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Indo-U.S. Ties and the Next Generation of Law Teachers

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Abstract

India faces a shortage of qualified law teachers. According to the proposed legal education reform agenda, national law schools are due to open in each state and the standards at the existing 900⁺ law schools will undergo review. Indian law teachers will seek training on participatory learning and on skills teaching. They will seek guidance on research strategies. They will develop new courses of study. The new Indian law pedagogy and research culture will evolve in the Indian context with values shared by U.S. legal educators.

India Committee members with knowledge and interest in both Indian and U.S. legal cultures can play a supportive role in developing law teacher training resources as India undertakes legal education reform. Among us are attorneys who negotiate Indo-U.S. business deals and represent families with Indo-U.S. ties. There are faculty who teach international and comparative law and who focus on India as they design student projects and conduct research. Attorneys who supervise legal process outsourcing to India have a vested interest in knowing what Indian law students learn about professional ethics, legal writing and research. This article recaps key features of Bachelor of Laws education in India, identifies certain reforms being planned, and suggests several types of resource development to support the work of the next generation of Indian law teachers.

Keywords:

United States, U.S., India, legal education, law teachers, legal writing, Bachelor of Laws, legal research, internships, Bar Council of India, professional ethics, All-India Bar Examination, law curriculum, external examiners, University Grants Commission, lawyering skills, clinical legal education

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India faces a shortage of qualified law teachers. According to the proposed legal education reform agenda, national law schools are due to open in each state and the standards at the existing 900+ law schools will undergo review. Indian law teachers will seek training on participatory learning and on skills teaching. They will seek guidance on research strategies. They will develop new courses of study. The new Indian law pedagogy and research culture will evolve in the Indian context with values shared by U.S. legal educators.

India Committee members with knowledge and interest in both Indian and U.S. legal cultures can play a supportive role in developing law teacher training resources as India undertakes legal education reform. Among us are attorneys who negotiate Indo-U.S. business deals and represent families with Indo-U.S. ties. There are faculty who teach international and comparative law and who focus on India as they design student projects and conduct research. Attorneys who supervise legal process outsourcing to India have a vested interest in knowing what Indian law students learn about professional ethics, legal writing and research. This article recaps key features of Bachelor of Laws education in India, identifies certain reforms being planned, and suggests several types of resource development to support the work of the next generation of Indian law teachers.

Likewise, India Committee members can inspire U.S. law faculty to further develop India-relevant curriculum, legal research topics, internships and service projects. The article describes the limited ways in which U.S. law schools presently engage their students with India and raises the question of what more should be done to prepare U.S. law graduates to handle the growing number of legal interactions between India and the U.S.

Indian Legal Education Today

Currently, the Bar Council of India (BCI), the regulatory body over legal practice and legal education pursuant to the Advocates Act, 1961, defines the curriculum at Indian law schools. The BCI recognizes two types of courses for first degrees in law: the three-year Bachelor of Law (LL.B.) degree for graduates holding an initial Bachelor's degree in any discipline, and the five-year joint Bachelor of Arts, Bachelor of Law (B.A., LL.B.) degree after 12th standard (grade). For each of these degree programs, BCI mandates that students take not less than 28 law subjects, 18 compulsory substantive law subjects and four compulsory clinical papers (Drafting, Pleading and Conveyancing; Professional Ethics and Professional Accounting System; Alternative Dispute Resolution; and Moot Court Exercise and Internship). LL.B. students take six optional papers from three or more groups of elective topics, and for a specialized and/or honors course, a student takes an additional eight papers from one group. The list of elective course groups that may be offered is robust, including

Constitutional Law, Business Law, International Trade Law, Crimes and Criminology, International Law, Law and Agriculture, and Intellectual Property Law. A university/school may add to these subjects and groups, but Indian law schools often limit the number of electives to less than a dozen in a given semester in view of constraints in faculty expertise and other resources.

This high degree of control over the curriculum likely arises from the fact that India has relied solely on a person's degree in law from a recognized University to ensure minimum competence for admission and enrollment of advocates by the State Bar Councils. The introduction of an All-India Bar Examination in 2010 provides another check on competence for practice and may lead to more flexibility in the law curriculum. The highly mandated curriculum has placed Indian law schools at a competitive disadvantage in responding to the fast-changing profession of law and global trends in legal education. Indian law graduates have typically specialized by pursuing LL.M. study and/or post-LL.B. diploma courses.

Indian university policies often limit freedom in syllabus creation and student assessment in a course. Presently, a syllabus usually is created by a group of professors who teach the same subject. Grading of examinations involves external examiners besides the professor of the subject. This context results in examination-driven courses and constrains an individual teacher from experimentation in teaching a course. Formal teacher training ("refresher courses"), funded by the University Grants Commission, are required for promotion, and cover only substantive law topics, rather than types of pedagogy.

Lawyering skills ("practical training") and clinical legal education in India are affected by the fact that full-time law faculty cannot practice law, though a law teacher may seek permission to appear in a particular case. A practicing advocate may teach law but teaching is restricted to three hours per day. This effectively bans law practice by full-time faculty, preventing a teacher's ability to supervise legal aid by students.

Faculty research to produce new knowledge has been optional at many Indian law schools. In some institutions, heavy teaching loads inhibit research.

Calls for Reform

Over the last decade, Indian legal educators have recommended reforms including modernizing pedagogy; including practical training, clinical legal education and its social justice mission into the curriculum; teaching critical thinking and analytical writing skills; providing global perspectives; and enhancing faculty research capabilities. While national law schools and certain other highly reputed law schools in India address these issues, the vast majority of law schools in India lack resources to accelerate reform.

At the National Consultation on Second Generation Reform in Legal Education held in Delhi on May 1 – 2, 2010, the Union Minister for Law and Justice Dr. M. Veerappa Moily presented a Vision Statement to the Prime Minister of India Dr. Manmohan Singh that called for, inter alia, the following innovations to improve Indian legal education:

- Establishment of four national level Institutes of Advanced Legal Studies and Research, to focus on research and an upgrade of faculty skills,
- Establishment of a National Law University as a school of excellence in every state,
- Evaluation of each of the 913 existing law schools for the purpose of upgrading the colleges and providing opportunities to the students,
- Creation of opportunities for students to specialize in various aspects of the law during their education, and
- Continuous focus on social responsibility and professional ethics, including response to the unmet needs of the rural poor and other deprived sections of the Indian population.

To staff the planned new national law universities, upgrade the existing law colleges, and add specialized courses, India will need to recruit and train a substantial number of law teachers. The four Institutes for Advanced Legal Studies and Research will train law teachers in pedagogy and research.

Law Teacher Training Resources Needed

There are several core resources less readily available to Indian law teachers than to legal educators in the U.S. Development of such resources could significantly advance the Indian reform agenda.

1. Broad selection of law textbooks with cases, problems, and other materials, supported by teachers' manuals.

Textbooks on core legal subjects with case excerpts, readings, questions, and problems help new and experienced law teachers prompt class participation. A fine model is the co-authored textbook by Shyam Divan and Armin Rosencranz, *Environmental Law and Policy: Cases, Statutes and Materials* (2nd ed., Oxford University Press 2004).

A teacher's manual is particularly helpful to someone teaching a course for the first time. A manual raises key points, and suggests analysis of problems, topics to omit if short of time, and ways to structure a class.

2. Availability of materials and training for the teaching of legal analysis, research and writing

There is wide agreement that India-relevant materials for the teaching of legal analysis, research and writing are needed to improve LL.B. student legal

writing. A legal writing course that emphasizes critical thinking and reasoning would complement the BCI mandated clinical course on Drafting, Pleading and Conveyancing. Education on proper attribution to sources would help reduce the frequency of plagiarism by law students.

3. Materials for community development and poverty law work, such as practice manuals and web resources, to support the work of legal aid clinics.

Systematic development and dissemination of high quality resources for rural community development and for representing the urban poor and other disadvantaged groups would be a way to model good legal practice and encourage performance of pro bono work. Such materials would greatly aid lawyers and law teachers supervising student work in communities. They could be developed through a joint project of law schools and the practicing bar.

4. Strong institutional support for faculty research and writing for publication

Creating a culture of legal research includes research training programs of various types (sociolegal, jurisprudential, etc.) for junior scholars, mentoring of faculty on scholarship, and opportunities for securing feedback on works-in-progress.

5. Strong associations of law teachers to engage in regular sharing of ideas, teaching and research strategies, and resource development. The absence of a national association of law schools or of law teachers, akin to the American Association of Law Schools and its Sections, is noticeable in India. Legal educators have repeatedly discussed the idea, but it has not taken root.

As Indian legal educators set priorities for resource development, there may be opportunities for India Committee members to contribute ideas, materials and other support to the efforts. Collaborations drawing out Indian and U.S. perspectives can build legal education resources both informed by U.S. teaching and research strengths and well-suited to Indian contexts. Collaborations may take the shape of coauthoring, co-training and participating on planning committees and advisory boards.

Building Knowledge of India Among U.S. Law Students and Faculty

While individual U.S. law faculty members and students have taught, conducted research and studied in India on grants since India's independence in 1950, few institutional programs have emerged to bring U.S. law students to India. Touro College Jacob D. Fuchsberg Law Center, Central Islip, New York, conducts the longest running summer study abroad program for U.S. law students. Directed and partly taught by U.S. law faculty, the program, held in Shimla and in Dharamsala, features Indian guest lecturers.

A new collaborative study abroad program on human rights has been developed by the University of Nevada, Las Vegas, William S. Boyd School of Law in partnership with the Indira Gandhi National Open University School of Law in Delhi. The International & Comparative Human Rights Law Practicum will be held for twelve days in December 2010 – January 2011 in New Delhi.

Indo-U.S. law student exchange and internship programs are now on the rise in face of law school internationalization efforts. Typically law students pay tuition to their home institution. They intern or study abroad at the host institution and transfer credits to the home institution. Here are a few examples. In 2009 and 2010, Harvard Law School offered three-week Linklaters Winter Term India Internships. Students proposed paper topics and spent 2 ½ weeks at a Mumbai law firm and the last half-week visiting a law school in New Delhi. Indiana University's Maurer School of Law India Initiative sent six law students who were selected as Milton Stewart Fellows in the law school's Center on the Global Legal Profession to participate in internships in Delhi in summer 2010. Jindal Global Law School arranged the internships. National Law School of India University has exchange programs with law schools at Duke, Columbia, Indiana University and the University of Wisconsin. The National Academy of Legal Studies and Research in Hyderabad as exchange programs with University of Illinois College of Law, University of Oklahoma and Santa Clara University. National Law School, Delhi, has exchange programs with Lewis & Clark Law School, University of Alabama Law School and George Washington University.

Other India-U.S. law school collaborations have grown around specialized topics. George Washington University Law School has conducted an India Project since 2004 with the Rajiv Gandhi School of Intellectual Property Law at the Indian Institute of Technology, Kharagpur. The project has sponsored several international conferences on patent law. American University Washington College of Law and Indian women law teachers established the Gender and the Law Association (GALA) with grant support from the U.S. Department of State. The grant funded GALA conference activities and travel. Faculty and students of B.P.S. Mahila Vishwavidyalaya (Women's University) Department of Laws and the Center on Applied Feminism at University of Baltimore School of Law have commenced a series of videoconferences on family law and other topics of mutual interest.

U.S. law school courses on India are offered occasionally. For example, Professor William J. Lockhart of the Wallace Stegner Center for Land, Resources and the Environment at S.J. Quinney College of Law, University of Utah, conducted an "International Environmental Practicum," working with students in preparing litigation handled by cooperating attorneys in India. Professor Vikramaditya S. Khanna, University of Michigan Law School, teaches a course on Law & Economic Development: India. Comparative Law courses

and courses on Gender, Law and Development sometimes have substantial components on India.

Overall, the volume of U.S.- India legal education interactions lags behind those of U.S. and Indian business schools. Business faculty seized the opportunity to show and engage U.S. students in India's robust economy and to collaborate with Indian colleagues.

However, in view of India's global importance and the growing ties between the U.S. and India, more attention should be devoted to India-related issues in study, research and service work of U.S. law schools. India Committee members have the expertise, insight and networks to nurture further collaborations.

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