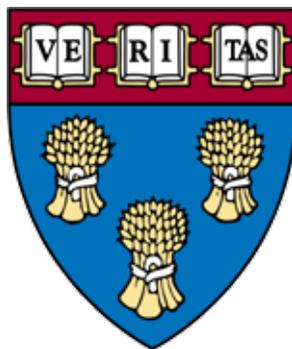


HARVARD LAW SCHOOL
PROGRAM ON THE LEGAL PROFESSION



THE TRANSFORMATION
OF INDIAN LEGAL EDUCATION

A Blue Paper

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FOREWORD

The Law School Program on the Legal Profession was founded in 2004 to:

- ◆ Conduct, sponsor and publish world-class empirical **research** on the structure, norms and evolutionary dynamics of the legal profession;
- ◆ Innovate and implement new methods and content for **teaching** law students, practicing lawyers and related professionals about the profession; and
- ◆ Foster broader and deeper connections **bridging** between the global universe of legal practitioners and the academy

This manuscript by Professor N.R. Madhava Menon is part of a “blue paper” series of substantial essay, speech and opinion pieces on the legal profession selected by the program for distribution beyond the format or reach of traditional legal and scholarly media channels. Specifically, this text formed the basis for a keynote address delivered by Professor Menon at the program’s conference, *The Indian Legal Profession in the Age of Globalisation*, held in October 2011 in New Delhi, India. We thank you for your interest and look forward to your feedback.

THE TRANSFORMATION OF INDIAN LEGAL EDUCATION

Legal Education Reforms 1960–1985

Like every other institution in Indian society, higher education in general and legal education in particular are in a continuing process of far-reaching changes in organization, management, content and delivery. The basic factor in this transformation is the constitutional mandate to build a social order based on democracy, human rights and rule of law securing to all of its citizens justice, liberty, equality and dignity.

On the basis of recommendations of an expert committee, Parliament took steps as early as 1961 to enact the Indian Advocates Act, integrating the legal profession throughout the country under uniform standards, and creating duly elected bar councils at the state and central levels with the authority to manage the profession including standards of legal education, of course, in consultation with universities teaching law. The first generation reforms in legal education followed soon thereafter which prevailed with minor changes until the beginning of the 1980s. This phase of legal education reforms included:

- ◆ LL.B. becoming a post-graduate (after a basic degree in Arts, Science, Commerce or Humanities) programme of three year's duration;
- ◆ Rapid expansion of law teaching institutions, mainly in the private sector, many of them operating as part-time (a few hours in the morning or evening on the premises of regular colleges) institutions and the bulk of teachers coming from the practicing profession, giving lectures before or after court work;
- ◆ Development of core curriculum consisting of certain mandatory subjects offered at all full-time as well as part-time law colleges; and
- ◆ Establishment of a compulsory one year post-LL.B. apprenticeship with a senior advocate required for eligibility for license to practice (this was later dispensed with).

Within two decades, access to legal education was greatly expanded, though the quality was diluted uncontrollably. The Bar Council of India (BCI) began inspecting and "licensing" law colleges though it had only marginal impact on standards. Second generation reforms thus became imperative to maintain access and improve quality. This was undertaken a decade before economic liberalization happened in the country in early 1990s. The strategy was to make the LL.B. a post-higher secondary school course of a longer duration (5 years) with an expansive curriculum where students study law in social context (through introduction of a range of law-related social science subjects) and employing multiple methods of teaching and evaluation. The Five-Year Integrated LL.B. programme thus developed was prescribed

by the BCI to be the only BCI-recognized law course beginning in 1982. Due to resistance from some sections of the bar and some universities, the Bar Council soon revised its own regulations and allowed both streams (three-year post-graduate LL.B. and five-year post-higher secondary integrated LL.B.) to be run by colleges and universities according to their choice.

The expansion of law colleges continued during this period, enrolling annually about 200,000 students in the over 900 law teaching institutions in the country. Quality remained a casualty in many of these institutions which included university departments of law (roughly 150), Government managed/funded colleges of law (about 150) and the rest privately sponsored self-financing mostly part-time (evening) institutions.

Second Generation Reforms Led by National Law School

In the above context, the Bar Council of India developed a strategy of sponsoring a model law school with university status to act as a pace-setter for legal education reforms envisaged by its five-year integrated LL.B. curriculum. This initiative led to the birth of the first National Law School at Bangalore in 1986 which was supposed to become “the Harvard of the East” according to its sponsors. The success of the National Law School experiment was indeed a turning point in Indian legal education, particularly in respect to academic excellence, social relevance and professional competence. It soon assumed the dimensions of a movement with every state in India seeking to establish a National Law School on the Bangalore model. India has fifteen National Law Universities at present which offer quality legal education to nearly 2000 students annually.

India entering the WTO and adopting policies of economic liberalization in the 1990s brought about legislative changes in the new millennium not only in the economy but also in the regulatory framework of human resource development. As many as six pieces of legislation are now pending in Parliament which, if adopted, are potentially capable of radically changing the higher education scenario in the country, including legal education. It is in this context that the Ministry of Law and Justice proposed what may be called the “third generation” reforms in legal education, wherein a variety of changes in the regulatory framework are contemplated along with more national law schools and additional government funding of advanced centres for research and training in law.

One may identify, inter alia, the following factors (listed in no particular order) for the transformation of legal education in this period:

- ◆ The changing demands of the legal market at the national and global levels;
- ◆ The establishment of new regulatory regimes in emerging areas of the economy;
- ◆ The emergence of new technologies, particularly in the communication sector;
- ◆ Growth of international trade and prospects of trade in services;
- ◆ The advent of corporate culture in legal practice, particularly in intellectual property rights matters;
- ◆ The replication of the Bangalore model of National Law Schools in many more states;
- ◆ The increasing demand for legal studies from among highly talented students;
- ◆ Changes in the legal education regulatory system (Common Law Admissions Test; All India Bar Examination; the Directorate of Legal Education in BCI);
- ◆ The partnership of bar, bench and academia in the management of legal education at least in the National Law School scheme;

- ◆ Collaboration with foreign law schools and the influence of foreign-educated lawyers;
- ◆ Government willingness to finance law schools and improve faculty salaries;
- ◆ On-campus recruitment and the institution of awards for best performing teachers and law schools by law firms;
- ◆ The spread of legal publications, law reporting and legal awareness;
- ◆ The recommendations of the National Knowledge Commission (2005);
- ◆ Law school involvement in legal aid, human rights and clinical and experiential education.

Three Decades of Reforms: Outcomes Positive and Negative

One might ask about the outcomes resulting from the influence of the above factors and the future direction of legal education in India given the level of economic development and globalization. Never since Independence has legal education received the attention it receives today from society, government and the private corporate sector. This has resulted in better infrastructure, greater private participation and increased investment, though yet inadequate for quality legal education. India today has the largest legal profession in the world (1.3 million attorneys), though not all of them are in legal practice in the conventional sense (i.e. litigation-oriented practice). If solo practice has been the dominant pattern in the past, the trend today is more towards partnerships and large firms involving multiple areas of specialization. Though the legal profession has been the monopoly of the male gender in the past, women are now joining legal practice in increasing numbers and are finding their places in the judiciary as well. The steady influx of people from the lower socioeconomic strata to legal careers is changing the composition of the profession, and strengthens democracy and rule of law in the country. Legal practitioners are finding lucrative ways to practice outside courts and litigation, compelling reforms in organization, management and disciplinary control of the profession.

On the negative side, one must mention the paucity of competent teachers even in the best of law schools to guide the growing body of motivated students. There are vacant positions in every law school. Bright law graduates do not join post-graduate studies in Indian law schools nor are they attracted to teaching and research positions in them. Many of them migrate to U.S. and U.K. law schools for LL.M. education and either do not return to India or agree to take up teaching positions in India. This situation has led policy planners to consider restructuring post-graduate legal studies (the LL.M. degree is still a pre-requisite for teaching position in law schools) making it a one-year programme geared to teaching, research and specialization (the proposal is under consideration of the University Grants Commission which regulates post-graduate programmes in law). The Bar Association of India and Society of Indian Law Firms have come forward to address the shortage of teachers, offering to send senior advocates to act as adjunct faculty in selected law schools. Some law schools have started recruiting teachers from outside India, paying them attractive service conditions distinct from the rest. Others are entering into exchange arrangements under which students and teachers are provided opportunities to learn in different environments under credit transfer arrangements. Everyone now realizes that unless the faculty position is improved, the future of legal education is bleak and students with financial capacities will migrate to other jurisdictions for their education.

Looking to the Future

One may speculate as to what might happen if the bills pending in Parliament relating to higher education become law in the near future. Firstly, the Bill on National Commission on Higher Education and Research will restore university autonomy and allow experimentation and competition in individual institutions, possibly resulting in academic excellence at least in some law schools. Secondly, the Foreign Educational Service Providers' Bill may induce some world famous universities to set up their own campuses in India or enter into twinning arrangements compelling structural and functional changes in the delivery of education in other law teaching institutions. The National Accreditation Regulatory Authority Bill will tend to enforce minimum standards and help reduce mediocrity and exploitation while promoting the good institutions to constantly strive for academic excellence. The establishment of a network of advanced centres of legal research and training as recommended by the National Knowledge Commission will help address the lack of quality research and promote a research culture in existing law schools. These are possibilities for the future which are contingent upon a variety of factors in the polity and the economy.

Final Thoughts

Before I conclude, I must refer to a complaint from the Bar and the Bench repeatedly made against the National Law Schools. It goes to the very fundamental objective of legal education in a developing country, where the Indian Constitution enjoins the legal system to facilitate eradication of poverty, inequalities in status and of opportunities and ensure justice to all in social, economic and political spheres. While attempting to meet the challenges of the marketplace and globalization, the focus of the curriculum at the National Law Schools is reportedly geared to the private corporate sector, supplying trained graduates for corporate jobs, legal and managerial. The original objectives of setting up National Law Schools were to supply well-trained lawyers to the trial and appellate bar as well as for judicial service so that access to justice is enlarged and the quality of justice for the common man is improved and strengthened. This has not happened to any satisfactory level. Corporate opportunities have proved to be an attractive comfort zone for most law graduates. The profession is also becoming corporatized in urban centres leaving the rural and poor litigants to a delivery system found inadequate in several respects. The corporate bar seems to be demanding more and more bright graduates every year. Even government agencies are unable to secure high quality legal services commensurate to those fielded by the private corporate sector.

This development has created some distortions in the distribution of work and income in the profession enlarging the inequalities and creating problems in discipline and management. We understand that the corporate legal market in India today is worth over a billion dollars, half of which is shared by foreign law firms. The top 100 Indian companies have reportedly spent last year (2010) nearly 500 million dollars by way of legal fees. India's legal market is set to grow in a big way in the coming decade given the rate of growth the economy has achieved consistently over the last two decades. This is bound to impact the way the profession is organized and the way legal services are delivered. Who gets what and at what cost in this emerging scheme of things is not only a matter of concern to the professional membership, but also to those in charge of ensuring the delivery of equal justice to all under a democratic constitution.

ABOUT THE AUTHOR

Professor N.R. Madhava Menon is a legal educator who has completed over 52 years of teaching and research in different universities. He is the author of the Five Year Integrated B.A.,LL.B. (Hons) course which successfully transformed the quality of legal education in India beginning in 1986. Professor Menon also has been the founder-director of the National Law School at Bangalore which revolutionized the status of law schools in the scheme of professional education in the country. He was also instrumental in establishing National University of Juridical Sciences in Kolkata and the National Judicial Academy in Bhopal, in both of which he was the founder-director. Presently he holds the IBA Chair in continuing legal education at NLS, Bangalore and is the chairman of Menon Institute of Legal Advocacy Training (MILAT), a voluntary organization in professional development training for young advocates, based in Trivandrum (Kerala).

Recognizing the services rendered to legal education and legal profession, the Society of Indian Law Firms has instituted an annual award of one hundred thousand rupees, a citation, and a plaque to a law teacher from South Asian countries selected by a jury headed by a retired Chief Justice of India. The award is known as the "Professor N.R. Madhava Menon Best Law Teacher Award". Professor Menon was also honoured by the President of India with the highest civilian award PADMA SHRI for public services. Professor Menon was president of the Commonwealth Law Teachers' Association for a four year term. He is the author of eight books and over a hundred research papers in law, the legal profession, and legal education.

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