

October 15, 2007

Dear Mr. Prime Minister,

The National Knowledge Commission, while deliberating on issues related to knowledge concepts, recognizes legal education as an important constituent of professional education. The vision of legal education is to provide justice-oriented education essential to the realization of values enshrined in the 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, policy makers, 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. As part of a consultative process, we constituted a working group of experts, including distinguished members of the Bar, the bench and academia under the chairmanship of Justice M. Jagannadha Rao to suggest necessary measures to improve the quality of legal education in India. A list of the members of the working group is set out in **Annexure I**. Our consultations with stakeholders have helped identify a few key reform proposals which are elaborated as follows:

#### **1. Regulatory Reform: a new Standing Committee for Legal Education**

We recommend the setting up of a new regulatory mechanism under the Independent Regulatory Authority for Higher Education (IRAHE), vested with powers to deal with all aspects of legal education and whose decisions are binding on the institutions teaching law and on the union and state governments. The Standing Committee for Legal Education may consist of twenty-five persons (including eminent lawyers, members of the Bar Council of India/BCI, judges, academics, representatives from trade, commerce and industry, economists, social workers, students and others) and it must aim at revamping legal education to meet the needs and challenges of all sections of society.

At the time of enactment of the Advocates Act, 1961, it was envisaged that legal education would only produce lawyers for the courts and accordingly the BCI had been entrusted with the limited role of 'promoting legal education and laying down minimum standards of legal education' required for students who 'are entitled to practice'. In the last fifty years, and particularly after liberalization in 1991, the entire concept of legal education has changed considerably. Today, legal education has to meet not only the requirements of the Bar but also the new needs of trade, commerce and industry, in the context of growing internationalization of the profession. The need for improvement in

overall quality to match global standards has become even more salient when viewed from such a perspective. In light of the changed scenario in the last fifty years and the existing gaps and deficiencies in overall quality, it is clear that the BCI has neither the power under the Advocates Act, 1961 nor the expertise to meet the new challenges both domestically and internationally. It is, therefore, necessary to constitute a new regulatory mechanism with a vision both of social and international goals, to deal with all aspects of legal education and to cater to the needs of the present and the future. The BCI would however continue to exercise its powers to recommend minimum standards required for practice in the courts. Further, the BCI would continue to enjoy its powers of discipline so far as the members of the Bar are concerned. A more detailed analysis of the rationale, structure and functions of the new regulatory mechanism, as excerpted from the working group report, is set out in **Annexure II**.

## **2. Prioritize Quality and develop a Rating System**

We recommend the development of an independent Rating System based on a set of agreed criteria to assess the standard of all institutions teaching law as a mechanism to ensure consistent academic quality throughout the country. The criteria for rating would be evolved by the Standing Committee for Legal Education while the rating would be done by independent agencies licensed by IRAHE for the purpose. Recognition could be either granted or withdrawn on the basis of such ratings. The rating results should be reviewed annually, regularly updated, monitored and made available in the public domain.

## **3. Curriculum Development**

We recommend the development of contemporary curriculum, which is integrated with other disciplines and also ensures regular feedback from stakeholders. Autonomy may be granted to universities, national law schools (NLSUs) and other law schools to decide the core and optional courses to be offered. This is a departure from current practice where the BCI largely determines curricula and syllabi. A committee should be formed that includes faculty and practitioners and seeks student feedback to discuss curricula, syllabi and reading material of all core and optional courses, and devise a 'model' syllabus for all core and optional courses. Law schools and universities would be free to use and depart from the 'model' syllabus.

Law teaching must be interwoven with related contemporary issues, including international and comparative law perspectives. The curricula and syllabi must be based in a multidisciplinary body of social science and scientific knowledge. Curriculum development should include expanding the domain of optional courses, providing deeper understanding of professional ethics, modernizing clinic courses, mainstreaming legal aid programs and developing innovative pedagogic methods. Legal education must also be socially engaged and sensitize students to issues of social justice.

#### **4. Examination System**

We recommend revising the prevailing examination systems and suggest the development of evaluation methods that test critical reasoning by encouraging essential analytical, writing and communication skills. The end-semester examination should be problem-oriented, combining theoretical and problem oriented approaches rather than merely test memory. Project papers, project and subject viva, along with an end-semester examination to be considered as pedagogic methods imperative for improving quality.

#### **5. Measures to attract and retain talented faculty**

To attract and retain talented faculty, we recommend better incentives, including improving remuneration and service conditions. It may be necessary to think of salary differentials within and between universities and law schools along with other means of attracting and retaining talented faculty members. Such salary differentials between and within universities and law schools could be effective without being large. This will help retain talent in legal academia where the problem of inadequate remuneration is far more acute than in other disciplines. Salary differentials could be considered as a means to retain quality talent and also promote a culture of excellence.

To foster quality and create better incentives, there is also need to remove fetters on faculty that pertain to opportunities in legal practice (such as consultancy assignments and legal practice in courts). These reforms need to be introduced in a balanced, reasonable and regulated manner to ensure adequate incentivization for faculty without compromising on the maintenance of consistent academic quality. As a further incentive, it is necessary to create better opportunities for active involvement of academia in the shaping of national legal education policy.

There is also need to reconsider existing promotional schemes and avenues to promote meritorious faculty members. Other incentives for faculty include fully paid sabbaticals; adequate House Rent Allowance (HRA); instituting awards to honor reputed teachers and researchers at national and institutional levels; flexibility to appoint law teachers without having an LL.M degree if the individual has proven academic or professional credentials; faculty exchange programs with leading universities abroad and upgrading existing infrastructure.

#### **6. Developing a Research Tradition in law schools and universities**

We believe that creating a tradition of research in law schools and universities is imperative if India has to transform itself from being only a consumer of available legal knowledge to being a leading producer in the world of new legal knowledge and ideas. We recommend the following measures to develop such a serious culture of research: emphasizing analytical writing skills and research methodology as integral aspects of the LL.B program; creating excellent infrastructure (including research friendly library facilities, availability of computers and internet; digitization of case law; access to latest journals and legal databases available worldwide); rationalizing the teaching load to leave

faculty members sufficient time for research; granting sabbatical leave to faculty to undertake research; creating incentives if research results in peer reviewed publications, either through additional increments (beyond the UGC scheme) or in any other appropriate manner; institutionalizing periodic faculty seminars; establishing quality peer-reviewed journals; prescribing research output as one of the criteria for promotion; creating a database of citations to identify the most cited and influential writings as well as considering such data for promotion purposes; establishing prerequisites such as a mandatory dissertation in the LL.M program, a pre-registration presentation and a course in methodology for M.Phil and PhD programs respectively; and establishing four new centers for advanced legal research.

## **7. Centers for Advanced Legal Studies and Research (CAL SAR)**

There is need to set up four autonomous, well networked Centers for Advanced Legal Studies and Research (CAL SAR), one in each region, to carry out cutting edge research on various aspects of law and also serve as a think-tank for advising the government in national and international fora. The CAL SARs would maintain adequate linkages and institutionalized interaction opportunities with law schools and universities, including continuing legal education for faculty. Some other specific functions and objectives of these centers would include: publishing a peer reviewed journal of international quality; facilitating multi disciplinary approaches to law; institutionalizing arrangements for scholars in residence; organizing workshops and undertaking in-depth research on new and developing areas of law.

Each CAL SAR would require an initial investment of around Rs. 50 crores to build an academic complex, conferencing facilities, a world-class library and other infrastructure. These institutes would also need to be provided with an annual budget to the tune of Rs. 5 crores for salaries, fellowships, administrative expenses and related expenses. The initial investment and the annual budgets should be borne by the central and respective state governments (that would host the CAL SAR) respectively, but the CAL SARs should gradually aim at financial self-sustenance, through innovative financial methods.

## **8. Financing of legal education**

It is for law schools and universities to decide the level of fees but as a norm, fees should meet at least 20% of the total expenditure in universities. This should be subject to two conditions: first, needy students should be provided with a fee waiver plus scholarships to meet their costs; second, universities should not be penalized by the UGC for the resources raised from higher fees through matching deductions from their grants-in aid. The central and state ministries may also be urged to endow chairs on specialized branches of law. State financing can be complemented with endowments from the private sector, including synergistic arrangements such as appropriate public private partnerships. Incentives such as tax holidays for donations above a high minimum threshold by the corporate sector may be considered. Institutions should be given the autonomy to evolve their own innovative methods of financing to maximize infrastructure and resource utilization.

## **9. Dimensions of Internationalization**

Building world class law schools today will require creatively responding to the growing international dimensions of legal education and of the legal profession, where it is becoming increasingly necessary to incorporate international and comparative perspectives, along with necessary understanding of domestic law. Suggested initiatives to promote such international perspectives include building collaborations and partnerships with noted foreign universities for award of joint/dual degrees; finding ways of evolving transnational curricula to be taught jointly by a global faculty through video conferencing and internet modes; as well as creating international faculty, international courses and international exchange opportunities among students.

## **10. Technology for dissemination of Legal Knowledge**

For maximum dissemination of legal knowledge, it is recommended that all information available in the Indian Law Institute (“ILI”), Supreme Court Library, Indian Society for International Law (“ISIL”) as well as those of all law schools, universities and public institutions in the country, be networked and digitized. Such networking is in addition to the need for adequate infrastructure such as computers, law journals, legal databases and excellent libraries in the institutions teaching law.

We believe that the changes and reforms proposed in this letter are necessary to bring about a qualitative transformation in legal education essential to meet present and future needs. We look forward to being engaged in consultations for their speedy implementation.

Thank you and Warm Personal Regards,

Sam Pitroda,  
Chairman,  
The National Knowledge Commission

CC: Dr. Montek Singh Ahluwalia, Deputy Chairman, Planning Commission  
Mr. Arjun Singh, Minister for Human Resources Development  
Mr. H. R. Bhardwaj, Minister for Law and Justice

## Annexure I

### Members of the Working Group on Legal Education

1. Justice M. Jagannadha Rao, Chairperson  
Former Judge, Supreme Court of India  
Former Chairperson, Law Commission of India
2. Justice Leila Seth, Member  
Former Judge, Delhi High Court  
Former Chief Justice, High Court of Himachal Pradesh
3. Prof. N. R. Madhava Menon, Member  
Former Vice Chancellor, National Law School of India University (NLSIU),  
Bangalore  
Former Vice Chancellor, West Bengal National University of Juridical Sciences  
(NUJS) Kolkata  
Former Director, National Judicial Academy, Bhopal
4. Mr. P.P. Rao, Member  
Senior Advocate, Supreme Court of India
5. Prof. B.S. Chimni, Member  
Former Vice Chancellor, NUJS, Kolkata  
Professor, Jawaharlal Nehru University, New Delhi
6. Mr. Nishith Desai, Member  
Managing Partner, Nishith Desai Associates, Mumbai
7. Dr. Mohan Gopal, Member  
Former Vice Chancellor, NLSIU, Bangalore  
Director, National Judicial Academy, Bhopal

## Annexure II

### Governance Structure

#### Relevant Excerpts from the Report of the Working Group

#### **1. Rationale for Standing Committee on Legal Education**

##### **1.1 Changes in legal education in the last fifty years show that the provisions of the Advocates Act, 1961 are no longer sufficient:**

1.1.1 Under the Advocates Act, 1961 (“Act”) the role allocated to the Bar Council of India (“BCI”) was very limited in the sense that it was to promote legal education and to lay down minimum standards with a minimum standard necessary for those students who ultimately enter the legal profession to practice in the courts. The provisions of the Act did not envisage a larger role for the BCI.

1.1.2 The concept before and in 1961 was that law schools should mainly produce graduates for the purpose of entry into the Bar. The Advocate’s Act, 1961 was, therefore, enacted with that objective in mind by Parliament. According to the Supreme Court of India, in **O.N.Mohindroo –Vs- B.C.I.** (A.I.R. 1968 SC 888 = (1968)3 SCR 709); and **Bar Council of U.P.’s case** (AIR 1973 SC 231 = (1973) 1 SCC 261 = (1973) 2 SCR 1073) the subject covered by the Advocates Act, 1961 is referable to Entries 77, 78 in List I of Schedule VII of the Constitution of India. These two Entries deal, among others, with the subject:

“persons entitled to practice before the Supreme Court” (Entry 77) and  
“persons entitled to practice before the High Court” (Entry 78)”.

1.1.3 Under section 7 (1) (h) of the Advocates Act, the BCI has been entrusted, as stated above, with the limited role of “promoting legal education and laying down minimum standards of legal education” required for students who “are entitled to practice”. Section 7 (1) (h) requires the BCI to “consult the universities for the purpose of laying down these standards of legal education”. Section 7(1) (i) of the Act enables the BCI to grant recognition to universities whose law degrees shall be sufficient qualification for enrolment as an advocate. The BCI may, for this purpose, visit and inspect the universities concerned whose degrees in law may be recognized for the purpose of enrolment of law graduates as lawyers. Similar power is conferred by Section 6(1) (gg) of the Act on the State Bar Councils in regard to inspection. Section A of Part IV of the Rules made by the BCI deals with the five years’ course, Section B deals with the three years’ course and Section C deals with inspection.

## **1.2 Changed scenario**

- 1.2.1 About fifty years ago the concept was that the law schools are meant to produce graduates who would mostly come to the Bar, while a few may go into law-teaching. The Advocates Act, 1961 was enacted to achieve the said object, namely, to prescribe minimum standards for entry into professional practice ‘in the courts’, as stated above. But during this period and more particularly after liberalization in the year 1991, the entire concept of legal education has changed. Today, legal education has to meet not only the requirements of the Bar and the new needs of trade, commerce and industry but also the requirements of globalization. New subjects with international dimensions have come into legal education. There is also an enormous need for non-practising law graduates in trade and commerce. It is also necessary to allow engineers, chartered Accountants, scientists and doctors to qualify in law for non-practising purposes. Indeed, it is gratifying that some Indian Institute of Technology (“IIT”) institutions have recently started several courses in law. The Open University system must also be allowed to cater to legal education. The Bar Council of India may, of course, still deal with the minimum standards of legal education for the purposes of entry into the Bar but there is a need to have a new regulatory mechanism that will cater to the aforementioned present and future needs of the country.
- 1.2.2 Therefore, among the various types of legal education, we can identify the type which is necessary for those who practice law, the type which prepares them to become researchers and teachers, the type which deals exclusively with academic subjects of substantive law, the type which deals with public legal education or para-legal education, the type that prepares law graduates to deal with legal, regulatory and ethical issues in active sectors of domestic and international business and industry, and finally, the type which professionals in engineering, medicine, management and social work may require. It will be noticed that the Bar Council’s role is confined to the first category only.

## **1.3. Bar Council of India has been conferred with limited powers but is exercising more powers under subordinate legislation:**

- 1.3.1 In the light of the concept behind the Advocates Act, 1961, as stated above, very limited powers were conferred on the BCI. But, during the last few decades, in as much as there was no other regulator to take care of emerging needs and trends, the BCI has been dealing with all aspects of legal education under Resolutions, Rules and Regulations instead of limiting itself to the maintenance of minimum standards of legal education for the purpose of entry into the Bar.
- 1.3.2 In the ‘First National Consultation Conference of Heads of Legal Education Institutions’ held on 12.8.2002, it was pointed out as follows:

“The regulatory structure for legal education in India is currently seriously flawed and needs careful reconsideration. A typical law college has four masters at a minimum; the university to which it is affiliated; the State Government; the University Grants Commission; and the Bar Council of India... These four agencies have varying mandates, interests and constituencies and do not provide coherent guidance for the improvement of legal education in the country”

It also stated:

“There is wide concern among legal academics that they are not adequately consulted currently by any of these authorities”

It was also clearly observed in the conference that the BCI had spread its jurisdiction beyond what was contemplated by Entries 77 and 78 of List I of Schedule VII of the Constitution and the provisions of the Advocates Act, 1961. The conference wanted that the BCI concern itself only with the minimum standards necessary for entry into the Bar. It said:

“The Bar Council of India would then be responsible only for regulating entry into the legal profession and maintenance of professional standards rather than for legal education”

- 1.3.3 In the last three decades, as stated above, the BCI, by virtue of its Resolutions, Rules and Regulations, has taken over the entire body of powers in relation to legal education which is not the intention of the Advocates Act, 1961, which is a legislation under Entries 77 and 78 of List I Schedule VII of the Constitution of India. The BCI, under its powers to grant recognition to universities for the purpose of enrolment of law graduates has been also dealing with inspections, affiliation or disaffiliation of various law colleges, granting annual affiliation or permanent affiliation etc... It has also been laying down conditions for establishment of law schools, buildings, appointment of faculty, and a variety of other matters in which the faculty and other players have not been allowed to have any effective role. These powers were extended by the BCI under Resolutions, Rules and Regulations, as stated above, though such extension is not permitted by the Advocates’ Act, 1961.
- 1.3.4 There appears to be considerable justification for treating the rules/resolutions/circulars of the Bar Council of India dated 2-7-96, 21-10-97, 23-9-98, 22-12-98 etc., made under way of delegated legislation, taking over maintenance of standards, curriculum, qualifications for admission and for faculty and inspections for all purposes, as being outside the scope of powers and jurisdiction of the Bar Council of India.
- 1.3.5 The members of the BCI who are practising lawyers and who get elected to the Bar Council, do not all have expert knowledge or experience for deciding the

requirements of legal education for purposes other than practice in the courts. Indeed, the Bar Council is not supposed to deal with all aspects of legal education. As pointed in **Sobhana Kumar vs. Mangalore University** (AIR 1985 Karnataka 223) by Rama Jois J (as he then was), the BCI can only prescribe minimum standards for entry into Bar whereas the universities or the law colleges can prescribe higher standards. (See also the 14<sup>th</sup> Report of the Law Commission, 1958 recommendation 25 is at page 550) and the 184<sup>th</sup> Report of the Law Commission, 2002 para 4.11). As the Advocates Act, 1961 is not intended to cover all aspects of legal education other than entry into the Bar, the Rules, Circulars and Resolutions of the Bar Council of India in relation to all other aspects of legal education must be treated as beyond the scope of permissible delegated legislation and therefore invalid.

#### **1.4 There has not been effective consultation between the Bar Council of India and the Faculty**

1.4.1 Further, presently, there is no effective consultation with the faculty. In the Legal Education Committee of the BCI constituted under Section 10 (2) (b) of the Act, there are 10 members out of whom five are lawyers- Bar Councilors, a retired Judge of the Supreme Court, a High Court Judge, the Law Secretary and the Secretary, University Grant Commission and there is only one faculty member. Of course, the Law Commission has recommended in the 184<sup>th</sup> Report (2002) that in the place of the two Secretaries, there could be two more members from the faculty. But, even that is not sufficient. There are more than 700 law schools in the country and it is a grave travesty of justice that the faculty has no equal role in the matter of legal education, whether it deals with entry into the Bar or with the general needs of society for legal services.

#### **1.5 Permissions have been granted to several law schools of poor quality:**

1.5.1 The Report of the Ahmadi Committee (1994) constituted by the Chief Justice of India and the various resolutions in other conferences have repeatedly pointed out that the BCI has granted permission to a large number of law schools that are maintaining very poor standards and have very poor infrastructure.

#### **1.6 Most of the seven hundred odd law schools do not compare well with the standards and curriculum required in the present age**

1.6.1 While the NLSUs and some other law schools teach a very large number of subjects both compulsory and optional, that are necessary and useful for a variety of purposes in legal education, the other law schools offer only the minimum number of compulsory subjects prescribed by the Bar Council of India. These other law schools are not able to offer more compulsory or optional subjects because of limited faculty. The NLSUs and few other law schools are offering a larger number of optional subjects, which in some institutions are more than 40. The faculty in these 700 odd law schools is limited because they are either large

in number in one place or are located in remote areas in the mofussil where sometimes there is not even a District Court.

- 1.6.2 Today, we have about 11 NLSUs where students are selected in an all India competition. These colleges have been producing our best legal talent comparable to the most renowned colleges in U.S and U.K. However, this alone is not sufficient for our purposes and we have to raise the standards of the remaining 700 odd law schools. The Law Commission has indeed observed in its 184<sup>th</sup> Report (2002) (see para 10.7) as follows:

“We cannot, however, rest content with a few star colleges. We must be concerned with all the rest of the hundreds of law colleges located in cities and district headquarters all over the country. It is these students who come to the Bar in great numbers at the grass root level... A few bright star colleges with limited number of student intake in an All India selection is not the end and may not result in an over all change in the level of legal education”.

- 1.6.3 Therefore, there is need to bring about a revolutionary change in the standards and curriculum of these 700 and odd law schools so as to bring them, step by step, to the level required in the present age. In fact, it is necessary that all these law schools must be compelled to provide a large number of optional subjects.

### **1.7 Needs of the Bar and Subordinate Judiciary are not met by the graduates from the existing 700 and odd law schools:**

- 1.7.1 Recently, the Supreme Court of India has observed in **All India Judges Association Vs. Union of India** (2002) 3 SCALE 291 = (2002) 4 SCC 247, (2002) 2 SCR 712 = AIR 2002 SC 1752 that recruitment rules in the States should be amended to permit raw graduates from the law schools to enter the subordinate judiciary. Obviously, this requires a high degree of proficiency from the students who pass from the law schools. It should be our objective to improve the standards of all the law schools to the standards required in the present age. Otherwise, the quality of the Bar and the subordinate judiciary is bound to go down further. There is, in fact, an urgent need for a fresh probe into the quality of legal education in several law schools and if it is revealed that the standards are poor, it may be necessary to direct closure of such law schools.

- 1.7.2 Further, it has been noticed that in the last fifteen years, ever since the NLSUs have been established, meritorious students both from NLSUs and some other law schools are joining law firms and corporate houses in greater numbers than those who opt for the Bar and the subordinate judiciary. One of the objects of establishing the NLSUs was to improve the quality of the Bar and the subordinate judiciary. While it cannot be disputed that such brilliant students are necessary for leading law firms and corporate houses to meet the challenges of globalization, we should not forget that unless these students are attracted to the Bar,

subordinate judiciary and academia, the quality of legal services cannot be improved.

- 1.7.3 Senior Counsel in the Trial Courts, High Courts and the Supreme Court must be generous in attracting this talent by offering them good compensation so that all of them may not get attracted to the law firms and corporate houses. As the pay scales of Junior Civil Judges have been enhanced after the implementation of the recommendations of the Jagannatha Shetty Commission, some of these students, if they join the subordinate judiciary at a young age, there are good chances of their reaching the High Court.

## **1.8 Bar Council of India ought to have taken steps to have legislation passed for re-introduction of the Bar examination:**

- 1.8.1 As in all countries, in India too, a Bar examination had to be passed whenever law graduates sought enrolment as lawyers. Such an examination was being conducted by the State Bar Councils under the provisions of the Advocates Act, 1961 but the provision relating to Bar examination was deleted by amendment of the statute in 1973. However, after the Ahmadi Committee Report (1994) recommended re-introduction of the Bar examination, the requirement was reintroduced by a way of a Rule made by the Bar Council of India. The Supreme Court, in: 1999 (3) SCC 176 declared the Rule as *ultra vires* as **Sudheer Vs. Bar Council of India** such a requirement has to be introduced only by amending the Advocates Act, 1961. The Supreme Court went further and made a clear recommendation that the requirement of Bar examination must be reintroduced into the Act by a statutory amendment. Unfortunately, the BCI which is to take care of standards for purpose of entry into the Bar has not taken steps to have the Act amended by reintroduction of the Bar examination, in spite of the observations of the Supreme Court in **Sudheer** and in spite of the specific recommendation of the Law Commission in its 184<sup>th</sup> Report (2002) (Para 12.16).
- 1.8.2 From the above discussion, it is clear that the present quality of most of the 700 and odd law schools does not meet the domestic needs of our trade and commerce nor the needs for the purposes of recruitment to the subordinate judiciary. This quality should be improved by taking various steps such as bringing in better faculty and, better libraries. As stated above, the law schools must be compelled to offer a large number of optional subjects to meet the needs of the present times.

## **1.9 Challenge of delivering justice to the poor**

- 1.9.1 The main challenge facing India's legal and judicial systems is delivering justice to poor people. For the most part, people deprived of Constitutional or legislative rights have little access to courts. With the cost of good quality legal services escalating, the ability of common people to get effective, high quality legal assistance and access to justice is diminishing and the legal system is in danger of becoming further alienated from common people. New and innovative solutions

are needed to ensure that common people have access to justice and that legal ideas and legal knowledge protect their interest. Increasing numbers of the best law graduates are moving to corporate law practice and civil and criminal litigation at the local level is suffering from a serious dearth of adequately qualified legal professionals. It is therefore imperative that legal education should prepare students with the aptitude, interest, commitment, skills and knowledge necessary to work with socially excluded people and the poor at the local level, to advance the cause of justice.

### **1.10 Domestic needs and needs of Internationalization: Need for a new ‘Regulator’ with a global vision:**

1.10.1 The Law Commission in its 184<sup>th</sup> Report, (2002) (Para 5.16) has pointed out that there are revolutionary changes which have come into legal education by reason of developments in information, communication, transport technologies, intellectual property, corporate law, cyber law, human rights, ADR, international business, comparative taxation laws, space laws, environmental laws etc. and that

“The very nature of law, legal institutions and law practice are in the midst of a paradigm shift”.

1.10.2 The aim of transnational legal education is not to create individuals who can ‘practice’ law in a number of jurisdictions. Although graduates of such a program may well wish to do so, such ability should not be seen as an objective in itself, but merely as an incidental result. The aim of any new program should be to create lawyers who are comfortable and skilled in ‘dealing’ with the differing legal systems and cultures that make up our global community while remaining strong in one’s own national legal system. Our lawyers must be trained to specialize in international trade practices, comparative law, conflict of laws, international human rights law, environmental law, gender justice, space law, bio-medical law, bio-ethics, international advocacy etc. They must also acquire a general knowledge of American, French, German, Chinese and Japanese law. For example, in South Korea, in the last 10 years, the curriculum has been expanded to include not only the above subjects, but also International Business, International Contracts, International Civil Procedure and laws of England, America, France and Germany.

1.10.3 Globalization does not merely mean addition or inclusion of new subjects in the curriculum as stated above. While that is, no doubt, an important matter, the broader issue is to prepare the legal profession to handle the challenges of globalization and internationalization. This obviously goes far beyond preparing graduates only for practice at the Bar or for the subordinate judiciary.

## **1.11 Steps that have to be taken to prepare legal education to meet various challenges, in addition to changes in curriculum:**

- 1.11.1 Apart from expanding the curriculum, law schools have to improve their libraries; the students and faculty must be able to draw regularly from the internet. Use of computers and internet must be made compulsory in all law schools. So far as the faculty is concerned, experience in other countries shows that video-conferencing of lectures by foreign faculty can help in overcoming the shortage of teachers having knowledge of new subjects. The next thing that is being done elsewhere is the exchange of faculty for short periods, wherever finances permit.
- 1.11.2 Legal education must be socially engaged. This means that legal education programs must compulsorily expose students to the problems of poverty, social exclusion, social change and environmental degradation through clinical legal education, legal aid programs and through seminars and debates that sensitize and expose students to issues of social justice. Working with the poor through one or other program must become a mandatory part of the curriculum. Faculty must include individuals with inter-disciplinary training and direct experience on social issues.
- 1.11.3 In some countries, law schools are tying up or partnering with foreign law schools. For this purpose, an alliance of law schools has to be brought into being so that the domestic as well as the foreign law schools may mutually benefit and, in such alliances, the cost is to be shared. The syllabi can be changed to have a common core of transnational curriculum. Block teaching allocations are also now common under which, both students and faculty listen directly to foreign faculty or to lectures by video-conferencing. Today, collaboration with foreign universities is resulting, in some countries, in award of two degrees simultaneously.
- 1.11.4 That exactly summarizes the position in India created by the existing regulator. While Indian industry and businesses have expanded beyond national boundaries into other continents and while international business investments into India have come to stay, the bulk of our law schools operate in isolation and focus only on local needs and not even upon the needs of the nation, let alone regional or international needs. This situation that has been created can be broken only by establishing an independent regulatory mechanism with an international vision, which can see beyond the requirements of 'entry into the Bar'

## **1.12 A new regulatory mechanism is needed with powers to deal with all aspects of legal education:**

- 1.12.1 In the light of the changed scenario in the last fifty years, the needs of globalization after 1991, and the gaps and deficiencies in the existing system as referred to above which have to be filled up, it is clear that the BCI has neither the power under the Advocates Act, 1961 nor the expertise to meet the new

challenges both domestically and internationally. It is, therefore, necessary to constitute a new regulatory mechanism with a vision both of social and international goals, to deal with all aspects of legal education and to cater to the needs of the present and the future. Such a mechanism will have to be vested with powers to deal with all aspects of legal education. The directives of the new regulatory mechanism must be treated as binding on the law schools, the Universities and on the Union and State Governments. The new regulator has to prevent dilution of the minimum standards by any of the players.

- 1.12.2 As stated at the outset, in the Report of the National Knowledge Commission 2006 released recently the proposal is to have an Independent Regulatory Authority for Higher Education (IRAHE) with several Standing Committees including one for legal education (vide page 55). It is also proposed that the following Acts namely those relating to UGC, All India Council for Technical Education (“AICTE”), MCI and BCI will have to be amended.

We, accordingly, propose the setting up of a Standing Committee on Legal Education whose recommendations will be taken into account by the new regulator, the IRAHE. The new Standing Committee on Legal Education may consist of a group of persons including eminent lawyers, members of the Bar Council of India, judges, jurists, academicians, eminent men from trade, commerce and industry, economists, eminent social workers, student representatives and others so that legal education can be revamped to meet the needs and challenges of all sections of society in the next five decades.

## **2. Composition of the new Standing Committee on Legal Education**

- 2.1 It is suggested that the new Standing Committee on Legal Education may consist of 25 members as follows:
- a. One will be a retired judge of the Supreme Court and preferably the retired judge of the Supreme Court who is the Chairman of the Legal Education Committee of the Bar Council of India;
  - b. Seven members from the legal profession of which the Bar Council of India will nominate five and two will be nominated by the IRAHE.
  - c. Seven from the faculty;
  - d. One from the government;
  - e. Two to be nominated from the industry, trade and commerce;
  - f. One from civil society;
  - g. Two from other professions;
  - h. One from management or other institutions having a legal component;
  - i. One parliamentarian; and
  - j. Two students of the final year, one representing the NLSUs and the other representing the other law schools (Non-voting representation).

All the members, except the five lawyers to be nominated by the Bar Council of India, have to be nominated by the IRAHE.

2.2 The BCI will continue to exercise its powers to recommend the minimum standards required for practice in the courts and such recommendations shall be binding on the IRAHE. Of course, the Bar Council of India will continue to enjoy its powers of discipline so far as the members of the Bar are concerned.

**3. Matters under the purview of the new Standing Committee on Legal Education**

3.1 The Standing Committee on Legal Education shall have authority to recommend to the IRAHE *inter alia* on the following matters:

- a. Laying down broad standards of legal education in all its aspects including standards for practice in the courts, provided that it shall enforce the minimum standards recommended by the Bar Council of India for the purpose of practice in the courts;
- b. Laying down conditions for admission of students and conduct of entrance examinations in each state and laying down the procedures of counseling and allocation of students to various law schools;
- c. [Suggesting a model] curriculum, the syllabus, the number of compulsory and optional subjects and taking steps to provide for research;
- d. Qualifications and experience of law teachers and number of teaching hours;
- e. Establishment of training institutes for law teachers;
- f. [Suggesting norms] for affiliation and recognition of law schools by the universities;
- g. Attendance requirements for students;
- h. [Licensing of agencies for] inspection of law schools and their accreditation
- i. Ensuring autonomy for law schools so far as the optional subjects are concerned and prescribing regulations to prevent dilution of standards;
- j. Taking steps to improve the quality of legal education in all law schools to the standards of the NLSUs and to meet the challenges of the domestic needs and the needs of globalization.

As already stated, the recommendations of the Standing Committee on Legal Education shall be considered by the IRAHE. The recommendations of the Bar Council of India under the Advocates Act, 1961 shall, however, be binding on the IRAHE insofar as they relate to minimum standards required for purposes of entry into the Bar.