

The continuing ambiguities in postgraduate legal education in India

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The state of legal education in the country has historically stood at the mercy of multiple regulatory agencies – the university to which the college is affiliated, the state under whose law the college runs, the University Grants Commission (UGC) and the Bar Council of India (BCI).

However, it is the BCI that has enjoyed an upper hand, specifically by virtue of Section 7(h) of the Advocates Act, 1961. The Section allows the BCI to both promote and lay down standards of legal education in the country in consultation with the universities and the state bar councils. Since the UGC's power to regulate higher education is general, the BCI has usually stepped in to fix the ambiguities.

Challenges to the role of the BCI have largely been raised on three counts – first, the lack of both consultation and representation from the academia in its decision-making processes; second, the persistent argument that the purpose of legal education is larger than a mere service to the courts; and third, that in its attempt to regulate legal education, the BCI oversteps its mandate under the Advocates Act. In all these challenges, the core argument remains the same - that the regulation of legal education must be done by some other body; in most instances, the UGC.

In all its magnanimity, the National Education Policy 2020 (NEP-2020) pays mere lip service to legal education. It nowhere gives the UGC the power to regulate the subject-matter.

The BCI Legal Education Rules, 2020 (2020 Rules) notified on January 2, 2021, allow the BCI to take hold of the entire spectrum of legal education – undergraduate, postgraduate, and Ph.D courses. While doing so, it also attempts to fix the challenges highlighted above, by first, creating a special sub-committee giving due representation to academia under its Legal Education Committee (LEC) to implement the 2020 standards; and second, by establishing the India International University of Legal Education and Research (IIULER) at Goa. The success of IIULER is premised on the shoulders of the National Law School of India University (NLSIU), Bangalore, a greatly successful venture of the BCI.

These developments are best understood in the BCI's press release of August 12, 2019, where it lamented the state of legal education in the country and the lackadaisical approach of the other regulating agencies, including the universities and the UGC. It thereby proposed a moratorium of three years on the opening of new law colleges in the country.

The 2020 Rules, however, fall short of clarifying both the nature and the fate of postgraduate legal education in the country. While the 2019 press release acknowledged that only approval/recognition of LL.B. degree is within its domain and that LL.M. and Ph.D. degrees were beyond its control, the 2020 Rules creatively extend the power of the BCI to regulate both LL.M. and the Ph.D. It seems that the BCI stepped in to plug the gap which the NEP-2020 left.

Rule 6 of the 2020 Rules abolishes the one-year LL.M. program in favour of a two-year LL.M. Some of the related issues have been contested through a string of petitions, including the one by the Consortium of National Law Universities, before the Supreme Court arguing that the UGC, and not the BCI, is the appropriate body to regulate the LL.M. degree. The 2020 Rules were proposed to be brought into force from the 2022-2023 academic session. However, pending any decision on merits, the case has been listed for hearing by the Court. Even IIULER has postponed admission to its LL.M. programs, which were scheduled to commence soon. All in all, the current situation is that has not been any specific notification about the implementation of the 2020 Rules, and there is no prohibition as to their application.

The additional issue of Ph.D. in Law, which has become by far the most affected post the NEP-2020 and the 2020 Rules, has also been largely ignored so far.

The UGC Regulations, 2022, in line with the NEP-2020, allow admission to Ph.D. courses after four years of undergraduate study. The 2020 Rules, however, allow admission to Ph.D. in Law only after an LL.M. of two years – at least three years more than any other stream, which may extend to four or five years depending upon the nature of the graduate degree before LL.B.

Additionally, where the four-year undergraduate degree would enable a candidate to pursue Ph.D. directly in any other stream (with 75% aggregate), a graduate with a five years (integrated BA/BBA/BCom LLB), six years (three-year Bachelors with LL.B.), or even seven years (four-year Bachelors with LL.B.) of study will not be able to take admission in Ph.D. in Law.

Further, it seems that none of the candidates – either the five-year LL.B. or six-year LL.B. - would be able to take direct admission in Ph.D. under the UGC Regulations, 2022 in any other stream due to the non-fulfilment of the four-year study requirement.

Finally, the 2020 Rules do not specify the length of the Ph.D. degree. While the minimum period provided is three years, it seems that the maximum period is left at the mercy of other regulating agency – college, university or the UGC. This takes us back to square one, yet again.

It is very unfortunate that the state of postgraduate legal education in the country remains largely ambiguous. A bigger problem is the effect that it has on the students who decide to study further. Where the 2022 Regulations, as many have argued, expose ill-trained students to higher demands of research, the 2020 Rules extend the learning process to probably its last limit. With additional ambiguities in place, the student is left in the lurch.

There has been very little research on the mental, psychological, motivational and social experiences of doctoral students. Nature Journal's global survey (October 2022) reveals that the postgraduate learning, especially the Ph.D. programmes, poses widespread mental challenges for students, exposing them to high stress levels and struggles with anxiety or depression.

It is high time that we find solutions to the stalemate that postgraduate legal education in the country finds itself in. The purpose of the learning of law resides in its social relevance, and if we end up forgoing that incentive, there would be very less motivation for the younger generation to pursue its study. The legal fraternity must act now to save the profession from its slow death.

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