

Adapting Indian Legal Education to the Demands of a Globalising World

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A. Introduction

Half a century ago, the main purpose of university legal education in India was not the teaching of law as a branch of learning and as a science but simply to impart to students a knowledge of the black letter law, that is, certain principles and provisions of law to enable them to enter the legal practice exclusively for local needs. Gradually this perception changed and the process of reform in law and legal education was initiated. The real break came in 1990s when the new challenges posed by scientific and technological revolution and greater interaction between nations, trade in goods and services, information technology and free capital flow across international boundaries made the world a global village. Consequently, the concept of "local practice" widened to that of "transnational practice" in the context of globalisation and opening up of most of the economies of the world.

How should the legal profession and legal education respond to the new challenges? Never before in history has the need for sound thinking and planning on all issues been felt so intensely as today. Unless the topics of universal application are integrated into legal education in developing countries, our lawyers and those of other countries would not be able to compete in the transnational marketplace. In the present day, an innovative programme of integrated interdisciplinary legal learning and in the new areas such as Comparative Law, information technology, intellectual property, corporate governance, human rights, environment, and international trade law, investment, and commerce, transfer of technology, alternative dispute resolution and space is important. Comparative Legal education for professional excellence is needed in these and other areas on a global basis.

The world's problems require international co-operation and solutions, especially after the initiation of the liberalisation and globalisation process in today's world of increasing international trade and inter-dependence. The recent trend is that most of the agreements are construed internationally and the member countries are obliged to implement them at

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the domestic level. It is necessary for lawyers to understand the political, cultural and social influences on the legal systems of other countries and, by using that knowledge, to forge strong relationships between parties. Some observations of David Gerber are apposite in this context. For instance, Gerber calls for greater attention to theory in the broad sense of conceptual structure, because theories are the mechanisms for structuring information and knowledge effectively. The object of the entire exercise is to structure knowledge about foreign legal systems.¹ Analogous to this viewpoint is the model suggested by Ugo Mattei. He argues for a classification of legal systems, which he refers to as taxonomy² of legal systems for the purpose of learning from each other by rethinking the traditional boundaries drawn in the context of changing nature of global politics. This situation necessitates revisiting the classic categorisation of legal systems as civil, common and socialist.³

For a new beginning, one has to think within the paradigm of change and bring to the forefront the need for developing new approaches to the ongoing challenges posed by globalization, which should be prioritized in the framework of legal education in a country such as India, in order to cope with the current and future pressures. The object and purpose of this paper is to examine the rationale of translational law including Comparative Law as a compulsory course within the legal curriculum in India. It is also an opportunity to gain insights into the operation and teaching methods best suited for Indian Legal Education.

B. Historical Background of Legal Education in India

From the very moment the British set their feet in Surat, India, they attempted to live according to their own institutional arrangement. In this process, they secured permission from the then Moghul emperor to live according to their own religion and laws.⁴ This necessitated the creation of the rudimentary judicial system, which was intermingled with the administration that was set up. Gradually, the development of separate judicial

¹ Globalization requires development of more sophisticated tools for structuring and interpreting foreign legal knowledge. See David J. Gerber, *Globalization and Legal Knowledge: Implications for Comparative Law*, 75 *TULANE LAW REVIEW*, 949, 971 (2001).

² Taxonomy is important in the Law as in any other discipline. It evolves to accommodate doctrinal, legal and social changes within itself. See Ugo Mattei, *Three Patterns of Law: Taxonomy and Change in the World's Legal System*, 45 *THE AMERICAN JOURNAL OF COMPARATIVE LAW*, 1, 5-44 (1997).

³ *Id.* 6-8.

⁴ SA. B. KEITH, *A CONSTITUTIONAL HISTORY OF INDIA*, 22-32 (1937) and M. P. JAIN, *OUTLINES OF INDIAN LEGAL HISTORY*, 10 (1972).

systems in Presidency Towns and Mofussil areas,⁵ administering different sets of laws, required judges and lawyers to be suited to handling cases in the courts of these areas.

For almost a century, from 1857 to 1957, a stereotypical system of teaching compulsory subjects under a straight lecture method throughout the two year course continued. The need for upgrading legal education has long been felt. Numerous committees were set up periodically to consider and propose reforms in legal education. The All India Bar Committee made certain recommendations in 1951.⁶ In 1954, XIVth Report of the Law Commission (Setalvad Commission) of India discussed the status of legal education and recognized the need for reform in the system of legal education. It depicted a very dismal picture of legal education. It was only from 1958 that many universities switched over to three year law degree courses. In 1958, when the Law Commission voiced its concern, there were hardly 43 institutions preparing 20,519 students for law examination.⁷ After enactment of Advocates Act, 1961, there was an exponential growth of sub-standard law schools, with hardly any regard to the quality of legal education.⁸ Admission to these law schools became far too easy under this regime.

The Advocates' Act, enacted in 1961, became the focal point of the legal education system presently in existence. The Bar Council of India Rules, inducted under The Advocates' Act 1961, lays down the curriculum for imparting legal education throughout India and these said Bar Council of India Rules have been governing the procedural aspects of legal education, including, but not restricted to, the subjects to be taught, mode of examination to be conducted, the various Degrees to be conferred on successful students and the like. It was only in 1967 that it became the onerous task of the three year law colleges to include procedural subjects into the curriculum of their law school. The monologue lecture scheme adopted in law schools, where practical training is either totally neglected or marginally implemented at the level of Moot Courts, Court visits and legal research, will not make good lawyers in today's scheme of legal education.

Rules on Legal Education, which were incorporated into the pre-existing regulations, have been amended from time to time. There were demands for a consolidated latest version of the Rules under Part IV on standards of Legal Education and Recognition of Degrees in Law for admission as Advocates from Universities and Colleges teaching Law in the Country. In

⁵ **Mofussil areas:** n. [Urdu] outlying districts, away from urban **areas** or big city centres.

⁶ M.P JAIN, *supra*, note 5.

⁷ *Id.* 627

⁸ *Id.*, 629

response to popular demand, the Bar Council of India published the Rules in its final shape as applicable from 30 November 1998.

The minimum qualification for being an advocate is an LLB Degree, generally a three year course, which can be obtained after graduation in other disciplines. A debate as to its efficacy in the recent past led to a proposal of a five year integrated course after an intermediate (10+2) examination (from 1st class to 12th class - total period of 12 years of study). The three year course itself came to be restructured into a semestered system and several papers came to be included and excluded as per the Bar Council Guidelines. Hence, the Council today allows both the 3 year course and 5 year course to continue.

C. Agencies Regulating Legal Education

The Constitution of India basically laid down the duty of imparting education on the States by putting the responsibility for education in List II of the Seventh Schedule of the Constitution. But it now forms part of List III, giving concurrent legislative powers to the Union and the States. Legal profession along with the medical and other professions also falls under List III.⁹ However, the Union is empowered to co-ordinate and determines standards in institutions for higher education or research and scientific and technical institutions and also has the exclusive power, inter alia, pertaining to educational institutions of national importance, professional, vocational or technical training and promotion of special studies or research.

Empowered by the Constitution to legislate in respect of legal profession, Parliament enacted the Advocates Act, 1961, which brought uniformity in the system of legal practitioners in the form of advocates (all Advocates in India are at the same level and are recognized as such and they are not restricted from appearing before any court in India) and set up of the Bar Council of India and State Bar Councils in the States. Under clause (h) of sub-section (1) of Section 7 of the Advocates Act, 1961, the Bar Council of India is the supreme regulatory body to regulate the legal profession in India and has power to fix a minimum academic standard as a pre-condition for commencement of studies in law. Under clause (i) of sub-section (1) of Section 7, the Bar Council of India is also empowered "to recognize Universities whose degree in law shall be taken as a qualification for enrolment as an advocate and for that purpose to visit and inspect Universities." The Act, thus, confers on the Bar Council of India the power to prescribe standards of legal

⁹ Substituted by the Constitution (Forty Second Amendment) Act, 1976 for Entry 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, Available at <http://indiacode.nic.in/coiweb/amend/amend42.htm> (last accessed on 14 June 2009).

education and recognition of law degrees for enrolment of persons as advocates.¹⁰ However, when promoting legal education and laying down standards of Legal Education, the Universities and the State Bar Councils must be effectively consulted.¹¹

D. Globalisation and Legal Education in India

The term 'globalisation of law' refers to the degree to which the whole world lives under a single set of legal rules. Such a single set of rules might be imposed by an international body, adopted by global consensus, or arrived at by parallel development in all parts of the globe. In today's world of increasing international trade and inter-dependence the need for transnational law has increased many fold. As more and more countries open their economy, either partially or completely, there is a growing need to recognize and work towards a uniform system of law. This process of globalisation is evident in all facets of law.

I. The Importance of Comparative Legal Education

India is at a significant stage now positioned for a role as a major global player. Considering the growth of India in areas of technological and financial sectors, it is important to reflect upon these developments and assess the need to study transnational law and Comparative Law. It can be said that in recent times the value of Comparative Law has been appreciated, however it is not yet been made a compulsory course. Recommendations of the National Knowledge Commission of India (NKC) also emphasize that legal education should meet the needs of trade, commerce and industry in the context of growing internationalization of the profession.¹² The NKC constituted a Working Group in order to propose some key reforms in the field of legal education in India. The Working Group comprised of experts, who are members of the Bar, the Bench and academia.¹³ The Chairman of the Working Group is Justice M.Jagannadha Rao. The Working Group of the NKC recognizes *inter alia* the importance of the study of Comparative Law, with the

¹⁰ *Advocates Act*, 1961, section 7, Available at <http://www.vakilno1.com/bareacts/Advocateact/advocateact.htm> (last accessed on 14 June 2009).

¹¹ See *Gopal Krishan Chatrath V. Bar Council of India*, AIR 2001 Punjab and Haryana. 41, 48.

¹² Recommendations of the National Knowledge Commission submitted to the Prime Minister of India, dated 15 October 2007, 1. Available at <http://knowledgecommission.gov.in/downloads/recommendations/LegalPM.pdf> (last accessed on 14 June 2009).

¹³ *Id.*, Other Members of the Working Group are: Justice Leila Seth, Prof.N.R.Madhava Menon, Prof.B.S.Chimni, Mr.PP.Rao, Mr.Nishith Desai, Dr.Mohan Gopal.

purpose of creating lawyers who can deal with differing legal systems and cultures, while remaining strong in one's own national legal system.¹⁴

Comparative law as a discipline provides various tools to the students to carry out comparative legal research. Keeping in mind the relevance of the discipline of Comparative Law and the seriousness of the subject, a study was done by Professor Rahmatullah Khan in 1971.¹⁵ Professor Khan discusses in this book a few methods as to how Comparative Law should be taught in India. So far, it could be said that it was the only noteworthy work done in India on this area.

II. Importance of International Law

Here it is pertinent to establish the relevance and importance of international law in the context of globalization.¹⁶ The term international law encompasses both public and private international law, including comparative law. The topic of methodology in international law has attracted the attention of scholars' world over.¹⁷ Of late international trade law has become a popular choice among students. The relevance and interface of comparative law and international trade law cannot be overlooked or ignored.¹⁸ In this perspective, we

¹⁴ *Id.*, 13. The Working Group on Legal Education recommends general knowledge of American, French, German, Chinese and Japanese Law.

¹⁵ RAHMATULLAH KHAN, AN INTRODUCTION TO THE STUDY OF COMPARATIVE LAW, (1971). This study is intended to guide the teachers in the matter of teaching the subject and attempts to investigate significant areas for research in the subject.

¹⁶ Globalization requires development of more sophisticated tools for structuring and interpreting foreign legal knowledge. David J. Gerber, *supra* note 1, 949-975.

¹⁷ A brief survey of some of the important works is mentioned here. See generally, Upendra Baxi, *Teaching and Research in Human Rights: A Re-exploration*, 22 INDIAN JOURNAL OF INTERNATIONAL LAW, 353, 353-359 (1982), Richard N. Kiwanuka, *Teaching of International Law in South Africa*, 24 INDIAN JOURNAL OF INTERNATIONAL LAW 525 (1984), R. Khan, *Centre for International Legal Studies-A Proposal*, 10 INDIAN JOURNAL OF INTERNATIONAL LAW, 507 (1970), R. Khan, *National School of Law-A Proposal*, 14 JOURNAL OF THE INDIAN LAW INSTITUTE, 590 (1972), R. Khan, *International Law as a Discipline in India*, in INTERNATIONAL RELATIONS AND AREA STUDIES IN INDIA 81, (M.S. Rajan, ed., 1997), Friedrich Kratochwil, *Of Law and Human Action: A Jurisprudential Plea for a World Order Perspective in International Legal Studies*, in INTERNATIONAL LAW: A CONTEMPORARY PERSPECTIVE, 639, (Richard Falk, Friedrich Kratochwil, Saul H. Mendlvitz eds., 1985), R. Falk, *A New Paradigm for Legal Studies in INTERNATIONAL LAW: A CONTEMPORARY PERSPECTIVE*, 651, (Richard Falk, Friedrich Kratochwil, Saul H. Mendlvitz eds., 1985), Gerry Simpson, *On the Magic Mountain: Teaching Public International Law*, 10 EUROPEAN JOURNAL OF INTERNATIONAL LAW, 70 (1999), Duncan Kennedy, *Liberal Values in Legal Education*, 10 NOVA LAW REVIEW 603 (1986), Duncan Kennedy, *The Political Significance of the Structure of the Law School Curriculum*, 14 SETON HALL LAW REVIEW, 1 (1983), Duncan Kennedy, *First Year Law Teaching as Political Action*, 47 LAW AND SOCIAL PROBLEMS, 47 (1980).

¹⁸ For an interesting methodology of teaching comparative law, see Gert Steenhoff, *Teaching Comparative Law, Comparative Law Teaching*, 64 ELECTRONIC JOURNAL OF COMPARATIVE LAW, 47 (2002), Available at <http://www.ejcl.org/64/art64-4.pdf> (last accessed on 14 June 2009). Some group of scholars like Prof. Ugo Mattei, Prof. Duncan Kennedy et al launched a new project and institution-International University College Torino, Turin, Italy in 2006. The aim of this project is advanced academic study of global capitalism and the preparation of

cannot disagree with D'amato's view that "International Law as a discipline is more exciting and challenging. As a law school subject, it is our window to the world...If there is going to be change, it has to come from student demand. To be more effective, students should demand international law courses not just because of subject matter, but also because of the light they throw upon the study of 'law' in general."¹⁹

International Trade Law developed over the years and especially after the establishment of WTO and various multilateral trade agreements under the WTO aegis as well GATT 1995 have unfolded a vast multitude of International Trade law norms, which impinge on every aspect of nation's life. The international agreements on Goods, Services, Intellectual Property, Investments, Sanitary and Photo-Sanitary Measures, Dumping, Non Tariff Barriers, State Trading etc., have been concluded in a manner that municipal states including India have little choice of not complying the international standards as developed by international economic institutions. International Monetary Fund and World Bank are also important components of international trade strategy and as such have opened up a vast area of law, economics and policies which have both international and domestic linkages and the lawyers of today have to position themselves strategically in the overall balancing of international legal obligations and municipal settings. The WTO dispute settlement mechanisms have outweighed all the other international dispute settlement mechanisms by the fact that its jurisdiction is compulsory. Therefore, the decisions rendered by the dispute settlement bodies of the WTO have explicitly and implicitly developed a highly complicated jurisprudence, which requires a high intellectual profile to be understood.²⁰

III. Commercial, Contract and Securities Law

There are various connotations to the term 'Globalisation of law'. It may be viewed as a concomitant of the globalization of markets and the business practices of the multinational corporations that operate in those markets. There has been some movement toward a relatively uniform global contract and commercial law. It is well established that contracts are a kind of private lawmaking system. By that we mean that a contract may be defined as a law between the parties to the contract. The two or more contracting parties create a set of rules to govern their relationships, as laid down under the terms of their

international class of lawyers and finance experts with a highly integrated background of comparative law, economics and finance. Focus will be on legal, economic and financial specificities of Asia, Latin America and Africa and interdisciplinary studies like law and sociology, law and anthropology. Available at <http://www.iuctorino.it> (last accessed on 14 June 2009).

¹⁹ ANTHONY D'AMATO, INTERNATIONAL LAW: PROCESS AND PROSPECT, 294 (1995).

²⁰ See chapter on International Law as a Career, *Id*, 358 – 370.

agreement. In international trade too, the parties enter into contracts and the contracting parties invariably agree to submit to a nongovernmental arbitration mechanism or the courts of some particular nation state, or both, to resolve contract disputes. They may also chose the governing law of the contract under which any contract dispute between them shall be resolved.

In today's world of inter-dependence and international commerce, there is increasing importance of growth of harmonization of international commercial law. Most of the countries have now recognized the need for a uniform, predictable and transparent system of law for encouraging foreign investment and international trade with other countries. As a result of this, the courts and law of most of the countries recognize and enforce the judgments of the others. Hence there is a tentative movement towards the formulation of transnational commercial law through contracts.

In the securities market there have been rapid legal innovations for better investor protection, such as the ban on insider trading and committee reports on corporate governance. There has been an enormous, global flood of product standards and other consumer protection law, but not only are developments much faster in some nations than in others, but the substantive standards and rules adopted also vary widely.

IV. Protective Law

The constitutional rights movement is one aspect of a global movement that is based on the distrust of concentrations of power. The individual is seen as needing protection from all the larger forces that threaten to crush him, not simply the governmental ones. Law is seen as one instrument for such protection. Thus, in speaking of globalization, we move from the realm of constitutional law to the realm of torts, product standards, consumer protection, and occupational health and safety. Of course, most legal systems around the world have always dealt with personal injury, fraud, and shoddy goods. However, with passage of time the '*caveat emptor*' rule was replaced and the laws of consumer protection and investor protection became more stringent. In the sphere of business organization and finance, there has been active improvisation in securities and corporate governance law. Globalisation here refers to a worldwide increase of legal protection against the ill effects of technical, economic, and social devices too complex, distant, or powerful to make individual self-protection possible. The most recent manifestation of this movement is the mushrooming of environmental protection law that is partially fueled by a concern with nature itself but tends to achieve its greatest impetus when that concern is coupled with putative injury to individuals from pollutants.

Perhaps globalization is clearest and most dramatic in environmental law. As it became increasingly clear that the externalities of environmental degradation crossed national boundaries and that some of them, like ozone depletion, were truly global, parallel developments in national environmental law accelerated, as did efforts at multi-national

and/or international environmental protection law. Given the global uniformity of the industrial technologies threatening the environment, considerable substantive uniformity emerges even in national environmental rules.

V. Science and technology laws

Another issue concerns the application of science and technology in the legal practice and legal development. It is now universally accepted that science and technology form the key to eradication of poverty and improvement of the quality of life. Whether it is environment or energy, health or housing, education or employment, modern science can provide opportunities for growth in a manner that is sustainable and equitable. A number of laws are being enacted, absorbing scientific inventions and facilitating technological developments, directed towards growth and social justice. The irony of the situation is that neither legal education nor legal practice is influenced adequately with the technological revolution that is sweeping the progressive nations across the world.²¹

Even computers, which have become common place in every area of governance is still to enter in a big way into legal education. If this situation is allowed to continue, the legal world will, instead of being the agents for delivery of justice to the community, turn out to be obstacles to justice. The institutions teaching law should lead the change in this direction.. They have to re-vamp the curriculum with an emphasis on science-related law subjects (cyber law, environmental law, energy law, air and space law, health law, agricultural law, forensic sciences and intellectual property law) and organise multi-disciplinary teaching with a view to enable the future lawyers and judges to become critical consumers of scientific knowledge and experts in resolution of scientific disputes. Universities also have to extend a helping hand to equip the existing practitioners with the scientific knowledge necessary to handle the emerging legal issues through continuing education programmes and distance education courses. This is another challenge for legal education, which cannot wait for long for appropriate responses.

E. Suggestions

The guiding question remains: what kind of lawyers or law graduates are to be produced by the institutions of higher learning in law. It is important to attend to this question, which is to be addressed before we revisit the curriculum and suggest some changes for making international law as a discipline more effective and influence students to read the subject in detail. For a major part of the law course, Comparative Law is an optional paper in the curriculum in Indian Universities.²² It is prudent and desirable to teach this subject.

²¹ NR Madhv Menon, *The future of law teaching institutions*, THE HINDU, Tuesday, 30 July 2002.

²² A.LAKSHMINATH, *COMPARATIVE LAW*, 53 (2007).

This exercise to a large extent will influence the purpose of international law teaching and methodology. It is precisely at this point that learning Comparative Law can prepare students for effective participation in an increasingly global and diverse legal profession. Further, students can enhance their legal skills, collaborative learning and leadership.

With the growth of international and regional legal orders, an understanding of the forms and methods of comparative legal study has become essential to all those wishing to understand and engage in current legal debates.²³ Amidst this scenario, it is necessary to transform legal education in response to present and future needs. The debates and theories relating to legal systems are important to be a compulsory part of the legal curriculum. It may be said that the purpose of Comparative Law²⁴ is not to unify the different laws and legal cultures of the world, but to understand the multiplication of these laws, different traditions and cultures and in the process to get acquainted with the unfamiliar legal systems of the world. In this effort, lawyers and legal scholars will learn to appreciate the similarities and differences in systems of the world and will tend to look at issues in a rational manner. This situation will further the enrichment of understanding of the layers of complexity in a society.

The increasing demand of lawyers in a globalised world has given a fresh impetus to the study of international law in India. Therefore this demand requires the present curriculum and pedagogy related to international law and teaching be revisited so as to set some new standards in the field of international law training in the universities²⁵ and national law schools.²⁶

²³ See generally for geographical overviews of the development and current practice of comparative law around the world, THE OXFORD HANDBOOK OF COMPARATIVE LAW, (Mathias Reimann and Reinhard Zimmermann eds., 2006).

²⁴ If laws differ because people disagree about principles, comparativists can describe the disagreement. Perhaps they can even help to resolve it. If laws differ because circumstances are different, comparativists can describe how the difference in circumstances makes each law appropriate. See James Gordley, *The Universalist Heritage*, in COMPARATIVE LEGAL STUDIES: TRADITIONS AND TRANSITIONS, 31, 44 (Pierre Legrand and Roderick Munday eds., 2003).

²⁵ In India, universities are classified as traditional universities, open universities, professional universities, institutes of national importance, deemed universities, which includes private deemed universities. These universities in India are supported by the Central Government and State Governments. These universities are members of 'Association of Indian Universities (AIU)'. For more details see Association of Indian Universities, available at <http://www.aiuweb.org> (last accessed on 14 June 2009). The other apex organization endowed with the responsibility of promoting and coordinating university education and determination and maintenance of standards in institutions of higher education, is the 'University Grants Commission (UGC)'. See University Grants Commission, available at <http://www.ugc.ac.in> (last accessed on 14 June 2009).

²⁶ In order to improve the quality of legal education in the country, several members of the legal fraternity debated on a new system of legal education in the 1970s and 1980s. Thus the National Law School of India University (NLSIU), Available at <http://www.nls.ac.in> (last accessed on 14 June 2009), Bangalore was set up in 1987 as a bold experiment in legal education. Currently there are more than eight law schools established in different parts of the country offering five year B.A.,LL.B (Hons), LLM and PhD programmes. R.Khan, *National*

F. Conclusion

We have been looking at the globalization of law along a number of factors. The global distrust of hierarchical authority and concentrated public and private power generates growth in administrative law, constitutional, and other rights law, and in legal regulation of economic enterprise. The global desire to protect the individual generates growth in personal injury, consumer protection, environmental law, and even family law. The globalization of markets and business enterprise generates the growth of a worldwide law of business transactions. The global multiplication of exterior business relationships and the growth of arms-length regulatory styles fuel a growing demand for lawyers and their involvement in more and more social, economic, and political relationships. Having stressed on the need for globalisation, we need to adopt our domestic structure to be able to keep pace with the movement of globalisation both in terms of legislation and in terms of legal education and practice.

After all, the twenty-first century lawyer needs to have a good understanding of the transnational legal environment because international concerns and agreements in this century are pervasive and encompass virtually all branches of human activity— from the ocean floor to the planets climate to outer space. The legal educators need to be more aware of the changes and be pro-active in changing to meet the challenges.

School of Law-A Proposal, *Journal of the Indian Law Institute*, *supra*, note 17. Also see generally, K.L.BHATIA, LEGAL JUSTICE EDUCATION: VISION PLAN FOR LEGAL SCHOOL (2006).

