of Justice) Regulation 1945.
22 Section 48 of the Assam Frontier (Administration of Justice) Regulation 1945.

Separation of Judiciary from Executive

Article 50 of the Constitution of India is a Directive Principle of State Policy. It gives a direction to the State to keep Judiciary independent of the Executive, particularly in judicial appointments. It reads, "*the State shall take steps to separate the judiciary from the executive in the public services of the State*". The process of separation of judiciary from executive has been a slow one in case of Arunachal Pradesh. It began in a piecemeal manner in the year 2006 with Notification No. Jud-44/2004 dated March 16, 2006 issued by Government of Arunachal Pradesh, Department of Law, Justice and Legislative Department consequent upon the decision taken by the Council of Ministers in its meeting held on May 11, 2005, to separate the Judiciary from the Executive initially at level of Districts and Sessions Courts. However, the appointment of judicial officers happened much later. The complete separation of judicial power from executive is not yet achieved in the State.

In *Nabum Nikum* case,[23] the Gauhati High Court had to determine whether by the impugned Notification dated 8.6.2010 of the Government of Arunachal Pradesh, all the Deputy Commissioners/Additional Commissioners could have been divested of their powers and jurisdiction to take up the trial of the cases, both civil and criminal including institution, till the Assam Frontier (Administration of Justice) Regulation 1945 is suitably amended. Admittedly under the provisions of the said Regulation and depending upon the pecuniary jurisdiction, appeal lies to Deputy Commissioners/Additional Deputy Commissioners against the decision of the Village Authorities. An embargo had been created with the issuance of the impugned Notification dated 8.6.2010 in terms of which the aggrieved party aggrieved by the decisions of the Village Authority had been rendered remedy less. Prior to issuance of the said notification, aggrieved party was entitled to prefer appeal either to the Deputy Commissioner or to the Assistant Commissioner depending upon the pecuniary jurisdiction. The Court held that as an interregnum the appellate jurisdiction of DC/ADC over the decision of village authorities to be continued as per the provision of the AFR 1945 until the Regulation is suitably amended in the light of draft Civil Code Act for Arunachal Pradesh prepared by the High Court. This case is important for the key issues like separation of power between executive and judiciary as mandated under Article 50 of the Constitution. Secondly, the appellate forum above the village authority constituted under the AFR Act 1945 which vested it on the DC/ADC within their jurisdiction. The impugned Notification dated 8.6.2010 (later modified by Notification dated 3-10- 2015) of the Government of Arunachal Pradesh had in fact repealed Section 46 of AFR in effect without amending the AFR 1945 as such. This created confusion and ambiguity with respect to the question of appellate jurisdiction pertaining to the Executive magistrates and the judicial courts newly created. The said notification is undoubtedly a good step towards separation of executive and judicial power begun in 2006. However, in many places Executive magistrates

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23 *Nabum Nikum v. State of Arunachal Pradesh* 2015 SCC OnLine Gau 596: (2015) 5 Gau LR 212 (Gau).

continued with appellate power under Section 46 of the AFR out of ignorance of the 2010 notification or in order to maintain status quo under the AFR as people would normally bring the appeal before them from the decision of the village authority being an age old practice. This led to confusion as a result of which the writ petition was filed in *Nabum Nikum* case. Ideally had the AFR 1945 been suitably amended by the Government by divesting the appellate power of the DC/AC in any matter and vested it on the competent civil or criminal courts established such jurisdictional confusion could have been avoided.

Subsequently as per Notification No. Jud/Law-32/2011 dated 3-10-2015, all pending cases (both Civil and Criminal) with the Executive Officers shall be transferred to the nearest Courts having jurisdiction namely Courts of District and Sessions Judge/Additional District and Sessions Judge/Chief Judicial Magistrate-cum-Civil Judge (Sr. Div.)/Judicial Magistrate First Class-cum-Civil Judge (Jr. Div.) for trial and disposal except appeals from village authorities under Section 46 of AFR. It further notifies that all appeal cases in civil matters pending in the courts of the judicial officers shall be transferred to the DCs and ACs. It means that DCs and ACs appellate power over the decision of village authority in civil matters as provided under the AFR is not taken away by this notification although in other cases of criminal nature the power now vests with the competent courts as mentioned earlier. This notification continues as of today and the appellate power of DC/AC's court against the decision of village authority in civil cases remains but the much needed amendment in AFR Act has not been done.

In the case of *Registrar General, Gauhati High Court v. Union of India*[24], a Division Bench of this Court, *inter alia*, held that the North East Frontier(Administration of Justice) Regulation 1945, applicable in the State of Arunachal Pradesh, will give way to the applicability of the Code of Civil Procedure 1908, and Code of Criminal Procedure 1973, to the regularly constituted civil and criminal courts, without in any manner affecting the operation of Article 371-A of the Constitution or functioning of village customary or any other courts. The Government of Arunachal Pradesh effected separation of the judiciary from the executive vide Notification dated 16.3.2006, and therefore, the provisions of the Code of Criminal Procedure are applicable to the notified Districts mention therein, where separation of judiciary from the executive has been effected with the establishment of 5 (five) Courts session divisions.

Guidelines for Appointment, Powers and Functions of *Gaon Burahs* and Head *Gaon Burahs*, 2001 by Government of Arunachal Pradesh

These Guidelines are the only law made by the State Govt. post AFR 1945 to streamline the appointment, powers and functions of *Gaon Burahs* and head

24 2013 SCC OnLine Gau 558: (2014) 3 Gau LR 379 (Gau).

Gaon Burahs called 'village Authority' (hereafter H.G.Bs/GB) under the AFR.[25]

The objective is to bring transparency and effectiveness in the procedure and to strengthen the age old customary institution and preserve its democratic character in the interest of larger social and administrative benefit of the people. The Guidelines are meant to supplement the main provisions in AFR pertaining to the Village Authority.

The key features of the Guidelines are:

(i) The Deputy Commissioner may appoint such person or persons as he considers desirable to be the member/members of a village authority for such village as he may specify and he may modify or cancel any such order of appointment, and may dismiss any person so appointed.

(ii) Selection of H.G.Bs/GB will be by unanimous or majority opinion of the adult residents of the village (above 18 yrs.) at a full and open meeting to be conducted in the presence of the administrative officer of the area. The quorum for such a meeting will be one third of the total number of adult persons in the village.

(iii) The person to be selected as GB should be persons with influence and acceptability in the village and should possess knowledge on customary laws, he should have an interest in the development of the village.

(iv) The administrative officer shall maintain records of the proceedings of the meeting, record of all those present in the meeting, he will forward the name of the person selected as GB along with his bio-data, character and antecedent report, the proceedings of the meeting and his recommendation to the DC.

(v) The selection of the GB by the village endorsed by the majority is not binding on the DC. However, DC has to record his reason for rejection in writing and communicate to the concerned person. The DC can send back the recommendation to the village with a direction to conduct a fresh selection of GB but if the same name is recommended again by the village, DC can appoint any person of his choice as GB (refer para (d) of the Guideline)

(vi) The person whose selection has been rejected by the Deputy Commissioner, will have the right of appeal against such order before the concerned Divisional Commissioner.

Basic Qualifications for Appointment as H.G.B/ GBs

(i) He/she must be a native, residing in that village;

(ii) He/she should be well conversant with the customary laws and traditions;

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25 Chow L. Manpoong and Chow P. Mannow, HANDBOOK FOR GAON-BURAS & PANCHAYATI RAJ LEADERS, Government of Arunachal Pradesh, http://www.arunachalpwd.org/pdf/Hand%20Book%20for%20Gaon%20Burahs.pdf, (visited on May 24, 2019).

(iii) He/she should be literate to the extent that he should be able to read and write English/Hindi language; and

(iv) He/ she should not be less than 35 years and more than 60 years at the time of his/ her appointment.

It may be noted that all these conditions may be difficult to fulfil in all cases of appointment.

Disqualification of H.G.B/ GBs.

(i) Conviction of a criminal offence by a court of law/ village council (*Keba and Buliyang*)[26] etc. ;

(ii) Habitual offender;

(iii) Primary member of a political party; and

(iv) Moves out of village and lives in some other place.

Number of H.G.B/ GBs

(i) One G.B for a population of 100 or less in a village. If a village has more than 100 population then 1 GB per hundred up to a maximum of 10 G.Bs in a village and numbers above 50 will be rounded off to 100 for appointment of GB.

(ii) A village having 5 or more GBs will have one H.G.B to be appointed by the DC but a village will not have more than two H.G.Bs.

(iii) The surplus GB already appointed will be phased out gradually after death or retirement. (what is the tenure or age of retirement)

(iv) Only notified villages are entitled for appointment of H.G.B/GB.

Powers and Responsibilities of H.G.B's/ GB's

In terms of responsibilities of H.G.B's/ GB's the position is same as provided under the AFR except that:

(i) H.G.B's/ GB's is required to co-operate with the panchayat members in implementing various development programs in their respective jurisdiction;

(ii) To assist the government agencies in implementing any program and policies;

(iii) H.G.B's/ GB's shall not disobey the commands of the district authorities and shall not indulge in any unwanted activities in the village; and

(iv) No right to participate in any agitation program against government.

Powers in Criminal Matters

(i) H.G.B's/ GB's can try case involving theft, including theft in a building, mischief not being mischief by fire or any explosive substance, simple

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26 '*Keba'* is the traditional village council/authority of *Galo tribe* and *Buliyang* for the *Apatani tribe* of Arunachal Pradesh.

hurt, criminal trespass or house trespass, assault or using criminal force a kin to Section 19 of AFR as per customary laws.

(ii) The cases which could not be settled in the village level it may be referred to circle level/sub-division level and then to the District level.

(iii) H.G.B's/ GB's may impose a fine not exceeding Rs.50/- for any offence which they are competent to try (refer to para 6(b)(c) of the Guideline) the amount seem to be a mistyped as under the corresponding provision in Section 20 of AFR, a fine of maximum Rs.3000/- can be imposed by the H.G.B's/ GB's. Even in case of non- attendance of witness, fine not exceeding Rs.50/- can be imposed, however under Section 41 of AFR it is upto Rs.500/-.

(iv) Any party aggrieved by a decision of H.G.B's/ GB's may appeal within seven days to the DC/ADC, who on receipt of such appeal, shall try the case *de-novo*. (this provision is partially modified by Notification No. Jud/Law-32/2011 dated 3-10-2015 mentioned earlier).

Powers in Civil Matters

(i) H.G.B's/ GB's shall try all suits without limit of value, in which both the parties are indigenous to the State and live within the village.

(ii) Power to award costs and compensation up to Rs.50/- for unfounded or vexatious suits. {under the AFR it is upto Rs.5000/- perhaps it's a typing error in the Guideline, refer para (7)(b)}.

(iii) Para (7)(a) to (i) of the Guideline is substantially similar to provisions contained in Section 40 to 45 of AFR in relation to civil powers of the village authority except sub para (h).

(iv) Sub para (h) to para (7) provides that any person aggrieved by a decision of a H.G.B's/ GB's may appeal to the DC in suits not exceeding Rs.500/- in value, and to political officer in suits exceeding that value. Whereas, under AFR, any person aggrieved by a decision of a village authority may appeal to the AC in suits not exceeding Rs.500/- in value and to the DC in suits exceeding that value (refer Section 46).

It may be noted that the term 'political officer' is no longer used in the government administration.

Dismissal of H.G.B's/ G.B's

The appointing authority can dismiss any person appointed as H.G.B's/ GB's:

(i) If his/her performance is not satisfactory.

(ii) H.G.B's/ GB's will continue in service subject to the satisfaction of the DC.

(iii) The principles of natural justice will be followed in dismissal of H.G.B's/ GB's.

Punishment for Misconduct of H.G.B's/ GB's

Para (9) of the Guideline prescribes a fine up to Rs.500/- or imprisonment for a term which may extend to six months to be imposed by DC/ADC on H.G.B's/ GB's for any misconduct in exercise of his functions under the AFR. However, what amounts to misconduct has not been defined anywhere.

Analysis of AFR and its Guidelines

When we closely examine both the instruments in the context of village authority i.e. H.G.B's/ GB's institution there are critical concerns which are of crucial nature. The objective to protect the customary laws through the institution of H.G.B's/ GB's and to sustain the village democracy in existence prior to AFR is a laudable step. However, the traditional village councils of several tribes were far more democratic, powerful, effective in its powers and functions before the coming of AFR.

The AFR as well as the Guideline have curtailed the traditional powers and position hitherto enjoyed by the traditional village councils functioning in a free and democratic manner in a customary environment. Some of the drawbacks are:

(i) H.G.B's/GB's appointment are at the discretion of DC. DC can even overrule the majority decision of the village in the selection of a suitable GB's. In practice, local political representatives give recommendation which is arbitrary as political interference in the appointment of the H.G.B's/GB's affects the village democracy;

(ii) The decision of the H.G.B's/GB's is not final and binding as the aggrieved party can always appeal before the DC/AC;

(iii) The biggest lacunae being the Executives *i.e.* DC/AC still enjoys appellate jurisdiction in civil matters even after the separation of judiciary from executive;

(iv) After the separation of judicial function from executive in criminal matters through govt. notification, the AFR stands altered. However, a legislative measure is required as mere executive order is not adequate;

(v) There is no provision for women's reservation under the AFR, Guideline as well as the subsequent Govt. notification though some women have been appointed as GB in practice;

(vi) Tenure/ term for H.G.B's/GB's is not provided anywhere;

(vii) Many inconsistencies are apparent between the Guideline, notification and the AFR which creates ambiguity;

(viii) The H.G.B's/GB's are required to administer justice as per customary laws and the AFR prohibits appearance of pleaders but in reality lawyers are allowed to appear before the ADC/AC in a matter which has been decided as per customary laws. This nullifies the whole purpose of giving power to the H.G.B's/GB's and undermines this institution;

(ix) In family/domestic cases coming before the H.G.B's/GB's usually women's rights *vis-à-vis* the man tilts in favor of the later and it largely depends on power and degree of influence one party has over the other. Non-awareness of women's Constitutional rights by the village authority leads to denial of justice in many case;

(x) The appeals lying before the DC/AC suffer from unreasonable delay as a result justice is denied;

(xi) Lack of adequate financial, logistical and infrastructural support to H.G.B's/ GB's is the main reason why this institution is not able to evolve itself in the 21st century;

(xii) General lack of awareness of their real powers and functions, constitutional rights, gender equality and justice, human rights, need to adapt and interpret customary laws to make it gender equal and evolve with time;

(xiii) What is the benefit of continuing with executive dominance over the village authority in customary law adjudication? Is not this contributing to delay in justice as the matter can go up to the Courts in appeal?;

(xiv) The AFR 1945 has become obsolete in many areas after Arunachal Pradesh has attained full Statehood in 1987, for instance, the police functions of village authority specified under AFR is within the complete purview of police department in reality;

(xv) The provisions on fine, punishment, misconduct etc. needs modification and refinement;

(xvi) The Panchayat institution and H.G.B's/GB's have different legal powers and functions, however Sections 38 and 39 of AFR dilutes this which is ambiguous. In context of Arunachal Pradesh, village panchayat and village authority are two separate organs, the former is an elected body which administers the developmental works, schemes and administrative or supervision role in some cases but has no judicial function which is vested in H.G.B's/GB's (the village authority). The concepts of Decentralization and Equality are integral part of the Arunachali culture and hence, in real sense, the Panchayati Raj Institute is not an alien institution to us. The institution of *Gaon Buras*, an integral part of our Arunachali society, is an example of democratic self-governance. For hundreds of years the *Gaon Buras* in Arunachal Pradesh have served the state on developmental and judicial matters and are still retaining their importance! On one hand the *Gaon Bura* system is centuries old while on the other hand we have the Panchayat Raj institute, which is in its infant stage in Arunachal Pradesh. Without the active support from these two institutes, no developmental program can be successful in Arunachal Pradesh;[27] and

27 *Supra* n. 6.

(xvii) Need for proper record of customary laws by modern means and awareness measures to further improve and strengthen this institution.[28]

Way Forward and Suggestions

The important role of H.G.B's/GB's in adjudication of customary laws and bringing justice to the doorstep of village by rendering decision that is fast, accessible and free from formal legalities is an institution worth to be preserved for posterity. It is an important law and order enforcing agency at the village. Considering the overburdened and expensive judicial system in the country. This traditional village institution is necessary for the preservation of our culture, religion and tradition. However, it does not mean that there are no evils in it. Influence of power and politics have negatively impacted the impartiality and neutrality and democracy of H.G.B's/GB's which needs to be restored. They should not be mere puppets in the hands of politicians and executives but become a powerful pillar of justice at the village and one of the key pillars of democracy. There is a need to legally empower and consolidate their position through a good law enacted by the State government. There is a dire need to abolish the judicial power of the Executive when the judicial separation of powers from executive has already been effected.

The H.G.B's/GB's power in petty criminal and in all civil matters must be preserved and adjudication of customary laws must be upheld by the Court, except in cases of breach of fundamental and constitutionally guaranteed provisions where the higher Court should send back the case with proper direction to reconsider it. But with the introduction of formal laws as CPC and Cr.P.C in the state and move towards separation of judiciary and executive power, the people prefer to use formal legal set up in all criminal matters, but in civil matters the local village authority is still the preferred forum. Since the appellate jurisdiction is with the DC/AC, consequently, delay and dilution of traditional village authority the result which is worrisome considering the importance of this indigenous justice delivery system having its own merit and advantages. The Executive must be divested of this appellate power altogether and it should be vested with the judiciary. However, the appeal should not be allowed on mere factual grounds but on exceptional grounds as mentioned earlier. Otherwise the right to appeal will be misused by rich and powerful to negate the decisions of H.G.B's/GB's.

The Government needs to constitute a special committee to prepare a draft law to repeal and modify the AFR and the above Guideline by exercising its power under Article 372 of the Constitution which empowers the competent legislature to repeal, amend, and modify any pre-existing laws (Pre-Constitutional laws). Also, Personal laws *i.e.* customary laws is a concurrent subject matter, therefore the legislature is within its power to enact a new law in this regard. Having said that, such bill should be properly debated at the Assembly and open for public consultation before it is passed by the Assembly

28 "*Documenting the Northeast's Tribal Laws*", DOWN TO EARTH, Jun 7, 2015, https://www.downtoearth.org.in/coverage/documenting-the-northeasts-tribal-laws-13843, (visited on May 19, 2019).

and becomes the law of the land. In order to revitalise the institution of *Gaon Buras/Buris* certain important steps are needed to be taken timely, for example, firstly, selection through political patronage in appointments of the *Gaon Buras/Buris* needs to be discarded by divorcing the appointments totally from the politics. The *Gaon Buras/Buris* including Head *Gaon Buras/Buris* should be selected and appointed purely on merit basis in free, fair and transparent manner besides downsizing their existing numbers. Intellectual caliber, wisdom and knowledge about the customary laws, prescribing minimum educational qualification for the appointment. Minimum and maximum age limits for the same (appointment) besides the retirement age of the *Gaon Buras/Buris* should be fixed. There is a need of appointment of more *Gaon Buris* to make the body more representative and ensure democratic governance in the system.[29] This institution need to be strengthened legally and administratively and revamped suitably.

Conclusion

The village authority as the basic unit of justice delivery must be preserved as an integral part of tribal indigenous society. However, the system as it is prevailing needs urgent legal and policy changes. This means suitable amendment of AFR is inevitable. The DC and ADC/AC must be completely divested of the judicial power. In civil cases if the decision of the village authority is acceptable to both the parties in duly prescribed manner, it should be considered final and made appealable only before the High Court under Section 48 of AFR on exceptional grounds mentioned therein. This will make the traditional justice system faster and efficacious in the real sense. In addition, training and awareness regarding Constitutional objectives, human rights, gender equality and use of technology will infuse more efficiency and competence in *Gao Buras*. They need infrastructural support and skilled human resources to aid them in documentation and record keeping as majority of *Gao Buras* are illiterate, however in new appointments literate/educated may be given preference.

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29 Kago Gambo, ADMINISTRATION OF JUSTICE IN ARUNACHAL PRADESH: A STUDY OF THE GAON BURA AS A VILLAGE AUTHORITY OF THE APATANIS, https://shodhganga.inflibnet.ac.in/bitstream/10603/135063/13/13_abstract.pdf, (visited on May 20, 2019).

RIGHT TO MAINTENANCE OF WOMEN IN INDIA: A SOCIO-LEGAL STUDY

Debasree Debnath[♣]

Abstract

The concept of right to maintenance of women arises from the obligation attached with the marriage institution. India being a patriarchal setup never accepts the rule of law provided under the Constitution of India and does not gives women their equal rights. Women are not equated with men in our society and they are always jeopardised and victimised in every sphere of their life. This paper deals with the status of women during different periods of time in India and explores the need and importance of maintenance in their life. It also elaborates the social, economic and traditional barriers which leads them to become dependent for their survival on male members of their family. Hence, right to maintenance becomes an integral part of their life, mostly in situations when they are unable to maintain them. This paper also examines the issues relating to Uniform Civil Code which is most awaiting in Indian society and the reasons for its non-implementation. Due to this dilemma, woman gets victimised because of various diversities in personal laws. To provide equal respect to all women, it is necessary to enact uniform law for all. Since India consists of diverse religion; uniform law should be enacted by putting the diversity of laws in its centre.

Keywords: Maintenance, Personal Laws, Uniform Civil Code, Secularism.

Introduction

Man and woman are the two pillars of human life, they share equal rights and responsibilities to build the society, but still woman are not getting equal status as man. Since ancient times, the woman was always considered as a mediocre citizen in our society, they had to fight at every stage of their life, even when they were in mother's womb-the most secure place on the earth. It took a lot of courage for a woman to up bring the concept of woman empowerment. Woman is a significant part of social institution like family, without them the structure of family is a mess.

To better understand the current status of woman, it is essential to analyse the historical position of woman. Sociological perspective, financial hardship and legal position of woman are three major factors which has an immense impact on their life in this multicultural society. With the enactment of the Constitution of India, all the people are given equal rights, but being a

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patriarchal country, the woman is still not treated equal with man and never given equal rights and opportunities. In addition to this, the Preamble also provides equal status and opportunity for all, but equality for woman only remains in the black letters of law, it is still a dream for every woman. The deep-rooted prevalence of feudal forces was a great impediment to give woman their equal rights. The sporadic incidents of the male dominance in India are historical evidences that woman was never given equal status with man. Caste and class bias aggravate the concept of gender discrimination in the walks of life. The traditional practices, orthodox believe, discrimination against woman and unbreakable barriers made woman to remain in the four walls of the house and therefore she became dependent on male members for their survival. Therefore, the concept of maintenance[1] becomes an indispensable part after dissolution of their marriage tie as sometimes in such situations even their family members also do not wish to support them. They become helpless in such situations and therefore arises the need of maintenance by husband for their survival.

The purpose of this research work is to analyse the historical position of woman, their position in the family as it is the basic social institution and the need of maintenance right for them. This paper tries to address the highly sensitised issues related to personal laws and the diverse factors responsible for maintenance, with special reference to Hindu and Muslim woman. This study also reveals that, the society being patriarchal in nature try to frame the patriarchal norms to govern the life of woman which are based on social, economic and political issues.

Maintenance as Matrimonial Remedy

In the Hindu law, marriage was considered as a *Samskara* or sacrament. According to *Yajnavalkya*, marriage was performed to achieve three purposes-enjoyment, son and *dharma.*[2] Under the Muslim law, the Baillie's Digest defined marriage as a contract for the purpose of legalising sexual intercourse, and procreation of children. The union of marriage gives rise to the important legal consequences in the form of duties, rights and obligations to both the spouses. The spouses become entitled to each other's society after solemnisation of the marriage, which follows from the very nature of the matrimonial relation between them. The husband has a duty to support and maintain his wife, until she performs all matrimonial duties and remains faithful to him. Marriage being a social institution implied this condition in the nuptial vow when they become husband and wife.

Under the Hindu jurisprudence, it is the responsibility of a Hindu to support and provide maintenance to his family, and relations which occurs from the

1 Section 3(b) of the Hindu Adoptions and Maintenance Act 1956 states that, *"Maintenance includes- (i) in all cases, provision for food, clothing, residence, education and medical attendance and treatment; and (ii) in the case of an unmarried daughter also the reasonable expenses of an incident to her marriage."*

2 Asutosh Mookerjee, MARRIAGE, SEPARATION AND DIVORCE, 3rd ed., 2002, p. 2.

very existence of the relationship among them.[3] Under the *Mitakshara* law, the *Karta* is legally obliged to maintain his family.[4] The *Dayabhaga* law also provides the same law upon *Karta* of the Hindu Joint Family. The main objective of claiming maintenance is that other party has no sufficient means to support themself. However, it is not merely the subject matter, based upon which the Court grants maintenance, it is the discretionary power of the Court in awarding the maintenance, like in *Kalyan Dey Chowdhury v. Rita Dey Chowdhury Nee Nandy*[5] the Court held that, a quarter of the husband's net salary can be granted to the wife as maintenance amount.

Marriage tie comes with right to residence;[6] right to maintenance[7] and these rights of wife are the outcome of her matrimonial status. Bearing cost of food, clothing, lodging and education are included in maintenance.[8] The right to maintenance is essential for a woman due to the financial hardship and social stigma attached with her. Once the marriage is broken, sometimes even her own family do not wish to support her economically and consider her as a burden. In the patriarchal society, where man has a traditionally higher position, woman receives a low priority; therefore maintenance paves the way for their better life. After the solemnisation of marriage, the husband is obliged to provide maintenance to his wife. In the Muslim personal law also, if the wife is willing to perform the conjugal life, the husband is responsible to maintain his wife and if the marriage is dissolved by a decree of Court, she has right to ask for maintenance till the period of *Iddat*.[9] However, if the wife is not willing to perform conjugal life then she forfeits her right to maintenance. She will also lose her right to maintenance when she leaves her husband's house without seeking his permission. The husband is obligated to maintain his wife after solemnisation of marriage even if he is necessitous and having no means to maintain his wife.[10] The wife can file a petition for maintenance under the Muslim law or under Section 125 of the Code of Criminal Procedure 1973. During the period of *Iddat,* where divorce dissolves a marriage, the wife has right to maintenance.

Historical Position of Woman in India

To know the necessity of maintenance right of woman it is required to study the social, economical and financial condition of their life in the historical period. During the Vedic period, woman and man were given equal status and they were called as *Dampati.* They shared equal status in religious and other duties. The two great epics of Hinduism- *Ramayana* and *Mahabharata* depict the ideology of Hindus. In *Mahabharata*, wife is known as the root of *Dharma*,

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3 *Bhagwan Singh v. Mst. Kewal Kaur* AIR 1927 Lah. 208.

4 *Savitri Bai v. Laxmi Bai* (1887) 2 Bom 573.

5 (2017) 14 SCC 200: 2017 SCC OnLine SC 440.

6 *S. Prabhakaran v. State of Kerala* (2009) (2) RCR (Civil) 883 (Ker.).

7 *Mohammad Ahmed Khan v. Shah Bano Begum* AIR 1985 SC 945; *Jayanti v. Alamelu* 27 Mad. 15, *Danial Latif v. Union of India* AIR 2001 SC 3262.

8 *Smt. Purnashadi v. M N Bhattacharya* AIR 1950 Cal 465.

9 M.A. Qureshi, MUSLIM LAW, 5th ed., 2015, p. 134.

10 *Ahmad v. Sultana Bibi* AIR 1943 Pesh 73.

prosperity and enjoyment. At that time relations were mostly reciprocal in nature and depended equally on both the genders, as her work was found necessary in production process. This period can be termed as the Feminine Glory period; the feminine principle concept of *Shakti* was also emerged in this phase as a Hindu philosophical concept. In the Vedic period woman acquired a high place; they had respect, the right of education and enjoyed the equality in learning Vedas.

But if we look into the Rig Vedic period, the Aryans were patriarchal in nature, they always dominated and they were considered as superior to their wife. However, in that period, woman was bestowed with some rights, like to participate in social as well as religious activities and the right to choose their life partner. They also had the right to Vedic studies. Some Vedic hymns were also written by women as they developed great eminence on the subject.

The scenario of post Vedic period was different to the social condition of woman in Vedic period. In this period, woman suffered a blow and certain limitations were put on women's rights and freedom, such as they were denied education. At the time of *Smritis* the knowledge of Vedas was not permitted to the females and it was only confined to male members.

The medieval period of India, demonstrates the social discrimination against woman and was also called the 'dark age' for woman. This period witnessed the foreign invasion in India and resulted in weakening the status of woman in the society. The foreign conquerors, such as Muslims brought with them their own culture, religion, which in turn degraded the position of woman. Men treated them as dirt under their feet and they had kept them behind the veil. Cursed practices like *sati*, child marriage, dowry, and female foeticide were aroused in a rampant manner which was not in harmony with nature. Among Rajputs of Rajasthan, the *Jauhar* system was practiced. Therefore, reforms became an essential part to develop the condition of woman and to regain the society's lost vigour. This period witnessed the inequality among women and their struggle for right and freedom.

The age of *Dharmasastras* depicts the subjugated condition of woman in the society. In that period, the woman was excluded from both economic and religious sphere. In consequence they became dependent on the menfolk of their family, for every diminutive necessity of their life, including the right to maintenance. Education was denied to them and it was pushed to a state of ignorance. The women also had parental remedy from the father, matrimonial remedy from the husband-all these causes lead to the dependency over the male members. The *Manu Smriti* represents the concept of *Na Stree Swatantramarhati*.[11] It means in her entire lifetime, a woman never deserved freedom. She does not have any right in her own house, and in this manner traditionally the woman was given secondary position in society. Marriage was treated as a union of two families rather than two souls, and the condition of

11 "*Manusmriti – Understanding the time and Context of the Code*", THE HINDU, October 31, 2011, https://www.thehindu.com/books/manusmriti-understanding-the-time-context-of-the-code/article2586502.ece, (visited on January 12, 2019).

woman depended on the sympathy of the in-law's house. *Yagnavalkya* too shows the disheartened condition of woman in the era of *Dharmasastras*. The female child was considered as curse in the family and many parents even killed their children on the belief that, they will become burden on them in the near future. Child marriage was rampant at that time as it was believed that those who did not get their marriage before the age of puberty,[12] they had committed an unforgivable sin. Although man may marry at any age they desire.

In the present day era also, though in the black letters, the Constitution of India provides equal rights to everyone, regardless of their caste, creed, race, religion, gender, but our legal system of India reveals different scenario for women, mostly in the areas of divorce and maintenance laws. When it comes to women in actual practice nearly all personal laws differentiate against women. The objective of maintenance law is to crystallise the black letters of law and to compel the man to perform his legal obligations towards his wife. The provisions for maintenance ensure that the woman should not be left as a destitute on the scrapheap of society. Interim maintenance is provided under Section 24 of the Hindu Marriage Act 1955. On the other hand, Section 25 deals with permanent alimony, which is fixed at the time of passing the decree of divorce or subsequent thereto. While exercising the jurisdiction under Section 24, the most fundamental thought which needs to be considered is whether the party who is asking for maintenance has any independent income, by which he/she can fulfil all the necessary expenses of the cost of proceedings.

Women and Maintenance as a Matrimonial Remedy

Life is never a fairy tale for a woman; she has to struggle for her existence. The detailed analysis of their life history will reveal their unsympathetic story and the requirement of maintenance right. The deteriorated conditions of woman become more stringent for those who are financially unstable after divorce. They befall in the dark reality of the society where only obscurity becomes their only destination. They become the puppet in the insensitive society.

In such condition for their survival, it becomes necessary to secure them economically. Maintenance is the only glow in such darkness after the break down of marriage, which gives them stability and makes them economically independent. The Court in *Shailja v. Khobanna*[13] held that, 'capable of earning' is not an acceptable ground for reducing the maintenance granted to her. The reason behind such kinds of judicial pronouncement is only to confer woman with much larger rights than they had been enjoying in the early era. The Hindu wife was obligated to lead her whole life with her husband in all the good and bad phrases of her life and she was supposed to submit herself to the husband.[14] The corresponding duties were also accrued at the moment when the marriage was validly solemnised. The husband has the duty to protect her and give her

12 *Supra* n. 9, p. 38.

13 2017 SCC OnLine SC 269: (2018) 12 SCC 199.

14 *V. Tulasamma v. V. Sesha Reddy* AIR 1977 SC 1944.

maintenance and to abide by all the other duties arising out of the marital relations.

The Hindu woman is permitted lifetime maintenance until she marries again; on the other hand, it is permitted only till the period of *Iddat* for a Muslim woman. Although there are certain case decisions[15] where the Apex Court has granted maintenance when the wife is unable to maintain and support herself when the *Iddat* period was over. Under the Muslim Women (Protection of Rights on Divorce) Act 1986, the Muslim husband is liable to provide maintenance to his divorced wife only till the period of *Iddat.* Coming to the Holy *Quran*, which is extremely sympathetic towards woman and orphans, it cannot be presumed that the divorced wife was intended to be left in the lurch after the period of *Iddat.*[16] *Quran*[17] expressly laid down that, the widow is entitled to a year's maintenance from the estate of her deceased husband. The male dominated society did not want to allow their wife the right of maintenance after the period of *Iddat* and hence they misinterpret the Holy book.

Legal Remedy and the Right to Maintenance

The Hindu law provides that, either of the party can claim maintenance and alimony, when the decree of divorce is pending[18] in the court or after the decree of divorce was passed.[19] The factum of marriage whether void or valid has to be proved to grant maintenance.[20] Again a woman can claim maintenance even when she is a divorcee.[21] In *Pankajini Das v. Hrusaikesh*[22] the court held that, as per the customs of the Hindu law, a Hindu wife after the solemnisation of marriage resides with her husband under the same roof which is known as matrimonial home.

Only a wife is entitled to the get the maintenance under Section 18 of the Hindu Adoptions and Maintenance Act 1956. The Law Commission of India also took another reformative initiative[23] to protect the right to maintenance for women in India. A Muslim woman who professes Islamic religion is also

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15 *Mohammad Ahmed Khan v. Shah Bano Begum* AIR 1985 SC 945; *Ali v. Sufaira* (1988) 3 Crimes 147; *Danial Latif v. Union of India* AIR 2001 SC 3262.

16 S.A. Kader, MUSLIM LAW OF MARRIAGE AND SUCCESSION IN INDIA: A CRITIQUE WITH A PEA FOR OPTIONAL CIVIL CODE, 1st ed. 1998, p. 45.

17 Verse 2:240 of the Holy Quran reads as "*Those of you who die and leave widows should bequeath for their widows A year's maintenance without expulsion; But if they leave (The residence). There is no blame on you for what they do with themselves, provided it is reasonable. And Allah is exalted in Power, Wise.*"

18 Section 24 of the Hindu Marriage Act 1955.

19 *Ibid.* Section 25.

20 *Ranjana Vinod Kejriwal v. Vinod Babulal Kejriwal* AIR 2009 Bom 176.

21 Section 18 of the Hindu Adoptions and Maintenance Act 1956.

22 AIR 1986 Ori. 184.

23 Law Commission Report No. 252, "Right of the Hindu Wife to Maintenance: A relook at Section 18 of the Hindu Adoptions and Maintenance Act 1956," 2015 http://lawcommissionofindia.nic.in/reports/on%20Right%20of%20the%20Hindu%20Wife%20to%20Maintenance%20%20A%20relook%20at%20Section18%20of%20the%20Hindu%20Adoption%20and%20Maintenance%20Act,1956.pdf, (visited on March 15, 2019).

entitled to get the maintenance from her husband under their personal law as well as under Code of Criminal Procedure 1973.

Law of Maintenance under the Canopy of Criminal Law

The Code of Criminal Procedure 1973 is secular in nature[24] and is evenly applicable to all. It is the greatest tool to set down the norms for society and to protect the people from societal hardship. Section 125 of the Code of Criminal Procedure 1973 provides measure for social justice and protects the women. It comes under Article 15(3) of the Constitution of India and is reinforced by Article 39.[25] Section 125 of Code of Criminal Procedure 1973 does not contradict any of the sections of the Muslim Women (Protection of Rights on Divorce) Act 1986.

When the husband breaks his vows of fidelity and commits certain crime, the wife has the right to opt for a divorce petition and claim for maintenance, under Section 13 and 18 of the of the Hindu Marriage Act 1955 and the Hindu Adoptions and Maintenance Act 1956 respectively, as these provisions are complementary to each other. Section 18 of the Hindu Adoptions and Maintenance Act 1956 were in addition to those provided under Code of Criminal Procedure 1973.[26] The court in *Bhagwan Dutt v. Kamala Devi*[27] decided that Magistrate can direct for the payment of interim maintenance under Section 125 of Code of Criminal Procedure 1973. Also, the Supreme Court in *Bai Thaira v. Ali Hussain Fissali*[28] decided that,

> *We hold that every divorcee otherwise eligible is entitled for the benefit of maintenance allowance and the dissolution of the marriage makes no difference to this right under the code.*[29]

Here, the court upholds the economic right of a woman by granting her allowance after the dissolution of the marriage. Again, Section 125 of Code of Criminal Procedure 1973 being a social legislation provides the vital and most important duty imposed on a husband to support and give maintenance to his wife under the personal law and functions irrespective of caste, creed and religion. It is a bold step towards a progressive piece of social legislation in the recent times.

The further contention that this provision violates Article 25 of the Constitution of India and it is not tenable, as Islam holds women in high esteem and regard. The Holy *Quran* and the traditional sayings of the Apostle of God enjoin on men the duty of treating women with honour and dignity. Further, the High Court of Kerala in *Kunhi Moyn v. Pathumma*[30] decided that, the new interpretation of Section 125(1) of the Code of Criminal Procedure 1973 comes

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24 *Mohammad Ahmed Khan v. Shah Bano Begum* AIR 1985 SC 945.
25 *Rames Chander v. Veena Kausal* AIR 1978 SC 1807.
26 *Aher Mensi Ramsi v. Aherani Bai Mini Jetha* AIR 2001 Guj 148.
27 AIR 1975 SC 83; *Savitri v. Govind Singh* AIR 1986 SC 984.
28 AIR 1979 SC 362.
29 *Ibid,* p. 364.
30 1976 MLJ (Cr) 405.

within the 'providing for social welfare and reform' legislation contained in Article 25(2) of the Constitution of India and therefore the challenge under Article 25 is not available to the petitioner.

All the Indians irrespective of their religion and caste can avail the provisions of the Code of Criminal Procedure 1973 and it is equally applicable to all who seek matrimonial remedies under this Code. The religious and non-religious laws are suffering due to the various shortcomings into it. Therefore, it is desirable to have uniform laws applicable to all Indians.

Status of Women in the Society

The social barriers which bind the woman from time to time can be divided into three categories; which are discrimination against women, cultural and traditional practices and violence or abuse against woman. Since ancient era, child marriage has been a curse to woman from 500 BCE. This practice was continued for a long time as a social custom, and after the death of the husband the woman was forced to live a dreadful life losing her own identity. Cultural and traditional practices did not allow her to remarry, as widow remarriage was banned at that time. She had to live a life which was tortuous and miserable. Social practice of Sati forced her to immolate herself against her own will. She was not allowed to participate in any of the social functions and she was bound to live an isolated life detached from the society.

The society suffered a cultural collapse at the time of Mughals and Marathas, and the conditions of woman deteriorated even more at that time. They were tortured physically and mentally, they were also not allowed for education and thereby home became the safest place for them. Customary practices did not allow them of property rights, purdah system and polygamy were in practice.

To improve the condition of woman, it became necessary to give her a healthier and prosperous life, without this the regeneration appeared predestined to failure. Various social factors lead them to be economically vulnerable in the society. To develop their situation and to maintain their dignity, the right to maintenance became an essential part of their life.

As a social institution marriage should be preserved, but when there is no chance of reunion between spouses, in such circumstances the Court may grant divorce decree and award maintenance to the either party. The right to maintenance can be claimed when the proceedings are pending in the Court or after the decree of divorce granted by the Court. The time period for granting divorce is an important subject matter to be concerned as it may lead to distressing for the aggrieved party. Recently, divorce by mutual consent became the central point of discussion in the legal arena as the Supreme Court of India in a landmark judgement waived off the six month waiting period[31] and viewed that Section 13B (2) of the Hindu Marriage Act 1955 is directory in nature and do not possess a mandatory character.

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31 *Amardeep Singh v. Harveen Kaur* (2017) 8 SCC 746.

One of the social practice which helped the woman was the concept of *Karta* under the Hindu Joint Family who was obliged to maintain its members, their wives and children, which was in place even before the enactment of the Hindu Code. In the same pace after the marriage the wife being the partner of the husband in life plays a vital role and therefore, he is obliged to provide support and maintenance to his wife. Every male Hindu irrespective of his financial position was legally obliged to provide maintenance to his wife.[32]

Women and Equality

For the development of the society and to bring the gender equality, the emancipation of women is necessary. To uplift the condition of women, it is essential to look into the social, economic and democratic progress of the society. In addition to that, the socio-economic parameters of the society need to be analysed, but due to the social stigma attached with women, it becomes an obstacle in their way of life. Gender stereotypes did not allow women to exercise their rights and thus create discrimination between men and women. Gender inequality prevails in social institutions, like their family, working place, matrimonial home, and educational place.

Starting from the law of marriage, there should be equal rights and the practice of polygamy among Muslims should be prohibited. Legislations should ensure identical rights to both Hindu and Muslim women. Recently, in *Balchand Jairamdas Lalwant v. Nazneen Khalid Qureshi*[33] the Bombay High Court decided that even when a Hindu female is converted to other religion or changes her religion she will not be disqualified for claiming the property of her father[34] which is an innovative step taken by the Court to protect the rights of the daughter.

Again on August 22, 2017 the Supreme Court by a 3-2 majority gave a path breaking judgment where it was held that *triple talaq*[35] is unconstitutional. Apart from this, the Supreme Court also referred a challenge on the practice of polygamy[36] and *Nikah Halala*[37] which are a significant step to keep the status of equality on the same footing to both Hindu and Muslim women. However, at that time, the All India Muslim Personal Law Board (AIMPLB) protested against the Muslim Women (Protection of Rights on Marriage) Bill 2017 at Mumbai as in the bill the Government has criminalised *triple talaq*.[38] The main concern of the Muslim women here was that if the husband sent to jail there will be no one who will have legal obligation to provide them maintenance which in

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32 *Jayanti v. Alamelu* 27 Mad. 15.

33 (2018) 2 Mah LJ 804.

34 *Nayanaben Firozkhan Pathan v. Patel Shantaben Bhikhabhai* (2018) 2 Mah LJ 804.

35 *Supra* n. 9, p. 97.

36 The practice of being married to more than one woman at a time.

37 If a female wants to marry her previous husband after divorce she first has to marry someone else and after consummation of that marriage she have to take a divorce and then only she will be permitted to marry her previous husband.

38 Section 4 of the Muslim Women (Protection of Rights on Marriage) Bill 2017, *"Whoever pronounces talaq referred to in section 3 upon his wife shall be punished with imprisonment for a term which may extend to three years and fine."*

turn will violate their right to maintenance. However, after much discussion the legislature passed the Bill in the year 2019 which retains the provision of criminalising *triple talaq* and also mentioned *triple talaq* as void and illegal.

In a patriarchal country like India, there is only little influence of women in the formation of traditional practices or law. Also in ancient era women were not allowed to go outside and remained within the four walls of the house, they were not even permitted for education and employment. The differentiation of gender inequality is based on some traditional norms and cultural practices which prevails in the society. These differences mostly depend on the historical development and religious norms which predominates in society. Women in every community are discriminated and mostly in the Muslim community, mainly due to the educational backwardness. In the pre-Islamic era the women faced the dreadful conditions of their life and they remained in seclusion, servitude and dependence. They did not have any right of inheritance and formed an integral part of the estate of their husband.

Viciousness to Women and the Practice of Inhumanity

Violence predominated against women and most of the women become victims of mental and physical torture in our society. It is the most pervasive human rights violation a woman can face in her life. In almost every home, they are tortured, beaten and sometimes even killed. It has become a legacy, which is passing from generation to generation. Social stigma, economic and political exigencies are the foremost reason behind the restrictive and abusive life of the women. Inhuman barrier and limitation clamped upon them which turns out to be burdened with several taboos.

To overcome such situations, the judiciary plays a prominent role and gives various remedies to the women. After the divorce, the women who are incapable to maintain themselves, it becomes difficult for them to sustain in the insensitive society. The Supreme Court in *Sanju Devi v. The State of Bihar*[39] decided that, a judicially separated wife is also entitled for maintenance. Again in *Kusum Sharma v. Mahinder Kumar Sharma*[40] the Delhi High Court made it mandatory for both the spouses to file in an affidavit in detail with their income, assets and expenditures for filing a petition for divorce, so that it will be easy for the Court to grant the maintenance on the basis of true income as this right is a basic human right.

Also in the present day era, women are abused in various forms, their glory unfortunately depends on their ability to sacrifice. When a woman is ready to sacrifice her happiness and freedom she is praised, but whenever she raises her voice against violence, her voice is unheard, she cries of her own. Violence is an experience, which almost every woman faces in her lifetime, irrespective of culture and religion. Domestic violence, harassment in the workplace becomes a part and parcel of their life. Although various social legislations[41] were passed

39 2018 (1) RCR (Crl) 196 SC.

40 AIR 2015 Del 53: (2015) 217 DLT 706.

41 The Protection of Women from Domestic Violence Act 2005; Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013.

to curtail these evil practice, but in reality society remains the same for a woman to reside in. The following chart is the report of National Crime Record Bureau of 2011-2015 relating to the proportion of crime under Indian Penal Code (IPC) 1860 against women, which shows the cruel image of the victimisation of woman in our country.[42]

Sl. No.	Year	Total IPC Crimes	Crime against women (IPC cases)	Percentage to total IPC crimes
1.	2011	23,25,575	2,19,142	9.4%
2.	2012	23, 87, 188	2,44,270	10.2%
3.	2013	26,47,722	2,95,896	11.2%
4.	2014	28,51,563	3,25,327	11.4%
5.	2015	29,49,400	3,14,575	10.7%

Economic and Financial Hardship of Women

With the passage of time, it is realised that education maps a lot of difference in the social status of men and women. The economic independence of a women cannot change the vulnerable nature of women in our society.[43] They have been suffering for long time, regardless of her economical background. The economical right of women should be protected in every phase of their life. Mostly, in our society the Muslim females are deprived of many rights as they are still governed by their personal laws. Muslim Law still governs various issues like marriage, divorce and polygamy. Women should be educated enough to know and learn their rights, and should become well established in the society. Education gives the courage to fight against the cursed and traditional practices which snatched their right to education in early era. It has been seventy years since independence, women are yet to get their basic rights. To overcome the financial hardships of life, it is crucial to educate women.

India is a country with multiple cultures and religions. The citizens of India have been given certain Fundamental Rights by the shield of Part III of the Constitution of India. Despite these Fundamental Rights, women are deprived of their rights. To be self-dependent it is very much essential to educate the women from their childhood. Education improves the lives of women and made them capable to participate in economic as well as political phase. It paves the way for a better future, but the heart breaking reality can be revealed by the global index of gender inequality; it is proved by this index that in today's era also women remains far behind than men.

According to the Global Gender Gap Report of 2018, India ranked 87th in 2016 and in the year 2017 and 2018 it stands at 108th, with a downfall of 21.[44]

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42 National Crime Record Bureau, "Crime Against Women", 2015 http://ncrb.gov.in/StatPublications/CII/CII2015/chapters/Chapter%205-15.11.16.pdf, (visited on March 20, 2018).

43 Monica Chawla, GENDER JUSTICE: WOMEN AND LAW IN INDIA, 1st ed. 2006, p. 1.

44 "*The Global Gender Gap Report*", 2018, WORLD ECONOMIC FORUM,

Global Index		Economic Participation and Opportunity		Educational Attainment		Health and Survival		Political Empowerment	
2018 Rank	Score	Rank	Score	Rank	Score	Rank	Score	Rank	Score
108	0.665	142	0.385	114	0.953	147	0.940	19	0.382
2017 Rank	Score	Rank	Score	Rank	Score	Rank	Score	Rank	Score
108	0.669	139	0.376	112	0.952	141	0.942	15	0.407
2016 Rank	Score	Rank	Score	Rank	Score	Rank	Score	Rank	Score
87	0.683	136	0.408	113	0.950	142	0.942	9	0.433

Another aspect is to have the property rights for women. They do not have the property rights in a Hindu Undivided Family as it was not permitted earlier in the male dominated Hindu family. They feel that if women are given property rights then there will be disintegration of family. However, with the enactment of Women's Right to Property Act 1937, the property right is given to women, so that they can lead their life without becoming burden on anyone. The widow had given property rights by the male coparceners after their death. But the grief-stricken really of this Act was, it only confers limited property right to the women.[45] This Act becomes insufficient to meet the need of women and it became necessary to make an inclusive Hindu Code, which in turn led to the enactment of Hindu Succession Act 1956. At that time, Christian and Muslim women were still governed by their personal laws.[46] The Hindu women agreed to give the property rights and they are now governed by Hindu Succession Act; while the Muslim woman does not have any law relating to property. The Hindu Succession Amendment Act 2005 provides some amount of property of her father to the daughter as well as to the son. To quote Justice Sujata V. Manohar of Supreme Court of India,

> *".... It is not easy to eradicate deep seated cultural values or to alter traditions that perpetuate discrimination. It is fashionable to denigrate the role of law reform in bringing about social change. Obviously law, by itself, may not be enough. Law is only an instrument. It must be effectively used. And this effective use depends as much on a supportive judiciary as on the social will to change. An active social reform movement, if accompanied by legal reform, properly enforced, can transform society and women in particular. And an effective social reform movement does need*

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http://www3.weforum.org/docs/WEF_GGGR_2018.pdf, (visited on December 20, 2019).

45 Bina Agarwal, REDEFINING FAMILY LAW IN INDIA, 1st ed. 2007, pp. 306-354.

46 T.K.Rajalakshmi, "*Muslim Women are More Vulnerable*," FRONTLINE, Vol.24, No.2, 2007.

the help of law and a sympathetic judiciary to achieve its objectives."[47]

Women and the Constitution

With the enactment of the Constitution of India, it creates various social and economical rights for women. It synthesis on the customary and religious practices to endorse the rights and economical values of women. It also tried to fill the gender gap between a men and a women to achieve harmony and maintain balance in the society and to reach the required community goals.[48] It is responsible for framing the rules and regulations for the governance of country. The concept of equality appears from the preamble itself to all its citizens and the Constitution of India, provides the same right as a Fundamental Right to all. It gives equal status to both men and women, but due to social dilemma, hurdles become a part and parcel of women's life. To overcome the dilemma the makers of the Constitution provides certain rights for the upliftment of women in India, such as Article 14[49], 15 (3)[50], 42[51], 51 (a) (e).[52]Apart from Constitutional protection, other domestic legislations and international instruments are also protecting the rights of women.

Conclusion

This study finds the historical, traditional and cultural barriers of women which curtail their right to equality and made them vulnerable in the human civilisation. Having a close look at all the personal laws, it becomes obvious that the women have been conferred an inferior status in comparison to men, like under Hindu law before codification, women were not given equal rights with men and polygamy was prevalent at that time. They did not have any property right except *Stridhan.* The Muslim law also depicts the same picture, where women were always given secondary status in all respects compared to men, polygamy was permitted and the Shia Muslim male can perform *Muta* marriage[53] for an agreed period of time. The injustice done to the women in India have been taken by the judiciary to protect the matters relating to personal law. To create a shield against the discrimination of women in their personal laws, it is necessary to create a uniform personal law. The Uniform Civil Code must be and has to be a harmonious blend of the best in all systems of jurisprudence.

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47 Barkat Aftab Ahmed Khalid Ahmed, "*Economic Rights of Indian Women-A Critical Analysis*," SCHOLARLY RESEARCH JOURNAL FOR HUMANITY SCIENCE & ENGLISH LANGUAGE, Vol. I, No. 5, 2014, pp. 830-839.

48 *Supra* n. 30, p. 21.

49 Equality before law.

50 State to make special provision for woman and children.

51 Just and human conditions of work including maternity benefit should be given to woman at working place.

52 It is the fundamental duty of every citizen to respect each and every human being and not to give derogatory treatment on the basis of sex.

53 *Supra* n. 9, p. 51.

THE PURPOSE OF LAW AND LAWYERS

Rahul Desarda[♣]

Abstract

This paper analyses Harper Lee's classic, To Kill a Mockingbird, to argue that the ultimate purpose of the legal system and lawyers is to serve the society. This purpose stems from the fact that law is a profession and not a business where one merely seeks profits. Lawyers are meant to be upholders of justice, not pallbearers because they possess the power to positively impact society. The paper touches upon various aspects of law such as the relationship between law and society, equality before law and drawbacks of the jury system. The premise of a profession is service to the society, therefore lawyers must provide affordable legal service to the marginalised and deprived communities. Further, considering the privilege they are accorded, lawyers have a moral obligation to offer pro bono legal aid to their disadvantaged clients. Empathy, ethical conduct and moral consciousness are essential in the making of an ideal lawyer. Undermining the significance of morality in the legal profession contradicts the very idea that law is a noble profession. Harper Lee's book is a stark portrayal of the downfall of nobility in the legal profession and how evil social practices, such as racism and other structural inequalities are further reinforced if the legal system is not based on morals and ethics. Finally, to understand the true purpose of law, we have to take a step back and understand the purpose of life itself.

Keywords: Purpose of Law, Professional Ethics, Equality Before Law, Justice.

Introduction

The sixteenth President of America and a lawyer by profession, Abraham Lincoln said: "*The leading rule for the lawyer, as for the man of every other calling, is diligence*".

In the contemporary era, people across the world have a very narrow perception of the lawyers. Far from upholders of justice, today they are seen as callous individuals who care about nothing but money. On the other hand, there are some who believe lawyers should not be judged by the client they undertake to argue for. Some go on to state that as long as the lawyer is working according to the interests of the client, he or she is being fair to society. Legal profession today has been reduced to just another career option. Harper Lee's book '*To Kill a Mockingbird*' has been a source of inspiration for people over the years to

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take up law for the betterment of the public. She vividly portrays the theme of discrimination, as a white lawyer attempts to defend a guiltless black man accused of raping a white girl. Apart from the intricacies of racism against the blacks, the book aims to send out a message to the legal profession that lawyers should strive for ensuring equality in the society and not for furthering their personal and commercial interests. The white lawyer Atticus Finch, through his relentless pursuit for justice for his disadvantaged client, sets an example for other lawyers to follow. Although it is not evident in the recent history of the law profession, Atticus's character reminds us that the ultimate purpose of law and lawyers is to serve society. This paper analyses Harper Lee's classic, '*To Kill a Mockingbird*,' to argue that the ultimate purpose of the legal system and lawyers is to serve the society. This purpose stems from the fact that law is a profession and not a business where one merely seeks profits.

Purpose of Law and Lawyers

Harper Lee in her book intends to make everyone realise that law is not a trade wherein one seeks profits, rather law is a profession meant to serve the underprivileged masses. The nature of the legal profession is such that lawyers play a very significant role in promoting societal values. Atticus understands that it is his duty as a lawyer to help the people who can't afford to pay the fees. Earlier in the story, Scout, the young daughter of Atticus realises that her father is giving legal advice to his client Walter Cunningham, someone who was not able to make his ends meet and was not able to use his land for the purpose of financially supporting his family members. Cunningham regretfully says:

> *Mr. Finch, I don't know when I'll ever be able to pay you.*[1]

Atticus, being a humble lawyer responds:

> *Let that be the least of your worries, Walter.*[2]

In this instance, Atticus had no legal obligation to assist Mr. Cunningham without charging his usual fee. Nevertheless, he sympathizes with Mr. Cunningham's situation and serves him considering this as his moral duty. In addition to this, his attitude towards Mrs. Dubose and the Cunninghams displays his generosity.

Atticus understands that his profession demands him to serve even those who cannot afford his services. David Fagelson, in *Rights and Duties: The Ethical Obligation to Serve the Poor* categorically argues that because of the privilege they are accorded, lawyers have a moral obligation to offer *pro bono* legal aid to the deprived.[3] According to Fagelson, this privilege is given by the state to professionals who can manage their affairs in their own ways. He puts forward the view that the legal profession is awarded these privileges because it is supposed to encourage the larger value of justice.[4] Since *To Kill a*

1 Harper Lee, TO KILL A MOCKINGBIRD, 1st ed. 1960, p. 20.

2 *Ibid*.

3 David Fagelson, "*Rights and Duties: The Ethical Obligation to Serve the Poor*", LAW AND INEQUALITY, Vol. 17, No. 1, 1999, p. 171.

4 *Ibid*, p. 172.

Mockingbird is set in America, his argument becomes even more pertinent. He claims:

> *The fundamental premise of justice in American society consists in equality before the law.*

Equality before law is a well-established legal principle which means that the law must treat everyone equally, regardless of their social standing and all the people are subject to identical laws. The larger premise of *To Kill a Mockingbird* deals with equality before law because it is the non-administration of this principle that leads to Tom Robinson's death. The jury is evidently prejudiced against him and as it is indicated in the book, the blacks are by and large discriminated when it comes to the administration of laws.

Atticus ensures equality before law is maintained by serving a cause larger than his commercial interests. In *The Death of an Honorable Profession*, author Carl T. Bogus succinctly presents examples from Atticus's life to further the argument that Atticus is a person who is not allured by commercial pursuits and he practices law without any hopes of earning huge amounts of money.[5] For example, in the earlier years of his legal practice, he practiced economy more than anything in order to admit his brother to a school of medical.[6] Afterwards, Atticus manages to derive a reasonable income from the law.[7] Atticus prefers walking to driving every day to his 'modest' office in the courthouse of Maycomb. 'Not all of Atticus' clients can pay with money', hence he accepts goods such as stove wood and hickory nuts instead of money.[8] This is important because Bogus here proves that even if one practices law with morals and ethics and without any urge for immense profits, one can still lead a reasonably contented life and have your basic needs fulfilled. Since the paper of Bogus primarily discusses the demise of the law profession, he picks up another textual example from *To Kill a Mockingbird* to hint at the purpose of a profession. Atticus says to Scout:

> *Did you know! Dr. Reynolds works the same way. He charges some folks a bushel of potatoes for delivery of a baby?*[9]

Similar to law, medicine is a profession primarily expected to help the general public and not to seek profits. Atticus indeed proves that law is a noble profession and not a business.

To Kill a Mockingbird establishes that morals and ethics are central to the functioning of the legal profession if the legal system is to be impartial in delivering justice. Rejecting the importance of morality in the legal profession amounts to contradicting the very idea that law is a noble profession. Harper Lee reminds us that if ethics and principles are not taken into consideration, the most marginalised communities such as the blacks in America will always be

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5 Carl T. Bogus, *"The Death of an Honorable Profession"*, INDIANA LAW JOURNAL, Vol. 71, No. 4, 1996, p. 911.

6 *Ibid*, p. 916.

7 *Ibid.*

8 *Ibid.*

9 *Supra* n. 1, p. 21.

dominated by the powerful groups of the society like the whites. Atticus wants to instill in his children the belief morality is a core of the American legal system and wants them to take inspiration from lawyers who defend the oppressed communities.

In one of the instances, Scout asks Atticus:

> *Do all lawyers defend negroes?*

To which Atticus retorts confidently,

> *Of course they do.*[10]

Atticus's reply implies that at least he is of the opinion that all lawyers must defend the blacks and therefore he is doing nothing special but merely his job, which is standing for the oppressed. If the jury believed in moral and ethical values, the result of the Tom Robinson case would have been certainly different.

In another instance, Jem is told by a man called Reverend Sykes that:

> *"I ain't ever seen any jury decide in favor of a colored man over a white man...."*[11]

Atticus is right when he remarks:

> *A court is only as sound as its jury, and a jury is only as sound as the men who make it up.*[12]

The white men who made up the jury lacked ethical conduct and their racist attitude towards the blacks hindered the process of delivering justice. In a talk with Scout, Atticus remarks:

> *"...before I can live with other folks I've got to live with myself. The one thing that doesn't abide by majority rule is a person's conscience."* This is enough of an evidence to claim that Atticus was a man of and principles and moral values.

According to Talmage Boston in *Who was Atticus Finch*, Atticus backs the claim that the American legal system should not be prejudiced, and every lawyer has a moral and ethical duty to practice in a way that ensures this outcome.[13] Boston is essentially arguing that although Atticus was appointed by the court to represent Tom Robinson, he was not obligated to pursue the matter and had the choice to withdraw. However, Atticus decides to fight the case for his black client due to various reasons but the fundamental one is his moral standing in society. As he is a legislator, Atticus considers that he can represent his county only if he is fair to all its people. Since Atticus teaches his children to live a life that is morally just, he feels he should practice the same and help Tom Robinson on ethical grounds. Atticus considers this to be his once in lifetime case; one that will personally affect him is personally attached with this case and considers it to be his once in a lifetime case. His deep personal engagement

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10 *Supra* n. 1, p. 77.

11 *Supra* n. 1, p. 212.

12 *Supra* n. 1, p. 209.

13 Talmage Boston, *"Who was Atticus Finch?"*, TEXAS BAR JOURNAL, Vol. 73, No. 6, June 2010, p. 485.

is another indicator to the importance of morals and ethics in this case and for that matter any case that significantly impacts the society.

Harper Lee's background, which played a significant role in her book, is well analysed in *The Death of an Honorable Profession.* Carl T. Bogus tells us that Harper Lee belonged to an era when lawyers were justifiably regarded as great individuals.[14] As he observes, a group of high-spirited lawyers like Thurgood Marshall and Charles Hamilton Houston started off a legal battle in mid-nineteenth century America for ending discrimination against the black community on the basis of race.[15] Their efforts did not go in vain, as a small syndicate of lawyers in 1954 won in *Brown v. Board of Education*, a case that made racial segregation in public schools unconstitutional.[16] The nine justices who delivered the judgment, in this case, were morally fit, unlike the members of the jury in Tom Robinson's case. In one of the instances after Tom is sentenced guilty by the jury, Atticus tells Jem that if he and boys like him were on the jury, Tom would be acquitted. Since Jem is a young kid, he has not yet formed any prejudices or biases in his mind and his opinion that Tom is not guilty is a rational one, based on basic morals and ethics, which he has acquired from his father, Atticus. Atticus epitomises morality and is always upright in the story. His ethical grounds are so strong that he is never found vacillating between two issues and is clear on his stance.

Atticus Finch's character in *To Kill a Mockingbird* is a testimony to the conviction that lawyers as professionals possess the power to positively impact society. Even though he is unsuccessful in defending his black client Tom Robinson, he successfully makes the readers realise the significance of law and lawyers in ending evil social practices such as racism. He is against the racist and dominant view prevailing in the society. He is unaffected by the people who call him a 'nigger-lover' and continues to focus on his good work.[17] After being embarrassed by Atticus in the courtroom, the alleged victim's father, Bob Ewell spits on Atticus face. Still, Atticus does not react and reasons that if not him, Mr. Ewell would have taken out his frustration on his helpless children, thus displaying a great sense of empathy. All these characteristics of Atticus suggest that he is an embodiment of an ideal lawyer. He is a lawyer who is not perfect yet practices law in the spirit of the profession, attempting to break the wall of the system which is influenced by biased mindsets.

Atticus knows the hard reality of Alabama. At the outset, he knows it is nearly impossible for him to win the case and thus he tells Scout that they are not going to win it. However, he tries his best to persuade the discriminatory jury that his client has been falsely accused of committing the rape of the white girl and through his stirring speech in the court, draws the attention of everyone towards the injustices suffered by the blacks. He brings to light the assumption that builds prejudice against the blacks; "*the evil assumption-all Negroes lie,*

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14 *Supra* n. 5, p. 911.
15 *Supra* n. 5, p. 919.
16 *Ibid.*
17 *Supra* n. 1, p. 85.

that all Negroes are basically immoral beings, that all Negro men are not to be trusted around our women".[18] He gives a seminal piece of advice to Scout, which is quite relevant in the discourse of relationship between law and society, says:

> *If you can learn a simple trick, Scout, you'll get along a lot better with all kinds of folks. You never really understand a person until you consider things from his point of view-until you climb into his skin and walk around in it.*[19]

In *The Lost Lawyer*, Anthony Kronman presents the idea of lawyer-statesman.[20] Atticus is that lawyer-statesman and one of the few lawyers that have turned out to be heroic in character. Kronman drives home the point that to act as a statesman on a great level, a lawyer must stop practicing law as a business.[21] It can be derived from Kronman's book that Atticus is the ideal lawyer-statesman on account of his great practical wisdom and exceptional persuasive powers and him being devoted to the public good but keenly aware of the limitations of human beings and their political arrangements.[22] Bogus's analysis of Atticus's actions is an extension of Kronman's idea. According to him, 'Atticus Finch is the quintessential statesman' and 'he sees the law as a noble calling and he practices law with nobility'.[23] Kronman sees Atticus as a lawyer who uses his skills learned in the legal profession for the larger good of society. Among others, these skills include clarity in thinking and sound judgment

Alexis de Tocqueville in *Democracy in America* states that lawyers in America have participated actively not only in the legal profession but in many walks of life.[24] He is referring to the impact of lawyers on various aspects of the nation. Atticus is one of those lawyers who influenced not only the case he was fighting for but also the highly racist society he was living in. His perseverance even impacted the racist jury, which was forced to think for a considerable amount of time before handing down its decision. Fagelson aptly defines the significance of law and lawyers in reforming society.[25] The idea of serving society as an alternative to developing private interests, according to him is the cornerstone of the legal profession. He classifies lawyers into two categories, one which is unaware of the actual purpose of law and the other which considers its pro bono service as a way of serving the disadvantaged and defend causes that are least likely to get represented.[26] Atticus belongs to the latter category. Also, even if a lawyer pursues the legal profession to the best of his abilities and ethical norms of the profession, he or she may not succeed in

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18 *Supra* n. 1, p. 208.

19 *Supra* n. 1, p. 199.

20 Anthony T. Kronman, THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION, 1st ed. 1995, p. 370.

21 *Ibid*.

22 *Ibid*.

23 *Ibid*, p. 371.

24 Alexis de Tocqueville, DEMOCRACY IN AMERICA, 1st ed. 2012, p. 207.

25 *Supra* n. 3, p. 199.

26 *Ibid*.

shifting the balance of power in the society. Atticus is successful in communicating that a lawyer must move beyond the realm of law and legal system, to the larger human arena, in order to fight the injustice rooted in the system.

Conclusion

To Kill a Mockingbird is a stark portrayal of the reasons behind the downfall of nobility in the legal profession and how evil social practices, such as racism and other structural inequalities are further reinforced if the legal system is not based on morals and ethics. Atticus has not merely been a role model for budding lawyers over the years but also a figure that gives us hope despite failing in his valiant attempt to secure justice for his client and tells us that much work needs to be done to realise the true purpose of the legal profession. In fact, to understand the purpose of law, we need to take a step back and first understand the purpose of life. Various studies suggest that achieving happiness is the purpose of life. Some people believe happiness can be attained through acquiring money while others think serving a cause bigger than one's personal interests brings happiness. Professionals such as lawyers have traditionally chosen the latter path and that is why characters like Atticus are revered.

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