LEGAL EDUCATION, RESEARCH AND PEDAGOGY– IDEOLOGICAL PERCEPTIONS

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BY THREE methods we may learn wisdom: - First, by reflection, which is noblest, second by imitation which is easiest; and third by experience, which is the bitterest (Confucius).

I Legal education – Prologue

The purpose of legal education is two fold: One view favouring that legal education should be treated as a part of liberal education; the other view opining that it should be treated as professional education. As professional education, legal education equips law students for filling different roles in society, and discharging various law jobs, the range and scope of which are always expanding in the modern democratic society, e.g., as policy-makers, administrators, lawyers, law teachers, industrial entrepreneurs etc. Accordingly, it is realized in modern India that legal education ought to have breadth, depth and width.

Law, legal education and development have become inter-related concepts in modern developing societies which are struggling to develop into social welfare states and are seeking to ameliorate the socio-economic condition of the people by peaceful means. The same is true of India. It is the crucial function of legal education to produce lawyers with a social vision in a developing country like India.

According to Arthur von Mehren, before Independence the Indian legal profession and legal education had not developed "a rationally functional approach to the problems of law and legal order" and the "Indian legal education inevitably tended to evolve in patterns that emphasized rote memory. To impart information – not critical understanding – remained the goal of legal education". Consequently, when India gained independence, "its legal profession and legal teaching were thus not able to play the role they ought, by western standards, to have played.

There is now a deeper consciousness not only among the law teachers, judges and the enlightened professional lawyers, but also among others,

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that law has to play a crucial and vital role in a democratic society, that law has to serve as a vehicle of economic and social change in a developing society and that democracy and respect for law and rule of law will be strengthened in India by promoting legal education and research in law. It is the desire of the people that lawyers should play an active role in rebuilding the Indian society.

The age of positive jurisprudence having passed one is now persuaded by the intellectually liberating potential of inter disciplinarity. The most intellectual contributions relate to emergent challenges of globalization and the 'new' world order, the revival of Kantian 'law of peoples', a Benthamite "general" jurisprudence, a Derridean cosmopolitan 'politics of friendship' and so on.

The politics of legal education and the economics of law practice should be subjected to academic scrutiny if the legal profession in India has to be saved.[1] Justice must become central to the law curriculum and community-based learning must give the desired value orientation in the making of a lawyer. Increased recognition of the limitations inherent in the juridical ideology traditionally perpetuated within the legal education has led to widespread modification of the law school curriculum in recent years. While analysis of law as a parasitic discipline celebrates a marked move away from doctrinarism and towards more pluralist approaches in legal education and research to the extent that the critical courses such as law, gender and poverty etc. are restricted constantly in the minds of both students and academics to the peripheral sphere of the non black letter and therefore the less legal, they do indeed run the perpetual risk of reinforcing rather than challenging the legitimacy of dominant juridical ideology.

II Legal education and ideology

Education is a means by which knowledge is transmitted and skills developed. Beneath what appears to be a relatively simple statement exists a complex matrix of pedagogic and cultural practices that inform, shape and give effect to what information is chosen and how it is understood, transmitted and received. University education in its widest sense is a whole-person process, where the focus is not so much on the teaching and learning of specific skills or training as it is on the cultivation of personal autonomy, intellectual independence and the development of life-long critical perspectives. At the very least, university education ought to strive to prepare people for a changing world by promoting the intellectual and analytical

1. N.R Madhava Menon, "Halting Progress of Legal Education" *available at* Wikipedia the new Encyclopedia at *http://mail.google.com/mail.*

skills that will assist them in assessing choices about their lives. Thus, the influence of education extends far beyond the classroom to all aspects of a person's life.

Legal education has long been the subject of inquiry into its purpose and methods and the landscape of legal pedagogy reflects the diversity of interest it has generated. Recently there has been a focus on legal education within a wider knowledge context, examining the teaching, learning and research in law as part of the overall project of developing analytical and conceptual skills as exemplified in the whole-person process of university education.

Law exists not only as a form of concrete expression found in statutes and common law and as commentary in legal texts and journal articles but also as the expression of the approved rules of conduct which have been 'agreed upon in the proper manner by the proper persons in power. What counts as the 'proper' mode of law-creation is, of course, itself a matter in the control of the powerful'. Included in this definition of law is judge-made law, since judges and the judiciary are 'institutionalized as executive agents of social power'. In that they serve as adjudicators and arbitrators of legal rules and disputes. What is significant about law as an expression of the social rules of conduct is that it is a joint expression of power and ideology:

> The crucial question about the origins of law always relates to the power bloc behind the legislation; the nature of the problem this bloc wants to solve, the ideologies in which this problem is perceived and understood, and the political opposition to the proposed legislation. Law is a hybrid phenomenon of politics and ideology, a politico-ideological artefact'.

It seems reasonable to think that the same subconscious assumptions about the world and the way it should influence how law lecturers understand law and in turn teach it to students. Teaching is not the value-free transmission of ready-made knowledge; rather, because it is imbued with the teacher's own experience, perspectives and understandings, it is the creation of particular form of knowledge. Education – 'as a socio-cultural structure and process is, in all its various forms, intimately connected with the production and dissemination of foundational knowledge and therefore with the re-creation and reproduction of … differential valuations and hierarchies of knowledge….'

Education must be understood as a social process that is steeped in cultural signifiers and is neither objective nor content-neutral. The material one learns by, understands by and teaches by is affected by one's own ideological and pedagogic influences and assumptions, just as the students

are similarly affected. Once a person becomes aware of these phenomena, these can become powerful teaching and learning tools and resources that allows him to more closely examine, engage and connect with people and to become a part of rather than apart from the world around him. Moreover, in teaching law in a cross-cultural and cross-experiential fashion we make it matter to all our students. This, ultimately, reaches to the fundamental principles of higher education. One must ensure that students develop those analytical, conceptual, research oriented and other intellectual skills to enable them to make better choices in their lives, to become better citizens and to determine their place in the world and their relationships within it. At the same time one should be committed to legal education that is professionally as well as socially and culturally relevant.

These goals are not incompatible. Indeed, they embrace the idea that law be taught within the context of the society in which it operates. It is not difficult to contemplate teaching law which integrates differing perspectives and thereby challenges the perception of law as a single monolithic expression of social rules. In doing so one also more accurately reflects the reality the students experience. Additionally, one also grants them a greater opportunity to take responsibility for their own learning, using material and information that are more meaningful and relevant to them. University and legal education should be intellectually stimulating, horizon-expanding and participatory: something that matters for everyone.

A particularly notorious debate between Peter Gabel and Duncan Kennedy, titled 'Roll over Beethoven', which was published in 1984, provided a vivid illustration of the rival positions which emerged within critical legal studies and which remain largely unresolved, perhaps by definition unresolvable.[2] Gabel and Kennedy assumed these very different, indeed polar, positions within CLS scholarship: Whilst Gable advocated some form of reconstructive enterprise, Kennedy maintained a more radical and uncompromising position determined to concentrate on 'trashing' liberal legalism. Thus, as the debate revealed, for Gable critical project was directed towards making law better approximate 'experienced reality'. The 'human condition' is one of 'fundamental contradiction', and law must acknowledge this whilst reflecting the need for individuals to 'overcome alienation' from society. The sense of community which must be inculcated into previously alienated individuals will be realised by a crucial moment of connectedness, a 'moment of describing existential reality at the level of reflection', which Gabel termed 'intersubjective zap'. At the same time, as reinvesting a philosophy of self, Gable, like others such as Roberto Unger, wanted to effect a complementary revision of legal theory and practice.

2. Hunt 521(1990).

In his more recent writings, Kennedy has advocated a rather quieter strategy, preferring to 'undermine and entice', rather than engage in anything more confrontational.[3] It is certainly true that much of the zeal that so fired the 'crits' during the 1980s appears to have passed. As Peter Goodrich suggests, the critical strategy now appears to be one of nurturing intellectual 'sleepers' in law schools, subversive radicals, who 'await the twenty-first century night when under cover of darkness they will crawl out of the belly of the beast'.[4] There is an ironic edge to the observation. But it remains an intriguing thought, and it might just prove to be the more effective strategy after all. For it is certainly true that law schools retain their enormous, and disproportionate, influence in modern society.

The Japanese legal education system is driven more by examination than by formal schooling. The profession of barristers, known as *bengoshi,* is highly regulated, and the passing rate for the bar examination is around three percent. Prospective attorneys who do pass the examination must take it three or four times before passing it, and a number of specialized "cram schools" exist for prospective lawyers. After passing the bar exam, prospective barristers undergo a one-year training period at the Legal Research and Training Institute of the Supreme Court of Japan. During this period, the most capable trainees are "selected out" to become career judges; others may become prosecutors or private practitioners.[5]

III Research objectives – Retrospect and prospect

Indians in their cynicism have continued to ignore both the treasure and the methods that helped their predecessors in their accumulation of knowledge. The obvious reference is to WTO and IPR. In a number of ways they are uniquely placed. Like China they too are a living civilization and like the Japanese and the Chinese they should also be pragmatic. Their contributions to human progress are not negligible as historical documents endorse this statement.

Research has its functions and uses. One conducts research either to enhance the efficiency of the system, increase the volume and quality of information, to add on to what already exists or to create material conditions of comfort. In other words, research has got to be meaningful. Research is purposive and it has definite goals. It is either basic (also called pure) or instrumental or applied. Most of the basic research is serendipity. The

3. Kennedy 340(1997).

4. Goodrich 974-75, 982 (2001).

5. Legal Education (General) *available at* Wikipedia, the free encyclopedia at *http://mail.google.com/mail.*

fundamental or basic research is not very common. It is also time consuming and very expensive. Examples in question are researches in the area of space, superconductivity, nano-technology and stem cell technology.

The major problem that India is facing is in the IPR regime and the steps that India needs to take to protect itself against the economic exploitation by advanced countries of the west. It is already facing numerous problems in agriculture and health-related researches including mapping of genes, production of genetically modified seeds, cloning, robotics, embryonic stem cell technology, skin cells to stem cell technology and techno-science, etc.

Ancient Indians defined knowledge to belong to two types: *Apara vidya* (lower knowledge) and *para vidya* (higher*)*. Somehow these distinctions continue to be valid even today as well. *Apara vidya* is a kind of knowledge, which seeks to understand the apparent phenomenon of existence externally, by an approach from outside, through the senses and the intellect. This is how one acquires lower knowledge. The lower knowledge constitutes all human knowledge acquired through books or experiments. Even the *Vedas* fall in this category since they are not themselves the direct experience of the self and of the eternal that is beyond all beings. *Para vidya*, is the knowledge, which seeks to know the truth of existence from within. This mystic knowledge does not follow any of the well-known steps of research. Indian mystics continue to talk of *samadhi*, the awakening of *kundalini, yogic mudras* etc. that yield definitive results.

Three types of knowledge Indians have eventually developed. The first one is *metaphysical* or *intuitive knowledge*. One need not bother with this form of knowledge because it is a matter of individual experience and consciousness. The second form of knowledge is *rational or logical knowledge*. India happens to have a vast body of literature in this field and interestingly it is far advanced than the west. It developed a logical method or reasoning called '*vitanda*.' Second was the development of *sastras* or researched knowledge. This was called rational knowledge. The development of logic in *Nyaya* or *Mimansa* philosophies is the typical product of that age and effort. It is this phase of development that came to its eventual fruition in the philosophical contributions of Nagarjuna and Dharmakirti. A glimpse of their logic can be witnessed in *Milindapanha* (the dialogue between King Mahendra and Nagsena).

Then came the third, *experimental* sciences. This form of knowledge was no descent but a step towards progress. This gave us some of the greatest scientists and physicians. The astronomers, mathematicians, physicians etc. are the product of this knowledge. William James recorded: "From the Vedas (ancient Indian scriptures) we learn a practical art of surgery, medicine, music, house building under which mechanized art is

included. They are encyclopedia of every aspect of life, culture, religion, science, ethics, law, cosmology and meteorology."[6]

In the 7th century A. D., Kumaril Bhatt developed methods of research for discovering, creating and improving knowledge. He defined in the typical aphoristic style the steps one must follow in research. These steps are common to both social as well as physical sciences. The aphorism is: "Vishayo Vishaaschaiva purvapaksha stathotaram/Niranayaishchi panchang shashtradhikarana smritam." In other words he declared that researcher ought to remember five steps in writing a *sastra.*

The first step was doubt/identification of a problem. The second was review of existing literature or the establishing of the ground for conducting research or defining grounds why research had become imperative. Thereafter he, like Hegel, proposed dialectical method for arriving at the truth. The researcher has to propose *purvapaksha* or the arguments against the propositions. Then he must follow it up with *uttarpaksha* or offer answers to each of the grounds raised in the earlier proposition. The result has to be a synthesis or the final decision. It should be clear now that modern researchers too follow the same steps. Here is the latest version of the steps developed by an Italian researcher named Carlo Lastrucci. His steps are (i) formulation of the problem; (ii) surveying related literature; (iii) preparing research design; (iv) fixing the size of the sample; (v) data collection; (vi) interpretation of the data; (vii) verification of the interpretation or rejection of the hypothesis and lastly (viii) preparing research report. For conducting empirical research Indians need not borrow all tools from the west instead they can compare the aforementioned steps and draw conclusions particularly for empirical research in law and related disciplines.

Knowledge like truth is not easy to cognize. One may agree with Jayanta, an Indian thinker of *nyaya* school, that knowledge is a mode of *buddhi*, which transforms itself into the shape of the object it cognizes.[7]

Hypothetical reasoning is an intellectual act, which contributes to the ascertainment of truth by means of adducing logical grounds in favour of one of the alternative possibilities when reality is not known in its actual character. This type of reasoning can or might not help resolve indecisiveness. This reasoning is also of five types. (i) *atmasraya* is an argument that is self-dependent in respect of genesis, subsistence and cognition. E.g. A is the cause of B. Here B must be different from A, because the cause is different from effect. (ii) *anyonyashraya* is a mutually

6. D. P Chattopadhyaya, *Science and Society in Ancient India.*
7. R. P Singh,"Research, Meaning, Functions and Progress" (2005 University News).

dependent argument. Such as A depends on B, and B depends on A. (iii) *chakraka,* here the argument is circular in nature. E.g. A requires B, and B requires C, and C requires A. (iv) *anavastha* is the regression *ad infinitum*. E.g. If we explain A by B, and B by C etc. we can go on doing so without explaining anything. (v) *reductio ad absurdum* or *tandanyabadhitaprasanga*. It indirectly proves the validity of the argument by showing that the contradictory of its conclusion is absurd. This may be done by opposing the contradiction of the conclusion by means of some fact or by applying some universal law. If the contradictory be false the original conclusion must be true. Compare Wambaugh's theory of ascertaining ratio decidendi of a case which seems to be similar to this.

Error or *viparyaya* — when any object is presented in a form which does not belong to it, it is a case of error or illusion. Sky-lotus is one such example.

The nature of *prama* (valid knowledge) will be of immense use for teleological research in law. Valid knowledge has two-fold characteristics of truth and novelty. In this regard all Indian philosophies are common. Perception, inference, comparison and verbal testimony are commonly accepted as four forms of valid knowledge.

It might interest some law students to go through the following configuration and see how they are placed and their utility in legal research.

Lokayata	perception
Buddhism	perception, inference
Vaisesika	perception, inference
Samkhya	perception, inference, word (*sabda*)
Nyaya	perception, inference, words Comparison
Vedanta	perception, inference, word - Comparison, postulation (*arthapatti*) and non perception (*anupalabhadi*)
Bhatta Mimansa	perception, inference, word - Comparison, postulation and non perception.
Prabharaka Mimansa	perception, inference, word-Comparison, postulation.

One could easily select one or more of the above methods for conducting research particularly in law.

Gunnar Myrdal once said there is no objectivity in research particularly in analyzing the judgments. One sees what he wishes to see. In law and social sciences the truth gets colored the moment one tries to formulate a hypothesis. You eventually come to prove what you started to prove. The truth that one knows is, therefore, relative, transitory and malleable. This

perception is very important from the point of forensic exercises.

Research is the innate function of all human minds, the purpose of research is to help humanity by creating tools of collecting quality information and revealing some aspect of the unknown. All progress is definable in terms of quality research alone with all other considerations constituting the very core of that effort.[8]

If a researcher cannot help having assumptions and if assumptions themselves are the reason for irrelevant conclusions all research findings become suspect. Research and 'closed' minds rarely go well together.

IV Law research — Modernist perspectives

Recent studies in law have been directed towards the development of methodologies and institutional mechanisms for planning and decision-making, recurring and continuing education; broadening access to and equality of opportunity through clinical legal education and legal aid to the poor; the use of new technologies; costs and financing of different programmes like legal literacy drives and pre-litigational conciliations and *lok adalats*; curriculum planning; institutional research; the governance and accountability of institutions of legal education. The university education now stresses the importance of studying law roles, the usage of law trained people, the work and socio-economic character and ideologies of lawyers.

Most of the commonwealth countries give low priority to legal education and consequently law schools are not equipped with full-time faculty. It is often said that many poor countries are spending proportionately more on education than the richer countries, but getting less in the way of benefits from the heavy sacrifices imposed. There are increasing pressures on the legal academics to clarify the purposes for which particular programmes of education are provided, to match claims with performance, to identify kinds of reforms needed; to revise standards of accountability and procedures for budgeting programs in order to evaluate their benefits against their costs; to reform employment policies within the educational system.

There ought to be a 'systems approach', the importance of perceiving legal education as a multidimensional activity, one which uses formal and non-formal methods, self-education, clinical education and of course, learning through various practical experiences. While it may be amorphous, the educational planning in

8. Look at the methods used in accurately predicting the outcomes of the judgments of the U.S. Supreme Court in *Brown's* case (1955); *Linkletter* v. *Walker* 381 U.S. 618 (1965); *Roe* v. *Wade* 410 U.S. 113 (1973); *Bush* v. *Al Gore* 531 U.S. 98 (2000) etc.

law at the law university and law faculties of universities level is generally directed at concerns such as the following:

Socialization objective

The use of law education to develop perceptions and understanding of the environment, local and global, to understand the problems of one's society; to influence values and attitudes. The basic degree programme should include a curriculum which helps students become better educated citizens as well as lawyers and provide opportunities for many kinds of educational experience. E.g.: Participation in legal aid and community service programmes, negotiation, mediation, conciliation, arbitration, internships, moot courts, research, publication of scholarly journals, forums, task forces, workshops and other enterprises devoted to current issues of significance. Legal socialization is a very important dimension of educational development in law universities, where the stress ought to be on the importance of law as a dimension of general civic education emphasizing the knowledge about the various legal cultures, about the legal problems and concerns of the people, about the way in which people learn about and regard courts, the profession, the police and other critical organs of the legal system, about values associated with law and justice, and how these are formed. Through media, extension programmes and other activities one can provide civic education.

Man power objectives

Attention is given to analysis of both economic and social activities of university law graduates in society, their mobility, the ways in which they engage in public service, entrepreneurial transactions, representation of different groups, brokering political or economic projects, and deference to human rights. Man-power approach should address the needs for sub-professional training. The university is perceived as a resource within the total educational system and the law school as a multi-functional institution depending upon the local variables in these sectors of human research and development.

Man-power objectives and the problems of scale

The methods used emphasize active student participation in problem solving and the development of communication skills. The universities are paying more attention to the needs of the legal systems at the basic levels of operation and to function as a vital research center. The need is to try and evolve more professionally oriented courses.

Opportunity objectives

Efforts should increasingly be made to open new streams of entrants admitting persons from groups which, historically, have been, disadvantaged, either by caste, religion or sex to achieve the goals of affirmative action programmes.

Common law – civil law dichotomy

Common law system is mostly adversarial and hence the role of the advocate is limited to the exercise of the forensic skills in collecting and articulating the evidence, whereas the civil law system is mainly inquisitorial and hence the roles of lawyers and judges are wider and require a more meaningful interaction with all societal forces. The role of lawyer in the contemporary times should not merely confine to litigation as such but it must equally focus on the role of a lawyer as a mediator, a counsellor and a conciliator. In making the legal education more meaningful in the present day context the law faculties must aim in inculcating these roles and functions, to the persons entering into the profession. With the development of the behavioural sciences the emphasis in legal education is on the study of impact of law on society and of society on law.

Liberalisation of economic policy in India and India's entry into the world market in a big scale has enhanced the responsibilities of the law faculties in developing comparative law studies mostly in the field of comparative business law, international commercial arbitration etc. to safeguard the national interests. This branch of comparative law and conflict of laws need to be developed, as they are not yet popular subjects.

Artificial intelligence

The prospects are bright both for teaching and research in the application of computers. Interdisciplinary studies in the area of law and computers would provide a meaningful interaction between the legal academics and technologists. Computers can be best used in two ways to assist the legal profession. One is the information retrieval system, which can be developed with the help of law faculty and the computer science department. The second area in which computers can very usefully be employed is artificial intelligence system with which several types of stereotype cases can be decided with the help of computer programmes to arrive at more objective and quicker decisions. The law faculty should actively engage in collaborative research with the computer science department. This needs to be pursued vigorously to design meaningful computerized programs as alternative dispute settlement mechanism.

Research objectives

The tasks range from insightful analyses of the content of contemporary legal doctrine to studies of the actual impact of particular laws on particular activities in society, from normative prescriptions providing moral principles underlying the legal order to scientific descriptions of the social context of laws and legal institutions, from research designed to aid policy judgments to research directed at general theories about social change. The emphasis should specially be on the use of social perspectives and methods. The ongoing research activities include law, science and technology including the law's role in electronics communications and computer revolution, law and economics, law and political science, law and anthropology, law and biotechnology, law and communication technology, law and techno-science. The latest research from skin cells to stem cells, a new technique developed by Shinya Yamanaka of Kyoto University has set at rest the moral and legal dilemmas in embryonic stem cell technology because it creates embryonic like stem cells without creating, harming or destroying human lives at any stage.[9]

Administrative objectives: Developing vehicles for planning and authoritative decisions

The most important object is not a plan, but the continuing generation of flow of information and ideas and decisions. Especially needed is the generation of new human resources - a new breed of law teachers and jurists who can bring new perspectives and new leadership to the profession of legal education. They are both the catalysts and the deliverers of reform. This kind of leadership though late is fortunately, emerging in the Indian legal academia.

The new scholarship, in the law schools seeks to investigate the social contexts of law, the variables which may affect the working of institutions and the behaviour of persons in law roles or the impact of particular laws on society or similar issues. This kind of development-oriented socio-legal research calls for new perceptions about law, new methods to formulate questions for investigation and to acquire and evaluate data, and interdisciplinary collaboration - a new approach to research, which looks at social problems from many perspectives, not simply a legal one. Towards this end the syllabus at postgraduate level has to be restructured and the topics for Ph.D. theses should also emphasize empirical research

9. *Times of India*, dated 8.6.2007 at 1 & 10.

on socially relevant themes also with live sciences and physical sciences interface.[10]

V Clinical legal education

There is a growing recognition in recent years that knowledge of the law is best understood in the context within which it operates in our complex society. This new approach to the study of law brought forth the concept of 'clinical legal education' into limelight as a means of making legal education system more socially relevant and professionally significant. Clinical legal education has now become an integral part of the curriculum in undergraduate programmes of law and is placed high on the educational agenda of many reputed law schools and universities throughout the world. In the US, which is regarded as the home of clinical legal education, 90 percent of law schools use some form of clinical approach, and the law school clinic is firmly entrenched as an important vehicle through which instruction is given in the theory and practice of law. Similar developments have taken place and are now taking place in Australia, Canada, India, Malaysia, South Africa and the South Pacific. In Canada, and more recently in Australia, the value of clinical methods has been recognized and praised in governmental reviews leading to the expansion of such programmes in law schools.

Changes in the law syllabi have been made at the behest of the Bar Council of India and the University Grants Commission so as to incorporate 'practical training' component into the law school curriculum, which for the most part grew out of the clinical education movement. Moreover, the recent reforms in legal services delivery in India, such as community based informal alternative dispute resolution forums, known as 'legal aid camps' or '*lok adalat'* warrants substantial support from law school clinics for their effective functioning. Despite its growing importance, clinical system is not getting much support and encouragement from law schools, universities, law faculties and the legal profession. This indifferent attitude is mainly attributable to the lack of proper understanding and misconceptions about the role and content of clinical legal education among the legal educators, law students, law faculty, members of the bench and bar. Dissemination of proper knowledge and sensitization of students and the faculty on the above aspects is, therefore, an imperative necessity to

10. These include: Legal Control of Drugs and Psychotropic Substances; Law and Artificial Intelligence; Law and Information Technology; Law and Gender Justice; Law and Economic Liberalization; Alternative Dispute Resolution; Air, Space and Law; Disaster Management and Law; Law and Biotechnology and Justice Education.

secure active student participation, faculty involvement and the support from bar and bench in clinical activities.

The term clinical legal education, therefore, refers to learning by doing the types of things that lawyers do. It enables students to take on real clients' problems and work with them with the obvious goal of equipping the students to perform the variety of roles which lawyers are expected to play in the society. It is a system designed to facilitate the students to *'learn the law through experience'* and directs the students to make an attempt to understand the theoretical and operational parameters of legal doctrines and statutory principles and the techniques of applying them in actual practice and real life situations. The students gain these practical insights through participation and undertaking certain clinical projects designed and organized by law school clinics.

Clinical legal education and practical training are often confused with each other. The use of training techniques with nothing other than skill development in mind would be seen as practical training, but not clinical in its true sense. On the other hand, clinical techniques make the students capable of learning far more than skills, and can develop critical and contextual understanding of law as it affects people in society. Clinical experience in law school thus offers a unique opportunity for students to learn under supervision, not only about the professional skills used by lawyers, but also the role of the law and legal profession in society.

Clinical legal education integrates both *doctrinal* and *empirical* approaches in the study of law with a view to secure more effective student participation in learning the law. Hence, it is quite different from traditional legal education. The lecture-seminar methods so common in the education of law rarely involve students in the real or realistic experience of the law in practice. The study of law through the traditional approach of analyzing legal doctrines and precedents and the conventional lecture and discussion methods are based upon *'teacher-centred'* learning approach and have proved themselves inadequate in making the students participate actively in learning process. The *'case study'* method pioneered by *Christopher Langdell* and others at Harvard Law School in the last quarter of the nineteenth century is also of limited value. Under the Langdellian method students concentrate on appellate decisions, analyzing them and identifying principles upon which they were made. The result of lecture-seminar and case study methods is fundamentally limiting as students are largely passive recipients of knowledge, relying on an account of the law by an 'expert' in that field supplemented by periodic involvement through the production of assignments and tutorial discussion.

In India there is no proper forum or an umbrella organization such as Clinical Legal Education Organization (CLEO) in the UK, Clinical Legal

Education Association (CLEA) in the US, Association of American Law Schools (AALS), the Australian Clinical Education Association. All these organizations are providing a forum for the law teachers who are interested in a clinical approach to discuss the work together and share the experiences amongst them. They are further monitoring and playing a supportive role to the clinical legal education programmes in their respective countries. Such kind of initiative is very much needed in India too.

The above problems, therefore, need to be addressed in a proper manner in an appropriate forum by all concerned, be it the BCI, UGC, central and state governments for evolving an effective clinical methodology and integrate it with the law curriculum so as to achieve a fair balance between the doctrinal and empirical goals of legal education. This need has been emphasized by Madhava Menon, the pioneer of clinical legal education movement in India, in the following words "*clinical education can in the future open up the social action role of legally trained persons*".

VI Legal education and techno- science challenges

The advances in recombinant DNA engineering micro-chip technology have been spectacularly wide ranging and relate to almost every area of human life. Advances in cyber-technology give rise to a whole variety of technologies and underlie the 'promise' and 'perils' and new forms of emergent nanotechnologies pose a serious challenge to the legal education.

The emergence of information technology and biotechnology is decisive transformation that marks globalization. The contemporary world stands transformed in several ways by the revolution in microchips and integrated circuitry. It enables patterns of time-space compression, a defining feature of contemporary globalization. It makes real the hitherto unimaginable advances in genetic sciences and strategic biotechnologies. Advances in recombinant DNA technologies and integrated circuitry depend wholly on revolutionary techniques of artificial intelligence.

This development provides a driving force for the global emergence of trade related market friendly human rights and human capabilities. This leads to movements towards redefinitions of impoverishment. Poverty is no longer identified in terms of material deprivation but in terms of access to information or to cyberspace enhanced human capabilities. The new north is cyber-rich and the new south is cyber poor, thus marking what is known as digital divide.

The emergence of information technologies has facilitated widespread privatization of governmental functions in welfare administration, health, education, finance, business, industries etc. Digitalisation of the world provides time space for increased and voluminous solidarity among the

legal fraternity.

These also give birth to the formation of techno-science based strategic industries that resent and often reject state and international regulation and generate new forms of techno-politics. Together, these constitute a genomic materiality of globalization (little noticed in social theory narratives of globalization) contributing to the formation of 'New World Order'. Biotechnologies, united in the pursuit of reductionist life sciences- where 'life' is no more than information open to techno-science codification, manipulation and diverse techniques of mutation and reproduction—fall into several domains of law and technology. Agricultural biotechnology, fostered by agribusiness, promises food for all; pharmaceutical biotechnology promises heath for all; industrial biotechnology promises sustainable development for the world and the human genome projects, among other things, now promise new possibilities in therapeutics, health care and benign human cloning.[11] The belief that biotechnology provides unprecedented vistas of human progress is not just media hype; its practitioners, in all parts of the world, live by it. The law schools must invariably keep in mind the above-mentioned advances in techno-science while formulating curriculum and promoting research, pedagogic skills and ideology. These developing technologies must be addressed by the law educators and law researchers.

VII Critical studies – Post modernist perspective

Critical legal studies thinker Duncan Kennedy has criticised what he considers to be the 'passivising' experience of legal education, and its accompanying tendency both to perpetuate hierarchy and to sustain a belief in its natural necessity. According to Kennedy, submissiveness is imbued within the structure of legal education. This submissiveness, together with the deployment of juridical ideology through the narratives of the 'knowledgeable' authority, render the experience of studying law for many students' one of double surrender – to a passivising classroom environment and to a passive attitude towards the content of the legal system'.[12]

The paper seeks to draw attention to the formative role played by legal education in the development not so much of *what* lawyers think, but rather of *how* lawyers think. Law as an academic discipline is more than a body of substantive principles. It is set in a particular institutional context, and as such legal education necessarily entails not only the transmission of ideology but also the teaching of specific skills that reflect the particularity

11. Upendra Baxi, *Future of Human Rights* (2008).
12. Kennedy, 1990: 40.

of the 'legal method'. It can be argued that these skills simultaneously reflect and produce a normalised lawyer's way of thinking that in turn re-affirms the complicity promoted within the passivising classroom environment and perpetuates the prevailing legal ideology itself undermined within critical commentary.

There is an intimate relationship between the processes of education, the transmission of knowledge, the deployment of training and the exercise of power. In so doing, it will uncover the complex juxtaposition between legal ideology and legal method that underlies the operation and teaching of law as an academic discipline. '*Juridical systems are permanent vehicles for relations of domination and polymorphous techniques of subjection*'.[13]

VIII Epilogue

It is not just that the juridical legitimization of power masks the disciplinary operation of techniques of case analysis and problem solving upon the 'active' student learner. Rather, it is also the case that the disciplining effects of this legal method actually help perpetuate the juridical representation of law as an expression of the rational, neutral and coherent exercise of power.

In Foucaultian terms, therefore, the delineation of 'law as an academic discipline' requires not only the promotion of a specific ideology, but also the deployment of a catalogue of disciplinary techniques that are in themselves inextricably bound up with the perpetuation of knowledge.

Sixty years of postcolonial Indian legal education (at least in the chronological sense as something that occurs after decolonization) have merely 'modestly developed traditions of legal scholarship'. This is so because law teachers of yesteryears and also 'specialist' colleagues in other allied 'social science and humanities disciplines' have 'by and large failed in building a research project in law with distinctly Indian problems and possibilities.' And the 'vice like grip of doctrinal legal analysis' has rendered 'teaching and learning law' a 'self-referential enterprise in the interpretation of rules'; Indian legal scholarship, on this view of it, remains overwhelmingly exegetic and dismally doctrinal, content merely with 'commentaries' which merely 'chart the movement of doctrinal legal trends across various fields.' As a result, legal education in India has not been successful in going beyond meeting minimal requirement of producing 'legal technicians' for a range of legal markets.' Overall, 'legal education in India' has been unable 'to respond holistically and meaningfully to contemporary challenges'.[14]

13. Foucault, 1976b: 24-25.
14. Upendra Baxi, Enculturing Law (Unpublished).

In any further pursuit of 'enculturing law' Indians may perhaps want to rather anxiously revisit their distinctively very own ways of structuring pedagogic violence. This is by no means an easy terrain but then no talk concerning 'enculturing law' remains worth the self-naming outside the violence of the founding myths and lived realties, whether styled with Walter Benjamin as the violence of pure means (divine violence) or with Derrida the 'foundational' and 'reiterated' violence of the 'modern' law's multifarious and poignant incarnating regimes of illegalities. Some ways of imagining the tasks of doing histories of legal education in India, as well as the globalizing Global South, and the future histories of 'enculturing law', may still carry messages of hope in all their constitutive ambiguity.

Law teaching

For students outside the mainstream of traditionally represented law, legal education is often marginalising at best or effacing at worst. Women students raise the issue of invisibility or neglect. Men, heterosexuals and members of the dominant culture hear about the law in a manner that is meaningful to and supportive of them, whilst women, gay men and those outside the dominant culture do not.

Their invisibility makes their experience all the more painful. This invisibility is hardly consonant with the liberal and humane education students ought to receive from higher education. It is the responsibility of law teachers to explore those issues and areas traditionally either ignored or under-represented in law classes for exactly this reason. It is not sufficient simply to hope that students will find something of relevance to them in lectures or reading materials: we need explicitly to raise and discuss issues of how law differentially affects different groups.

These issues need to be raised in the first term of the first year of legal education and consistently thereafter through the remaining years. Students first of all need to be included in their own education and to know that they exist and matter. Secondly, students need to know and understand early in their legal education that law is not composed of a single monolithic expression of social rules but that it is rich in theory and texture. Thus, students need to hear of such areas as gender, affirmative action, social justice and legal theory, critical legal studies, poverty and the law early because then these become normalized as part of the legal education discourse.

Compounding matters of (in) visibility is the conviction of some. The fact is that India is a multicultural society where people of differing culture, gender, class, ethnicity, sexual orientation or level of ability can and do seek legal information.

Law lecturers are in a position to contribute to a better-informed legal profession by raising awareness of these issues in the first place. Even if most of the students do not go on to practice law, we will at least have validated the experience. By validating their experience rather acknowledging and accommodating the idea that people interpret information and experiences in a way that is meaningful to them and that this may not represent a common interpretation. Those who are outside the perceived common interpretation often feel neglected or invisible. By directly raising and discussing issues and concerns routinely neglected, lecturers and students give an important public, factual foundation to competing visions of reality.

Information is made available for students to decide for themselves whether to accept all of it, some of it or none of it, but at least the choice is there to be made on an informed basis. To make legal education more inclusive and reflective of society as a whole, much work needs to be done. To begin with, one can consistently integrate differing perspectives within the learning materials- whether lectures or tutorial questions – as part of the course delivery. It may also be useful to include a variety of social contexts within the case studies, problems and questions. In doing so teachers challenge other students' tendencies to generalize and assume a common interpretation to legal issues.

Discomfort, pain and fear of ridicule have no place in the educational experience, and no place at all in a higher education system that seeks to cultivate students' personal autonomy and intellectual independence. In each of these cases it must be ensured that a sensitive and supportive environment is created in which issues of gender, class, ethnicity, sexual orientation and social justice (among others) may be examined and discussed.

Not only must differing perspectives and social contexts be integrated into the curriculum, they must be integrated across the curriculum. Again there is a need consistently to acknowledge and normalize the experiences of those outside the boundaries of traditionally represented law.

The more the message of marginaliation and segregation is heard and the more ways in which the message is expressed through various readings, lectures, tutorials and other media, the greater the challenge to the assumption of a generalized common interpretation to law. A larger project in creating a cross-cultural and experiential law curriculum consists of re-thinking and re-designing the curriculum from a critical perspective that draws on wide and varied sources. O' Donnell and Johnstone[15] suggest that

15. O' Donnell and R. Johnstone*, Developing a Cross – Cultural Law Curriculum* 17 (1977).

Indians consider the following questions when designing the syllabus and teaching materials.

- Does it open up the opportunity for students' critical engagement with the subject matter?
- Does it give validity and legitimacy to the knowledge, experience and language of the learners rather than operating out of a predetermined notion of the nature of knowledge?
- Does it offer an interactive approach to the phenomena under discussion?
- Does it leave room for change, adjustment and new questions?

Their re-designing the law curriculum integrating these concerns represents a massive, lengthy and serious endeavour. Their decision not to do so represents a loss of opportunity not only to enrich their students' educational experience but their own as well. Yet, it is important that all perspectives, traditionalists included, be represented in the legal curriculum. Again, once a fuller range of information is made available to the students, it is upto them to analyse, critique and select as they see fit.[16]

Authorities – Legal education

A review of the functioning of various authorities connected with legal education amply demonstrates that there is neither a harmonious coordination nor an effective determination of standards in law schools because of multiple controls. The present inspection and accreditation processes do not ensure quality assessment or transparency. The composition of legal education committee should be so changed as to adequately provide representation to eminent law teachers, law scholars and educationists. Law teachers do need exposure to some better teaching techniques to help build their capabilities. The national law universities should come forward to provide continuing education and training to the teachers both in pedagogic skills and research techniques. Academic staff college experiments are not yielding good results. Legal scholarship from the profession should be encouraged by using their expertise in law education both clinical and court centric. Attendance and continuing assessment of students should form part of the examination system and the ranking. The universities must develop the law curriculum taking into consideration the fast moving developments in science and technology, management, corporate accountability and alternative dispute redressal mechanism. The traditional

16. N. K. Sam Banks (1999) 19 L.S. 445.

universities should give as much freedom as possible to the law faculties to introduce the changes in the curriculum without losing much time.

The law faculties in the universities should play an important role in introducing new courses and implement them immediately. The traditional universities must come forward to revitalize the practical training programme and to introduce clinical legal programme and effectively monitor the implementation of these measures by introducing credits for active participation in the programme. Bar councils must come forward to play a significant role in streamlining the practical training and clinical legal education in law colleges while granting recognition and approval of affiliation.

According to Steven Freeland of Sydney, the next generation of lawyers will need to operate within the context of increasingly multilateral legal regulation, even over areas of law that have traditionally been regarded as within the exclusive domain of the sovereign state. Lawyers will need to become more multi-disciplinary and flexible in their training. As the world becomes smaller due to technological advances, it also becomes more complex and one has to address these demands of the next generation. Several courses which were optional have to be made compulsory. He concludes that: "[T]he challenges of the twenty first century are daunting for humankind. Rapid developments in technology, changes in the geo-political climate, and recognition of issues of global concern, among other things, will demand that the legal processes respond in an appropriate manner".

National Knowledge Commission

At this juncture it is pertinent to recall the recommendations of the Commission. The National Knowledge Commission while recognizing legal education as an important constituent of professional education emphasized that the vision should be to provide justice-oriented education essential to the realization of values enshrined in the Indian Constitution. Legal education must prepare professionals equipped to meet the new challenges and dimensions of internationalization, where the nature and organization of law and legal practice are undergoing a paradigm shift. It has also emphasized the need for original and path breaking legal research to create new legal knowledge and ideas that will help meet these new challenges in a manner responsive to the needs of the country and ideals and goals of our Constitution. The following proposals were made by the Commission to improve the quality of legal education in India. They are as follows:[17]

17. See Sam Pitroda, Chairman, National Knowledge Commission, Compilation of Recommendations on Education Report submitted on 6.11. 2007 at 45.

1. The establishment of a new Regulatory Authority for Higher Education vested with powers to deal with all aspects of legal education and whose decisions are binding on the institutions teaching law and on the Union and State Governments.
2. Prioritization of quality and development of rating system in legal education.
3. Curriculum Development and Reforms.
4. Reforming examination system.
5. Measures should be taken to attract and retain talented faculty.
6. Development of research tradition in Law Schools and Universities.
7. Establishment of centres for Advanced Legal Studies and Research, one in each region to carry out cutting edge research on various aspects of law and also serve as think-tank for advising the government in national and international fora.
8. Financing of Legal Education: Institutions should be given full autonomy to evolve their innovative methods besides providing complementary funds to be liberally given by State and Central ministries by establishing chairs and corporations may be provided tax exemptions for donations to law schools.
9. Internationalization: Building world class Law Schools today will require creatively responding to the growing international dimensions of both legal education and legal profession, where it is becoming increasingly necessary to incorporate international and comparative perspectives, alongwith necessary understanding of domestic law.
10. Technology should be developed for maximum dissemination of legal knowledge. All information available in the Indian Law Institute, Supreme Court Library, Indian Society of International Law as well as those of all Law Universities and Law Schools and Public Institutions of the country should be networked and digitalized.

In conclusion it may be emphasized that in conformity with above mentioned recommendations there must be a common code of transnational curriculum and there must be faculty exchanges by the use of modern technology through video conferencing. There must be exchanges between faculty for short periods. The students and faculty must jointly be exposed to the faculty from abroad in the matter of new subjects and research particularly for prosecuting their post graduate and post-doctoral

programmes. Students must also be allowed to go on semester exchanges to foreign universities. A new system of students obtaining joint degrees of a local and a foreign university simultaneously must be introduced. Such collaboration in legal research, particularly with an internationally reputed institute like the Indian Law Institute as a nodal agency will be more meaningful and highly rewarding for promoting legal research and scholarship among the legal fraternity.