

UNIT : 1

Objectives of Legal Education

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Education is a radiance that shows the mankind the right path to move forward. The purpose of education is not just making a student literate but to develop rationale thinking, enhances knowledge and self sufficiency

1.0 Objectives:

- 1.0.1. To study how and why Legal Education was introduced in India
- 1.0.2. To be able to understand the Importance of Legal Education
- 1.0.3. To study why Legal Profession is a Noble Profession
- 1.0.4. To be able to understand Ethics in legal profession
- 1.0.5. To know what are Challenges to Legal Profession

1.1. Introduction:

According to a legendary proverb “A man without education is a strange animal.” Dr. Babasaheb Ambedkar was of the opinion that education will liberate all and hence he called each and everyone to be educated, unite and fight against the odds of the society. The encyclopedia of education defines legal education as a ‘skill for human knowledge which is universally relevant to the lawyer’s art and which deserve special attention in educational institutions’¹. Former Justice Dada Dharmadhikari has rightly remarked that ‘legal education makes lawyer an expert who pleads for all like the doctor who prescribes for all, like the priest who preach for all and like the economist who plan for all’². It may really be termed as an art that enjoys the capability to make lawyer a best pleader for the public at large. Education does not mean mere “accumulation of information” or acquisition of degrees. It is the motivating force behind the character and personality of the student that mould him into a good human being. Education pulls out a person from ignorance, superstitions and narrow-minded selfishness and lead towards progress, liberation and social behavior respectively. Even an old Sanskrit proverb state that education which leads to liberation; liberation from ignorance which shrouds the mind; liberation from superstition which paralyses efforts; liberation from prejudice which blinds the vision of truth.

1.2. Subject Explanation

1.2.1. Introduction of Legal Education in India:

The concept of dharma, in the Vedic period, can be seen as the concept of the legal education in India. Although there is no record of formal training in law, the dispensation of justice was to be done by the king on the basis of a self-acquired training. Justice was also administered by the King through his appointees who in turn were persons of known integrity and reputation of being fair and impartial. The guiding force for the King or his appointee was the upholding of the Dharma.

In modern India legal education came in to existence in 1885. Numerous committees were foamed to consider and propose reforms in legal education. Constitution of India basically laid down the duty of imparting legal education. Advocates’ Act, 1961 which brought uniformity in legal system. In the changed scenario the additional roles envisaged are that of policy planner, business advisor, negotiator of any interested groups etc. In the Era of Globalisation legal system in India include catering the needs of new brand consumers or clients namely foreign companies, collaborators etc. Strengthening our legal education system is need to face the new challenges. Imparting of legal education has always been considered as one to the noblest profession. Legal education which is part of general

education cannot be viewed in isolation. Today, legal education derives its impetus from the economic, social and economic and political set up of the society.

1.2.2. Importance of Legal Education:

Globalization has called upon the law to execute numerous responsibilities in society and lawyers are expected to act as change agents and social engineers in governance and development. If law is a tool for social engineering and social control, it should be studied in the social content. This means integrating law subjects with social and behavioural sciences. This would enable the lawyer to solve problems in socially acceptable ways and assist in developing public. The following objects of legal education can be cited for consideration:

1. The legal education should be able to meet ever-growing demands of the society and should be thoroughly equipped to cater to the complexities of the different situations.
2. Legal education has an important role in directing and moderating social change. In this regard it has to operate as conscience-keeper of society.
3. Legal communication shall manifest higher moral values; shall maintain high degree of competence discipline and ensure that no section of society is denied of access to its services because of poverty or social status.
4. Legal education seeks to impart appropriate training, which should be made available through professionals.
5. Legal education is expected to inculcate law students with the operative legal rules both substantive and procedural.
6. The prime object of the legal education is to produce efficient lawyers.
7. Legal education must equip the student with the necessary theoretical and practical skills to deal with the diverse and expanding world of legal practice.

Lacunae in Present Legal Education :

There are various lacunae in present system of imparting legal education which considerably impaired movement of building new generation of efficient lawyers, teachers for India. These are:

1. There is no separate law university in all the states to govern the educational institutions.
2. The law institutions are presently affiliated to general universities which already have loads of burden of different faculties like Art, Science and Commerce colleges. This caused adverse impact on the curriculum, syllabi etc. and of course, on the development of legal education.

3. Mushroom growth of private non-granted law colleges is seen everywhere and they are ill equipped. Only part-time teachers are manned in such institutions.
4. The vacancies of permanent teachers are not filled upperhaps due to lack of qualified candidates and of course, due to mal-practices in recruitment process.
5. If a person has nothing to do, they join law course this is the situation of admission in legal education today.
6. The students of present generation are having ambition to become doctor or engineer, but they do not want to be a lawyer or law teacher. It means legal education is unable to attract these students. This deficiency can be worked out by offering job opportunity to students.
7. Some colleges adopted regional language as medium of instruction and examination. There will be conveyance of regional language to students but there will not be uniformity in legal education. Diversified legal education may cause deficiency.
8. As traditional teaching methods are still used in class-rooms, legal education does not attract students to come and sit in class-rooms.
9. Attendance ratio is considerably poor in some educational institutions.
10. Traditional talk and chalk method of teaching is still adopted in majority of law colleges for teaching. The teachers are not still motivated to use modern technologies like computer, projector, discussion method etc while teaching. The product of such traditional system of education will not be able to cope-up the problems of present IT age. Therefore students learn traditional skills and knowledge. But the modern IT age needs a lawyer with diversified skills and multi-tasking abilities which the traditional curriculum and syllabi do not provide.
11. There is no proper clinical (practical) knowledge to students of rural law colleges. They are getting the theoretical knowledge of advocacy.
12. The student of some reputed law school use to assist judges, leading practitioners as their curriculum provides for such assistance. Therefore those students acquire all the potentials of advocacy which the rural student is not acquiring.
13. No internship in law profession as it is in medical profession. It was in India for three years then it was withdrawn after Hon. Supreme Court decision.

1.2.3. Legal Profession – A Noble Profession:

The practice of law is a noble profession. It is a profession that depends upon diverse people of honesty, integrity, compassion, and courage to join its ranks if it is to fulfil its responsibility to preserve and defend liberty and justice. It is a profession that asks its members to make a commitment to the rule of law and accessibility by all segments of society. That brings an obligation to imbue future generations with an understanding of and appreciation for the rule of law, judicial system, and the role of a profession.

1.2.4. Ethics in legal profession:

The following are the rules prescribed by the Bar council of India³
Advocate's Duty towards the Court:

1. Act in a dignified manner

During the presentation of his case and also while acting before a court, an advocate should act in a dignified manner. He should at all times conduct himself with self-respect. However, whenever there is proper ground for serious complaint against a judicial officer, the advocate has a right and duty to submit his grievance to proper authorities.

2. Respect the court

An advocate should always show respect towards the court. An advocate has to bear in mind that the dignity and respect maintained towards judicial officer is essential for the survival of a free community.

3. Not to communicate in private

An advocate should not communicate in private to a judge with regard to any matter pending before the judge or any other judge. An advocate should not influence the decision of a court in any manner using illegal or improper means such as coercion, bribe etc.

4. Refuse to act in an illegal manner towards the opposition

An advocate should refuse to act in an illegal or improper manner towards the opposing counsel or the opposing parties. He shall also use his best efforts to restrain and prevent his client from acting in any illegal, improper manner or use unfair practices in any manner towards the judiciary, opposing counsel or the opposing parties.

5. Refuse to represent clients who insist on unfair means

An advocate shall refuse to represent any client who insists on using unfair or improper means. An advocate shall exercise his own judgment in such matters. He shall not blindly follow the instructions of the client. He shall be dignified in use of his language in correspondence and during arguments in court. He shall not scandalously damage the

reputation of the parties on false grounds during pleadings. He shall not use unparliamentary language during arguments in the court.

6. Appear in proper dress code

An advocate should appear in court at all times only in the dress prescribed under the Bar Council of India Rules and his appearance should always be presentable.

7. Refuse to appear in front of relations

An advocate should not enter appearance, act, plead or practice in any way before a judicial authority if the sole or any member of the bench is related to the advocate as father, grandfather, son, grandson, uncle, brother, nephew, first cousin, husband, wife, mother, daughter, sister, aunt, niece, father-in-law, mother-in-law, son-in-law, brother-in-law, daughter-in-law or sister-in-law.

8. Not to wear bands or gowns in public places

An advocate should not wear bands or gowns in public places other than in courts, except on such ceremonial occasions and at such places as the Bar Council of India or as the court may prescribe.

9. Not to represent establishments of which he is a member

An advocate should not appear in or before any judicial authority, for or against any establishment if he is a member of the management of the establishment. This rule does not apply to a member appearing as “amicus curiae” or without a fee on behalf of the Bar Council, Incorporated Law Society or a Bar Association.

10. Not to appear in matters of pecuniary interest

An advocate should not act or plead in any matter in which he has financial interests. For instance, he should not act in a bankruptcy petition when he is also a creditor of the bankrupt. He should also not accept a brief from a company of which he is a Director.

11. Not to stand as surety for client

An advocate should not stand as a surety, or certify the soundness of a surety that his client requires for the purpose of any legal proceedings.

Advocate's Duty towards the Client:

1. Bound to accept briefs

An advocate is bound to accept any brief in the courts or tribunals or before any other authority in or before which he proposes to practise. He should levy fees which is at par with the fees collected by fellow advocates of his standing at the Bar and the nature of the case. Special circumstances may justify his refusal to accept a particular brief.

2. Not to withdraw from service

An advocate should not ordinarily withdraw from serving a client once he has agreed to serve them. He can withdraw only if he has a sufficient cause and by giving reasonable and sufficient notice to the client. Upon withdrawal, he shall refund such part of the fee that has not accrued to the client.

3. Not to appear in matters where he himself is a witness

An advocate should not accept a brief or appear in a case in which he himself is a witness. If he has a reason to believe that in due course of events he will be a witness, then he should not continue to appear for the client. He should retire from the case without jeopardising his client's interests.

4. Full and frank disclosure to client

An advocate should, at the commencement of his engagement and during the continuance thereof, make all such full and frank disclosure to his client relating to his connection with the parties and any interest in or about the controversy as are likely to affect his client's judgement in either engaging him or continuing the engagement.

5. Uphold interest of the client

It shall be the duty of an advocate fearlessly to uphold the interests of his client by all fair and honourable means. An advocate shall do so without regard to any unpleasant consequences to himself or any other. He shall defend a person accused of a crime regardless of his personal opinion as to the guilt of the accused. An advocate should always remember that his loyalty is to the law, which requires that no man should be punished without adequate evidence.

6. Not to suppress material or evidence

An advocate appearing for the prosecution of a criminal trial should conduct the proceedings in a manner that it does not lead to conviction of an innocent. An advocate shall by no means suppress any material or evidence, which shall prove the innocence of the accused.

7. Not to disclose the communications between client and himself

An advocate should not by any means, directly or indirectly, disclose the communications made by his client to him. He also shall not disclose the advice given by him in the proceedings. However, he is liable to disclose if it violates Section 126 of the Indian Evidence Act, 1872.

8. Not to receive interest in actionable claim

An advocate should not trade or agree to receive any share or interest in any actionable claim. Nothing in this rule shall apply to stock, shares and debentures of government securities, or to any instruments, which are, for the time being, by law or custom, negotiable or to any mercantile document of title to goods.

9. Not to bid or purchase property arising of legal proceeding

An advocate should not by any means bid for, or purchase, either in his own name or in any other name, for his own benefit or for the benefit of any other person, any property sold in any legal proceeding in which he was in any way professionally engaged. However, it does not prevent an advocate from bidding for or purchasing for his client any property on behalf of the client provided the Advocate is expressly authorised in writing in this behalf.

10. Not to bid or transfer property arising of legal proceeding

An advocate should not by any means bid in court auction or acquire by way of sale, gift, exchange or any other mode of transfer (either in his own name or in any other name for his own benefit or for the benefit of any other person), any property which is the subject matter of any suit, appeal or other proceedings in which he is in any way professionally engaged.

11. Not to adjust fees against personal liability

An advocate should not adjust fee payable to him by his client against his own personal liability to the client, which does not arise in the course of his employment as an advocate.

12.Keep proper accounts

An advocate should always keep accounts of the clients' money entrusted to him. The accounts should show the amounts received from the client or on his behalf. The account should show along with the expenses incurred for him and the deductions made on account of fees with respective dates and all other necessary particulars.

13. Not to Divert money from accounts

An advocate should mention in his accounts whether any monies received by him from the client are on account of fee or expenses during the course of any proceeding or opinion. He shall not divert any part of the amounts received for expenses as fee without written instruction from the client.

14. Intimate the client on amounts

Where any amount is received or given to him on behalf of his client, the advocate must without any delay intimate the client of the fact of such receipt.

15. Adjust fee after termination of proceedings

An advocate shall after the termination of proceedings, be at liberty to adjust the fees due to him from the account of the client. The balance in the account can be the amount paid by the client or an amount that has come in that proceeding. Any amount left after the deduction of the fee and expenses from the account must be returned to the client.

16. Provide copy of accounts

An advocate must provide the client with the copy of the client's account maintained by him on demand, provided that the necessary copying charge is paid.

Advocates Duty towards the Opponents:

1. Not to negotiate directly with opposing party

An advocate shall not in any way communicate or negotiate or call for settlement upon the subject matter of controversy with any party represented by an advocate except through the advocate representing the parties.

2. Carry out legitimate promises made

An advocate shall do his best to carry out all legitimate promises made to the opposite party even though not reduced to writing or enforceable under the rules of the Court.

Advocates Duty towards Fellow Advocates:

1. Not to advertise or solicit work

An advocate shall not solicit work or advertise in any manner. He shall not promote himself by circulars, advertisements, touts, personal communications, interviews other than through personal relations, furnishing or inspiring newspaper comments or producing his photographs to be published in connection with cases in which he has been engaged or concerned.

2. Sign-board and Name-plate

An advocate's sign-board or name-plate should be of a reasonable size. The sign-board or name-plate or stationery should not indicate that he is or has been President or Member of a Bar Council or of any Association or that he has been associated with any person or organisation or with any particular cause or matter or that he specialises in any particular type of work or that he has been a Judge or an Advocate General.

3. Not to promote unauthorized practice of law

An advocate shall not permit his professional services or his name to be used for promoting or starting any unauthorised practice of law.

4. Consent of fellow advocate to appear

An advocate should not appear in any matter where another advocate has filed a vakalt or memo for the same party. However, the advocate can take the consent of the other advocate for appearing.

In case, an advocate is not able to present the consent of the advocate who has filed the matter for the same party, then he should apply to the court for appearance. He shall in such application mention the reason as to why he could not obtain such consent. He shall appear only after obtaining the permission of the Court.

1.2.5. Globalisation and Challenges to Legal Profession:

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.⁴ The Law Commission in its 184th 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".

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1.6. Reference

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