

# LANGUAGE AND FUTURE OF LEGAL EDUCATION: CONTEMPORARY CHALLENGES

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*Abstract* — Legal education and language form part of an inseparable whole and the expansion of the one without other is far from imagination. The globally relevant legal education has been suffering from the language barrier in India which has affected the proliferation of meaningful legal education. Language is dear to any nationality and is attached with identity of the community. Also, justice being an element of entitlement cannot be segregated from language. The paper explores the issue of language as a hurdle in the expansion of legal education

**Keywords:** Social Change, Legal Education, Language Hurdles, Justice, Accessibility

“*The law is a profession of words.*” —David Mellinkoff

Law is a means to bring social change, and social change requires the medium of language. Language has a direct relationship with access to justice by masses in India. For those, whose lives have been confined in ensuring their survival can never dream of justice being done to them, and thus language has hardly occupied significance for them. The law deals with every subject under the sun. Thus, it has the potential to influence every aspect of our life. Therefore, its reach to the masses, whose life it impacts meticulously, is of great significance. The relevance of language can never be exaggerated because it is the mode to impart as well

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as receive knowledge. Law serves many purposes in society. It is an instrument to regulate human behaviour, serves as a means of radical change in society and the glimpse of change gets manifested in law. In short, the law brings the change in society at the same time, changed by the norms of society. The construction that is bestowed upon the law is shaped by courts of law and is also subjected to varied interpretation. Therefore, the judiciary through purposive interpretation ascribes the meaning to it to serve the larger goal of delivering justice. In this process of interpretation, language becomes crucial because it promotes learning of law by means of language used by the courts.

The role and use of language have also been recognised by the highest law of the land. According to the Constitution of India, English is the language of the High Courts and the Supreme Court. However, through Article 348(2) of the Constitution, the Governor of a State, with the consent of the President, can allow the use of the local language in the High Court. So far, Rajasthan, Uttar Pradesh, Madhya Pradesh and Bihar have taken this route to use Hindi in their High Court proceedings.<sup>1</sup> Thus Hindi has been accepted as constitutional mandate but this is also a reality that this use has not proved to be feasible.

The legal education is concerned with the basic philosophies, ideologies, critiques and instrumentalities, and also addresses the aspect of creation and maintenance of a just society. Thus, it concerns with ‘justice in society’ and ‘just society’ and differentiates legal science from other social and human sciences. This has been due to the reason that in legal education language does not only serves as medium of conveying idea but also goes a long way to decide the success of law to provide remedy against a mischief.

A little reflection suffices to reveal just how essential is the language to the legal enterprise. Yet academic research on the intersection of language and the law is a relatively recent phenomenon, with much of the work dating from the 1980s.<sup>2</sup> It has been found that interplay between law and language has remained relatively less explored. In furtherance of the betterment of the legal education intersection between law and language needs to be investigated systematically.

In light of the above, the role of language in legal education needs deliberation. The issue to be discussed upon is the impact of language constraints on the objective of legal education and how it vitiates the goal of complete justice. Legal education in India has undergone a paradigm shift, in which the role of language has been a determining factor. Language constraints surely hamper accessibility and availability of legal education. The future of legal education faces several challenges in terms of access, quality, eligibility, and

<sup>1</sup> Sruthisagar Yamunan, “SC Starts Translating Judgements into Other Languages. Will This Improve Indians’ Access to Justice”, July 18, (2019).

<sup>2</sup> Judith N. Levi and Ann Gaffam Walker (eds.), “The Study of Language in the Judicial Process” in *Language in the Judicial Process*, New York: Plenum Press, 35 (1990).

entitlement. Therefore, the ultimate goal of Justice cannot be guaranteed unless and until we address the language hurdles of legal education. Thus, the authors have tried to explore the challenges of language impeding and obstructing the progress of legal education in India. Securing justice to people is the end goal of the law. Therefore, the shaping and framing the minds of those who are entrusted with the responsibility of delivering justice is of utmost significance. The system of legal education nurtures the reasoning of lawyers and judges and language becomes the medium. Therefore, the relevance of legal education can hardly be exaggerated. Education is the instrument through which a free and reasoned mind is given atmosphere of creativity and grown. Availability and accessibility of education and more specifically legal education has been an issue since the very advent of it. Access to education is impacted by several factors such as economic status, cultural background, as well as the social beliefs of the society. Quality of education is a state concern, especially if it is concerned with legal education. Law serves as a tool to change the social evils and legal education determines the attitude towards those social evils. For instance, child marriages and mob lynching. These two issues which the law has taken to address was having social endorsement as well therefore legal education can have enduring impact to change the social ethos.

## I. EVOLUTION OF LEGAL EDUCATION IN INDIA

Anand J. observed “Legal education is distinct to other streams of education due to its significant contribution to society and national integration. Legal education in India could be traced as early as the Vedic age when it was essentially based on the concept of Dharma. However, there is no evidence of any formal legal education offered at that time. The training in law was self-learning, and mostly the kings themselves dispensed justice. Occasionally, judges were appointed to administer justice. These judges were not formally trained in the administration of justice but were well known for their ‘righteousness and justness’ and for following Dharma”<sup>3</sup>. He further stated that “in the absence of need for trained legal professionals, there was no institutionalization of legal education as a separate branch, but the same could be said to have been imparted as a part of general education which revolved around the notion of *Dharma*.”<sup>4</sup>

The modern Indian legal profession dates from British rule with the establishment of courts in Madras, Bombay and Calcutta in the year 1726. The reform of Indian legal education after the British rule and establishment of Bar Council of India was a turning point in the arena of legal education. Legal education began to be popularised. Legal education has a specific role to play in society because the law is an instrument of change. If those who

<sup>3</sup> Dr Justice A.S. Anand, “H.L. Sarin Memorial Lecture: Legal Education in India — Past, Present and Future”, (1998) 3 SCC J-1.

<sup>4</sup> *Ibid.*

are deciding and determining the shape and path of legal education are prudent enough to realise the role it has to play in nation-building, then the task becomes easier.

Access to quality legal education which is socially as well practically relevant is confined to certain centres of excellence where the access to large masses is highly restricted due to economic limitations. These centres of excellence have the medium of instruction as English, and the entry barrier is very strict. Therefore, the right to those who are economically disadvantaged is denied. This availability of quality education only being limited in particular language is highly unfortunate. Thus, it can be easily seen that economic deprivation leads to deprivation in access to the English language, which in turn leads to denial of access to good centres of learning where the medium of instruction is English. Thus, economic deprivation is hindering the proliferation of legal education as a whole. Most of the northern Hindi speaking states which are economically backward are denied access to good centres of learning because they lag behind in language enrichment. This hampers their development and in turn, development of their region as well.

In consonance with the mandate of the Constitution of India, English has continued to be the official language for all practical reasons<sup>5</sup>. The BCI rules mandate that medium of instruction in law courses should ordinarily be English and it should be included as a subject in the first year. This mandate is consistent with international norms and is need of the hour, for which the BCI cannot be blamed. It also becomes necessary in order to make Indian law student globally relevant and germane in the field. But this mandate should also ensure availability of quality legal literature in Hindi as well for those classes of society who struggle to reach the highest centres of learning. And if somehow, they manage to reach there, their survival is filled with never-ending hardships.

## II. CLINICAL LEGAL EDUCATION

In the modern-day clinical legal education occupies a vital status. The necessity of mootings as exercise is still a distant dream and formality in conventional law schools. Even an honest attempt to prepare law schools in India to offer effective clinical legal education to the students faces several serious challenges. These challenges range from amending laws, restructuring financial resources, changing mindsets, and geographical, cultural and language differences<sup>6</sup>. Milstein states that “the ultimate aim of clinical teaching is to develop

<sup>5</sup> Refer to Art. 343, Constitution of India.

<sup>6</sup> Abidha Beegum V.S., “Necessity of Certain Reforms in the Field of Legal Education: Importance of Clinical Legal Education in India”, *International Journal of Political Science, Law and International Relations (IJPSLIR)* 2014 available at <<http://www.tjprc.org/publishpapers/-/1396435425-1.%20%20Necessity%20of%20Certain%20Reforms%20-%20full.Pdf>>, last visited on August 11, 2020.

reflective practitioners and lifelong learners<sup>7</sup>). So, learning through clinical methods should occupy a significant place in our teaching methodology as well. Clinical legal education has an innovative way of making students learn through life experience, which has never been imagined by them. The imparting of clinical legal education due to language barrier has also been adversely affected. The drive towards promoting clinical legal education should focus on language hindrances and only then can it lead to success. It is often said a lawyer eats out of his communication skills. A judge is known for his lucrative language. Thus, mastery over communication is an art which is an integral part of the profession. Therefore, whatever aspect of the legal profession a student undertakes it becomes essential to understand the intricacies of language.

### **III. ACCESS TO LEGAL LITERATURE IN REGIONAL LANGUAGE**

India is known for unity in diversity, comprising the most varied composition of the ethnic and the linguistic population. Language is one of the dearest assets to any community, no less than nationality. Thus, no community is ready to depart with its linguistic affiliation readily. At the same time, the laws have a universal application. Therefore, availability and access to legal literature in regional language is of vital importance which is linked with justice delivery in India. The fact of English becoming indispensable is no more open to many challenges. Still, there could be practical problems when it comes to translating all relevant legal documents and cases laws in the vernacular language. This may deny access to justice to those not in the mainstream. All those aspects of law which have international perspective are not available in vernacular language which denies these regions access to such knowledge. This has limited the scope of thinking and thus, growth of the profession and justice delivery as a whole. The international literature which provides a comparative perspective to a student of law to better understand the subject is closed to large masses. Therefore, such huge number operate in a closed world in spite of globalisation.

The 2008 rules of BCI accept the fact that many universities accept vernacular language as a medium of examination. The rules make English exam compulsory for universities which allow students to have vernacular language as a medium of examination<sup>8</sup>.

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<sup>7</sup> Elliot Milstein, "Clinical Legal Education in the United States: In-House Clinics, Externships, and Simulations" 51 *Journal of Legal Education* 375 (2001).

<sup>8</sup> Bar Council of India Education Rules, 2008 available at <<http://www.barcouncilofindia.org/about/legal-education/education-rules-2008/>> last visited on September 27, 2020.

#### **IV. PROBLEM OF COMMON LANGUAGE IN MULTILINGUAL STATE**

It has been one of the most difficult issues to establish one common language in a multilingual State like India. India is composed of many semi-national states with its distinct dialect, ethnicity, cultural prejudices and profile. Linguistic diversification tends to increase with the social isolation of speech communities.<sup>9</sup> Thus, access to legal education is denied its due recognition. Neglect of minority language in legal education has further aggravated the issue because it is not subject to dispute that a child learns anything easily and with less conflict if taught in the mother tongue. The political factor behind it cannot be ruled out. The national unity of India, has many times been threatened by the move towards having a common language and it has also injured the expansion of legal education.

#### **V. THE CHALLENGES BEFORE LEGAL LANGUAGE**

The use of language occupies a special significance in the legal system where it is used as a tool by the policymakers while drafting of the law and deciding their connotation to remedy a particular mischief. The use of language by the courts to substantiate their reasoning renders the import of language to be worthy of discussion. Therefore, legal philosophers need to have a discerning sense of language use.

Words serve as a tool of law to provide relief to the parties and curb the social evil. In the legal profession language used by judges becomes important because of the meaning imposed upon them by the judges. The lawyers are expected to present the feeling of their client with accurate words to get justice.

It is usually felt that the study of law enables learning of new language, but it is not so easy. The linguistic refinement needs to be mastered for mature use in the legal profession. Thus, precision and enhancement of linguistic skills are indispensable in the legal profession.

The language problem in access to legal education is more acute than any other stream of professional knowledge. We cannot become ignorant of the language tussle in a multi-ethnic country like ours. The wayout appears to be the mandate to the policymakers to strive for the development of legal literature in English which is our window to the outer world but at the same time effort towards enriching the legal literature in vernacular language should not be neglected. We need to have an open mind towards the practical realities of the

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<sup>9</sup> Paul Friedrich, "Language and Politics in India", *Daedalus*, Vol. 91, Nos. 3 and 2 Current Work and Controversies 544 (Summer, 1962).

global village. If we keep our attitude stringent towards English, we are sure to pause. Similarly, it is also equally true that in a diverse state like ours neglect of regional language has been one of the potent reasons for the poor state of affairs in access to quality legal education. Multilingualism itself should be the object to be achieved.

The northern belt of India is hugely populated and Hindi dominated area. Here the use of Hindi as language of instruction will be relied by the law colleges. This will definitely have certain implications as the cases, the treatises and commentaries, and the laws themselves are all written in English. Although efforts are underway, there is as yet no technical legal vocabulary in Hindi, and this makes it difficult to express precise ideas or technical legal concepts.<sup>10</sup> Moreover any international development and perspective to law to be made available in local language requires distinct efforts which has not been up to expectation.

## VI. DISPENSATION OF JUSTICE AND LANGUAGE SKILLS

The Law Commission of India was also conversant of the fact that legal education is fundamental to the very foundation of the judicial system.<sup>11</sup> The courts are considered to be temples of justice, and judges are the Lords to deliver to all whatever is due to them theoretically. It is the faith in the third pillar of any effective government that keeps the hope alive despite the all-pervasive corruption. Then the question of skills of these lords in the legal language needs to be pondered over. This is where continued legal education assumes importance.

The National Knowledge Commission has also taken cognizance of the importance of legal education. In its Report the Commission<sup>12</sup>, while recommending the establishment of a regulatory body under the name and style of “Regulatory Authority for Higher Education (IRAHE)” covering the field of legal teaching, has made the following observations:

*“The vision of legal education is to provide justice-oriented education essential to the realization of values enshrined in the*

<sup>10</sup> Getman, Julius G., “The Development of Indian Legal Education: The Impact of the Language Problem” (1969). Available at <<http://www.repository.law.indiana.edu/facpub/1900>>.

<sup>11</sup> Law Commission of India, 184th Report on the Legal Education & Professional Training and Proposals for Amendments to the Advocates Act, 1961 and the University Grants Commission Act, 1956, (2002) available at <<http://14.139.60.153/bitstream/123456789/4070/1/184th%20Report%20on%20The%20Legal%20Education%20%26%20Professional%20Training%20and%20Proposals%20for%20Amendments%20to%20the%20Advocates%20Act%2c%201961%20and%20the%20University%20Grants%20Commission%20Act%2c%201956.pdf>>, last visited on August 11, 2020.

<sup>12</sup> The National Knowledge Commission Report, 2008.

*Constitution of India. In keeping with this vision, legal education must aim at preparing legal professionals who will play decisive leadership roles, not only as advocates practising in courts, but also as academics, legislators, judges, policymakers, public officials, civil society activists as well as legal counsel in the private sector, maintaining the highest standards of professional ethics and a spirit of public service. Legal education should also 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.”*

The Law Commission of India in its 216<sup>th</sup> Report observed on the vitality of language in the following words<sup>13</sup>

*“Language is a highly emotional issue for the citizens of any nation. It has a great unifying force and is a powerful instrument for national integration. No language should be thrust on any section of the people against their will since it is likely to become counter-productive.*

*It is not merely a vehicle of thought and expression, but for Judges at the higher level, it is an integral part of their decision-making process. Judges have to hear and understand the submissions of both the sides, apply the law to adjust equities. Arguments are generally made in higher courts in English, and the basic literature under the Indian system is primarily based on English and American textbooks and case laws. Thus, Judges at a higher level should be left free to evolve their pattern of delivering judgments.”*

Here the emphasis was that restriction should not be imposed on the use of any language if it renders the expression difficult. The future shall witness a radical transformation in the content as well as methods adopted to impart legal education in India. Globalisation has posed multiple challenges to the future of legal education in India. Still, it has provided an opportunity to challenge the status quo, which is an essential condition for seeking any reform. Thus, to bring structural change in the legal education it is incumbent upon us to play our role to remove language hurdle as a most significant barrier in

<sup>13</sup> Law Commission of India, 216th Report on Non-Feasibility of Introduction of Hindi as Compulsory Language in the Supreme Court of India, (2008) available at <<http://lawcommissionofindia.nic.in/reports/report216.pdf>>, last visited on Aug. 11, 2020.



the growth of legal education in India which will then really have a global perspective and acceptability.

Further, if this goal is achieved, it will lead to integrated growth of language as well as legal education in the most effective manner possible. The National Education Policy (NEP) 2020 in the light of challenges posed by COVID-19 has further presented many challenges for the survival of the evolving legal education. Though the New Education Policy proposes to bring many noteworthy changes such as National Book Promotion Policy, promotion of regional language and multiple entries and exit options among other, it would be too premature to comment upon its implementation. The power of language in teaching and learning has also been emphasised in the NEP 2020.

The COVID-19 and post COVID circumstances have highlighted the significance of the online mode of teaching-learning pedagogy, which will further present many challenges in terms of availability of literature to complement legal education. This will further expose the barriers of language in legal education in India, which have to be overcome by the stakeholder of legal education in future to come.

The language and legal education form part of an inseparable whole and development of one without the other is far from imagination. The apex court also emphasised the significance of legal education and stated that “The need for a continuing and well organised legal education, is absolutely essential reckoning the new trends in the world order, to meet the ever-growing challenges. The legal education should be able to meet the ever-growing demands of the society and should be thoroughly equipped to cater to the complexities of the different situations<sup>14</sup>”.

The author is also not oblivious of the fact that the evolution of legal education is attached to the material which needs to be made available in vernacular language which is the duty of people of Indian origin. The present challenges created by barriers of language can be effectively addressed with special incentives from the authorities to those who contribute towards creation of sources not limited to specific language. Moreover, we cannot rule out the possibility of dispute in modern day society but the manner in which it is resolved decides the fate of the nation. Thus, it is suggested that law making in our country should give due consideration to the multi lingual social fabric of India and legal education being an instrument of social change should aim at holistic growth of all languages without any coercion.

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<sup>14</sup> *State of Maharashtra v. Manubhai Pragaji Vashi*, (1995) 5 SCC 730.