



National legal education policy and future of Indian legal education: Learning from history to reform the present

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Abstract

The Government of India under the Ministry of Human Resources and Development (MHRD) came up with the Draft NEP 2019, which suggested reforming legal education through culture and history to ascribe morality and ethics in the profession. There is no society without its legal history and civilizational indigenosity. Any legal system which lacks the native and ethnic character of the society will ultimately fail the test of time on the course of society's transformation. Modern legal education in India has largely been a baggage of colonial leftovers, and there is an alacritous need not only to decolonise laws but also legal education. Reflection of Indic jurisprudence and civilizational values are pertinent for the sustenance of ethical legal education in India. However, the process of reflecting these ideas in the present education system is assorted with structural and procedural ambiguities due to uncoordinated and unstructured policy-making in Indian legal education. There is a great deal of hostility and academic dilemma amongst the principal protagonists – the BCI, UGC, and the Universities and Academic thinkers as to how these Indic principles can be reflected in the present system in its true spirit. The present paper is an attempt by the authors to contextually analyse the need to reflect conventional Indic jurisprudence in contemporary legal education. The author also address how Indic civilizational values can be incorporated into legal education.

Keywords: MHRD, National legal education policy

Introduction

A cynic may ask, "What about the dark spots of Ancient India?" The dark spots on the sun are completely engulfed by his glorious refulgence^[1]. No civilization can grow and advance unless it unsheathes subsistence from its soil through its roots. Article 1 of the Constitution of India avows about 'Bharat', which can be seen as a reflection of its civilizational identity in the modern Indian Constitution. When tradition

ns of a nation die, then the nation is dead, even if it persists as a great power in the world, yet it is nothing but an aggregate of meaningless individuals determinedly pursuing their contemptible aims^[2]. Every civilisation in the world is traced to the development of the legal regime. Law is the base of any social structure and an essential way of change and development.

The knowledge of the law of civilization reflects the traditions of the nation and embodies the experiences of its history. The knowledge of law must be imparted to every citizen for the execution of their duties and their rights^[3]. Thus, legal education is essential not only to create good advocates but also to respect the rule of law, morality, social rules, human values, normativism and fundamental rights of living beings. The history of the Indian independence, if impartially written will devote more pages to the lawyers than to the votaries of any other metier.

Too much has been written about legal education reforms in India since Independence, but many of these erudite blue papers and proposals have largely neglected the serviceableness of *Shastric* education. The British brought into India not only a mass of legal rules called common law but also their outlook and techniques in establishing, maintaining and developing the legal system^[4]. Formal legal education was adopted during the British period by the

British government through various legal instruments^[5]. The ghosts of superfluous British education system run through the present legal education framework. Mahatma Gandhi in Hind Swaraj said, "If India copies England, it is my firm conviction that she will be ruined."^[6] Law in the colonial system was studied as an art founded on certain arbitrary and technical rules, whereas a bare reading of ancient Indian model of legal education can be seen as science which consists of ethical principles laid down for protecting human interests in various life relations^[7]. Justice system in ancient India is the evidence of a sound legal system in India. Legal education was imparted based on written statements found in Vedas, Upanishads and other religious books.

India has more than 1500 law colleges, university departments and institutions imparting legal education at undergraduate, postgraduate and integrated degree programme levels^[8]. National Law Universities are an upshot of second-generation reforms of legal education, that have undoubtedly played a critical role in the development and transformation of legal education and research^[9]. The initiative of establishing a model legal institution was to create "the Harvard of the East". But how far have these premier legal institutions have embodied the rich heritage of Indic values and Dharma to develop curriculum or to analyse socio-legal issues is still debatable^[10]. What can be discerned on a prima facie analysis is that, the model institutions have adopted the tenets of legal education pattern from the western models like Harvard, and thereby in toto neglecting the basic principles of what the 'East' stands for. 'The Harvard of the East' institutions have largely become the doppelgangers of the western model. We have so far witnessed top law schools in India drawing inspirations from the west to adopt best commercially

suitable practices. We are at a paradigm where anything drawn from western culture is appreciated and considered marketable. This has led to institutions replicating courses and pedagogies from American and European education system. Although this process has been profitable, the negative impact it has on the value system of the Indian society is distinctly perceptible. The journey of transformation of the Indian legal system has witnessed the westernisation of education masquerading as modernisation. The recurring issues extensively discussed under the ambit of legal education reforms include curriculum, examination, lecture method, quality control and entrance examination. A socially and culturally relevant legal education that can address the needs of our society is the need of the hour. While the fundamental issue surrounding legal education and the profession per se is the question of ethics. India's idea of ethics is largely rooted in its philosophies and works of literatures. Modern legal education has pretermitted Indic philosophy. Dharma and other ethical Indic values find no reflection in the contemporary education system. Restructuring legal education is an immediate desideratum. A legal system which lacks a native and ethnic character of society will ultimately fail the test of the time.

Why Legal Education Must Reflect Dharma And Indic Values

The National Knowledge Commission (NKC) constituted in 2005 to advise the Prime Minister's Office on policy related to education, research institutes and reforms needed to make India competitive in the knowledge economy, stated that, *"Legal education should 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. Further, there is need for original and path-breaking legal research to create new legal knowledge and ideas that will help meet these challenges in a manner responsive to the needs of the country and the ideals and goals of our Constitution."*^[11]

A pervasive theme found in the legal education reforms is the need to harmoniously balance globality and commerciality with values and ethics. The Human Resource Development Ministry in 2019 uploaded on its website the Draft National Education Policy (NEP) to improve the existing framework of education in the country. The report has highlighted that "...a key aspect of governance systems is the ability of the State and private interests to adhere to Constitutional values, and establish, support and maintain the rule of the law as envisioned in our founding documents."^[12] It is an implied constitutional mandate that legal education has to build a social order based on democratisation of justice, enforcement of human rights and preservation of rule of law securing to all of its citizens' justice, liberty, equality and dignity. Legal education carries with it a duty of social responsibility and social inclusion. The NEP scrutinizes a legal education embellished with constitutional ideas of justice - social, economic and political, that can serve both the global image reconstruction of indigenous cultural values and national needs of quality education based on rule of law and human rights.

1. Towards a new legal education policy

The task of law is to ensure the adjustment of human relationships in society to the best possible advantage^[13].

The Draft National Education Policy has made two significant suggestions in this context^[14]:

- A. The curriculum should reflect the socio-cultural context of the civilization: Transmission of the foundational values of Indian democracy to the learners of law to give social relevance and acceptability of law is the *raison d'être* of legal education. The policy calls upon the concerned authorities in universities to ensure that the curriculum reflects, in an evidence-based manner, the history of legal thinking, principles of justice, practice of jurisprudence and other related content appropriately and adequately. The policy further states that the curriculum must reflect the history of legal institutions and the victory of 'dharma' over 'adharma' in the curriculum. The committee has based its conclusion to stimulate the growing consensus that the study of law is not pure, but an interdisciplinary phenomenon of the culture of society and history through the study of classical law texts.
- B. Multilingual education: The recommendation is engineered to solve the issue of linguistic diversity acting as an impediment to access to justice. Predominantly, transactions at the district level are conducted through decentralisation in their respective regional languages. However, the High Courts and Supreme Court continues to follow the English tradition. As the law is predominantly taught in English in major institutions, there is a growing jolt widening the gap of students of law practising at the grassroots level due to linguistic inabilities. The policy recommends first-level state institutions offering law education must consider offering bilingual education. However, many traditional universities are moving towards an English based curriculum due to the trickle-down effect created by commerciality and parameters set up by top-tier legal institutions. It has further recommended the institutions to set up special cells for translating legal materials from English to the State language and vice-versa. Previously, the University Education Commission, also known as the Radhakrishnan Commission set up in 1949 strongly recommended that the teaching of law should be switched out from English media to regional languages and there was a dire need to bring out adequate legal literature in different regional languages for this purpose.

The Indian legal system's approach and attitude to Indic thoughts, traditions and institutions have often been counter-productive to the development of ethics and literature. Indic legal jurisprudence, logic and reasoning are not substantial parts of legal curriculum and law-making in the country. This reflects a deep-seated ignorance, apathy and perhaps even an abhorring approach to the native legal systems, which held this civilization together even when it was not a single political unit. More importantly, traditional Indic legal concepts have been consigned in their application merely to personal laws and laws relating to religious institutions, forgetting that they had a wider sphere of influence which encompassed all aspects of life^[15]. This approach has negatively impacted the society's approach not just to issues of administration, marriage and succession, but also the duty-based approach to the environment, which is a raging concern today.

2. Deciphering the idea of Dharma

It is very difficult to interpret Dharma in Indian jurisprudence by placing it in silos to give it a clear definition. Although, our entire civilizational history is based on the concept Dharma. In Mahabharata, Yudhishthara says it very clearly '*dharmasya tattvam nihitam guhāyām*', it is very obscure what is Dharma, what is not^[16]. Indian constitutional history has shown how the path of law and Dharma need not be exclusive. There is a growing need to evolve an indigenous Indic jurisprudence garrisoning it on the metaphysical element of Dharma as the grundnorm of Vedic civilization. While profound Indian *Darśana* such as *Nyaya*, *Vaiśeshika*, *Mimamsa* and other Indian philosophies which form the basis of Indic Legal jurisprudence are tied to Dharmashastras are widely taught and learnt outside India, while India law schools do not even remotely deal with them. As a consequence, an impression is created in the young and formative minds of law students that the concept of rule of law or any other legal principles, legal fictions are necessarily and solely the contribution of Western thought. Due to this wilful ignorance, Courts of the land often looks to the West for inspiration, as opposed to drawing inspiration from the vast ocean of Indic jurisprudence. There is also a growing concern amongst the legal academia on the juristic argot and the need to simplify the language used in judgments. Many recent judgments show why there is dire need to simplify the juristic language which could be in sync with the social order and resonate with the native pulse of the society.

The Way Forward

The Harvard University in 2017 offered a comparative educational program on "Indian Religions Through Their Narrative Literatures" an examination of the religious traditions and communities of South Asia through the stories they tell^[17]. The intent of introducing the course was to study the complexities of dharma or ethics in the text. Even in India, there was a demand from various sections of the society to introduce lessons from Mahabharata, Ramayana and Gita in schools and colleges. But the scheme has so far remained unachievable because of the religious angle associated with it. The biggest failure immobilising the burgeoning of Vedic literature is the categorisation of this literature as religious texts. Even though these historical stories have a close-knit connection with religion, it is of great academic importance to view these texts through a holistic prism, by disassociating it from religion and studying them as Indic literature. The rich literary heritage which India treasures would remain futile unless texts are given academic importance to draw analogy and reasoning. If Indian legal education's perspective towards these sacred historical treaties metamorphoses from mere mythology to Vedic history, India can emerge as the frontrunner of historical school and sociological of jurisprudence. Social relevance and acceptability cannot be achieved unless the curriculum reflects evidence-based jurisprudence of the Indic way of dharma.

Israel is a functioning example of a state breaking the shackles of the imperialist legal system. It has effectively torn down laws and read down procedures carry forwarded from the British rule. During the years of British rule, education was acquired through non-academic courses, called law classes to provide legal education for "government officials," to give "clerks and interpreters of

the Courts some knowledge of the law.^[18]" Post the recognition of Israel as an independent state, efforts were directed to revamp the legal system. This was procedurally mechanised through two steps: Decolonisation the British laws and restructuring the procedure. Israel integrated national character, multiculturalism, law and morality, social responsibility with legal education. The nation has substantially changed most of the laws along with developing a new system of education. Experiential learning, taking the forms developing distinct pedagogies, skill-building workshops, traditional laws both religious and social, and legal clinics, were introduced in Israeli law schools in the mid-1990s.

The task lies upon the Indian legal community to look back into the past, to develop an ethnic legal system with native Indic characters for the future. According to the authors, this can be achieved through three (3) R's - Reformations, Recourse and Resources - directed in this direction. The primary areas of focus should be – Subjects viz. introducing indigenous courses and Pedagogy viz. adopting the Vedic method of teaching. This would in-turn transform the legal system in itself. The modern legal system is facing the dire need to resolve the issue of judicial pendency through alternative dispute mechanism. On the other hand, the ancient Indian system of adjudication was predominantly based on decentralisation of justice delivery, wherein the structural efforts were undertaken to amicably settle disputes speedily at the village level.

Subjects: Vedic Literature vis-à-vis Rethinking the Mimamsa Rules of Interpretation

With the commercialisation of law as a profession, there have been several instances where lawyers and advocates have compromised morals for monetary benefits. A 'Dharma' based legal curriculum has to be developed to ensure that universal standards like - morality, ethics, equity, rectitude, conscientiousness - are reflected in the curriculum of the professional course. Shri P.V. Kane's pioneering work on native jurisprudence in his 'History of Dharmashastra' should be made mandatory teaching in all law schools. Indic environmental jurisprudence roots its foundation in the restrained approach to the use of natural resources, since idea of Dharma exhorts balance, restraint and respect for all nature.

Fundamental changes can be introduced in subjects like professional ethics, legal history, jurisprudence and interpretation of statutes. A perfect example could be 'Legal Theory and Judicial Process'. It is one of the compulsory papers for the post-graduate program in Law. According to the study conducted by the authors, the syllabus of the judicial process followed in majority of NLUs contains a module on Benjamin Cardozo's classic work on 'Nature of Judicial Process'. Although the authoritative quality of his book is unquestionable, works with more socio-cultural relevance can be easily traced in the Indian jurisprudence. For example, *Brihaspati*, *Yajnavalkya*, *Narada* and *Katyana* represent the last stage of legal development. Brihaspati tells us about seven courts. His concern for even-handed justice becomes evident when he amplifies rules relating to different classes of evidence with their characteristics. *Yajnavalkya* described systematically the process of judicial procedure. *Narada* provides the first legal commentary which is not loaded with precepts of religion and morality. *Katyana* gave a detailed account of the constitution of the

courts of justice and an elaborate description of the court procedure. These pieces of Indic literatures can be studied along with other western works to gain more clarity on the Judicial process and to get an Indian perspective on the administration of justice.

India has essentially been a duty centric society, unlike the west which is a right-centric society, references of which can be found in the *Samhita* texts and *Indic* literature including Mahabharata, Ramayana, Chanakya Niti, Upanishads and other religious texts. These philosophies can be introduced as a separate subject like 'Comparative Indology' in the curriculum. Multi-lingual education and Indian studies (cultures, history, languages) could also be adopted as a credit course to enhance the multi-disciplinary aspect of legal education. Works of Indian thinkers and jurists can also be comparatively analysed with western thinkers.

Mimamsa Rule of interpretation is a product of native Indian jurisprudence, culminated out of traditional, rational and scientific principles for the interpretation of legal texts. Despite its great intellectual value, there has been no utilisation of these principles in practice. The principles of interpretation of statutes mainly relied by the Indian law courts are those delving in the works of Western jurists like Maxwell and Craies. The Mimamsa principles are in two respects superior to Maxwell's principles of interpretation. Firstly, they can be used not only for interpreting statutes but also judgments, whereas Maxwell's principles can only be used for interpreting statutory law. Secondly, they are more detailed, synchronised and systematic ^[19]. Mimamsa provides particular and distinct methods for interpreting the matters stated in the scriptures like 'Vedas', 'Smirities' etc. It can also be traced that many of the methods of the interpretation given by *Manu*, *Yagyabalkya*, *Narad*, *Vyas*, *Bhrihaspati* and others concrete on the traditional system and method of interpretation as given by *Jaimini* in *Mimangsa*. However, initially developed for interpreting religious texts, because of its universal application of principles, they came to be utilized for interpreting legal texts, philosophy, grammar, etc ^[20]. Principles of Mimamsa rules of interpretation are categorised as - Primary Rules of Interpretation, Basic Principles of Interpretation, General Rules regarding the application of texts and Principles having a special relationship with the interpretation of texts and customs. These indigenous principles ensure wider and liberal flexibility. As the principles are undiscovered by lawyers, it is seldom appreciated by the courts. It directly imposes a duty on the legal education to incorporate Mimamsa rule of interpretation in the syllabus as a part of the 'Interpretation of Statues'. Law is largely a reflection of society, and progressive interpretation of laws require laws and rules to be interpreted according to the character of society. Reflections of the Indic method of interpretation should be recognised by legal education.

Knowledge of Vedic literature and Mimamsa principles enables one to creatively develop the law. When the idea of teaching Dharma and ethics through the medium of Vedic literature and texts is discussed, it would be preposterous to even think of teaching interpretation by these texts through

western teaching norms and pedagogies. Indic literature can only be interpreted, understood and analysed through Indic methods.

Indic Pedagogy: Storytelling and Vāda

Indic literature's contribution to culture, religion, ethics, *Nyaya*, *Niti* and morality through its civilizational notions is an impeccable domain of philosophy. Likewise, the role of literature in the development of law is indisputable. Krishna Iyer J rightly observed, "we cannot regain our past glory unless we realize the importance of morality in our present legal system. ^[21]" Philosophies and beliefs of the native procedures, ethnic practices, of past cultures, traditions and Indic value system, is depicted in Vedic literature.

The mooted of this idea of restructuring the existing pattern of legal education is constructed to reflect Dharmic ideas and other ethnic values in Vedic history. It starts with tracing the origins of modern legal concepts in the ancient texts. A perfect example could be International Humanitarian law (IHL). The present framework of IHL expounds several principles reflected in Mahabharata and Ramayana. Ancient Indian philosophy's contribution to the development of ethics of war and modern humanitarianism and the dovetailing of International humanitarian jurisprudence and principles of diplomacy with the ancient Indian philosophy of Indic literature is yet to get its academic recognition. May it be the immunity granted to Hanuman in Ramayana or Lord Krishna in Mahabharata, concepts of sovereignty, ambassadorship and principle of 'diplomatic immunity' reflected in the 1961 Vienna Convention, can be easily studied and traced in the Vedic literature.

Section 304 of the Code of Criminal Procedure stipulates the provision of legal aid to facilitate access to justice ^[22]. Ravan's brother Vibhishan in Ramayana can also be viewed as the first '*amicus curiae*' who have argued for a person who has been accused of a crime. Similarly, the connection of *Dharmayuddha* (just war), righteousness, and good governance can be traced in the other texts including Rig Veda, Manusmriti, and Arthashastra. These traditional constructs can be interlinked with the concept of storytelling to analyse the importance of Vedic history in the development of law. Several other principles of jurisprudence can be traced from the practices and incidents propounded in Vedic history. It is also important for a civilizational state to adopt and inculcate best practices found in its civilizational past as a source of law. In the landmark case on negligence, *Donoghue v. Stevenson* ^[23], Lord Atkin adopted the neighbourhood principle from the Bible.

Vāda means debates, dialogues and discussions. *Vāda* played a quintessential role in validating and promoting the growth of different philosophical and Vedic knowledge systems of India. Drawn from the *Ānvīkṣikī* (Sanskrit denoting the "science of inquiry") in 650 BCE, debates and dialogues have succoured the burgeoning of traditional Indic knowledge systems. Based on the traditions of tolerance, diversity and pluralism, most of the Vedic literature including Ayurveda, Arthashastra, Ramayana and Mahabharata are structured in the techniques of debate ^[24]. *Shastric* education in the traditional Gurukul system in Ancient India was based on dialogues and discussions, which can be considered as a better mode of educating than the Socratic method.

On a thorough reading of Indic literature, several other references can be drawn that have a direct or indirect correlation with the law as it is in practice. The concept of *Vāda* and Story-telling have a significant value in Indian culture. The idea of introducing Indic literature as an important part in the curriculum of legal education programme will prove to be a futile exercise unless the pedagogy of teaching also changes along with the character of subjects. Storytelling and interpretation of history can enable students of Dharma to get a holistic view of the functioning of ethics in a progressive society. Development of ethics in the profession will have a direct impact on the social responsibility of a lawyer. Education is just a means to achieve the end of a social welfare society.

Conclusion

In a socio-culturally diverse country like India, academic institutions especially dealing in law must be allowed efficient autonomy and freedom to frame courses. An ethical legal education should be seen as part of 'lifelong learning' and need not be confined to what happens inside law schools or preparation for legal practice. Indian legal education system is facing a dire need to revive ethics and morality of law. The idea of Dharma imposes some social responsibilities on a lawyer, as the law is considered to be an instrument of social engineering and an effective instrument of socio-economic transformation. It becomes necessary to study law in the operation of social facts and ethical values. India has a rich heritage of a duty-based and value-based social system. The goal of developing ethics and cultural values among students of law would require consistent efforts directed towards restructuring the legal education. From the drafting of law to the interpretation of a law, learning of the law to teaching of the law, Vedic history and literature systemize answers to the majority of the ethical issues surrounding the legal system. Transformation of legal education would be a gradual process, but it would require immediate steps being taken in this direction.

No system of education can attain a national character when it is governed by external rationality. There is need to decolonise laws and frame new laws based on Dharmashastras. While many major acts governing civil society in India are framed keeping Halsbury principles as the basic structure. Indian value system could function more ethically with an internal control system if a code of conduct/laws are framed keeping Dharmashatras as the touchstone of legitimacy. Restructuring of the course outline and reframing of the curriculum is a time-consuming administrative process. Clinical legal education can play a major role in ensuring that the Indic values are reflected in the curriculum. Through authoritatively backed guidelines, it shall be made mandatory for individual Universities to establish a Centre specifically to conduct a study on Indology, Dharmashastras and Vedic Jurisprudence. These clinics at institution level can focus on offering credit courses, conducting lecture series and handling pilot projects on Indic values.

Various draft policies and white papers have been brought to light as a concentrated effort to decolonise laws and legal education. However, a policy on paper may convey a grand vision but the ultimate test of a policy depends on its implementation. A strive to integrate Dharma and Indic values in legal education would remain a white paper draft unless effective steps are taken towards its implementation.

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