

One Such Pattern in the Indian Legal Academy

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Problems and perspectives in Indian legal education have remained unchanged since the mid-nineteenth century when the earliest academies were established under imperial rule. Both legal studies and the profession were not created with a visible need to integrate with India's social, political, and economic challenges. This wide gap has continued to thwart efforts to reform legal education thereafter. Thus, it is important to look between the past and the present to take stock of events from pre-independence till the advent of the national law schools. The article charts the consequences of India's legal education policy, and developments, to further suggest that reforms must include more unorthodox introspection.

Les problèmes et les points de vue qui prévalent dans le système de l'éducation juridique en Inde sont demeurés inchangés depuis le milieu du 19^e siècle, lorsque les premières facultés ont été créées sous le régime impérial. L'éducation et la profession juridique n'ont pas été créées de façon à refléter les défis sociaux, politiques et économiques de l'Inde. Cet important écart continue de nuire aux tentatives de réforme du système d'éducation juridique. Par conséquent, il est important d'étudier le passé et le présent et de tenir compte des événements antérieurs à l'indépendance de ce pays jusqu'à la création des facultés nationales de droit. Cet article dresse le bilan des conséquences de la politique d'enseignement du droit en Inde et de son évolution et suggère que toute réforme devrait inclure une forme moins usuelle d'introspection.

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1. INTRODUCTION

Problems and perspectives in Indian legal education have remained unchanged since the mid-nineteenth century when the earliest academies were established under imperial rule. Both legal studies and the profession were not created with a visible need to integrate with India's social, political, and economic challenges. This wide gap has continued to thwart periodical efforts to reform legal education thereafter. Thus, it is important to look between the past and the present to take stock of events from pre-independence till the advent of the national law schools. The article charts the consequences of India's legal education policy, and developments, to further suggest that reforms must include more unorthodox introspection.

Instances from the structure of legal education, its commitment to research, and the pattern of the modern law academy are peeled in layers to sketch: how it came to be. The thematic story is that legal studies must happen in a hermeneutic manner to understand issues and problems in the life world; and as a way to open the "black box" of the human mind. The concern for learning forms the underlying pattern in the paper.

The essay adopts a descriptive and narrative tone giving attention to the history and rhetoric of Indian legal education. In modest ways it connects the story and different stories within; which will be especially revealing to readers in the North American context. Part II covers important developments in legal education from its formal inception, after the Indian mutiny till the creation of the modern national law school. It contextualizes the political and social problems which serve as an overview of the present state. Part III covers the overlap between the powers of the BCI and UGC regulating legal education. It discusses the structural problems that affect the educational process. Part IV offers a general outline of the research

environment in the country and its vital link to learning. Part V discusses some pathologies of the modern law academy. The essay concludes the need to germinate a process oriented education stressing on higher-order thinking skills. This ensures that the student and her learning rightfully occupy the center stage in future planning.

2. SUMMARY SO FAR

The British had vested interests in developing India's educational policy. Imparting a western education was one of the means of legitimating its rule. Thomas Babington Macaulay's *Minute on Education* written in 1835 for William Bentinck gave a decisive turn in the policy.¹ The most important of which is the mandatory prescription of the English language as the medium of instruction²--, also as a way to promote fidelity to the British Raj.

Formal legal education was in a nebulous state during colonial rule since it officially assumed the crown to govern India, after the 1857 revolt. The story hangs in an era of hegemony and exploitation of the Indian masses by British conquest to be taken too seriously. Thomas Metcalf termed the concept "oriental despotism."³ He writes :

The idea of India as a country somehow lost in time nevertheless remained, and was to have profound effects not only on the working of the British Indian judicial system, but on the fundamental structures of the Raj itself.⁴

It is hard to imagine any major role for Indian lawyers in colonial ruled society.⁵ It is in this context that the standard and content of education in law must be examined.

¹*Minute by Hon'ble T.B. Macaulay, dated the 2nd February 1835, http://www.columbia.edu/itc/mealac/pritchett/00generallinks/macaulay/txt_minute_education_1835.html (Accessed 20th August, 2010).*

² *Ibid.*

³ THOMAS R. METCALF, IDEOLOGIES OF THE RAJ 6 (1995).

⁴ *Ibid.*, 13.

The despotic English rule destroyed any future for legal education or research resulting in the alienation of Indian masses.⁶ Legal academic, P.K. Tripathi observed:

The truth is that in India the thinking of all concerned, the government, the legislators, the Bar, the judiciary and the law schools alike, has been severely conditioned by the English attitude of indifference to the law schools and to legal education. What only made conditions in India worse than, for instance, in Canada, has been the far greater degree of political subjugation that characterized the British rule in this country, resulting, in turn, in added inferiority of status and quality for the indigenous legal institutions.⁷

The cultural effects of colonialism adversely impacted traditional jurisprudences, dispute settlement, and consequently even education. Colonies became zones of experimentation for the colonizers.⁸ Bernard Cohn instructively demonstrates the relationship between colonialism and its conquest of knowledge as a way of power during the eighteenth and nineteenth century.⁹The

⁵ The English did not see a role for legal education in their country too at that point in time. There were two legal systems in India, a British imposed and an indigenously working system of dispute settlement and personal laws. The highest court of appeal was not in India. There have been studies on the legal profession in India during the British rule and it is relevant to look at B.B. MISRA, *THE INDIAN MIDDLE CLASSES: THEIR GROWTH IN MODERN TIMES* (1961). Misra depicts the specialization in professions during the time of the British rule and covers the growth of the legal profession as one among this (162). But see generally, Sir Lionell Horwill, *The Legal Profession in India*, 6 RES JUDICATAE 160 (1953). Horwill writes an obsequiously anglophile version of the conditions in early independent India and what he terms “British Justice” where Indians became experts in British law (162). This is a lopsided account of a whole history of oppression. For this reason his exaggerated observation that the standard of legal education in India was “high” “at any rate in Bombay, Calcutta and Madras” must be taken with a pinch of salt in light of the condition of the Indian society at large (170-171). It is important to look at *supra* note 3, 13. Metcalf remarks about the rewriting of original Indian texts as directly in contrast with the British conception of their own law.

⁶ P.K. Tripathi, *In the Quest for Better Legal Education* 10 JOURNAL OF INDIAN LAW INSTITUTE. 469-470 (1968).

⁷ *Ibid.*, 475.

⁸ Elizabeth Kolsky, *Codification and the Rule of Colonial Difference: Criminal Procedure in British India*, 23 LAW AND HISTORY REVIEW 631 (2005). Kolsky demonstrates how the Code of Criminal Procedure enacted in 1861 contributed to the “dual system of law.” Although it was meant to be universal, it exempted British subjects from local jurisdiction. See further, RADHIKA SINGHA, *A DESPOTISM OF LAW, CRIME & JUSTICE IN EARLY COLONIAL INDIA* (1998).

See further, Kunal Parker, *The Historiography of Difference*, 23 LAW AND HISTORY REVIEW 685 (2005). Important works in subaltern studies (studies of post-colonial society) written by scholars such as: Shahid Amin, David Arnold, Dipesh Chakrabarty, Partha Chatterjee, Ranajit Guha, David Hardiman, Sudipta Kaviraj, Gyandendra Pandey, Gyan Prakash. Gayatri Spivak, and Sara Suleri (n 1 at 685).

⁹ BERNARD S. COHN, *COLONIALISM AND ITS FORMS OF KNOWLEDGE: THE BRITISH IN INDIA* (1996). See also, NICHOLAS DIRKS, *CASTES OF MIND: COLONIALISM AND THE MAKING OF MODERN INDIA* (2001). See further, *supra* note 3, 10-11.

ideology of the colonial period replaced the ancient and “deeply entrenched” local self-government and customary unwritten laws.¹⁰ The British created the construct of the colonial subject by rewriting the land laws and its devolution.¹¹ This was made possible by studying Indian languages and rewriting ancient normative codes, thus imposing British notions under its need felt for codification.¹² To make age-old laws of Hindus and Muslims accessible to English judges, there were large scale attempts to translate these texts.¹³ Cohn describes the efforts of William Jones who carried out the translation of all indigenous codes to become the “Justinian of India.”¹⁴ The legal landscape was undergoing overwhelming change during these times: so there could have been no real space for legal education in such a rapidly transforming society.

Law colleges were started around 1855, Hindu College at Delhi (as then), Calcutta (as then), Madras (as then), Elphinstone College at Bombay (as then).¹⁵ The conditions on the whole were dismal.¹⁶ Jain observes that there was no proper access to legal resources by Indians and moreover, all important positions were occupied by Englishmen and the highest appellate courts

¹⁰ *Ibid.*, 58-59.

¹¹ *Ibid.*

¹² *Ibid.*, 59. See for example, John Mayne, *Hindu Law in Madras*, 3 L.Q.REV. 446 (1887).

¹³ *Ibid.*, 66. Governor General, Warren Hastings, appointed scholars to translate Hindu codes from Sanskrit to English. Since there was no European then who could efficiently translate from Sanskrit to English. It had to be first translated in Persian, then from Persian to English. See *supra* note 3 at 13, consequently the Hindu and Muhammadan case law that emerged was a distinctive creation of British judges

¹⁴ *Ibid.*, 70. Term borrowed from Cohn. See further, H.T. Colebrooke continued Jones’ legacy (72- 74).

¹⁵ See M.P. JAIN, *OUTLINES OF INDIAN LEGAL HISTORY* (5th ed., 1997) 696-697. In the early days a lawyer in Calcutta called a *vakil*, was required to have studied at the Hindu College Benaras or the Calcutta *Madrassas*. Subjects such as Persian, Geometry, Law, Theology, Natural Philosophy and Grammar were taught. Only gradually it became necessary to have a LL.B. degree to become a *vakil*. (696). See further, C Tupper, *English Jurisprudence and Indian Studies in Law*, 3 JOURNAL OF THE SOCIETY OF COMPARATIVE LEGISLATION 84 (1901). The author affirms the above: “*The three oldest of the Indian universities—those of Bombay, Madras, and Calcutta—are not yet half a century old, all three having been founded in the year of the mutiny. We date, as you all know, from 1882*” (85).

¹⁶ *Supra* note 697.

were in London.¹⁷ There was prestige attached to studying for a Bar-at-Law at London than LL.B. from India.¹⁸

Arthur Von Mehren was Ford foundation's representative in India from August 7, 1962 to June 11, 1963, to learn about India's legal education and scholarship.¹⁹ He found political and institutional will to be lacking in introducing sweeping changes.²⁰ First, he refers to the colonial mindset of hitherto laws that brought a disparity between laws in the books and social mores.²¹ He points out the social purpose of legal rules in common law and civil law thinking which has not been harnessed by India.²² It presents a grim picture of static law that failed to meet the country's problems in any meaningful way. 1947, the year of India's independence, brought greater urgency and focus to law and rights of the people as the country enacted her own constitution in 1950 and established a hierarchy of judicial system.²³ If there was ever a need for lawyers to play a role in society it was now.²⁴ It is summed up in its soul search: "*Our gifts for philosophical studies would indicate that it is possible to have as great students of systematic law and jurisprudence as any other people.*"²⁵

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ See Jayanth Krishnan, *Professor Kingsfield Goes to Delhi: American Academics, the Ford Foundation, and the Development of Legal Education in India*, 46 AM.J.LEGAL HIST. 447, 460 (2005).

²⁰ Arthur Taylor Von Mehren, *Law and Legal Education in India: Some Observations*, 78 HARV.L.REV. 1180 (1965).

²¹ *Ibid.*

²² *Supra note 20.* Von Mehren makes an interesting point that private law and legal profession played a marginal role in society. (1183) On the institutional front, he notes some examples like the contribution of Anandjee as Dean of the Faculty of Law, Benares Hindu University in revamping the three year LL.B. program. (at 1185)

²³ *Supra note 15* 698.

²⁴ The University Education Commission studying the conditions of legal education soon after independence attributed "the low ebb" as an inheritance of the British Raj. (*Ibid.*699-700.)

²⁵ *Ibid.* at 699 Report of the University Education Commission appointed in 1948.

Legal education during the past 60 plus years has not been bright. This is verifiable from the policy recommendations bemoaning the remorseful affairs.²⁶ Concerns tirelessly resonate: low ratio of teacher's per student, large numbers of adjuncts and visiting faculty appointments in relation to full time professors, depleted physical infrastructure, lack of pedagogical and curricular reform, absence of research, permissions to too many colleges that maintain poor standards, meager financial resources.²⁷

During the years', legal education was wholly in the black-letter law tradition having faint regard for social policy.²⁸ In the aftermath of colonial rule there was no centralized bar council to co-ordinate legal education. Admission to the bar was overseen in the respective states. Justice Ahmadi says:

In the first place it must be realized that the general pattern of education in post-independence era had been fluid since there were periodical attempts at

²⁶Report of the Bombay Legal Education Reforms Committee (1935); Report of the Chagla Committee (1955); Report of the All India Bar Committee (1953); Report of the Rajasthan Legal Education Committee (1955); Law Commission of India *14th Report*; (1958) [hereinafter cited as *Setalvad Report*]; Gajendragadkar Committee Report (1964); University Grants Commission, *Towards a Socially Relevant Legal Education* (1979) [hereinafter cited as *UGC Report*]; University Grants Commission, *Report of the Status of Teaching and Research in the Discipline of Law, I & II* (1990); Bar Council of India, Report of the Committee on Reforms in Legal Education and Regarding Entry into legal Profession (1995); Law Commission of India, *184th Report*, (2002) [hereinafter cited as *Law Commission Report*]; Report of the National Knowledge Commission (2007) [hereinafter cited as *Knowledge Commission Report*].

²⁷ Observations of M.C. Setalvad in 1958 is exact even today:

The teachers are mainly legal practitioners who give tuition outside court hours. Some of these institutions are run exclusively by part-time teachers. Many of these institutions have no buildings or libraries of their own and classes are held in buildings belonging to arts colleges and other institutions...[C]lasses are held in shifts and there are on the rolls of each class a large number of pupils sometimes exceeding hundred. It is to these crowded classes that the part-time lecturer imparts his instruction, and the attendance he commands is only due to the anxiety of the pupil to have his attendance marked when the lecturer calls the roll. It is not surprising that in this chaotic state of affairs in a number of these institutions, there is hardly a pretense at teaching and that the holding of tutorials or seminars would be unthinkable.

Setalvad Report, <http://lawcommissionofindia.nic.in/1-50/Report14Vol1.pdf> 522.

²⁸ See *infra note* 144 and accompanying text. .

restructuring the educational pattern in schools and colleges. On account of this virtually continuing exercise, a state of uncertainty prevailed.²⁹

From its inception there was no clarity over regulating legal education.³⁰ Formally speaking education was undertaken by departments in universities or as part of colleges affiliated to universities and they were governed by the state bars.³¹ The 14th Law Commission of India report noted that there were full-time colleges only in Bombay and Madras and the rest were mainly part-time evening colleges.³² It called for the establishment of a centralized bar council to regulate the standard of legal education across the country. Another recommendation was to confer law degrees in a two year course of study only after the completion of a basic bachelor degree.³³ It felt that this would introduce uniformity in the country. The commission made sweeping structural recommendations.³⁴

A feature that must interest comparativists is the commission's recommendation to adopt the Langdellian case method.³⁵ However, the problems of India and America starkly differed.³⁶ This was soon to be the realization of the Ford foundation which had contributed

²⁹Justice A.M. Ahmadi, *Repairing the Cracks in Legal Education*, (1993) 1 S.C.C. 3, available at <http://www.ebc-india.com/lawyer/articles/93v1a2.htm> (Accessed 23rd April, 2010).

³⁰ Siva Shankar, *Commonwealth Law Teachers' Meetings: The Indian Law Teachers' Association*, 5 JOURNAL OF SOCIETY OF PUBLIC TEACHERS OF LAW 26-27 (1959-60). The proceedings of the second conference of law teachers of India held in December 1958 recorded the need for the University Grants Commission to play a role if research and social utility in law had to be engendered. But for an immediate contradiction of the vision, see *A Brief Report of the Fourth Conference of Teachers of Law in India Held at the Lucknow University on December 28 and 29, 1960*, 6 JOURNAL OF SOCIETY OF PUBLIC TEACHERS OF LAW 136-137 (1961). It concluded that although law formed a part of a liberal education it must be studied as a "technical and scientific subject."

³¹ See Jill Cottrell, *10+2+5: A Change in the Structure of Indian Legal Education*, 36 J.LEGAL EDUC. 331, 332, (1986). Cottrell points out that there were only three central universities with law faculties: University of Delhi, Aligarh Muslim University, and Banaras Hindu University. See *supra note 6*. R.U. Singh, Dean of Lucknow and Delhi University succeeded to establish new libraries and introducing modern courses in the curriculum. (485). See also *supra note 26 UGC Report* points out that the bulk of teaching was in law colleges (2).

³²*Supra note 6*, at 523, Gorakhpur University and Agra University did not have law colleges/departments, but conferred law degrees to students who seem to receive instruction in law from arts colleges.

³³ See *Setalvad Report*, <http://lawcommissionofindia.nic.in/1-50/Report14Vol1.pdf> (Accessed on 14th June, 2010)

³⁴ See *supra note 15* 700-703.

³⁵ *Ibid.* 537-538.

³⁶ See T. Bastedo, *Law Colleges and Law Students in Bihar*, 3 LAW & SOC'Y REV. 269 (1969). This is one of the few empirical studies of law colleges of one region in the country. The author documents how social status and prestige

greatly to uplift the standard of legal education. Jayanth Krishnan richly presents an archival history of the pre and post Ford years.³⁷ The plot thickens with a cross-fertilization of ideas in legal planning.³⁸

Then in 1961, the union government introduced the legislation governing the conduct of admission to members of the bar, their conduct and discipline, and standards of legal education in the country.³⁹ The move to establish a centralized bar to regulate the standard of education was a breakthrough. Law was a three year course of study after obtaining a bachelor's degree. There were optimistic signs after the creation of a national body of legal professionals to oversee legal education.

Von Mehren played an instrumental role in reforming the system serving in the Gajendragadkar commission appointed by the Vice Chancellor, University of Delhi, C.D. Deshmukh, to study the reorganization of legal education in the University of Delhi.⁴⁰ It recommended far reaching measures to upgrade teaching, curriculum and examination.⁴¹ In addition, dean of the Banaras Hindu University, Anandjee, appointed a commission under the

of the legal profession has fallen lower after independence. The author states: "*The mixture of poor student, indifferent teacher, and insufficient and mechanically learned knowledge has gloomy implications.*" (286) The essay reveals the social and religious backgrounds of the law student from Bihar. It found that students are more likely from a rural family having an income below 300 rupees per month where most of their fathers are farmers and over 80% have not progressed beyond high school.

³⁷ *Supra note* 19, 37.

³⁸ Prominent Americans were: Carl Spaeth, H.C.L. Merillat, Walter Gellhorn, William Rice, Clark Byse, Lawrence Ebb, Howard Mann, Nathaniel Nathanson, Arthur Von Mehren, Robert Cole, Bertram Wilcox, Julius Getman, John Jackson, Harry Jones, Arthur Murphy, Kenneth Penegar, Dallas Sands, Sheldon Elliot, Alan Glendhill, and Harop Freedman. From the Indian side: A.T. Markose, R.U. Singh, L.R. Sivasubramaniam, P.K. Tripathi, G.S. Sharma, Anandjee, M.P. Jain were involved in various capacities. (Names gathered from various sources)

³⁹ Education falls under the shared legislative list of the center and state. See THE CONSTITUTION OF INDIA., (List III, Entry 26).

⁴⁰ See *supra note* 6 at 485-486. See further, another committee to look into legal education reforms suggested by the BCI and appointed by the University Grants Commission Chairman, D.S. Kothari, under P.B. Gajendragadkar. (488).

⁴¹ *Ibid.*

chairmanship of B.P. Sinha.⁴² With a reversal in fortunes, Ford invested in a grant of \$240,000 to Banaras Hindu University (BHU) in 1964 and then \$304,000 in 1967;⁴³ and later again in 1967, \$441,000 to University of Delhi.⁴⁴

A new agency, the University Grants Commission (UGC) entered the fray in 1956. It was established to administer and determine standards of university education. It took series of initiatives to investigate ways to improve legal education. Further it also provided grants and other kinds of assistance to faculties and departments. In May 1964, it helped conduct the Kasauli seminar with G.S. Sharma, head of the University Law School, Rajasthan.⁴⁵ There was a growing need expressed for a national law school with a carefully selected group of students and teachers.⁴⁶

Comparative scholar, Dallas Sands recollected the talent he found among Indian law teachers stating that although the overall standard of teaching may have been poor, teachers were “impressive in their scholarly sophistication.”⁴⁷ He points out the inability of law teachers to view law as a participatory value oriented process limiting the phenomenon to what he termed rule “verbalism.”⁴⁸ The authority oriented teacher is ideologically predisposed not to look

⁴² *Supra note 15*, 704. See M.C. Bijawat *Banaras law School: A Legend*, BANARAS LAW JOURNAL 18-19 5 (1982-83).

⁴³ *Supra note 19* at 463. For more on ILI see part IV. part

⁴⁴ *Supra note*, 6487.

⁴⁵ *Supra note 15*, 706-707. The UGC set up a Legal Education Committee which organized a seminar in Poona University from February 20 to 24 (1973). During 1975-77 it organized regional workshops at Madras, Chandigarh, Poona and Patna. For more on the Poona Seminar see, S.K. AGARWALA (ed), LEGAL EDUCATION IN INDIA: PROBLEMS AND PERSPECTIVES 1973). For an early proposal of the idea of the National Law School see GS Sharma, *Some Thoughts on a National Law School for India*, 3 JAIPUR LAW JOURNAL 256 (1963). See generally B.F. Willcox, *Kasauli Seminar*, 4 JAIPUR LAW JOURNAL 204 (1964).

⁴⁶ *Supra note 15*, 707.

⁴⁷ Dallas Sands, *Thoughts About Legal Education (After Teaching Law in India)*, 21 ALA. LAW REV. 501 (1969). Sands writes an invaluable biographical account of his stint as a visiting professor at the College of Law, Banaras Hindu University, Varanasi, and generally about his interactions with legal academics in India. See further, Dallas Sands, *Reflexions on Indian Legal Education*, 4 BANARAS LAW JOURNAL 112 (1968).

⁴⁸ *Ibid.*, 504.

beyond the mandate of statutory rules. In effect, this jurisprudential paradigm came to define their pedagogical approach.

In the meanwhile, the report card of legal education was grave: the legal profession struggled to bridge gaps of social and political inequality. Indeed, it was highly litigious and “rule minded.”⁴⁹ Previous commission reports lacked normative foundation. Far too often they delved into issues without deliberating the means and ends of legal education neglecting focus on the areas for institutional rebuilding.⁵⁰ Moreover, there is a rhetorical sameness about policy recommendations on legal education: each report seems a rerun of the earlier.

Over time a gradual skepticism of Ford’s implementation of the American model began to tell.⁵¹ The results were agonizing because of massive inefficiency, politicization, and governmental indifference.⁵² It brought the end of Ford’s relation with Indian legal education.

Upendra Baxi brought refreshingly new perspectives stressing the need for a socially relevant education. And he cautioned against a wholesale borrowing without appreciating the Indian milieu.⁵³ He proposed a number of unconventional insights in curricular and pedagogic transformation based on the BCI’s lack of imagination in course structure and omission to

⁴⁹Marc Galanter, *Introduction: The Study of the Indian Legal Profession*, 3 LAW & SOC’Y REV. 201 (1969). Galanter points out there were more than 75,000 lawyers in the country comprising the second largest body of legal practitioners in the world.

⁵⁰ *Supra note 15*, 707. The Poona seminar organized by the UGC discussed “what should be the objectives of legal education?” Evidently there were two responses one that legal education was a liberal education, and other, that it was a professional course.

⁵¹ *Ibid.*

⁵² *Ibid.*

⁵³ *Supra note 26* (UGC Report) at 12-16. Baxi notes that it is hard for the case method to flourish in Indian school given the crisis of confidence of teachers to face questioning and the poor quality libraries.

consult the teaching community.⁵⁴ BCI treats legal education as a liturgy for admission to the bar. A modernist approach integrates law as a social process oriented to the needs of the marginalized, problems of the agricultural sector, issues confronting delivery of justice in the lower judiciary, and the working of village *panchayats* (local self-governing bodies). Baxi tellingly points that the set-up neither imparts *hard law* nor provides a modernist approach.⁵⁵

Baxi indicted the teaching techniques and called for pedagogic transformation. He anecdotally suggests: “if we produce the like of [this] scholar in India it will not be *because*, but rather *in spite of our legal education*.”⁵⁶ He relies on Paulo Freire’s work to state the academy suffers from “narration sickness” described by the “banking concept of education.”⁵⁷ It implies that education becomes a way of depositing information for students to memorize and spill. This form of pedagogy takes away creativity. He quotes:

The teacher talks about reality as if it were motionless, static, compartmentalized and predictable. Or else he expounds on a topic completely alien to the existential experience of the students. His task is to fill the students with the contents of his narration...⁵⁸

On this point, Sands reflects on the role of a teacher as a “learner’s helper” instead of a just an orthodox scholar.⁵⁹ His attention to the idea of learning forms an underlying theme in this essay.

The legal system is like an inter-related circuit and a teacher not wellrounded in this network

⁵⁴ Baxi points out that only Benares and Delhi were exceptions changing to the semester system and introduced more creativity in their course offerings. The standard format was a list of 10 compulsory subjects; and 6 elective subjects. 4 electives are to be selected from an enumerated list of 18 courses.

⁵⁵ *Ibid.*, 9.

⁵⁶ *Ibid.*, 10.

⁵⁷ *Ibid.*, 33 as in PAULO FREIRE, *PEDAGOGY OF THE OPPRESSED* (1972).

⁵⁸ *Ibid.*, 9.

⁵⁹ *Supra note 47*, 503.

teaches in rigid blocks. Baxi's report contextualizes legal education advancing a first of its kind analysis about teaching and curriculum reform in a not so routine manner.⁶⁰

Since the Gajendragadkar report there were proposals for the establishment of national law schools to systematically impart legal education on the lines of modern curriculums and innovative teaching methods. The ever increasing disparity between the legal process and the rest of the country needed repair. So the BCI introduced a rule in 1982 adding a 5 year integrated law course conferring a dual baccalaureate degree in law.⁶¹ Krishnan generously depicts the role of Madhava Menon in the creation of the first deemed law university, National Law School of India University at Bangalore.⁶² As witnessed, this was not to be a happy ending to the problems. The problems were more deep seated.

The national law school was designed as a five year law program students enter after high-school proceeding to graduate with dual-degrees in arts and law. It coincided with the liberalization of the Indian economy which brought rich in-flows of private and foreign investment. This had a ripple effect for law firms practicing commercial and corporate laws. There arose a demand for a new kind of lawyer who is proficient in writing and communication, ability to conduct research and work systematically with statutes and cases. Alongside this there was also a surge of the upwardly mobile class who saw legal studies as a proxy to white collar

⁶⁰ The Prime Minister Manmohan Singh aptly remarked on the law teachers of the country:

There is also the serious problem of law teachers – a vexed problem of numbers, quality and diversity. We need good law teachers to shape and nurture young legal minds. The sad reality is that when we look for experts to head new law schools and the new faculties, we have precious few to choose from. There is an obvious need to provide more uniform but calibrated and better salaries, accompanied by considerably improved terms of service for our teachers.

<http://pib.nic.in/release/release.asp?relid=61265> (Accessed 11th June, 2010).

⁶¹ See N.R. Madhava Menon, *Halting Progress of Legal Education*, <http://www.thehindu.com/thehindu/2001/10/23/stories/13230643.htm> (Accessed 19th April, 2010). See further N.L. Mitra, *Legal Education in India*, <http://www.aals.org/2000international/english/India.htm> (Accessed April 19th 2010).

⁶² NLS, Bangalore, was established under the National Law School of India University Act, Karnataka, (1986), <http://www.nls.ac.in/> (Accessed 22nd April, 2010). See also *supra note* 19 .

jobs. The program was an incubated atmosphere offering a variety of compulsory and only some optional courses of the teaching and clinical kinds.⁶³ It was a massive success--graduates were skilled at legal analysis and emerged with confidence.

13 more national law universities entered the elite category after NLSIU, Bangalore.⁶⁴ Each of them expressly endorses the reason for their creation to combat the poor standards of legal education inherited.⁶⁵ From 2008, some eleven of these universities began conducting a joint entrance examination consisting of a written paper at centers spread across the country.⁶⁶ Selections are done based on these examinations. It attracts students from different

⁶³ See for example, NLSIU, http://www.nls.ac.in/academic_programmes_undergraduate_courses.html (Accessed 15th June, 2010).

⁶⁴ *National Academy of Legal Studies and Research University of Law*, "NALSAR," Hyderabad, established under the National Academy of Legal Studies and Research University Act (1998), <http://nalsar.ac.in/> (Accessed 19th April, 2010); *The West Bengal National University of Juridical Sciences*, "NUJS," Kolkatta, established under the West Bengal National University of Juridical Sciences Act, (1999), <http://www.nujs.edu/nujs.html> (Accessed 19th April, 2010); *National Law University Jodhpur*, "NLU," established under the National Law University, Jodhpur, Act, (1999), <http://www.nlujodhpur.ac.in/> (Accessed 19th April, 2010); *National Law Institute University*, "NLIU," Bhopal, established under Act of Madhya Pradesh (1997), http://www.nliu.com/about_us.htm (Accessed 19th April, 2010); Hidaytullah National Law University, "HNLU," Raipur, established under Hidaytullah National University of Law, Chhattisgarh, Act, (2003), http://www.hnlu.ac.in/home/index.php?option=com_content&task=view&id=18&Itemid=49 (Accessed 19th April, 2010); Gujarat National Law University, "GNLU," Gandhinagar, established under the Gujarat National Law University Act (2003), <http://www.gnlu.ac.in/aboutus.htm> (Accessed 19th April, 2010); Dr. Ram Manohar Lohiya National Law University, "RMLNLU," Lucknow, established under Uttar Pradesh Act (2005), <http://www.rmlnlu.ac.in/> (Accessed 19th April, 2010); Rajiv Gandhi National University of Law, "RGNUL," Patiala, established under the Rajiv Gandhi National University of Law, Punjab, Act, (2006), <http://www.rgnulpatiala.org/> (Accessed 19th April, 2010); Chanakya National Law University, "CNLU," Patna, established under the Chanakya National Law University Act, Bihar (2006), <http://www.cnlu.ac.in/> (Accessed 19th April, 2010); National University of Advanced Legal Studies, "NUALS," Kochi, established under Kerala Act (2005), http://www.lawentrance.com/nuals_kochi.htm (Accessed 19th April, 2010); National Law University, Delhi, established under Act of New Delhi (2008), <http://nludelhi.ac.in/AboutUs.htm> (Accessed 19th April, 2010); National Law University Orissa, "NLUO," <http://www.nluo.ac.in/about.htm> (Accessed 19th April, 2010).

⁶⁵ See generally Common Law Admission Test, "CLAT" <http://www.clat.ac.in/webpages/Pdf2010/CommonLawAdmissionTest-2010.pdf> (Accessed 20th April, 2010). But read an intelligent backlash by the most recent school describing its background. NLUO, Orissa, <http://www.nluo.ac.in/about.htm> (Accessed 29th April, 2010):

There was a time when integrated five-year law courses were looked upon as a novelty. This is no longer true. More than twenty years have passed since the first such course was established, and now the concept is regarded as commonplace.

⁶⁶ *Supra note 65*

parts of the country. There are also reservations based on caste, backward class, gender, disability, and region.⁶⁷ Institutions are typically funded by a mix of private and public endowments--, each institution has its distinct arrangement.⁶⁸ Students are completely self-funded and pay high tuition and living expenses.⁶⁹ There is no available data to estimate how students raise this money. It is a fair assumption that majority of the students attending these schools are financed from personal funds. It indicates the economic class and urban demographic of its student population.⁷⁰ It is perhaps a paradox that these schools are a part of the state as the education they provide is highly more expensive than private legal institutions.

There is no major coverage on the functioning of these institutions. Speaking generally, they tell stories of a grand safari when everything from facilities to teaching were a far-flung make-shift.⁷¹

In no time these institutions gained status. Indeed, the formula was simple enough: lobby hard for status and then divest energy laying the infrastructure. The autonomous status and its

⁶⁷ *Ibid.*

⁶⁸ This is not clear as not all universities display their finances publicly on its websites. NLSIU, <http://www.nls.ac.in/financeandaccounts.htm> (Accessed 23rd April, 2010).

⁶⁹ But see, NLSIU, http://www.nls.ac.in/academic_programmes_undergraduate_scholarships.html (last visited 23rd April, 2010) provides list of scholarships from educational loans and fee waivers. See further, National Law University, Delhi, <http://nludelhi.ac.in/BA-LLB.htm> (Accessed 19th April, 2010) provides a need based scholarship where the amount can be repaid 2 years after graduation. See NLSIU <http://www.nls.ac.in/scholarship1.pdf> and <http://www.nliu.com/ballb%20doc.pdf> (Accessed 2nd April, 2010), NLSIU and NLIU's financial assistance for SC (Schedule Caste) students (and Other Backward Castes). For an estimate of fees, see NALSAR, http://nalsar.ac.in/academic_programes.html. (Accessed 23rd April, 2010). Just tuition amounts to Rs. 85,000 for domestic and USD 5,500 for international students'--per annum. Some other law schools offer merit scholarships like see Symbiosis Law School, <http://www.symlaw.ac.in/scholarships.aspx> (Accessed on 29th April, 2010), Jindal Global law School, <http://www.jgls.org/lawschool/prospective-students/scholarships.asp> (Accessed 29th April, 2010).

⁷⁰ See NUJS, <http://www.nujs.edu/downloads/increasing-diversity-by-increasing-access-concept-note.pdf> (Accessed 23rd April, 2010). An attempt to reach out to marginalized groups in regions of the country to help them access these law schools.

⁷¹ See generally *supra note* 19, 489-491. Krishnan covers Menon's narrative account of the search of competent teachers, students, accommodation for hostels, classroom and library infrastructure, and most of all curriculum content.

imposing concept assured that other things will naturally fall in place.⁷² Meanwhile, it was the students who scaled academic and professional success that surpassed even the measure of instruction they received.⁷³ One commonly hears students attribute their success to electronic databases and cooperation from their peers. It is not far from true to describe their achievements as gritty and self-driven.⁷⁴

The chance for a really significant introspection of the national law schools was with a high profile international committee in 1996 comprising of Marc Galanter, Savitri Goonesekere and William Twining.⁷⁵ But the tenor of the report is mild and lacks critical and insightful recommendations.

A distressing class hierarchy has crept into legal education. It is divided into elite national schools and non-national schools. The essential difference between the two is that they are merely creations in their time. Writing in September 1974, leading Indian jurist, Late S.P. Sathe anticipated: “[t]he creation of an elitist institution for a discipline like law when standards of legal education in general are so poor may have unanticipated and undesirable

⁷² See generally, Justice A.S. Anand, *Legal Education in India-Past, Present and Future*, <http://sarins.org/lectures/legal-education-in-india-past-present-and-future-justice-as-anand/> (Accessed 23rd April, 2010). It is only one of numerous examples of how the law school model became quite literally a saleable commodity:

National law School of India at Bangalore is the laboratory of an experiment, novel in several ways in higher education. It is an institution not dependent on any state or central funding for its maintenance; an institution which is academically completely free to design its course, *test the product* and maintain a *strict quality control*. (emphasis added)

⁷³ See generally NLSIU, http://www.nls.ac.in/academic_programmes_undergraduate.html (Accessed 20th April, 2010). See latest winners of Rhodes scholarship, bench and Bar, <http://www.barandbench.com/index.php?title=NALSAR,%20NLSIU%20stand%20proud%20in%20Rhodes%202010%20Scholarships&page=brief&id=193&gn=1193> (Accessed 23rd April, 2010); <http://www.barandbench.com/index.php?title=NLSIU%20makes%20mooting%20history:%20India%20wins%20Mafred%20Lachs%20for%20the%20first%20time&page=brief&id=207&gn=1207> (Accessed 23rd April, 2010). See generally, NLSIU, <http://www.nls.ac.in/NLSIU%20RCC%202010%20Brochure.pdf> (Accessed 28th April, 2010).

⁷⁴ See Part V for a fuller discussion.

⁷⁵ See Report of the Expert Panel of the National Law School of India University, <http://marcgalanter.net/Documents/papers/scannedpdf/reportoftheexpertpanel.pdf> (Accessed 20th August, 2010). The report summarizes the working of the NLSIU from its inception.

consequences.”⁷⁶The need to demarcate elitism and selectiveness is gathered in the declaration of one leading law school which states that it is set apart from the rest because it has a limited student intake of 80 chosen out of 3322 applicants in 2005.⁷⁷On the converse, the glaring numbers of students who do not get an opportunity is a matter of serious concern. It echoes the disproportion Sathe anxiously raised.⁷⁸

There are hectic deliberations in the public circles in these times. Legal education has become a top government priority.⁷⁹The Prime Minister, Dr. Manmohan Singh struck the right note observing:

It’s no doubt we have travelled a long distance since that time. But we must admit and have to ask honestly ourselves whether we have significantly altered the landscape of our legal education system. We do have a small number of dynamic and outstanding law schools, but I am afraid they remain islands of excellence amidst a sea of institutionalized mediocrity. We are not even marginally nearer to profound scholarship and enlightened research in law.⁸⁰

The problems and solutions are regurgitated committee after another about poor quality colleges, failure to meet demands of the bar and the subordinate judiciary, and inability to provide justice for the poor and marginalized.⁸¹A shortcoming of all commission reports is that

⁷⁶S.P. Sathe, *Is a National Law School Necessary?* 9, ECONOMIC AND POLITICAL WEEKLY, 1643 (1974). Sathe recounts that lawyers as a general class during the British were pro-establishment and it reflected the static nature of law in those times.

⁷⁷NALSAR, <http://recruitmentnalsar.org/files/Brochure.pdf> (Accessed 28th April, 2010). See also GNLU, <http://www.gnlu.ac.in/aboutus.htm> (Accessed 28th April, 2010); RMLNLU, http://www.rmlnlu.ac.in/director_message.htm (Accessed 29th April, 2010).

⁷⁸It will be interesting to look at what we mean by “national”? One important source says: “*These institutions are national in the sense that substantial number of seats in all these institutions are filled up by students from all over India and the academic staff are also recruited on all India basis.*” See CLAT, <http://www.clat.ac.in/webpages/Pdf2010/CommonLawAdmissionTest-2010.pdf> (Accessed 12th June, 2010).

⁷⁹See *supra* note 26 *Law Commission Report*, 102-103. See also Law Minister Veerappa Moily, *The Vision Statement*, <http://pib.nic.in/release/release.asp?relid=61270> (Accessed 11th June, 2010).

⁸⁰PM’s [Prime Minister’s] inaugural address at the conference of National Consultation for Second Generation Reforms in Legal Education, <http://pib.nic.in/release/release.asp?relid=61265> (Accessed 11th June, 2010).

⁸¹*Supra* note 26 *Knowledge Commission Report*. 11.

virtually none of them conduct empirical research.⁸² This is a serious methodological inadequacy of the expert bodies. A proper plan can be devised only after a competent survey of the existing situation. Such as the average budget to run a law school, current expenditure of colleges on library and infrastructure, access of colleges in rural areas, dependence on vernacular language, studying the legal problems of the community. Further, none of the commissions critically reflect into the so-called “pace-setters” or national law schools, whose progress resembles slow-footed ships.⁸³ The model has not been as inclusive and lags to address teaching methods and curriculum content. In light of this, attempts to reform legal education can be accomplished not by imitating the national law school model, but a sweeping transition of presently functioning colleges in the country.⁸⁴

3. POWER STRUGGLE AT THE TOP

The contestations between the Bar and University education has been a creation since the early 20th century itself in all systems.⁸⁵ Leading Indian academic, P.K. Tripathi wrote a

⁸² *Supra note 26 UGC Report*, 102-103. The report reads extremely pedantically at many places discussing scholarly articles in totally foreign contexts. There are no statistics on the number of law teachers in the country, number of publications of teachers, amount the college spends per student on an average, average expenditure on library resources, conditions of law colleges in smaller districts, access to legal education in rural areas, fund support for economically deprived students and so on. No planning can take place without such awareness.

⁸³ Term borrowed from CLAT <http://www.clat.ac.in/webpages/Pdf2010/CommonLawAdmissionTest-2010.pdf> (Accessed 23rd April, 2010).

⁸⁴ See generally *supra note 26 Knowledge Commission Report*. Recall Cottrell’s somber personal account which still holds good:

I visited one university law college where nearly two months before the examinations teaching had virtually stopped because the students (most of whom lived in town eight miles away) had ceased to come. It was too much trouble and the weather was getting cold. Thus in many states there is a paradoxical situation that huge numbers of students are on the rolls while hardly any are in the classroom, let alone the libraries. (*Supra note 31*, 337)

⁸⁵ *Ibid.*

historical comparison of Indian legal education with developments in U.K., Canada, and USA.⁸⁶ On this same, Justice Ahmad speaking says:

In the first place it must be realized that the general pattern of education in post-independence era had been fluid since there were periodical attempts at restructuring the educational pattern in schools and colleges. On account of this virtually continuing exercise, a state of uncertainty prevailed.⁸⁷

Legal education has to be a plan driven project which is shaped by wider public discussions. This can happen when there is a broad sharing of powers between the bar, university commission, universities and its department. At the moment this is in a precarious state with no consensus on the role of the BCI, UGC, and the universities each legislating standards of legal education.⁸⁸ In some circumstances there is also a fourth tier—the state government or judiciary.⁸⁹ As a result of the gaps at the top the real concerns of law students are not redressed since each of these agencies have their own manifestos.

The nature of this trifurcation is examined here. The BCI's power jousting is ill founded under the policy scheme. An inclusive direction for education envisages roles for all three bodies and none of them may rightly claim to exclusively represent the interests of legal education. Accepted this way, India's model is unique from other countries in the world and why not?⁹⁰ It

⁸⁶ *Supra note 6*, 469-483.

⁸⁷ Justice A.M. Ahmadi, *Repairing the Cracks in Legal Education*, (1993) 1 S.C.C. 3, available at <http://www.ebc-india.com/lawyer/articles/93v1a2.htm> (Accessed 23rd April, 2010).

⁸⁸ *Supra note 31*, 344.

⁸⁹ NALSAR introduced a reservation policy for students from Andhra Pradesh in compliance with the state government's directive. Bench and Bar, <http://www.barandbench.com/index.php?title=20%20reservation%20for%20AP%20students%20in%20Nalsar%20to%20be%20reality&page=brief&id=498> (Accessed 23rd April, 2010). Also, GNLU's reservation for students from Gujarat, http://www.winentrance.com/law_entrance_exam/gnlu/Gujarat-National-Law-University-GNLU.html (Accessed 23rd April, 2010); NLIU, Jodhpur, reserves its seats for those fulfilling its domicile requirements, <http://www.nliu.com/balb%20doc.pdf> (Accessed 25th April, 2010).

⁹⁰ For example American Bar Association, <http://www.abanet.org/legaled/> (Accessed 23rd April, 2010).

suits a country with urgent needs, where single institutions such as the BCI or UGC lack the industry and resources to effectively govern all aspects of legal education. So there is a need to formalize this collaborative arrangement in light of the Knowledge Commission's recommendation to prevent authorities contesting against one another. At the same time, it will have to guard against centralization of regulatory power; a shared model of decision making is desirable for India's needs.

(a) Scope of the BCI

The Advocates Act, 1961, was a piece of legislation to govern standards of practicing lawyers. The mandate of the Advocates Act was always limited to ensure standards for qualified graduates entering practice.⁹¹ There is no mention of legal education in the preamble and purpose. It established the BCI as a body to represent the interests of the bar with powers to promote legal education by laying down minimal standards:

7 (1) (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 recognise Universities whose degree in law shall be a qualification for enrolment as an advocate and for that purpose to visit and inspect Universities...⁹²

BCI's scope of regulation is unclear. From a plain reading, it implies that the BCI can lay down standards in consultation with universities in India. This does not conceive the BCI as an exclusive authority. Instead it envisages a consultative model. It is gathered from the succeeding line which limits its scope to oversee qualifications for enrollment as an advocate. Of course, law

⁹¹ THE CONSTITUTION OF INDIA, 1950 (Entry 77 & 78).

⁹² See § 4. The functions are wide ranging from supervising state bar councils and protecting rights of advocates to promotion of law reform. Commonwealth Legal Information Institute, http://www.commonlii.org/in/legis/num_act/aa1961102/ (Accessed 24th April, 2010).

is still a professional discipline and the BCI's role in supervising qualifications for its enrollees is a necessary requirement.

First, let us further elaborate on the role of the BCI. The main function of the BCI is to recognize universities, departments, and colleges for the purpose of enrolment of advocates to the bar.⁹³ Such power is delegated to the state bar council during the time of enrollment. It does not say anything about law courses which do not enroll its graduates to the bar. It supposes that such schools may continue without being covered by the BCI. Such as those providing post-graduate legal studies. Policy wise, this construes the BCI as a body restricted to overseeing under-graduate legal education from the perspective of entry to the bar and not as a pure academic study. It sets undergraduate and postgraduate legal education moving in opposite directions. This decomposed plan of education ignores higher education thereby perpetuating the ills of legal practice. In this scenario, it is neither suitable nor viable to think of the BCI as the sole proprietor of legal education.

The check-list mindset can be discerned from its "Legal Education Committee" that has representatives from BCI, UGC, and the judiciary, but strangely only a single academic representative.⁹⁴ This committee performs the vital role of administering the standards of legal education and also accrediting them. There are serious contradictions in its ability to plan legal education since the formation of this committee is half-baked and not representative of the core of the problem: teaching and curriculum.

⁹³ Rule 3. BCI, <http://www.barcouncilofindia.org/legal-education/rules-legal-edu.php> (Accessed 23rd April, 2010).

⁹⁴ *Ibid.* § 2 (xvi). 5 members nominated by the BCI, 5 co-opted members comprising of a chairman being a former supreme court judge, a sitting high court judge, a professor, law secretary, and the UGC chairman.

Such illustrations are not hard to find. Let us take an important example of the meaning of “Regular Course of Study.” Note that this decides the status of recognition to all law colleges in the country under §2 (xxiii):

[m]eans and includes a course which runs for at least five hours a day continuously with an additional half an hour recess every day and running not less than thirty hours of working schedule per week.⁹⁵

The criterion for educational institutions is a stretch before even the most formalistic rule. Its premise is that to be recognized a program must be managed like a medieval prison.

Consider such instances as part of its check-list mindset.⁹⁶ Any institution intending to provide a professional degree course is required to maintain the minimum standards of requirements.⁹⁷ The schedules depict the scant attention to the learning of the student. Its list of courses do not have any mention of objectives and merely set out some poor quality “text books” that reinforce the ills that the policy recommendations have been trying to eradicate since over 60 years.⁹⁸ K.I. Vibhute makes a point that there is no separate compulsory paper on international law, but rather one where international law and human rights are together.⁹⁹ Recently, however, the BCI has initiated a discussion on a curriculum development making the right noises of preserving the “sovereignty of the faculty.”¹⁰⁰

⁹⁵ *Ibid.*

⁹⁶ Let us take two instances of excess management. See Rule 10 about the classes in the semester system, that there shall be not less than 30 class hours per week. Further, Schedule III 27 lays down the dress codes for formal wear for students during internship.

⁹⁷ *Ibid.* § 17.

⁹⁸ Schedule II.

⁹⁹ See K.I. Vibhute, *International Law in India—Developing Curricula and Teaching: Some Reflections*, 5 SINGAPORE JOURNAL OF INTERNATIONAL & COMPARATIVE LAW, 388 (2001).

¹⁰⁰ BCI, <http://www.barcouncilofindia.org/notices.php?id=30> (Accessed 23rd April, 2010).

There is an overall discouragement for inquiry. This is aptly symbolized in its inane age barriers. It is impossible to fathom a logical connection of age and quality performance.¹⁰¹The age obsession has been a trend since the Setalvad commission report which also spends time discussing the *right age* to pursue legal studies? The BCI prescribes attaining 20 years for admissions to 5 year course and 30 years to 3 year course.¹⁰²It is an absurd and inexplicable limitation which further isolates the national law school from deserving aspirants. Recently there has been inter-ministerial cross fire between the Human Resource Ministry and the Law Ministry and its legal lobbies. The BCI has truculently warded any intervention seeing it as an attempt to sabotage its role: “*all part of a hidden agenda*” they warn.¹⁰³ An exasperated Minister for Human Resource (Kapil Sibal) responded: “*We need to think about India...not Bar Council, not my ministry or your ministry. If somebody has a problem, we need to get together and work it out.*”¹⁰⁴This is also played out in the debate over the bid of the ministry to allow foreign universities in the country.¹⁰⁵Even if it got it right on this issue, its attitude is one of arrogance for a dialogue.

There is a growing dissatisfaction about BCI’s capacity to oversee legal education.¹⁰⁶ Since, the standard of education is reflected in the poor levels of advocacy in ground zero. The *sarkari* (colloquial for public bodies) response is to set-up committees to show a sense of

¹⁰¹ See CLAT, <http://www.clat.ac.in/webpages/Pdf2010/Age%20Criteria%20Mismatch.pdf> (Accessed 29th April, 2010). Tally of candidates whose applications were rejected because of a mismatch in age.

¹⁰² Schedule III 28 (i) (ii).

¹⁰³ Times of India, <http://timesofindia.indiatimes.com/india/BCI-questions-HRD-ministry-initiative-on-legal-education-reforms/articleshow/4973331.cms> (Accessed 16th April, 2010).

¹⁰⁴ Financial Express, <http://www.financialexpress.com/news/hrd-for-reforms-in-law-education-seeks-bar-council-support/522961/> (Accessed 19th April, 2010). For more recent see, Bar and Bench, *Who Should Regulate Law Schools in India?* <http://barandbench.com/brief/2/908/who-should-regulate-law-schools-in-india> (Accessed 20th August, 2010).

¹⁰⁵ Bar and Bench, <http://www.barandbench.com/index.php?title=Foreign%20Universities%20Bill%20-%20BCI,%20Directorate%20of%20Legal%20Education%20oppose&page=brief&id=590> (Accessed April 19th, 2010).

¹⁰⁶ See generally the concurrence of this view in a recent opinion, Madhava Menon, *To go from Mediocrity to Excellence*, <http://www.hindu.com/2010/06/18/stories/2010061853121200.htm> (Accessed 20th August, 2010).

urgency. Accordingly, it created a patchwork body called the Directorate of Legal Education to prepare an “action plan.” Anyhow, it assumed work on 4th January, 2010, in the capital New Delhi to coordinate between the academy and bar.¹⁰⁷ The fate of the 950 odd law colleges in the country is in the arms of a motley committee having little popular recognition.¹⁰⁸

The assessment that the BCI is a reactionary force to any reform is at best an understatement. It opposed the government’s move to introduce the National Higher Education and Research Bill laying down elaborate standards for higher education and research in all disciplines.¹⁰⁹ The recalcitrance arises from its need for self-preservation. It sneered at the government’s move calling it “adventurist and highly condemnable.”¹¹⁰ Suffice it to say this expert observation would have been better channelized at its own functioning.

The BCI lacks an academic input. Its committees are normally stuffed with judges, advocates, and retired deans. Its concern with under-graduation at the cost of post-graduate studies fails to redeem the overall standards of learning. The provisions for accreditation of

¹⁰⁷ BCI, <http://www.barcouncilofindia.org/notices.php?id=25&p=1> (Accessed 12th April, 2010).

¹⁰⁸ Law et al. news, <http://www.lawetalnews.com/NewsDetail.asp?newsid=786> (Accessed 10th April, 2010). Deccan Chronicle, <http://www.deccanchronicle.com/bengaluru/directorate-revamp-country%E2%80%99s-legal-education-157> (Accessed 10th April, 2010). See list of approved law colleges BCI, <http://www.barcouncilofindia.org/legal-education/rules-legal-edu.php> (Accessed 10th April, 2010). Interestingly these numbers have phenomenally increased over the years. See *Setalvad Report*, at 520-565, <http://lawcommissionofindia.nic.in/1-50/Report14Vol1.pdf> (Accessed 19th April, 2010). It records that there were 7 law departments and 36 law colleges in the country. *Law Commission Report*, records there are 460 law schools and 102 universities imparting legal education, <http://lawcommissionofindia.nic.in/reports/184threport-PartI.pdf> (Accessed 19th April, 2010). *Knowledge Commission Report* records there are 750 institutions, out of which 113 are government run, 586 private, 11 national law universities, <http://www.knowledgecommission.gov.in/recommendations/legaeducation.asp> (Accessed 19th April, 2010). See further, Zee News, <http://www.zeenews.com/news631110.html> (Accessed 12th June, 2010). It records that there are over 11 lakh registered advocates, around 1,000 law colleges, and approximately 5 lakh law students. Moreover each year 60,000 law graduates join the legal profession.

¹⁰⁹ -, http://www.academics-india.com/NCHER_Bill.htm (Accessed 19th April, 2010).

¹¹⁰ The Hindu, <http://www.thehindu.com/2010/03/09/stories/2010030958080300.htm> (Accessed 19th April, 2010). The BCI objected to this on the grounds that it centralizes power in higher education. This is a classic case of “the camel not seeing the crookedness of its own neck.”

colleges are not enforced in spite of it being framed.¹¹¹ Supervising legal education becomes an afterthought with its energies on disciplining advocates who are spent forces in the larger scheme of things. Thus it has an unenviable task: maintain the standards of advocacy and reform legal education.

The BCI has re-introduced a bar examination for entry in the bar as a measure to maintain standards.¹¹² While this change is welcome, these are knee-jerk rehearsals to restructure the entire system in a country whose problems are visible from any cross section. It requires a revolutionary empowerment of the student from all agencies.

(b) Scope of the UGC and University Bodies

The primary body to coordinate and determine standards of higher education is the UGC.¹¹³ Its mandate is to oversee standards of teaching, examination and research in all universities.¹¹⁴ It does this by recommending various measures discharging its wide powers and functions in an effort to coordinate aspects of higher learning. Even the BCI follows the UGC guidelines on setting standards, teaching load, curriculum, salary, qualifications for teachers. It is ultimately the UGC which confers university status to institutions and BCI only supplements with professional standards. Hence, a proper interpretation of BCI's powers must be understood in conjunction with the role of the UGC.

¹¹¹ § 28-31. The parameters for accreditation are fairly exhaustive and well taken. For this see latest development, Legally India, *Ambitious BCI Legal Education Reforms from 2011: Ranking Law Colleges, Standardization and Improvements*, <http://barandbench.com/brief/2/908/who-should-regulate-law-schools-in-india> (Accessed 20th August, 2010).

¹¹² Bar and Bench, <http://www.barcouncilofindia.org/notification-amending-conditions-for-right-to-practice-and-bringing-the-all-india-bar-examination-into-force/> (Accessed 10th June, 2010).

¹¹³ University Grants Commission Act, 1956, under entry 66 of the union list, <http://www.ugc.ac.in/policy/ugcact1956.html> (Accessed 23rd April, 2010).

¹¹⁴ *Ibid.* § 12.

Accordingly, the UGC undertakes programs to facilitate interaction among law teachers across the country. After the Baxi report, and the subsequent recommendations in 1988, the UGC commissioned a curriculum development report published in 2001.¹¹⁵ It is a comprehensive report with suggestions to update curriculums of all courses at the undergraduate and postgraduate level.¹¹⁶ It takes an earnest academic tone going beyond the diet for practicing lawyers, and possible roles as judges, academics, administrators, counselors in a democracy.¹¹⁷ The contribution of this report is that it contains detailed objectives under each course offering. A relative comparison of the merit of these recommendations with the BCI's respective attempts wholly reveals the UGC's competence in pedagogy and curricula reform. Thus, law colleges increase their academic standing abiding to the UGC's recommendations.

University bodies exercise a subordinate level of regulation over structure, finance, and academics by executing standards. Autonomous law universities generally constitute a general council, executive council, academic council, and finance council.¹¹⁸ These are bodies that determine the executive policies and programs of the university and are normally chaired by the university vice chancellor. They exercise control on aspects of education and governance over the university. In short, this forms the third tier of regulation of legal education and the most tractable because of its direct impact.

(c) **Making Order out of Chaos**

From the above it is clear that there arises regulatory tension between the three tiers of control. It is a case of "He said! She said!" Views diverge on how to address this lacuna. Some

¹¹⁵ UGC, http://www.ugc.ac.in/policy/law/law_Foreword.pdf (Accessed 23rd April, 2010).

¹¹⁶ *Ibid.*

¹¹⁷ *Rationale of the Course*, UGC, http://www.ugc.ac.in/policy/law/law_Foreword.pdf (Accessed 23rd April, 2010).

¹¹⁸ See for example, NLSIU, <http://www.nls.ac.in/governingbody.htm> (Accessed 23rd April, 2010).

suggest vesting the mantle in the BCI. Others, like Sathe for instance assert the role of the UGC owing to its expertise in higher education. In wake of this, the Law Commission and National Knowledge Commission both identified this problem suggesting alternatives. We deal with each of them to defend the hybrid Indian model adapted by the Knowledge Commission. What is required is accountability ensuring maximum collaboration at different levels of planning. A better formalization of the joint-action is sharing resources. It lessens the burden on any single agency. Such a cooperative framework is essential in a country as India where resources are scarce and legal education requires to be spread to remoter parts of the country when there is still no legal literacy.

The Indian variation spoken about is an accidental creation. Both are created by the parliament, one to deal with entry of professional lawyers and the other with education. There is no evidence that the early planners intended distribution of powers in this manner. Because of this blurriness there is uncertainty over their jurisdictions.

Recall the developments marking the power struggle of the BCI. There have been tremendous misgivings about its role. The All India Teachers Congress, January, 1999, representing law teachers across the country was aggrieved that the BCI was not complying with the requirements of consulting them on legal education as envisaged by section 7 (1) (h) of the Act.¹¹⁹ There is a greater need to involve the academic community. Similar concerns were voiced in the meeting of the heads of legal institutions at NSLIU.¹²⁰ It observed that though the BCI should be left to supervise standards for entry in the bar, legal education must be kept outside its exclusive purview.

¹¹⁹ *Supra note 26*, 10.

¹²⁰ *Ibid.*, 30.

The recent Law Commission report on legal education called for harmonization of the powers. It found that as a practical matter universities will have to comply with the BCI for becoming a recognized legal professional. At the same time, the UGC's role in education is holistic. It saw both of them as having common goals.¹²¹ It proposed two Legal Education Committees, one representing the UGC and the other the BCI. Both were expected to consult one another. The decision of the BCI's Legal Education Committee was binding.¹²²

However, it is hard to see anything novel in this measure. It basically gives bureaucratic shape to the existing arrangement. It focuses more on numerical adjustments in the composition of the committee. This is the only improvement as the rest is a recycled version of earlier reports under this title.

A scathing criticism of the BCI's role came from the National Knowledge Commission.¹²³ It emphatically recommended creating a new regulatory mechanism to oversee the needs of legal education. It proposed an interesting framework by way of an Independent Authority for Higher Education (IRAHE) with powers to deal with all aspects of higher education. Under this, several Standing Committees would supervise medical, legal, and such technical education. The new Standing Committee on Legal Education would consist of representations from BCI, eminent lawyers, judges, jurists, teachers, social workers, students,

¹²¹ *Ibid.*, 23.

¹²² *Ibid.* Annexure A.

¹²³ *Supra* note 26 *Knowledge Commission Report*. The chairperson of the commission Sam Pitroda (others in the working group on legal education were Justice Jagannadha Rao (chair), Justice Leila Seth, Madhava Menon, B.S. Chimni, Mohan Gopal, P.P. Rao, and Nishith Desai) recorded the various deficiencies in the present set-up noting that the BCI is usurping more powers than conferred.

government, and industry. In so far as entry to the bar the BCI's power of recommendations was binding. This committee was a go-between for all matters of legal education.¹²⁴

The Knowledge Commission's alternative throws up interesting questions regarding its workability. In theory it is the antidote to all problems. It takes great care to represent broad interests and this recognizes the cross cutting influences law has in a modern society. It settles the debate on who is the boss--, retaining the limited role of the BCI to prescribe standards for bar admissions. It aims at an overall standardization of education in different technical disciplines and perhaps this model needs to be given a chance. Or will it suffer the same disenchantment?

A possible criticism can be that the design of this model may be counter-productive. It is top-down with a supra-national body having no multi-layered engagement process. It takes away the possibility of sharing powers between the university, bar, education commission, and the state governments at institutional levels. In time there is a possibility that there are no checks on this centrally regulating body. Here is the line between reality and utopia which it will need to address. It will have to infuse accountability and take steps to decentralize power to accomplish its goals.¹²⁵

Before closing this section, one must acknowledge the recently appointed Chairman of the BCI, Gopal Subramniam, who succeeded to prevent escalation of tensions somewhat for the time being. It has come up with a progressive inspection manual where it expressly observes its

¹²⁴ *Ibid.* 16.

¹²⁵ See generally Jane Schukoske, *Legal Education Reform in India: Dialogue Among Indian Law Teachers*, 1 JINDAL GLOBAL LAW REV, 251 (2009).

role out to be “qualification for enrollment as advocate.”¹²⁶ This manual has an impressive and well organized list of criteria.¹²⁷ It recognizes its collaborative role to “promote” legal education.¹²⁸ This is a positive sign for better things in store for the future.

Structural constraints act as obstacles to learning. Actual learning concerns can be translated when institutional structures are sensitive at each level.¹²⁹ Some too readily concede that a functional educational structure necessarily imparts learning: this conclusion is hasty and improper. Systemic change can occur only after it reassesses what learning is about. The balance of the essay continues this diagnosis.

4. RESEARCH COMMUNITY: STILL IN SEARCH OF THE BANYAN TREE

The crux of learning law through research is advancing ideas of theory and practice. As we examine in this article, the structure of legal education poses a fundamental disincentive for any real learning to happen. A similar pattern is observable in the lack of importance to scholarship. The energetic phase of scholarship belonging to Tripathi, Baxi, Sathe, and Dhavan did not continue to another generation. The lack of inter-generational transfer of ideas is somewhat evident from the erosion in research traditions in the academy. There is no worthy tradition to speak of today. So, this section is a survey of research spaces in India in light of the pivotal role of the Indian Law Institute (ILI). Further, it looks at contemporary developments in

¹²⁶ See BCI, <http://www.barcouncilofindia.org/wp-content/uploads/2010/06/Inspection-Manual.pdf> (Accessed 11th June, 2010).

¹²⁷ *Ibid.* It importantly includes senior faculty part of the inspection. Among some of the improvements for example it collects data on the kinds of electronic databases subscribed by colleges.

¹²⁸ See BCI, <http://www.barcouncilofindia.org/about/legal-education/> (Accessed 11th June, 2010).

¹²⁹ Chief Justice K.G. Balakrishnan speaking at ILI’s 2010 convocation states:

[h]igher education is not only meant for personal empowerment, but it also serves as an instrument of social integration and transformation. When students belonging to different backgrounds learn together in a conducive environment, they gradually learn to look beyond the traditional barriers of caste, regionalism, gender, class, and religion.

ILI, http://www.ilidelhi.org/chief_speech.pdf (Accessed 24th April, 2010).

journals and internet blogs today that are driving a deliberative democracy. Its importance and connection with learning is self-actualizing.

The essay does not introduce epistemological claims about learning, but accepts a simple notion that to learn means to move beyond information to the realm of reason and doubt.. There are three interrelated concepts: learning, research, and knowledge. Here research establishes proof and justification since knowledge is created only after this process of verification. Learning strives to make this connection with knowledge[at least in principle]. Thus, the enterprise of research is the heart of all learning.

(a) Giant Leaps in Research

ILI is an Indian dream made possible by American initiatives. Its inception was a prolonged process of exchange from scholars on both sides. In 1955-56, L.R. Sivasubramnian Dean, Delhi Law Faculty, visited American Law Schools to study the nature of legal research.¹³⁰ Following exchanges of proposals for a research program, Carl Spaeth, Dean, Stanford Law School, visited India in 1956.¹³¹ The institute received its funding from the Indian government, private sources, and Ford foundation.¹³²

Formally, the ILI was established in 1956 with the need for research in public law by examining administrative and constitutional law issues. It was a glittering opening with the President Rajendra Prasad, Prime Minister Pandit Jawaharlal Nehru, Chief Justice S.R. Das, Executive Chairman Mr. K.M. Munshi, and Dean Sivasubramanian, present on the

¹³⁰ Lawrence Ebb & A.T. Markose, *Conference of the Indian Law Institute*, 7 AM.J.COMP.L. 219 (1958).

¹³¹ *Ibid.*, 220.

¹³² *Ibid.*

occasion.¹³³ Prime Minister Nehru greeted the institute saying it was “*necessary and important;*” “*tribute and homage to the law and the men of law...in a welfare state.*”¹³⁴ He aptly remarked: “*society has to face two urges, namely, continuity and change and if these are evenly balanced, it is well.*”¹³⁵ The institute was envisioned to uphold secular, scientific, and socialist values.

But what was its role going to be with the other major legal actors? What was its type of research? President Rajendra Prasad speaking at the opening reassured:

It is necessary that there should be a body which works quietly in an atmosphere which is free from the din of courts and also away from the controversy of the legislatures, where attention is paid to the various implications of a particular kind of legislation and where legislation which has already been adopted is studied for the objects it has achieved and for the way in which it has been worked. This can be done by an Institute like this.¹³⁶

However, this forced neutrality from politics and policy soon becomes an obstruction to dynamic research. The institute’s objectives were conservative. It talks of a kind of research meant to systematize or collect information.¹³⁷ It says: “*to promote the clarification, simplification and systematization of law.*”¹³⁸ There is no mention either of social and economic inequality or a critical counter-state axis. Its aim can be summed up as wholly traditionalist.

The lack of social and economic needs of the scale of India meant that this Western-type idealized institute will need to undergo a reality check.¹³⁹ After its establishment there were

¹³³ *Ibid.* 220.

¹³⁴ ILI, <http://www.ilidelhi.org/Profile.htm> (Accessed 26th April, 2010).

¹³⁵ *Supra note* 130, 221.

¹³⁶ ILI, http://www.ilidelhi.org/Dir_Rep.pdf (Accessed 26th April, 2010).

¹³⁷ ILI, <http://www.ilidelhi.org/Profile.htm> (Accessed 28th April, 2010).

¹³⁸ *Ibid.*

¹³⁹ Rajeev Dhavan, *Legal Research in India: The Role of the Indian Law Institute*, 34 AM.J.COMP.L. 527 (1986). Dhavan covers Setalvad’s travel to America and how he was overcome by American legal education over the British model. Setalvad had visited the Ford Foundation, New York, and discussed the affairs of the Indian Law Institute and

consultations between representatives from America and Indian scholars on areas of focus. Its initial plan was devised by: Clark Byse, Howard Mann, Nathaniel Nathanson, Lawrence Ebb; P.K. Tripathi; two High Court justices C.B. Agarwala (Allahabad) and P.B. Mukherkji (Calcutta); and two lawyers G.N. Joshi (Bombay) and Sikri (Punjab).¹⁴⁰ The final report charted subjects such as Judicial Review, Delegated Legislation, and Inter-State Commerce.¹⁴¹ This shows a distinctively American flavour as there were structural problems confronting America at that point in time. However, India's problems were far more basic: agricultural reform, and social and economic rights. In addition, to the above, the institute resolved to conduct public law research of a comparative kind.¹⁴²

ILI even to this day is the most equipped library in the country.¹⁴³ It came out with the first print of its journal publication, *Journal of Indian Law Institute (JILI)*, in 1958.¹⁴⁴ Since then the series of publication has covered the liveliest debates in legal scholarship produced in the country. It also publishes the *Annual Survey of Indian Law*, *Index to Legal Periodicals*, and has its own in-house printing press for scholarly works.¹⁴⁵

the report of Dean Speight on the problems of legal education in India. See also, M.P. Jain, *Some Reflections of the Research Program of the Indian Law Institute*, 24 *JOURNAL OF INDIAN LAW INSTITUTE* 457 (1982).

¹⁴⁰ *Ibid.* 534.

¹⁴¹ *Text of the Final Report of the Conference on Research Topics*, 7 *AM.J.COMP.L.* 233-238 (1958). This was prepared by A.T. Markose, Justice C.B. Agarwala; consulting Clark Byse and Lawrence Ebb.

¹⁴² *Supra note*, 130, 226.

¹⁴³ There are more than 75,000 titles and more than 270 periodicals. See <http://www.ilidelhi.org/> (Accessed 28th April, 2010). Online catalogue ILI, <http://115.119.88.22:8080/jopacv06> (did not open as on 24th April, 2010). See S.K. Agarwala, *Development and Planning of Law Libraries in India* available at Hein Online 3 *JOURNAL OF INDIAN LAW INSTITUTE* 24 (1975). Agarwala records the statistics of the annual library budget, acquisition of books and periodicals in proportion to the students.

¹⁴⁴ Rajeev Dhavan, *Means, Motives and Opportunities: Reflecting on Legal Research in India*, 50 *MOD.L.REV.* 725 (1987). See n 7 727. Journal sections were carried as part of law reporters such as *All India Reporter*, *Supreme Court Cases*, *Madras Law Journal*, *Calcutta Law Weekly Notes*, *Bombay Law Reporter*. The *India Law Review* was the first major publication (1946-52). Thereafter, there were more such as the *Journal of Parliamentary and Commonwealth Studies* (1967) introduced.

¹⁴⁵ See ILI, <http://www.ilidelhi.org/publication.htm> (Accessed 26th April, 2010).

Early Indian legal research was formalistic showing deference to the government and the Supreme Court. It did not utilize techniques of social sciences. Instead it preferred the study of black-letter law.¹⁴⁶ This made it easy for judicial and governmental influences in determining its research agenda.¹⁴⁷ Dhavan elaborates on the two early approaches of law: state made colonial law, and custom which were a source of tension.¹⁴⁸ Legal research reflected this tension of tradition and modernity. The displacement of traditional legal practice and knowledge did not have the peoples' legitimacy.¹⁴⁹ This massive and gradual rewriting exercise has been instructively studied by eminent anthropologists such as Duncan Derrett, Robert Lingat, and Bernard Cohen.¹⁵⁰

The Law Commission rendered devotional service to the government and struggled to provide innovative solutions. There was a large digest of publications meant for practitioners and an equal amount of legalistic work contributed by practitioners. Juristic writing by judges and eminent jurists were largely complementary of the state and the court, and not resonating beyond

¹⁴⁶ *Supra note* 139, Dhavan points out G.S. Sharma's push for sociological jurisprudence in the 1960s at 546. Generally on the role of comparative law, see Rajeev Dhavan, *Borrowed Ideas: On the Impact of American Scholarship on Indian Law*, 33 AM.J.COMP.L 505 (1985). Dhavan describes the American impact on India's scholarship calling for Indian scholarship to follow its own "social intuition." There were a number of seminars and academic exchanges between scholars of the two countries. From Dhavan we learn that comparative scholars C.J. Hamson and Rene David conducted seminars at the ILI in 1969 and 1972 respectively. The institute also published *An Introduction to the Study of Comparative Law* (1971, later reprinted in 1979). See also, P.K. Tripathi, *Foreign Precedents and Constitutional Law*, 57 COL.L.REV. 319 (1970). Marc Galanter, *The Uses of Law in Indian Studies*, <http://marcgalanter.net/Documents/papers/scannedpdf/TheUsesofLawinIndianStudies.pdf> (Accessed on 20th August, 2010). Galanter argues the uniqueness of highly technical legal doctrines in India and its dissonance from Indian society.

¹⁴⁷ *Supra note* 139. ? Dhavan thoroughly lays out how this influenced the work of ILI. Since the Chief Justice of India is the ex-officio President of the institute it is at times an extension of the court's politics. Dhavan infers that the ILI assisted in the intellectual turn that the court was taking which is evidenced by the partnership between G.S. Sharma Director at the time and Justice Gajendragadkar then serving Chief Justice of the Supreme Court. (538-540). It was characterized by a turn to a socialist and pro-government agenda. The next phase was marked by social research pioneered by Baxi who was the Director of the institute, and later S.N. Jain's tenure. During this time the ILI assisted the government in its research on free press, water laws and irrigation. (541-542).

¹⁴⁸ *Supra note* 144, 729.

¹⁴⁹ *Ibid.*, Dhavan observes that the modern legal institutions were overburdened without being popular. It was external rather than being intrinsic. (733)

¹⁵⁰ *Ibid.* See also Marc Galanter, *The Displacement of Traditional Law in Modern India*, 24 JOURNAL OF SPECIAL ISSUES 65 (1968).

these horizons. The market for what Dhavan terms “reflexive research” eluded Indian scholarship in its early decades.¹⁵¹This relationship of the state, law, and justice, has an impact on the nature of research and vice versa.

In the meanwhile, the legal profession struggled to bridge gaps of social and political inequality. Indeed it was highly litigious and “rule minded.”¹⁵²Drastic changes had to be introduced in legal education to bring an overall impact. There was a substantive transition in research during the late 1970s’ with the public law movement gaining visibility. India was on the brink of history with judicial activism and constitutionalism in ferment.¹⁵³The supreme court protected fundamental rights relaxing its rule on standing in public interest litigations for infringement of rights involving citizens. There was an energy one can gather reading the case reports, speeches, and biographies of those times. A convergence of the academy, bench, and bar saw the public law movement enter an important phase of reconstruction. Indeed, it was now that the transformative potential of legal research and education as justice oriented education was in

¹⁵¹ *Supra note 139*, 738.

¹⁵² Marc Galanter, *Introduction: The Study of the Indian Legal Profession*, 3 LAW & SOC’Y REV. 201 (1969). Galanter points out there are more than 75,000 lawyers in the country and it comprised the second largest body of legal practitioners in the world.

¹⁵³ Notable cases of constitutionalization of rights during this time: *Sunil Batra v. Delhi Administration*, AIR 1978 SC 1548; *Maneka Gandhi v. Union of India*, AIR 1978 SC 853; *People’s Union for Democratic Rights v. Union of India*, AIR 1982 SC 1473; *D.S. Nakara v. Union of India*, (1983) 1 SCC 304; *Bandhua Mukti Morcha v. Union of India*, A.I.R. 1984 S.C. 802; *Sheela Barse v. Union of India*, (1986) 3 SCC 596; *M.C. Mehta v. Union of India*, AIR 1987 SC 1086; *M.C. Mehta v. State of Tamil Nadu*, AIR 1991 SC 417; *A.R. Antulay v. R.S.Nayak*, AIR 1992 SC 1701; *Unni Krishanan v. State of Andhra Pradesh*, AIR 1993 SC 2178; *Vellore Citizens Welfare Forum v. Union of India*, AIR 1996 SC 2715. See generally Upendra Baxi, *Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India*, in THE ROLE OF THE JUDICIARY IN PLURAL SOCIETIES 32 (Neelan Tiruchelvam & Radhika Coomaraswamy eds., 1987).. There was also a push for socio-legal research using empirical social science methods to gather data to study legal reform in society.

progress. It was a defining movement for the socio-legal academic community who made a difference bringing “public virtue” in the arena of teaching and research.¹⁵⁴

Unfortunately, today the ILI is a residue of its old self.¹⁵⁵ It is understaffed, cash poor, and requires administrative revamping.¹⁵⁶ It functions as an adjunct of the government and Supreme Court. There is only one full time professor on its faculty in a center that specializes in post-graduate legal research.¹⁵⁷ There are no mentionable publications of the institute and no additional journals added after the Annual Survey of Indian Law, 1965, or any specialized research tracks.¹⁵⁸ It is fast losing relevance with contemporary research because of its static nature. It is unfortunate that the promises in the hay days for India’s juristic tradition are not continued with the same fervor.

(b) Present Day Scenario

Today, some showcase research takes place in law schools, but there is a lot to strive for in substantial contribution of ideas.¹⁵⁹ This is reflected by the inadequate support to research by

¹⁵⁴ See Upendra Baxi, *Professor Pradyumna Kumar Tripathi: A Tribute* (1924-2001), (2001) 5 S.C.C. 1. Baxi pays a tribute to Tripathi’s contribution to the academic culture. He speaks about the role played by the judiciary, profession, and academia in social transformation where the law teacher had to possess policy negotiation skills. He refers to G.S. Shama (Jaipur), Anandjee (Banaras), A.T. Markose (Cochin), R.U. Singh, V.N. Shukla (Lucknow) and M.P. Jain (Delhi). Dominating insights were: G.S. Sharma’s sociological understanding in jurisprudence and development; Anandjee in labour law and jurisprudence; and Charles Alexandrowicz, T.S. Rama Rao, B.S. Murthy, M.K. Nawaz, R.P. Anand, Nagendra Singh, and R.P. Dholakia in public international law. In this context, it is hard not to disagree with Baxi’s point that biographies of Indian law teachers are hard to find.

¹⁵⁵ It is a deemed university since 2004.

¹⁵⁶ *Supra note* 139. The institute was undergoing a severe financial crisis where its budget was in a deficit and its main income was from government grants. The dependence on government funds assured that critical and intellectual autonomy in research is a far cry.

¹⁵⁷ It offers LL.M., post-graduate diplomas, and Ph.D. courses. Faculty information is gathered from <http://www.ilidelhi.org/faculty.htm> (Accessed 24th April, 2010).

¹⁵⁸ This information is gathered from ILI, <http://www.ilidelhi.org/research3.htm> (Accessed 25th April, 2010). For example, there is no provision for online submission of manuscripts for JILI in its website.

¹⁵⁹ National law schools have a research component as part of their courses where students write papers as projects. In addition, seminar papers offer students a chance to write longer papers. Students also may receive opportunities to share ideas on their paper. But the overall quality of the papers is subject to the supervisor’s enthusiasm and standard.

managements. Managements are burdened by the low ratio of teachers to students and for this reason teachers become stand-up lecturers. In time few become crusading ringleaders. A post of a lecturer signifies the end of a teacher's learning—now it is time to *inflict* knowledge.

Any conservative rating of institutional learning needs to focus on the extant quality of research. Recall Baxi stressing on the access to journals recommending the need for good quality reading materials for teachers.¹⁶⁰ Now with electronic resources in urban areas this is less of a problem. [A different plan is required for colleges that do not have digital access.] In this section, we survey some sample departments and resources that enhance learning.

We briefly outline four dimensions. First, departmental research that happens in individual capacities or through centers affiliated to the university. Second, institutional research undertaken by professional research organizations. Third, journals and periodicals promoting legal scholarship. Fourth, role played by internet communities to share ideas. By no means is this survey exhaustive or in depth, it is only meant to give an outline.

There needs to be a conversation between the academy and students across the country. This opens ideas for everyone's access irrespective of their institutional pedigree. At the moment it is an unequal competition of ideas among students of institutions. This is because some have greater access to resources. If learning has to evolve from its primitive state, research centers must work closely with non-national colleges as the predominant student population are outside these ivory towers.

¹⁶⁰ *Supra note 26* See also UGC, <http://www.ugc.ac.in/policy/payorder.html#payscale> (Accessed 24th April, 2010). UGC prescribes a portion in its salaries for teachers a research allowance.

Departmental research is often left to committed academicians who pursue their research work in harsh conditions. The university publications are focused on case books or course materials.¹⁶¹ Barring NUJS no other university enumerates its faculty publications.¹⁶² A passing look at leading law universities reveals there is independent research currently in public law, M.P. Singh,¹⁶³ A. Laxminath,¹⁶⁴ Mool Chand Sharma, Sudhir Krishnaswamy;¹⁶⁵ public international law V.S. Mani;¹⁶⁶ International trade law A.K. Koul,¹⁶⁷ human rights by Kamala Sankaran (public law and labour law),¹⁶⁸ Ved Kumari (specializes in juvenile and gender),¹⁶⁹ Amita Dhanda (specializes in disability laws and gender);¹⁷⁰ intellectual property by V.K. Unni,¹⁷¹ Shamnad Basheer;¹⁷² civil and criminal laws Vepa Sarathy,¹⁷³ Sridhar Acharyulu.¹⁷⁴ The “deep learning” of students in the 950 odd law colleges can happen by engaging with only a handful of scholars.¹⁷⁵ In such a scenario, there is an urgent need for distribution of academic resources.¹⁷⁶

¹⁶¹ See NLSIU, http://www.nls.ac.in/library_publications.html (Accessed 28th April, 2010).

¹⁶² See NUJS, <http://www.nujs.edu/nujs-faculty-professors-administration.html#> (Accessed 24th April, 2010). See further <http://www.nujs.edu/downloads/academic-activities-undertaken-by-the-faculty-during-2009-2010.pdf> (Accessed 12th June, 2010).

¹⁶³ NUJS, <http://www.nujs.edu/faculty/mahendra-p-singh.html> (Accessed 24th April, 2010).

¹⁶⁴ CNLU, <http://www.cnlu.ac.in/> (did not open on 24th April, 2010).

¹⁶⁵ NUJS, <http://www.nujs.edu/faculty/sudhir-krishnaswamy.html> (Accessed 24th April, 2010).

¹⁶⁶ See generally Jaipur National University, http://www.jnujaipur.ac.in/school_of_law_and_governance/ (Accessed 24th April, 2010).

¹⁶⁷ University of Delhi, http://www.du.ac.in/faculty_member_details.htm?id=1689 (Accessed 24th April, 2010).

¹⁶⁸ University of Delhi, http://www.du.ac.in/faculty_member_details.htm?id=1697 (Accessed 24th April, 2010).

¹⁶⁹ http://www.du.ac.in/faculty_member_details.htm?id=1687 (Accessed 24th April, 2010).

¹⁷⁰ <http://nalsar.ac.in/faculty/AmitaDhanda-profile.html> (Accessed 24th April, 2010). (Also on areas of administrative law.)

¹⁷¹ <http://nalsar.ac.in/faculty/unni-profile.html> (Accessed 25th April, 2010).

¹⁷² <http://www.nujs.edu/faculty/shamnad-basheer.html> (Accessed 24th April, 2010).

¹⁷³ <http://nalsar.ac.in/faculty/Sarathi-profile.html> (Accessed 25th April, 2010). (Also on areas of public law.)

¹⁷⁴ <http://nalsar.ac.in/faculty/Sridhar-profile.html> (Accessed 24th April, 2010).

¹⁷⁵ NUJS lists the journals in which its faculty has published. See <http://www.nujs.edu/nujs-faculty-research-papers.html> (Accessed 26th April, 2010).

¹⁷⁶ It is in this context one must look at the overreaching international thrust of legal education by O.P. Jindal Law School. There is a repeated mention of “across the globe” as its main thrust. See <http://www.jgls.org/lawschool/aboutjgls.asp> (Accessed 26th April, 2010).

Legal academies liberally name research centers aimed to promote social justice. Little is heard about them after their inception. They have not been able to sustain themselves for lack of grants and expertise.¹⁷⁷ Currently centers at NLSIU and NLU Jodhpur look busy.¹⁷⁸ The lack of inter-disciplinary work in legal research is a crucial reason why it has not produced cutting edge scholarship. Proper inter-disciplinary work can happen by engaging leading scholars from other disciplines. For the moment, they are too self-enclosed.

Some of the prominent national journals—apart from what we previously discussed above have been Banaras Law Journal, Jaipur Law Journal, Delhi Law Review, and the various state bar journals and digests—information for which is not readily available [Unsurprisingly they still do not accept online submissions.]. More recent primary *student reviewed* journals are The National Law School of India Review,¹⁷⁹ NUJS Law Review,¹⁸⁰ NALSAR Law Journal,¹⁸¹ Indian Law Review,¹⁸² GNLU Law Review,¹⁸³ Jindal Global Law Review,¹⁸⁴ and some more.¹⁸⁵ There are a number of secondary journals that focus on narrower areas.¹⁸⁶ Journals

¹⁷⁷ See for example, the Faculty of Law at Benaras Hindu University lists its grants and projects on hand at <http://www.bhu.ac.in/lawfaculty/website/LawWebsite/home/project.html> (Accessed 20th Aug, 2010).

¹⁷⁸ http://www.nls.ac.in/academic_programmes_research_centers.html (Accessed 26th April, 2010). A list of centers at NLU Jodhpur available at http://www.nlujodhpur.ac.in/learning_centers.php (Accessed 28th April, 2010). See also, <http://www.rgnulpatiala.org/ric.html> (Accessed 28th April, 2010). See description about Institute of Advanced Legal Studies, India Law Society, Pune, <http://www.ilslaw.edu/> (Accessed on April, 2010). See <http://nalsar.ac.in/disability/index.html> (Accessed 10th June, 2010) recently established Center for Disability Studies undertakes policy and advocacy work for persons with disabilities.

¹⁷⁹ <http://www.nlsir.in/> (Accessed 28th April, 2010).

¹⁸⁰ <http://www.nujslawreview.org/> (Accessed 28th April, 2010).

¹⁸¹ http://nalsar.ac.in/pdf/nalsar_law_journal.pdf (Accessed 28th April, 2010).

¹⁸² <http://www.nliu.com/NLIU%20Law%20Review.pdf> (Accessed on 28th May, 2010)

¹⁸³ <http://www.gnlu.ac.in/GLRAboutUs.htm> (Accessed 28th April, 2010);

¹⁸⁴ University of Delhi, <http://www.jgls.org/lawschool/jgl-review.asp> (Accessed 28th April, 2010).

¹⁸⁵ RGNLU Law Review available at RGNLU, <http://www.rgnulpatiala.org/rlr.html> (Accessed 10th June, 2010); Scholasticus available at NLU, <http://www.nlujodhpur.ac.in/scholasticus.php> (last visited 28th April, 2010).

¹⁸⁶ Indian Journal of Constitutional Law, http://ijcl.net/content.php?content=About%20Us&image=about_title.jpg (Accessed 28th April, 2010); Intellectual Property Rights Review, <http://www.nls.ac.in/IPRJOURNAL/indexpage.htm> (Accessed 28th April, 2010); The Indian Journal of Law and Technology, <http://www.ijlt.in/> (Accessed 28th April, 2010); Indian Journal of International Economic Law, <http://www.nls.ac.in/Webpage%20Draft.htm> (Accessed 28th April, 2010); Socio-Legal Review, <http://www.sociolegalreview.in/> (Accessed 28th April, 2010)

promote interdisciplinary scholarship encouraging themes related to law and development. But this is still a tiny portion of the legal academy interested in writing-- , predominantly otherwise all other law colleges and national law schools do not have a single law journal.¹⁸⁷ For instance, one law school even offers professional service: *“If you want us to assist in any research for your organisation please email us your requirements.”*¹⁸⁸ These are some of the several instances to a cultivated ignorance about research.

Institutional research in the country performs exceedingly well owing to its use of interdisciplinary research techniques. Their audiences are not restricted to pure law actors and range from social theorists to common people in society. The rigid methodologies of law-school research are replaced with applying humanities and social sciences which produce cutting edge outcomes that challenge existing boundaries. Their dynamism is reflected in its push for advanced research: offering post-graduate degrees, publishing contemporary work in law and social sciences, organizing seminars and conferences. Some of them also provide legal aid, conduct advocacy related work with civil society groups, and undertake policy work.

Some major centers are Center for Studies in Social Sciences,¹⁸⁹ Center for Policy Research,¹⁹⁰ Center for the Study of Culture and Society,¹⁹¹ Center for the Study of Developing

¹⁸⁷ Indian Law Society, <http://www.ilslaw.edu/> (Accessed 28th April, 2010); Dr. Ambedkar Law College, <http://drambedkarlawcollege.com/> (Accessed 28th April, 2010); Government Law College, <http://www.glc.edu/> (Accessed 28th April, 2010). See National Law University, <http://nludelhi.ac.in/Projects.htm> (Accessed 28th April, 2010). They collect Rs. 2,500 p.a. as journal fee as part of its fees see <http://nludelhi.ac.in/BA-LLB.htm> (Accessed 28th April, 2010); HNLU, http://www.hnlu.ac.in/home/index.php?option=com_frontpage&Itemid=1 (Accessed 28th April, 2010); NLIU, charge a fee of Rs. 500 p.a. as journal fee as part of its fee, <http://www.nliu.com/ballb%20doc.pdf> (Accessed on 28th April, 2010); RGNLU, <http://www.rgnulpatiala.org/student.html> (Accessed 28th April, 2010).

¹⁸⁸ Amity Law School, http://www.amity.edu/als/corp_resources/research_publication.htm (Accessed 28th April, 2010).

¹⁸⁹ Center for Studies in Social Sciences, <http://www.cssscal.org/> (Accessed 26th April, 2010).

¹⁹⁰ Center for Policy Research, <http://www.cprindia.org/onefocus.php?s=8> (Accessed 26th April, 2010).

¹⁹¹ Center for the Study of Culture and Society, <http://www.cscsarchive.org/> (Accessed 26th April, 2010).

Societies,¹⁹² Center for the study of Law and Governance,¹⁹³ Peoples Union for Civil Liberties,¹⁹⁴ Alternative Law Forum,¹⁹⁵ Human Rights Law Network,¹⁹⁶ and Lawyers Collective.¹⁹⁷ There are numerous organizations doing important research on specialized areas such as law and development which is consuming to recount in the space of this article. In addition, insightful legal commentary appears in dailies and periodicals [English and vernacular] such as The Hindu and its publication Frontline,¹⁹⁸ and The Economic and Political Weekly.¹⁹⁹ Indian journalism is vibrant actively facilitating discussions on law and society. This resembles a community in a collective project to protect the democratic fabric. Its vibrancy makes it a form of catalytic learning.

Lastly, the most exciting development in legal academy has been the rise of discursive practices through legal blogs and internet communities. They are run by law faculty, students, legal professionals, journalists and activists. It has contributed to a free and equal dialogue. These are networks of civil society to build a democracy where voices can travel. For instance, one popular blog “Law and Other Things” discusses current affairs, lists announcements, and shares views on scholarship, in an incisive manner.²⁰⁰ At the time of the historic judgment of the

¹⁹² Center for the Study of Developing Societies, <http://www.csd.s.in/index.php?inc=research> (Accessed 26th April, 2010).

¹⁹³ Center for the Study of Law and Governance, <http://www.jnu.ac.in/csrg/default.htm> (Accessed 26th April, 2010).

¹⁹⁴ People’s Union of Civil Liberties, <http://www.pucl.org/> (Accessed 28th April, 2010).

¹⁹⁵ Alternative Law Forum, <http://www.altlawforum.org/> (Accessed 27th April, 2010).

¹⁹⁶ Human Rights Law Network, <http://www.hrln.org/hrln/> (Accessed 28th April, 2010). They also publish a bimonthly magazine Combat Law covering wide range of human rights related issues. Combat Law, <http://www.combatlaw.org/> (Accessed 28th April, 2010).

¹⁹⁷ Lawyers Collective, <http://www.lawyerscollective.org/> (Accessed 28th April, 2010). They also publish a magazine Lawyers Collective discussing human rights concerns, <http://www.lawyerscollective.org/magazine> (Accessed 28th April, 2010).

¹⁹⁸ The Hindu, <http://www.thehindu.com/> (Accessed 28th April, 2010); Frontline, <http://www.frontlineonnet.com/> (Accessed 28th April, 2010).

¹⁹⁹ Economic and Political Weekly, <http://epw.in/epw/user/userindexHome.jsp> (Accessed 10th June, 2010).

²⁰⁰ Law and Other Things, <http://lawandotherthings.blogspot.com/> (Accessed 28th April, 2010). Some other popular blogs are Indian Corporate Law, <http://indiacorplaw.blogspot.com/> (Accessed 28th April, 2010), Spicy IP, <http://spicyipindia.blogspot.com/> (Accessed 28th April, 2010).

Delhi high court on 2nd July, 2009, excluding private consensual sex between same-sex adults, there was an enriching circulation on the implications of the judgment.²⁰¹The forum was an invitation to make people active participants in interpreting the court's decision. These deliberative spaces are the bedrock to contest citizens' claims tomorrow outside the sphere of the formal state processes. Thus this facilitates learning as a form of empowerment.

Legal resources proliferate on the internet in the form of legal journalism.²⁰²There is a growing market for legal developments by students and legal professionals about the current events in practice, academics, or public service. In contrast, there is still to be a real competition for free and open distribution of legal resources of legislations and case laws on the internet.²⁰³

Legal academia in India is in a decline compared to social sciences. The secret for its failure is its reluctance to see research as an end in itself. Law people are more concerned with typecasting legal scholarship as “with us or against us,” or “legal or non-legal.” The heavy legal masonry constrains inter-disciplinary work under the guise of borrowed phrases like “academic legal rigor.”

From the foregoing, it is gleaned that departmental research in law universities requires freedom to collaborate its intellectual project with more advanced research organizations. Learning by way of research attempts to place the controls in the hands of students. True democratic learning connects the text and student/s in a discourse. They require approaches of discovery, reflexivity, and reasoning, tuned to diverse intellectual styles and interests. Although

²⁰¹See discussion of *Naz Foundation v. Union of India*, W.P. No. 7455 of 2009, Law and Other Things, <http://lawandotherthings.blogspot.com/2009/07/naz-foundation-v-union-of-india.html> (Accessed 29th April, 2010).

²⁰² See Bar and Bench, <http://www.barandbench.com/> (Accessed 20th August, 2010); Legally India, <http://www.legallyindia.com/> (Accessed 20th August, 2010);

²⁰³ Some popular legal resource websites are: <http://judis.nic.in/> (Accessed 20th August, 2010); <http://www.sebi.gov.in/> (Accessed 20th August, 2010); www.nic.in (Accessed 20th August, 2010); <http://www.parliamentofindia.nic.in/> (Accessed 20th August, 2010).

there is research papers included in the “compulsory curriculum,” [of national law schools] such inclusions are perfunctory given that there is no overall tradition of research.²⁰⁴The absence of an integrated community of scholars’ means there exist no feedback for ideas. Thus it is a break in the chain of learning. A harmful effect of this is seen the same versions of ideas suffocate in a closed manner.

5. 1986: BEHIND THE MAKING OF THE LEGAL TECHNOCRAT

The break of a new dawn in legal education, a new era of partnership between the bench, bar, and government, is some familiar jingoisms at the launch of each new law school. The advent of the national law school is perhaps synonymous with new idioms in legal education: “Harvard of the East,”²⁰⁵ “excellence,”²⁰⁶ “exclusive,”²⁰⁷ “able competent and humane lawyers,”²⁰⁸ “disseminate knowledge.”²⁰⁹ Add the word “global” to surpass the rest.²¹⁰ It is not astonishing

²⁰⁴ As a future proposal it will be interesting to look at past projects of students to assess the degree of success of the writing component.

²⁰⁵ A Vice-Chancellor of a reputed law university broadcasts with [amusing] turn of phrase: “*For years, they have been saying the National Law School is a Harvard of the East but our vision is to make people call Harvard the Bangalore of the West. Till then, we won't rest.*” India Today, <http://indiatoday.intoday.in/site/Story/45869/India's+best+Law+colleges.html?complete=1> (Accessed 28th April, 2010). See also, NLSIU, <http://www.nls.ac.in/NLSIU%20RCC%202010%20Brochure.pdf> (Accessed 29th April, 2010).

²⁰⁶ NLSIU, http://www.nls.ac.in/about_history.html (Accessed 29th April, 2010); NALSAR, http://nalsar.ac.in/about_nalsar.html (Accessed 29th April, 2010); National Law University, <http://nludelhi.ac.in/AboutUs.htm> (Accessed 29th April, 2010); RMLNLU, http://www.rmlnlu.ac.in/director_message.htm (Accessed 29th April, 2010); <http://www.gnlu.ac.in/aboutus.htm> (Accessed 29th April, 2010).

²⁰⁷ See *supra* note 77.

²⁰⁸ NALSAR, http://nalsar.ac.in/about_nalsar.html (Accessed 29th April, 2010).

²⁰⁹ NUJS, <http://www.nujs.edu/nujs.html> (Accessed 29th April, 2010); HNLU, http://www.hnlu.ac.in/home/index.php?option=com_content&task=view&id=19&Itemid=50 (Accessed 29th April, 2010); National Law University, <http://nludelhi.ac.in/AboutUs.htm> (Accessed 29th April, 2010); NALSAR, http://nalsar.ac.in/about_nalsar.html (Accessed 29th April, 2010); RGNUL, <http://www.rgnulpatiala.org/ourv.html> (Accessed 29th April, 2010); NUALS, http://www.nuals.ac.in/aims_objects.aspx (Accessed 29th April, 2010).

²¹⁰ National Law University, <http://nludelhi.ac.in/AboutUs.htm> (Accessed 29th April, 2010); Jindal Global Law School, <http://www.jgls.org/lawschool/aboutjgls.asp> (Accessed 29th April, 2010); RMLNLU, http://www.rmlnlu.ac.in/director_message.htm (Accessed 29th April, 2010).

to note that these institutions are uncannily similar. So it is important what these resonate as an idea about legal education.

This section explicates a main theme: the monolithic structure of the law schools. It does this by looking at their aims and objectives. It gives a good reason to ask: why is an institution created? There must be something more normative at the root of it. There are important elementary educational oversights behind its creation. Here the institutions' self-critical reflection on its teaching and evaluation is discussed in light of the implications these hold to the student and her/his learning.

The primary reason for complaints against these institutes is that there is a dissonance between their aims and reality. Its popular legitimacy is derived from the recognition it receives from corporate and commercial sectors. The larger the workforce it provides to the commercial class the higher up it moves in the rankings.²¹¹ Thus, to realize its aims, institutes must reflect on their normative values by committing to learning. This can happen only by infusing academic courage and freedom at the thrust of its educational process. This makes learning a self-directing process.

(a) Noble Pursuits-Hard Realities

Indian law schools are quite different from western law schools in purely formal ways. To begin, the goals of establishing these schools are driven by a commitment to social justice, strengthening the bar and judiciary, and the need to lift the overall standards of legal education.²¹² In this way, its typology is unique. It is unfair to compare the constitutionalist

²¹¹ The problem is one of low baselines because there is as yet no other basis to distinguish schools.

²¹² See recently, the Prime Minister Manmohan Singh reiterated the need for education to reflect societal commitment :

dimension of Indian schools generally speaking with western counterparts for this fundamental reason. The original aspiration of these national law schools was to be grounded in problems of the Indian milieu. Nevertheless, there is a tendency for capricious makeovers.

There needs to be an engendering of a self-critical and modest approach of the law schools. Instead of demonstrating humility as a prerequisite for learning, by stark contrast are heavily self-promoted. Any “high and mighty” mindset makes integration with the rest of the law colleges and the lower judiciary a foregone conclusion.

i) Law schools have a goal of achieving social justice. For instance, take one leading law school as a case study in this paradigm. It has a somewhat extensive elaboration of globalization and social justice.²¹³ An analysis of its purpose gives the impression it is an institute of rights activism. Normally law schools embody its educational mission as “professionally competent, technically sound, and socially relevant” [no pun intended!]. For example a leading law school announced:

The primary mission of the University will be to create Lawyers who will be professionally competent, technically sound and socially relevant, and will not

Our legal education system should be particularly sensitive to the needs of the marginalized sections of our society like women, Scheduled Castes and Scheduled Tribes and the poor. Not only should these sections of society be adequately represented among law students, the legal education we impart should inculcate sensitivity towards the special needs of the under-privileged sections of our community.

PM's [Prime Minister's] inaugural address at the conference of National Consultation for Second Generation Reforms in Legal Education, <http://pib.nic.in/release/release.asp?relid=61265> (Accessed 11th June, 2010).

²¹³ See as illustration National Law University, <http://nludelhi.ac.in/AboutUs.htm> (Accessed 29th April, 2010); See further NLSIU, <http://www.nls.ac.in/resources/nlsiuact.pdf> (Accessed 29th April, 2010); RGNUL, <http://www.rgnulpatiala.org/ourv.html> (Accessed 29th April, 2010); NUALS, http://www.nuals.ac.in/aims_objects.aspx (Accessed April 29th 2010); HNLU, http://www.hnlu.ac.in/home/index.php?option=com_content&task=view&id=19&Itemid=50 (Accessed 29th April, 2010); CNLU, <http://webcache.googleusercontent.com/search?q=cache:6FNutwOyvUgJ:www.cnlu.ac.in/+chanakya+law+college&cd=2&hl=en&ct=clnk&gl=us> (Accessed April 29th 2010). Only NUJS <http://www.nujs.edu/nujs.html> (Accessed 29th April, 2010) appears to have a serious implementation of social development.

only enter the Bar and the Bench but also be equipped to address the imperatives of the new millennium and uphold the Constitution of India.²¹⁴

At first, it sounds highly idealized.²¹⁵ No sooner these aims draw contradictions. One leading university declares: “*To conduct research on civil rights and fundamental rights and to cooperate with industrial or any other infrastructure management.*”²¹⁶ (Emphasis added) These are two fundamentally confusing objectives it pursues. Recall the expert panel studying NLSIU pertinently observing the following:

There is a potential conflict between the ethos of a law school committed to service to society and the expectations of corporate employers and for students destined for elite corporations...²¹⁷ We are particularly concerned that superior proficiency and organization not be confined to the corporate sector. Part of the mandate of the NLSIU is to promote social justice including ways of enlarging access to justice by improvements in the legal services provided to the disadvantaged, the poor, and the wider community.²¹⁸

ii) Law schools undertake the vital role of “disseminating” knowledge and “promoting” research. The unhappy truth of this proposition lies in the impossibility of its claim. This objective unfailingly appears in every institution.²¹⁹ For example look at an illustration of a law

²¹⁴ National Law University, <http://nludelhi.ac.in/AboutUs.htm> (Accessed 29th April, 2010); NALSAR, http://nalsar.ac.in/about_nalsar.html (Accessed 29th April, 2010); versions of this HNLU, http://www.hnlu.ac.in/home/index.php?option=com_content&task=view&id=19&Itemid=50 (Accessed 29th April, 2010); NLIU, http://www.nliu.com/about_us_next.htm (Accessed 29th April, 2010).

²¹⁵ See Vice Chancellor of a leading University quote :

[] offers students a program of legal education unique in several ways- a program of unparalleled intensity packed into 5 hardworking years. The program spreads over 15 trimesters, involves some 4000 hours of classroom instruction...

NLSIU, <http://www.nlsrecruitment.in/NLSIU%20RCC%202010%20Brochure.pdf> (Accessed 1st May, 2010).

²¹⁶ NUALS, http://www.nuals.ac.in/aims_objects.aspx (Accessed 29th April, 2010); National Law University, <http://nludelhi.ac.in/AboutUs.htm> (Accessed 29th April, 2010); RMLNLU, http://www.rmlnlu.ac.in/director_message.htm (Accessed 29th April, 2010).

²¹⁷ See above note ? Marc Galanter, *Report of the Expert Panel of the National Law School of India University*, 13.

²¹⁸ *Ibid.*, 14.

²¹⁹ NLSIU, <http://www.nls.ac.in/resources/nlsiuact.pdf>; <http://nludelhi.ac.in/AboutUs.htm> (Accessed 29th April, 2010); NALSAR, http://nalsar.ac.in/about_nalsar.html; <http://www.nujs.edu/nujs.html> (Accessed 29th April, 2010); HNLU, http://www.hnlu.ac.in/home/index.php?option=com_content&task=view&id=19&Itemid=50; <http://webcache.googleusercontent.com/search?q=cache:6FNutwOyvUgJ:www.cnlu.ac.in/+chanakya+law+college&cd=2&hl=en&ct=clnk&gl=us> (Accessed 29th April, 2010); NLUO, <http://www.nluo.ac.in/background.htm>

university: *“To disseminate legal knowledge and legal processes and their role in national development by organizing lectures, seminars, symposia, workshops and conferences.”*²²⁰ Now contrast this with another university: *“To disseminate legal knowledge by organizing lectures, seminars, symposia, workshops and conferences.”*²²¹ Hard as it is to spot any difference.

Law schools mean well, they intend on promoting knowledge and research. But prior to this, it needs to be understood that knowledge results from sharing a dialogue in a community transcending institutional boundaries. Research is collectively generated in an environment--it cannot be magically unveiled. Majority of the top legal scholars in the country are outside these elite schools, this is a telling sign that it is not research friendly.

iii) Law schools instill a sense of ethical values training students for the bar and judiciary.²²² The elite students see this as a trump card over their non-elite counterpart: “We have a greater sense of idealism about the profession than the rag tag and bobtail!” Sometimes institutions are misled into believing they are cultural and moral custodians. Even here institutes’ generously echo each other’s aspirations--quite literarily. One leading university says: *“To promote cultural, legal and ethical values with a view to promote and foster the rule of law and the objectives enshrined in the Constitution of India.”*²²³ Another one follows: *“To promote*

(Accessed 29th April, 2010); RGNUL, <http://www.rgnulpatiala.org/ourv.html> (Accessed 29th April, 2010); NUALS, http://www.nuals.ac.in/aims_objects.aspx; (Accessed 29th April, 2010).

²²⁰ National Law University, <http://nludelhi.ac.in/AboutUs.htm> (Accessed 29th April, 2010).

²²¹ NALSAR, http://nalsar.ac.in/about_nalsar.html (Accessed 29th April, 2010).

²²² NUALS, http://www.nuals.ac.in/aims_objects.aspx; <http://www.rgnulpatiala.org/ourv.html>; <http://www.nluo.ac.in/background.htm>; (Accessed 30th April, 2010); HNLU, http://www.hnlu.ac.in/home/index.php?option=com_content&task=view&id=19&Itemid=50 (Accessed 30th April, 2010); GNLU, <http://www.gnlu.ac.in/aboutus.htm> (Accessed 30th April, 2010); NALSAR, http://nalsar.ac.in/about_nalsar.html; National Law University, <http://nludelhi.ac.in/AboutUs.htm> (Accessed 30th April, 2010).

²²³ RGNUL, <http://www.rgnulpatiala.org/ourv.html> (Accessed 30th April, 2010).

cultural, legal and ethical values with a view to promote and foster the rule of law and the objectives enshrined in the Constitution of India.”²²⁴ Hard as it is to spot any difference.

Plans to set up institutes need thorough ground work of the educational needs in society and greater imagination. At the moment the competition is in elegance and craft.

Since some of these maladies in planning permeate into the educational process: there is something intrinsically anti-student about the prevailing education and it stems from its unreflective planning and establishment. It is demonstrated that none of these care to mention the “student” or anything insightful to say about “learning.”²²⁵ The heart of an educational experience is that the student and her/his learning must be the core of its concern. However, the absence of even a passing reference to the main stakeholder indicates the degree of care and attention. It is no wonder that a new law school cautions:

ideally placed to learn from other law schools, from their strength and their drawbacks, their success and lapses equally...²²⁶

(b) Doomed Pedagogy

Pedagogy is a mirror of learning. The precondition for this is that the pedagogs must enhance their learning.²²⁷ Pedagogy in law schools suffers from a creative deficit. It is described

²²⁴ National Law University, <http://nludelhi.ac.in/AboutUs.htm> (Accessed 30th April, 2010).

²²⁵ But see NLIU, http://www.nliu.com/about_us_next.htm (Accessed 30th April, 2010).

²²⁶ NLUO, <http://www.nluo.ac.in/background.htm> (Accessed 30th April, 2010).

²²⁷ Amita Dhanda, *The Power of One* as in AMITA DHANDA & ARCHANA PARASHAR, DECOLONISATION OF LEGAL EDUCATION (2009). Dhanda argues that along with change at the institutional level, a simultaneous change is required by the teacher as an autonomous agent. This is a deeply intuitive account of the author’s own experiences.

as Case Law method and Socratic Method.²²⁸ For example, a new university describes: “*The discussion method, a combination of the case law method and Socratic method shall be employed in teaching the subjects. There may also be some lecture classes.*”²²⁹ This section is not a reflection of the practice of law schools, since this requires knowledge of the departmental practice for a sense of class room strategies employed in schools. It only serves as an estimate of the observed pattern. They reveal a preference for borrowing western labels without any critical reflection of local practices. In short, to base all learning on just one or other component is intellectually frustrating.²³⁰

The schools or the legal profession has not had any noteworthy introspection on the teaching outcomes.²³¹ Seldom do we find teachers dwelling on aggregating learning approaches such as auditory, visual, tactile, sign language, group learning, kinesthetic, , in curriculums to suit different learners. Further the different styles of reasoning such as prescriptive, descriptive, analogical, and argumentative. Just as an example, there is no one to ask the question why each student must have identical questions to answer in examinations. Why not learners answer in the form that best suits her individual capacity? The entire point of an education is that each student arrives with unique questions. Further, there are slim numbers of presently teaching academics in

²²⁸ NLSIU, <http://www.nlsrecruitment.in/http://www.nls.ac.in/brochure2008.pdf> (Accessed 30th April 2010); NALSAR, http://www.recruitmentnalsar.org/index.php?option=com_content&view=article&id=49&Itemid=28 (Accessed 30th April 2010); <http://shailaja.blogspot.com/> (Accessed 30th April, 2010).

²²⁹ <http://www.nuals.ac.in/aboutus.aspx> (Accessed 30th April, 2010).

²³⁰ See Bertram Willcox, *A Tribute to Mohammad Hidayatullah*, 16 CORNELL INT’L. L.J. (1983) 279. Wilcox remarks about the success of the British system of lectures in Indian education for producing eminent practitioners and judges (282-283). See also, *supra note* 15, 704-705. The Gajendragadkar Committee Report, 1964, appointed by the University of Delhi recommended the lecture-cum-case method for the development of sociological jurisprudence in a country like India.

²³¹ See M Le Burn and J. Goldring, with V. Nagaraj and L. Corbin *Exporting Australian Education to India: A “Train the Trainers” Workshop for Indian Law Teachers*, 9 LEGAL EDUCATION. REVIEW (1998) 101. A workshop to share experiences of teaching, evaluation and clinical legal education between Australian and Indian law teachers was hosted by NLSIU. See also generally, Derrick Bell & Erin Edmonds, *Students as Teachers, Teachers as Learners*, 91 MICH.L.REV. 2025 (1993).

these institutes writing on nuanced pedagogical challenges.²³² In fact no university has their course lists available on the web site to “disseminate knowledge.” Adding to that, some of them continue to teach courses in the conventional way and out of a single book. And what is more they continue memorizing cases. The lack of understanding the process of learning fails to bridge the class room to the students’ experience.²³³

It is revealing that a pattern of self-discovery flourishes in today’s law schools. Eager students pursue their learning independently. Ironically: no-teaching is sometimes better than over-teaching. It is profoundly explained in a parable of W.E. Hocking, who talks about seeking from experiences:

Since the conviction must be gained by each for himself, the master must not make the matter easy, must not explain. Hence the novice was taught with silence, with ridicule, with blows. And driven from one master, he would take to the great road in search of another, carrying his stick, wearing his straw sandals, begging food and lodging, mingling with all conditions of mankind. Then some day, a chance happening, a casual remark, a song, a bit of nature, and the abrupt illumination took place. It is said that one such novice thereupon returned to his original master, cast himself at his feet, and poured out his acknowledgment saying: “I owe everything to my teacher, because he never told me anything, never explained anything!”²³⁴

The case method and Socratic Method have been influences from the west.²³⁵ Its unthinking application to a country whose problems require life’s experiential learning and sociological insight is a sure misfit. Sands rightly points out that India has its own indigenous

²³² See *supra* note 227.

²³³ Krishnaswamy, observes: “*growth and success of the National Law Universities are filled with hagiographic accounts of the role played by larger than life vice-chancellors and faculty.*” Sudhir Krishnaswamy, *Order...Order*. Indian Express, <http://www.indianexpress.com/news/order....order/448340/> (Accessed 30th April, 2010).

²³⁴ W.E. Hocking, *What Does Philosophy Say?*, 37 THE PHILOSOPHICAL REVIEW, 134 (1927).

²³⁵ See generally Robert Stevens, *Harvard Sets the Style in Law School* (1983) 51-72. Joel Seligman, *Laying the Foundations: The Law School Model of Christopher Columbus Langdell* in THE HIGH CITADEL (1978) 20.

methods of teaching from its diverse mythological and folk tradition.²³⁶ Madhava Menon's push to inject the legal academy with these aspects is surely creditable. It is a fact of legal life that case studies are a significant part allowing students to differentiate precedents. However, the definition of an entire pedagogical approach as case method is an overreach.²³⁷ For instance one former national law school student recalls: "*We were told we would be discussing an issue in the next few days, say defamation, so we would go do our own research on it and in class it would be more of a Q and A and much more exciting.*"²³⁸ So is it a universal learning strategy?

The Socratic Method undoubtedly favours a dialogical approach. It moves away from the lecture method where "*the lecture pumps laboriously into sieves. The water may be wholesome but it runs through.*"²³⁹ However, no one method is an ideal-type. Teaching is deeply intuitive as learning. The Socratic Method is based on questions initiated by the teacher where the teacher plays "The Great Socrates" and her students' react as per assigned roles. It makes the teacher the flamboyant actor and discourages any form of cross-dialogue among students. Jenny Morgan writes that it "silences cooperation."²⁴⁰ Students rarely ever question one another directly. The simple borrowing of the Socratic model is a narrow pedagogical response to a highly nuanced field.

The method is based on self-affirmation: "*There is a correct answer to each question since I know the first and last word of the subject.*" This distances the perception of knowledge from the students. It is a teacher centric model of pedagogy where student participation is extorted by threats or cold silence.

²³⁶ See also *supra* note 47, 510. See also *supra* note 6. Tripathi extensively covers the various pedagogical approaches prevailing in the United States leading to the 1960s'.

²³⁷ http://delhibelly.blogspot.com/2005_11_01_archive.html (Accessed 30th April, 2010).

²³⁸ *Ibid.*

²³⁹ *Supra* note 235, 54.

²⁴⁰ Jenny Morgan, *The Socratic Method: Silencing Cooperation*, 1 LEGAL EDUCATION REVIEW 151 (1989).

Of course, there are seminar courses, and tutorials, offering scope for open discussions. Neither do we suggest for a complete abolition of this model. In the hands of a scholarly teacher this can be productive. Also, it may be useful to replicate adversarial role-playing. However, it becomes an impediment when it is blankly adopted as a singular mode of learning.

This is the same case with the case method. It is without content. There was a time when NLSIU published its case books on law subjects. It sought to infuse professionalism in legal studies. Todd Rakoff and Martha Minow observe: “*The fact is Langdell’s case method is good for some things, but not good for others.*”²⁴¹ Lawyers need to think in variable settings today that surpass “adjudicative facts.”²⁴² A more systematic study of law is required which integrates theory and practice stressing on court independent meanings to problems. In light of extra-judicial dispute resolutions and subordinate legislations: study of law as a body of principles and cases is a more cumulative approach.

The importance of out-of-the-box solutions to pedagogy is urgently desired. Presently aspects of course structure, curriculum, teaching and evaluation are associated with crude mathematical formulas. The tyranny of grades over learning, slavish adherence to a regime all through the duration of 5 years, conservative approaches to course contents alter enthusiasm to learn. There is a routine businesslike approach to these things which moves hostile to learning. More often these changes will have to be introduced by teachers as institutions are not in a position to make suggestions.

(c) What Does this Hold as an Idea about Legal Education?

²⁴¹ See Todd Rakoff & Martha Minow, *A Case for Another Case Method* (unpublished manuscript on file with author).

²⁴² *Ibid.*

A narrowly tailored education psychologically conditions a student that she is never good enough. That in the pool of competition and comparison she is insufficiently equipped. There is a lack of sensitivity because all judgments about learning standards are merely self-reinforcing. You are good so long as *I* redeem you. It approximates a closed circuit of communication.

The current model of legal education is a *business school approach*. It prescribes uniformity and standardization of an unimaginative kind. This section discusses the business school approach of legal education that is pursued under the cloak of justice oriented education. Two strands will be highlighted: the CLAT and the corporate recognition of law schools. Both result in elite institutions becoming legal brand ambassadors.

CLAT preserves the elite nature of the club. The idea of an “entrance examination” itself is somewhat benighted. The purpose behind this extraordinary measure was so that candidates writing entrance exams need not be put under any inconvenience of giving the test at multiple centers. This was a one stop answer to all problems just as it exists in elite engineering and management schools of the country.²⁴³ But legal studies require great amount of social imagination than engineering or business, so replicating the same type is undesirable.

The exam consists of 200 marks and questions range from general knowledge to elementary mathematics.²⁴⁴ The order of allotment of schools goes according to the preferences given by the candidate based on the number of marks secured which decides the student’s ranking. It is a centralized examination system deciding allotment of seats from a choice list [make sure to tick the right one!]. Here is where everything is completely wrong and what can be

²⁴³ See Joint Entrance Examination-2010, Indian Institute of Technology, <http://www.iitd.ac.in/jee/> (Accessed 20th August, 2010); CAT Indian Institutes of Management, http://www.catiim.in/test_centres.html (Accessed 20th August 2010).

²⁴⁴ CLAT, <http://www.clat.ac.in/webpages/Pdf2010/CommonLawAdmissionTest-2010.pdf> (Accessed 1st May, 2010).

termed as the business school approach because education must be a study the condition of society.

CLAT removes subjectivity in admissions by delegating authority to centralized administrators. The ingredient to restrict admission to successful answerers of questions, removes the scope of having someone interesting, plain, predictable, different, adventurous, background of adversity. It is no surprise that test centers to decode CLAT have bourgeoned as a profitable venture making everyone happy in the bargain.²⁴⁵ In fact, stories are that many young law teachers are given tempting offers to teach at these tutorials owing to its cash richness.

CLAT is for a specific demographic in the country. This can be gathered from the fact of its heavy favouritism toward the English language and makes no accommodation for vernacular languages. Its whole claim for being national is defeated here. It is taken that it may be a good idea to avoid physical inconvenience to applicants, but what about intellectual barriers? Then consider this:

If there is a tie between two or more candidates in the CLAT examination result the same shall be resolved in the following manner in the order provided (1) Higher marks in section on Legal Aptitude/Awareness of the CLAT examination. (2) Elder will be preferred (3) Draw of lots.²⁴⁶

It is a puzzling stroke of genius that even in case of a tie [“wait ... this is not a lottery!”] it does not consider personality, background, and development of the student. It robs the autonomy to

²⁴⁵See <http://www.lawentrance.com/>; <http://www.successcds.net/>; http://www.winentrance.com/law_entrance_exam/clat/; http://www.clat.in/index.php?option=com_content&task=section&id=6&Itemid=8;; [http://ezinearticles.com/?Career-Option-For-Common-Law-Admission-Test-\(CLAT\)&id=4058833](http://ezinearticles.com/?Career-Option-For-Common-Law-Admission-Test-(CLAT)&id=4058833); <http://www.infibeam.com/Books/info/rituparna-mazumdar/clat-common-law-admission-test-entrance-exam-clat/9788183553278.html>; <http://whois.domaintools.com/lawentrance.com>; (Accessed all 1st May, 2010).

²⁴⁶ <http://www.clat.ac.in/webpages/Pdf2010/CommonLawAdmissionTest-2010.pdf> (Accessed 1st May, 2010).

admit candidates who can be diverse—the point that diversity is inherently educating is lost.²⁴⁷

This establishes the unmistakable institutional homogeneity as a consequence.

The university conglomerate is gaining speed to corporatize the ends of legal education. Law schools mimic starry eyed placement agencies. Increasingly institutes must translate their achievement in the language of money. See one leading university declare:

[] is being recognized as a ‘market facing law school in India’ by the industry experts. The students of [] have, with their hard work, sound legal knowledge and eagerness to grow, attained some of the best placements in India and abroad. The students have been recruited by national regulators, senior counsels, reputed national and international law firms, corporates [*sic*], and financial institutions. The pay packages offered by the national law firms range between Rs. 4.8 lakh to Rs. 14 lakh per annum, whereas, the international law firms have offered packages between Rs. 28 lakh to Rs. 30 lakh per annum in the previous year. The pay packages of corporates range between Rs. 4.5 lakh to Rs. 11 lakh per annum for the previous year.²⁴⁸

It is commonplace to applaud financial incentives, but it is another thing to be entranced by the market altogether. Law universities differ from other colleges because of the patronage from commercial sectors to its graduates. The nature of involvement varies from funding events to conducting joint seminars.²⁴⁹ Meanwhile graduates clearly enjoy a superior position compared to their counterparts in other colleges. Universities compete in a small space for having the best placements. Likewise national and international law firms compete with each other for a pound in the flesh.²⁵⁰

²⁴⁷ See generally list of top school choices among CLAT toppers <http://www.legallyindia.com/20100531901/Law-schools/93-per-cent-clat-toppers-opt-nls-nalsar-nujs-next-in-age-old-pecking-order> (Accessed 12th June 2010).

²⁴⁸ NLU, <http://www.nlujodhpur.ac.in/placement.php> (Accessed 1st May, 2010). See also salary packages NLSIU, <http://www.nlsrecruitment.in/NLSIU%20RCC%202010%20Brochure.pdf> (Accessed 1st May, 2010).

²⁴⁹ Legally India, <http://www.legallyindia.com/20100419714/Mooting/nls-space-moot-defence-dreams-burn-up-in-finals-nujs-climbs-4th-in-mpl> (Accessed 1st May, 2010).

²⁵⁰ Legally India, <http://www.legallyindia.com/20090909178/Law-schools/Amarchand-finishes-2010-recruitment-run-at-NUJS> (Accessed 1st May, 2010).

Law students move into corporate careers as default options.²⁵¹In a survey conducted by one leading university, its early batch in 2004 had 6 students in law firms [on-campus recruitment?] this figure in 2008 was 31.²⁵²Further, students on average had 15 months of work experience 60% at law firms, 20% litigation and dispute resolution, 10% higher judiciary, and 10% at NGO's.²⁵³

There is a profiling by both schools and the global corporate sector to recognize one another as suave. The main recognition of the schools elitism is from the fact that it sponsors important number of talented graduates in the highroads of commercial success. Its leg-up is the benefits of an intelligent student peer-group and international eminence. However, recall the recent strike by students from an elite school as fallout from the deteriorating standards: bad teaching, lack of basic requirements, corruption, and nepotism.²⁵⁴Whereas it is the commercial sector that contributes greatly in creating national law universities.

We intended to raise a concern about rethinking the need for an alternative legal education which commits to the idea of freedom and discursive exchange. The practice of freedom is indispensable to learning. A successful academic institution walks those extra miles to provide students ways to unlock their potential in relation to the problems of society.

6. CONCLUSION

²⁵¹Recruitment brochures vividly capture the city metropolis, campus, and student. See NALSAR, <http://recruitmentnalsar.org/files/Brochure.pdf> (Accessed 1st May, 2010); NLSIU, http://www.nlsrecruitment.co.cc/RCC_2009_Brochure.pdf (Accessed 12th June, 2010); NUALS, <http://www.nualsccr.org/nuals2009.pdf> (Accessed 12th June, 2010); NLIU, <http://www.nliu.com/NLIU%20Brochure.pdf> (Accessed 12th June, 2010); GNLU, <http://www.gnlu.ac.in/Recruitment%20Almanac%202009-10.pdf> (Accessed 12th June, 2010).

²⁵² NALSAR, <http://recruitmentnalsar.org/files/Brochure.pdf> (Accessed 1st May, 2010).

²⁵³ *Ibid.*

²⁵⁴ See Indian Express, <http://www.indianexpress.com/news/top-law-school-shut-after-students-strike/434671/2> (Accessed 1st May, 2010).

Learning is about inventions and reinventions. It is a supple process displaying a back and forth-type scenario. Learners navigate from the “general to the particular” and again from the particular to the general.²⁵⁵It postulates a discursive process and takes utmost care not to abandon the learner. The central purpose is that the process must ultimately strengthen not weaken a student. It underscores that to impart learning institutions must carry the good of developmental learning in their own organizational pedigree.

This essay conveys something simple: empower students as learners. Ideas must rank above institutions, administrators, and teachers. There needs to be an organic growth in law schools away from its homogeneity. It can sometimes translate into: obscurantism, and power and authority. The immediate requirement is elementary educational reform that concentrates on learning outcomes. Recall Sands observing the need for “learner’s helper.” Such reform must resonate: freedom at the heart of learning.

²⁵⁵ See *supra* note 241, 103.