

INDIA AT 2047: BUILDING THE FUTURE OF LEGAL EDUCATION AND LEGAL PROFESSION

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When Indians attained Independence from the British on 15th August 1947, we embraced many significant and influential ideas of transformative change that any society should aspire when it embarks on a new beginning. These are – democracy, constitutionalism, entrenched rights and freedoms, a parliamentary form of government, free and fair elections, universal adult suffrage, and constitutional prohibition of all forms of discrimination. The adoption of the ideas was ambitious, aspirational and truly transformative.

A question that is rarely asked is what kind of individuals were involved in India's fight for independence, who laid the foundations of the new Republic committed to human rights and fundamental freedoms, who are those individuals who had the bold vision to establish a constitutional democracy? They included Mahatma Gandhi, Jawaharlal Nehru, Rajendra Prasad, B.R. Ambedkar, Sardar Vallabhai Patel, Dadabhai Naoroji, Sundernath Bannerjee, Madan Mohan Malviya, Motilal Nehru, Bal Gangadhar Tilak, C. Rajagopalachari, Lala Lajpat Rai, C.R. Das, Saifuddin Kitchlew, Bhulabhai Desai, Tej Bahadur Sapru, Gobind Ballabh Pant, Kailash Nath Katju and many more. The unique aspect common to all of them, and many others who led the freedom moment was that

they were all lawyers committed to the cause of freedom, democracy, rule of law, human rights and civil liberties, and above all, to the cause of justice. They were lawyers who gave time, money and ideas and made several professional and personal sacrifices to be part of the freedom movement. They believed in the cause of justice and spent their life in the pursuit of the ideals which brought us to 1947.

As India embarks on the journey of 100 years of freedom from 1947 to 2047, 25 years from now, the main thing to focus is the importance attached to legal education and the development of the legal profession. There are five major challenges, each of which can be addressed by a determined effort to pursue the future with a view to attaining excellence, endurance and eminence in legal education and legal profession.

1. Addressing the Mediocrity of Law Schools

We have over 1,700 law schools in India. The Bar Council of India (BCI) has recognised the need for reform in legal education, which has become urgent and critical. We are producing nearly 1,00,000 lawyers every year who graduate out of these over 1,700 law schools. The speed and scale in which we are producing law graduates is poorly matched with the quality of education, training, capacity building and opportunities that are available for the law graduates. A fundamental reimagination of the law school ecosystem is essential for us to move towards any reform or progress in this effort. All stakeholders need to be involved in this process including lawyers, judges, law academics and others. But this effort needs to be led by the judiciary working closely with the BCI. Mediocrity of the large section of Indian law schools cannot be addressed only by more and more focus and resources for the National Law Schools and the elite private law schools. We need to embrace the idea of democratisation of legal education by ensuring minimum standards of excellence in every law school, regardless of its private or public character or its rural or urban institutional presence. The National Education Policy (NEP) has emphasized the importance of quality in teaching and research in the pursuit of excellence in higher education. However, this aspiration to pursue excellence cannot be a privilege of only few elite institutions, but ought to become part of the institutional goal of every law school in the country.

2. Preparing the Future of the Legal Profession

The institutionalized mediocrity that is prevalent in many of the law schools has its direct and corollary impact on the legal profession. The reality of the legal profession unfortunately is marred by a large number of poorly educated and inadequately trained lawyers who are involved in the practice of law. Their own plight is unfortunately bordering on impoverishment, with no vision or imagination for participating in the effort to build a world-class legal system for India. Developed societies have taken enormous efforts to build the quality standards of various professions with strong commitment to three important values – excellence, endurance and eminence. Our aspiration for the India of 2047 ought to be based upon a reimagination of the legal profession. We need to recognise the importance of excellence based on professional standards that are essential for being a responsible lawyer. There is a critical need for building endurance in the legal

profession as lawyers are important voices of the civil society. Their contribution to the legal profession will be strengthening and improving the functioning of the democratic institutions. They ought to be working towards achieving seeking transparency and accountability and in that process promoting justice, while upholding the public interest. They should be speaking truth to power and working towards protecting the rule of law.

3.Improving the Selection of Judges

Contemporary focus and significant attention has been given to the selection of judges in High Courts and the Supreme Court of India. However, it is rather unfortunate that little attention is paid towards the development of the justice system in its entirety, which to a large extent will depend upon the qualifications, competence, commitment and integrity of the judges in the subordinate courts of India. In fact, the word, “subordinate” is offensive and pejorative and we need to change this so that the significance of the work undertaken by these judges are recognized by the state and the society. As of May 2022, India had a sanctioned strength of 25,628 judges. However, we have only 23,790 judges of which 34 are in the Supreme Court; 1079 in the High Court and 22,677 in the Subordinate courts. We will not be able to recruit good judges unless we work towards reforming legal education. There has to be innovative approaches towards curriculum development and course structuring that will provide a sharper and specialized focus towards training and capacity building for judges. The current law curriculum in the form of one-size-fits-all model is woefully inadequate for building institutional capacities for the development of an enlightened and efficient judicial system. The dramatic changes in law and the social expectations of the justice delivery system, the advancements in science and technology and the new developments in the fields of public and private law require a new and imaginative approach to legal education, especially for the judges. This effort should lay emphasis on imparting essential judicial skills through courses on judicial process, juridical studies, judicial ethics, statutory interpretation and judging.

4.Inspiring young people to study law

As a society, we need to recognize the role and importance of lawyers. There is a need for inspiring young people across the country to aspire to study law. The study of law need not be linked to the aspiration of students to become lawyers. While several of the law graduates may choose to enter the legal profession, the study of law in all its forms and manifestations can be independent. The pursuit of the study of law should be undertaken with a view to building enlightened citizenry with a higher degree of civic consciousness for achieving responsible citizenship. Democratic societies can be nurtured only through ordinary people believing in the ideals of the rule of law. We need to focus on access to legal education not only as an aspect of the study of law for becoming a lawyer or a judge, but to pave way for studying law as a compulsory subject across all aspects of study in primary, secondary and tertiary education. Law, I believe, is the new liberal arts and we need to place its importance in the larger context of education by providing opportunities for young people to study and understand law as a social institution. Law ought to become a foundational course of study in all disciplines from Engineering to Medicine; from

liberal arts to humanities, including in the wider gamut of social sciences. This will also help achieve the objective of NEP to break down the barriers of knowledge and to promote interdisciplinary and multidisciplinary learning in our education ecosystem.

5. Recognising the Role of Public Interest in Law

Law and legal institutions are involved in building the social structure and norms of the society. They are also involved in establishing rules and regulations for governing the relationship between state, private actors, individuals and the society at large. Law is equally engaged in dispute resolution and conflict management with a view to solving problems in society. In pursuing this role of law, we need to recognize that legal education and the legal profession need to keep the public interest as paramount. The primacy of public interest ought to be deeply embedded in the study of law. Lawyers whether they work in the private sector or they are engaged in not-for-profit careers are mindful of the larger social responsibilities attached to the legal profession. The next 25 years of our effort to infuse these values into legal education will shape the future of the legal profession. The pursuit of public interest in law should be differentiated from public interest lawyering. The nature of law as a social institution needs to be recognized by all actors involved in the law, who have an inherent responsibility towards promoting the common good. Public interest is about the pursuit of common good and ought to be undertaken in both public law and private contexts.

The Way Forward: Continuing Legal Education for Lawyers and Judges

One of the most neglected aspects of the legal education and the legal profession is the near absence of any serious effort to pursue continuing legal education for lawyers. There is an urgent need for a National Lawyers' Academy and State Lawyers' Academy that will focus entirely on training and capacity building for the lawyers. This ought to be given the highest priority by both the Central Government and State Governments. The sad reality today is that we have nearly 50 crore cases pending in Indian courts. This is despite the fact that our lawyers and judges across the board work very hard and fulfill their responsibilities beyond the call of duty. However, we need to address the systemic barriers and institutional sclerosis that has crept into legal education and the legal profession that has made continuing legal education a non-serious and non-academic endeavor. While the judicial academies at the national and state levels have made marginal impact as far as training of judges are concerned, their functioning in an isolated manner with little or no collaboration with academic institutions, law schools and universities have made them somewhat less relevant to the larger scheme of building intellectual capacities for the judges.

We need to work towards creating concerted efforts and collaborative initiatives with law schools and universities for developing robust continuing legal education programmes for lawyers and judges. Law schools ought to become the site of judicial training and capacity building by making use of their competency in higher legal education and research, their

mastery over specialized branches of law, and access to digital and disruptive technologies. This will help in the ultimate transformation of the legal profession in India to ensure excellence, endurance and eminence by 2047.

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