

EMERGING AREAS IN A GLOBALISED WORLD AND RESPONSE OF INDIAN LEGAL EDUCATION

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INTRODUCTION

The law and all other streams are interdependent. Thus, if any of the stream developed, it is desired and required that law should also develop to regulate the development. In a globalised world many developments are taking place, along with it the parameters of life and surroundings are also changing. Thus, it is the responsibility of law to respond it. To respond the changing dimensions of life and surroundings, it is important to train minds to create law and to profess the law. In short, it is important to update the legal education system.

The present article is to look into the legal education system in India and if that system is able to respond emerging areas of a globalised world.

GLOBALISATION

The term globalisation refers to the acceleration and intensification of mechanisms, processes, and activities that are allegedly promoting global interdependence and perhaps, ultimately, global political and economic integration. It (...) involves the *deterritorialisation* of social, political and economic and cultural life.”¹ With the increasing globalization of economic activities and ever-greater capital mobility, an era has been emerged where corporations choose among states in search of optimal business environment. Since, the states need investments and participation from private sector for achieving best growth, they are encouraging corporate by using tools such as creation of liberalized, just, fair and competitive markets and India is no exception.

¹ Martin Griffiths and Terry O’Callaghan, *International Relations: The Key Concepts* (Routledge, 2002) 126-127

Since 1990, India has introduced far-reaching changes in its foreign and domestic policies. A paradigm shift may be observed in policies before 1991 and after 1991. One may say it was a transition from socialism towards capitalization but it was a shift to a market system that encouraged private players to operate liberally. The then government initiated economic liberalization and successive governments did not change it as well. Therefore, it may be inferred that economic liberalization was welcomed by all political parties as also different stakeholders. Thus, with a strong political will, presently India is one of the fastest growing economies of the world².

As mentioned earlier, for corporate sector for operate optimally in terms of trade, it is essential to prepare a just and fair market that is liberal and competitive in nature. Towards this, it becomes imperative to-

- Enact strong legislations,
- Have clear and unambiguous investor friendly policies in place
- Have effective and speedy dispute resolution mechanism

All the above requires help of personnel having the knowledge of field of law.

Hence, it is utmost important to think and act on the requirements of legal education in the emerging areas of trade and economy so that the persons are trained with requisite knowledge of the emerging areas of in a globalised world along with the dispute resolution mechanisms. The process of globalisation is multi-faceted. Of these, one facet is trade and economy. In the present article, we will discuss globalisation pertaining to trade and economy and response from legal education towards it.

Before delving into the response, it would be worthwhile to discuss the progress of trade and economy in the world to understand the current scenario and outlook for the future.

GROWING SIGNIFICANCE OF TRADE AND ECONOMY IN THE WORLD

² Refer “India Vision 2020”, Report of Planning Commission of India on http://planningcommission.gov.in/reports/genrep/pl_vsn2020.pdf

As can be seen from human history, life is influenced mainly by three factors- political forces, trade and economy, and culture. Out of these, dominating impact of trade and economics worldwide has produced revolutions in the sector of science and technology, commerce and trade as well as in agriculture and industry. Over the past few decades, the entire world has been experiencing rates of economic growth that were once unthinkable. It may be inferred, from the history of trade and economic development, that the emerging international system will be quite different from the systems that have preceded it. One hundred years ago, the economy was run by European governments with constantly shifting alliances, their rivalries, their calculations and miscalculations, and wars they fought. This period was followed by the bipolar alignment due to the cold war that brought in more stable order in many ways; but with one superpower reacting to each move the other made.

Since 1991, the global economy has expanded and accelerated dramatically due to the increasing participation of states in world trade and economy. With the increasing participation, interdependency amongst states is also increasing. In this interdependent world, the corporate use dozens of states as parts of a product chain to buy raw material, manufacture or assemble finished/semi-finished good, market and to sell products. Due to technological innovations trade and economy is becoming real global in nature. For example, thirty years ago, news was not conveyed instantly, but by the 1990s event happening anywhere were transmitted within minutes if not seconds to all over world. Earlier, news was mainly political in nature. Now, news also consists of economic and trade news. This can be seen by the advent of exclusive business news channels, mainline news that contain business headlines. Prices and the status of market are conveyed by the news across the world. Twenty years ago, there was a huge business in arbitrage because such instant price comparison was difficult but now it is not so. Today, it is a routine for persons to compare prices of products on the Internet to get lower cost, better quality and possibly more features. Cheap phone calls, video- conferencing, teleconferencing and broadband have made it possible for people to do jobs for one country while residing in another country in addition to adding capability to make quick decisions - marking the next stage in the ongoing story of growth.

As one probably know that the arrival of big ships in the fifteenth century, goods became mobile. Likewise, with modern banking in the seventeenth century, capital became mobile.

Nowadays people do not necessarily go to where the jobs are, but jobs are going where people are. For example, today, a clothing factory in Thailand can be managed almost as if it were in United States³. As another example, this can also be seen in concept of work from home. Regarding corporate, they are moving the manufacturing to areas having more skilled, hardworking labour and availability of required inputs at low cost. They are also outsourcing some of their business subsystems to lower input costs of products.

Thus, trade and economy, and technology, are evolving in a liberalized, competitive and connected international business environment. Today, despite the daily reports of bombings, terrorist plots, rogue states and civil strife, economy is progressing.

EMERGING AREAS OF TRADE AND ECONOMY

After understanding the influence of trade and economy, let us briefly discuss what the emerging areas of trade and economy are. The concept of trade and economy has widened with the establishment of World Trade Organization (WTO). Nowadays trade does not mean only exports and imports of goods but it also covers negotiations and transactions on a global scale regarding agriculture, services, investment, intellectual property rights and many more⁴. It seems that territorial borders have lost their significance in growing trade and economy scenario. The arrangements facilitate trade and in case of disputes or problems, provide resolutions as well. The growing participation of states in world trade increases the economic activities. Hence, may be in future the WTO may become World Economic Organisation⁵. All over the world, lot of work is going on in these areas.

POSITION IN INDIA

The economy of India is the twelfth largest economy in the world by nominal value and the fourth largest by purchasing power parity (PPP). In the 1990s, following economic reform from

³ Refer FAREED ZAKARIA, THE POST AMERICAN WORLD,pg. 21-25 (Penguin Viking, 2008)

⁴ The GATT system, precursor of today's WTO, provided rules for trade in the narrow sense of exports and imports. Through Uruguay Round services, intellectual property rights and other areas brought under WTO. See Hisamitsu Arai, "Global Competition Policy as a Basis for a Borderless Market Economy", on <http://www.meti.go.jp/english/topic/>, visited on 5 Jan 2018

⁵ *Ibid*

the socialist-inspired economy of post-independence India, the country began to experience rapid economic growth, as markets opened for international competition and investment. In the 21st century, India is an emerging economic power with vast human and natural resources, and a huge knowledge base.

India is a one of the founding-members of General Agreement on Tariffs and Trade (GATT) since 1947 and its successor, the World Trade Organisation (WTO). Thus, India is a party to various arrangements, namely, investment⁶, intellectual property rights⁷, services⁸ and many others. While participating actively in WTO's general council meetings, India has been crucial in voicing the concerns of the developing world. For instance, India has continued its opposition to the inclusion of such matters as labour and environment issues and other non-tariff barriers into the WTO policies. Thus, India has established its position as a developing nation that can take up independent stand on issues concerning the world at large.

Realising the growing importance of trade and economy India has introduced and amended various legislations and policies to keep in step with global developments. The recent examples are Competition Act, 2002 as amended in 2007 and Emigration Law, 1983⁹. It may also be added here that banking sector is also undergoing reforms. For example, the Indian Parliament passed Securitization Act that started banking reforms and helped the banks lower their Non-Performing Assets. Apart from this, Reserve Bank of India (RBI) acts as watchdog keeping tab on banking activities and keeps tab on key rates to control money supply, fuel growth and check inflation. Foreign exchange regime has also been updated in view to bring consistency with the framework evolving under WTO. As an example, Foreign Exchange Regulation Act, 1973 (FERA) has been replaced with Foreign Exchange Management Act, 2000 (FEMA). Various other issues are emerging and have to be dealt with. One of them is the issue of carbon emissions. Trade and industry in India may affect due to any type of binding obligation regarding cutting of carbon emissions. Another issue, is the issue of patent, is also getting

⁶ Agreement on Trade Related Investment Measures (TRIMs)

⁷ Agreement on Trade Related Aspects on Intellectual Property (TRIPs)

⁸ General Agreement on Services (GATS)

⁹ As per the last news, The Emigration Bill was expected to be introduced in Parliament during the ongoing Budget session that will replace the legislation of 1983. Overseas Indian Affairs Minister told media in an interview that the current Emigration Act was framed 26 years back and they have drafted the new bill considering today's requirement. See Economic Times, dated 14 March 2010

attention like the patent of Basmati rice¹⁰. As per the news published in New York Times in 2001, now most of the issues have been settled. As per the source of this news, it was an example of an emerging issue of bio-piracy¹¹. All these issues need a systematic comparative legal analysis. India is now developing innovating technologies and acquiring patents. There are also a lot of Indian and Multinational Corporations that are operating from its soil. Some of these are operating in a common area or target common customer base. Therefore, there is a necessity of fair, speedy and efficient dispute redressal mechanisms to be implemented wherever they are not already in place. In crux, various issues, emerging in the area of trade and economy, require efficient dispute resolution mechanisms.

In this background, the author strongly opines that proper legal education on emerging areas must be imparted to the aspirants of law.

THE PERSPECTIVE OF LEGAL EDUCATION¹² IN INDIA

Laws change as per the changing scenario of the society. The subject of law is normative in nature; hence, it is different from other humanity subjects¹³. The discipline of law is one of the most significant disciplines and its practitioners are required to play active role to respond to the changes created by both internal and external factors. In the changed scenario, the additional roles that have been envisaged for the law personnel are- business advisor, negotiator among interest groups, expert in articulation and communication ideas, mediator, lobbyist, law reformers¹⁴ and many more. Thus, in the present era of trade and economic liberalization, legal

¹⁰ Basmati rice, sought-after for its fragrant taste, was developed by Indian farmers over hundreds of years, but the Texan company RiceTec obtained a patent for a crossbreed with American long-grain rice. India fears the patent will severely damage exports from its own farmers to the US. In 1998, they exported almost 600,000 tonnes of basmati rice. The Indian government in June 2000 filed 50,000 pages of scientific evidence to the US Patents and Trademarks Office, insisting that most high quality basmati varieties already possess these characteristics. See Anthony Browne, "India Fights U.S. Basmati Rice Patent" June 25, 2000 http://www.biotech-info.net/basmati_patent.html

¹¹ Saritha Rai, "India-U.S. Fight on Basmati Rice Is Mostly Settled" *New York Times*, 25 August 2001

¹² For the present paper, "legal education" meant for the author is the education towards the award of LL.B. and LL.M. degrees.

¹³ Law is still considered by many as a part of humanities stream. Law should be considered as professional independent stream.

¹⁴ Prof N. R. Madhava Menon, "Halting progress of legal education", *The Hindu*, October 23, 2001

education has to accommodate new and emerging areas. Presently legal policies are formulated based on integrated knowledge of a whole range of physical and natural science subjects. These includes trade, economics and investment, bio-diversity, bio-technology, information technology, environmental sciences, air and space technologies, ocean and marine sciences, forensic sciences, public health, petroleum and minerals related subjects, etc. The legal policies are also required to respond emerging issues as well.

LEGAL EDUCATION IN INDIA ON TRADE AND ECONOMY: WHAT IS IT? WHAT OUGHT TO BE?

The legal education in India is regulated by multiple agencies, namely: Bar Council of India¹⁵ (BCI), University Grants Commission¹⁶ (UGC), the government through Human Resource Development (HRD) and Law ministries and respective university authorities. Earlier, in India, discipline of law as a profession and legal education was not a popular choice of the students. Students who performed well in their intermediate education aspired to study medicine, engineering, computers, business management and accounting. However, now the scenario has been changed. The Bar council of India introduced LL.B. programme with an integrated five-years LL.B. course; a course which can be pursued after XII, and various national law schools which are dedicated to legal education only are established; National Law School in Bangalore in 1982 and afterwards in Hyderabad, Kolkata, Bhopal, Jodhpur, Nagpur, Mumbai etc as also in Delhi.

The UGC and BCI have provided a model course curriculum to be implemented by the educational institutions for LL.B. UGC has given model course curriculum for LL.M. as well. The list of the courses given by the UGC and BCI is quiet exhaustive and it is based on multidisciplinary approach¹⁷. That many of the courses have been assigned in view of the trade

¹⁵ The Bar Council of India (BCI) under section 7 (1) (h) of the Advocates Act, 1961 is empowered to promote legal education and lay down 'standards' of such education in consultation with the universities imparting such education.

¹⁶ The University Grants Commission under section 2 (f) of University Grants Commission Act, 1956 (UGC Act) is also having power to exercise control over the universities and affiliated colleges for prescribing standards of education

¹⁷ See Model curriculum on www.ugc.ac.in and Legal Education on www.barcouncilofindia.org

and economy as well. The model course curriculum prescribed by UGC for LL.B. 5-year programme provides following courses relating to emerging areas in trade and economy: intellectual property law, alternative dispute resolution, international economic law, insurance law, banking laws including Negotiable Instruments Act, and investment and security laws. Relating to trade and economy, the BCI has provided groups¹⁸ titled as business law¹⁹, international trade law²⁰ and intellectual property law²¹. For the programme of LL.M., the UGC has provided eleven specialisation areas²². Out of that four areas are relevant to trade and economy, they are- International law and organisation, Business law, Labour, capital and law, Environment and legal order, and Science, technology and law.

ANALYSIS

Upon analysis, it is revealed that UGC and BCI have included the courses on trade and economy, mainly International trade law, International economic law, Banking law, Insurance law, Intellectual property law, Alternative dispute resolution (ADR), Investment and security laws, Comparative law, and Competition law. Out of these courses, UGC listed ADR as a compulsory course and BCI listed it as a compulsory clinical course.²³ Other courses are optional in nature.

¹⁸ BCI has provided integrated and specialised/honours scheme for LLB programme. Three years' LLB is also in existence.

¹⁹ Business law group includes- Law and Economics, Banking Law, Investment Law, Financial Market Regulation, Foreign Trade, Law of Carriage, Transportation Law, Insurance Law, Bankruptcy and Insolvency, Corporate Governance, Merger and Acquisition, Competition Law, Information Technology Law, Direct Taxation, Indirect Taxation, Equity and Trust, Law on Project Finance, Law on Corporate Finance, Law on Infrastructure Development, and Special Contract.

²⁰ The group of international trade law contains- International Trade Economics, General Agreement on Tariffs and Trade, Double Taxation, Dumping And Countervailing Duty, Trade in Services and Emigration Law, Cross Border Investment, Agriculture, Dispute Resolution, International Monetary Fund, Trade in Intellectual Property, and International Banking And Finance.

²¹ The group of intellectual property law includes- Patent Right Creation and Registration, Patent Drafting and Specification Writing, IPR Management, Copyright, Trade Mark and Design, Trade Secret and Technology Transfer, Other Forms of IPR Creation and Registration, IPR Litigation, IPR Transactions, Life Patent, Farmers and Breeders Right, Bio Diversity Protection, Information Technology, IPR in Pharma Industry, IPR in SMEs

²² See, Model curriculum on www.ugc.ac.in

²³ Thus, it can be inferred that the recommendation done by the Law Commission in its 184th Report, 2002 regarding Alternative dispute resolution have been realized.

The core courses on trade and economy are international trade law, international investment law and international economic law. Regarding inclusion of courses on trade and economy for LL.M., UGC prescribed total 11 areas. Out of these, four areas are relevant to trade and economy. In essence, UGC and BCI prescribed exhaustive course curriculum to impart education regarding trade and economy.

THE WAY FORWARD: EMPIRICAL AND CLINICAL APPROACH

It is indeed impressive that in legal education the aspects relating trade and economy are being studied. In these subjects the problems and prospects are growing further. In this scenario, its relativity and developments are required to be studied in the Indian context. A lot of work is required to do in the contents of the courses relating to trade and economy. The course contents are updating the students, but mostly found a non-connectivity with the ground level which affects lives of people. Thus, at times the framed subject in a syllabus unable to analyse the impact of developments on common lives. More emphasis should be given on empirical and clinical approach to these courses.

1. With empirical approach, the effect of laws will be seen in reality.
2. Along with the corporate sector, the government departments should also give more opportunities to the law students in the form of internship. This will help the students to understand government work and responsibility involved and government departments can attract merit law students.
3. Above all, the aim of the legal education should not be limited making of lawyers or placing them in a corporate sector. The aim must be to face the global challenges, to cope up with the growing speed of development globally and to lead world in a form of an academician or a judge, or a lawyer or a corporate person or a government officer or so on.

CONCLUSION

As urged by the National Knowledge Commission, the legal education should become a globally competitive. To respond the growing influence of trade and economy it is important to update course curriculum and include international and comparative law perspectives. It

further stated that legal education should also prepare professionals equipped to meet the new challenges and dimensions of internationalization.

The world is moving towards universal trade and economic law. However, the economic gap between developed, developing and least developed states is increasing. To overcome from this problem, as stated by the Planning Commission of India in 'Vision 2020', the limitations of out-dated curriculum and out-moded delivery systems should be dropped, and then only, the new opportunities can be created to close the education gap that separates the world's most prosperous communities from their poorer cousins

Today globalisation and changing dimensions of the Indian economy and polity have posed new challenges of governance. It is ought to be necessary to cater the need of today and tomorrows requirements to face these challenges. The universities are lagging behind in updating themselves as per the present day requirement. The Birla-Ambani Report, 2000 suggested that government should encourage business houses to establish educational institutions to bring educational reforms in India. On this, the author's submission is that the business houses may perform their social responsibility by offering their helping hand to the existing universities and institutions.