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LEGAL EDUCATION IN INDIA: ISSUES AND CHALLENGES

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BSTRACT

For a country, to develop an economically stronger stable government, strong legal framework, and a low crime rate are the criteria which attract more foreign investment. Indian judiciary was criticized for its long pending cases. In the words of William Edward Gladstone, justice delayed is justice denied. Vacancies in the judiciary causes pendency of cases, it is also true that government is unable to place sufficient judges as many law practisioners and law students are unable to clear the judiciary exams. The educational institutions that impart law subject need to adopt certain measurable techniques in order to produce good lawyers who are equipped with commendable knowledge in their domain. There is a clear gap between industries and educational institutions for they run successfully on their own sphere.

Government realized this issue when our country opened the market for globalization, where our society had enough number of graduates but they were inadequate in terms

of knowledge and skill in the domain which that particular industries were looking for. As new industries and technological development are emerging, many problems associated with those fields require legal professionals to hold adequate practical knowledge. Legal principle that prescribes no person can be escaped from the liability for the violation of law by saying he is unaware of law. This means everybody should possess basic knowledge of law to lead their day-to-day life peacefully. Advocates are the backbone of a society. A doctor can aid in saving a persons healthy life whereas lawyer plays a another major role in terms when a person is deprived of his personal rights and liberty. Implementing NEP recommendation on student assessment based on knowledge, executing Legal Aid services as recommended by the BCI rules at every institutions, making arrangement of engaging experienced legal professionals as guest lecturers are a few reformations which the education institution is expected to implement for the social welfare.

Keywords: Legal education, reformation in education, skill development, education policy

INTRODUCTION

Legal education has been getting a new boom in recent years for many reasons. Some with passion and some with personal reasons want to pursue a degree in law. But as of Indian education system, many graduates we produce in any field lack knowledge as well as practical skill with regard to the degree they possess. We can identify many reasons which have contributed to the failure of such graduates. One such reason is language barrier and inadequate practice whether it is BA Literature or Engineering Science. The Latin maxim “ignorance of the law excuses not” which means that a man can not escape himself from the liability for the violation of law saying he is unaware that such law exists. We can consider that it impliedly mandates any person to know the law of the land to avoid any unwarranted issues.

India is one of the emerging developing nations which contributes as a manufacturing hub but not as land of innovations to sell off our ideas to capitalize.

Standard criteria for evaluating a country’s level of development are income per capita or gross domestic product, and non-economic factors, such as the Human Development Index (HDI), which comprises levels of education, literacy, and health into a single figure.

ECONOMY AND EDUCATION

Gross Domestic Product (GDP) and Per Capita Income are the globally adopted system of measuring the economic level of a country. India is considered as one of the developing nations. To generate more GDP / per capita income, a country must have a talent pool of intellectuals who with their innovation and knowledge and by best utilizing the available resources of the land attract more revenue to the country. India is contributing as manufacturer hub but not as a land of innovations to sell off our ideas to foreign countries, to boost our economy. Whether it is engineering projects of infrastructure development, implementation of new transport systems, or in the field of medical science and its allied industries or in national security keeping sufficient technically advanced armaments, we depend on foreign countries to hire technology. The current education system we follow has traces of what British colonial taught of pedagogy which insists only knowing of facts by

way of memorising and not by understanding its core concept of any subject we study. Drain theory which was put forth by Gopalakrishna Goghale, stated that britishers exploited India for resources, and they gave minimum or no return.

Government has introduced education policy which were amended twice during 1968 and then in 1986. Government’s education policy clubbed with other schemes produced more number of graduates but not more number of entrepreneur and skilled persons. One main reason is that there is a clear gap between industries and education institution where both these institutions were running successfully on their own sphere. Our government realized this issue when our country opened their market for globalization, where our society had enough number of graduates but they were inadequate in terms of knowledge and skill in the domain which that particular industries were looking for. As new industries and technological development are emerging, many problems associated with those fields require legal professionals to hold adequate practical knowledge.

“Ignorance of the law excuses not” is a Latin maxim laying a legal principle that prescribes person unaware of law does not escape him from the liability for the violation of law. In other words, it impliedly mandates any person to know the law of the land to avoid any unwarranted issues.

Due to the failure of the education system and lack of skill, survival of graduates to hold a job becomes more difficult. People started losing morality and concentrated on fetching money unethically. New Education Policy 2020 has proposed/emphasized to assess the knowledge imparted to the student rather than the mark they achieved. Implementing legal aid service to deal with daily hardship of the people and to be a part of legal team during the time of graduation will enable students to understand contemporary issues and the solution to solve those issues.

PRESENT ISSUES IN THE JUDICIAL SYSTEM

As per National Judicial Data Grid (NJDG), there is about 3.3 crore pending criminal cases before the Indian courts, among them 2.5 crore cases are pending¹ for the reasons of improper representation by the lawyers and inadequate strength of judges in the lower courts to the actual requirement. An article reveals that as of April 2022, we

have approximately 21 judges for every one million population², whereas the western continents Europe and United States have 210 judges and 150 judges per million respectively. As per Justice Malimath report on 'Committee on Reforms of Criminal Justice System' and 120th Law Commission report had recommended to raise the strength of judges by 50 per million³, which was reported in the year 2003 for which we require 65000 more judges to meet the recommendation prescribed. According to a 2018 Niti Aayog Strategy paper, it would take at least 324 years to dispose all these pending cases, besides regularly filing new cases.⁴ Improving judicial infrastructure and appointing vacancies in the judicial and non-judicial staff are highly demanded by the Chief Justice of India.⁵ Political vendetta also plays a huge role in the appointment of judges. The names of many judges recommended by the Collegium for various high Courts and for the Supreme Courts were turned down by the Central government for no reason, generally, Union government has to consider such recommendation within the time span of 3 to 4 weeks.⁶ In fact, Supreme Court in 2018 has initiated a suo motu case to monitor progress made by High Courts and state governments in filling the vacancies according to the timeline it had prescribed in 2007 which the case is still pending⁷.

EDUCATION AND JUDICIARY

As of 2021, we had 18,934 judges and 5,589 vacancies as per the 'sanctioned strength' of judges in High Courts and lower courts and it is predicted 28,814 judges by 2023 means we will need an additional 9,880 judges. Nevertheless no candidate has qualified in the written examination held in September 2019 for the recruitment of District Judges to Jammu and Kashmir higher judicial service. This was the fourth such instance of even a single lawyer failing to qualify the exam.⁸ Same kind of incident took place in the state of Tamilnadu where not one of 3500 candidate has passed the exam conducted for the district judicial post.⁹ In 2019 almost 66 percent seats for the Delhi Judiciary exam could not be filled, though more than 12,000 students appeared were unable to score the cut off marks.¹⁰ A single bench judge from the Madhya Pradesh High Court has expressed his concern over the appointment of Public Prosecutors/Government Advocates who are incompetent they neither properly arguing the matters nor assisting

the Court, further directed the State Governments Law Secretary to take appropriate steps.¹¹

ADVOCATES ACT AND NEW EDUCATION POLICY

It is essential for a law student to participate in Moot court competitions and paper presentations on the contemporary issues that are called for from various law colleges. Besides that, original involvement in a realtime case is the difficult task, it is something like asking a MBBS student to do autopsy of a dead body for gaining practical knowledge. Part IV of the Advocates Act, 1961 prescribes under rule 2 of Schedule II that university is free to design its academic program. Rule 11 of Schedule III recommends every institution to establish Legal Aid Clinic, and the Legal Aid Authority of the District shall obtain a list of lawyers and NGO who are volunteering themselves in training the law students during their internship/vacation. Rule 26 of the Sch.III advises State Bar councils to make a district wise list of senior lawyers who are willing to take under internship students and BCI to furnish such name lists in their website. Generally, these recommendations were not followed properly due to which students are passing out with graduation without adequate knowledge. In addition to the above things students are encouraged to prepare for competitive exams like CLAT-PG and Union/ State Public Service Commission.

New Education Policy has recommended knowledge based education rather than mark based evaluation of student in the examination. The recommendation of the UGC based on the NEP, 2020 are similar to that of its recommendation of the BCI. The UGC has now asked institutions to engage experts and professionals who have adequate experience in the relevant subject to work as a visiting/guest lecturer in order to impart practical knowledge to the students to overcome the contemporary issues in the field.

REFORMATION IN THE JUDICIARY

On one hand we are trying to fulfill the Constitutional obligation under Article 39A Right of legal aid to poor and destitute people for the right of justice, in this regard India has enacted The Legal Services Authorities Act, 1987. The law enforcing authority-police- is generally in the control of state government, since India follows an adversarial system which highly depends on the investiga-

tion that was conducted by the prosecution, the judiciary cannot interfere in any investigation. So the law commission has recommended the government to adopt a few advantages of the inquisitorial method. Many developed countries have adopted an inquisitorial system where the judge holds the power to control the investigation of the police, on the result high conviction rate and quicker disposal of cases were achieved.

Due to the failure of the education system and lack of skill, survival of graduates to hold a job becomes more difficult. People started losing morality and concentrated on fetching money unethically. New education policy, 2020 has proposed/emphasized to assess knowledge imparted

to the student rather than the mark they achieved. Implementing legal aid service to deal with daily hardship of the people and to be a part of the legal team during the time of graduation will enable students to understand contemporary issues and the solution to solve those issues.

SUGGESTIONS

- Implement Legal aid service in each institution .
- Knowledge - based assessment as prescribed by UGC through NEP, 2020
- Engaging practicing lawyers and other government officials as guest lectures.

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