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LEGAL EDUCATION AND DEVELOPMENT RECRUITMENT OF LAW STUDENTS IN INDIA

I

It is not possible to look at the question of recruitment of law students in isolation from the question of quality and content of legal education in a country. The quality of law students and the complexion of legal education are intimately inter-related. One has its impact on the other. If legal education is purposive and of high quality, it is bound to attract intelligent and motivated students. On the other hand, if intelligent and motivated students join the law course, its quality is bound to improve further. Such students will pose a challenge to the law teacher who will thus be compelled to rise to the occasion. But, ultimately, all these questions are related to the status of the legal profession in the society. The expression 'legal profession' is being used here not in the narrow sense of an advocate or a legal practitioner in a court, but in a broad sense, i.e., any profession or vocation in life where knowledge of law is applicable, relevant and useful. The crucial question is what role is a lawyer expected to play in society? If lawyers have opportunities to play a significant role in a society, it is bound to have an abiding impact on the character of legal education as well as on the quality of students who join law courses.

To put the question of recruitment of law students in India in the right perspective, it appears to be necessary to say a few words about the developments which have taken place in the area of legal education in India generally over time, particularly since Independence.

II

Before India gained its independence in 1947, the study of law was not taken as a very serious exercise. Although it is true that there were many outstanding lawyers in the country, and that lawyers were in the vanguard of the Independence movement, yet, by and large, this was not because of the quality of the legal education imparted, but in spite of it. Some of the top-notch lawyers were barristers who had received their legal education in England. There were some home-grown products also, but they could be counted on fingers. The condition of the law schools were none-too-happy. No University desired to run a law school on a deficit basis. It had to be a self-financing institution, and, if possible, a money-making concern, so that it could feed the teaching of other disciplines in the university. There were no adequate law libraries, barring one or two exceptions. Most of the law teaching was conducted by part-time law teachers. Lawyers who were busy during the day in the courts, took off some time to deliver a few lectures in the evening without much preparation or

thought or organisation, or perspective. Though some beginning had been made to develop the whole-time law teaching profession, it was yet in a nebulous state. The atmosphere in the law schools used to be quite unenterprising. The number of law students was not very large. For example, the law school of the University of Delhi, before 1946, used to be a small, compact unit with not more than 100 students and 4 teachers. Absenteeism in the class was a rule rather than an exception. There were no traditions of research or academic legal writing. There were no proper text books. Whatever books were available were those written by practising lawyers, primarily for the profession. Much of this state of affairs could perhaps be attributed to the limited role which a lawyer was then expected to play in society. Mainly he was confined to practising before the courts, mostly, the district courts. There were only a few High Courts in the country and top legal positions were the preserve of the British Barristers. *Laissez faire* was the prevailing norm and the government was more of a police state. Trade and commerce was very limited and there was only little industrial activity in the country. There was no conscious socio-economic developmental effort being made to improve the condition of the masses. Opportunities thus available to the lawyers, and consequently their earning capacity, were very limited and this had its impact on the quality of legal education.

With the dawn of independence, the whole scene has undergone a transformation. There has been an explosion in the number of students seeking admission to law courses. To meet this demand, new institutions to impart legal education have come into existence and so there has been a proliferation of law schools in the country. A number of progressive law schools (especially, Lucknow, Delhi, Chandigarh, Kurukshetra and Varanasi) have converted law teaching from a part-time to a whole-time vocation. Post-graduate courses in law have come to be started in some leading universities primarily with a view to preparing academic researchers and law teachers. With the advent of the academic lawyer on the scene, some accent has come to be placed on legal research and writing. A number of law teachers have gone to foreign law schools, particularly to the British and American Law Schools like Yale, Harvard, Stanford or Cornell, for higher law degrees. Some of these persons have been imbued with a sense of doing something in India to improve legal education and bring it at par with the standards prevailing at some leading foreign law schools. Therefore, ideas began to be canvassed for this purpose. Then, the Ford Foundation appeared on the scene and showed some interest in the improvement of legal education and offered to fund the cost involved in undertaking some select programmes for the purpose, such as, bringing a few foreign professors of law to India; sending some brilliant law students for graduate law degrees to foreign universities, particularly to the American law schools; improving library facilities, etc. It is to be noted

that Ford Foundation's program of assistance was confined to two major universities only, namely, Delhi and Banaras Hindu University. It was never an all-India program to help legal education generally, and now even this limited program has come to an end.

The motivation prompting some of the law teachers to take steps for improving legal education has not been merely to emulate the foreign law schools, but has arisen also from the sense of a deeper conviction that law has to play a crucial role in a democratic society, that law has to serve as a vehicle of economic and social change in a developing country and that democracy in India will be strengthened by promoting legal research and respect for law. It was the desire of these people that lawyers should play an active role in rebuilding the Indian society. The legal socio-economic scene in the country was conducive to the development of legal education. The Constitution of India is basically a document for the lawyers and there was an increase in constitutional litigation. The Supreme Court was established as the highest court in the land; each state came to have a High Court. The number of senior law jobs increased and so did the law jobs at the junior levels. With the establishment of new universities and new law schools, there was demand for law teachers. The socio-economic scene also became active with five year plans, expansion of industry and commerce and enactment of a large number of socio-economic laws. The role of a lawyer thus came to be seen in a much wider perspective than merely practice of law before a court. Hence a change in the quality, content and complexion of legal education came to be viewed as a great necessity by law teachers and university administrators.

The first significant step in the direction of improving legal education was taken by the Banaras Hindu University at the instance of Dean Anandjee. It appointed a legal education committee as early as 1962, under the chairmanship of the then Chief Justice of India, Hon'ble Shri B.P. Sinha. The committee devised a new program and curriculum for the LL.B. degree, the significant features of which were: (1) increasing the duration of the LL.B. course from two to three years; (2) introducing certain new courses which were of more relevance, and eliminating semesters with an examination at the end of every semester; (3) introducing certain new courses which were of more relevance, and eliminating certain traditional courses (Roman Law, for instance) which did not seem to be much relevant, to the emerging and contemporary Indian society. The committee also proposed strengthening of the staff of the law school by increasing the number of senior positions of readers and professors. A significant aspect of the program for improvement of law teaching was envisaged to be to change from the pure lecture method to the case-method and, therefore, preparation of the case-books was to be undertaken by the law teachers on a priority basis. After the recommendations of the committee were accepted by the B.H. University and the pro-

gram put into force, Ford Foundation offered financial help for certain items of the program as mentioned above.

The next significant step in this direction was taken by the University of Delhi. In 1963, the university appointed a committee under the chairmanship of Chief Justice P.B. Gajendragadkar to make recommendations for a thorough going re-organisation of legal education in the University. This Committee in its report in 1964 also proposed a three-year, six semester, law course for the LL.B. Degree. Many features of the Banaras scheme were incorporated in the Delhi scheme.

In 1961, a momentous step was taken by the Indian Parliament. To establish a unified bar in the country as a whole, it enacted the Advocates Act, 1961, constituting the Bar Council of India.¹ The Act provides that a person will be entitled to be admitted as an advocate if he has obtained a degree in law from a university in India or outside India, recognised by the Bar Council. The Act has thus conferred on the Bar Council, power to prescribe standards of legal education and recognition of law degrees for enrolment of persons as advocates. Thus, the Bar Council got a say in the matter of legal education in the country through its power to recognise or not the LL.B. degree of a university for the purposes of enrolment as advocates. The Bar Council can thus lay down certain norms and insist that all universities follow them. If a university does not conform with the standards prescribed by the Bar Council, it may refuse to recognise its LL.B. degree and refuse to enrol its law graduates as advocates. The Bar Council thus has a powerful leverage in its hands to influence the content and standards of legal education in the country.

Another significant step taken towards the promotion of legal research and improvement of legal education in India was the establishment of the Indian Law Institute as a registered society near about 1958. The idea to establish such a body came from a few academic lawyers, and the Ford Foundation offered financial assistance for an initial period on a matching basis. One of the objectives of the Institute is "to promote the improvement of legal education, and to impart instruction in law and allied fields." One of the most important activities of the Institute is to publish a Journal which is the leading law journal in India. The Institute has also carried out some research projects and published them. The Institute has had some impact on legal research and academic writing in the country but its impact on improvement of legal education, as such, has only been marginal. Except for publication of two or three casebooks, and holding an annual seminar for young law teachers, it has not undertaken any worthwhile program in this direction.

¹ For a discussion of the provisions of the Act, see Veeraraghavan, *Legal Profession and the Advocates Act, 1961*, 14 *J.I.L.A.*, 229 (1972).

Several symposia and seminars have been held in the country to discuss the problems of legal education and formulate proposals for its improvement. One such seminar was held at Kasauli in 1964 by the Faculty of Law, University of Rajasthan, with the aid of the University Grants Commission.² The last seminar was held in 1972 at Poona. This seminar was a sequel to the report of the Legal Education Committee appointed by the University Grants Commission.³ The Poona Seminar was organised by the Poona University, was sponsored by the University Grants Commission, and was supported by the Ford Foundation. It was a grand affair. Judges, lawyers, Indian law teachers, a few foreign law teachers, such as, Professors Myers S. McDougal, Arthur von Mehren, Edward McWhinney, and representatives of the Bar Council and the University Grants Commission participated in this seminar. Practically all aspects of legal education were considered at the seminar and several recommendations made for its improvement. One significant omission however was the question of recruitment of law student. This aspect was not discussed or debated.⁴

From the above, it will be appreciated that much thought has been devoted to the developmental problems of legal education in India and several significant steps have been taken towards its improvement. One of these steps is the introduction of a three year course for the LL.B. degree. Till 1967, the duration of the LL.B. course in the universities used to be two years. But then the Bar Council prescribed that a three year degree course alone would be recognised for admission to the bar. In doing so, the Bar Council adopted the recommendations made by the Sinha and Gajendragadkar Committees of the Banaras and Delhi Universities mentioned above. A three year LL.B. course has therefore become the uniform general pattern throughout the country. A few universities still run a two-year course but this is only of cultural or academic interest and is not good for enrolment at the bar.

²The proceedings of the Kasauli Seminar have been published in volume IV of the *Jaipur Law Journal*.

³For the text of the report of this Committee, see Appendix in *Legal Education in India*, *infra*, n. 4.

⁴A brief resume of the proceedings of this seminar appears in 12 *J.L.L.I.*, 74-79 (1972). Full proceedings of the seminar have been published in book form: See *Legal Education in India: Problems and Perspectives*, (ed. S.K. Aggarwal). The matters considered at the Poona Seminar were: (i) Objectives of Legal Education; (ii) Curriculum Reforms and Teaching Methods; (iii) Post Graduate Teaching and Research; (iv) Faculty Recruitment, Training and Facilities for Research; (v) Examination and Student Work Assessment; (vi) Law Libraries.

The Bar Council has also influenced the content of the course for the LL.B. degree. The Bar Council has prescribed ten subjects as core or the compulsory subjects.⁵ It has also prescribed 18 optional subjects out of which a law student has to take at least 4 subjects. The optional list includes some of the modern subjects like labour law, taxation, administrative law, international economic law etc. These subjects were conspicuous by their absence previously in the LL.B. syllabii of the universities. Besides these, two other subjects have to be studied by a law student. Here the Universities have a flexibility and can prescribe any other subjects outside the Bar Council list. During the last year of the course, instruction and practical training are also to be imparted for a period of six months in Rules of Courts and drafting of pleadings and documents. As far as the Bar Council is concerned, semester system is optional for the universities. They may or may not introduce the semester system so long as the duration of the course remains three years and the subjects prescribed by the Bar Council are taught. The Bar Council only prescribes that there shall be an examination at the end of every year, but a university shall be at liberty to hold examinations at the end of every six months. Several universities have introduced the semester system. Banaras Hindu University is the pioneer in this respect. It has six courses in each semester, and, therefore, to get the LL.B. degree, a candidate has to take 36 papers in addition to moot courts etc. Delhi University requires five papers in each semester making a total of 30 courses for the degree. A university examination is held at the end of each semester. The semester system has helped in making the coverage of the LL.B. degree curriculum both extensive and intensive and in many courses it has become possible to have an in-depth study.⁶

III

The problem of admissions is basic to any course. Therefore, the question of admission of law students remains a fundamental problem for the success and viability of the LL.B. course? What type of students should be admitted to the law course? The answer to this question appears to depend on another question: what are the objectives and goals of legal education? What ends is legal education designed to subservise in society?

⁵These subjects are: (i) Indian Legal and Constitutional History; (ii) Contracts; (iii) Torts; (iv) Family Law; (v) Crimes and Procedure; (vi) Constitutional Law of India; (vii) Property Law; (viii) Evidence; (ix) Legal Theory; (x) Civil Procedure.

⁶For comments on Indian Legal Education, see Arthur Taylor von Mehren, *Law and Legal Education in India: Some Observations*, 78 *Harv. L.R.* 1180 (1965); also 5 *J.I.L.I.* 271 (1963) and 3 *Jaipur L.J.* 13 (1963).

It can be assumed that an important objective of legal education in any country is to produce advocates to practise before law courts and thus help in the administration of justice to the common man. It is on the basis of this premise that the Bar Council has been given a say in the maintenance of standards of legal education. But, in a developing, democratic, society, it is not possible to take such a restrictive view of legal education. Nor is this view adopted by any progressive law school anywhere in developed democratic countries. Practice before the courts, in the modern context, has become only a limited, a very limited, aspect of the legal profession. With the demise of the *laissez faire* philosophy, and the ushering in of the welfare concept, the range of the functions of the state has expanded a great deal. The state has become ubiquitous in developing countries and affects practically all aspects of the human life. Law is needed for effectuating every socio-economic program. Legislation and judge-made law have been expanding in range and depth at a very fast rate. Knowledge of law has thus become essential for many persons engaged in various fields, for example, legislators, administrators, policy-makers, planners, developers, urban planners, industrialists etc.

The law courses have therefore to be attuned to cater to all these needs. Admission policies to the law courses have accordingly to be attuned to these circumstances. Competitive examinations for the prestigious All-India services, like the Indian Administrative Service, the Indian Foreign Service etc., have a significance of their own and law papers constitute an important component of these competitive examinations. Diplomats, tax lawyers, administrative lawyers, India needs all these various types of lawyers. Therefore, admission to law courses has to take into account all these needs. In addition, there is also the cultural aspect. Should law be taught as a part of the liberal education as well, or merely as a professional course pure and simple — the word 'profession' being used here in a very broad and comprehensive sense as including not merely practice of law but all other pursuits where knowledge of law, legal skills and craftsmanship were required.⁷ In thinking about the problem of admission to the law courses, two difficulties peculiar to India have also to be taken care of. One is the problem of in-service students. It has been found that many persons have to give up their education career in the middle to seek some gainful employment to look after their families. After they are stabilised somewhat in life, they seek to improve their educational qualifications with a view to improve their careers and prospects in their employment. Thus, a large number of in-service candidates come to join the law course. By and large, these students are quite serious, mature and self-reliant

⁷ See Anandjee, *Legal Education*, *supra*, n. 4 at 382.

having a good expression and command over the language. There have been several in-service candidates who have done very well in law courses and thereafter have done very well in life after completing the LL.B. course. I believe that any scheme of legal education will have to make provision for, and take into account the needs of, these students, as avenues to improve their educational qualifications ought not to be closed. To do so will be inhuman in a country like India, for, otherwise most of the people will be condemned to their present lot. Thus, such students have become an accepted phenomenon in the scheme of Indian legal education. The number of law students taking a law course on a part-time basis is thus very large and those who undertake legal studies exclusively are comparatively smaller in number. In the University of Delhi, the ratio of in-service to non-service candidates is nearly 60 to 40.

In other universities, the ratio of part-time to full-time students may vary but still the number of part-time students is substantial. The only law school known to me which restricts admissions to the law course to whole-time students only is Banaras Law School. It does not admit in-service candidates at all. Otherwise, most of the universities make provision for part-time law students. Some universities run two separate LL.B. courses — one in the morning and the other in the evening, having the same coverage; some universities run the course only at such hours when in-service students can participate either in the evening or in the morning before office hours. Sometime back, a proposal was mooted at Delhi that the duration of the course for part-time students be increased by one more year over and above the duration of the whole-time course, but this proposal had to be given up under pressure of law students. It may be noted that the present-day trend in India is to expand educational facilities for in-service candidates all through. Thus, the Delhi University provides an evening B.A. and even a M.A. course. The University has set up a separate Institute of Post-Graduate (Evening) Studies for non-law subjects. Law cannot be an exception to this general trend in the country. In this regard, the Bar Council has only prescribed that the instruction to be imparted should ordinarily be for a minimum of 3 hours on every working day and that the students should be required to put in a minimum attendance of 66% of the lectures in each of the subjects as also at tutorials and moot courts. Thus, provision has been made by the Bar Council for in-service students.

Another serious problem faced by the law schools is that of numbers. The number of students seeking to join the LL.B. course has increased by leaps and bounds since the independence. For example, whereas in Delhi, the annual intake for the LL.B. course in 1950 or even in 1960 was nearly 400, today it is nearly 1,400 and teaching has to be distributed at three separate centres, each centre having its own autonomous staff, library and budget. And, in spite of so many admissions, many applicants are still denied

admission. Some law schools in India have as many as three to four thousand students on the rolls. Such a large number of students under one roof is bound to affect the standards of teaching for it may be extremely difficult to provide adequate library and other facilities for such a large student body.⁸

IV

Before the establishment of the Bar Council in 1961, in some Indian universities, admission to the LL.B. course could be secured by those who had passed the Intermediate Examination. This involved ten years of schooling leading to the matriculation examination and two years of college education thereafter before a person could get into the LL.B. course. This pattern prevailed only in a few universities. Bombay was one important university which gave admission to the LL.B. course to those who had passed only the Intermediate Examination. The majority of the Indian universities had opted for graduation (B.A., B. Com., or B.Sc.) as the minimum qualification for admission to the LL.B. course. The first graduate degree meant two more years of college after the Intermediate Examination. It was generally felt that the admission qualification to the LL.B. course should not be Intermediate but graduation, as the Intermediate Examination did not give enough maturity to a student to pursue the LL.B. course. Now, happily, a graduate degree has become the minimum qualification throughout the country for admission to the LL.B. course. This has been the result of the prescription by the Bar Council that at the time of joining the course of instruction for a degree in law, a person should be a graduate of a University. At present, graduation involves 14 years of schooling and college education. But according to the latest proposals of the Government of India, the duration for graduation will be extended by one more year. That is it will take 15 years to pass the B.A. Examination in India.

The minimum qualification prescribed by the Bar Council for admission to the LL.B. course is graduation without any requirement of grade or performance at the related examination. The Bar Council has however recommended (as distinguished from prescribed) to the universities that no student should be admitted to the Law course unless he has, inter alia, obtained at least 40% marks in the aggregate if it is for the day classes or 50% marks in the aggregate if it is for the evening course, in his B.A., B.Sc., or B. Com. examination.⁹ Another recommendation made by the Bar

⁸For information regarding various law schools in India, reference can be made to I.L.I., *Directory of Law Colleges in India* (1971).

⁹Circular No. LE-7/1975 dtd. 2nd July, 1976 from the Secretary, Bar Council of India to the Registrars of the universities.

Council is that admission to the course be made by means of a viva-voce tests. These two recommendations are not binding on the universities, and each university is free to prescribe its own admission requirement in addition to what the Bar Council has prescribed, viz. graduation. A university can thus superimpose over this minimum qualification any other additional requirement, e.g., the minimum percentage of marks obtained by a candidate at the graduation examination. Most of the universities just leave the matter at the point fixed by the Bar Council and admit each and every graduate who offers himself for admission irrespective of his performance at the graduate examination. Some universities have not fixed any number of places for the LL.B. course. The result of this open-door policy is that there is absolutely no selectivity of students admitted to the law course and all and sundry get admission. Some universities may aim at selectivity for law admissions in an indirect manner. They may not fix the minimum level of marks at the B.A. Examination to be attained by an applicant, but may fix the total intake for the first year of the LL.B. course. Such universities will then select applicants in order of merit until the quota of seats is filled in. While there is no minimum percentage of marks prescribed as such for law admissions, because the number of seats may be less than the number of applicants for admission, the candidates at the bottom may get excluded. The last candidate admitted in such a system may have somewhat higher percentage of marks than the minimum percentage of marks prescribed for passing the B.A. Examination.

Only a few universities prescribe a minimum percentage of marks in the B.A. Examination as qualification for admission to their law courses. These universities are relatively fortunate for they can select candidates above the cut-off point and refuse admission to the candidates with lower percentage of marks. The cut-off point in such cases will naturally be fixed at a point higher than the bare pass percentage required for passing the B.A. Examination. This rule has a two-fold purpose. One, to have some selectivity for law admissions cutting off the graduates at the lowest level for this purpose; two, self-preservation and survival. The number of applicants for law courses at the universities may be so large that all the applicants cannot possibly be accommodated and, therefore, candidates below a certain percentage of marks have to be denied even the right to apply. For if every graduate has the right to make an application for admission, then the number of applicants may become unmanageable even for the administration to process them, and, further, denial of admission to a large number of applicants may create its own problems. Pressures may start building up to increase the in-take and the university may be forced to take in more than the number of students for which it had adequate facilities. Therefore by denying the right to apply for admission below a certain point, such pressures can be warded off to some extent. The minimum may be so prescribed that the number of applications may

more or less match the number of places fixed for the year. Some universities have prescribed 40% marks for the purpose and, therefore, a graduate with less than 40% marks is denied the right to apply. Some universities have fixed 45% as the cut-off point. So far as I know, the University of Delhi is in the most fortunate position from this point of view. Being situated in the Metropolis of India, having a population of nearly 6 million, with perhaps the highest per capita income in the country and with the highest level of literacy, and attracting intelligentsia from all over the country, the number of applications for admission to the LL.B. course is very large. For instance, during the year 1975-76, the Faculty of Law, Delhi University, received 3661 applications for admission of whom 1562 applicants were given admission. Over the years, therefore, the Faculty of Law, Delhi University, has been raising the standard for admission. To start with, the cut-off point was fixed at 40% at the B.A. Examination; it was then raised to 45%. Even then the number of applicants was found to be larger than the places fixed for law admissions. So, the minimum was raised from 45% to 48% and from the academic year 1976-77, the minimum has been raised to 50% at the graduation. One can now hope that the number of applicants for the LL.B. course will more or less match the number of places fixed for the law course. This may be considered as a revolutionary step in legal education so far as India is concerned. To appreciate the full importance and implications of the step, one has to remember the fact that the pass percentage at the B.A. Examination is 35% and, therefore, all graduates between 35% to 49.9% will be denied admission to the LL.B. course at the Delhi University. This bloc consists of far too numerous students in the Indian context. Besides, the University of Delhi has formulated elaborate rules for admission to settle priorities *inter se* between the applicants. This becomes necessary to meet the situation that the number of applicants may be larger than the places fixed for admission. So, priorities for admission have to be laid down. Therefore, beginning is made with the highest qualification, namely, a Masters degree with not less than 55% marks; next comes the category of Honours graduates with not less than 55% marks; then come the plain graduates with not less than 55% marks; then is the category of those who have passed professional examinations in Engineering, Architecture, Nursing etc. with 55% or more marks. Thereafter comes the turn of those between 55% and 50% in the same order. To the extent the percentage of marks secured at an examination affords a criterion, the law student body at the Delhi University can be regarded as the most select in the whole of the country.

A question is often raised whether admission to law courses should be restricted to graduates from certain disciplines? The current thinking in the country, and rightly so, is that a graduate from any discipline should be given admission. Thus, at the Delhi University, and similar is the case

with other universities, graduates from Arts, Humanities, Commerce, Social Science or Science, are admitted to the LL.B. course without any distinction. In this scheme of things at Delhi, science graduates stand a better chance to secure admission for usually the percentage of marks secured by them is higher than that of the students from other disciplines. Delhi University attracts, besides the graduates in Arts, Science, Commerce or Social Sciences, graduates from such other disciplines as Engineering, Agriculture, architecture, chartered accountants and other professions as well. These candidates are also given admission as is clear from the above.

There is one other aspect which may be mentioned here to complete the picture of law admissions in India. Some special facilities have been provided in India for what are called Scheduled Castes, Scheduled Tribes and backward classes. These sections of the people are comparatively backward socially, educationally and economically. The Government of India is anxious to ameliorate the condition and status of these people. The Constitution of India while outlawing all discrimination on the basis of religion, race, caste, sex, place of birth, nevertheless, empowers the government to make special provisions for the advancement of any socially and educationally backward classes of citizens or for the scheduled castes and the scheduled tribes.¹⁰ Therefore, nearly 20% seats are reserved for the students from these sections. In case of such students, the *minimum* percentage of marks at the B.A. level for eligibility of admission is lowered by 10% as compared to other applicants. Comparatively, this section of the student body is weaker academically as compared with the rest of the student body.

A pertinent question that may be raised here is whether selection of students for admission according to the marks is rational. It can be argued quite plausibly that such a system is arbitrary for it is quite possible that, because of some special circumstances, a candidate may have failed to do well in his examination at the graduation level but he may have innate capacity to benefit from a law course and do well therein. A student may have fallen ill, or may have faced any other calamity on the eve of the examination resulting in his poor performance at the graduation level. Should such a student be denied admission? At present, there is no rule to consider the cases of such students on their merits. A rule of thumb is applied in all cases. Suggestions have been made at times to have separate entrance examination for admission to the law course. This has not been found feasible or advisable for it involves huge organisational problems and

¹⁰ Art. 15 of the Constitution of India. For further details see Jain, *Indian Constitutional Law*, 510 (1971). There is also Art. 29(2) which forbids the state from denying to any citizen admission into any educational institution maintained by the state or receiving aid out of the state funds on the grounds only of religion, race, caste, language. See Jain, *op. cit.* 616.

its utility is dubious. For example, if a student has 60% marks at his B.A. Examination from the University of Delhi, it will not be possible to reject him for law admission on the basis of a separate entrance examination, and admit a student with 50% at the B.A. examination. However, while an entrance examination for all applicants may not be a feasible proposition, some system may perhaps be devised under which students within a prescribed range below the cut-off point (where this point is as high as 50%) may get another chance to prove their worth. An entrance examination for those who have marks say between 45% and 49.9% may be a desideratum. To debar such students permanently from getting admission to a law course, if they have merit and aptitude for the same, appears to be harsh and academically somewhat irrational.

A question has been raised from time to time whether only students from some particular disciplines or possessing some special skills or aptitude should be permitted to join the law course. It is doubtful whether there can be any acceptable answer to such a question. It does not appear to be possible to accept the argument that the students from any one particular discipline prove better lawyers than from another discipline. It is common knowledge that students from science, mathematics, biology and various other disciplines have proved to be very good lawyers — academic or professional. Nowadays, emphasis is laid on inter-disciplinary approach and, therefore, a mixed bag of students in the law class appears to be a more satisfactory arrangement. However, it may be that in the law schools, some arrangements may have to be made for teaching elements of sociology or economics for those who have no background knowledge of these disciplines. Some knowledge of these subjects appears to be necessary for a lawyer to understand and appreciate the role of law in society in the modern world.

It is interesting to note that the legal education in India is not purely urban oriented. A large number of students from rural areas are able to join the law course. A good number of them go to law colleges near by. A number of law colleges have been started in district headquarters and even in small towns. Most of these law graduates stay in these towns and undertake various law roles there.

V

From time to time, the Indian law teachers lament that the quality of those who come to join the LL.B. course is not of a very high order. One can often find such remarks as the following being made at seminars or in legal writing about the legal education in India: "The general standard of students seeking admission to law schools is very low;" or that a "B.A. who had received a first-class degree" could not be attracted to a law course.¹¹ Prof. von Mehren mentions the principal of a first-class law

¹¹ See von Mehren, *supra*, n. 6, at 1186.

school as having told him that he could not attract a first class B.A. to the L.L.B. course. These remarks of a disparaging nature about the entire law student body cannot be accepted at their face value for these are based merely on inarticulate impressions and are not backed by any data or statistics either on an all India basis, or on any regional basis, or even on the basis of any particular or individual law school. Unfortunately, it has become somewhat customary to decry legal education and all that goes along with it. No survey of any kind has ever been conducted to assess hard facts and collect necessary data to draw any dependable conclusions. In 1969, Russell B. Sunshine¹² and Arthur L. Berney¹³ undertook a restricted sample survey of the law student body at three Indian law schools — the Delhi University Law Faculty, Law Faculty at Ernakulam in the State of Kerala in South India and a college affiliated to the Bombay University. Their report of this survey has been published in Volume 12 of the Journal of the Indian Law Institute at pages 39 to 118.¹⁴ Even this limited survey is very revealing. Some of the data collected by them hardly lends support to the above-mentioned deprecatory impressions expressed by law teachers and others of Indian Legal Education. On the other hand, some of the hard facts revealed in the Survey give one a pleasant surprise that the actual position in the area of Indian legal education is perhaps much better than what it has long been believed to be.

According to the academic qualifications, the breakup of the students at each of the three places percentage-wise was found to be as follows:¹⁵

	Delhi	Ernakulam	Bombay
Graduates	76	90	74
M.A., M.Sc., M. Com. and other post graduate degree	19	9	19
No answer	5	1	6

¹² A.B. (Yale), J.D. (Cal.); Berkeley Professional Studies Fellow at the Indian Law Institute, New Delhi (1968-1969).

¹³ Visiting Professor, Delhi University Law College; Consultant, Legal Education, Ford Foundation, New Delhi (1968-1969); on leave, Boston College Law School.

¹⁴ See, Basic Legal Education in India: An Empirical Study of the Student Perspective at Three Law Colleges.

¹⁵ *Ibid.*, 99.

Sunshine and Berney then analysed the position of the graduate students joining law courses according to the grade point average and found the result to be as follows:¹⁶

	Delhi	Ernakulam	Bombay
60% or above (First Class)	7	4	5
50% to 60% (Second Class)	42	30	26
40% to 50% (Third Class)	50	65	68
No answer	1	1	1

The above table shows that the number of third class B.A.'s joining the LL.B. course was fairly large. But if the above two tables are taken together, it will be clear that the damaging impressions about the poor quality of law students are not at all substantiated. At Delhi and Bombay, nearly 20% of the law students were found to be holding post-graduate degrees. Since 1969, when the Sunshine-Berney survey was undertaken, this percentage, I am sure, has gone up in a number of universities, but certainly at the University of Delhi. However, even leaving this factor out of reckoning, 20% law students have been found to be holding post graduate degrees. In addition, as seen from the above Table, of the graduates (not holding post-graduate degree), nearly half were with a First or a Second class, and only the other half had a third class. If the results of both these tables are seen in a cumulative manner, the actual position in a class of 100, at each of the three law schools will appear to be as follows:¹⁷

	Delhi	Ernakulam	Bombay
Post-graduates	19	9	19
I & II class graduates	<u>38</u>	<u>30</u>	<u>25</u>
Total	57	39	44
III class graduates	<u>38</u>	<u>60</u>	<u>50</u>
Total	95	99	94
No reply received	5	1	6

Thus, the above data makes it clear that at Delhi, 57% law students had either a Post Graduate Degree or a I or II class at B.A.; at Ernakulam, this percentage was 39 and at Bombay, 44, which was lower than the figure at Delhi. At Delhi, the number of III class B.A.'s was nearly one-third of the

¹⁶ *Ibid.*, 50.

¹⁷ This table has been prepared by me on the basis of the statistics taken from the Sunshine-Berney Survey — see notes 15 and 16.

entire class; in Bombay it was nearly half and at Ernakulam it was nearly 60%. Thus, this break-up conclusively shows that it is not correct to assume that very good students do not come forward to join the law course.¹⁸ Quite a sizable body of law students at each of the three places has been found to belong to the category of Post Graduates or I and II class graduates. As regards the B.A.'s III class, a point which needs to be emphasized at this place is that the bulk of them belong to the Scheduled Castes/Scheduled Tribes/Backward classes, and these categories of students will have to be there with us for quite some time to come for reasons already mentioned above. One other point needs to be underlined here. At the University of Delhi, as mentioned before, beginning from the academic year July, 1976, the minimum percentage for admission to the LL.B. course has been raised to 50% at the Graduate level. As none with less than 50% in B.A. is going to be admitted at the LL.B. course, the category of III class B.A.'s will disappear except for the Scheduled Caste/Scheduled Tribe students. It is bound to result in a substantial improvement of the quality of the law student body. At Delhi, the qualifications to join the LL.B. and the Masters' courses have now become convergent and, therefore, it will no longer be valid to say that the law student body is in any way inferior to the Post Graduate students in Arts, Social Sciences or Humanities. The case of the M.Sc's is different as there, because of the limited laboratory facilities available, a much higher cut-off point is insisted upon for admission. One can hope that the Delhi model will have a multiplier effect on other law schools in the country which may be expected to progressively raise the admission cut-off point.

Another interesting feature of the Sunshine-Berney Survey is the break-up of the graduates joining the LL.B. course discipline-wise at the three law schools. The position appeared to be as follows:¹⁹

	Delhi	Ernakulam	Bombay
Science	15	56	21
Engineering	1	0	0
Literature	12	1	4
Economics	29	22	36
History	11	5	7
Commerce	17	10	20
Language	4	1	5
Other	12	5	6

¹⁸ Sunshine-Berney say so, *ibid.*, 50, but their own statistics point otherwise.

¹⁹ Note 14, at 98.

On the basis of the above data, the two surveyors make the following comment:²⁰

"From the Ernakulam data it is reasonable to conclude for most Kerala students that law clearly is not a first choice post-graduate discipline. Fifty-six percent of the Ernakulam law samples majored in science as graduates; subsequent enrolment in law represented a change in academic direction, a change presumably precipitated for many by their failure to earn graduate records sufficient to permit continuation of study in science or medicine at the post-graduate level. Economics and commerce are substantively more closely related to law than are science or medicine; combining academic training in economics and law might be excellent preparation for example for a legal position with a business firm."²⁰

Two comments may be made on the above statement at this stage. One, the trend of such a large number of science graduates joining law is most accentuated in Ernakulam; the same trend is not visible at Delhi or Bombay. It may be true that many of the science graduates may have joined law because they could not expect to gain admission in a post-graduate course in science or in medicine or in any science-oriented discipline where admission is much more competitive than law. That also explains the large number of third class graduates joining the law course in Ernakulam. The position in Bombay or Delhi is substantially different where the science graduates joining LL.B. course are nearly 20% of the total class. Two, experience tells us that there is no essential incompatibility between science and law. Many leading law teachers and law practitioners in India at present are those who took the law course after having achieved an outstanding grade in science. Therefore, it may also be that some science students take law as a matter of conscious choice, not necessarily because they were denied admission in a higher science course.²¹

One of the usual comments made against the law students is that many students join the law course after being rejected for the post-graduate course. The Sunshine-Berney survey shows that such a comment has only a marginal element of truth and that it is not borne out by facts or data that a large number of law students are rejectees at M.A. courses. One of the questions (Q. 41) asked at the survey was: Did you in fact apply for admission to post graduate studies other than law? This was to assess the

²⁰ *Ibid.*, 52.

²¹ *Ibid.*, 100.

number of those who join law course after being rejected for admission in post-graduate courses. The answers received to this question were as follows:²²

	<i>Delhi</i>	<i>Ernakulam</i>	<i>Bombay</i>
Yes	16	36	15
No	80	64	75
No answer	4	0	10

Another related question was 43 which ran as follows: If you did apply to other post-graduate studies, why did you not join them?²³

	<i>Delhi</i>	<i>Ernakulam</i>	<i>Bombay</i>
My parents/relatives preferred that I study law	5	2	7
I was not admitted to the other studies	5	17	5
I preferred law to the studies that I did not join	10	12	7
Other reason	3	5	6
No answer	77	63	74

From the above table, it appears that except for Ernakulam, the number of those who were refused admission at the post-graduate course before joining the LL.B. course at Delhi and Bombay was very small. According to Sunshine and Berney:

"It follows that for our Delhi and Bombay students, the hypothesis that law constituted merely a second choice post-graduate discipline receives no clear support. Again, however, the distribution of samples' graduate grade - point averages. . . suggests that even in economics and commerce most students with the best graduate records did not enroll at law schools. Few students at any of our three law schools admitted to having been formally rejected by other post-graduate institutions. It is suggested, however, that a far larger number of law students who initially had intended to pursue non-legal studies at the post-graduate level, in the end stopped short of filing normal post-graduate applications and instead settled upon law school as a consolation once receipt of their graduate marks made it clear that admission to preferred disciplines would be denied."²⁴

²² *Ibid.*, 101.

²⁴ *Ibid.*, 52

²³ *Ibid.*

Obviously, the above comment is much more true for a place like Ernakulam than for a place like Delhi or Bombay.

Another common criticism made against the law students is that they have a "low vocational motivation in general." Again, the Sunshine-Berney survey shows that, by and large, this criticism is not borne out by the hard facts. They asked three questions to assess the vocational motivation of the law students. Question 35 was: Why did you choose to join law school? The following table depicts the answers received to this query.²⁵

	Delhi	Ernakulam	Bombay
I was motivated by an intellectual interest in the law	28	46	38
I intended to practise law as a career	33	25	26
I thought that a legal education would help me to pass government service examinations	12	1	5
Encouraged to join by friends, relatives, teachers in graduate courses	11	16	12
I had nothing better to do	6	5	4

Question 66 ran as follows: Upon final completion of your legal studies, what occupation do you expect to take up? The results in the tabular form run as follows:²⁶

	Delhi	Ernakulam	Bombay
Independent practice at the Bar	31	25	33
Practice at the Bar with a law firm	7	19	2
A legal position in government service	16	19	9
A legal position with a business firm	9	4	12
Legal teaching or research	6	4	2
A non-legal position in government/business firm	3	0	1
No firm expectation at this time	16	21	33
Any other	9	9	4
No answer	2	1	2

Thus, the number of law students wishing to enter the law practice was roughly one-third of the student body at each of the three places. This is a much higher figure than what is generally believed to be the motivation of

²⁵ *Ibid.*, 53, 99.

²⁶ *Ibid.*, 105.

law students. It is also very significant that the number of law students motivated by an intellectual interest in law was also very high as appears to be the case from the above table. This will be a pleasant surprise for many law teachers. The second table shows that at Delhi and Ernakulam, nearly 75% law students were hoping to enter a law role (profession or vocation connected with law) while at Bombay, this figure was somewhat lower at nearly 60%, but the figure of uncommitted students was fairly high. Those joining a law course as an aid to competitive examination was high at Delhi but not so high at either Ernakulam or Bombay. This is somewhat unexpected at least so far as Bombay is concerned.

VI

It might be of interest to know that India has at present 1,350,000 advocates on roll with the Bar Council. The figures for enrolment every year during the last four years are as follows:

1971 - 72	6,038
1972 - 73	7,422
1973 - 74	8,276
1974 - 75	9,370

Thus, enrolment of advocates is progressively rising every year. This appears to be a direct result of larger number of law graduates coming out of the universities. It may however be remembered that not all enrolled advocates remain active after some time, or that not all those who enrol themselves actively engage in law practice. Even the number of fresh enrolled advocates every year is substantial.

Anyway, the Sunshine-Berney Survey was conducted on a very restricted scale as it covered only three law schools in the country. The need of the day appears to be to have a more comprehensive survey of the law student body on an all-India basis. It is only then that it may be possible to dig out the necessary data and hard facts relating to legal education in India, on the basis of which proper planning may be undertaken in future. In the absence of such a survey, decisions as to the enrolment and selection of law students, and other related matters relating to legal education, continue to be made on an *ad hoc* basis, inarticulate premises and impressions. The Sunshine-Berney Survey, though limited as it is in its coverage, has performed a useful service to the Indian Legal Education insofar as it has revealed that, after all, many of our impressions and premises may not be based on factual data.²⁷

²⁷In 1964, as Director of the Indian Law Institute, I had suggested that such a survey be conducted. For an extract from my memorandum, see Sunshine & Berney, *ibid.* 42.

Along with a survey of law students, a survey of the Indian legal profession also appears to be a desideratum for there is a close link between legal education and legal profession and the former has to be relevant to the latter. It is seen from the above that sizable numbers of law students desire to adopt some vocation connected in some way with law and, therefore, the proposed survey will have to be on an extensive basis covering all vocations/professions and jobs where law has a role to play. In the terminology of the ICL report, entitled *Legal Education in a Changing World*, this will mean a survey of law roles in India whether discharged by law-trained persons or para-professional persons. Such a survey will help in the proper planning of legal education whose primary purpose is to nourish and strengthen the role of law in society. Without our having a comprehensive picture of the law roles in their broad sense, their needs, size and requirements, a proper planning in the area of legal education appears to be somewhat unreal.²⁸

This will include a survey of not only the profession of law practice but also administrative and judicial services as well as such junior services as Tehsildar, Naib-Tehsildar, Law officers, Excise and Taxation, police, Banks, semi-government and private establishments etc.

It may be interesting to note that because of the facilities provided to in-service students to take law courses, law-trained persons are now infiltrating into many law roles which were hitherto discharged by para-professionals and this will definitely improve the quality of performance of these varied roles. It is true that in India the law-roles are multiplying in number and significance, but this needs to be assessed. Though, superficially, it may appear that in India at present the law enrolment program is very large in proportion to the need for law-trained persons, yet it also appears to be a fact that the full potentiality of law-roles has not been exploited so far. Many law roles continue to be performed by para-professionals and this could be revealed by the proposed survey. Then, the Government of India is taking steps for expanding legal aid in the country which is bound to increase demand for more lawyers. Today much of the Indian population goes without any effective and adequate legal aid. Also, every day new and new tribunals are being established which also increases the need for law-trained personnel.

²⁸ In 1964, Dean Cavers of the Harvard Law School, in a memorandum to the Indian Law Institute, mapped out a survey of the legal profession. He proposed a survey mainly of the practising advocates. The proposal being made here relates to a more extensive survey. It should be a survey of all jobs (governmental or non-governmental including the law profession) where knowledge of law is useful or desirable.

Lastly, the one big problem in India at the present moment is: How to improve legal education with such a large body of law students? The financial resources of the country do not permit a first class legal education being imparted to thousands of students who join the law courses at present throughout the length and breadth of India. There appears to be no immediate prospect of the number of law students going down in any significant manner in the near future. Education is now spreading to every nook and corner of the country. One can now find huge colleges being established at district towns where formerly there was not even a high school. In many law schools, a large number of students are first generation students, i.e., they are sons or daughters of parents none of whom ever had the opportunity of getting university education. With the expansion of the educational base at the lower level, there is bound to be pressure at the higher points of learning. As far as one can visualise, the pressure for admission for a law degree may become more intense rather than less in course of time. It is not possible to deny admission to large number of candidates by prescribing artificial rules for eligibility for admission. For this is bound to generate, sooner or later, intense pressures on the universities which they may not find it possible to resist. Nor it appears to be necessary to adopt a restrictive perspective of need for legal education. As the ICL Report suggests: "A citizen to be effective in enjoyment of his civic capacities, needs a basic knowledge of at least some aspects of law. Officials and others who perform important law roles, e.g., a policeman, business men or politicians — need an understanding of parts of the law and its underlying policies and values."²⁹

In India the demand for legal education and the scale on which it is offered are very large. The factors leading to this phenomenon are varied — spread of education; legal education affording a better alternative for most of the students than just a plain Master's course; those employed in jobs demanding knowledge of law wanting to acquire the same etc. These factors are not going to abate in the near future. The only solution of this contemporary problem appears to be to organise legal education at two hierarchical levels. At the top, there should be a few select law schools, call them national law schools or what you will. These centres of excellence should have first class facilities and should admit only the best and intellectually dedicated students on an all-India basis, and turn out quality law graduates. Here the stress should be on quality and quality alone. These law schools can develop interdisciplinary courses, can insist on some necessary skills as prerequisite to admission to practice and promote in developing Law and Development research and course.³⁰ But there are

²⁹ *Legal Education in a Changing World*, 16.

³⁰ See in this connection, H.C. *Law and Development*.

formidable problems in the way of establishing such institutions in India. The first and foremost is the problem of financial resources, for these schools, but their very nature, are going to run into huge financial deficit and, therefore, the University Grants Commission will have to underwrite them — and this is very difficult in view of limited resources available for higher education. The other equally difficult problem is that of structures — how to concede autonomy to these institutions to develop their own programmes and syllabi and admission policies. It cannot be developed properly and fully in the context of any established University where law colleges cannot enjoy greater autonomy than what is conceded to its other departments.

But then, to cater to the needs of the rest of the students seeking to join the LL.B. course, the rest of the law schools will have to cater to the quantity, perhaps to some extent, at the cost of quality, and do as best as they can within their resources.³¹

Proposals to establish some institutions of excellence have been mooted from time to time, but no concrete proposal has as yet reached the take-off stage.³² There can be no serious objection against such a course of

³¹ One method to cater to this quantity, being adopted by some universities, is to award a two year LL.B. Degree. To differentiate this degree from the three year professional course, as stipulated by the Bar Council, the two-year degree may be called General or Academic Degree and this be made a part of the nomenclature of the degree, viz. LL.B. (General) or LL.B. (Academic). Recently, the Kurukshetra University has made an innovation. It has introduced a two year (Academic) degree in law without the requirement of class-room attendance. The purpose of this innovation is "to allow those persons who cannot attend regular classes but want to equip themselves with law degrees." There is no attendance requirement for this degree. Such law graduates will not be able to enrol themselves as Advocates. This is something like a correspondence course, a number of which have been started in various other courses (besides law) by many universities. There is immense thirst for knowledge in India and, to some extent, this method seeks to meet this aspiration. The experiment being conducted at Kurukshetra in the area of law needs to be watched carefully before being adopted by other universities.

³² A tentative model for a National Law School has been suggested by Rahmatullah Khan in National Law School — A Proposal, 14 *J.L.L.J.* 590 (1972).

action, for in no country all the law schools are of equal or comparable standards. Even in a country like the U.S.A., with its immense resources in men and material, there exist several grades of law schools. Even the law schools at the second level may be able to improve matters by starting an honours law course. Only a select body of students may be allowed to join this course and they may be given some personalized supervision and guidance. Until 1960, the University of Delhi ran an honours course in law (which was designated as B.C.L.) in addition to the LL.B. course. Only a few first class students were admitted to this course every year. It was a prestigious course and all those who undertook this course are now doing extremely well in life in careers connected with law. Its duration was three years while the ordinary course in law (LL.B.) at that time was of two year duration. With the changeover of the LL.B. course from two to three years, the B.C.L. course was discontinued. I feel that time has come when such a course may be introduced in some leading universities to improve the quality of education and to give something more to the better quality students than can otherwise be given to the rank and file in the LL.B. course.

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LEGAL EDUCATION AND DEVELOPMENT THE NEED FOR LEGAL TRAINING OF CIVIL SERVANTS: A CASE FOR DIPLOMA IN LEGAL STUDIES IN THE UNIVERSITY OF MALAYA

I

THE CHANGING ROLE OF CIVIL SERVANTS

Since independence in 1957, Malaysia has embarked upon various economic development programmes which have led to rapid economic, social, cultural, political and technological development in the country. So far, five five-year plans have been introduced, the First Five-Year Plan, 1956-1960, the Second Five-Year Plan, 1961-1965, the First Malaysia Plan, 1965-1970, the Second Malaysia Plan, 1971-1975 and the Third Malaysia Plan, 1976-1980, some with moderate success and some with great success.

Development is a dynamic process where things, ideas, knowledge and even institutions change. With these rapid changes, knowledge becomes obsolete in the course of time. With this it follows that what is learnt has to be relearnt to keep up with the times and also with the increased amount of knowledge and information available.

With the increase in development activities there is also a rise in the demand for government involvement. Problems and issues not only grow bigger but even more complex. The management of these problems and issues have to be done systematically and also within the framework of law. Through all these spectra of problems and activities, rules and regulations are formulated.

In response to development plans and to cater for the ever increasing need of providing better services to the public, there is corresponding expansion in the government's administrative machinery. The advancement in development also resulted in more complex problems confronting the civil servants in the process of carrying out their duties. More often than not, they are confronted with legal problems.

Since 1965, the government has expanded the civil service four-fold. The term 'civil service' here refers only to those in Division I of the Malaysian Administrative and Diplomatic Service. In 1975, the number of civil servants in this category totalled 1,841.

Today, most of them are not only entrusted with administrative functions but also with judicial functions as adjudicators, magistrates, or members of Tribunals. In addition, those civil servants who are posted to the Ministries play another role — that of advising the legal draftsman on policy matters when formulating new laws or amending the old ones.