CHAPTER - 2

Education and Globalization

2.1 Introduction

A Critical issue in legal education in the times to come is international. What is to be seen in how law schools, academicians, Professionals throughout the world respond to this need enormous development are taking place in the global economy. Initiatives are being taken from the top down, and quite literally, from bottom up. Changes in economic foundations of the world political economy are already evident. The emerge of china, India, Brazil and South Africa as Major players is being complemented by dramatic initiatives on the part of the U.S, and the European union to radically expand the structure of global economy.

Finance services, telecommunications manufacturing, e-commerce, and investments are all was areas where globalization is entrenched and continues to grow at a rapid rate. The migration of manufacturing jobs, software development positions and other employment opportunities from the United States to other countries where labour costs are lower are reported daily.

Major Banks, insurers and reinsurers operate on a global basis and e-commerce is no respecter of national boundaries. The global financial services market will continue to experience Major growth fuelled through mergers and acquisitions. The existence of this global market globalization cannot be ignored by any law school. Legal educators and legal practitioners will have to work in the educators and legal practitioners will have to work in the context of this rapidly changing environment. These are critical challenges for the future of the legal profession as a global force for providing structure and process for the providing structure and process for the complex world of tomorrow.
Globalization has been a subject of debates and discussions from numbers perspectives. There is no doubt that globalization has profound implications for the future of higher education worldwide. Inevitably, the need for raising academic standards, creating a better research environment, developing sound infrastructure, formulating good governance model, creating better career opportunities, and promoting professional advancement of academics are all central issues for formulating the necessary policies for higher education.

2.2 Meaning of education

Simple literacy suggests that “Education” is nothing but formative experience or development of mental character. Elite literacy enunciates that “Education” is the “formative experience in the development of character or mental power” But the celestial truth is that Education is not the unique province of human race only. However, Education is the primordial move in the acquisition of knowledge, which may subsequently be solidified into wisdom and that wisdom may eventually be culminated into enlightens. Such is the eternity of the education in human life, and it is a pious potion for a noble and robed intellectual. It is axiomatic that education is the best friend of oneself, if you befriend knowledge with the help of education, you are said to have been equipped for ‘ill materialization’ in the word of Addison Joseph, ‘what is to a block of marble, education is to a human soul’ Thomas Kempis once said “nowhere in the world I could find peace, except in a corner with a small book” true, books are the set of education.

2.2.1 Importance of Education

It will be interesting to note the Supreme Court’s view on the importance of the education: “Learning is excellence of wealth that none destroy: to man naught else affords reality of joy”.

2. Ravlapati Madhavi “Legal Education in India challenges & perspective” The Journal of Value Inquiry No.2, 1976, p68
3. As per immortal poet valluvar cited in the case of Unikrishnam vs Andhra Pradesh, AIR 1993 SC 2172 ( para 148.)
“An old Sanskrit adage states that is education which leads to liberation: liberation from ignorance which shrouds the mind, liberation from superstition which paralyses efforts, liberation from prejudice which blinds the vision of truth”.

“victories gained, peace is preserved, progress is not on the battlefields where ghostly is made not on the battlefields where ghostly murders are committed in the name, of patriotism, not in the counsel of chambers where insipid speeches are spun out –in the name of debate. Not even in factories where are manufactured novel instruments to strangle life, but in educational institutions which are the seed buds of culture, where the children in whose hands, quiver, the destinies of future are trained, from their ranks will come out when they grow up, statesmen and soldiers, patriots and philosophers who will determines the progress of the land.”

2.2.2 Importance of Legal Education

Article 26(1) universal declaration of human rights states: Everyone has the right to education. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit”. Hence withdrawal of part-time legal education is against the spirit of this universal declaration.

Our National leader like Mahatma Gandhiji, Pandit Jawaharlal Nehru, Sardar Vallabhai Patel happened to be law graduates. Perhaps legal education any be the thought promoter for their struggle of our country’s independence. The purpose of law degree is not merely for enrolment as an advocate in wider spectrum learning and knowledge of law is very much necessary to the persons of all walks of life who undertake different vocations. Legal knowledge is a must to reach excellence in one’s own adopted vocation.

For example, a Banker must be well aware of the enactments like the Banking Regulation Act, etc. A businessman must be aware of transfer of property Act, Indian contract Act, & sale of goods Act etc. A real Estate developer must know the provisions of transfer of Property Act, Registration Act, succession Acts, etc. That is

4 As per immortal poet valluvar cited in the case of Unikrishnam vs Andhra Pradesh, AIR 1993 SC 2172 (para 12)
5 Ibid, Para 14
why the qualification of law degree is recognized for giving due weight at the time of selection as well as department promotions for employees. Therefore law degree is necessary for the employees in various sections to perform well and reach excellence in their respective occupation.

On the other cannot, Ignorance of law have any excuse; all the citizens are expected to know what are their fundamental rights conferred by the constitution. The other of the coin contain the directive principles of state policy, by knowledge of which the employees of state/central government may tilt the state action towards the achievement of the directive principals, if an opportunity is given to them to study law under part time. As there is no excuse for ignorance of law the endeavor should be to make learning law, as compulsory to the citizens of the country. Then how far it is justified to withdraw the opportunity of employees under part time which they were entitled till the year of 2000.

There exists an opinion that an employee is having an opportunity to serve his employer for salary till his retirement after his employment, as a gift of part time legal education, he gets another opportunity for enrolling himself as an advocate and can start his profession and earning as a competitor to already existing other advocates. The answer can be found in Supreme Court’s opinion “the fundamental purpose of Education is the same at all times and places. It is to transfigure the human personality into a pattern of perfection through a systematic process the development of the body, the environment of the mind, the sublimation of the emotions and the illumination of the spirit. Education is a preparation for a living and for life, here and here after”.

We may observe that part time legal education. Education of an employee is “for a living and for life, here and hereafter”, and thus its denial is quite unjustified.

Employees can start their legal profession only after them come out of employment as clarified by Supreme Court “profession requires full time attention and would not countenance an advocate two horses or more at a time. He has to be full time advocate or not at all”. In other words, an employee is denied of an opportunity for

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6 As per immortal poet valluvar: *Unikrishnam vs Andhra Pradesh*, AIR 1993 SC 2172 (para 14).
7 *Dr. Haniraj L. chulani Vs Bar Council of Maharashtra*, AIR 1966 SC 1708.
acquiring the qualifications necessary for him to ride even “one Horse” after his
retirement which is unjustified. At the same time it is well prohibited that an employee
shall not practice as an advocate during his employment. Sarcastically an employee is
allowed to ride on old horse only and there is no danger of overtaking the young horses.

2.2.3 Changing goals of Legal Education

The legal education, in modern times is not confined to production of practicing
advocates alone. Its scope and ambit is very wide, and its impact is felt in every sphere
of human life. As ‘law’ is considered to be a tool social engineering the legal education
has become a means to bring changes in the society for the betterment in the lives of
citizens. Now a lawyer i.e., a person who completes his legal education has many
options before him which include the practice of law. He can become an advocate, a
legal counselor, a legal advisor, legal consultant, a solicitor an academic advocate, a
legal executive, a legislative draftsman, a family counselor etc. A person trained in law
can contribute in any above capacities and bring in a social change.

In view of the expansion of the field of law and emergence of new kinds of
jurisprudence, the legal education present includes the production of well-trained
lawyers, judges, legal and corporate executives and law teachers. It has a commitment
the society, the corporate sector and the State. As S.P. Sathe correctly stated, legal
education is required for equipping men and women to perform a variety of legal roles
requiring a variety of skills, such as problem analysis, oral and written communication,
counseling, advocacy and negotiation, the methodologies of legal reasoning and legal
research.8 Prof. Sathe also rightly opined that legal education has unfortunately
received a very casual treatment from Indian educational planner.9 Historically
speaking, the first Indian University Commission was appointed in 1902 which
recommended admission to the LL.B course was the graduates of arts and science. The
admission to the LL.B course was reduced from three years to two years on its
recommendation. The Commission also recommended the introduction of better

8 See legal Education in a Changing world- Report of the Committee on legal Education in the
Developing Countries p. 62.
p. 1643.
teaching methods, particularly the case method, which did not fructify. Probably due to these reasons that the Radha Krishna commission (1948) went on to observe that our law colleges did not hold” a place of high esteem at home or abroad.\textsuperscript{10}

The 14\textsuperscript{th} report of Law commission of India submitted by M.C. Setalvad on “Reform of Judicial Administration” in its chapter 25 entitled “Legal Education”, has thrown light on the question of legal education in India.\textsuperscript{11} The commission took note need for reforms in the system of legal education in our country. It opined that factors like treating law colleges as part time institutions, absence of juristic thought, and deterioration in standards, overcrowding in law colleges and Art colleges running law colleges, are responsible for the sorry state of affairs in the case of legal education in India. The Commission also felt that two-year duration of the law degree course was not sufficient for covering the large number of subjects taught. Consequently the commission recommended three years duration for the law degree course by quoting Sri Tej Bahadur Sapru who said that “it is impossible to traverse even a respectable area of law within two years” and that if the university want to raise their standard of legal education, if the Universities want their graduates in law should have a more extensive, if not more extensive, if not more intensive knowledge of law, then the least they can do is they must provide three years course”.\textsuperscript{12} Unfortunately, this report is often cited for the reported observations of a law teacher of experience and a former member of Union Public service commission to the effect that “there are already a plethora of LL.B’s half-backed lawyers, who do not know even the elements of law and who are let loose upon society as drones and parasites in different parts of the country. As a member of the Union Public service commission, I have had occasions to interview several first class graduates of law from different Universities. Several of them did not know the names of the books prescribed; did not know what subjects were prescribed either in the first and second LL.B; did not know the sight of the books, because they had not seen them and asserted cheerfully that all they had done was to

\textsuperscript{12} Cited in the Bombay Legal Education Committee Report, p. 37.
crum the lecturer’s notes"\textsuperscript{13} The said observation appears to be contemptuous and generalized.

Ultimately the 14\textsuperscript{th} Report of the Law Commission of India we not on to suggest certain measures to improve the standards of legal education in India including (i) introduction of a 3-years law course, (ii) making law colleges to be full time institutions, (iii) allocation of adequate/ample funds of state available for placing the imparting of legal instruction on a sound and modern footing, (iv) appoint of full-time teachers, (v) supplementary the lecture method by seminars, moot courts and case method, (vi) undertaking research in law and (vii) introduction of an apprenticeship course of one year duration after completion of the course.

The second phase of reforms in law-teaching began in 1960s with the enactment of the Advocates Act, 1961 in response to the findings and suggestions of the 14\textsuperscript{th} Report of the Law Commission. Under the said Act, the Bar Council has been entrusted with the responsibility to promote legal education and to lay down standards of such education in consultation with the Universities in India imparting such education and bar councils of States. The UGC, established under an Act of 1956, a little while earlier, was also entrusted with the responsibility of improving standards in Indian Universities. Both these developments contributed to the second phase of reforms to improve standards of legal education in India. In fact in many of the traditional law colleges and law schools throughout India, it is the impact of the second phase of reforms which is witnessed even today.

The third phase of reforms form the mid-1970s to the late 1980s culminating with establishment of the National Law School at Bangalore has ushered in certain reforms in selected areas. It commenced with a series of four workshops on ‘the modernization of legal education’ organized under the auspices of the UGC between Dec-1975 and Dec-1976.\textsuperscript{14} The above proceedings were published in1979 in a report entitled “towards a Socially Relevant Legal Education”. In 1981, the UGC issued another report on “the Status of Teaching and Research in the Discipline of Law.” As

\textsuperscript{13} The 14\textsuperscript{th} Report of the Law commission of India, at pp. 14.455 and 14.456.

\textsuperscript{14} The description of the phases of reform is drawn from the report is drawn from the report of the Curriculum Development Centre in Law (Vol.1) UGC, 1992 at p.2 (Para 1.7).
regards the establishment of National Law School, there are two conflicting views. The
supporting view is that it is necessary to have such institutions to make legal education
socially relevant, to ensure academic autonomy and to introduce innovative teaching
methods along with a curriculum that reflects current policy changes. The other view
was echoed by S. P. Sathe is that the National Law Schools are elitist in character; and
cater to the needs of a minuscule but powerful section of the society. The late
Professor also rightly predicted way back in 1974 that ‘only affluent students can join
the proposed national law school’. He also emphasized that the Bar Council should plan
to legal education in general rather than concentrate on elitist institution which will
benefit only a small percentage of the student body. Further the Central and State
government and the UGC must take the prime responsibility for improving the legal
education.

2.2.4 Current Status of Legal education in India

At present, one can find different kinds of law schools imparting professional
legal education in India. They include (i) the law schools forming part of the University
system, run from the University campus. (ii) the Govt. Law Colleges run by the State
Government and affiliated to Universities, (iii) the private law colleges affiliated to
Universities in the State; and (iv) the national law school type institution modeled on
the NLSIU, Bangalore. Whereas one finds many similarities between the first three
categories of law schools mentioned above, the fourth category stands on a different
footing altogether. The national law school type institutions have the following
advantages over and above the first three categories. They are (a) greater academic
autonomy, (b) better infrastructure, (c) greater administrative autonomy, (d) better
financial resources, (e) patronage of the Judiciary, government and the Bar and (f) the
elitist character etc. In fact, they are in an enviable position in every respect, thanks
mainly to the unconditional support they receive from various. Thus they can fix
substantial amount as fee, they can devise any number of academic programmers, and
they are given preference and sometimes monopoly in the matter of sanctioning of
projects by the government and international institutions and in conducting workshops.

15 See Satha S.P. “Is a National Law School necessary?” Economic and Political Weekly, Sept. 28, 1974,
pp. 1643-1645.
seminars and conferences. The judiciary, which is given a prominent place in the running of such institutions, as per the provisions of the State laws made to create them, plays a very active role of Godfather. In certain States like A.P. there have been instances of the courts directing the parties to pay costs in legal proceedings for institutions like NALSAR. Therefore, the National Law Schools receive a favorable and preferential treatment from every concerned quarter, and so are the teachers working there.

As regards the other categories of law schools, they have their own limitations in the form of (i) lack of autonomy in fixing the fees collected from students, (ii) lack of academic autonomy in course design, (iii) revision and retardation of syllabus, (iv) the predominant view that law is not a professional course; but a social science on part with political science and sociology etc., (v) the attitude of the students which is not professional and (vi) the attitude of teachers which is lackadaisical most of the times etc. Another factor that undermined the status and prestige of the traditional law schools generally is the lack of infrastructure. The net result of such schools causative factors is that the majority of students graduating from such schools lack fluency in English language, lack analytical skills, lack sometimes even the fundamental knowledge of legal subjects; and more importantly they demand high percentage of marks even though they do not deserve them. Naturally they make half-backed lawyers and they would become drones and parasites as pointed out by someone.

Now coming to the role of law teachers in imparting better legal education and intellectual advancement, it varies depending on the institution for which they are working, the attitude of the students the infrastructure, the incentives for academic and pedagogic excellence and the emerging areas of legal education.

The law teachers’ role in the light of the preceding discussion assumes importance in advancing legal education in India. The lacunae in the legal education system in India could have been rectified to a great extent had the teaching community played its role of perfection. There is no justification in blaming the State, the UGC, Bar Council and the judiciary alone for the present sorry state of affairs in the traditional law schools. A significant part of the blame lies on the law teachers also. Whereas the part-time law teachers donned the role of professors in the 1950s to
mostly, the career legal academicians came to be appointed after the Advocates Act, 1961 came into force. But one glaring aspect that has not been addressed property in India appears to be constitution of a law teachers’ body at All India level, for playing an active role in legal education.16

The law teachers can play an effective role in better legal education in the following areas:

I) in the curriculum reform relating to LL.B. and LL.M.
II) in conducting clinical legal education effectively
III) in conducting Para–legal programmes like conducting free legal-aid, legal literacy and counseling programmes;
IV) in objective evaluation of the examination of the students;
V) in devising innovative academic programmes; and
VI) in making the students well acquainted with the use of computers in legal education and legal profession etc.

They can discharge the above functions effectively, only when they have a commitment to law teaching; and are also to do the above acts as per the syllabi and other guidelines. A part time teacher, a lawyer teaching law on part-time basis, a retired teacher or a research scholar is not in a position to perform the above tasks. It is the duty of career academicians to pay a significant role in the above areas. However they need to understand that they are not comfortably placed as compared to the teachers of national law schools, in terms of autonomy in academic matters, infrastructural facilities available, the exchange programmes with other institutions including foreign Universities, the projects sanctioned by government; and more importantly the funding the parent institution receives or generates.

This makes the task of teachers in traditional law schools even more challenging. As the law teachers in the traditional institutions produce almost 90% of the lawyers in India, their effective contributions will go a long way in improving the

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16 The All India Law Teachers Association has been formed but it has been confined to holding some seminars and conferences; and it is not a true representative of all the teachers in India. Further it has not been consulted by the Government, UGC and other bodies in policy formulation and other aspects of legal education.
standards of legal education in India. This will naturally lead to production of better lawyers, Judges and policy makers.

The law teachers, therefore have to update their knowledge acquaint themselves with the art of using computers in legal profession, contribute thought provoking and original articles and papers on important and contemporary developments in law, adopt multi-disciplinary and inter-disciplinary approach in teaching law; and establish a good working relationship between law schools, judiciary, Bar and the corporate sector etc. They must remember that one bad teacher can spoil generations of students and one bad law teacher can affect adversely the society at large. In the absence of many incentives to their counterparts in corporate national law schools, self-motivation is the best tool for imparting a better legal education. It is an undisputed fact that at present good law teachers is very hard to find; and even if any such competent teacher is found, the prevailing conditions in the law schools.

Therefore, it is the duty of the state, Bar Councils, UGC and the University apart from the managements to give incentives to competent law teachers periodically, to provide adequate facilities for quality education and research, to provide financial security and to provide sufficient opportunities for acquiring updating their knowledge. The time has come for the Bar Council of India, the UGC and the judiciary etc., to recognize ‘law’ as a professional course, to divert their attention to the traditional law schools and teachers, and to make them partners in the task of improving standards of legal education in India. At the same time, the law teachers also must organize themselves to become a force to reckon with. They can play a collective and constructive role in providing quality education in India. It is sincerely hoped that all the concerned players will go for a deep introspection on this aspect and on the role of law teachers in imparting a better legal education, which is a sine qua non for an intellectual society.

On an analysis of reforms in legal education in India in the 20th century, it can be seen that first three phases of reforms contributed ideas that are of crucial importance to legal education in India viz. ‘professionalization’ during first phase, ‘setting and maintaining high academic standards’ in second phase and ‘social relevant’ in third phase respectively the next and new & old vision. It should develop a strategy that is
anchored in the broader issue of reform of the legal and judicial system, and integrated with it. The next phase should also be prepared to question the fundamental paradigm of the role of law in India referred, and to develop a new vision for the role of law in which legal education would have a distinct role.

The law teachers therefore are required to keep in mind the following aspects in performing their task to perfection in the 21st century. They are

1. The changing role of the state,
2. Expansion of the international dimension of economic transactions,
3. Rise of trans-national law and institutions,
4. The expanding of courts in view of rapid advances in communication, transportation and information technologies,
5. Complexity and specialization,
6. New Risks for Marginalized Sections
7. Development of skills necessary for such critical and innovative analysis,
8. Need to interests of vulnerable sections, and
9. Need for greater inculcation of gender sensitivity in the courses taught.

To sum up, there is a dire need for legal education and professionals to focus on the rapid changes occurring in all aspects of human societal relations in an effort to evaluate and respond to them.

2.2.5 Legal education, Liberal and Professional

Legal education is a small, yet significant component of higher education which is attracting, unlike in past, a lot of attention today. Legal education, in a liberal sense, involves imparting basic understanding of the law and Justice systems on order to build a healthy democratic society under rule of law and to promote responsible citizenship with awareness of rights and responsibilities. There is a strong ease in this regard to teach the constitution to all students in schools and colleges. Professional education in law, on the other hand is concerned with preparation of legally trained persons to act as lawyers and judges for the increasingly numbers tasks of governance, socio-economic reconstruction, adjudication of disputes, conduct of international relation legal research
and reform etc. the question before us is how well is the existing system of professional legal education geared to reform these tasks which are likely to become more complex and challenging in the years to come\textsuperscript{17}.

The proposal in respect of liberal education include teaching of appropriate citizenship modules in the school curriculum, introduction of ‘law’ as a subject in the graduate courses in colleges and universities and developing extension programmes in the form of Para-legal courses suitable to a wide range of government, Para-stated and civil society organizations. Some universities are already involved in the types of liberal legal education activities which do strengthen rule of law and democratic development particularly at the grass roots. Indira Gandhi Open University’s school of law has embarked on an ambitious agenda for legal education through the distance mode which deserves to be emulated by other universities. Teaching of Law subjects is also picking up in commerce and management departments, medical and engineering schools and social work institution though they are more designed to equip the respective professionals to use tools and resources to advance their professional goals, rather than to make an aware citizenry.

What is more important in the immediate future for the country is the quality of professional legal education which is less than 100 years old and is still managed by a mix of good, bad and indifferent institutions. The state of legal education in the country at the time of independence was neither uniform nor professional, nor standardized to the needs of the young Republic. There less than fifty colleges teaching law mostly in major cities and that to run on part-time students not seriously pursuing a career in law. The result was that students who were serious to join the profession and could afford the costs went to England for legal studies. Recognizing the total inadequacy of university education in law, the organized profession in the respective states insisted on compulsory apprenticeship with a senior lawyer for at least one year coupled with a tough Bar Council conducted examination on professional subjects before anyone could be enrolled for legal practice, Obviously, the academic and professional point of view.

\textsuperscript{17} Prof. Madhava Menon N.R. “Reflections on Legal and Judicial Education”, edition 2009, p.80.
The problem was compounded because of liberal admission to legal practice of people who never went to universities for legal education but were associated with administration of Justice as vakils, Muktiars, pleaders and agent for a certain period of time.

When the Indian Advocate Act was enacted by Parliament in 1961, a major change was initiated by entrusting the development and control of legal education to the elected Bar Councils. It was to be organized in consultation with universities teaching law through a statutory committee called the Legal Education Committee. The story of legal education from 1961 till date is a mixed bag of “little done vast undone” for which the teachers, students, Bar Councils, universities and the State/Central Government have to own up responsibilities.

Looking back at these five decades of legal education since 1961, I find a lot of missed opportunities and half-hearted reform resulting in a situation where each efforts step forwarded was followed by two steps backward in efforts to reform legal education from the morass it has fallen perhaps the challenges of technology and globalization coupled with new opportunities emerging for legally trained persons may now influence the course of professional legal education in better way of sustained reform for excellence relatively autonomous of other human, social sciences. It furnishes beyond techniques, skills and competences, the basic philosophies, ideologies, critiques and instrumentalities, all addressed to the creation and maintenance of a just society. It is in this concern with justice in society and with attaining a just society which differentiates legal from other social and human sciences”. This deter minces the very fundamental basis of legal education and at this level, the classification of professional versus non-professional legal education becomes meaningless. The Baxi Committee had to confront three challenges to meet its lofty ideals. These were (a) modernization of syllabi to make them socially relevant, (b) multi-disciplinary enrichment of law curricula and (c) corresponding pedagogic modifications. Let us also examine the views of the Bar council and its leaders on legal education. According to Mr. Ram Jethmalani, the formidable requirements of lawyer are: -

(1) “ability to comprehend truth from falsehood
(2) knowledge that facts are ultimately established by testimony of witnesses; rarely by documents or circumstances alone;
(3) ability to garble with witnesses
(4) ability to reason and draw appropriate,
(5) ability to play game rules in the court,
(6) command over language,
(7) knowledge of rules of procedure and evidence,
(8) Knowledge to deal with clients and opponents with honestly, firmness and tact, and
(9) Quality to cultivate critical faculty to the problem of law reform”.

This as is clear is a narrow view and is confined to the demands of limitative layering. Such a highly skilled professional education, without an in-depth knowledge and appreciation of fundamentals of law, is quite likely to create a completely exploitative legal profession. Good governance necessarily requires Rule of Law which seeks justice and ensures a just society. Therefore, even though one can perceive a highly skill-oriented professional legal educational system, society may not be interested in such a kind of legal professional education at all. This proposition fundamentally question the ability of the Bar council of India to down standards for legal education.

Truly speaking the Bar Council of India can only prescribe that part of legal education which concern legal techniques or skills. The UGC on the other hand, is also not competent to standardize legal education because of its inability to comprehend the structure of technology, and the skills of legal education which are required for the profession. But that part of standard setting which is concerned with fundamentals like basic philosophies, ideologies, critiques and instrumentalities, and addresses itself to the creation and maintenance of a just society, is properly within the domains of the UGC thus, functioning of these two apex standard setting bodies should be complementary. In the recent report of the Law commission of India, it has been suggested that a statutory legal education committee of the Bar Council of India should be established which has equal representatives drawn from eminent people in the Bar, Bench and the Academia, in order to prepare a proper legal curriculum. The members
of the committee are to be nominated on the basis of their specialty and expertise, and not on the basis of any political ideology or inclination.

2.2.6 Future Professional Need

India needs a strong legal professional for both constructive and meditative professional management. It also requires competent lawyers to bear the responsibility of public administration. A good quantitative and qualitative legal education programme can give the country at least 8 to 10 thousand competitive lawyers to meet the challenges of the new economic order as well as new challenges in the areas of constitutional and criminal law in the next 4 to 5 years. Only such competitive legal profession can protect the country’s need financial restructuring.

Legal education is an investment which if wisely will produce most beneficial results for the nation and accelerate the pace of development. Of late the role of a lawyer in a common law system is more than a skilled legal mechanic; he acts as a harmonizer should be aligned to the conventional and contemporary needs of the legal profession.

2.3 Rule of Law and Role of Lawyers

We are a nation of Constitutional governance ruled by law. We believe in the saying “Be you ever so high, the law is above you”. In the modern era ours is a welfare democratic State, which has adhered to the principles of equality of opportunity and equality of justice. Perhaps that is the reason why our Constitution gives primacy to the common man. Karl Marx said that “Men make Constitutions and Constitutions do not make men”. Our Constitution therefore rightly recognizes the man as the cog in the great wheel of progress towards prosperity and recognized the man and the man alone as the signature music in the perennial rhythm with which the welfare State conducts its opera. As a beginning point to understand the importance of role of Lawyers in the rule of law, it is apt to briefly indicate the principles of rule of law.
The basic idea of rule of law taken in its broadest sense means that people should obey the law and be ruled by it. Some of the writers recognized the following as essential principles of rule of law.

1. All laws should be prospective, open and clear. Law cannot be retroactive;
2. Laws should be relatively stable;
3. The making of particular laws should be guided by open, stable, clear and general rules;
4. The independence of the judiciary must be guaranteed;
5. The principles of natural justice must be observed;
6. The Courts should have review powers over the implementation of the other principles;
7. The Courts should be easily accessible;
8. The discretion of the crime preventing agencies should not be allowed to pervert the law.

Principles 1 to 3 form a separate group and require that law should conform to the standards designed to enable it effectively to guide action. Principles 4 to 8 are designed to ensure that legal machinery of enforcing the law should not deprive it of its ability to guide through distorted enforcement and that it shall be capable of supervising conformity to the rule of law and provide effective remedies in cases of deviation from it.

Universal Declaration of Human Rights, 1948 declares that human rights should be protected by rule of law so as to avoid the man resorting to rebellion against tyranny and oppression. While enumerating as many as twenty-seven human rights it declares that everyone charged with a penal offence shall have guarantees necessary for his defense and that everyone has the right to an effective remedy by the competent Courts and Tribunals for acts violating the fundamental rights granted to him by the Constitution or by the Law. Thus, rule of law also includes the principle that every citizen should have a guarantee of effectively defending himself for protection of his fundamental rights. In a Court of law, such effective defense cannot be possible without a specialized impartial profession to plead for other citizens. Every citizen cannot be
expected to know the laws. In modern day the proliferation of enactments by Legislatures is so vast that by the time legislation is enforced completely, the object with which it was made either vanishes or is lost. All the citizens are laymen when it comes to knowing the law. Mr. Justice Southerland of U.S. Supreme Court in *Powell vs. Alabama*\(^{18}\) emphasized the need for a person with skill in law to plead for others.

“Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence, left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, von though he have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence, If that be true of men of intelligence how much more trice is if of the ignorance and illiterate, or those of feeble intellect.” The Supreme Court of India of India also recognized the importance of a person skilled in law. It was observed in *Suk Das vs. Union Territory of Arunanchal Pradesh*\(^{19}\) as follows.

> “Even literate people do not know what are their rights and entitlements under the law. It is this absence of legal awareness which is responsible for the deception, exploitation and deprivation of rights and benefits from which the poor suffer in this land. Their legal needs always stand to become crisis oriented because their ignorance prevents them from anticipating legal troubles and approaching a lawyer for consultation and advice in time and their poverty magnifies the impact of the legal troubles and difficulties when they come. Moreover, because of their ignorance and if literacy, they cannot become self-reliant; they cannot even help themselves. The law ceases to be their protector because they do not know that they are entitled to the protection of the law and they can avail of the legal service programme for putting an end to the exploitation and winning their rights.”

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\(^{18}\) 287 US 45 (1932)  
\(^{19}\) AIR 1986 SC 990
In all modern Constitutions as observed by Professor Lawrence Tribe the endeavor is to protect the rights of democratic minority from the brute majority. The U.N. declared guarantees therefore necessarily involve the right to be informed about the grounds for indictment and right to be defended by legal practitioner of his choice. The right to life is an inviolable and inalienable right recognized by the Constitution. It is the nature’s gift to every human being and the same cannot be lightly meddled with by the democratic majority. In United Stated the right to counsel was declared to be part of “due process of law” Clause of XIV Amendment to US Constitution. In this connection, I would like to discuss an interesting case decided by the US Supreme Court in *Miranda vs. Arizona*,\(^2\) which is popularly called the ‘Miranda Warnings case’.

In the said case, Miranda was arrested and taken to Police Station on the charge of kidnapping and forcibly raping an eighteen year old girl. At that time the accused was twenty-three years old, indigent and educated only up to ninth grade. He was suffering from emotional illness of schizophrenia. At the Police Station he was interrogated by two officers in a separate room for more than two hours where upon Miranda gave a detailed oral confession and then wrote it in his own hand and signed a brief statement admitting and describing the crime. The admission was extracted without any force, threats or promises and without any warnings. When the case ultimately reached the Supreme Court of US, Chief Justice Warren speaking for majority held that the confession statement signed by Miranda is no evidence as it was obtained without informing the accused his constitutionally guaranteed right to have the assistance of a counsel. The following observations of the US Supreme Court are apt.

“We hold that when an individual is taken into custody or otherwise deprived of his freedom by the authorities in any significant way and are subjected to questioning; the privilege against self-incrimination is jeopardized. Procedural safeguards must be employed to protect the privilege and unless other fully effective means are adopted to notify the person of his right of silence and to assure that the exercise of the right will be scrupulously honored, the following measures are required. He must be warned prior to any questioning that he has the right to remain silent, that anything he says can be

\(^2\)AIR 1984 SC 436.
used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires. Opportunity to exercise these rights must be afforded to him throughout the interrogation. After such warnings have been given, and such opportunity afforded him, the individual may knowingly and intelligently waive these rights and agree to answer questions or make a statement.”

2.3.1 Right to Legal Services

The Supreme Court of India approved in *M.H. Hoskot vs. State of Maharashtra* observed that the fair procedure includes the social defense of the accused by providing effective legal defense through a counsel. Without doing so, the fundamental right to life and liberty guaranteed in Article 21 of the Constitution of India would be defeated; it is a part of basic civilized jurisprudence that mighty State should not inflict on the weak and meek accused criminal punishment without affording procedural rights. The Court observed,

“The other ingredient of fair procedure to a prisoner, who has to seek his liberation through the court process, is lawyer’s services. Judicial justice, with procedural intricacies, legal submissions and critical examination of evidence, leans upon professional expertise, and a failure of equal justice under the law is on the cards where such supportive skill is absent for one side, our judicature, molded by Anglo-American models and our judicial process, engineered by kindred legal technology, compel the collaboration of lawyer-power for steering the wheels of equal justice under the law.”

The principle enunciated in *Miranda vs. Arizona* case is also recognized as part of Indian Constitutional Law in *D.K. Basu vs. State of West Bengal* and the Supreme Court of India inter alia laid down that a person arrested shall be entitled to have one friend or relative being informed that he has been arrested and detained in a

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21 In case of *Miranda Warnings case*, US chief Justice Warren Observed.
22 AIR 1978 SC 1548.
23 *M.H. Hoskot v. State of Maharashtra*.
24 384 SC 436
25 AIR 1997 SC 610
particular place and that the arrested person shall be permitted to meet his lawyer during interrogation.

The importance of legal services to a citizen pitted against the State as well as the citizen who is pitted against another powerful citizen was realized and by the Constitution (Forty Second) Amendment Act, 1976 Article 39A was introduced as a directive principle of State policy obliging the State to secure the operation of legal system to promote justice on the basis of equal opportunity by providing free legal aid to ensure that opportunity for securing justice are not denied to any citizen by reason of economic disabilities. Interpreting Article 21 and 39A of the Constitution of India, the Supreme Court in a large number of decisions for example *M.H. Hoskot vs. State of Maharashtra, State of Haryana vs. Darshana*, *Hussainara vs. State of Bihar*, *Khatri vs. State of Bihar*, and *Sukh Das vs. Union territory of Arunachal Pradesh*, laid down that it is the fundamental right of every citizen facing indictment to have a right to a defense counsel and any conviction without providing legal aid would be Constitutionally invalid.

We can say that effective mechanism of legal services is part of rule of law and every citizen has a right for services of a trained legal counsel at the stage of arrest, investigation, interrogation and trial, an every civil litigation involving vindication of common law right or statutory right.

**2.4 Administration of Justice and Law Colleges**

Administration of justice and Judicial process in India is based on Anglo-Saxon and Anglo-American model. It is mostly adversarial in nature. Given the complexity of law which lays down generalities leaving specifics to the justice delivery system to innovate and apply, it is not always possible for the litigant to plead justice by himself. As early as the Laws of Henry I (1110-35 AD), the law permitted a man to plead in

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26 AIR 1979 SC 855  
27 AIR 1979 SC 1369  
28 AIR 1981 SC 928  
29 AIR 1986 SC 991  
Court on behalf of another. A well informed and skillful lawyer would provide effective and satisfactory service to a client who can afford to pay. An indigent person is therefore necessarily deprived of best and effective legal services of a well-informed lawyer. How true it is, that no modern society which values human rights would survive without professional advocates. The importance of lawyers not only lies in serving the cause of the litigants, but also in the fact that they form the inputs for the other products and bye-products of justice delivery system. The lawyers are appointed as Judges, Government Law Officers, Legal Advisors and some of them even become teachers in Law Colleges. It would therefore truism to say that in the administration of justice, lawyers and law colleges which train law graduates have an important role to play. They have also important role in the judicial process.

The legal education has been a subject of serious concern of the Nation ever since the first Government Law School was established in Bombay in 1855. The subject was examined by Calcutta University Commission of 1917-1919, the University Education Commission, 1948-49, (Prof. Radhakrishnan Commission), the Bombay Legal Education Committee of 1949, the All India Bar Committee of 1953, the Rajasthan Legal Education Committee of 1955 and the Committee of Judges appointed by Chief Justice of India as resolved by Conference of Chief Justices, 1993.

The XIV Report of Law Commission of India discussed the status of legal education and recognized the need for reform in the system of legal education. The Commission quoted with approval the observations of Justice Muthuswami Iyer made in 1885:

“Law is hitherto studied in this presidency more as an art founded on certain arbitrary and technical rules than as a science which consists of principles laid down for protecting human interests in various life relations A College, therefore, where legal education is to be imparted on a scientific basis, will be of great value to the country, and exercise a very beneficial influence on the practice of law as an art”. 31

In 1935, Sir Tej Bahadur Sapru as Chairman of Unemployment Committee appointed by the Government of Uttar Pradesh observed.

“Our own view is that so far as universities in these provinces are concerned legal education has not occupied the place to which its importance entitled it and we are not prepared to say that the standard of legal education has risen to the extent to which it has risen in certain other departments”. 32

In 1949, the Radhakrishnan Commission compared Indian System of Legal Education with that of Europe and America and observed.

“In Europe and America, legal education has long occupied a high niche among the leaned curricula. Products of the study of law have frequently risen to positions of distinction in public service or have amassed fortunes in the private practice of law or have acquired wide reputation as scholars even without entering practice. Legal education is on an elevated plane and teachers of law enjoy a high respect, perhaps as high as or higher than those of any other field of instruction. In our country, we have eminent practitioners and excellent judges. This law has also given us great leaders and men consecrated to public service. Most conspicuous of these is Gandhiji. Here the comparison ends. We have no internationally known expounders of jurisprudence and legal studies 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” 33

In 1858, the First Law Commission of India observed that the position in regard to legal education of the country since the publication of the Radhakrishnan Commission (1948-49) definitely deteriorated further and that serious study of law on scientific lines is conspicuous by its absence in law colleges.

In 1993-94, a Committee consisting of Justice A.M. Ahmed, Justice M. Jagannadha Rao and Justice B.N. Kirpal was constituted by the Chief Justice of India in accordance with the resolution of the Conference of Chief Justices, 1993 to suggest appropriate steps to be taken in the matter of legal education so that the law graduates acquire sufficient experience before them became entitled to practice in the Courts. The said Committee noticed the status of legal education and lawyers in the following words:

32XIV Report of Law Commission of India, at p 520.
33Id. at 521.
“Today, it appears that there are 84 Indian Universities which award a Bachelor’s degree in Law. It is said that there are around 464 Law Colleges in all in the country and while there are around 6 lakh law graduates every year. There are about 5500 Bar Associations throughout the country. India has the second largest number of lawyers in the world next only to the U.S.A. but even so, the lawyer-population ratio is believed to be not sufficient enough to cater to the needs of about 80 crore people.”

The Committee further noticed the falling standards in legal education and quoted the observations of Justice Ahmadi:

“Since all law teaching is undertaken by the Universities and Colleges affiliated to universities, and since a recognized University Law Degree is in itself sufficient qualification for entry into the profession, a heavy duty lies on those who manage the affairs of the Bar Council of India to take appropriate steps to enhance the prestige of the legal profession by ensuring high quality legal education.”

Therefore, from the days of teaching law as specialized subject in specialized colleges, it is universally accepted that the Indian legal education system has produced few internationally known ‘expounders of jurisprudence’. We failed to produce great jurists though the legal profession was able to produce freedom fighters and men like Gandhiji and Nehruji. Any effort to solve the problem should first diagnose the problem and identify the areas which require concentration. We have a polity guided by a written Constitution aiming at equality, Liberty, Justice to all. Equality and equal opportunity can only be achieved by dispensing equal justice and social justice. The law colleges and the legal education should aim at educating these by inculcating a sense of social service, if necessary by change of syllabus. In this context, we need to refer to observations made by the Supreme Court of India in *State of Maharashtra vs. Manubhai Pragaji Vashi*;\(^{34}\) which are apposite:

“The need for a continuing and well organized legal education is absolutely essential reckoning the new trends in the world order, to meet the ever growing challenges. 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

\(^{34}\) (1995)5 SCC 730.
situations. Specialization in different branches of the law is necessary. The requirement is of such a great dimension, that sizeable or vast number of dedicated persons should be properly trained in different branches of law, every year by providing or rendering competent and proper legal education. This is possible only if adequate number of law colleges with proper infrastructure including expertise law teachers and staff are established to deal with the situation in an appropriate manner. It cannot admit of doubt that, of late there is a fall in the standard of legal education. The area of ‘deficiency’ should be located and corrects should be effected with the cooperation of competent persons before the matter gets beyond control. Needless to say that repeated and competent academics should be taken into confidence and their services availed of, to set right matters.”

2.4.1 Efforts to Improve Standards

The Committee of three Judges of 1993 appointed by the Chief Justice of India made the suggestions inter alia recommending strict standards while recognizing and granting affiliations to law colleges. It also recommended the following:

(a) There must be an entrance examination at the stage of admission to the law college in University to the affiliated colleges.

(b) Five year system of law course after Intermediate course (10 + 2) should be introduced in the entire country.

(c) Professional ethics must to make a compulsory subject. Lengdell’s method or case method must be made compulsory and must carry more marks than theory and necessary steps should be taken to supplement the lecture method. The case method would require modern techniques of imparting legal education. The method should also include problem methods, moot courts and mock trials etc.

(d) The student-visits to Courts must be made compulsory to provide greater exposure. The examination methods should be changed and norms are to be fixed not only for maintaining quality of questions that are set, but also marks to be awarded for evaluation of questions papers. To avoid malpractice in the

examination, the instant questions can be generated with the help of computers and question papers presented through the National Informatics Centers, as is done in UPSC examinations;

(e) The Bar Council should give license to a law graduate only after 12 months to 18 months’ apprenticeship with entrance we examination. Each State should establish National Law School type of colleges.

The Bar Council of India purporting to exercise their powers under Section 49(1)(ag) made the Bar Council of India Training Rules, 1995 prescribing a condition that an entrant of the legal profession before enrolment as Advocate should undergo pre-enrolment training and apprenticeship as laid down in the said rules. These rules were challenged in the Supreme Court in V. Sudheer Vs. Bar Council of India.36 The Supreme Court declared the Rules ultra virus. But permitted the Bar Council of India by way of interim measure to consider the feasibility of making suitable rules providing for in-practice training to be made available to the enrolled Advocates till the Parliament steps in to make suitable statutory amendments in the Advocates Act, 1961. It is heartening to note that for a century and half, efforts have been afoot to improve the standards of legal education to help provide better forensic services to the Nation. This is an effort in the right direction to have quality inputs in the machinery of administration of justice for better dispensation of justice.

In 1990, the University Grants Commission constituted Curriculum Development Centre (CDC) for designing new curriculum in law with a view to promote human resources development. The said Centre recognized three main challenges that are facing the legal education. Modernization of syllabi to make it socially relevant, multi-disciplinary enrichment of law curricula and corresponding pedagogic modifications. The creation and maintenance of a ‘just’ society was the foremost and radical objective in the perception of the CDC while developing modern curriculum. The CDC in law prepared a detailed syllabi and curriculum for 31 LL.B courses, 29 LL.B (Honours) courses and 59 LL.M courses. In the process of development of curriculum, the CDC in law noticed that the Bar (Advocates) and

Bench (Judges) attach low priority to legal education and the primary responsibility was left to law teaching fraternity. The CDC realized that existing syllabi is not in tune with the present day needs. In the brief note presented to UGC on 27 and 28th January, 1990, it is stated as:

“However, the novel trust in the proposed curriculum is that the exploitation of constitutional idea, values and processes is singularly directed to the Humans Resources Development (HRD). Ideas of justice, accountability, due process of law, equality in social justice and economic relations, pacific forms of resolution of conflict, humane treatment of offenders, all these provide distinctive operational law areas for the HRD. This aspect of law may be termed as a ‘cultural capital’. Besides, the two other aspects which are characteristics of law, namely law as a ‘social technology’ supplied to the resolution of human conflicts, and law as a discipline belonging to the tradition of hermeneutical professions concerned with the interpretation of acts and oriented towards HRD. Perhaps, the most important aspect of HRD in law is the investment in legal education for promoting the rule of law and democratic development in India. CDC has been guided by these perspectives in designing the new curriculum.”³⁷

The above observations aptly present the existing situation in the field of legal education.

World over, there is more and more awareness about rights social development and empowerment of people. The present day legal education in all the countries has been thought to be inadequate to meet the demands of well-informed communities. In United States, American Bar Association appointed the Task Force on law schools and profession for studying legal education with a view to narrow the gap between the law schools and the legal profession. The Task Force submitted a report known as the MacCrate Report, 1992. The said Committee accepted that American Law Schools cannot reasonably be expected to shoulder the task of developing even best students into full-fledged lawyers the result of which is that the gap developed between expectation and the reality resulting in complaints and recriminations from legal educators and lawyers. The MacCerate Report ³⁸ provided unique overview of the legal

³⁷ CDC Report (Prepared by UGC & BCI) p 45
profession today in the USA. The report made elaborate recommendations under the headings.

(a) Disseminating a Discussing the Statement of Skills and Values.
(b) Choosing a Career in law and Law Schools.
(c) Enhancing Professional Development during the Law school years.
(d) Placing the Transition and Licensing Process in the Education Continuum.
(e) Striving for Professional Excellence after Law School.
(f) Establishing an American Institute for the Practice of Law.

Under the Heading ‘Enhancing Professional Development During the Law School years’, The MacCrate Report suggested that Law Schools and the practicing Bar should look upon the development of lawyers as a common enterprise. Macerate reports a list of fundamental skills and values such as problem solving, legal analysis, legal research, factual investigation, litigation, ADR procedures, organizing and management of legal work and recognizing and resolving ethical dilemmas. Wide ranging recommendations including the one for establishing an American Institute for the practice of law were made by the MacCrate Report. The MacCrate report shows that Legal education and professional Development is of serious concern even in advanced countries like the U.S.A. We, therefore, should frankly discuss and deliberate about improving standards of legal education in India.

2.4.2 Challenges in New Millennium

Law, as we all know, is ever developing and is never static. New areas and fields of law are discovered and it is very important that law students should be made aware of the recent developments in the fields of law. One such branch of law, the importance of which has not yet been fully recognized by the law schools and Universities in India, is the law of intellectual property rights. Compendious courses on the law of Copy Right, Trade Marks and Patents are offered in a few law schools as optional courses, but these do not either integrate the significance of these subject matters under any comprehensive aspect of modernization or development. Nor do they spread or emphasis the subject areas represented by these three interconnected bodies.
of the law. It is essential that a greater emphasis be paid to this branch of law. India has a very narrowly based intellectual property bar and judicial understanding of intellectual property law and justice is both limited and shaky. Both from the standpoint of human resources development, modernization and justice it is important that the intellectual property law be given the attention and importance it deserves.

Another very important branch of law which has been fast developing is private international law. Initially after independence, we were drawing guidance from English private international law and even today, we do it often, but with a distinct determination that we have to develop this subject on our own. At times, we have to necessarily resort to seek guidance from English private international law rules, since our rules in this area like many others to some extent have been in common law system. The law students must be familiarized with the subject and the function, utility and the importance of private international law should be made known to them.

Lawyers are supposed to perform an important function of helping people to abide by the law. They are Officers of the courts and supposed to help them arrive at the truth and just resolution of the disputes. The successful operation of the delivery of justice depends upon the commitment of the lawyers to the cause of justice. Various ethical questions arise in this connection. It is important that law students be acquainted with the social background of the lawyers and on the other hand, the relationship of the legal provisions with the clients and judges. The students are made aware of the ethical standards that are expected of the lawyers and today’s society and how such standards are to be achieved and enforced.

Yet another challenge which we face today is to make our presence as lawyers in the international arena. It is absolutely necessary to keep pace with the various developments in the international law.

After the Second World War, various Conventions and Protocols relating to protection and preservation of human rights came into existed. The makers of the Constitution had the advantage to look into some of those Conventions for example, the Universal Declaration of Human Rights, 1948.
India became a signatory to many Conventions and Protocols. The European countries adopt the doctrine of Monoism which provides that as soon as a country becomes a signatory to such Conventions, they become part of the municipal law whereas the principle of dualism is applicable in India in terms whereof a statute has to be enacted either in consonance with and/or in terms of such Conventions. Various judgments of the Supreme Court referred to such Conventions and Protocols for the purpose of protection of human rights while interpreting the provisions of the relevant statutes. Reliance on such Conventions and Protocols placed by the Supreme Court for the purpose of protection of person’s right under Art. 21 of the Constitution of India is the order of day.

In D.K. Basu’s case,39 the Apex Court did not accept the argument that the International Charters should not be relied upon as no statute in terms thereof had been enacted on the ground that Universal human rights are part of Constitutional guarantees adumbrated under Article 21. The legal education must therefore embraces within its fold a set of such Charters, Conventions and Protocols which could be made applicable for the protection of human rights despite the fact that no statute as such has been enacted.

From the year 1992 the country has adopted a policy of liberalization, privatization and globalization. While implementing this policy of liberalization, law as an instrument has a predominant role to play. Law and lawyers do have a role to play in the liberalization and economic change that is taking place in the country.

We are all confronted with the question whether the law and lawyers can utilize this instrument of law to ameliorate the changing conditions. Can law be utilized as an instrument of change? I would say, why not? Judges, lawyers, jurists and scholars who are associated with the functioning of the legal and judicial systems can undoubtedly by their innovativeness, ingenuity and exertions, devise, through the instrumentality of law equitable norms and rules which could assist in obtaining a fairer and more equitable deal for our lesser fortunate brethren in getting the maximum benefit in the age of liberalization and privatization. The law does not remain static. It does not operate in a

39 AIR 1997 SC 610.
vacuum. As social norms and values change, laws too have to be re-interpreted and recast. Law is really a dynamic instrument fashioned by society for the purposes of achieving harmonious adjustment, human relations by elimination of social tensions and conflicts.

The legal community is a vital component of the society in this country and it has played a leading role in the movement of independence and it has an important role in fashioning the shape of things in most of the countries after Independence.

The need to amend the laws governing corporate sector and the fiscal laws has been felt. The legislation or administrative measures aimed at deregulation simplification, better flexibility have been brought about to provide a congenial atmosphere for competitive environment and economic liberalization. Fiscal policies have been molded. Simultaneously, various laws fiscal, corporate, patent and technology laws have been changed quite substantially. The recent amendment to Companies Act is one such step which seeks to ensure better corporate governance blended with better accountability and to develop an investor friendly environment. The world of science and technology is changing at a breathless pace and with it, the world of trade and commerce, both internal and international where constant change is a continuing phenomenon. At such a crossroad of human destiny, our ability to meet these changes needs foresight and wisdom. Economists, scientists, technologist and industrialists have to work in unison. Need for rapid and persistent up gradation in the scientific and technological knowledge is imperative in the present economic scenario.

Environmental law has also assumed a great importance. Right to have a clean environment is not only treated to be a fundamental right under Article 21 of the Constitution of India, but also treated to be a human right. Beginning from the Stockholm Declaration in the year 1972, International Charters and Conventions have come to stay wherein great importance had been laid on sustainable development and maintenance of ecological balance.

Although the International Court has not yet been moved for violation of the treaties concerning environmental issues, having regard to the recent developments in
the case laws it is absolutely necessary that a curriculum on environmental law also be included and proper attention should be paid to the field of environment by law colleges.

Another important aspect which may be taken note of by all those present here is to develop a workable model where there is coordination among the law colleges and the Universities and those who man justice deliver system in matters of standards, prescription of syllabus and curricula and legal training. Such a model would go a long way to help achieve the constitutional goals of equality of justice and liberty. It is said that a lawyer with his brief case can make more money than hundred thugs with thousand guns. I would only say that a lawyer with his brief case can give solace to hundreds of people than 1000 arm chair thinkers.

Legal Education of highest standard invigorates administration of justice which at present is passing through a unique phase of being faced with peculiar challenges. Docket explosion, falling standards in professional excellence, inadequate funds are but a few such challenges. Besides these, the shift in economic planning where more than 70% of Gross Domestic Product comes from service sector and economic liberalization aimed globalizing Indian business and Industry are bound to bring other challenges. The almost successful efforts by Foreign Legal firms to set up their Offices are sure to send signals which cannot be ignored. Already there is a rumor that international arbitrations are dominated by foreign lawyers though in such cases, Indian Lawyers play secondary role. If Indian Legal Services are also globalised the great vision of forefathers and activist judges to dispense cheaper justice would be swept under the carpet and it would be too late for us to make amends by importing our skills in new areas of Cyber laws, Computer law and Intellectual property laws. The threat, notwithstanding, we need not be pessimistic nor become paranoid. The situation can be avoided; any can be prevented by changing and concentrating on policy options in all legal fields. But the beginning should be made here at Law Colleges from where all of us and likes of us came from.
2.4.3 Indian Government and Assessment of Legal Education

As Spaeth and Merillat discovered during their 1956 mission and 1957 conference, Indian legal elites were not reluctant to express their ideas for how best to reform India’s law schools. The year that Spaeth and Merillat visited India, the central government’s Law Commission—a state board within the Ministry of Justice—charged with proposing law reform related legislation began a study to revamp Indian legal education.\(^40\)

The Law Commission was not the first state-body to look at this issue. As early as 1917, the British empowered Calcutta University to study how to improve Indian law schools. One year after independence, the University Education Commission of 1948-49 examined this subject; and within the next five years three other separate commissions focused on strengthening how law students were educated.\(^41\) All of these commissions noted that Indian legal education was in disarray; however, the 1956 Law Commission went the furthest in its criticism of how Indian law schools functioned.

The Law Commission issued a damning final report in 1958. It declared that almost every aspect to law schools in India was “extremely defective” and was “not calculated to produce either jurists or competent legal practitioners.”\(^42\) The Commission, for example, disapproved of the lack of uniformity in admissions. Some institutions, such as Delhi University and Banaras Hindu University, required applicants to possess a bachelor’s degree before entering, while others (such as Bombay University) allowed graduating high school students to sit for the admissions

\(^{40}\) MOTILAL CHIMANLAL SETALVAD AND LAW COMMISSION OF INDIA, REFORM OF JUDICIAL ADMINISTRATION (1958) [hereinafter LAW COMMISSION]. Within this report there were many subjects addressed by the Law Commission, legal education just being one of them. The Law Commission of India dates back to the British Raj. The first Commission was established in 1834 and charged with codifying the penal law. After independence, the Commission has been in charge of proposing legislation that would comply with the Constitution’s non-justiciable, Directive Principles that mandate the state to bring about legal, political, and solo-economic reform for all Indians. For a detailed discussion on the Commission, see <http://www.lawcommissionofindia.nic.in>.

\(^{41}\) Id. (noting that the other committees were: the Bombay Legal Education Committee of 1949; the All India Bar Committee of 1953; and the Rajasthan Legal Education Committee of 1955.)

\(^{42}\) Id. at 548.
Indeed the latter was the practice in England and had been in place in parts of India for some time. But drawing on the philosophy of Roscoe Pound, the Commission believed that law was a difficult, complex science and that the effective study of this subject could only be done by those with intellectual maturity. The Commission pointed to a previous Indian study that found “the best colleges of law [in the United States] including Harvard, Columbia, Michigan, Chicago, California and others require completion of a four-year degree course in Arts and/or Science before admission to the law courses.” Likewise the Commission believed that only students with post-baccalaureate degrees and who passed strict entrance exams should be eligible for admission.

The Commission went on to call for other changes. While the duration of legal education which at this time was two years was deemed appropriate, the curriculum was not. The Commission argued that students should be subjected to rigorous scientific, theoretical, and doctrinal training in law. (Interestingly, aside from jurisprudence, the Commission did not spell out what other specific courses should be offered to meet this objective). It emphatically recommended that procedural and more practical based courses not be part of the two years curriculum. Practical training in law schools, including moot court courses and competitions, had only furthered the perception that legal education was vocational rather than academic in nature.

The Commission even rejected the idea that practitioners be allowed to serve as adjunct professors. Law faculties needed to be staffed with full-time people who saw teaching as a profession unto itself. Traditionally, Indian law faculties were filled with practicing lawyers who would rush to the classroom after a busy workday and show up unprepared to teach. This prevalence of adjuncts contributed to the dearth of academic scholarship from law faculties, much to the dismay of the Commission. Part-time

43 MOTILAL CHIMANLAL SETALVAD AND LAW COMMISSION OF INDIA, REFORM OF JUDICIAL ADMINISTRATION (1958) [hereinafter LAW COMMISSION]. Id. at 526
44 Since 1938, law could be taken as an undergraduate major. Interestingly, up till that point at some Indian law schools (like Bombay University), “admission to the degree course in law was open only to graduates in arts, science or other subjects.”
45 Id. at 521
46 Id at 522.
47 The study cited by the Commission was issued by the 1948-1949, p 531-33
48 Ibid
teachers were perpetuating an already “grievously backward” legal education system, and their “haphazard and cursory methods of teaching” demeaned the educational process as well as diserved students. The Commission pointed to the United States where professional teachers appreciated and recognized the value and time-commitment involved in perfecting pedagogy; American law professors had successfully developed a combinational technique of teaching using lectures, case-law, and the Socratic method, and the Commission recommended Indian law school teachers follow this approach.\textsuperscript{49} Hence, adjuncts had to be replaced immediately if Indian legal education was to move forward.

Although the Commission sought to make the legal educational environment more scholarly, it recognized that most law graduates would not enter academia but instead pursue a professional career in law. The Commission therefore argued that after law graduates completed the two years of “scientific” legal education, the Indian Bar Council not Indian law faculties would be responsible for providing courses on the practical aspects of the profession. Concurrently, these aspiring practitioners would be asked to “apprentice” under the tutelage of an established lawyer for a period of one year. The Commission acknowledged that the type of work asked of the apprentice might vary. Some might serve as a researcher in a lawyer’s office; some might regularly appear in court on behalf of the lawyer; or some might do a mixture of the two. For the Commission, the lawyer and the Bar Council could determine the nature of the apprenticeships; the key point was that legal education would remain an intellectual and scientific endeavor.

\subsection*{2.4.4 Accreditation to Digital Technology}

Traditional law firm libraries have largely been replaced by virtual libraries supported by gigantic and ever evolving digital data bases. Classroom teaching of law has been augmented by numerous electronic innovations, instruction in research methods has changed dramatically, and the case of communication between students and teachers has created a new type of 24/7 learning partnership outside the classroom. Faculty scholarship has also been altered in significant ways, the most obvious being

\textsuperscript{49} The study cited by the Commission was issued by the 1948-1949, p 535-37.
the global stage on which scholarly exchanges about legal issues now routinely occur, the implications of vast databases for conventional and empirical research, the ease with which manuscripts can be prepared and edited, and electronic publication modes that makes it possible to share early drafts of papers with colleagues around the globe and receive rapid feedback from them.\textsuperscript{50}

\subsection*{2.4.5 WTO Agreement and Globalization}

The World Trade Organization had come into effect from 1\textsuperscript{st} January, 1995 with support of 85 founding member countries including India. India signed the agreement as one of the founder members. The General Agreement on Trade in Services (GATS) of WTO agreement consists of six parts, xxix Articles and 8 Annexure. GATS impose number of general obligations on signatory countries. All signatory countries are bound to abide by the rules of the WTO. GATS require nations to accord “most favored nation” status. As per this agreement a member country must provide both market access and “national treatment” to other member countries. As a consequence, we cannot prevent the entry of foreign lawyers into India. If we do so that will amount to an infringement of the provisions of GATS and WTO. Globalization has brought a tough competition in educational service sectors. We are facing tough competition not only from within but also from outside the country. Internationalization and Globalization of the legal profession and the probable entry of foreign lawyers into India in the near future, poses a serious threat to the legal professionals in India. We have to compete with the knowledge of foreign lawyers. Globalization of the legal profession is likely to introduce a sea-change in the entire fabric of law teaching and legal profession in India. The profession of law, today to a large extent, requires lawyers to represent clients not only within but also outside national frontiers. After the establishment of WTO and India gets actively involved in trade liberalization, including trade in legal services (under GATS), there is no escape from allowing equal treatment to law persons from other jurisdictions. As a result of the unprecedented changes

\textsuperscript{50} Available at http://www.jgls.org/global-legal-education.pdf
induced by technology and globalization, all professions including legal profession are forced to re-think their method of management and delivery of services.\footnote{Available at http://www.jgls.org/global-legal-education.pdf}

2.4.6 Law Being a Multi-Disciplinary Field

Keeping in view the needs of Indian Society, it is necessary that both the systems of legal education, namely, Three-Year Law Course and Five-Year Law Course should be continued. However, this will require availability of adequate competent and sincere staff as well as separate infrastructures for the two systems. Expecting members of the existing staff to run both the systems is to put undue strain on them. Similarly, using the same infrastructure for both the systems creates practical problems. Moreover, while teaching various subjects in Pre-Law Course of the Five-Year Law Course, care must be taken of the students coming from Science background in 10+2 who may not be having elementary knowledge of such subjects. Certain aspects of Natural Science, Computer, etc. may be introduced in Pre-Law Course so that the students may have better appreciation of certain new branches of law, e.g. Patent Law, Cyber Law, etc.

2.4.7 Emphasis in Practical Training

Arrangements for the students to undertake practical training, such as attending chambers of lawyers, participating in trial proceedings, attending Lok Adalats, etc., should be made by the institutions rather than leaving the students to manage for themselves. There should be greater interaction between the practicing lawyers and the law teachers. Teaching of procedural laws should be entrusted to the sincere practicing lawyers. Young lawyers joining profession may be associated with the legal aid programme, Lok Adalats, etc. in the early years of their practice. However, this should be done under the guidance of an experienced lawyer.\footnote{Available at http://www.jgls.org/global-legal-education.pdf}
2.5 Legal Education, Research and Pedagogy – Ideological Perceptions

By three methods we may learn wisdom: - First, by reflection, which is noblest, second by imitation which is easiest; and third by experience, which is the bitterest (Confucius).

A) Legal education — Prologue

The purpose of legal education is two fold: One view favoring that legal education should be treated as a part of liberal education; the other view opining that it should be treated 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 expanding in the modem democratic society, e.g., as policy-makers, administrators, lawyers, law teachers, industrial entrepreneurs etc. Accordingly, it is realized in modem India that legal education ought to have breadth, depth and width.

Law, legal education and development have become inter-related concepts in modem 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. The same is true of India. It is the crucial function of legal education to produce lawyers with a social vision in a developing country like India.

According to Arthur von Mehren, 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 inevitably tended 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 to play a crucial 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 age of positive jurisprudence having passed one is now persuaded by the intellectually liberating potential of inter disciplinarily. The most intellectual contributions relate to emergent challenges of globalization and the ‘new’ world order, the revival of Kantian ‘law of peoples’, a Benthamite ‘general jurisprudence’, a Derridean cosmopolitan ‘politics of friendship’ and so on.

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.53 Justice must become central to the law curriculum and communication based learning must give the desired value orientation in the making of a lawyer. Increased recognition of the limitations inherent in the juridical ideology traditionally perpetuated within the 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 and research 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 nonblack letter and therefore the less legal, they do indeed run the perpetual risk of reinforcing rather than challenging the legitimacy of dominant juridical ideology.

B) Legal education and ideology

Education is a means by which knowledge is transmitted and skills developed. Beneath what appears to be a relatively simple statement exists a complex matrix of pedagogic and cultural practices that inform, shape and give effect to what information is chosen and how it is understood, transmitted and received. University education in its widest sense is a whole dependence, person process, where the focus is not so much on

the teaching and learning of specific skills or training as it is on the cultivation of personal autonomy, intellectual independence and the development of life-long critical perspectives. At the very least, university education ought to strive to prepare people for a changing world by promoting the intellectual and analytical skills that will assist them in assessing choices about their lives. Thus, the influence of education extends far beyond the classroom to all aspects of a person’s life.

Legal education has long been the subject of inquiry into its purpose and methods and the landscape of legal pedagogy reflect the diversity of interest it has generated. Recently there has been a focus on legal education within a wider knowledge context, examining the teaching, learning and research in law as part of the overall project of developing analytical and conceptual skills as exemplified in the whole-person process of university education,

Law exists not only as a form of concrete expression found in statutes and common law and as commentary in legal texts and journal articles but also as the expression of the approved rules of conduct which have been agreed upon in the proper manner by the proper persons in power. What counts as the ‘proper’ mode of law-creation is, of course, itself a matter in the control of the powerful. Included in this definition of law is judge-made law, since judges and the judiciary are ‘institutionalized as executive agents of social power’. In that they serve as adjudicators and arbitrators of legal rules and disputes. What is significant about law as an expression of the social rules of conduct is that it is a joint expression of power and ideology:

The crucial question about the origins of law always relates to the power bloc behind the legislation; the nature of the problem this bloc wants to solve, the ideologies in which this problem is perceived and understood, and the political opposition to the proposed legislation. Law is a hybrid phenomenon of polities and ideology, a politico-ideological artifact’.

It seems reasonable to think that the same subconscious assumptions about the world and the way it should influence how law lecturers understand law and in turn teach it to students. Teaching is not the value-free transmission of ready-made
knowledge; rather, because it is imbued with the teacher’s own experience, perspectives and understandings, it is the creation of particular form of knowledge. Education ‘as a socio-cultural structure and process is, in all its various forms, intimately connected with the production and dissemination of foundational knowledge and therefore with the re-creation and reproduction of differential valuations and hierarchies of knowledge.’

Education must be understood as a social process that is steeped in cultural signifiers and is neither objective nor content-neutral. The material one learns by, understands by and teaches by is affected by one’s own ideological and pedagogic influences and assumptions, just as the students are similarly affected. Once a person becomes aware of these phenomena, these can become powerful teaching and learning tools and resources that allow him to more closely examine, engage and connect with people and to become a part of rather than apart from the world around him. Moreover, in teaching law in a cross-cultural and cross-experiential fashion, we make it matter to all our students. This ultimately, reaches to the fundamental principles of higher education. One must ensure that students develop those analytical, conceptual, research oriented and other intellectual skills to enable them to make better choices in their lives, to become better citizens and to determine their place in the world and their relationships within it. At the same time one should be committed to legal education that is professionally as well as socially and culturally relevant.

These goals are not incompatible. Indeed, they embrace the idea that law be taught within the context of the society in which it operates. It is not difficult to contemplate teaching law which integrates differing perspectives and thereby challenges the perception of law as a single monolithic expression of social rules. In doing so one also more accurately reflects the reality the student’s experience. Additionally, one also grants them a greater opportunity to take responsibility for their own learning, using material and information that are more meaningful and relevant to them. University and legal education should be intellectually stimulating, horizon expanding and participatory something that matters for everyone.
A particularly notorious debate between Peter Gabel and Duncan Kennedy, titled ‘Roll over Beethoven’, which was published in 1984, provided a vivid illustration of the rival positions which emerged within critical legal studies and which remain largely unresolved, perhaps by definition irresolvable. Gabel and Kennedy assumed these very different, indeed polar, positions within CLS scholarship. Whilst Gable advocated some form of reconstructive enterprise, Kennedy maintained a more radical and uncompromising position determined to concentrate on ‘trashing’ liberal legalism. Thus, as the debate revealed, for Gable critical project was directed towards making law better approximate ‘experienced reality’. The ‘human condition’ is one of ‘fundamental contradiction’, and law must acknowledge this whilst reflecting the need for individuals to ‘overcome alienation’ from society. The sense of community which must be inculcated into previously alienated individuals will be realized by a crucial moment of connectedness, a ‘moment of describing existential reality at the level of reflection’, which Gabel termed ‘inter subjective zap’. At the same time, as reinvesting a philosophy of self, Gable, like others such as Roberto Unger, wanted to effect a complementary revision of legal theory and practice.

In his more recent writings, Kennedy has advocated a rather quieter strategy, preferring to ‘undermine and entice’, rather than engage in anything more confrontational. It is certainly true that much of the zeal that so fired the ‘crits’ during the 1980s appears to have passed. As Peter Goodrich suggests, the critical strategy now appears to be one of nurturing intellectual ‘sleepers’ in law schools, subversive radicals, who ‘await the twenty-first century night when under cover of darkness they will crawl out of the belly of the beast’. There is an ironic edge to the observation. But it remains an intriguing thought, and it might just prove to be the more effective strategy after all. For it is certainly true that law schools retain their enormous, and disproportionate, influence in modern society.

C) Research objectives — Retrospect and prospect

Indians in their cynicism have continued to ignore both the treasure and the methods that helped their predecessors in their accumulation of knowledge. The obvious reference is to WTO and IPR. In a number of ways they are uniquely placed. Like China they too are a living civilization and like the Japanese and the Chinese they should also be pragmatic. Their contributions to human progress are not negligible as historical documents endorse this statement.

Research has its functions and uses. One conducts research either to enhance the efficiency of the system, increase the volume and quality of information, to add on to what already exists or to create material conditions of comfort. In other words, research has got to be meaningful. Research is purposive and it has definite goals. It is either basic (also called pure) or instrumental or applied. Most of the basic research is serendipity. The fundamental or basic research is not very common. It is also time consuming and very expensive. Examples in question are researches in the area of space, superconductivity, nano-technology and stem cell technology.

The major problem that India is facing is in the IPR regime and the steps that India needs to take to protect itself against the economic exploitation by advanced countries of the west. It is already facing numerous problems in agriculture and health-related researches including mapping of genes, production of genetically modified seeds, cloning, robotics, embryonic stem cell technology, skin cells to stem cell technology and techno-science, etc.

Ancient Indians defined knowledge to belong to two types: Aparavidya (lower knowledge) and ParaVidya (higher). Somehow these distinctions continue to be valid even today as well. Apara Vidya is a kind of knowledge, which seeks to understand the apparent phenomenon of existence externally, by an approach from outside, through the senses and the intellect. This is how one acquires lower knowledge. The lower knowledge constitutes all human knowledge acquired through books or experiments. Even the Vedas fall in this category since they are not themselves the direct experience of the self and of the eternal that is beyond all beings. Para Vidya is the knowledge,
which seeks to know the truth of existence from within. This mystic knowledge does not follow any of the well-known steps of research. Indian mystics continue to talk of Samadhi, the awakening of Kundalini, yogic, mudras etc. that yield definitive results. Three types of knowledge Indians have eventually developed. The first one is metaphysical or intuitive knowledge. One need not bother with this form of knowledge because it is a matter of individual experience and consciousness. The second form of knowledge is rational or logical knowledge. India happens to have a vast body of literature in this field and interestingly it is far advanced than the west. It developed a logical method or reasoning called ‘Vitanda.’ Second was the development of ‘sastras’ or researched knowledge. This was called rational knowledge. The development of logic in Nyaya or Mimansa philosophies is the typical product of that age and effort. It is this phase of development that came to its eventual fruition in the philosophical contributions of Nagarjuna and Dharmakirti. A glimpse of their logic can be witnessed in Milindapanha (the dialogue between King Mahendra and Nagsena).

Then came the third, experimental sciences this form of knowledge was no descent but a step towards progress. This gave us some of the greatest scientists and physicians. The astronomers, mathematicians, physicians etc. are the product of this knowledge. William James recorded:

“From the Vedas (ancient Indian scriptures) we learn a practical art of surgery, medicine, music, house building under which mechanized art is included. They are encyclopedia of every aspect of life, culture, religion, science, ethics, law, cosmology and meteorology.”

Hypothetical reasoning is an intellectual act, which contributes to the ascertainment of truth by means of adducing logical grounds in favour of one of the alternative possibilities when reality is not known in its actual character. This type of reasoning can or might not help resolve indecisiveness. This reasoning is also of five types.

(i) atmasraya is an argument that is self-dependent in respect of genesis, subsistence and cognition. E.g. A is the cause of B. Here B must be different from A, because the cause is different from effect.

(ii) anyonyashraya is a mutually dependent argument. Such as A depends on B, and B depends on A.

(iii) chakraka, here the argument is circular in nature. E.g. A requires B, and B requires C, and C requires A.

(iv) anavastha is the regression ad infinitum.

E.g. If we explain A by B, and B by C etc. we can go on doing so without explaining anything.

(v) Reduction ad absurdum or tendanyabashedapprising. It indirectly proves the validity of the argument by showing that the contradictory of its conclusion is absurd. This may be done by opposing the contradiction of the conclusion by means of some fact or by applying some universal law. If the contradictory be false the original conclusion must be true. Compare Wambaugh’s theory of ascertaining ratio decided of a case which seems to be similar to this.

Gunnar Myrdal once said there is no objectivity in research particularly in analyzing the judgments. One sees what he wishes to see. In law and social sciences the truth gets colored the moment one tries to formulate a hypothesis. You eventually come to prove what you started to prove. The truth that one knows is, therefore, relative, transitory and malleable. This perception is very important from the point of forensic exercises.

Research is the innate function of all human minds; the purpose of research is to help humanity by creating toots of collecting quality information and revealing some aspect of the unknown. All progress is definable in terms of quality research alone with all other considerations constituting the very core of that effort.58

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58 Look at the methods used in accurately predicting the outcomes of the judgments of the U.S. Supreme Court in Brown’s case (1955); Linkletter v. Walker 381 U.S. 618 (1965); Roe v. Wade 410 U.S. 113 (1973); Bush v.41 Gore 531 U.S. 98(2000) etc.
If a researcher cannot help having assumptions and if assumptions themselves are the reason for irrelevant conclusions all research findings become suspect. Research and ‘closed’ minds rarely go well together.

**D) Law research - Modernist perspectives**

Recent studies in law have been directed towards the development of methodologies and institutional mechanisms for planning and decision-making, recurring and continuing education; broadening access to and equality of opportunity through clinical legal education and legal aid to the poor; the use of new technologies; costs and financing of different programmes like legal literacy drives and pre-litigation conciliations and bkadalats; curriculum planning; institutional research; the governance and accountability of institutions of legal education. The university education now stresses the importance of studying law roles, the usage of law trained people, the work and socio-economic character and ideologies of lawyers.

Most of the commonwealth countries give low priority to legal education and consequently law schools are not equipped with full-time faculty. It is often said that many poor countries are spending proportionately more on education than the richer countries, but getting less in the way of benefits from the heavy sacrifices imposed. There are increasing pressures on the legal academics to clarify the purposes for which particular programmes of education are provided, to match claims with performance, to identify kinds of reforms needed; to revise standards of accountability and procedures for budgeting programs in order to evaluate their benefits against their costs; to reform employment policies within the educational system.

There ought to be a systems approach, the importance of perceiving legal education as a multidimensional activity, one which uses formal and non-formal methods, self-education, clinical education and of course, learning through various practical experiences. While it may be amorphous, the educational planning in law at the law university and law faculties of universities level is generally directed at concerns such as the following:
i) Socialization Objective

The use of legal education to develop perceptions and understanding of the environment, local and global, to understand the problems of one’s society; to influence values and attitudes. The basic degree programme should include a curriculum which helps students become better educated citizens as well as lawyers and provide opportunities for many kinds of educational experience. E.g. Participation in legal aid and community service programmes, negotiation, mediation, conciliation, arbitration, internships, moot courts, research, publication of scholarly journals, forums, task forces, workshops and other enterprises devoted to current issues of significance. Legal socialization is a very important dimension of educational development in law universities, where the stress ought to be on the importance of law as a dimension of general civic education emphasizing the knowledge about the various legal cultures, about the legal problems and concerns of the people, about the way in which people learn about and regard courts, the profession, the police and other critical organs of the legal system, about values associated with law and justice, and how these are formed. Through media, extension programmes and other activities one can provide civic education.59

ii) Opportunity Objectives

Efforts should increasingly be made to open new streams of entrants admitting persons from groups which, historically, have been, disadvantaged, either by caste, religion or sex to achieve the goals of affirmative action programmes.

iii) Common Law - Civil Law Dichotomy

Common law system is mostly adversarial and hence the role of the advocate is limited to the exercise of the forensic skills in collecting and articulating the evidence, whereas the civil law system is mainly inquisitorial and hence the roles of lawyers and

59 Look at the methods used in accurately predicting the outcomes of the judgments of the U.S. Supreme Court in Brown’s case (1955); Linkletter v. Walker 381 U.S. 618 (1965); Roe v. Wade 410 U.S. 113 (1973); Bush v.41 Gore 531 U.S. 98(2000) etc.
judges are wider and require a more meaningful interaction with all societal forces. The role of lawyer in the contemporary times should not merely confine to litigation as such but it must equally focus on the role of a lawyer as a mediator, a counselor and a conciliator. In making the legal education more meaningful in the present day context the law faculties must aim in inculcating these roles and functions, to the persons entering into the profession. With the development of the behavioral sciences the emphasis in legal education is on the study of impact of law on society and of society on law.

Liberalization of economic policy in India and India’s entry into the world market in a big scale has enhanced the responsibilities of the law faculties in developing comparative law studies mostly in the field of comparative business law, international commercial arbitration etc. to safeguard the national interests. This branch of comparative law and conflict of laws need to be developed, as they are not yet popular subjects.

iv) Artificial Intelligence

The prospects are bright both for teaching and research in the application of computers. Interdisciplinary studies in the area of law and computers would provide a meaningful interaction between the legal academics and technologists computers can be best used in two ways to assist the legal profession. One is the information retrieval system, which can be developed with the help of law faculty and the computer science department. The second area in which computers can very usefully be employed is artificial intelligence system with which several types of stereotype cases can be decided with the help of computer programmes to arrive at more objective and quicker decisions. The law faculty should actively engage in collaborative research with the computer science department. This needs to be pursued vigorously to design meaningful computerized programs as alternative dispute settlement mechanism.
v) Research Objectives

The tasks range from insightful analyses of the content of contemporary legal doctrine to studies of the actual impact of particular laws on particular activities in society, from normative prescriptions providing moral principles underlying the legal order to scientific descriptions of the social context of laws and legal institutions, from research designed to aid policy judgments to research directed at general theories about social change. The emphasis should specially be on the use of social perspectives and methods. The ongoing research activities include law, science and technology including the law’s role in electronics communications and computer revolution, law and economics, law and political science, law and anthropology, law and biotechnology, law and communication technology, law and techno-science. The latest research from skin cells to stem cells, a new technique developed by Shinya Yamanaka of Kyoto University has set at rest the moral and legal dilemmas in embryonic stem cell technology because it creates embryonic like stem cells without creating, harming or destroying human lives at any stage.\footnote{The Times of India, dated 08.06.2007 at 1 and 10.}

vi) Administrative Objectives

The most important object is not a plan, but the continuing generation of flow of information and ideas and decisions. Especially needed is the generation of new human resources a new breed of law teachers and jurists who can bring new perspectives and new leadership to the profession of legal education. They are both the catalysts and the deliverers of reform. This kind of leadership though late is fortunately, emerging in the Indian legal academia.

The new scholarship, in the law schools seeks to investigate the social contexts of law, the variables which may affect the working of institutions and the behavior of persons in law roles or the impact of particular laws on society or similar issues. This kind of development oriented socio-legal research calls for new perceptions about law, new methods to formulate questions for investigation and to acquire and evaluate data, and interdisciplinary collaboration a new approach to research, which looks at social
problems from many perspectives, not simply a legal one. Towards this end the syllabus at postgraduate level has to be restructured and the topics for Ph.D. theses should also emphasize empirical research on socially relevant themes also with live sciences and physical sciences interface.  

E) Clinical Legal Education

There is a growing recognition in recent years that knowledge of the law is best understood in the context within which it operates in our complex society. This new approach to the study of law brought forth the concept of ‘clinical legal education’ into limelight as a means of making legal education system more socially relevant and professionally significant. Clinical legal education has now become an integral part of the curriculum in undergraduate programmes of law and is placed high on the educational agenda of many reputed law schools and universities throughout the world.

In the US, which is regarded as the home of clinical legal education, 90 percent of law schools use some form of clinical approach, and the law school clinic is firmly entrenched as an important vehicle through which instruction is given in the theory and practice of law. Similar developments have taken place and are now taking place in Australia, Canada, India, Malaysia, South Africa and the South Pacific. In Canada, and more recently in Australia, the value of clinical methods has been recognized and praised in governmental reviews leading to the expansion of such programmes in law schools.

Changes in the law syllabi have been made at the behest of the Bar Council of India and the University Grants Commission so as to incorporate ‘practical training’ component into the law school curriculum, which for the most part grew out of the clinical education movement. Moreover, the recent reforms in legal services delivery in India, such as community based informal alternative dispute resolution forums, known as ‘legal aid camps’ or ‘lok adalat’ warrants substantial support from law school clinics.

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These include: Legal Control of Drugs and Psychotropic Substances; Law and Artificial Intelligence; Law and Information Technology; Law and Gender Justice; Law and Economic Liberalization; Alternative Dispute Resolution; Air, Space and Law; Disaster Management and Law; Law and Biotechnology and Justice Education.
for their effective functioning. Despite its growing importance, clinical system is not getting much support and encouragement from law schools, universities, law faculties and the legal profession. This indifferent attitude is mainly attributable to the lack of proper understanding and misconceptions about the role and content of clinical legal education among the legal educators, law students, law faculty, members of the bench and bar. Dissemination of proper knowledge and sensitization of students and the faculty on the above aspects is, therefore, an imperative necessity to secure active student participation, faculty involvement and the support from bar and bench in clinical activities.

The term clinical legal education, therefore, refers to learning by doing the types of things that lawyers do. It enables students to take on real clients’ problems and work with them with the obvious goal of equipping the students to perform the variety of roles which lawyers are expected to play in the society. It is a system designed to facilitate the students to ‘learn the law through experience’ and directs the students to make an attempt to understand the theoretical and operational parameters of legal doctrines and statutory principles and the techniques of applying them in actual practice and real life situations. The students gain these practical insights through participation and undertaking certain clinical projects designed and organized by law school clinics.

Clinical legal education and practical training are often confused with each other. The use of training techniques with nothing other than skill development in mind would be seen as practical training, but not clinical in its true sense. On the other hand, clinical techniques make the students capable of learning far more than skills, and can develop critical and contextual understanding of law as it affects people in society. Clinical experience in law school thus offers a unique opportunity for students to learn under supervision, not only about the professional skills used by lawyers, but also the role of the law and legal profession in society.

Clinical legal education integrates both doctrinal and empirical approaches in the study of law with a view to secure more effective student participation in learning the law. Hence, it is quite different from traditional legal education. The lecture-seminar methods so common in the education of law rarely involve students in the real
or realistic experience of the law in practice. The study of law through the traditional approach of analyzing legal doctrines and precedents and the conventional lecture and discussion methods are based upon ‘teacher-centered’ learning approach and have proved themselves inadequate in making the students participate actively in learning process. The ‘case study’ method pioneered by Christopher Langdell and others at Harvard Law School in the last quarter of the nineteenth century is also of limited value. Under the Langdellian method students concentrate on appellate decisions, analyzing them and identifying principles upon which they were made. The result of lecture-seminar and case study methods is fundamentally limiting as students are largely passive recipients of knowledge, relying on an account of the law by an ‘expert’ in that field supplemented by periodic involvement through the production of assignments and tutorial discussion.

In India there is no proper forum or an umbrella organization such as Clinical Legal Education Organization (CLEO) in the UK, Clinical Legal Education Association (CLEA) in the US, Association of American Law Schools (AALS) and the Australian Clinical Education Association. All these organizations are providing a forum for the law teachers who are interested in a clinical approach to discuss the work together and share the experiences amongst them. They are further monitoring and playing a supportive role to the clinical legal education programmes in their respective countries. Such kind of initiative is very much needed in India too.

The above problems, therefore, need to be addressed in a proper manner in an appropriate forum by all concerned, be it the DCI, UGC, central and state governments for evolving an effective clinical methodology and integrate it with the law curriculum so as to achieve a fair balance between the doctrinal and empirical goals of legal education. This need has been emphasized by Madhava Menon, the pioneer of clinical legal education movement in India, in the following words “clinical education can in the future open up the social action role of legally trained persons”.

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F) Legal Education and Techno-Science Challenges

The advances in recombinant DNA engineering micro-chip technology have been spectacularly wide ranging and relate to almost every area of human life. Advances in cyber-technology give rise to a whole variety of technologies and underlie the ‘promise’ and ‘perils’ and new forms of emergent nanotechnologies pose a serious challenge to the legal education.

The emergence of information technology and biotechnology is decisive transformation that marks globalization. The contemporary world stands transformed in several ways by the revolution in microchips and integrated circuitry. It enables patterns of time-space compression, a defining feature of contemporary globalization. It makes real the hitherto unimaginable advances in genetic sciences and strategic biotechnologies. Advances in recombinant DNA technologies and integrated circuitry depend wholly on revolutionary techniques of artificial intelligence.

This development provides a driving force for the global emergence of trade related market friendly human rights and human capabilities. This leads to movements towards redefinitions of impoverishment. Poverty is no longer identified in terms of material deprivation but in terms of access to information or to cyberspace enhanced human capabilities. The new north is cyber-rich and the new south is cyber poor, thus marking what is known as digital divide.

The emergence of information technologies has facilitated widespread privatization of governmental functions in welfare administration, health, education, finance, business, industries etc. Digitalization of the world provides time space for increased and voluminous solidarity among the legal fraternity.

These also give birth to the formation of techno-science based strategic industries that resent and often reject state and international regulation and generate new forms of techno-politics. Together, these constitute a genomic materiality of globalization (little noticed in social theory narratives of globalization) contributing to the formation of ‘New World Order’. Biotechnologies, united in the pursuit of
reductionist life sciences- where ‘life’ is no more than information open to techno-science codification, manipulation and diverse techniques of mutation and reproduction fall into several domains of law and technology. Agricultural biotechnology, fostered by agribusiness, promises food for all; pharmaceutical biotechnology promises health for all; industrial biotechnology promises sustainable development for the world and the human genome projects, among other things, now promise new possibilities in therapeutics, health care and benign human cloning. The belief that biotechnology provides unprecedented vistas of human progress is not just media hype; its practitioners, in all parts of the world, live by it. The law schools must invariably keep in mind the above-mentioned advances in techno-science while formulating curriculum and promoting research, pedagogic skills and ideology. These developing technologies must be addressed by the law educators and law researchers.

G) Critical Studies - Post Modernist Perspective

Critical legal studies thinker Duncan Kennedy has criticized what he considers to be the ‘passivizing’ experience of legal education, and its accompanying tendency both to perpetuate hierarchy and to sustain a belief in its natural necessity. According to Kennedy, submissiveness is imbued within the structure of legal education. This submissiveness, together with the deployment of juridical ideology through the narratives of the ‘knowledgeable’ authority, render the experience of studying law for many students’ one of double surrender to a passivizing classroom environment and to a passive attitude towards the content of the legal system.

The paper seeks to draw attention to the formative role played by legal education in the development not so much of what lawyers think, but rather of how lawyers think. Law as an academic discipline is more than a body of substantive principles. It is set in a particular institutional context, and as such legal education necessarily entails not only the transmission of ideology but also the teaching of specific skills that reflect the particularity of the ‘legal method’. It can be argued that

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these skills simultaneously reflect and produce a normalized lawyer’s way of thinking that in turn reaffirms the complicity promoted within the passivizing classroom environment and perpetuates the prevailing legal ideology itself undermined within critical commentary.

There is an intimate relationship between the processes of education, the transmission of knowledge, the deployment of training and the exercise of power. In so doing, it will uncover the complex juxtaposition between legal ideology and legal method that underlies the operation and teaching of law as an academic discipline. ‘Juridical systems are permanent vehicles for relations of domination and polymorphous techniques of subjection’. 64

**H) Epilogue**

It is not just that the juridical legitimization of power masks the disciplinary operation of techniques of case analysis and problem solving upon the ‘active’ student learner. Rather, it is also the case that the disciplining effects of this legal method actually help perpetuate the juridical representation of law as an expression of the rational, neutral and coherent exercise of power.

In Foucault an terms, therefore, the delineation of ‘law as an academic discipline’ requires not only the promotion of a specific ideology, but also the deployment of a catalogue of disciplinary techniques that are in them inextricably bound up with the perpetuation of knowledge.

Sixty years of postcolonial Indian legal education (at least in the chronological sense as something that occurs after decolonization) have merely ‘modestly developed traditions of legal scholarship’. This is so because law teachers of yesteryears and also ‘specialist’ colleagues in other allied ‘social science and humanities disciplines’ have ‘by and large failed in building a research project in law with distinctly Indian problems and possibilities.’ And the ‘vice like grip of doctrinal legal analysis’ has rendered ‘teaching and learning law’ a ‘self-referential enterprise in the interpretation of mles’;

Indian legal scholarship, on this view of it, remains overwhelmingly exegetic and dismally doctrinal, content merely with ‘commentaries’ which merely ‘chart the movement of doctrinal legal trends across various fields.’ As a result, legal education in India has not been successful in going beyond meeting minimal requirement of producing ‘legal technicians’ for a range of legal markets.’ Overall, ‘legal education in India’ has been unable ‘to respond holistically and meaningfully to contemporary challenges’.

In any further pursuit of ‘enculturing law’ Indians may perhaps want to rather anxiously revisit their distinctively very own ways of structuring pedagogic violence. This is by no means an easy terrain but then no talk concerning ‘enculturing law’ remains worth the self-naming outside the violence of the founding myths and lived realties, whether styled with Walter Benjamin as the violence of pure means (divine violence) or with Derrida the ‘foundational’ and ‘reiterated’ violence of the ‘modern law’s’ multifarious and poignant incarnating regimes of illegalities. Some ways of imagining the tasks of doing histories of legal education in India, as well as the globalizing Global South, and the future histories of ‘enculturing law’, may still carry messages of hope in all their constitutive ambiguity.

2.6 Law Teaching

For students outside the mainstream of traditionally represented law, legal education is often marginalizing at best or effacing at worst. Women students raise the issue of invisibility or neglect. Men, heterosexuals and members of the dominant culture hear about the law in a manner that meaningful to and supportive of them, whilst women, gay men and those outside the dominant culture do not.

Their invisibility makes their experience all the more painful. This invisibility is hardly consonant with the liberal and humane education students ought to receive from higher education. It is the responsibility of law teachers to explore those issues and areas traditionally either ignored or under-represented in law classes for exactly this reason. It is not sufficient simply to hope that students will find something of relevance

to them in lectures or reading materials: we need explicitly to raise and discuss issues of how law differentially affects different groups.

These issues need to be raised in the first term of the first year of legal education and consistently thereafter through the remaining years. Students first of all need to be included in their own education and to know that they exist and matter. Secondly, students need to know and understand early in their legal education that law is not composed of a single monolithic expression of social rules but that it is rich in theory and texture. Thus, students need to hear of such areas as gender, affirmative action, social justice and legal theory, critical legal studies, poverty and the law early because then these become normalized as part of the legal education discourse.

Compounding matters of visibility is the conviction of some. The fact is that India is a multicultural society where people of differing culture, gender, class, ethnicity, sexual orientation or level of ability can and do seek legal information.

Law lecturers are in a position to contribute to a better-informed legal profession by raising awareness of these issues in the first place. Even if most of the students do not go on to practice law, we will at least have validated the experience. By validating their experience rather acknowledging and accommodating the idea that people interpret information and experiences in a way that is meaningful to them and that this may not represent a common interpretation. Those who are outside the perceived common interpretation often feel neglected or invisible. By directly raising and discussing issues and concerns routinely neglected, lecturers and students give an important public, factual foundation to competing visions of reality.

Information is made available for students to decide for themselves whether to accept all of it, some of it or none of it, but at least the choice is there to be made on an informed basis. To make legal education more inclusive and reflective of society as a whole, much work needs to be done. To begin with, one can consistently integrate differing perspectives within the learning materials- whether lectures or tutorial questions as part of the course delivery. It may also be useful to include a variety of social contexts within the case studies, problems and questions. In doing so teachers
challenge other student’s tendencies to generalize and assume a common interpretation to legal issues.

Discomfort, pain and fear of ridicule have no place in the educational experience, and no place at all in a higher education system that seeks to cultivate student’s personal autonomy and intellectual independence. In each of these cases it must be ensured that a sensitive and supportive environment is created in which issues of gender, class, ethnicity, sexual orientation and social justice (among others) may be examined and discussed.

Not only must differing perspectives and social contexts be integrated into the curriculum, they must be integrated across the curriculum. Again there is a need consistently to acknowledge and normalize the experiences of those outside the boundaries of traditionally represented law. The more the message of marginalization and segregation is heard and the more ways in which the message is expressed through various readings, lectures, tutorials and other media, the greater the challenge to the assumption of a generalized common interpretation to law. A larger project in creating a cross-cultural and experiential law curriculum consists of rethinking and re-designing the curriculum from a critical perspective that draws on wide and varied sources. O’Donnell and Johnston\textsuperscript{66} suggest that Indians consider the following questions when designing the syllabus and teaching materials.

- Does it open up the opportunity for students’ critical engagement with the subject matter?
- Does it give validity and legitimacy to the knowledge, experience and language of the learners rather than operating out of a predetermined notion of the nature of knowledge?
- Does it offer an interactive approach to the phenomena under discussion?
- Does it leave room for change, adjustment and new questions?

Their re-designing the law curriculum integrating these concerns represents a massive, lengthy and serious endeavour. Their decision not to do so represents a loss of

opportunity not only to enrich their students’ educational experience but their own as well. Yet, it is important that all perspectives, traditionalists included, be represented in the legal curriculum. Again, once a filler range of information is made available to the students, it is up to them to analyze critique and select as they see fit.\(^{67}\)

### 2.6.1 Authorities - Legal Education

A review of the functioning of various authorities connected with legal education amply demonstrates that there is neither a harmonious coordination nor an effective determination of standards in law schools because of multiple controls. The present inspection and accreditation processes do not ensure quality assessment or transparency. The composition of legal education committee should be so changed as to adequately provide representation to eminent law teachers, law scholars and educationists. Law teachers do need exposure to some better teaching techniques to help build their capabilities. The national law universities should come forward to provide continuing education and training to the teachers both in pedagogic skills and research techniques. Academic staff college experiments are not yielding good results. Legal scholarship from the profession should be encouraged by using their expertise in law education both clinical and court centric. Attendance and continuing assessment of students should form part of the examination system and the ranking. The universities must develop the law curriculum taking into consideration the fast moving developments in science and technology, management, corporate accountability and alternative dispute redressal mechanism. The traditional universities should give as much freedom as possible to the law faculties to introduce the changes in the curriculum without losing much time.

The law faculties in the universities should play an important role in introducing new courses and implement them immediately. The traditional universities must come forward to revitalize the practical training programme and to introduce clinical legal programme and effectively monitor the implementation of these measures by introducing credits for active participation in the programme. Bar councils must come

forward to play a significant role in streamlining the practical training and clinical legal education in law colleges while granting recognition and approval of affiliation.

According to Steven Freeland of Sydney, the next generation of lawyers will need to operate within the context of increasingly multilateral legal regulation, even over areas of law that have traditionally been regarded as within the exclusive domain of the sovereign state. Lawyers will need to become more multi-disciplinary and flexible in their training. As the world becomes smaller due to technological advances, it also becomes more complex and one has to address these demands of the next generation. Several courses which were optional have to be made compulsory. He concludes that: “The challenges of the twenty first century are daunting for humankind. Rapid developments in technology, changes in the geopolitical climate, and recognition of issues of global concern, among other things, will demand that the legal processes respond in an appropriate manner”.

2.6.2 National Knowledge Commission

At this juncture it is pertinent to recall the recommendations of the Commission. The National Knowledge Commission while recognizing legal education as an important constituent of professional education emphasized that the vision should be to provide justice-oriented education essential to the realization of values enshrined in the Indian Constitution. Legal education must prepare professionals equipped to meet the new challenges and dimensions of internationalization, where the nature and organization of law and legal practice are undergoing a paradigm shift. It has also emphasized the need for original and path breaking legal research to create new legal knowledge and ideas that will help meet these new challenges in a manner responsive to the needs of the country and ideals and goals of our Constitution. The following proposals were made by the Commission to improve the quality of legal education in India. They are as follows: 68

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68 Sam Pitroda, Chairman, National Knowledge Commission, Compilation of Recommendations on Education Report submitted on 06.11.2007 at 45.

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1. The establishment of a new Regulatory Authority for Higher Education vested with powers to deal with all aspects of legal education and whose decisions are binding on the institutions teaching law and on the Union and State Governments.

2. Prioritization of quality and development of rating system in legal education.


4. Reforming examination system.

5. Measures should be taken to attract and retain talented faculty.

6. Development of research tradition in Law Schools and Universities.

7. Establishment of centers for Advanced Legal Studies and Research, one in each region to carry out cutting edge research on various aspects of law and also serve as think-tank for advising the government in national and international form.

8. Financing of Legal Education: Institutions should be given full autonomy to evolve their innovative methods besides providing complementary funds to be liberally given by State and Central ministries by establishing chairs and corporations may be provided tax exemptions for donations to law schools.

9. Internationalization: Building world class Law Schools today will require creatively responding to the growing international dimensions of both legal education and legal profession, where it is becoming increasingly necessary to incorporate international and comparative perspectives, along with necessary understanding of domestic law.

10. Technology should be developed for maximum dissemination of legal knowledge. All information available in the Indian Law Institute, Supreme Court Library, Indian Society of International Law as well as those of all Law Universities and Law Schools and Public Institutions of the country should be networked and digitalized.
2.7 Insertion of Dharma in Indian Legal System

2.7.1 The Constitution of India

The Constitution of India stands for a secular State. The State has no official religion. Secularism pervades its provisions which give full opportunity to all persons to profess, practice and propagate religion of their choice. The Constitution not only guarantees a person’s freedom of religion and conscience, but also ensures freedom for one who has no religion, and it scrupulously restrains the State from making any discrimination on grounds of religion. A single citizenship is assured to all persons irrespective of their religion.

Dr. Radha krishnan, explained secularism in this country, as follows:

When India is said to be a Secular State, it does not mean that we reject the reality of an unseen spirit or the relevance of religion to life or that we exalt irreligion. It does not mean that secularism itself becomes a positive religion or that the State assumes divine prerogatives. We hold that not one religion should be given preferential status…This view of religious impartiality, or comprehension and forbearance, hats prophetic role to play within the National and International life.  

Most important components of secularism are as under:

(i) Samanata (equality) is incorporated in article 14;
(ii) Prohibition against discrimination on the ground of religion, caste, etc, is incorporated in articles 15 and 16;
(iii) Freedom of speech and expression and all other important freedoms of all the citizens are conferred under articles 19 and 21;
(iv) Right to practice religion is conferred under articles 25 to 28;
(v) Fundamental duty of the State to enact uniform civil laws treating all the citizens as equal, is imposed by article 44;
(vi) Sentiment of majority of the people towards the cow and against its slaughter was incorporated in article 48;

69 Dr. S. Radhakrishnan (Former President of India), “Recovery of Faith”, p. 184.
An eminent writer\textsuperscript{70} has described the expression “secular” as vague. He has further stated that it would be a correct summary of the provisions of articles 25-30 to say that the expression “Republic” as qualified by the expression “secular” means a republic in which there is equal respect for all religions.

This was the proposal in the 45\textsuperscript{th} Amendment Bill, which was passed by the Lok Sabha but defeated in the Rajya Sabha, because of oppositions of the Congress Party. Secularism (whatever it may mean) is a basic feature of the Constitution.\textsuperscript{71}

The concept of secularism to put it in a nutshell is that the “State” will have no religion.\textsuperscript{72}

Secularism inserted under Constitution 42\textsuperscript{nd} Amendment of 1976; does not mean Constitution of an atheist society.\textsuperscript{73}

2.7.2 Statutory Recognition of Dharma

Manu Smriti incorporates specific provisions on several topics of civil and criminal law as also procedural law. All of them were laid down as Vyavahara Dharma [civil, criminal and procedural law] as distinct from Raj Dharma [the constitutional law].

The word Vyavahara means a ‘legal proceeding’. This term is in vogue even to this day. The branch or division of law which regulated the rights and liabilities of parties in a legal proceeding was therefore called Vyavaharapada. This corresponds in modern times to an enactment on a particular topic. Having regarded to the types of disputes which were arising generally in ancient thus, the disputes or laws had been arranged under eighteen main topics. Apart from this, there were laws on various topics of public interest which are dwelt upon the next one by one. The classification and specification of laws under eighteen topics in Manu Smriti was as follows:

\textsuperscript{70} Basu, \textit{Constitutional Law of India}, 1998, Universal publication p. 4
\textsuperscript{71} S.R. Bommai \textit{vs.} Union of India, (1994) 3 SCC 1, para 153.
\textsuperscript{72} BalPatil \textit{vs.} Union of India, (2005) 6 SCC 690.
\textsuperscript{73} M.P. Gopalakrishnan Nair \textit{vs.} State of Kerala, AIR 2005 SC 3053.
Specification of Laws:

तेषामाद्यमृणादात् निश्चेपोखः।
सम्भूय च समुस्थानं दत्तस्यानपकर्मिः।।
वेतनसौयं चादानं संविदा व्यतिक्रमः।।
क्रयविक्रयानुमानं विवादं स्वमृपालयः।।
सैमविवादधानु पारूष्यः दण्डवाचिनोऽ॥
रतनेऽ च साहसरूपेऽ स्त्रीसंग्रहणमेवच।।
स्त्रीयुवामेण विभागु धृतमां येव च ॥।
पदान्याणस्वादिःतालयः व्यवहारस्थितताविह।।

[Manusmriti, Chapter VIII, 4-7]74

i) Runadana — Payment of debts;

ii) Nikshepa - Deposits;

iii) AswamyVikaya — Sale without ownership;

iv) SambhuyaSamuthana — Joint undertakings [partnership];

v) Dattasyanapakarma — Resumption of gift;

vi) Vetaladana — Payment of wages;

vii) Samvidvyatikrama — Violation of convention of guilds and corporations.

viii) Krayavikrayanusaya — Sale and purchases;

ix) SwamipalaVivada — Dispute between master and servant;

x) Simavivada — Boundary dispute;

xi) Vakparushya — Defamation;

xii) Dandaparushya — Assault;

xiii) Staya — Theft;

xiv) Sahasa — Offence by violence;

xv) Strisangrahana — Adultery;

xvi) Stripumdhanna — Duties of husband and wife;

xvii) Vibhaga — Partition;

xviii) Dyutasaamahvaya — Betting and Gambling.

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A) Labour Law

i) No Reduction of Wages for the Delay in Completing the Work Owing to Illness

If an employee is unable to do the work entrusted to him owing to illness, he may complete the work through another, or after he recovers from his illness. In such a case he is entitled to get full wages notwithstanding that a longer time has elapsed in completing the work.

This rule of Manu indicates a very humane approach. An employer could not deny wages on the ground of delay in performance of the work, if such delay was unavoidable.

B) Procedural Law

i) King Should Decide Cases According to Law

Daily the King should decide one after another all disputes which fall under the eighteen titles of law according to the principles drawn from local usages and from the institutes of the sacred law.

Medhatithi and Kulluka hold that local usages and customs, required to be followed by the Kings, should not be opposed to the sacred texts.

ii) Distinction Between Executive and Judicial Power

The King had both executive and judicial powers. But a clear distinction had been made between the two. Executive power had to be exercised on the advice of the Council of Ministers. As head of the Executive he was to wear Royal Dress and Crown

76 Id at p. 265.
and occupy the Throne. But when sitting as a Judge, he was to wear a simple dress and occupy his seat in the Court hall and give decision in conformity with the opinion of the Chief Justice and the Judges.

(a) 

तत्रासीनः विक्षोला पिपाणिमुद्यम् दक्षिणम्।
विनीतवेशसङ्केतः पश्येत् कार्याणिकार्यिणाम्।।

(Manusmriti, VIII, 1-2)\(^{77}\)

A King, desirous of investigating law cases, should enter his court of justice without ostentation in his dress and ornaments, preserving a dignified demeanor, accompanied by Brahmans and experienced councilors. In the Court hall, either seated or standing let him examine the cause of people [who bring suits before him].

(b) 

धर्मार्थविषयाय संयोजः समाहितः।
प्रणामः लोकपालः-कार्यदर्शनसम्बन्धः।।

(Manusmriti, VIII, 23)\(^{78}\)

Having occupied the seat of justice and having worshipped the guardian deities of the universe let him, with concentration of mind, conducts the trial of cases.

(c) 

तीक्ष्णीमुदुस्यात् कार्य वीक्ष्य महीपति।
तीक्ष्णीमुदुस्यावरजामवतिसम्मतः।।

(Manusmriti, VIII, 140)\(^{79}\)

Let the King, having carefully considered every cause, be both hard and gentle [as the situation requires]. A King who behaves appropriately commands the respect of one and all.

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77 Pt. Ganeshdutt Pathak, Manusmriti Bhashaprakashtikasahit, Thakur Prasad Kailashnath Bookseller, Varanasi - 1, 1947, p.266
78 Id at p. 269.
79 Id at .p. 247.
iii) The Chief Justice to Preside in the Absence of King

अमात्यमुख्यं धर्मंव्राजांस्तत्त्वं कुलोद्गतम्।
स्थापयेदसनेतस्मिन् खिन्नः कार्यं क्षणं नृणाम्॥।

(Manusmriti, VIII, 141)\textsuperscript{80}

When the King is unable to preside over his court, [owing to preoccupation], the Minister for Justice or the Chief Justice should occupy that place.

The provisions referred to above specifically make the King responsible for the administration of justice. It was his duty to preside over the highest court and decide cases. Only in exceptional cases could he depute or authorize the Chief Justice to preside over that court. Further, administering justice was considered a divine duty. This is indicated by the provisions that the King was required to worship the guardian deities of the universe before commencing court work.

iv) Oral Evidence

(a) Relevant witness [Sakshinah]

The fundamental rule regarding the admissibility of oral evidence is stated in the Smritis.

समवाध्यनाश्रयं श्रवणीविदिति ॥

(Manusmriti, VIII, 74)\textsuperscript{81}

Evidence of what had actually been seen or heard by a person is admissible.

(b) Who can be examined as witness?

गृहिणं पुज्यितं श्रवणं अद्वेवं शास्त्रविद् शूद्रायणय: ॥
अध्युतंत: साध्यमहिन्तिनयेक्षिविदनापदि ॥

\textsuperscript{81}Id at p. 278.
Trustworthy householders and citizens of the Country belonging to any caste may be examined as witness as by the parties to a suit.

أنا مراجع ين كرثنك، وسأ تأكد من أنهم أدانهم.
أنا مراجع ين كرثنك، وسأ تأكد من أنهم أدانهم.

(Manusmriti, VIII, 69)

Any person who has personal knowledge (of an act committed) in the interior apartments (of a house) or in a forest, or of a crime causing loss of life, may give evidence.

In all cases of violence, theft, adultery, defamation and assault, the King must not examine the competence of witnesses strictly [Manusmriti, VIII, 72].

(c) Penalty for failure to give evidence

त्रिपादाद्वृत्तम शाययूधान्तिदुन्नाराग्द: ||
तदृष्णप्राप्तुतात्त सर्वदशबन्धं च सर्वत: ||

(Manusmriti, VIII, 107)

A man, who, without being unwell, fails to appear before the court to give evidence, within three fortnights after the service of summons, shall be responsible for the whole liability involved in the case and will also be liable to pay one-tenth part of the whole liability as fine to the King.

(d) Demeanour of witnesses should be noticed

(Manusmriti, VIII, 25-26)

83 Id at p. 277.
84 Id at p. 278.
85 Id at p. 278.
86 Id at p. 258.
The internal workings of one’s mind can be understood by observing the motions, the gait, the speech, and the changes in the expression of the eye or face of the person. Therefore, by watching the demeanor of a witness, the King should discover the real disposition of the man.

Under present system, great value is attached to the demeanor of the witness regarding appreciating oral evidence and therefore in this regard importance is given to the view of the Trial Judge who had the opportunity of observing the demeanor of the witness.

C) Review of Judgment

Whenever any legal proceeding has been completed, or punishment has been imposed in accordance with law, it is final and the King shall not interfere.

But whatever his ministers or the judges may settle improperly, the King shall review such decisions and impose a fine of thousand panas [on those responsible].

Medatithi and Kulluka hold that the prohibition contained in the first rule is applicable to decision taken in accordance with law by the court presided over by the King and the second rule applies to unjust decisions given by judges.

D) Highest Dharma of Judges - Dispensation of Justice

All the DharmashastrasandSmritis with one voice laydown that dispensation of justice was the highest Dhanna of Judges.

(Manusmriti, VIII, 12)\(^{88}\)

(a) In a case where Dharma (justice) has been injured or made to suffer at the hands of Adharma (injustice) and still the judges fail to remove the injustice, such judges are sure to suffer for their act (or omission) which is Adharma.

\[ \text{यत्रा धर्मां धर्मणसत्यं यत्रानुत्तेनचं} \]
\[ 
\text{हन्यते} \text{प्रेक्षणाणां हतास्तत्रा समासदा} \]

(Manusmriti, VIII, 14)\(^{89}\)

(b) Where Dharma Injustice is sought to be destroyed by Adharma (injustice) and truth is sought to be destroyed by untruth, and the judges fail to prevent the same and remain mere spectators, they are sure to be destroyed.

E) Criminal Law

The distinction also becomes patent by the position in law that civil action could be initiated only by the person whose right was violated and not by any third party. Whereas, the King or his officer were prohibited from causing the initiation of a civil suit on his own, it was made obligatory on their part to investigate into a criminal offence on mere information. The special responsibility of the King [State] in the matter of controlling crimes, detection of crimes and punishing offenders is stressed in Manu Smriti.

i) Duty of State to Detect and Punish Offenders

\begin{align*}
\text{सम्प्राप्तापूपापलावेशमध्याविक्रया} & : || \\
\text{चतुर्पौर्तीक्ष्मा} & : \text{समाजः प्रेक्षणानिच} : || \\
\text{जीर्णोद्धारण्याणिकावेशमनिच} & : || \\
\text{शूचिनिवापरासारणानुपचरनिच} & : || \\
\text{एवविधनार्णादेशान्} & : \text{गुल्मः स्थावरजमें} : || \\
\text{तत्क्रियाश्रृङ्खलायुप्तवार्तेत} & : || 
\end{align*}


\(^{89}\) Id at p. 268.
(a) Persons who commit offences or who conspire to commit offences are generally found in assembly houses (clubs), hotels, brothels, taverns and victualler’s shop, festive assemblies, gambling houses, concert rooms, old gardens, forests, shops of artisans, natural and artificial groves, etc.

(b) The King must post soldiers and spies for patrolling such places and in order to keep away thieves and other unsocial elements.

(c) He should appoint reformed thieves who formerly associated with such doubtful elements and through them offenders must be detected and punished (Manusmriti, IX, 264-267).  

It establishes the clear distinction made as between civil wrongs which gave rise to a civil action and offences which gave rise to criminal proceedings by the King against the offender. This classification holds good also in modern jurisprudence. This is the mark of distinction of ancient Indian jurisprudence in comparison to other ancient legal systems in the World.

ii) Aiding the Offence of Theft, Harboring Thieves and Receiving Stolen Property are also Punishable

अभिनिदान भक्तवृत्तत्था शाकाकादन | 
सनिधानोपिष्टय भन्याक्याउँग्याँ: ||

Those who give to thieves, knowing them to be so, fire, food, implements or shelter, and receive stolen articles, shall be punished like thieves, by the ruler.

iii) Exemption for Acts of ‘Staya’ in Certain Cases

Taking articles belonging to another to the extent necessary and under special circumstances were declared as not amounting to an offence of theft.

वानसपन्यामूलकांदार्यन्वयेतार्यवच |
तृण च गोप्योग्रासाध्रमोक्षयमेवमुद्रवील ||

(Manusmriti, VIII, 339)  

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91Id at .p. 327.
Whoever takes grass, feel, flowers of trees and plants from any place for purposes such as feeding cows, for worship etc., commits no offence or Steya.

iv) Lighter Penalty for Offence Committed Out of Negligence

(Manusmriti, VIII, 264) 

He forcibly occupies a house, a tank, a garden or a field, shall be fined 500 panas. A fine of 200 panas shall be imposed if the same act was committed out of negligence or by mistake.

v) Right of Self-Defence

(Manusmriti, VIII, 350-351) 

Any person can slay without hesitation anatatayi (assassin) who approaches him with murderous intent, whether the assassin is one’s own teacher, a minor, an aged man or a Brahman well versed in the Vedas. By killing an assassin the slayer commits no offence.

Kulluka commenting on the above rule states that the right to use force in self-defence can be exercised when there is no time or scope to seek the assistance of the King [State] and any delay in not retaliating is going to cause loss of life or ruin. According to Kulluta, the right of killing an assassin must be exercised only when it is not possible to escape and not killing the assassin would cost the life of the person attacked. Mitakshara on Yajnavalkya 11-286 holds the same view. Apararka states that a person has to be regarded as an atatayi [assassin] who is about to set fire to property or kifi a person and there is no alternative but to kifi him to prevent the mishap.

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93 Id at p. 329.
Right of self-defence includes defence of women and the weak. Mitakshara states that a person has a right to oppose and kill another not only in self-defence but also in defence of women and weak persons who are not in a position to defend them against murderous or violent attack. Even killing an I3rahmana in exercise of such a right is no offence.

vi) Quantum of Penalty and Independence of Trial

The uniform rule prescribed in all the Smritis goes to show that in respect of offences triable or tried in a court presided by the Chief Justice or any other Judge, or by the King, after the finding of guilt was recorded by the court, the question of deciding the quantum of penalty solely vested in the King. The quantum of penalty was required to be decided by him independently taking into account not only the charge proved but all other circumstances which were prescribed as relevant for deciding the same. The importance of this procedure stands recognized under the Criminal Procedure Code, 1973, which requires separate hearing about quantum of penalty.

अनुबंधपरिधाय दोकाली च तत्तवः।
साराप्रचायालोकय दण्डंदण्डः;युपालयेत्।
अथमाण्डंनकोकोस्वहीतिनासनम्।
अवच्चर्य च पर्मोपदस्तमात्र तत्परिबर्जयते।
अद्वीत्यु दण्डानु राजादपापावयदण्डयन्।
अन्यमहदान्कोपतिनालकंविक्षितः।

(Manusmriti, VIII, 126-128)

(a) The King having fully considered and having due regard to (a) the motive, (b) the place of occurrence, (c) the ability of the offender to suffer the penalty and (d) the nature of the crime, should impose the penalty which the accused deserves.

(b) Let him (King punish offenders) first by gentle admonition, afterwards by harsh rebuke, thirdly by fine and after that by corporal punishment.

(c) If a King imposes penalty on those who are innocent or imposes harsh or unjust punishments even on those found guilty, he brings on himself great infamy and

after death sinks to hell.

The above provisions required the King to be highly circumspect and judicious in the matter of imposition of penalties. In the first instance, he was to be satisfied beyond any reasonable doubt about the guilt of the accused. Even when the accused was found guilty, in deciding the quantum, the King was required to take into account the age, the physical condition and health of the accused, his capacity to bear the penalty as also any aggravating or extenuating circumstances such as provocation etc., if any, as also his past record. The King was required to be kind to first offenders.

vii) Orders of the King Should be Obeyed

Let no man transgress that law which the King decrees including the direction to do any act which he favours or desist from doing acts which he prohibits or disfavors. All should obey the King’s decrees.

The above verse may give the impression that plenary power of law making was invested in the King. But the word ‘law’ here had been used in a limited sense to mean ‘royal command’ issued by a King without contravening written texts and accepted usage. Medhatithi, Kulluka and other commentators have interpreted this rule holding that this rule refers to lawful orders in worldly matters only.

2.8 The Globalization of Legal Education

The emerge of new economy globalization, privatization deregulation have thrown up new challenges. There are today revolutionary changes in information, communication and transportation technologies which require corresponding changes in the legal system. Many highly specialized area of Law like intellectual property, corporate law, cyber law, human rights, alternative dispute resolution international

business transaction, have to be introduced in all our law schools. The opening of trade and capital markets as a result of globalization and the retreat of the state from traditional have raised new legal issue concerning ways in which poor and marginalized sections can protect themselves from further impoverishment special emphasis has to be made on criminal Justice. The very nature of law, legal institutions and law practice are in the midst of paradigm shifts.

National Law Schools co-opt the law teachers and students from different Law colleges. There should be continuous interaction between the National Law School of that state and the different Law colleges established in that state.

University Law colleges have also social responsibility. There is no uniformity in staff pattern of University Law colleges. Some Universities closed LL.B. courses and run only LL.M. and Research programmes. The Law teachers recruited basically for Law teaching are involved in other activities ignoring their fundamental duty of teaching. It should be made compulsory that each University Law department must run LL.B. years/LL.B. 5 years at least on self-finance basis.

As UGC prescribed N.E.T for the eligibility of lectureship, at least there should be an examination for getting eligibility for Reader post so that the accountability should be fixed on Law Teachers. The present system allows the accountability without minimum standards into the university system. Like All India civil services, all India law teachers’ services should be created to recruit Law teachers and from the National pool, the Law teachers, can be allotted to be the university or colleges on need base.

In some states, Government Law colleges are there in some states private aided law colleges are there. But in the states like Andhra Pradesh neither government law colleges nor private aided law colleges are there. It is high time to establish at least 5 to 10 government Law colleges or/ and private aided Law colleges in each every state.

The Third phase of evolution of legal education is where we are now: Globalisation.\textsuperscript{96}

\textsuperscript{96} See generally John E. Sexton the “out of the Box: thinking about the training of law years in next Millennium” (2001).33U Tol. L.Rev. 189.
2.8.1 Internationalization

Things happened in the first phase of transformation identified here as Internationalization. As an advance on a purely local conception of the law, this international paradigm saw the world as an archipelago of Jurisdictions, with a small number of lawyers involved in mediating disputes between Jurisdictions or determining which Jurisdiction applied. This is the world of traditional international law, with a majority of practice taking place within a given Jurisdiction and educational institutions thus focusing on training student for that purpose.97

2.8.2 Transnationalization

The term “transnational law” is commonly attributed to Philip C. Jessup’s Lectures at Yale in the 1950 where he used the term to embrace “all law which regulates actors or events that transcend national frontiers.”98 For present purpose, it denotes the shift in perspectives that came slightly later, in the 1970s and 1980s, where the world came to be seen not as an archipelago but as a patchwork of Jurisdictions. The increasing mobility of capital and people required, and made possible, greater familiarity across Jurisdictions. Within law schools this took the form of collaborations and exchange programmes.99

The increasing diversity of the student population has had an important effect on the classroom, though a further shift is in process now as the movement across Jurisdictions of Transnationalization has given way to the emergence of a single globalized market.

Globalization: -The third phase of evolution of legal education is where we are now: Globalization. This can be understood as the integration of countries and peoples

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97 Again, a contrast may be made with civil law education, which had a far richer tradition of exchanging faculty and ideas bated on a shared heritage.
brought about by deep reductions in the costs of transport and communication, and the dismantling of barriers to the flow of goods, services, capital, knowledge and people.\textsuperscript{100}

The world has moved from archipelago to patchwork to web—both in the sense of the rise of the Internet as well as in the sense that commercial and other activities do not simply overlap at the edges but may be structurally and inextricably linked. Leading Law firms increasingly present themselves as “global”, a status measured for the first time in 1998 when the American Lawyer first published its “Global fifty” list of firms ranked by size and revenue.\textsuperscript{101} This has been augmented by the increasing importance of non-traditional regulatory regimes that transcend traditional Jurisdictional analysis. Whether it is compliance with 150 standards, controlling the behavior of multinational corporations, or to pick the most obvious example—regulation of the Internet itself, contemporary normative question are frequently global rather than local.\textsuperscript{102}

Within legal education, the first mark of globalization as distinct from transnationalization was the move from exchange programmes to double-degree programmes across national Jurisdiction. Examples from the United States include Cornell University Law School, which offers double-degrees in partnership with university in France and Germany.\textsuperscript{103}

Today there are few significant legal or social problems that are purely domestic adding that it is virtually impossible to avoid the transnational implications of almost any subject.\textsuperscript{104} The penetration international law into domestic law continues to grow, not only through international agreements but also through the creation and growth of supranational, inter-governmental organizations such as the world trade organization (WTO), world Intellectual Property organization (WIPO) and the United Nations Commissions on International Trade Law (UNCITRAL) as well as various regional economic organizations such as the European Union (EU), Association of Southeast

\textsuperscript{100} See Joseph E. Stiglitz, Globalisation and its Discontents (New York: w.w Norton,2002) at 9.
Asian Nations (ASEAN), Economic Community of West African states (ECOWAS), Southern African development free Trade agreement (NAFTA). \textsuperscript{105}

In today’s world these organizations play a significant role in the development of law. \textsuperscript{106} They increasingly adopt international conventions which have direct impact on domestic law and have created tribunals that adjudicate between member states and in some cases citizens of those states. The W.T.O, for example, provides various international dispute resolution panels, and although the panels’ decisions must be incorporated into domestic Law, the panels demonstrate that countries have to look beyond their own borders for sources of law that apply to transactions arising in the domestic context. \textsuperscript{107}

2.8.3 Globalization and Legal Education: The Challenges

The process of globalization is clearly unstoppable. \textsuperscript{108} In the most basic terms, globalization means integration through world trade, financial flows, the exchange of technology and information, and the movement of people. The world has become international at many different levels. For examples with long distance, transoceanic communication via phone, fax-mail or the internet and transportation are convenient, common place and affordable. On a business level, thing have never been so internationalized and the rate of growth is exponential. The key feature is the increasing integrated cross border organization of economic and financial activity around the global. The number of multinational corporations has grown from a handful 1960s to the point where guides to multinational corporations are commonly limited to the top 500 companies. \textsuperscript{109} These multinational companies not only sell aboard but also manufacture and incorporate subsidiaries all over the world.

\textsuperscript{106} (UNCITRAL), for instance has elaborated the UN convention on contracts for the International sale of Goods as well as Arbitration Rules.
\textsuperscript{108} Joseph weiler, speaking about the Global Law Program at New York University Law school in 2002, observed: “I take globalisation as a given and I believe that it has had, and will continue to have many beneficial and Negative effects on rich societies and poor.”
\textsuperscript{109} Fortune Global 500, annual ranking of the world’s most profitable operations. Available from: <http://www. Uncitral. Org.}
With all this globalization both business and personal disputes become international. For example, where assets of a company are spread across several countries, a bankruptcy matter may involve more than one country. The lawyer needs to know the conditions under which the person administering a foreign insolvency proceeding has access to the courts of a state other than his or her own. The lawyer also needs to know how to recognize the conditions of a foreign insolvency proceeding and what sort of rules apply when insolvency proceedings take place concurrently in different states.\textsuperscript{110} Parties in a sales contract may for instance, live in different states and their countries may be party to the United Nations convention on the international sale of goods, which might lead to the application of the convention to disputes arising out of the sales transaction.\textsuperscript{111}

Where Jurisdictions are party to the United Nations convention on the limitation in the international sale of goods a question of the time within which a party under a sales contract for the international sale of goods must commence legal proceeding against the other party to assert a claim arising from a sales contract or relating to its breach, termination or validity may implicate international law.\textsuperscript{112}

Several recent changes are making governments even more concerned with international issues. First, the growth in international trade, travel and communication forces governments to be concerned with protecting their citizens abroad; especially with their business dealings. Consequently\textsuperscript{113} there has been an increase in the scope and nature of domestic regulation of international with other.

As noted earlier, in response to the challenges of globalization various international course. Many publish international law journal summer-abroad programs are growing, and most campuses have international student organizations.\textsuperscript{114}

\textsuperscript{110} The United Nations commission on International Trade Law (UNICTRAL) has development the UNCITRAL Model Law on counter- Border Insolvency (1997).
\textsuperscript{113} Electrónica sicula SPA (Elis) (USVITALY) 1989 ICJ 15, 28 ILM 1109 (1989);
Some argue that globalization has exacerbated inequality\textsuperscript{115} in the least developed countries, a worsening of existing imbalances has impeded development and aggravated poverty.

Therefore, it has always been recognized that a lawyer must maintain and develop his or her professional skill to meet the environment he or she is praising in. This is especially important in the current era of information explosion. As noted earlier, law schools in developed world have, in part, responded to globalization trends with the development and encouragement of international exchange programs. In these programs, schools invite foreign law faculty as visiting teachers and sometimes establish more permanent relationships between law faculties.

2.8.4 Global Legal Education in India

Globalization has posed multiple challenges to the future of legal education in India, but has provided an opportunity to challenge the status quo which is an essential condition for seeking any reform. India has huge challenges to confront in promoting legal and judicial reforms, with a view to establishing a rule of Law society. The role of lawyers and judges will become critical for addressing future challenges of governance. In this regard, the training that imparted to future lawyers and judges in our law schools needs to be thoroughly re-examined to suit the social and economic transformation that is underway in the country. There are some important consequences for global legal education; global course, global programmes, global curriculum, global faculty, and global interaction.\textsuperscript{116}

The following are some important issues that deserve serious attention with a view to promoting global legal education in India.

2.8.5 Global Curriculum and Teaching

A few decades back, law schools in India were doing well as long as their curriculum was focused on India law and issues relating to the country’s legal system. While there was some limited impetus to the study of International and comparative

law, the larger focus was primarily on issues relating to the Indian legal system. This was of course, necessary and ought to have been the approach. There is indeed greater scope for improvement in promoting excellence in teaching and research is relating to India law and to addressing the challenges facing the legal system, including the need forest abolishing a society that respects the rule of law and meets the challenges of globalization.\(^{117}\)

However, new and emerging law schools cannot offer to limit their focus to teaching and research on issues relating to Indian law. In fact, the appetite of Indian law students for understanding international and comparative law has significantly increased over the years, given their participation in international moot competitions that range from issues such as maritime law to humanitarian law to dispute resolution.

The most challenges task is to strike a proper balance to ensure that students are taught a fair mix of courses that give them knowledge and training in Indian law, but at the same time prepare them for facing the challenges of globalization, whereby domestic legal; mechanism interact with both international and foreign legal system. This interaction is going to depend in the years to come and our law schools must prepare themselves to face this challenges posed by globalization.\(^{118}\)

### 2.8.6 Global Knowledge and Faculty Research

Hiring of good faculty has been a challenge in law school in India and abroad. Generally the financial incentives offered by the private sector both in India and abroad, are far more attractive than those available in the public sector, including law schools, for good lawyers to make a commitment to academic. But it is possible to attract good lawyers to academia by promoting a range of educational reforms and institutional initiatives, including better financial incentives.\(^{119}\)

Globalization has indeed provided new opportunities to address some of the challenges in this regard. Issues relating to the Indian legal system are not only taught and research in India but also in many other parts of the world. Growing number of


\(^{118}\) Id at p 47.

\(^{119}\) Id at P. 48.
Indian lawyers and schools are involved in this effort. There is a need to have a global focus in hiring faculty for Indian law schools of course, success will depend on the school’s ability to provide the right kind of intellectual environment and financial and other incentives for Indian or foreign schools to teach and purpose research in India and contribute to its growth story.120

Globalization of legal research has become a Universal trend. Legal scholars working in a particular country or researching on the law and legal system of that country do not limit their research to that country or its neighbors. With the development of web–based research and other online research tools databases, there has been a remarkable transformation in the development of comparative and international law research. It is important for global law schools to have or provide access to legal material from Jurisdiction all over the world. These need to be constantly updated to keep up with the changing dimension of law in all societies.

There is also a need to promote global exchanges, including bilateral and multilateral exchange of faculty and students, with a view to aid global knowledge relating to law and legal institutions. All this needs huge resources. It is not possible for the government of developing countries such as India, to support them through public funding. Concrete steps need to be taken to encourage global philanthropic initiatives.

2.8.7 Global Programmes and International Experience

Indian law schools need to consider innovation when it comes to the degree programmes offered by them. At present, there are two models: the three –year Bachelor of Law (LL.B.) programme offered by many Universities in India, and the five-year integrated B.A. (Hons.)-cum LL.B. Programme offered by the national law schools in India, starting with the one in Bangalore. It will be useful to look at the experience of the United States and others in examining whether Indian law school should consider offering the Juris Doctor (J.D.) programme. The starting of J.D. Programme in V.s. is largely credited to Christopher Columbus langdelll when he was dean of Harvand Law School during 1870-95, although the University of Chicago was

the first law school to offer a J.D. degree. Increasingly, many parts of the common law world are beginning to offer J.D programmes; Law schools in Australia, Canada and Hong-Kong are in the forefront obviously, there is an emerging trend in favour of J.D programmes.

There are sound Jurisdictions for offering a J.D programme in India. In this context, it will be useful to examine whether a graduate entry J.D programme can be established in India. It is relevant to note that since 2008, Melbourne Law School, one of Australia’s oldest and most reputed law schools, has offered only graduates entry J.D programme, scrapping its LL.B. programme. The rationale for this has been articulated thus. “The school firmly believes that the Melbourne J.D as designed and taught by the school represents the right response to the challenges of providing the highest quality legal education in the demanding and competitive international environment of the 21st century”.

In a recent Harvard University review of its undergraduate curriculum it was recommended, “There is a responsibility to educate students –who will live and work in all corners of the globe –as citizen not only of their home country, but also to see themselves, and this country, as others see them”. This broader vision is expressed also by the Hon’ble J. Clifford Wallace who advocates a greater globalization of Judicial education to better understand and foreign laws, and to borrow or adapt foreign laws where appropriate to interpret domestic laws and to solve new problems.

The Indian Judiciary has ruled time and again that unless there exists a grave in consistency, all forms of domestic law, including even the constitution, must be interpreted in a manner consistent with international law. In the judgment of Keshvanand Bharti Vs. state of Kerala, Sikri held.

It seems to me that, in view of Article 51 of the directive principles, this court must interpret language of the constitution, if not intractable, which is after all a

122 Id at 52.
123 Id at p 53
124 Id. at P. 54
municipal law, in the light of the United Nations charter and the solemn declaration subscribed to by India.

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

The decision of the Supreme Court in Gramophone co. of India Ltd. extensively relied upon several international conventions like convention on freedom of transit (Barcelone convention); the convention on the High seas, 1958, and the convention of transit treaty of landlocked states, 1965.

In Union of India vs. Sukumar Sengupta,126 the Court enforced the provisions of bilateral treaties of India and Bangladesh regarding ‘lease in perpetuity’ granted in favour of Bangladesh in respect of certain lands close to our border even though the agreement had not been formally ratified. The court inferred ratification of the bilateral treaty by the conduct of the party states.

In the realm of human rights, in which volume of decisions the court has referred and relied upon the universal declaration of human rights (UDHR) of 1948, the international covenant on civil and political Rights (ICCPR) of 1966, the international covenant on Economic, social and cultural Rights (ICESCR) of 1966, the convention on the Elimination of All forms of discriminations against women (CEDAW) of 1979, convention on the Rights of children of 1989.

India though not a party to the 1951 U.N convention relating to the states of refuges and its 1967 protocol and does not have a domestic law on the world, particularly, form the neighboring countries such as Sri Lanka, Bangladesh, Myanmar besides several thousand Tibetans, Iranian etc. It’s recognitions of its active support and assistance given to the refugees within India, that become a member of the executive committee of the High commissioner for refugees (EXCOM) 1955.

126 AIR SCC 1984 P35.
In the realm of environment law, the Court has drawn support from a large number of conventions and has adopted the well-recognized principles like sustainable development, the precautionary principal and polluter pays principal.\footnote{AIR SCC 1984, P. 35.}

\section*{2.8.9 Review of Legal Education in Law Schools}

The society is growing more and more complex. Technology has posed enormous challenges to the earlier system of law and Justice. Trade has become vast and technology oriented.\footnote{Id at P. 50.}

A lawyer has to comprehend the new social and economic changes in the world. The age old practices and tactics are no more relevant now. The Legal profession is not what it was a century or even a decade ago. Its role in the society is different now because it has a wider set of economic, political and social roles. Society has changed significantly, and change in the legal profession reflects those changes. Keeping this paradigm in mind, there is an emergent need to review legal education so that it meets the needs of the society. Lawyers will have to be acquainted with new tools and skills. A well administered and timely relevant legal education can, therefore, be said to be the only choice for the future. As opined by the famous Jurist, N.A. Palkivala, the two marks of a truly educated man are the capacity to think clearly and intellectual curiosity which enables him to continue and intensity the process of learning even after he has finished the Law course.\footnote{Id at p 51.}

Achieving the next level of paradigm for legal education shall not be possible without the presence of a faculty which is sensitive to the changing times. Hiring of good faculty has a challenge in law schools in India and abroad generally, the financial incentives offered by the private sector both in India and abroad are far more attractive than those available in the public sector, including law schools, for good lawyers to academia by promoting a range of educational reforms and institutional initiative including better financial incentive.
Globalization has indeed proved new opportunity to address some of the challenges in this regard issue relating to India legal systems are not only taught researched in India but also in many others parts of the world’s course, success will depend on the school ability to provide the right kind of intellectual environment and financial and other incentives for India or foreign scholars to teach and peruse research in India and to contribute to its growth story. It is worthwhile to learn from the experiences in other countries where the shortage of teachers and faculty has been addressed by video –conferencing of lectures by foreign faculty.130

The law schools of the future ought to provide academic space for engaging in teaching and cutting edge research on issues of global significance. The institutions ought to constantly reinvent themselves for facing the challenges of globalization through exchange and collaboration programmes. This has different implications for faculty, students, and for the development of teaching and research programmes.131

With the background of development in the global economy as aforesaid, India has to assume a greater responsibility as a key player by introducing a regime of progressive higher education. Within the larger debate relating to reform of the higher education sector in India, there is an urgent need to examine the situation with regard to legal education and how globalization is going to impact the agenda for it.132

In the background of the raging debate on opining up of the legal market for foreign lawyers and law firms, the need for imparting the right skills and education not only to future lawyers but even to current breed of legal profession has gained underlined importance. There are four important factor of legal education: Global curriculum, global faculty, global degrees, and global interaction. These deserve public attention.133

A few decades back, law school in India could do well as long as their curriculum was focused on India law and issues relating to the country’s legal system. While there was some limited impetus to the study of international and comparative

130 AIR SCC 1984 p 35
131 Id at P. 37
132 Ibid.
133 Ibid.
law, the larger focus was primarily on issues relating to the Indian legal system. This was, of course, necessary and ought to have been the approach. There is indeed greater scope for improvement in promoting excellence in teaching and research relating to Indian law and to addressing the challenges facing the legal system, including the need for establishing a society that respects the rule of law and meets the challenges of globalization\textsuperscript{134}.

2.8.10 Globalization of Legal Practice: Challenges before the Indian Bar

The process of liberalization and globalization is inevitably happening in every sphere of human activity. The general agreement on tariffs and trade (GATT) which India signed along with 117 other countries is expected to open up the services sector to international trade. According to knowledgeable circles by the turn of the century over fifty percent of global trading will be around services rather than on industrial goods. The impact of such massive transformation to the organization and delivery of legal services is matter of concern to those who are managing professional regulation and development. This note raises some of the issues in the context of the existing structure and pattern of legal services delivery in the country\textsuperscript{135}.

The legal profession is a highly competitive market system operating under very little regulation and supervision. There is monopoly though it is eroded substantially by the non-implementation of section 30 of the Advocate Act and by the gradual intrusion of accountants, trade unionists and others in different segment of legal practice. Recently the Bar Council of India attempted to restrict entry into legal practice by people above the age of forty. The power to recognize foreign law degree for purposes of eligibility to practice and the power to deny enrolment for foreign nationals expecting on certain condition have been used by the Bar Councils to strict foreign completion in domestic legal practice. The existing pattern of completion therefore, is skewed and limited to the top level in the legal pyramid. Many of those who have reached that level have been indifferent to the larger interests of the professional and

\textsuperscript{134} AIR SCC 1984 p 35.
\textsuperscript{135} Prof. Madhava Menon “\textit{Reflection on legal and Judicial Education}” Har Anand Publications, New Delhi at Page 117.
hardly took any interests in its management and development. This situation made some observers argue that there are many professions within the profession and there is near anarchy in its ranks. These organization weaknesses are bound to be exposed with liberalization and globalization. The consequence may be tragic and unpleasant to the entire profession.\footnote{Prof. Madhava Menon “Reflection on legal and Judicial Education” Har Anand Publications, New Delhi at Page 117.}

The role of lawyer in a liberalized economy has not been adequately studied. Certainly it is for too different from the present concept of advocate for parties to litigation. He is to be more a negotiator capable of working in a team with other professionals. He is to play a role in avoiding disputes rather than resolving one offer it has arisen. He has to be a global player in the sense that he should be able to advice on transactions outside his own country.\footnote{Ibid.}

The lawyer must be able to work with regulatory, administrative and enforcement agencies predicting their style of decision making rather than specialization on prediction of judicial decisions.\footnote{Ibid.}

Business practices on the ground are to be his primary concern and in this regard he has to show flexibility and imaginativeness in his use of legal instruments.\footnote{Ibid.}

While he has been so for wedded to one specific model of legal regulation of the economy he is now required to quickly adjust to be wildering variety of contract Mechanisms where private parties allocate property rights in conditions which are complex and ingenious.\footnote{Ibid.}

Public Law remedies may have to be invoked to prevent market failure and to uphold fair competitive regimes in other words, the rule of the game may themselves get changed and the pattern and style of disputation may become different in different situation.
These changes, inevitable in a liberalized economy make demands on the skills and capacities of average lawyers who today are shaped in the mould of arguing counsels in court.¹⁴¹

They are generally solo players running from court to court seeking ad-hoc solutions and interim orders in all types of litigations. The life of such legal practice is limited in emerging new world which is the real world of the global legal market. How are we preparing our professionals for this change knocking at our doors? What is the continuing education the profession is offering to its members to be able to survive the transition? These are issues which seems to me relevant in the context of liberalization and globalization.

Another matter to be discussed in this context is the impact of technology and communication systems in the legal practice of the future lawyer is essentially an information analyst and communicator. In this regard his job is made easier and different as a result of the information explosion and communication revolution modern technology has produced while the modern law office in the west is a technology marvel with infinite capacity for information research and on line communication the system that prevails in India is relatively unscientific, archaic and inefficient.¹⁴²

There are many more issues which must agitate the mind of all right thinking members of the profession in the context of the emerging trade in services about to overtake the world in a big way. Merely making statements that the foreign law firms would be prevented firms operating in the country is of no use. The world is changing too fast and the profession can no longer afford to be monopolistic and inward looking. The future shall witness a radical transformation in the context as well methods adopted to impart legal education and profession in India. Globalization has posed multiple challenges to the future of legal education in India but it has provided an opportunity to challenge the status quo, which is an essential condition for seeking any reform.¹⁴³

¹⁴¹ Prof. Madhava Menon “Reflection on legal and Judicial Education” Har Anand Publications, New Delhi at Page 118.
¹⁴² Id at 119.
¹⁴³ Id at P.120.
To conclude, I would like to quote the famous Irish author Edmund Burke who rightly said, “You can never plan the future by the past.” The time is ripe for an overhaul of legal education in India.

The UK has adopted a multi-path entry into the legal services market for those who wish to work in it. In setting this out I have deliberately avoided using the words lawyer or legal profession, which other would most likely insist on. Julian Lonbay (2007-10) sets out the paths as if they were train lines with crossing points using admission to the Roll of solicitors as his end point, he identifies three main lines to that terminus. The shortest and least complicated is for applicants to take a levels to enter University and then take a law degree which is followed by a one-year Legal Practice course (LPC), leading to admission. In general this takes about six years without break and excluding levels. The second shortest route is again to take a levels then take a degree in any subject and follow this with a one-year common Professional Examination (or graduate Diploma in Law), then join line with an LPC and TC to admission. This adds one year to the duration making seven years in total. The third route is much variable and elastic over time taken. Indeed route three might not lead to admission but halt along the journey. Lonbay’s starting points is either a student with GCSEs or a mature student who enters some kind of unspecified legal employment. This student joins the Institute of Legal Executives (ILEX) and takes ILEX part one and two examinations to become a legal executive. After a further two years of legal experience the student can enroll on the LPC, take the PSC and be admitted. This route allows for broken journeys and rest stops or even premature halts. After taking these journeys an admitted solicitor should be capable of demonstrating the expected SRA day one outcomes (Boon & Webb 2008:119). There is no explicit regulation of the law degree –i.e., LL.B. by the legal profession apart from the joint statements on the qualifying aspects of the degree and, of course, review by the quality Assurance Agency for Higher Education which examines all degree courses including law. With respect to the Legal Practice Course and bar Professional Training Course there is closer supervision involving audits and inspections by their respective regulators the Solicitors, Regulation Authority and the Bar Standards Board. For LL.Ms and research degrees in law there is no professional review.
The UK therefore, falls within the *polycentric* model of legal education and training as do a number of other countries and legal systems, but many do not.

### 2.9 Legal Education in U.S.

I contrast the US system of legal education and training in order to examine a *homocentric* system. The American Bar Association is granted the power to accredit and approve law schools and regulate them by the US department of Education. The result of this accreditation is that a student graduating with a juris Doctor (JD) degree can sit the bar examination of any state in the US. There are approximately 200 ABA law schools in the US Law schools which are not accredited may be permitted by their state to confer eligibility on students to take the bar examination. The number of unaccredited US law schools is not fully known. For example, California recognizes three categories of law schools: ABA accredited; state accredited law school; and unaccredited law schools. The latter two have varying degrees of regulation unaccredited does not mean unregulated. California has the largest number of state accredited and unaccredited law schools in the US, 18 and 28 respectively. Graduates from these latter two types can take only the California Bar examination and those of others if the other state will permit it.

Law schools in the US are categorized as “professional schools” along with journalism and business schools. They are distinguished from graduate schools which confer advanced degrees on research on students, i.e, PhDs. Admission to graduate school normally requires the completion of an undergraduate degree which for law can be in any discipline. The ABA requirement say that at three-fourths of a first degree must be completed for entry to law schools. However, this partial requirement applies more to the unaccredited law schools for example; California requires 60 hours undergraduate credit for entry to state accredited and unaccredited law schools. In addition to a first degree entrants need to take an admissions test which is usually the Law Schools Admissions Test (LSAT), and in many cases write a personal statement.

US, ABA –accredited law schools meet quite rigorous standards in delivering legal education. A law degree involves 58,000 minutes of instruction via an academic year of 130 days. Each credit is equated to 700 minutes of tuition. Most full –time JD
programs take three years although there are some programs that reduce the time to two
years. Satisfactory completion of law school enables a graduate to sit the state’s bar
examination although this is typically prefaced by a two month bar review course
which prepares students for the actual examination. Bar examination, though state
based, have almost become nationwide through their adoption of the Multistate Bar
Examination (MBE) developed by the National conference of Bar Examination
(NCBE).

The MBE covers contracts, torts, constitutional law, crime, evidence and civil
procedure and for some states a passing grade in this exam is sufficient for admission to
the state bar. Indeed, the NCBE has developed the Uniform Bar Examination which is
designed to test all the requirements for admission, but can be supplemented with
additional tests if individual states so determine. So far five states have adopted the
uniform approach. The NCBE also administers the MPRE which is the professional
responsibility examination that every applicant passes. Following admission to the state
bar a lawyer commences practice immediately without articles or training contracts.

The ABA may seem to exercise considerable sway over law schools but the
academy, as in the UK is generally free to organize the content of legal education in its
own way. However, the academy’s freedom is being challenged by the ABA’s proposal
to reform law school accreditation standards. The standards Review Committee has put
forwarded a series of changes to liberalize legal education by permitting by permitting
more online instruction, less security for faculty, and various other changes. These
have been challenged by the American Association of Law Schools (AALS) which sees
the proposals as deleterious for legal education as a whole and, instead, has requested
the ABA restart the ABA its review. The ABA has refused to do this.144

2.10 Legal education in U.K.

In the introduction I pointed out that English legal education arrived in its
modern from relatively late, especially when compared to US legal education; nor did
the big law firm come into existence until much later. In the 1930s the New York law
firm of Sullivan & Cromwell had over 200 lawyers so that Karl Llewellyn (1993)

144Hansen 2011.
warned that law factories were mopping all the best lawyers. The UK had to until when the artificial cap on partnership numbers was removed.

English legal education adopted neither the Socratic Method nor the use of cases and materials books. Instead it employed the typical of humanities education, namely the lecture and the inquisitorial. Textbooks were expository and largely descriptive of the legal topic at a particular time. There were relatively few law journals and certainly, none along American lines with student editors. Indeed, as twining has shown, the research profile of law was thin. It would have been difficult in the English context to distinguish a law student from a philosophy one. In part this represented the UK teaching of law at the undergraduate level rather than graduate as in the US. Nevertheless, as other commentators have noted, it was only in the last 30 to 40 years that English legal education began to consider such new ideas as clinical legal education and approaching the subject from the perspective of law in context as opposed to merely a system, or doctrine, to be learned and repeated.

In contrast to the US law and economics has never caught the academic imagination in the UK to the same extent. Other social sciences, notably sociology, have enjoyed greater success in the study of law. Research in areas such as courts, legal profession, access to justice and more have been informed by sociology, anthropology and geography.