# Chapter IV

**Scenario of Legal Education in India**

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Chapter IV

SCENARIO OF LEGAL EDUCATION IN INDIA

The study of laws, on condition they are good laws, is unrivalled in its ability to improve students.
– Plato

4.1 Introduction

Law, legal education and development have become inter-related concepts in modern developing societies which are struggling to develop into social welfare states and are seeking to ameliorate the socio-economic condition of the people by peaceful means. The same is true for India. It is the crucial function of legal education to produce lawyers with a social vision in a developing country like India. However, the legal education, in modern times is not confined to production of practicing lawyers alone. Today its scope and ambit has got widen up and its impact is felt in every sphere of human life. The law being a tool for the social engineering, legal education can be regarded as an instrument for the social design.

For any society, ripening of civilization is attributed through the social consciousness of the significance of law. The history of our own independence movement, if impartially written, will devote more pages to lawyers than to the votaries of any other vocation. It is well accepted proposition that the Profession of Law is a noble calling and the members of the Legal Profession occupy a very high status. 

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Since Law is the foundation of every society or a nation, Legal Education of the people is a sine qua none. Legal Education does not only create law-abiding citizens, but also produces brilliant academicians, visionary judges, astounding lawyers, and awe-inspiring jurists. Since law is a means for social changes and economic progress, since these four classes of men acts as catalyst for the growth of the society, the creation of these four groups of men should be the aim of the Legal Education.

The policy of legal education should be moulded in tune with the rapid contemporary changes occurring as a result of scientific and technological developments, especially by expansion of software technology.

Legal education in India generally refers to the education of lawyers before entry into practice. Legal education in India is offered by the traditional universities and the specialized law universities and schools only after completion of an undergraduate degree or as an integrate degree. Legal education derives its impetus from the economic, social and political set up of the society. Legal education is a human science which furnishes beyond techniques, skills and competences the basic philosophies, ideologies, critiques, and instrumentalities for the creation and maintenance of a just society.

### 4.2 Historical Development of Legal Education

The history of law links closely to the development of civilization. Ancient Egyptian law, dating as far back as 3000 BC, contained a civil code that was probably broken into twelve books. By the 22nd century BC, the ancient Sumerian ruler Ur-Nammu had formulated the first law code, which consisted of casuistic statements. The Old

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Testament dates back to 1280 BC and takes the form of moral imperatives as recommendations for a good society. Roman law was heavily influenced by Greek philosophy, but its detailed rules were developed by professional jurists and were highly sophisticated. Latin legal maxims were compiled for guidance. In medieval England, royal courts developed a body of precedent which later became the common law. The Napoleonic and German Codes became the most influential. In contrast to English common law, which consists of enormous tomes of case law, codes in small books are easy to export and easy for judges to apply.\(^5\)

The ancient Romans had schools of rhetoric that provided training useful to someone planning a career as an advocate, but there was no systematic study of the law as such. During third century BCE, Tiberious Coruncanius, the first plebeian pontifex maxinus (chief of the priestly officials) gave public legal instruction, and a class of jurisprudents (non-priestly legal consultant) emerged.\(^6\)

4. 2. 1 Legal Education in Ancient India.

\[\text{प्रत्यहं देशस्ते महान्सु सस्पदे शत्स्व सहुः।} \\
\text{अन्यायकादि मार्गम् विनवादानि तीत्वेक युक्त्यन्।} \\
\text{VIII – 3 : Manu}^7\]

The above verse from the Manu, indicates the prevalence law in Vedic period. There was an intricate and comprehensive legal system in ancient India. The concept of legal education in India goes back to the Vedic age when it was based on the concept of Dharma. Though there was no formal education to impart law, which can be understood as such law there was Karma and Dharma was the basic grandeur for every living individual. Training was self-acquired in matters connected with

\(^5\) http://en.wikipedia.org/wiki/Law, visited on 20.05.2014 at 3.00pm.

\(^6\) Gledon, Mary Ann Glendon is the Learned Hand Professor of Law at Harvard University and President of the Pontifical Academy of Social Sciences.

\(^7\) Manusmriti, (c. 100–300 AD) a Hindu pious mythological book, comprises texts considered to be authoritative legal guidance. Narrating an importance of Law the above particular verse, sloka 3, of chapter VIII, states that, King also is bound to obey the law. Here, it mentions the law described in Manusmriti.
Karma. The kings either used to dispense justice themselves or appoint Judges and assessors to administer justice.

However, there is no hint of any formal legal education offered at that time. The training in law was self-learning and mostly the kings themselves dispensed justice. Occasionally, judges were appointed to administer justice. These judges were not formally trained in administration of justice but were well known for their “righteousness and justness” and for following Dharma. The Vedas were the original sources of law, and the *Smritis* announced the message of the Vedas. The *Smritikars* were great jurists, which were considered most ancient expositions on law. *Dharma* being the central idea of the Hindu religion, separate training akin to modern legal education was not felt to be necessary. During the ancient period, legal disputes were settled by mediation, negotiation and some form of arbitration. Thus, what we perceive to be modern alternative dispute resolution mechanisms were the usual methods for resolving dispute in ancient India. Further, the law was believed to be very clear to all, requiring no complex human interpretation. Thus, there can be no doubt that parties to a dispute in ancient Hindu law had a right to represent but such representatives do not appear as independent trained third persons corresponding to the Advocates, *Vakil*.

Therefore, in absence of a need for trained legal professionals, there was no institutionalization of legal education as a separate branch but the same could be said to have been imparted as a part of general education which revolved around the

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notion of Dharma.\textsuperscript{11} Life in India during this period was simple and the form of judicial procedure was less complicated than that of western countries.

4. 2. 2 Legal Education in Colonial Era.

The Mughal period in India began with the invasion by Babar in 1525 and extended till the ascendency of British dominion in India. During this period the Emperor was the head of the judiciary. As Islamic jurisprudence is derived from the Quran, it is treated as immutable by any human agency. Further, the Sunna, which helped in explaining the Quran also became a major source.\textsuperscript{12}

A system of courts, following formal procedures, to adjudicate criminal and civil cases, came to be established with Mughal rule. The adoption of rules of evidence, introduced further complexities in administration and seeking of justice. These changes in the legal system necessitated the involvement of legal experts, who were addressed as Vakils. Also, two Mughal Codes, the Fiqh-e-Firoz Shahi and the Fatwa-e-Alamgiri were adopted to deal with the duties of Vakil.\textsuperscript{13}

Thus, legal professionals began to play an important role in the administration of justice. Though the Mughal legal system was extended mostly to the towns, in religious matters, disputants were allowed to settle their disputes in accordance with their religious, including Hindu, customs. Further, at the village level, Panchayats continued to exercise their powers to adjudicate on most disputes except those involving serious crime. However, an unsatisfied party could prefer an appeal from the decision of the Panchayat before the court established under the Mughal law. Thus, legal assistance became increasingly necessary as the administration of justice became more complex. Further, such situation also meant that disputants without

\textsuperscript{11} Ibid


\textsuperscript{13} Ibid p. 64
sufficient financial resources were placed in disadvantageous situation. Though a system of third-party representation was formalized in Mughal era, people who could function as such representatives do not appear to have the required specialized legal education and there is no evidence of formal legal education system.

4. 2. 3 Legal Education in British Period.

The pattern of Legal Education which is in vogue India today was transplanted by the Britishers after the establishment of the English rule in the Country. It was in the year 1857 that a step was taken in the direction of imparting formal Legal Education in the country. The modern Indian legal profession dates from British rule with the establishment of law courts in Madras, Bombay and Calcutta in the year 1726. Meanwhile, the establishment of three Universities set up in the cities of Calcutta, Madras and Bombay formally introduced Legal Education as a subject for teaching. This was the beginning of formal, legislative legal education in India.

However, long back with an establishment of the Supreme Court in Calcutta in 1774, there was an acute need for the trained lawyer. Hence the Asiatic Society was founded with an initiative of Sir William Jones, Judge of the Supreme Court\(^{14}\). Thereafter several colleges were started and affiliated to impart legal education so as to prepare practicing lawyers and judicial officers for the subordinate courts.

The formal legal education in northern India, was first ever been started in the province of Punjab in 1868 at Anjuman-I-Punjab, later on which was taken over by the Punjab University in 1870\(^{15}\). In 1874, vernacular classes in law were held to train the police personnel, the State of Travancore. The same got converted into law school and the judge of the Sadar court has been appointed as a professor of law\(^{16}\).

\(^{14}\) See, Hundred years of the University of Calcutta, 224 (Calcutta, 1957).

\(^{15}\) Ibid

Thereafter, several Law Colleges were established in the remaining parts of India. However, there was no uniform pattern of legal education in the country. Nevertheless, the purpose of university legal education was just to impart knowledge of certain principles and provisions of law rather than teaching law as a science or an independent branch of learning.

During these periods, i.e. before and after independence of several codifications have been found, governing the quality and conditions of the legal profession in India. The Regulation Act, 1772 recognized for the first time the legal profession in India. Thereafter, it was codified in Bengal Regulation-VII of 1793, prescribing the scales of fee to be charged by the Vakils. It was further modified by the Legal Practitioners Act, 1846 as a subject to regulate both the Vakils and Barristers. The Legal Practitioners Act, 1853 and 1879 made suitable amendments. The Bar Council Act, 1926 was passed to unify the Bar in India and to give legal profession measured autonomy in its affairs wherein the State Bar Councils and the High Courts were authorized to regulate the admission and the conduct of the Advocates practicing in the Courts.

After independence, during the period 1947 to 1960, there was a tremendous growth of law colleges in India. Unfortunately, this was not based on any rational planning. These law schools were lacking in even the minimum resources. Many of them were without any infrastructure viz. buildings or library, full time teachers, facilities for the professional training or even the final sanction of the concerned university.

4.3 Present Status of Legal Education in India

Legal education gathered momentum and acquired importance in free India. India became free with a large number of its citizens being poor and illiterate. The immediate concern was to minimize inequalities and provide basic amenities to millions of people. With the adoption of a democratic form of government, legal

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17 Report of the Committee on Law Reform in Legal Education in 1980s, 16 All India Teachers Association, (DU Law Faculty, 1979)
education was expected to bring the legal system in tune with social, economic and political desires of the country.\textsuperscript{18} Thus, the basic concern for the legal system in the early period of free India was to fulfill the objectives set out in the Constitution.

\textbf{4. 3. 1 Constitutional Provision}

The Constitution of India basically laid down the duty of imparting education on the States by putting the matter pertaining to education in List II of the Seventh Schedule. But it now forms part of giving concurrent legislative powers to the Union and the States\textsuperscript{19}. Legal profession along with the medical and other professions also falls under List III.

Though there is no specific entry in Schedule VII to the Constitution of India that deals with legal education. The regulation of standards of legal education, therefore, is through the more generic entries pertaining to higher education and entitlement to practice before courts.

‘…Coordination and determination of standards in institutions for higher education…’ is the subject matter of Entry 66 of List I of the Seventh Schedule to the Constitution of India. Entry 25 of List III also pertains to education, and reads as follows:

\begin{quote}
“25. Education, including technical education, medical education and universities, subject to the provisions of Entries 63, 64, 65 and 66 of List I; vocational and technical training of labour.”
\end{quote}

Entries 77 and 78 of List I, are concerned, inter alia, with the entitlement of persons to practice before the Supreme Court and the High Courts. The Entries read as follows:

\begin{quote}
“77. Constitution, organization, jurisdiction and powers of the Supreme Court (including the contempt of such court) and the
\end{quote}

\begin{flushleft}
\textsuperscript{18} Anand, A.S.J. \textit{Supra note} 8, p.126.
\textsuperscript{19} Constitution of India, List III, (Entry 26).
\end{flushleft}
fees taken therein; persons entitled to practice before the Supreme Court.

78. Constitution, organization (including vacations) of the High Courts except provisions as to officers and servants of High Courts; persons entitled to practice before the High Courts.

It is with reference to Entries 66, 77 and 78 of List I that the Parliament has enacted laws for the regulation of professional legal education in India. The regulation is partaken by two statutory bodies constituted under the above-mentioned laws – the Bar Council of India as the apex professional body concerned with the standards of the legal profession, and the University Grants Commission as an umbrella organization for all institutions of higher education.

As the Constitution of India created a uniform judicial system, concerns were raised in several meetings and conferences stressing the need for an all-India Bar and uniform system of regulating the legal profession. The government formed the All India Bar Committee under the chairmanship of the Judge of the Supreme Court. The said committee in its report observed that, in the absence of any centralized authority, the qualifications required for enrolment as a lawyer by different High Courts were not uniform. Also, there exists non-uniformity in various other norms of legal education across the country. Hence, the Committee recommended the establishment of State Bar Council for each State and an All India Bar Council at the National Level as the Apex Body for regulating the legal profession. The important recommendation of the Committee was that the apex body should also supervise the standards of legal education in India. To implement the recommendations of the All India Bar Committee, a comprehensive Advocates Bill was introduced in the Parliament and the same was passed as the Advocates Act, 1961.

20 In February - March 1950 the Inter University Board at its annual meeting held in Madras passed a resolution emphasizing the desirability of having uniformly high standards for the law examinations in the different Universities of the country in view of the fact, that under the new Constitution a Supreme Court of India had been established and stressing the need for an all India Bar.

21 Ibid
4. 3. 2 Role of Bar Council of India

The Advocates Act, 1961 was passed by the Parliament of India by virtue of powers under List I of the Constitution of India. Under this Act, an apex body, namely, the Bar Council of India was constituted at national level. This Act required the BCI to promote legal education and to lay down standards of such education in consultation with the Universities in India imparting such education. In furtherance of section 49 of Advocates Act, 1961, the BCI framed Bar Council of India Rules, 1965 wherein chapter- IV exclusively deals with minimum standards of legal education. These rules were amended from time to time to improve the standards of legal education in India. Thus, under the Advocates Act, 1961, that BCI is empowered to prescribe the minimum qualifications required for a student to get admission to a course leading to a degree in law in any recognized University and to prescribe the standards of legal education to be observed by such Universities.

It has been held by the Supreme Court in the matter of Bar Council of U.P. v State of U.P. that the Advocates Act, 1961, under Section 4 of which the Bar Council of India (BCI) has been constituted, is an enactment made pursuant to Entries 77 and 78 of Schedule VII i.e. it is with respect to the subject matter of ‘...persons entitled to practice...’ BCI is envisaged as the apex professional body for regulating and enforcing the standards to be observed by members of the Bar. In consonance with the various State Bar Councils, BCI is responsible for all matters relating and incidental to admission, practice, ethics, privileges, regulations, discipline and improvement of the profession.

However, the responsibility of BCI is not limited to professional standards alone, but extends to a regulatory character vis-à-vis legal education as well. The significance of the role played by BCI vis-à-vis legal education was noted as early as

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22 O.N.Mohindroo v Bar Council of India, AIR 1968 SC 888.
23 AIR 1973 SC 231.

in 1958 by the 14th Report of the Law Commission of India headed by the great jurist and first Attorney General for India, Shri M.C. Setalvad. Anticipating the introduction of an All-India Bar Council, which ultimately took the shape of the Bar Council of India, the Law Commission observed as follows\(^24\):

“One of the main subjects to which the All-India Bar Committee of 1953 gave its attention was the formation of a unified Indian Bar. The Committee had made detailed and practical recommendations which envisaged a common roll of advocates for the whole country with liberty to practice in all parts of the country. It considered the qualifications for admission to the common roll of advocates and recognized the need for co-ordination between the professional bodies which would impart practical instruction in law, hold examinations in it and thus regulate admission to the Bar and the Universities which would deal with the academic side of legal education. For achieving this end, it is suggested that the All-India Bar Council which was to consist of representatives of the various State Bar Councils should have a Legal Education Committee of twelve persons. The Committee was to consist of two judges, five persons to be elected by the All-India Bar Council and five other persons from the Universities co-opted by these seven members.”

BCI’s regulation of legal education is further manifested by the provisions of the Advocates Act, 1961. Section 7 of the Act, which delineates the functions to be performed by BCI, provides as follows\(^25\):

“7. Functions of Bar Council of India.

(1) The functions of the Bar Council of India shall be—

\\……………\\……………

\(^24\) 14\(^{th}\) Report Law Commission of India, 1958, p.520.

\(^25\) Advocates Act, 1961, Section 7.
(h) to promote legal education and to lay down standards of such education in consultation with the Universities in India imparting such education and the State Bar Councils;

(i) to recognize Universities whose degree in law shall be a qualification for enrolments as an advocate and for that purpose to visit and inspect Universities or cause the State Bar Councils to visit and inspect Universities in accordance with such directions as it may give in this behalf;

The Supreme Court, through its decision in the matter of *Bar Council of India v Board of Management, Dayanand College of Law*, surveyed the statutory powers available to BCI under the provisions of the Advocates Act, 1961 as well as the Rules framed thereunder, and concluded that since BCI was concerned with the standards of the legal profession and the equipment of those who seek entry into that profession, BCI is, thus, also concerned with the legal education in the country.

In 1962, following BCI orders, all Universities imparting legal education changed over from the two-year to the three-year program in law and revised the curriculum as prescribed by the BCI.

The Bar Council of India further established three supplementary organs to achieve its statutory mandate.

(a) *Legal Education Committee.* Under Section 10(2) (b) of the Advocates Act, 1961, the Bar Council of India, established Legal Education Committee. Though the motive behind the formation of this committee was purely an academic, it includes only one personnel from academia.

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26 (2007) 2 SCC 202

(b) **Bar Council of India Trust**: The Bar Council of India also created a public charitable organization, namely, The Bar Council of India Trust in 1974. This trust was created to maintain professional standards and to effect improvements in legal education. In this regard, the Trust intended to establish Law Schools of excellence and to promote legal research.

(c) **Directorate of Legal Education**: The Bar Council of India, in 2010 also The Bar council of India established a Directorate of Legal Education in 2010 for the purpose of organizing, running, conducting, holding and administering (a) Continuing Legal Education (b) Teachers Training (c) Advanced Specialized Professional Courses (d) Education Program for Indian students seeking registration after obtaining Law Degree from a Foreign University (e) Seminar and Workshop (g) Legal Research and (h) any other assignment that may be assigned to it by the Legal Education Committee and the Bar Council of India.

With an assistance of above three organs, the Bar Council of India has undertaken few major steps in the field of Legal Education. Firstly a National Law School with Deemed University status is being set up a Bangalore. This is a model institution for professional legal education pioneering reforms in curriculum development and clinical education. Secondly publication of standard text books in all branches of law as well as law related subjects. Thirdly, training to the young law graduates. Fourthly to improve clinical education in law colleges and a scheme of legal aid clinical in law colleges have to be introduced.\(^{28}\)

The Bar Council of India, in 2010, also formed its first Curriculum Development Committee (CDC) for the purpose of facilitating Universities and Institutions to formulate the course design in various courses in Law and other allied subjects. The Committee has emphasized the faculty autonomy in designing and conducting the

courses in the University. CDC opined that the integrated law course with the first degree subjects is highly technical and therefore there is a need for harmonization of the curriculum. Further, the faculty of the institutions needs to make a serious effort to customize the course and develop the strategy of teaching-learning based on the local needs and resources available.

It deals with preliminary course design, especially in courses to be allocated in the first year of studies in both the Unitary and Double Degree integrated courses. With regard to other courses CDC would formulate the same in future. It also encourages development of study materials and Case-books based on the course design. CDC emphasizes that this report is only to be considered as suggestive benchmark at the minimum level. Therefore, Universities are free to improve upon and prescribe higher standards. CDC has categorized the role of legal education as value education and professional education. It states that emphasis of the Universities is more on legal education as a value education; and the second role as a professional education is the look out of the BCI for standardization with the help of Universities. It has also identified several unresolved contradictions that are required to be resolved by BCI. One of such important contradiction is introducing the Bar Exam for enrolment of advocates. Further it has also pointed out the problem of paucity of qualified faculty and stressed on the need for the so called National Law Schools to emphasize on Faculty Improvement Program. It highlights the difference in the role played by the Law Colleges and Law Universities in the following words;

“One has to clearly understand now the role-difference between a Law School/College and a Law University. A Law School/College is run to impart ‘professional legal education’ for skill-learning through the prescribed courses and instructions as laid down by the Bar Council. The School/College has to strictly adhere to the standards to make the students competent to be a legal professional. On the other hand, a Law University has wider

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responsibility to carry on its higher educational experiments with both low-end and high-end integration of knowledge in addition to its usual School/College functions. Law Universities are also required to develop human resources for the Law Schools/Colleges and carry on higher studies and research in legal courses.”

4. 3. 3 Role of University Grants Commission

At the time of an independence of India, there were big socio-political changes going on across the country. On the issue of the social welfare and the standardization of higher education in India, the University Education Commission was set up in 1948. Dr. S Radhakrishnan was appointed as Chairman of the Commission “to report on Indian University education and suggest improvements and extensions that might be desirable to suit the present and future needs and aspirations of the country”. The major recommendation made by the Committee was to reconstitute University Grants Committee on similar lines of the University Grants Commission of the United Kingdom with a full-time Chairman and other members to be appointed from amongst educationists of repute. In 1952, the Union Government decided that all cases regarding allocation of grants-in-aid from public funds to both Central and other Universities and other educational Institutions of higher learning might be referred to the University Grants Commission. As a result, the University Grants Commission (UGC) was formally inaugurated by late Shri Maulana Abul Kalam Azad, the then Minister of Education on 28 December 1953.\(^\text{30}\)

However, the University Grants Commission (UGC) was established as a statutory body in November 1956 under an Act of Parliament, the University Grants Commission Act, 1956. The UGC has the unique distinction of being the only grant-giving agency in the country which has been vested with two responsibilities; that of providing funds and that of coordination, determination and maintenance of standards in institutions of higher education.

\(^{30}\) http://www.ugc.ac.in/about/genesis.html, visited on 20.02.2010 at 4pm.
The UGC is statutory mandated for the following aspects,

- Promoting and coordinating University education.
- Determining and maintaining standards of teaching, examination and research in Universities.
- Framing regulations on minimum standards of education.
- Monitoring developments in the field of collegiate and University education;
- Disbursing grants to the Universities and colleges.
- Serving as a vital link between the Union and state governments and institutions of higher learning.
- Advising the Central and State governments on the measures necessary for improvement of University education.

While the Advocates Act empowers the BCI to promote legal education and to lay down the standards of such education in consultation with the universities and state bar councils, the UGC Act, 1956 imposed a mandate on the UGC to take all such measures as they deem fit for the promotion and co-ordination of university education and for the determination and maintenance of standards of teaching examination and research in universities.31

As identified by the Supreme Court in the matter of Prem Chand Jain v R.K. Chabbra,32, it is pursuant to Entry 66 of List I that the University Grants Commission (UGC) was established under Section 4 of the University Grants Commission Act, 1956. As stated in the Statement of Objects and Reasons appended to the Act, UGC has the power to recommend to any University the measures necessary for the reform and improvement of University education and to advise the University concerned upon the action to be taken for the purpose of implementing such recommendations. UGC has to act as an expert body to advise the Central

31 Jena, K.C., “Role of Bar Councils and Universities for Promoting Legal Education in India”, Journal of Indian Law Institute, 44(4) 2002; p. 565
32 (1984) 2 SCC 302

Government on problems connected with the coordination of facilities and maintenance of standards in Universities. UGC, in consultation with the University concerned, has the power to cause an inspection or inquiry to be made of any University, and to advice on any matter which has been the subject of an inquiry or inspection.

The Supreme Court has emphasized at length the role and responsibility of UGC vis-à-vis the regulation of standards of higher education in India. The decision of the Supreme Court in the matter of University of Delhi v. Raj Singh[^33], is highly illuminative in this regard, wherein it was held that Regulations framed by UGC prescribing qualifications for teaching staff would override and prevail over all other legislations in this regard, even Parliamentary enactments. UGC’s regulatory character was succinctly reaffirmed by the Supreme Court in the case of Prof. Yashpal v State of Chhattisgarh[^34], as well, wherein it was held as follows:

“…………….The University Grants Commission Act has been made with reference to Entry 66. The Act has been enacted to ensure that there is coordination and determination of standards in universities, which are institutions of higher learning, by a body created by the Central Government………”

The UGC was established to look after the University system and it has no expertise to deal with each branch of higher education. It established a panel on legal education which was presided over by the retired Chief Justice of the Supreme Court of India. The purpose of this panel was to guide and standardize the legal education. Unfortunately, it has done nothing significant in improving standards of legal education in India[^35]. However, the UGC, in 1990 constituted a Curriculum Development Centre (CDC) with Professor Upendra Baxi as Chairman, for

[^33]: 1994 Supp. (3) SCC 516
[^34]: (2005) 5 SCC 420
designing new curriculum in law with a view to promote human resources development. The CDC recognized three main challenges facing legal education: modernization of syllabi in order to make it socially relevant, multi-disciplinary enrichment of law curricula and corresponding pedagogic modifications. The CDC prepared a detailed curriculum and syllabi for a number of courses.

The analysis from above two sub-section indicates the conjoint responsibility which BCI and UGC share towards the regulation of the standards of legal education. It is the consultative relationship between BCI and UGC which forms the backbone of regulation of legal education standards in India. Further, the Supreme Court of India has played a vital role in the functioning of Legal Education in India through its interventions time to time.

4.3.4 Role of Supreme Court

The Supreme Court of India in its landmark judgment such as Deepak Sibal v Punjab University, has held that the study of law should be encouraged as far as possible without any unreasonable intervention. The Supreme Court has realized the importance of discrimination of legal knowledge and tried to impress upon the state to appreciate the same. Manifestly the state or the standing bodies are very frequently found adopting a negative and discouraging policy regulating the legal education. When the Bar Council of India has resolved to restrict the entry into legal profession to all those below 45 years there has been struck down to be unreasonable and unconstitutional in Indian Council of Legal Education v BCRI. This type of restraints or regulations certainly will have an adverse impact on the new entrants into legal education.


AIR 1989 SC 493

AIR 1995 SC 691

Thus, unjustified intervention by the authorities are not taking constructive steps to strengthen and expand legal education resulted in slow and unsatisfactory development of legal education.

In *Bar Council of India v Aparna Basu Mallick* the apex court held that if the acquisition of a degree in law is essential for being qualified to be admitted on a state roll, it is obvious that the Bar Council of India must have the authority to prescribe the standards of legal education to be observed by universities in the country. Conditions of standard laid down by the Bar Council of India as to attendance in the law classes, lectures, tutorials, moot courts, etc. must be fulfilled before enrolment as an advocate.

In *State of Maharashtra v Manubhai Pragaji Vashi* the Supreme Court of India termed denial of grant-in-aid by the state of Maharashtra to be recognized private law colleges as was afforded to other faculties unconstitutional as well as violative of Articles 21 and 39-A of the constitution. It held that Article 21 read with Article 39-A of the constitution mandates or casts a duty on the state to afford grant-in-aid to recognized private law colleges, similar to other faculties, which qualify for the receipt of the grant.

The Supreme Court of India in the case of *V. Sudeer v Bar council of India* has analyzed the rule making power of Bar Council of India under section 24(3) (d) of the Advocates Act, 1961. The Supreme Court scrapped the order passed by Bar Council of India, prescribing one year pre-enrolment training and apprenticeship before enrolment. The court observed that;

“……..The Bar Council had framed impugned rules, which had to be scrapped out because it has resulted into firing at wrong end. All that Bar Council of India can do is to suggest ways and means to promote such legal education to be imparted by the

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39 1994 AIR 1334, 1994 SCC (2) 102
40 1996 AIR 1, 1995 SCC (5) 730
41 (1999) 3 SCC 176
universities and for that purpose; it may law down the standards of Education, Syllabi in consultation with the universities………..

In a similar case the Supreme Court of India struck down the order of Bar Council of India banning the evening law college. In *Gopalakrishnan Chatrath v Bar Council of India* 42 the court observed that

It has been further contended that the right of education which is still available to a person for educating himself other than the legal education, the right of the person who wants to educate himself in legal education would not be at par with others. The act of denying the legal education in the evening sessions would also be violative of Article 14 of the constitution. The education be it legal education or science education or art education, everybody is entitled to equal treatment.

With reference to part-time legal education by an employee and thereafter availing an opportunity for enrolling himself as an advocate the Supreme Court of India in *Dr. Haniraj L. Chulani v Bar Council of Maharashtra*,43 observed that The Fundamental Purpose of Education is the same at all times and all 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 hereafter. We may observe that part time legal education of an employee is “For a living and for life, here and hereafter’, and thus its denial is quite unjustified.

The Supreme Court of India, in *Indian Council of Legal Aid and Advice v Bar Council of India*,44 also struck down the resolution passed by the Bar Council of India, restraining a person of the age above 45 years for the enrolment as an advocate to the State Bar Council. The averment made by Bar Council of India that the legal

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42 AIR 2001 P H 41
43 AIR 1996 SC 1708
44 AIR 1995 SC 691

profession is pious and honourable with an object of serving mankind through the system of administration of justice, and hence the Bar Council of India has a pious duty to protect the public image of law profession by restricting the inflow of the large number of retired personnel. However, the Supreme Court foiled the argument.

Thus, the functions of BCI as well as the UGC have always remained under the scrutiny of an apex court. On several occasions the Hon’ble Supreme Court has prevented BCI for ultravires acts and directed UGC to use its power for the maintenance of the uniformity of the standards.

4.4 Nature of the Legal Education

Legal education is a human science which furnishes beyond techniques, skills and competences the basic philosophies, ideologies, critiques, and instrumentalities all addressed to the creation and maintenance of a just society.\(^{45}\) It provides occasions for articulation of theories of a just society and teaches us that articulation must be grounded in historical realities so that the truth of the working of the legal order is brought to the forefront. It is a subject of great importance in view of its dynamic role in molding and envisioning the legal system of the country—thus being instrumental in the accomplishment of the cherished objectives of justice, liberty, equality and fraternity of a sovereign, socialist, secular, democratic republic.\(^{46}\)

The law commission also defines legal education as a science which imparts to students knowledge of certain principles and provisions of law to enable them to enter to legal profession. Encyclopedia of education defines legal education as a skill for human knowledge which is universally relevant to the lawyer’s art and which

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deserves special attention in educational institutions.\textsuperscript{47} Blackstone says legal education aims at imparting knowledge of the country as part of necessary culture of a gentleman, nobleman and common man engaged in a learned profession.\textsuperscript{48}

4. 4. 1 Importance of Legal Education

Legal education is a broad concept.\textsuperscript{49} It includes the profession which is practiced in courts, law teaching, law research, administration in different branches where law plays a role and commercial and industrial employments and all other activities which postulate and require the use of legal knowledge and skill\textsuperscript{50}. The legal education stands for enhancement of human sensibility and injects a sense of protecting human liberty and equality before law.\textsuperscript{51}

The quality and standard of legal education acquired at the law school is reflected through the standard of Bar and Bench and consequently affects the legal system. Ignorance of law is not innocence but a sin which cannot be excused. Thus, legal education is imperative not only to produce good lawyers but also to create cultured law abiding citizens, who are inculcated with concepts of human values, legal ethics and human rights.

‗Law is the cement of society and an essential medium of change‘. The significance of legal education in a democratic society cannot be over-emphasized. Knowledge of law increases one understands of public affairs. Its study promotes accuracy of the expression, facility in arguments and skill in interpreting the written words, as well as some understanding of social values. It is pivotal duty of everyone to know the law. Ignorance of law is not innocence but a sin which cannot be excused. Thus, legal education is imperative not only to produce good lawyers but also to create cultured

\textsuperscript{48} Agarwal,S.K., "A Report on Legal Education in India-Problems and Perspectives", 1972
\textsuperscript{49} Gajendragadkar, Committee on the Re-organization of Legal Education in the University of Delhi, 1964
\textsuperscript{51} Agarwal, S.K., “A Report on Legal Education in India-Problems and Perspectives”, 1972, as observed in supra note 12.
law abiding citizens, who are inculcated with concepts of human values and human rights.\(^{52}\)

### 4. 4. 2 Aims of Legal Education

The aim of legal education is not just to produce professional lawyers. In addition to the litigating lawyer, who argues before the court of law, the term ‘professional lawyer’ also include all persons trained in law, whose either the employment or services are directly or indirectly dependent on their degrees in law.

Various organizations including academic institutions and statutory authorities have described various aims of legal education in their context and relevance.\(^{53}\)

The committee of legal education of the Harvard Law School lays emphasis on double purpose of a law school.

1. To train men for the legal profession, and

2. To provide a centre where scholars might contribute to an understanding of law and government and participate creatively in their growth and improvement.

Mr. Dean Wright of the University of Toronto suggested three objectives of a law school:

(a) education in the qualities that should be found in a legal practitioners,

(b) education which would train a man not merely in the work of solving problems of individual clients but of the society in which he lives, and

(c) To act as a centre of research and criticism and contribution to the better understanding of the laws by which societies are held together.

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\(^{52}\) Devadas, Advocate, *History of Legal Education in India*, National University of Advanced Legal Studies, Cochin.

Lord Denning in his address to the society of Public Teachers of Law expressed three purposes of legal education:

(a) to show how legal rules have developed, the reasons underlying them and the nexus between legal and social history,

(b) To extract the principles underlying the existing legal rules, and

(c) To point the right road for future development.

Dr. Mohammad Farogh in his observations on legal education in a modern civilized society wants to include the following aims and objectives:\(^{54}\)

(1) to inculcate students with the operative legal rules, both substantive and procedural,

(2) to provide the students with adequate experience to apply these rules,

(3) to equip the students with sufficient knowledge of the historical and sociological background of the country’s legal system,

(4) to provide the students with some knowledge of the other legal system of the world so that the students do not find themselves at a complete loss when it comes to adopting a comparative approach,

(5) Very significantly, the students should be encouraged to participate in discussions, seminars and challenge the very premise of legal concepts and their applications.

Legal education should aim at furnishing skills and competence, the basic philosophies and ideologies for creation and maintenance of just society.\(^{55}\) It must

\(^{54}\) Farogh, Mohammad, ‘Legal Education: Contemporary Trends and Challenges’, AIR, 1998 (6)

sensitize society to identify its problems and ensure social and economic justice through rule of law and to eradicate injustice, poverty, corruption and nepotism from the society. The legal education stands for enhancement of human sensibility and injects a sense of protecting human liberty and equality before law. The curriculum of legal education should be thought of in terms of its objectives.

Andrew J. Pirie has suggested that the process of systematic instructional design may involve four important steps;

1) Performance Analysis – it lays emphasis on the identification of instructional goals, which are needed by the consumers of legal education. It can be used as a mechanism to determine whether, there is an important difference between what someone is already able to do and what it is intended for him to be able to do, and , if an important difference does exist, whether instruction or some other course of action is appropriate. Objective is what the student will learn.

2) Task analysis is an earnest attempt to identify exactly what the student needs to know or do to achieve the goal. It is a careful description of what the competent person does or is supposed to do when he or she is doing job.

3) Skill analysis spells out a device to identify the steps which a person is required to undertake to achieve the goal. It involves information skills, intellectual skills or psychomotor skills. The skill analysis breaks down each of these identified steps into its component part. But if the steps involve higher-level intellectual skills, such as application, analysis, synthesis, or evaluation, the skills analysis becomes more complex. Skills analysis can involve the production of a very larger list of necessary behaviors, depending upon the task.

4) Writing performance analysis is the stage where both the instructor and the student are able to understand what a person must know or be able to do to accomplish his task.

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4. 4. 3 Objectives of Legal Education

For a developing democratic country like India, the objectives of the Legal Education may be multi-fold. Across the world they have been enumerated as follows,\textsuperscript{56}

1. \textit{Socialization Objectives}: the use of 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.

2. \textit{Manpower of Objectives}: the use of total educational system to generate the kinds of skills and knowledge needed for tasks in society.

3. \textit{Opportunity objectives}: the use of education to broaden opportunity and mobility in society- notably among groups who may have been historically deprived or repressed.

4. \textit{Research Objectives}: The use of educational facilities to develop research of value to education and society.

5. \textit{Administrative objectives}: the use of planning in the governance of institutions; the use of more sophisticated methods in budgeting, managing and evaluating programs.

4. 5 Reforming Attempts for Revamping of Legal Education

There is a general feeling that legal education in India is neither meaningful nor relevant\textsuperscript{57}. The way legal education has been structured in India appears to suggest

\textsuperscript{56} Legal Education in a Changing World: Report of the committee on Legal Education in Developing countries, International Legal Centre New York

\textsuperscript{57} Massey, I.P., \textit{Quest For Relevance in Legal Education}, 2 SCC (JOUR) 17 (1971).
that it is intended to provide students only with some knowledge of statutes. The curriculum is neither helpful in shaping aspiring lawyers in their traditional roles of problem solvers nor in their expanded roles of arbitrators, counselors, negotiators or administrators.

Due to prolonged neglect of legal education, numerous substandard institutions and ‘teaching shops’, with abnormally large number of students, grew up around the country. As a result, admissions to Law Schools became disorganized and the quality of the students was poor. With few exceptions, the Law Colleges failed to attract brighter students to the legal profession.

4. 5. 1 Reform in Legal Education

The Ford Foundation, one of the world’s leading philanthropic institutions based in the United States was infatuated with the promising idea of India. The Ford speculated a great potential in India with its political and military leaders opting for democracy rather than dictatorship. Two representatives of Ford, namely Carl B. Spaeth, Dean of Stanford Law School and Herbert Merillat, a lawyer visited India to observe the legal system and to conceptualize the problem of legal education as seen by the Indians and what Indians have done or thinking of doing to meet these problems. However, Spaeth and Merillat found widespread skepticism that anything could be done to change the status quo. Thereafter, Arthur Von Mehren, a law professor from Harvard visited India to continue Ford’s study on this issue. He believed that in order for Indian Society to begin accepting the democratic rule of law as legitimate, the laws themselves had to be written by Indians, educated within India. Since lawyers by their professional nature In my judgment, the most promising – indeed probably the only potentially decisive – key to the problem of India’s lac of legal and socio-economic development is legal education.....

58 Ibid.
education, by shaping the men and minds that will address themselves to the problems of law, offers the best — probably the only substantial — hope of accelerating, and consciously assisting, the process.

Meanwhile, the reports of law commission of India on reform of judicial administration in 1958 and Gajendragadkar committee report on reorganization of legal education in the university of Delhi were tabled. Von Mehren convinced Ford officials in New York to make their first substantial investment in an Indian University. His idea was to foster cooperative relationship with Indians and engaging Indian Law Professor to work alongside the Americans. Certainly, the US scholars brought to the table of great deal of expertise on legal education, without the Indian assistance the best American advice would not have succeeded. However, with a surprise to many of Indians, the Ford granted over a half million dollars to Banaras Hindu University, instead of Delhi University. Unfortunately, Banaras being economically poor inaccessible city with serious caste and language tensions among the populations the university could not enroll enough number of potentially impressive students. Later on, Prof. Kenneth Pye, Georgetown University Law Centre visited India to take stock of BHU’s law program. Pye found serious problems about inadequate library facility, vague syllabus, poor aptitude of faculty and lack of proper infrastructure facility. The quality of students was found to be extremely low and the lectures of professors without text books were dry.

Calls for reform in legal education were made as early as 1885, when Justice Muthuswami Iyer stressed the need for a formal college setup to impart legal education on a scientific basis. Further, there were been several singular or joint efforts and attempts pondered by concerned authorities of legal education in India. Some of the remarkable reports in such deliberations are as follows,


In the year 2002, the Law Commission of India (LCI) undertook a comprehensive suo motu review of the structure and regulation of the professional legal education
system in India. The Report prepared by LCI, titled as the “184th Report on the Legal Education & Professional Training and Proposals for Amendments to the Advocates Act, 1961 and the University Grants Commission Act, 1956” analyses in detail the conjoint responsibility of BCI and UGC towards the regulation of professional legal education.

a) LCI in its Report analyzes at length the quality of consultation envisaged between BCI and the Universities under Section 7(1)(h) of the Advocates Act, 1961. The Report notes that the responsibility of BCI in ensuring ‘…standards of legal education…’, and that of UGC in ensuring ‘…standards of education…’ are, in fact, not in conflict with each other, but have to be harmoniously construed. Section 7(1)(h), in providing for consultation between BCI and UGC, advances the proposition that both the statutory bodies share common goals vis-à-vis regulation of professional legal education. The Report stipulates that the requirement of Section 7(1)(f) is, in fact, ‘effective consultation’ between BCI and the Universities, thereby increasing the involvement of the members of academia in regulating legal education.

b) There are, obviously, practical and logistical difficulties in BCI consulting the huge number of Universities and other institutions imparting legal education. The LCI Report, therefore, recommends that instead of requiring ‘effective consultation’ with each University, the Advocates Act should instead be suitably amended to enable BCI to consult a representative body, which body, in turn, should be constituted by UGC, thus ensuring that both BCI and UGC remain equal partners in regulating legal education.

c) LCI in its Report has also considered the composition of the BCI Legal Education Committee provided for under Section 10 of the Advocates Act, 1961. Regarding the concerns raised by the academia over their perceived under-representation in the BCI Legal Education Committee, LCI rightly notes that the roles of the Bar, Bench and the academia vis-à-vis the regulation of legal education should be balanced. The Report rejects the proposition that the Bar Council’s role should be limited to regulating entry into the legal profession and
maintenance of professional standards. LCI recommends that the BCI Legal Education Committee should consist of 5 members elected from amongst the BCI members, one retired Judge of the Supreme Court, one retired Chief Justice /Judge of a High Court and 3 active law teachers holding the rank of Vice-Chancellor / Director / Principal / Professor in a law college. The inclusion of the Attorney General for India as an ex-officio member is also recommended.

d) To represent the academia, the Report recommends the constitution of a UGC Committee on Legal Education, comprising a total of 10 members, with 6 members being law teachers in office and 2 members being Vice-Chancellors / Directors of statutory law Universities. The Report envisages 3 faculty members to be common to both the BCI Legal Education Committee and the UGC Committee on Legal Education, in order to ensure better coordination between the BCI and the UGC Committees.

e) LCI envisages ‘effective consultation’ between BCI and the Universities as a three-tier process: the first consultation on a proposal regarding legal education would be between BCI, through its Legal Education Committee, and the State Bar Councils, after which the proposals would be considered by the UGC Committee on Legal Education. As the final stage of the consultation, the proposals would once again be deliberated by the BCI Legal Education Committee.

f) LCI also contemplates that the proposals of the BCI Legal Education Committee would be binding on the Bar Council, and would have to be implemented “without demur”. It is noteworthy that consistent with the recommendations of the 14th Law Commission Report, the 184th Report also accords primacy to BCI with respect to regulation of professional legal education.

g) With respect to inspection and recognition of law colleges by BCI, LCI recommends that it is imperative to require prior permission from BCI for imparting legal education. LCI rightly observes that the absence of such a
requirement has lead to a host of law colleges being granted permission to offer degrees in law, although such institutions were ill-equipped to offer or impart instruction. It is for this purpose that LCI strenuously recommends the prior permission system, as well as the provision for withdrawal of the permission by BCI in case at a subsequent stage the Bar Council finds that the necessary standards are not being maintained. LCI also recommends imparting of instruction by a law college without the prior permission of BCI to be made a punishable offence under the provisions of the Advocates Act.

h) LCI in its Report also records its dissatisfaction with the inspections carried out by BCI for the purpose of granting permission or recognition to law colleges. It is noted that in many cases, the inspection undertaken was merely perfunctory. Also contemplated in the Report is the possible conflict of opinion between BCI and UGC in case of simultaneous inspections undertaken by both the statutory bodies. LCI, therefore, recommends that the BCI Rules governing inspections be suitably amended to provide that at least one academician from a State different from the one where the law college in question is located also forms part of the inspection team. Further, the Report also recommends, in case of a conflict in the inspection reports prepared by BCI and UGC, that a further inspection be carried out by a Task Force constituted for that purpose, of which a judicial officer must necessarily be a member.

[B] National Knowledge Commissions’ Report

The National Knowledge Commission (NKC) was established by the Prime Minister of India in 2005 to recommend and undertake reforms in order to make India a knowledge-based economy and society. An important constituent of the NKC’s functions is professional education, particularly in the field of legal education. In light of its significance, the NKC constituted a Working Group on legal education in the country. The Report crucially notes that the “…vision of legal education is to provide justice-oriented education essential to the realization of values enshrined in the Constitution of India…”

Working Group, through a consultative process with the stakeholders in the field of legal education, made a number of reformatory proposals vis-a-vis the structure of professional legal education in India, which were forwarded as part of NKC’s report to the Prime Minister;

- NKC has recommended the establishment of a new regulatory body comprising eminent lawyers, BCI members, judges, academicians, representatives from trade, commerce and industry, economists, social workers, students and others; for the purpose of revamping legal education to meet the needs and challenges of all sections of society. NKC has envisaged that this new regulatory mechanism would function under the auspices of the Independent Regulatory Authority for Higher Education (IRAHE), and would be vested with powers to deal with all aspects of legal education. The decisions of this Authority shall be binding on the institutions teaching law as well as the Union and State governments.

- NKC has also recommended the development of an independent Rating System based on a set of agreed criteria to assess the standard of all institutions teaching law as a mechanism to ensure consistent academic quality throughout the country. The criteria for rating would be evolved by the Standing Committee for Legal Education while the rating would be done by independent agencies licensed by IRAHE for that purpose. Recognition could be either granted or withdrawn on the basis of such ratings. The rating results should be reviewed annually, regularly updated, monitored and made available in the public domain.

- Further, in order to attract and retain talented faculty, the NKC Report recommends better incentives, including improving remuneration and service conditions. According to NKC, it may be necessary to think of salary differentials within and between universities and law schools along with other means of attracting and retaining talented faculty members. Such salary differentials between and within universities and law schools could be effective without being large, and would retain talent in legal academia where the problem
of inadequate remuneration is far more acute than in other disciplines. Salary differentials could be considered as a means to retain quality talent and also promote a culture of excellence. Importantly, the NKC Report recommends that to foster quality and create better incentives, there is also need to remove fetters on faculty that pertain to opportunities in legal practice (such as consultancy assignments and legal practice in courts). These reforms need to be introduced in a balanced, reasonable and regulated manner to ensure adequate incentivization for faculty without compromising on the maintenance of consistent academic quality. As a further incentive, it is necessary to create better opportunities for active involvement of academia in the shaping of national legal education policy. There is also need to reconsider existing promotional schemes and avenues to promote meritorious faculty members. Other incentives for faculty include fully paid sabbaticals; adequate House Rent Allowance (HRA); instituting awards to honor reputed teachers and researchers at national and institutional levels; flexibility to appoint law teachers without having an LL.M degree if the individual has proven academic or professional credentials; faculty exchange programs with leading universities abroad and upgrading existing infrastructure.

* With respect to financing of legal education, NKC in its Report observes that it is for law schools and universities to decide the level of fees but as a norm, fees should meet at least 20% of the total expenditure in universities, subject to two conditions: first, needy students should be provided with a fee waiver plus scholarships to meet their costs; second, universities should not be penalized by the UGC for the resources raised from higher fees through matching deductions from their grants-in-aid. It is further recommended by NKC that the Central and State ministries may be urged to endow chairs on specialized branches of law. State financing can be complemented with endowments from the private sector, including synergistic arrangements such as appropriate public private partnerships. Incentives such as tax holidays for donations above a high minimum threshold by the corporate sector may be considered. Institutions
should be given the autonomy to evolve their own innovative methods of financing to maximize infrastructure and resource utilization.

Moreover, the Standing Committee on Legal Education made crucial observations, as under;

(1) The changes in the legal education in the last fifty years show that the provisions of the Advocates Act, 1961 are no longer sufficient. Under the Advocates Act, 1961 the role allocated to the BCI was very limited in the sense that it was to promote legal education and to lay down minimum standards with a minimum standard necessary for those students who ultimately enter the legal profession to practice in the courts. The provisions of the Act did not envisage a larger role for the BCI.

(2) The concept before and in 1961 was that law schools should mainly produce graduates for the purpose of entry into the bar. The Advocate’s Act, 1961 was, therefore, enacted with that objective in mind by Parliament. According to the Supreme Court of India, in O.N.Mohindroo v Bar Council of India61; and Bar Council of U.P.’s case62 the subject covered by the Advocates Act, 1961 is preferable to Entries 77, 78 in List I of Schedule VII of the Constitution of India.

(3) Bar Council of India have been conferred limited powers but is exercising more powers under subordinate legislation. In the light of the concept behind the Advocates Act, 1961, as stated above, very limited powers were conferred on the BCI. But, during the last few decades, in as much as there was no other regulator to take care of emerging needs and trends, the BCI has been dealing with all aspects of legal education under Resolutions, Rules and Regulations instead of limiting itself to the maintenance of minimum standards of legal education for the purpose of entry into the bar.

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61 A.I.R. 1968 SC 888, (1968)3 SCR 709
62 AIR 1973 SC 231, (1973) 1 SCC 261, (1973) 2 SCR 1073

(4) While the statement of objects and reasons and the preamble of the University Grants Commission Act, 1956 and of the Indian Medical Council Act, 1956 refer to the constitution of bodies for maintaining 'standards of education', there are no such words in the Statement of Objects and Reasons and the Preamble of the Advocates Act, 1961. The Act deals with minimum standards of legal education only in the context of 'practice in courts'. The Supreme Court of India has, in fact, held that the UGC and the Medical Council of India (MCI), whose powers deal respectively, with all aspects of education or medical education, can lay down standards of education which will override any other law. State of MP v Nivedita Jain63; Premchand Jain v R.K.Cbhabra64, Osmania University Teachers Association v State of AP65, University of Delhi v Raj Singh66, Medical Council of India v State of Karnataka67, Dr. Preetbi Srivastava and Another v State of M.P. and Others68. But such a general power to lay down standards of legal education for all purposes has not been conferred on the Bar Council of India by the Advocates Act, 1961.

(5) The members of the BCI who are practising lawyers and who get elected to the Bar Council, do not all have expert knowledge or experience for deciding the requirements of legal education for purposes other than practice in the courts. Indeed, the Bar Council is not supposed to deal with all aspects of legal education. As pointed in Sobhana Kumar v Mangalore University69 by Rama Jois J (as he then was), the BCI can only prescribe minimum standards for entry into bar whereas the universities or the law colleges can prescribe higher standards. As the Advocates Act, 1961 is not intended to cover all aspects of legal education other than entry into the bar, the Rules, Circulars and Resolutions of the Bar Council of India in relation to all other aspects of legal education must

67 1998 (6) SCC 131, AIR 1998 SC 2423
68 (1999) 7 SCC 120, AIR 1999 SC 2894
69 AIR 1985 Karnataka 223
be treated as beyond the scope of permissible delegated legislation and therefore invalid.

[C] Three Members Committee’s Report

During the course of hearing a matter relating to the affiliation of a law college with the Bar Council of India, *Bar Council of India v Bonnie FOI Law College & Ors.*\(^70\), the Supreme Court of India has sought to address an issue of enormous contemporary importance: the inspection, recognition and accreditation of law colleges by the Bar Council of India. The Supreme Court noted with concern the diminishing standards of professional legal education provided at various Law Colleges across the country, and, in particular, identified the quality and standard of infrastructure, library and faculty as core areas that need to be redressed, along with the pay and remuneration offered to the faculty members by Law Colleges. The Supreme Court, therefore, constituted a Committee\(^71\) to examine issues relating to affiliation and recognition of law colleges.

The mandate of this Committee was, therefore, to examine issues concerning the manner of affiliation and recognition of Law Colleges by the Bar Council of India, identifying areas which require redressal, and also addressing factors impeding the implementation of the norms already in place. The Committee, in accordance with the directions passed by the Supreme Court, sought responses and suggestions from various legal luminaries and experts associated with the field of law and higher education, and was overwhelmed at the keen interest and understanding displayed by all stakeholders in undertaking reform of the legal education system in India. The Report minutely analyses the existent edifice of the legal education system in India, and seeks to identify the key instrumentalists, as well as their roles, in the ongoing reform movement.

\(^70\) S.L.P. (C) No. 22337 of 2008 Supreme Court of India.

\(^71\) The Committee, consists of Shri Gopal Subramanium, Solicitor General of India as its Chairman, and Shri M.N. Krishnamani, President, Supreme Court Bar Association and Shri S.N.P Sinha, Chairman, Bar Council of India as its Members, undertook a holistic and comprehensive review of the existing literature on the reform of professional legal education in India.
The Committee observed the following suggestive notes received from various stakeholders and luminaries of Legal education.

(i) Role of BCI in regulating professional legal education: Concerns were expressed about BCI’s ability and expertise in dealing with developments at the very periphery of legal norms. To elucidate, it is felt that contemporary legal education has the primary challenge of being in sync with technological, biological and scientific developments. For this purpose, a number of recommendations were made to either constitute a new body replacing BCI as the apex body regulating legal education in India, or institutionalizing the association of technical experts with BCI to ensure more intricate understanding of contemporary issues while exercising powers of regulation.

(ii) Lack of funding for educational projects: Another paramount concern expressed by the legal luminaries is that of lack of funding in an area as important as legal education. The responses have noted that lack of an active culture of financial support for development of legal education in the country has had tremendous adverse impact on the infrastructural and research capabilities of the legal education system. In particular, lack of funds has led to underpaid faculties in numerous law colleges across the country and has also acted as a deterrent for many aspiring law teachers from actively pursuing the academic life.

(iii) Reform of inspection and recognition procedures: It has also been recommended that the area of inspection and recognition of law colleges by BCI needs immediate attention for the purpose of revolutionizing legal education in India. A number of responses suggest in-built checks and balances within the inspection and recognition system to ensure that institutions imparting legal education are not able to operate without prior permission from BCI – for which they should be able to satisfy certain minimum eligibility criteria.

(iv) Introduction of accreditation/rating system: Also recommended is the introduction of an accreditation/rating system for legal institutions. It is strongly felt that lack of such a rating system has led to a number of mediocre teaching and research institutions, while law colleges pioneering innovative methods of
research and teaching have constantly decreased. An accreditation/rating system would indeed be extremely progressive in incentivizing law colleges to maintain a certain degree of quality.

(v) Requirement of bar examination: It was also felt that there should be a two-tier system for the purpose of ensuring that only the best students have the privilege of practicing law in India. For this purpose, only providing the minimum standards for the purpose of affiliation of law colleges with BCI may not be sufficient and an entry level exam for the purpose of enrolling with State Bar Councils may be the need of the hour. It has been noted that such an entry level exam for enrolling as an Advocate would certainly not be unprecedented: such a regulation model has been implemented at length in USA as well as UK.

The Committee made the following recommendations.

I. Constitution of National Legal Knowledge Council:
   The purpose of formulating the policy vis-à-vis legal education India at a national level and by due consideration of experts from various fields, it is recommended that a National Legal Knowledge Council be established under the orders of this Hon’ble Court comprising legal luminaries as well as experts from various socially relevant fields. The functions of the National Legal Knowledge Council would include continuing reform of legal education in the country, including of matters pertaining to inspection and recognition of law colleges as well as appointment of suitable faculty to various institutions imparting legal education across the country. The Council would have the power to constitute expert groups / sub-committees for the purpose of assisting the Bar Council of India in matters regarding inspection and recognition of colleges, as well as for the purpose of identifying and selecting competent and qualified faculty.

II. Establishment of Legal Aid Clinics/Centres:

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72 Final Report, Three Member Committee on Reform of Legal Education.

Apropos the principle enshrined under Article 39-A of the Constitution of India, the Bar Council of India, vide Resolution dated October 24 2009, resolved that all law schools/colleges should establish a legal aid clinic/centre for the purpose of providing inexpensive and efficient justice to the needy sections of our society. It was also resolved that a lecturer shall be the faculty incharge of a legal aid clinic/centre, and that final year students would be trained at such legal aid clinics/centres in imparting professional legal advice and client interaction. This Committee unreservedly endorses the Resolution passed by the Bar Council of India and recommends that establishment of such legal aid clinics/centres be made a pre-condition to the recognition of law colleges by the Bar Council.

III. Faculty remuneration should, at least, be in accordance with the recommendations of the 6th Central Pay Commission:
The terms and conditions of service of the faculty members employed at institutions imparting legal instruction must be standardized on a priority basis. Since law is a very important professional stream, it may be necessary to offer higher and better emoluments and more attractive conditions of service. In particular, the remuneration accorded to the faculty at all legal institutions must be, at the very minimum, in conformity with the recommendations of the 6th Central Pay Commission, which have already been adopted by the Ministry of Human Resources Development and the University Grants Commission with respect to Central Universities. Similar pay-scales should also be made applicable to faculty teaching at law colleges, irrespective of the status of the institution i.e. statutory or private. The Bar Council may also consider the stipulation of higher salaries to make imparting legal education attractive and thoroughly professional.

IV. Chapter IV of the 2008 BCI Rules to be strictly enforced:
Chapter IV of the 2008 BCI Rules contains provisions vis-à-vis the Directorate of Legal Education, the responsibility of which include: (a) Continuing Legal education, (b) Teachers training, (c) Advanced specialized professional courses, (d) Education program for Indian students seeking registration after obtaining Law Degree from a Foreign University, (e) Research on professional Legal
Education and Standardization, (f) Seminar and workshop, (g) Legal Research, (h) any other assignment that may be assigned to it by the Legal Education Committee and the Bar Council of India. Considering the importance of the functions to be performed by the Directorate of Legal Education, as well as the recommendations made by this Committee in the draft report submitted to this Hon’ble Court on October 6, 2009, the Bar Council of India has, vide Resolution dated October 24 2009, appointed Prof. Satish Shastri, former Dean, Faculty of Law, Rajasthan University, Jaipur as the Director of Legal Education. Further, the Bar Council has also resolved that two young academicians who are capable of pioneering legal research should be appointed to the posts of Professor (Research) and Professor (Academic) in the Directorate. The Central Government has assured the Bar Council of its steadfast support to the Directorate, including provision of adequate functioning space as well as grants to enable the Directorate to perform its functions.

The constitution of the Directorate would give a much needed impetus towards research oriented reform in India. It is, therefore, imperative that adequate funds are earmarked towards the constitution and functioning of the Directorate and the provisions of Chapter IV of the BCI Rules are strictly complied with. Further, it should be ensured that only academicians and researchers of the highest quality are associated with the Directorate.

V. A Bar Examination should be introduced for the purpose of admitting law graduates to the Bar:

As discussed supra, the introduction of a bar examination would ensure maintenance of standards in the legal profession, as well as standardization and constant innovation in the standards of curriculum, teaching methodology etc. The Committee is, therefore, of the opinion that qualifying a bar examination should be made a requirement prior to admission to the Bar by all State Bar Councils across the country. In light of the decision of the Supreme Court in the V. Sudeer case, such a requirement may be introduced in the Advocates Act,
1961 by means of a statutory amendment. The said examination will be a professional examination conducted by BCI in accordance with the recommendations of the Parent Committee.

[D] National Consultation for Second Generation Reforms in Legal Education

A 'National Consultation for Second Generation Reforms in Legal Education' held during May 1 and 2, 2010 at Vigyan Bhavan, New Delhi, various policy aspects were conceived. Dr. M. Veerappa Moily, the then Union Minister of Law, Government of India, presented Vision statement for second Generation Reform in Legal Education. The vision statement highlighted the following,

The first generation of reforms established the National Law Schools and demonstrated that India too can have institutions that impart an affordable and world class legal education. The second generation of reforms shall focus on the three pillars of Expansion, Inclusion & Excellence. These reforms shall be an investment in the Indian lawyer and in the Indian student of law. The strategic policy addressing these key areas was designed as follows,

(1) Expansion

Expansion will focus on a multi-disciplinary approach encouraged across the board to enable more students to access affordable and quality legal education. An efficient justice system plays a vital role in our economic development. Reducing pendencies alone can add about 2% to our GDP and it is our legal education system that will provide the manpower to fuel this required efficiency.

- Establish four national level institutions at the regional level as Centers of Excellence focused on research and up gradation of faculty skills - these may be called Institutes of Advanced Legal Studies & Research.
There will be a National Law University established in every state as a school of excellence

Each of the 913 existing law schools to be evaluated by an empowered committee and classified as per standards and needs for the purpose of upgrading such colleges and creating and providing opportunities to the students

PPP model for law schools with specialized focus to be encouraged

Autonomous colleges that will meet demanding accreditation standards to be encouraged

Continuing learning centers to be established in collaboration with the Bar Council's Directorate of Legal Education

(2) Inclusion

Inclusion will focus on creating a system by which a first generation lawyer from a backward and poverty stricken class can rub shoulders with the best of the best at the national level:

Establish a National Law Library that can also be accessed by all citizens online. Law libraries will also be established in every district of the country. The Ministry will establish an online legal e-learning network where citizens can access lectures and classes on legal subjects in real-time

To create an overall framework of inclusive participation in opportunities, including internships in courts and like bodies for students and legal professionals, so that there is upward mobility for every legal professional to be able to access professional opportunities at the High Courts and Supreme Court

Scholarships and fellowships to be made available for women and students from economically and socially weaker sections in order for them to access various opportunities for a legal education and a professional career

(3) Excellence

Excellence will focus on identifying and nurturing talent by providing every opportunity to every individual wishing to be a student of law:
An opportunity for students to specialize in various aspects of the law during their education itself in order to create a pool of talent based on domain expertise and core competence

A continuous focus on social responsibility and a strong professional ethic during every step of the educational process. Every practitioner should have an unfailing commitment to the integrity and working of the legal system and reinvigorate the oversight mechanism for professional misconduct in order for it to take swift action, including debarring those that violate professional ethics and standards

An online continuous career development and monitoring program to be established founded on a national database of all legal practitioners in the country. This will be a robust tracking system by which talent can be identified and lauded. The database will track domain expertise and professional development for lawyers and will publicly recognize excellence as well as detect inefficiencies. This system will be the basis for identifying lawyers for various roles and appointments including law officers and judges

The Indian Law Institute to refocus on its core mission to promote research in law as well as conduct post graduate specialist courses in various fields of law by recruiting faculty of global standard

The Delivery of Justice and Law Reform Trust of India in collaboration with the bar, the bench and leading business schools in India will develop courses for court administrators and managers

We will develop a system to create a cadre of paralegals in various sectors of legal practice who may then serve as legal secretaries and strengthen legal aid and literacy programs

A comprehensive strategy that encapsulates both "Top to Bottom" and "Bottom to Top" approaches will see lawyers at all levels participating in continuing legal education programs. We will demonstrate that the Indian legal and justice system is efficient, responsive, globally competitive, quick and orderly with judges and lawyers who can rise up to global challenges and the future needs of the country.
4. 6 Summary of Chapter IV

Legal Education in India has unable to respond historically and meaningfully to contemporary challenges.\textsuperscript{73} It is obvious that except the duration of the courses and entry level examination for the bar, there has not been innovation in legal education since independence. The focus of the legal education has remained confined either to the preparation of legal professional or servant from corporates and MNCs. Despite of various committees for the reform in the legal education and their muffled suggestions, there has not been any remarkable change in the scenario of the legal education in India. Indian Legal education system is not yet prepared to face the challenges of the globalizations. Compared to other filed of knowledge viz. science, engineering, medical and management, the legal institutions have failed in pacing with the modern technological advancement and social development.

Even for creating a man power for bar and bench, the present system of legal education has failed in providing the content of practical exposure. The studies only have a theoretical focus with an old age lecture method with chalk and duster only. All the attempts of so called reform appear to be lacking in long term vision and carried on without the grass-root detailing. The directions provided seem to be with hallucination.

A recently held National Convention on legal education at Gangtok, Sikkim in its Gangtok Declaration too reiterated that autonomous institutions for legal academia and legal research should be established to fulfill objectives of legal education viz. (i) accessibility (ii) equity and (iii) excellence in order to achieve the fundamental objectives of legal education to fulfill the aspiration of ‘We the people of India’\textsuperscript{74}.

Except few most of the legal education institutes are suffering from mediocrity. There are few island of excellence, but feeble in number and inadequate to cater the

\textsuperscript{73} Baxi, Upendra : Enculturing Law (Unpublished) as stated by Laxminath, A, ‘Legal Education in India – Contemporary Conspectus’ in Rao, Manoher and Rao, Shrinivas (Eds.) “Legal Education in India – Challenges and Perspectives” Asia Law House, Hyderabad, 2010. p. 29.
\textsuperscript{74} University News (51) 26, p. 26 (2013)
national requirement of legal pool. Moreover, the important aspects of Continuing Legal educations, integration ICT and other latest technology are missing at large. The research output of legal educational institutes is trifling. There is neither a policy nor any program either to develop or inculcate the research attitude among the students or faculty.

Legal education in India requires, in deed a revamping, however, a new technique of restructuring needs to be devised instead of repeating earlier futile experiments.