CHAPTER - 1
Introduction

“Education is the manifestation of perfection already in man”
Swami Vivekananda.

Education is a fundamental human right and essential for the exercise of all other human rights. The right to education is a universal entitlement to education. This is recognized in the International Covenant on Economic, Social and Cultural Rights as a human right that includes the right to free, compulsory primary education for all. It promotes individual freedom and empowerment and yields important development benefits. Yet millions of children and adults remain deprived of educational opportunities, many as a result of poverty. Education is a powerful tool by which economically and socially marginalized adults and children can lift themselves out of poverty and participate fully as citizens.

Legal education is the education gained by individuals to become legal professionals or practitioners. It is the education of individuals who intend to become legal professionals or those who simply intend to use their law degree to some end, either related to law (such as politics or academic) or business etc. Unlike other forms of professional education such as medicine and engineering, legal education is both professional as well as liberal. Legal studies are multi-disciplinary in character; Legal education should aim at promoting ‘Justice’ rather than just resolve disputes & improve relationship. The study of Law in order to be meaningful has to be in the context of social realities.

The politics of legal education and the economics of law practice should be subjected to academic scrutiny if the legal profession in India has to be saved. Justice must become central to the law curriculum and community based learning must give the desired value orientation in the making of lawyer. Increased recognition of the limitations inherent in the juridical ideology traditionally perpetuated within legal
education has led to widespread modification of the law school curriculum in recent years. While analysis of law as a parasitic discipline celebrates a marked move away from doctrinarism and towards more pluralist approaches in legal education. To the extent that the critical courses such as law, gender and poverty etc, are restricted constantly in the minds of both students and academics to the peripheral sphere of the non-black letter and therefore the less legal, they do indeed run the perpetual risk of reinforcing rather than challenges the legitimacy of dominant juridical ideology.

The purpose of legal education is two folds. One view favoured legal education should be treated as a part of liberal education and the other view was in favour of treating as professional education. As professional education, legal education equips law students for filling different roles in society, and discharging various law jobs, the range and scope of which are always expending in the modern democratic society, e.g., policy-makers, administrators, lawyers, law teachers, industrial entrepreneurs etc. Accordingly, it is realized in modern India that legal education ought to have breadth, depth and width.

Law, legal education and development have become inter related concepts in modern developing societies which are struggling to develop into social welfare states and are seeking to ameliorate the socio-economic condition of the people by peaceful means. It is the crucial function of legal education to produce lawyers with a social vision in a developing country like India.

According to Professor Arthur Von Mehren,¹ before Independence the Indian legal profession and legal education had not developed “a rationally functional approach to the problems of law and legal order” and the “Indian legal education inevitable to evolve in patterns that emphasized rote memory. To impart information not critical understanding remained the goal of legal education”. Consequently when India gained independence, “its legal profession and legal teaching were thus not able to play the role they ought, by Western standards to have played. There is now a deeper consciousness not only among the law teachers, judges and the enlightened professional lawyers, but also among others, that law has served as a vehicle of

¹ Prof. Dr. A. Lakshminath, “Legal Education in India- contemporary conspectus”, Legal Education in India Challenges & Perspectives, Asian Law House, Hyderabad Publication, 2007, p 3
economic and vital role in a democratic society, that law has to serve as a vehicle of economic and social change in a developing society and that democracy and respect for law and rule of law will be strengthened in India by promoting legal education and research in law. It is the desire of the people that lawyers should play an active role in rebuilding the Indian society.

The Japanese legal education system is driven more by examination than by formal schooling. The profession of barristers, known as Bengoshi, is highly regulated, and the passing rate for the bar exam is around three percent. Prospective attorneys who do pass the examination must take it three or four times before passing if, and a number of specialized “cram schools” exist for prospective lawyers. After passing the bar exam, prospective barristers undergo a one-year training period at the Legal Research and Training Institute of the Supreme Court of Japan. During this period, the most capable trainees are “selected out” to become career judges; others may become prosecutors or private practitioners.

Since early nineties, the globalization has started showing its effect in all walks of life directly or indirectly. The fast changing world is today characterized by the emergence of global markets, application of new knowledge in production, requirements for new skills in professions, changing nature of quality of work and introduction of information and communication technologies in all spheres of human endeavor. This calls for a new concept of learning. The process of globalization, which has been accelerated by the advent of free-market economy, and by the remarkable developments in communication technology, has changed the character of higher education in general and legal education in particular.

The basic objective of globalization is to enhance productivity and to make education system an instrument for preparing students who can compete in the world market as productive members if society an important component of globalization in relation to education is the need of producing manpower of high quality, which can successfully face competition in the world market.

India has signed General Agreement on Trade in Services (GATS). Education is one of the 12 services sectors of GATS. The implementation of GATS would mean
privatization of the education sector and entry of foreign universities in India and their competition with the Indian universities and colleges. The greatest challenge in this situation will be to compete with the foreign universities having modern tools and techniques for education. Therefore, in order to protect and continue the specific identity and utility of our educational institution and to succeed in competition with foreign educational institution, they have to develop such an environment for educational management and capacity building, which could provide to the students befitting knowledge along with tradition and skills.

The concept of globalization has indeed become important to debates about the future legal education. It is an appropriate time to analyze the nature of globalization and how does it affect legal education.

Legal education is no more a domestic matter in the light of globalization. In the era of economic liberalization and WTO, legal profession in India has to cater to the needs of a new brand of legal clients namely the foreign companies or collaborations. Legal expertise would be required to finalize joint ventures, business negotiation and trade agreements. Indian legal education needs to be geared up to rise to the occasion. The globalization of mercantile laws, Intellectual Property Right (IPR) Laws and arbitration laws after the U.N. Commission on International Trade Laws (UNCITRAL) compelled the Indian Parliament to promulgate corresponding laws in accordance with the desires to WTO. Time has come for solving the legal disputes outside the court due to worldwide acceptance of Alternative disputes Resolution Systems (ADRS) by way of Arbitration Conciliation and Mediation.

Under WTO agreement India has allowed the entry of foreign law practitioners in India. The Indian lawyers have to face the situation arising from their giant foreign counterparts. There is an urgent need for imparting training to Indian lawyers so that they are fully equipped to compete with foreign lawyers. The real cause of fear and apprehension among Indian professionals over allowing foreigners to practice in India is the lack of competition and quality in legal education.

The purpose and function of law has assumed considerable significance in modern globalized world. The need for a continuing and well organized legal education
is absolutely essential reckoning the new trends in the world order, to meet every growing challenge. The legal education should be able to meet the ever growing demands of the society and should be thoroughly equipped to cater to the complexities of the different situations.

Globalization has already become a reality and we can no longer shut our eyes to the change taking place all around the world which has an impact on economic, social and technological activities. But unfortunately, in Indian the speed of change and reform in the field of legal education is extremely slow.

The legal education in Indian is at crossroads. The standard of legal education in the majority of law colleges is generally unsatisfactory. The common people do not give priority to legal education. Uncontrolled, growth of law colleges, poor quality in teaching, old and traditional methods, lack of infrastructure, lack of adequate library facilities, lack of computer and Internet facilities, absence of practical training, lack of finance are the major identifiable reasons for the present state of affairs in legal education apart from the problem of language.

Today, ‘Legal Education’ is in itself a specialized branch for study and there is abundant literature available, both Indian as well as foreign which refer to various concepts of legal education relevant both to teachers and students. Researcher view is that it is necessary for the Bar Councilors’, the Faculty, the UGC and the Managements to keep abreast of the developments in legal education in India and abroad. Researcher referred to legal education literature in India, USA, UK and Canada available at that time. It is suggested that the Legal Education Committee of the Bar Council of India as well as the UGC should have Libraries on the subject of legal education, consisting of literature on legal education so that the two committees could have the benefit of all the reports, past and present in India and contemporary literature on legal education from other countries. In the context of liberalization, privatization and globalization, the methods of legal education may have to be modified with suitable innovations. Several new subjects may also have to be introduced. In a recent book on Legal Education and Profession in India by Shri P.L. Mehta & Ms. Sushma Gupta, the history of legal
education is traced and the following reports are referred to chapter –III. The reports are:

1) Legal Education during 1861- 1961
2) First India University Commission Report 1902.
4) Report of the Bombay Legal Education Committee consisting of Dr. P.V. Kane, Justice N.H. Bhagwati.
6) Report of the All India Bar Committee, 1953.
9) Recommendations of the Gejendra gadkar Committee, 1964 appointed by Dr. C.D. Deshmukh, VC of Delhi University.
10) Formulations of All India Seminars on Legal Education, 1972.

We shall add to this list, the UGC Curriculum Development Report, 2001. There are reports on legal education produced by leading Universities and academic bodies in UK, USA and other countries. There are also journals on legal education. Steps must be taken to see that the copies of all these reports are available both with UGC and the Bar Council of India and they will be of immense help to the two Committees on Legal Education.

Several of the above Committees in India have also emphasized on the practical aspects of law. In this context, it is necessary to note that today the emphasis abroad is also on the practical aspects of law and the Report in USA on the subject is the celebrated Mac Crate Report (also called the Report of the Task Force of the American Bar Association on ‘Law Schools and profession').

There are again several important journals on legal education. For example, the Journal of Legal Education, published by the Association of American Law Schools (AALS) and the Journal of Professional Legal Education(USA) are leading journals and there are hundreds of articles in these journals on the subject in the past more than one decade. The journals also review books on legal education. There is, in addition to the above, a vast literature of articles by Judges, lawyers, academicians in India and abroad on legal education.

It appears that in the USA, 20 new courses were added during 1989-92 to the curriculum by the American Association of Law Schools. The Committee on Curriculum and Research in USA meets every three or four years to review the position.

Colleges are located in cities and districts headquarters all over the country. It is these students who come to the Bar in great numbers at the grass root level. It is the desire of the researcher that the Bar Council of India and academic community must co-ordinate and take steps which can result in upgrading the standards of legal education in these colleges which are spread over length and breadth of the country. A few bright-star colleges with limited number of student intake based on all-India selection is not the end and may not result in an overall change in the level of legal education.

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2 Deborah Jones Merrit & Jennifur Citon “New Course Offerings in the upper-level curriculum” (Vol 47), Journals of Legal Education, 1997, p.524
Upon the law student who emerges from the college depends the legal profession. Upon the legal profession depends the quality of the Judiciary. Once a lawyer practices for 3 years, he becomes eligible in most States to become a judicial officer at the level of a munsif. (Now, the Supreme Court has said that a law graduate can straight away go as a judicial officer). With seven years' experience, he becomes eligible in most States to be recruited as a District & Sessions Judge directly, who can deal with civil cases of unlimited pecuniary jurisdiction and who can recommend a sentence of death. Such are the high stakes involved. Therefore, there is need to make the curriculum stronger, and lay a firm foundation. Legal Education has to be taken seriously and kept on a high pedestal.

The Act, inter alia, provided for the setting up the Bar Council of India as the apex body and the State Bar Council. Under section 7(1) (h) of the Act, one of the functions of the Bar Council of India is to promote legal education and to lay down standards of legal education in the consultation with the universities imparting such education and Bar Council of States. Section 49(1) (d) of the Act; enable the Bar Council of India to frame rules in regard to the standards of legal education to be observed by the universities in India and their inspection for this purpose. The Bar Council of India in exercise of the said power has from time to time framed rules for the improvement in the standards of legal education and the same have been put to judicial scrutiny.

To improve the standards of profession, knowledge of various parts of advocacy is inevitable. Keeping this in mind the Bar Council of India framed the training rules in 1995. In V. Sudeer Vs. Bar Council of India; the Supreme Court quashed the rules of the Bar Council of India. The Court conceded that although the promotion of legal education is one of the statutory functions of the Bar Council of India, but the same should be carried on in consultation with universities and provisions of the Act which do not empower the Bar Council of India itself to frame rules.

The Apex Court invalidated the Training Rules1995. It expressed its grave concern over the falling standards of legal education. The court suggested and

\[3^\text{AIR 1999 SC1167}\]
recommended suitable changes in the Advocates Act to empower Bar Council of India to implement desired changes. However, till date the Advocates Act has not been amended by the legislature.

In order to standardize the quality of legal education, the Bar Council of India made endeavor to discourage casual and non-serious students from pursuing law course, by getting them enrolled in law colleges which run either in the morning or in the evening session without qualified teaching facility and proper paraphernalia. This facilitated candidates who are in services to pursue law studies after or before their working hours. This also helped the owners of such institutions to engage practicing lawyers to impart law teaching after their court hours. In order to curb both these practice, the Bar Council of India amended its rules and directed law colleges to switch over “Day” session from the academic session 2000-2001.

This amendment was challenged before various High Courts including Punjab and Haryana High Court. In *Gopal Krishna Chatrath Vs. Bar Council of India*, the Punjab and Haryana High Court quashed the said amendment and held that the universities must be consulted before making any change in the set-up providing legal education.

Section 24 (1) (c) (iii) of the Advocate’s Act provides that the person seeking admission as advocate should have undergone a three-year course of study in law from any university in India which is recognized by Bar Council of India Rule 17 (Part IV of BCI Rules) provides that no college impart legal education unless its affiliation to any university has approved by the Bar Council of India. Rule 17 (Part IV of BCI Rules) provides that no college shall impart legal education unless its affiliation to any has been approved by the Bar Council of India. Rule 18 deals with inspection of law institutions by a committee to be appointed for this purpose.

A division bench of Karnataka High Court in *Pruthvi Educational Trust Vs. Bar Council of India* validated the rules of Bar Council of India provided that no...
college shall impart instruction in course of study of law unless its affiliation has approved by the Bar Council of India. But latter a division bench of Karnataka High Court in *Manjula B.R. Vs. Karnataka State Bar Council*\(^7\) expressed different view. The bench observed that the words “Any University in India” under section 24 (1)(c)(iii) refer only to university constituted under any Central or State Act and does not include or refer to any independent private college, which affiliated to such university.

A perusal of the various cases decided by the Supreme Court and High Courts has established the fact that the Bar Council of India, in its present dispensation, is almost powerless to introduce or initiate any suitable modifications. It has miserably failed to check the mushrooming growth providing part-time teaching during morning and evening session by part-time unqualified teachers. The autonomy of university have also been adversely affected, their discretion have been taken without giving proper concern to its consequences. It is said that thought the Bar Council of India has been making sincere efforts to improve the standard of legal education; the situation has not changed much due to various factors like lack of co-ordination among the concerned authorities and absence of concerted efforts.

**Hypothesis**

1. To analyze and scrutinize the reports submitted by the different committees constituted by the government to enhance the level and standard of legal education in India.

2. Whether present statutory laws are sufficient to upgrade legal education in India.

3. Whether our present generation is getting sufficient and effective legal education.

4. Have adequate mechanism been put in place by the government to improve legal education in India?

\(^7\)AIR 2002 Kant.274
Research Methodology

Though the researcher has Prima facie relied on the primary and secondary sources of information and adopted doctrinal method of research. The Present study adopts analytical, descriptive and evaluative methods to draw conclusions and inferences. The present study also relies on relevant provisions of the related Laws. The study also relies on the Judgment on the apex court and other sources like article, various publications.

For the purpose of our study the whole work is divided into seven chapters.

Chapter 1 being introductory in nature introduces the subject and problem raised therein.

Chapter 2 deals with education and Globalization. In this chapter comparative analysis of education at the world level is prescribed.

Chapter 3 deals with Historical development of legal education in India. In this chapter an attempt has been made to find out the answer to question relating to the development of legal education in India.

Chapter 4 deals with the clinical legal education concept and concerns. In this chapter the actual position and development of clinical legal education in India, has been discussed.

Chapter 5 deals with the Legal education and its statutory frame work. In this chapter there is an attempt to find out the answer to the question whether the legislative developments in India are in right direction with some object or not.

Chapter 6 deals with legal education and legal aid. In this chapter the different provisions embodied in the Constitution are discussed which has enlighten the chapter.

Chapter 7 lastly deals with the conclusion and suggestions regarding the research topic.