

LEGAL EDUCATION AND RESEARCH IN INDIA: CONSTRAINTS AND CHALLENGES AHEAD IN THE WAY TO SOCIAL JUSTICE

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***A**bstract—The legal education has been considered as professional education and is being imparted in a separate professional college under the control and supervision of the Bar Council of India and State Bar Councils. It has not been taken as university education open as an academic discipline for all. The legal professional education waits the disputes to come to the court, then the lawyers and judges try to solve the disputes. Thus, the dispute is neither prevented to arise nor filtered to come up. The 'law' as professional education and 'law' as social justice education is a subject of debate in this paper along with teaching pedagogy, curriculum development, and research on contemporary issues in LPG economy. The paper aims to discuss the role of BCI, status of national law universities condition of non-NLUs and the administration of justice. Whether the legal education is 'justice education' or 'social justice education'? Can the letter pad law institution help achieving the goal enshrined in the preamble of the constitution-political, economic and social justice'? Can the noble profession achieve even professional objectives without 'able education'?*

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I. INTRODUCTION

Legal education refers to the education of lawyers before entry into legal profession. It is offered through traditional law departments/colleges and the modern specialized law universities. The legal education is meant to establish rule of law through administration of justice. The function of law is to control and regulate the behavior of people in the society. Historically, the law is closely linked to the rule of law and maintenance of order for the development of civilization. It was practiced by wise and prudent man without any formal education earlier. The modern Indian legal profession dates back from British rule with the establishment of law courts in Madras, Bombay and Calcutta. Meanwhile, the establishment of three Universities in Calcutta, Madras and Bombay formally introduced Legal Education as a subject for teaching. The Legal education gathered momentum and acquired importance in free India to render justice to a large number of its citizens as judicial remedies are one of the fundamental rights. The immediate concern was to minimize inequalities and provide basic amenities to millions of people. With the adoption of a democratic form of government, the legal education was expected to bring the legal system in tune with People's desires, economic and social justice. The Advocates Act, 1961 was passed to promote legal education and to lay down standards in consultation with the Universities in India. The BCI took major decision to establish national law university (NLU) at Bangalore as pioneer in modern legal education imparting five years integrated law courses. Today, we have twenty-two law schools and many private universities on NLU pattern.

In this context, the researcher seeks to study the growing significance of legal education in the age of liberalization, privatization, and globalization (LPG). The LPG economy is the mega challenge before legal education. The legal educational institutions lack objective and vision. It is passing through experimental transition. There is dearth of qualified teachers, mentor, training centers and grooming facilities. The legal education has been caged, cabined, and confined to profession only. It has not been opened as mass education like other social sciences disciplines. The research wing of the university is crying for modernization. The question setting, examination pattern and evaluation technique is either old fashioned or unscientific. The curriculum design and teaching pedagogy is eagerly waiting to be student centric. The high fee hinders the downtrodden family to think over legal education. The efforts of regulatory body seem ceremonial. The academic governance is unaware of the wants and wishes of the stake holders. Whether the specialized courses in specialized universities have been capable of fulfilling the aspirations of society and objectives of the Administration of Justice.? What are the constraints and challenges ahead? Whether the letter pad law schools can be revamped? What should be the mechanism for uniform legal education in India?

II. LEGAL EDUCATION IN HISTORICAL PERSPECTIVES

Imparting knowledge through education is inter-generational obligation. All the professionals, next generation. i.e. Doctors, lawyers, teachers, craftsman, engineers, chartered accountants, company secretaries, etc., who have acquired knowledge are under obligation to train the next generation. The Maurya period [321-185 BC] had very good legal system in India. But legal education as discipline was nowhere imparted. The king was the fountain of Justice. It was presumed that the wise man by nature, character and wisdom can impart the judicial function. Therefore, there was no need to impart legal education as such. As in Takshila also there is no trace of separate law subject for the princes to learn. The legal acumanship was the outcome of wisdom read with Vedas. The later period had also the same presumption, but it went into the hands of priest ship of specific religion. Thus, justice took the shape of religious color and became profession of particular class and cast. Thus, the legal education turned to religious education till the advent of the Brtishers in India. The Brtishers were habituated in the common law system and court. The East India Company was granted charter by King George I in 1726, to establish Mayors court in Madras, Bombay and Calcutta. The judicial function of the company was extended and expanded after the Battle of Palassy. The Mayors court was extended and expanded replacing the Mughal legal system. But the war of 1857 ended the reign of East India Company and established the reign of British Crown which culminated into the shift in Indian legal system. The supreme courts were established replacing the Mayors court. The Privy Council acted as the highest court of appeal. But there was no care for the initiation of legal education in India.

The advocates earlier were called as ‘Vakil’, the representative of the clients. The Legal Practitioners Act 1846 opened the profession for all cast, creed, and nationality. This made the people aware, and consciousness grew among many towards legal education as a professional and went London for such degree and license to practice in the court. The legal education could cultivate in them understanding, confidence, analytical power and meaning and means of freedom. This was one of the reasons that the lawyers, i.e. Mahatma Gandhi, Pandit Jawaharlal Lal Nehru, Sardar Patel were on fore front in the war of independence.

Before the independence, Munshi Ishwar saran moved in 1921, with a view to create an ‘Indian Bar’ as a body for providing legal education in India and to create an indigenus professional. The Government of India appointed a committee under the chairmanship of Sir Edward Chamier, the retired chief Justice of Patna High Court. The Chamier committee recommendation culminated into ‘The Indian Bar Council Act 1926’, authorizing the Bar Council to facilitate legal education and training in India.

After independence, the Advocate Act 1961 was enacted which empowered the Bar Council of India (BCI) to 'promote legal education and to lay down standards' in consultation with Universities and State Bar Council. With this the BCI can make rules prescribing the standard of legal education. For this purpose the BCI has been authorized to recognize the law colleges and law degree by Affiliation process and as a pre-condition for the enrolment as Advocate. In this way legal education has become a professional course. The result is that they can use their degree in courts including any other tribunals, offices, institutions for legal requirements. The requirement of legal professionals has been increasing due to expansion in business, government activities and awakening for legal rights recent years, even beyond the political-territorial boundary. In order to meet the modern requirements again there was a rethinking over the shape of legal education in 1970s which culminated into the establishment of National Law University with inter-disciplinary approach. But the legal education is still in mess searching for another drastic change with major role from 'inspection and affiliation' in the name of 'maintaining the standard of legal education' to regulate quality of education through admission and other means. This is also important as the legal education is not within the ambit of NEP (New Education Policy) 2020.

III. LEGAL EDUCATION AFTER INDEPENDENCE

of course, the constitution of Indian Bar Council by the Act of Indian Bar Council Act 1926, has demarcated a new era in the legal profession and education to supply the bar adequate number of professionals. But the objective was nowhere social justice. It was requirement of the experts in the court. The need of the lawyers became different after independence, as the preamble of the constitution deals with –political, economic and social justice. Thus, the Indian constitution expects legal education to be social justice oriented. As per the University Education Commission (1948), the legal education was 'pitiably and dependent'. It was not a mainstream education. The law courses could be taken simultaneously with post-graduation courses without regular class attendance in the evening. The students used to fill up forms, read notes and selected questions, answer in the exam which was evaluated without any quality norms. The XIV law report (1958) on "Administration of Justice", stated that the legal education seems to have not to teach law as a science or as a branch of learning, but merely imparting to students' knowledge of certain principles and provisions of Law to enter them into legal profession. Law has not been looked upon by the Universities as an educational or cultural subject. "Thus in 1962, a legal education committee was constituted in BHU under the chairmanship of CJI, Hon'ble Justice. B. P. Sinha. The Committee recommended three years law degree course –a pioneer efforts raising the standard of legal education in the right direction. The similar efforts were made by the Mahajan committee (Punjab University), Justice Gajendragadkar Committee (Delhi University) and Sinha committee (Kerala University). All approved the Banaras scheme.

However the report of Justice Gajendragadkar committee (1964) advocated very broader view of the legal education as “the legal education in broader sense includes not only practice but also covers law teaching, law research, administration in different branches –commercial, employment etc., all other activities which postulates and require the use of legal knowledge and skill within its scope.”

IV. NLU AND LEGAL EDUCATION

Way back in 1885, Mr. Justice Muthuswami Ayer had expressed anguish that ‘law is studied as mere art than science’. He emphasized that legal education should be imparted on scientific basis to further the protection of human interest in all spheres of life. Mr. Radha krishnan commission report also expressed anguish as ‘legal education in western countries has carved a niche among the learned curricula, but in our country, it does not hold a place of high esteem.’ Ultimately the 14th report on the Reform on Judicial Administration’ suggested certain measures to ‘improve the standard including --introduction of three years degree course after Graduation; Law colleges to be the full time institutions; allocation of adequate fund for imparting legal education ;appointment of full time teachers ;supplementary lectures ,seminar, moot court ,case study ,introduction of apprenticeship course for one year. The BCI was entrusted with the responsibility to promote legal education and to lay down standard in consultation with Universities in India.

The discussion continued even in the decade of seventies in various workshops which culminated in the establishment of National Law School of India University (NLSIU) at Bangalore. Ushering into modern legal education. However, it has two conflicting school of thought – “it is necessary to have such institutions to make legal education socially relevant.” Another school had negative view. As Sri S.P. Sathe, echoed that NLU are ‘elitist’ in character’.

Presently, India has twenty-five national Law Schools and around 700-hundred-degree law colleges affiliated to the various universities, private universities imparting three years as well as five years legal educational curriculum. Some of them have very good physical infrastructure, whereas some are struggling hard but in the name of right to education and mass education, such colleges are allowed by BCI. Thus BCI, has been compromising with the standard of legal education due to popular compulsion, despite the harsh comment as ‘letter pad Law colleges. Thus,in India on the one hand ‘the elitist legal education is working while on the other hand the system is ‘pre--1980 era or pre-independence era’. In the National Law Universities, clinical legal education is being imparted, whereas the affiliated colleges have traditional form of education. But both have law degree valid from BCI and UGC, are law graduate and entitled to be the part of bar, bench, law officers, legal advisors and teaching fraternity. The UGC and the state government emphasize on ‘bachelor’s

degree education'. They never care for the legal education. They have left it in the hands of the BCI and state Bar Councils. In the midst of chaotic situation, the 'High Affiliation fee' being charged by the BCI' has become a subject of criticism and thus a demand that the BCI 'be exempted from responsibility of legal education. There should be a separate body like MCI (Medical council of India), AICTE. Let the BCI take care of BAR only. When the BCI has started exam for the selection of candidate for 'Advocates license' and even the NLUs passed out have to appear in the eligibility test, then the role of maintenance of standard of legal education comes under 'question mark'. More so the BCI does not look into the post graduate education, all the legal educational institutions suffer from shortage of law teachers with quality. Although recently the BCI has started a move to incorporate Post graduate Legal education in its ambit and stop one year course for LL.M. of course the BCI concern is in favour of improving legal professional education. Unless the Post graduate education serious one, we cannot have best teachers. Hence, we cannot produce expert law graduates. Even the law schools are being run without adequate number of trained and passionate law teachers. This has resulted in the decline in quality teaching and research in the legal education system.

V. LEGAL EDUCATION VS LEGAL PROFESSION

Education is the core subject in the governance in the democracy as it is the tool to eradicate all ills and evils in human being, society and profession. The education has objective to bring behavioral change as well train the people for rational and analytical mind for brighter tomorrow. The legal education is not an exception. The educational training ultimately solidifies into wisdom. The education in law is the 'pyramidal', on the top of all humanities and social sciences. But legal education is not imparted as a discipline, rather as a professional course. It has never been thought as a liberal education to bring social justice or 'social justice education'. It has not been as a discipline; it is still caged cabined and confined within the sphere of profession. While the other social sciences are flourishing by expanding its horizon according to the disciplinary requirements of social demands.

Legal education is the education of individual who intend to become law professional and use their degrees in courts and tribunals. However, scrutinizing the social –political-economic requirements, it is found that it is not merely a professional education. It is not merely confined to litigation as legal knowledge is vital to every member of the civil society. The legal education needs to be open as a discipline and introduced in colleges as general educational discipline and can be taught as the subjects of social sciences and humanities. It can fulfill the demand of the society as non-litigation lawyer for mediation, arbitration, legal adviser in different sector for different purposes. The scope of legal profession will be widen and the supportive staff in the court can be hired from this stock. As in the panchayat Raj system, the NYAYA MITRA has

been created to provide justice at doors to the rural people. The Courses like B.A. Law (Hons) or subsidiary law paper in B.A. can be introduced for legal knowledge. Of course, they will not be entitled for practice in the courts. Like medical education in postgraduate, P.G. (Clinical) and P.G. (Academics) can be started in two years LL.M., for the brighter future of legal academics and professional improvement. Therefore, the present situation demands open debate on the issue of legal education. As it is not merely educational or professional degree, but it is a social justice education. The other nodal agency is NAAC (National Assessment and Accreditation Council) of India, an autonomous body under UGC, which is assessing the colleges and universities in general with law institutions also. The BCI should design uniform standard in consonance with NAAC and NIRF (National Institution of Ranking Framework) of MHRD and UGC for legal education institutions and research.

VI. LEGAL EDUCATION CURRICULLUM

Since the society, industries, market and socio-economic –political activities are expanding in the era of globalization, the demand of the legal professionals are also increasing. The legal canvas has spread beyond the borders with the process of globalization. Thus, the curriculum of the legal education needs to be accordingly. “The study of law is very intriguing and complex covering the deep sea, the earth, the sky, and the virtual-the cyber world.” There is a huge demand of the ‘technology lawyer’ who can support the procedural lawyers. But keeping cyber law/IT law as only one paper in the legal curriculum is injustice to the profession and society. Presently the legal curriculum is a process of imparting knowledge ‘something for everything’. Whereas there is a need for ‘everything in something’. The open specialization in special discipline or inter-disciplinary course can fulfill the present era problem. As in the Pondicherry University, there is Banking technology study coined with ‘banking law and IT’, and they are serving the purposes of Banks without the intervention of the professional lawyers. ‘The specialized academic lawyer can analyses legal issues and help-advise the institutions and save increasing number of litigation which are hampering progress.

As per the knowledge commission Report, there is very rigid compartmentalization of natural sciences and social sciences, hence dialogue is wanting. Hence the law curriculum has to open the boundary to accept the changing needs of industries, society and market, social welfare groups, human rights, requirements as per directive principles of state policy etc. Therefore, multidisciplinary curriculum in legal education is the demand of the time.

VII. TEACHING AND RESEARCH IN LAW

Every sovereign country resolves its socio-economic-political problems through legislations. But no country has enough resources to combat entire

problems alone nor has its ideological technology. The countries entering bilateral treaties bring suitable changes in laws for bilateral trade relations, investment, cultural exchange programmes etc. Such bilateral treaties may not work properly, therefore regional forums, i.e., SAARC, ASEAN, EU, etc. are created for speedy socio-economic progress and peace in the region. The resolutions of the General Assembly have become a propelling force to accommodate in the global conditions politically. The UDHR have been a great guideline for the countries to legislate and develop institutions for the human rights protection. The EU human rights court and its functioning has become an icon for rest of the world. India has given due importance to the international treaty under Article 51 of the constitution. The Human Rights are protected under Human Rights Act 1993. The National and state Human Rights commissions are functioning together. People are getting remedies. Likewise, the WTO agreement have emphasis on trade and development for the global village. The environment cannot be confined within four walls. Each country has been facing the natural calamity and global warming. The TRIPS agreements have connected the whole world into one economic zone. The ILO has been working on various employment issues internationally. The global nature of companies – multi-national, trans-national have encouraged India to change corporate laws in 2013 for globalizing the business. The reform in tax laws as per international treaties and conventions have resulted in GST Act for giving boost to business under –one nation -one tax principle. The consumer protection laws, and competition laws are global in nature. The Arbitration laws have got impetus to resolve international trade disputes.

Thus, the treaty- agreements, international covenants, conventions, conferences, resolutions, UDHR, TRIPS, and TRIMS, banking laws have taken root in the domestic laws. The objective of all global activities to bring socio-economic changes convenient for human development and peaceful world order. Even the criminal law-making area are not left unaffected. There is impact of ICC and ICJ too. The movement of nationals to different countries of the world have made it necessary for human protection and quick judicial remedies with extradition and asylum. The private international laws/conflict of laws have emerged with a great significance. The family laws are no longer domestic law. The problems related to refugee is still a global issue and the homeless/stateless also have remedies under the human rights and humanitarian laws. Thus, the inclusion of such international laws in course curriculum is an urgent aspect of teaching today in legal curriculum. The professionals in legal field require to be trained in domestic laws with reference to the international law to make them global.

The international law teaching is limited to national in scope due to lack of training to the law teachers. Secondly, the inter-state teacher exchange program is almost unavailable. There is no regional or global centers where in the issue based teaching –training be provided. The teachers and researchers are

craving for institutional support, books, journals, and law reports. Therefore, an inclusive curriculum in each papers of law requires to be framed for effective understanding of regional and global issues. Days are gone for the proverbial slogan that international law is vanishing point of jurisprudence.

The first half of the twentieth century witnessed great international upheaval leading to great world war, concluding into establishment of UNO and furthering global peace and prosperity. The wave of democracy entered the world fraternity for economic prosperity. This resulted into global conventions/treaties to overcome the hurdles, and paving way for uniform policies for better socio- economic-cultural world order. Thus, a new awakening entered into the world order to develop their people accordingly. It is now an open secret that no country can grow without global support. The marvel of telecommunication has brought the countries very close to each other. Now we are living in a global village. It is difficult to ignore any type of changes anywhere in the world. Therefore, the academics cannot remain aloof from the changing world order. So, the revision of course curriculum of academics has become an urgent need in order to prepare professionals of today for brighter tomorrow. The teaching has not to be limited to classroom teaching but research for domestic problems with reference to the changing world order. This is the reason that modern Universities are being established.

But it has been our experience that merely establishing a university is not enough. It requires rational and need based curriculum. It also requires understanding the employment scope in the globalized world. But, while framing, updating, or rationalizing the curriculum, the global scope is generally ignored. The reason lies in the either absence of knowledge of global changes or who will teach if the curriculum is of such standard. Thus, the courses become local or regional. It sometimes remains in the state boundaries. It becomes neither special nor national as there is no effort to discuss over this issue, calling a national conference for uniform and special course curriculum. The regulating agencies does provide model, but autonomy comes in the way in formulation of the course curriculum which succumbs under the superiority of the heads presuming they know everything. There is no discussion, hence arguments prevail.

Secondly, the teaching pedagogy is the most important factor in making the professional. The function of a teacher is not to teach but to create curiosity. The teacher's duty is to knock the door of the mind and let the student stimulate. But such teaching requires self-study, research, training and dedication towards the cause of students. The lack of updated books and access to library is a basic hurdle. The updated journals are also a dream. The preparation of the lecture plan and materials depend on the sources available in the library, which is almost dried up. The mandatory purchase of books annually is also pathetic. Thus, the compulsory library access remains a ceremonial ritual. This

results in monotonous teaching and research, ultimately driving the young generation into oblivion.

Thirdly, the training to the trainer is not only a principle, but an urgent need for sharpening the teaching methodology, updating of the current national as well as international changes, creating a sense of responsibility for academic institution and students, society, innovative to the ideas what better can be and how. The teachers are the builders of future of the young ones. This objective should be apparent in the mind always. But it has become an 'employment' 'with an objective of earning ones living, whereas teaching has been a solemn service.

Fourthly, the in-house weekly or fortnightly discussion on the teaching pedagogy, setting of question papers, evaluation technique is wanting. The 'review discussion' is a way to update and awaken the duty and responsibility of a teacher. But it is taken as a tool to victimize, and hence generally ignored. The communication to and fro from students' feedback is another important tool to keep update and aware the teachers for their responsibility.

The teachers are not concerned of classroom teaching only rather as a researcher also for academic as well as policy contributions. The writing of research papers, institutional research projects and authoring books are part and parcel of the teaching profession. If the institution motivates the teachers for such activities and helps in getting training, the entire academic world is benefited. The organization of seminar, workshop, and debates on local, national and global issues are technique to update the teachers as well as students.

Fifthly, teaching the papers/subject of law is a challenging one. It cannot be taught word by word. It requires to reveal the hidden philosophy inside the word, sentence, and paragraph. In another word, every paper of law in the curriculum, is a branch of subject in itself. Hence it has its own jurisprudence. As the jurisprudence in labor law is different from that of the intellectual property rights. Likewise, the jurisprudence of lawyering is essential to cultivate among the law students. Mere moot court practices are not enough. The students are to be trained the habit of reading, writing ,communication ,debate ,drafting ,and pro-bono-practices to understand the nature and significance of legal professional education.

VIII. EPILOGUE

The preamble to the constitution has set the objectives and goal of the constitution to achieve, i.e. political, economic and finally social justice. The education is one tool to bring social justice. Historically, the sound justice delivery system has been an essence for the peace and prosperity of any society. Legal

education has been taken to create a professional for BAR AND BENCH: ADVOCATE AND JUDGES. It has never been thought as a 'liberal education and social justice education'. The efforts of then IBC (Indian Bar Council) and now Bar Council of India (BCI) cannot be discarded and ignored. But the education in legal science cannot be taken merely as a professional education. It has to be liberated and open as a 'discipline' as other social sciences. Such curriculum can be introduced in the three years degree course as B.A. (Hons) in LAW, as well as M.A. in Law. Further various subjects of law can be expanded as it is being exposed in the foreign countries. As the world is moving towards globalization, but we are lacking Human Rights activists. The liberalized education as bachelor can meet the demand through law graduates. More so the law as a faculty or separate branch devoid of social sciences have also caused it to suffer the pangs of isolation. Such efforts can be compared with KELSONIAN MODEL of jurisprudential study.

The opening of legal education as liberal one can minimize pressure on the law colleges which are not in a position to maintain standard for the profession nor they are in a position to breed future seed for new crop. Thus, research in law has been obsolete whereas it is essential for socio-economic development in the democratic setup. Inter-disciplinary, multidisciplinary, and cross disciplinary approach can enrich the law curriculum and the present social-economic and political requirements can be fulfilled. On the other hand, the NLU, can be enriched with specialized graduate and post graduate faculty from the UGC education system. Thus, the multi-dimensional approach have potentiality to solve the social problems. A teacher of jurisprudence can be produced from graduate in law and postgraduate in comparative jurisprudence through liberal social justice education as per UGC system. The teacher in constitutional law can be groomed from law graduates and specializations in constitutional law in postgraduate. It does not require the LL.M. qualified from professional law college. As the teachers are meant to analyze, interpret and explain the subject conceptually and it can be done by the faculty groomed in non-professional academic institution in better way. On the other hand, the professional colleges should concentrate on grooming the students for BAR and Bench. The clinical training can be imparted through lawyers working in courts. Thus, the professional education and liberal education together can bring change in the legal education culminating to social justice. Legal education still in the name of professional education has been the victim of 'caged, cabined and confined' to law colleges and law schools. The result is that neither the law graduates nor the lawyers are benefitted. Even the administration of justice suffers the jolt of quality service. Still legal education is 'business oriented' on the part of entrepreneurs (either in government or private sector). Still, it has the legacy of Lord Cornwallis system of governance in the name of autonomy. After all who suffers. The obvious answer is 'we the people of India'. Thus, it requires to open the legal education as a 'discipline' beginning from the twelve class as a compulsory /optional paper. There should be a B.A. (Law) Hon's courses in

all universities and post graduate courses as M.A. in LAW as other social science papers, i.e., MA in History, Political Science, Sociology etc. Whereas the law colleges be allowed to impart legal education along with compulsory court practice (as assistant) with advocates along with theoretical classes and legal aid clinics to the litigants. Let such people be admitted to bar after clearing bar exams conducted by BCI. The BCI should confine to bar and Bench, another body to look after the legal education should be LECI (Legal education council of India) may be within BCI. The seats must be limited to not more than 500 in each states as per the medical and engineering. The course term should be four years. The entrance test on state level/central level can be conducted for legal aptitude test and they should be admitted after main written test, group discussion and interview. Thus on the one hand, the legal education will be open for all, serve the purpose in general and on the other hand, there will be quality lawyers which in return will strengthen the Bar and administration of justice.

At present, there are four groups of legal educational institutions-National Law Universities, Government colleges, affiliated colleges and new private universities. In each institution, there is crunch of teachers. The curriculum is differing from each other within the state as well as different in different states. The teaching is half cooked even in theory or conceptual. There is no court visit. No simulation exercise at colleges. Hence after the end of semester, there is no working knowledge. Thus, the students pass out from any institutions of repute lack the ready mind for any type of legal services barring exceptional genius. With the concept of placement, the legal education has become job oriented. The course designed is not practice oriented. Examination policy is memory oriented rather than merit (critical, analytical, problem solving) oriented. This has equal impact in the administration of justice too. In this scenario, the legal education needs to be opened as discipline as a social justice education.