

# Legal Education in India vis-a-vis Emerging International and Transnational Trends

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## Abstract

During the last two decades the practice of law in India has changed more rapidly and comprehensively than in any comparable period in history. Technological advancements and globalization have changed the concept of legal profession. Today, clients expect attorneys to be tech-savvy, specialized and prompt. They also require lawyers to be more geographically diverse, with either the ability to work on matters across state and national borders or the professional contacts to get the job done. In these times of change, Indian legal education face an uphill battle to instill in graduates the skills and acumen needed to succeed in this dynamic environment.<sup>i</sup> Events are moving very fast and reform in legal education cannot wait any longer. In the context of change ahead, it will be important to devote thought on how to adopt our legal education to modern conditions so that the coming generation may fit in the new society that is envisaged. Through this paper an attempt has been made to discuss the opportunities and challenges facing legal education in the era of globalization. It also identifies the knowledge and skills that law students will require in order to prepare for tomorrow, and explore pedagogical shifts legal education needs to make inside and outside the class room.

**Key Words :** Legal Education, Globalization, Emerging Trends.

## A. Introduction

In an increasingly interdependent world, with a growing array of economic, political, social, and environmental problems that transcend national borders — individuals cannot meaningfully function as responsible democratic citizens without both greater global knowledge, and the capacities and sensibilities necessary to engage that knowledge critically, and with sophistication. In response to these concerns, significant investments have been made in recent years to expand the place of global perspectives in education sector especially the legal education. Globalization and technological changes has had a profound effect on the legal services marketplace and the desire of graduates to even practice law. Gone are the days where all law graduates wanted to become sole practitioners. The effects of globalization and a strong growth in trade of transnational legal services have created a competitive legal services marketplace for the new lawyers. Arguably the greatest part of the work done by lawyers in the new era is not only done in courts but also in advising clients on important matters and mainly in business affairs. A Law degree has now become a passport to work in a wide range of fields, only one of which is private legal practice. Events are moving very fast and reform in legal education cannot wait any longer. In the context of change ahead, it will be important to devote thought on how to adopt our legal education to modern conditions so that the coming generation may fit in the new society that is envisaged. *Through this paper an attempt has been made to discuss the opportunities and challenges facing legal education in the era of globalization. It also identifies the knowledge and skills that law students will require in order to prepare for tomorrow, and explore pedagogical shifts legal education needs to make inside and outside the class room.*

## B. Global Professionalism : Emerging Trends

Globalization has been a subject of debates and discussions from numerous perspectives. There is no doubt that globalization has profound implications for the future of higher education worldwide. Inevitably, the need for raising academic standards, creating a better research environment, developing sound infrastructure, formulating good governance models, creating better career opportunities, and promoting professional advancement of academics are all central issues for formulating the necessary policies for higher education. Many aspects of education including legal education are driven by new market dynamics of demand and supply. Developments have brought paradigm shifts in almost every walk of life from political to economic to social to cultural. Paradigm shifts have in turn posed major challenges and provided greater opportunities not only to economic players but to professionals as well. The old adage remains that law is an instrument of social engineering, and the addendum is that lawyers are part and parcel of agents of social engineering resulting to change.

Today a lawyer is considered to be a policy planner, business advisor, negotiator among interest groups, expert in articulation and communication of ideas, mediator, lobbyist, law reformer, etc. in addition to their traditional role. These roles demand specialized knowledge and skills not ordinarily available in the existing profession.<sup>ii</sup> These roles have moved away from being localized and started moving beyond even national boundaries. As a result a new genre of *glocalised* legal professionals<sup>iii</sup> has evolved who while having a firm understanding of local legal scenario, was able to extend its principles to a global context. The growth of multi-national corporations and the growing importance of international trade relationships, and evolving interdependence among states in international relations have generated requirement of legal professionals who can think globally while acting in a local context.

Globalization's influence permeates the economy, the state, and civil society, and is felt no less in law than in other fields.<sup>iv</sup> After the economic liberalization in the year 1991 the economic scenario of the country has been changed. Today the Governments are more concerned with international issues due to some changes. First, the growth in international trade, travel and communication forces governments to be concerned with protecting their citizens (both corporate and human) abroad, especially with regard to their business dealings. Consequently there has been an increase in the scope and nature of domestic regulation of international interaction with others. An example is the growth of bilateral investment treaties.<sup>v</sup> Secondly, problems of the modern world are increasingly seen as trans boundary in nature, especially pollution and global warming, which refuse to stay within national boundaries.<sup>vi</sup> The result has been an explosion in the number of treaties dealing with trans boundary issues.<sup>vii</sup> Additionally, international organizations, both governmental and non-governmental, have grown. The processes of international law have expanded with the proliferation of international tribunals,<sup>viii</sup> the International Criminal Court,<sup>ix</sup> bilateral investment treaties,<sup>x</sup> environmental norms,<sup>xi</sup> and human rights treaties.<sup>xii</sup> All these arrangements impact on domestic issues.

## C. Challenges and Opportunities

In the new millennium due to globalization, the legal arena is also widening. Present era is of specialization and super-specialization in addition to the knowledge of the core law and legal procedures which warrants in-depth knowledge and understanding of specific areas of law, national and international. New fields like cyber law , intellectual property rights, space law, marine law, insurance law, health law and other business law (like project finance, competition law, corporate taxation, infrastructure contract, investment law etc.) are gaining importance which requires specific craftsmanship , analytical skills and research orientation. Lawyering today is probably of higher quality and that law firms are certainly more efficient today. These new law firms primarily engage and specialize in designing equity and loan instruments, writing infrastructure contract, power contract, drafting of project finance contract, finalizing transnational investment, joint venture and technology transfer contracts. There is a discernible shift in the disposition of law firms towards settling disputes through ADR mechanism especially through Arbitrator rather than through adversarial litigation mode of dispute resolution<sup>xiii</sup>. Globalization has thus expanded the internal and external demand for legal services and has also given rise to situation involving multiple jurisdictions. After liberalization of India's economy and with flow of foreign investment in number of fields, a number of foreign lawyers started advising their foreign clients on Indian Law. So, a number of law firms /foreign

lawyers are working in India in a surrogate manner.<sup>xiv</sup>The protectionist lawyers can only delay the possible entry of foreign lawyers and law firms in the globalised world.

Over the last few decades we have witnessed a remarkable change in the way legal services have been and continue to be structured and delivered globally. So, in the current socio-economic scenario, new doors are opened for legal professionals to show their expertise and skills inherited through practice. It is time to cultivate professional relations with counterparts of other parts of world. The entrepreneurs are looking at the professionals who are having the capacities to handle the issues for their benefits. It is only the professional capabilities, which win the clientele. Under these circumstances, Legal education in India must be better aligned with student and market needs.

#### **D. Conclusion and Suggestions**

The effect of globalization on legal scholarship has been transformative. In virtually every field of study, there is greater interest in comparative legal study, greater cross-border collaboration among academics, and more extensive engagement in projects abroad. One reason for these developments is that the global integration of the economy, technological innovation, and new ideas about regulation and governance are creating similar pressures on domestic legal regimes and producing similar social problems to which legal regimes must respond. However, we are also in the midst of a cultural shift in which social and political issues are more globally interconnected and law itself has enhanced significance. Questions that we used to think of as primarily issues of politics, policy, culture or economics, for example, are increasingly 'juridified', that is, conceived as legal matters, discussed in terms of rights, and litigated before courts and other tribunals. Such developments make the current efforts to transnationalize legal education both more important and more productive. Keeping in view the challenges of the new order, legal education has far more responsibility in making the legal professional highly skilled, proficient and competitive. The legal education has to respond by imbibing professional excellence and scholarship. It might have to undergo a sort of transformation in order to achieve the same. In order to meet the challenges posed in the changing context on legal profession the following suggestions are proposed, which will help to change the course of legal education in the country so as to enable all the law schools in the country to enable the students to come out of law schools/colleges as professionals who are enabled to think globally while acting locally.

First of all, it is proposed that there should be a Co-ordination committee constituted by the Central Government, with one representative each from Bar Council of India, State Bar Councils, Central Government, State Governments and University Grants Commission and a judicial member nominated by the Chief Justice of India, which would be the apex body so far as legal education is concerned. This apex body should control all the aspects of legal education and the powers currently vested in Bar Council of India and University Grants Commission, should be transferred to this body. The members of the committee should be either lawyers, or legal academics, who have active interest in the state of legal education in the country. The Apex Body will have the power of affiliation of legal education institutions.

Admission norms to law schools should be made strict. An all India entrance test for Law course as suggested by Bar Council of India is a welcome suggestion.

The existing practice rules of Bar Council of India do not allow full time law teachers to take up litigation roles even in legal aid matters, and still they expect the teachers to impart all the requisite skills in law colleges. As in the case of Legal Services Board Act, 1997 of UK, where law teachers are falling within the exempted category, in India also there is a need for allowing law teachers to take up legal practice, either in the form of full time practice or consultancy as appropriate, at least for legal aid purposes. The government can claim a certain percentage of fees earned by the teacher as part of consultancy approval arrangement. The quality of legal education depends upon quality of law teachers. One ominous development in recent years has been to appoint teachers on political and other consideration rather than on merit. This can frustrate all attempts at improving higher education. There is a need for improving the status and service conditions of law teachers to attract talented persons to the teaching profession. Interaction with visiting faculties of various prestigious law universities whether situated in India or abroad can motivate the law students a lot.

So far as the teaching methodology is concerned the learning process should start with class room learning, move towards simulation learning and move further towards experiential learning. In most of the institutions class room teaching occupies 80% of the curriculum with 20 % space given to simulation techniques like moot courts, drafting classes etc. Law teaching should ideally follow the methodology given in the following diagram :

### Class Room teaching



**Simulation Techniques like Moot Courts, Mock Trials, Client Counseling, Law office Management, etc.**



**Experiential learning through legal clinics, Internship, etc.**

Though the simulation techniques like Moot Courts, mock trials, client counseling sessions, drafting lessons etc would to an extent inculcate these skills, they are no match to the practical issues learned from actual practice of law. Hence Law schools should give preference to experiential learning than to class room teaching. Clinics set up in various subjects should be used as a method to teach law students about the areas of practice. This should be uniformly put to practice in all law schools of the country. Law colleges/Universities should specifically focus more and more on 'problem solving', 'fact investigation', 'communication', 'counseling', 'negotiation', and 'litigation' techniques.<sup>xv</sup>

In order to create a tradition of research in law schools and universities we have to take certain measures like: emphasis on analytical writing skills, introduction of research methodology as integral aspect of the LL.B program, to provide excellent infrastructure (including research friendly library facilities, availability of computers and internet, digitization of case law, access to latest journals and legal databases available worldwide) etc.

Another suggestion is, to improve the examination system. The prevailing examination systems may be revised and evaluation methods be developed that test critical reasoning by encouraging essential analytical, writing and communication skills. The examination should be problem-oriented, combining theoretical and problem oriented approaches rather than merely test memory. Project papers, project and subject viva, along with examination to be considered as pedagogic methods imperative for improving quality.

The practice of law in a globalised world requires a body of knowledge which is both complex and interdisciplinary. It requires the acquisition of a broad range of new skills and techniques of solving legal problems. To equip lawyers with the needed skills to practice law in a globalised world will require changes in the curriculum. It will require a curriculum which trains lawyers for the practice of law in a dynamic and rapidly globalizing world.

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<sup>iii</sup> A combination of words Global and local, see Wikipedia article <http://en.wikipedia.org/wiki/Glocalisation> (accessed on 16th July 2017)

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vii Convention Establishing the Multilateral Investment Guarantee Agency (MIGA) 1988, United Nations Convention on International Bills of Exchange and International Promissory Notes, 1988.

viii For example, the International Convention for the Settlement of Investment Disputes (ICSID) provides facilities for conciliation and arbitration of investment disputes between contracting states and nationals of other contracting states in accordance with the provisions of the convention. The convention has been acceded to by a majority of the states in the world.

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xii For example, Convention on the Elimination of All Forms of Discrimination against Women (adopted by UN in 1979, entered into force in 1981), See also International Covenant on Civil and Political Rights (adopted by UN in 1966, entered into force in 1976), See further International Covenant on Economic, Social and Cultural Rights (adopted by UN in 1966, entered into force in 1976).

xiii Established by the Rome Statute of the International Criminal Court, adopted in 1998. Available from: <<http://www.icc-cpi.int/nr/rdononlyres/add16852-ae9-4757-abe7-9cdc7cf02886/283503/romestatuteng1.pdf>>

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