

# Law and Regulations on Legal Education in India Before, During and After COVID-19 with a Post-COVID-19 Manifesto

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## Abstract

This article is in pursuit of a way forward from the pandemic-stricken condition of legal education in India to a future of excellence. It realizes that as much as the pandemic paralyzes us and threatens with losses, it educates us, emboldens us and helps us realize our true imaginative and constructive possibilities. What is being threatened is a system ordered through a regulatory governance, which owes its legitimacy to the constitution and rule of law. What is being discovered is the many possibilities—of imagination, experimentation and innovation—of regulations. Hence, this article builds a juxtaposition of regulations as they were before the pandemic and as they are during the pandemic, revealing the contrast between them in their scope and application. Inputs for reimagination found between the contrasts are used for making a manifesto for resilience and change, the relevance of which becomes obvious through a prevailing sentiment that perhaps the world will never be the same again.

## Introduction

Our complete ignorance of what the future held in store had taken us unawares; we were unable to react against the mute appeal of presences, still so near and already so far.

—Albert Camus, *The Plague* (1948)

This article and analysis of the law on legal education in India, which comprises the constitutional and regulatory enactments, mostly the latter, are prompted by the extraordinary changes in social condition caused by the COVID-19 pandemic. The pandemic has, in effect, been the closure of the ‘normal’, pushing society into a ‘new normal’ and prompting a reimagination of social production, including the role of higher/legal education in the mode of production. A reimagination and reinvention cannot, however, be possible against a rejection of the existing state of affairs, even though a new context has come in place. This inevitability of the ‘present’, and all frameworks there at, makes a strong case for the need to revisit the existing regulations. Further, any reimagination in the context of legal education demands a deeper understanding of regulations, including an understanding of their policy rationale,

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which helps to unveil the imaginative spaces within the regulations. This type of a study, and an analysis thereof, and the broad-based scope of regulations it explains become essential for the law school leadership, particularly given that the COVID-19 pandemic has altered the contexts in which the regulations operated, rendering the latter empty of meanings.

For the readers to comprehend the impact of the changed circumstances on the regulations, the article builds a juxtaposition of regulations (and the thought behind them, including relevant jurisprudence) as they were before the pandemic and as they are during the pandemic. Such a juxtaposition reveals the contrast between them in their scope and application. It is in the space between the contrasts that the inputs for reimagination lie. In other words, the juxtaposition and the resulting contrast become the analytic and the analytical output of this article, respectively. This analysis is followed by a futuristic take on the regulations by submitting a manifesto for resilience and change, partly during and mostly after COVID-19, the relevance of which becomes obvious through a saturnine sentiment relayed by Yuval Noah Harari that *perhaps the world will never be the same again*.

The second section of the article presents the regulatory history of legal education in India. The historicity of the regulations on legal education is captured therein such that the reader gets to understand the normative foundations and ontology of the regulations, which have fallen into newer conditions due to the pandemic. Such an engagement with the history, and the ontological understanding thereof, helps to appreciate the ‘becoming’ of legal education through various legislative decisions and acts. After all, it is history which becomes the starting point for any reimagination. In the third section, the article discusses the subsequently evolved regulatory framework of legal education under the Bar Council of India (BCI) and the University Grants Commission (UGC) of India. It also discusses the relevant constitutional provisions, explaining how the regulatory bodies get their legitimacy and how regulations percolate to the level of decision-making in universities. In the fourth section, the article explains how the pandemic has threatened the scope of existing regulations and the response of the regulatory bodies, including the BCI and the UGC to the pandemic. In the fifth section, the article submits a COVID-19 manifesto. It is the hope that this article would become a reference for law school leadership in India, for effectively responding to the circumstances created by the pandemic and to explore the possibilities in the new normal.

## A Regulatory History of Legal Education in India

Legal education, as it is understood in the contemporary sense, was introduced in India by the British, though initially with the only intent of educating the masses about the enactments of the British Empire.<sup>2</sup> Such a move was part of a larger programme of knowing-the-empire, first, through English language and, second, through laws of the land.<sup>3</sup> Therefore, during the early days, Indian lawyers were of a lower cadre—the tellers of laws—possessing the minimum qualification of matriculation (and, in many instances, even lower) and elementary knowledge of the English language.<sup>4</sup> However, later on, with the establishment of British Courts at Calcutta, Bombay and Madras to administer justice through British

<sup>2</sup> J.K. Bhavani, *Legal Education in India*, 4 J. INDIAN L. INST. 167 (1962). On legal education in ancient India, mainly under the Vedic tradition, see SUSHMA GUPTA, HISTORY OF LEGAL EDUCATION 44–51 (2006).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at 168.

legislations, there emerged the need for professionally qualified Indian lawyers who were well read in laws.<sup>5</sup>

The said scenario prompted the institution of a Professorship in law—the Perry Professorship of Jurisprudence—at the Government Elphinstone College in 1855, which would later become part of the University of Bombay.<sup>6</sup> Nearly 4 years later, a Government Law College, affiliated to the University of Bombay, was established at Bombay, which offered studies leading to an Bachelor of Laws (LLB) degree, marking the beginning of formal education in India.<sup>7</sup> Almost at the same time, law colleges were also established at Calcutta and Madras. By the end of the nineteenth century, there were 34 law colleges in India with a total student strength of approximately 3,000 students.<sup>8</sup>

The university education, including legal education, in India, during the nineteenth century and into two decades of the twentieth century was regulated by the central government headed by the Viceroy.<sup>9</sup> In the year 1902, under the initiative of Lord Curzon, the performance of Indian universities was reviewed by the Indian University Commission, which led to the enactment of the Indian Universities Act, 1904. This Act gave the Universities of Bombay, Calcutta and Madras the power to confer degrees, including honorary doctoral degrees in law through their respective faculties of law. The recommendations of the Commission subsequently led to the setting of the prerequisite of a bachelor's degree to obtain admission to the LLB degree.<sup>10</sup> They also reduced the duration of the LLB programme to 2 years from 3.<sup>11</sup> The 1902 Commission also recommended for 'Tutorials' and 'Case Method' to become part of legal pedagogy.<sup>12</sup>

Despite a larger urge for reform on the part of the ruling British government and Indian educationists, legal education largely remained unregulated until the Indian independence, but for the sporadic reports from various education commissions and committees.<sup>13</sup> After independence, many commissions were set up to review the higher education scenario, including the University Education Commission 1948–1949 (the Radhakrishnan Commission) and the Indian Law Commission 1958–1959, which lamented over the quality of legal education in India, and called for the standardization of legal education through regulatory intervention.<sup>14</sup>

Soon, the BCI was set up as per the Advocates Act, 1961, with the function inter alia to 'promote legal education and to lay down standards of such education in consultation with the Universities in India'.<sup>15</sup> For effective standardization and better monitoring of legal education, Section 10(2)(b) of the Advocates Act, 1961, provides for the establishment of a 'legal education committee consisting of ten members, of whom five shall be persons elected by the Council from amongst its members and five shall be persons co-opted by the Council who are not members thereof'.<sup>16</sup> Soon after its establishment, the BCI, based on the reports of the Radhakrishnan Commission and the Indian Law Commission, was persuaded to

<sup>5</sup> See Arjun P. Aggarwal, *Legal Education in India*, 12 J. INDIAN L. INST. 213 (1959).

<sup>6</sup> Bhavani, *supra* note 2, at 168. See also *Resolution of Government at 10 July 1856*, HOUSE OF COMMONS PAPERS, 23, PART 3 459–61 (1859).

<sup>7</sup> *Id.* See also S.R. DONGERKERY, *A HISTORY OF THE UNIVERSITY OF BOMBAY 1857 TO 1957* (1957).

<sup>8</sup> Aggarwal, *supra* note 5, at 233.

<sup>9</sup> Amrik Singh, *The Indian University Grants Commission*, 13 HIGHER EDUCATION 517, 517 (1984).

<sup>10</sup> GUPTA, *supra* note 2, at 70.

<sup>11</sup> *Id.*

<sup>12</sup> Bhavani, *supra* note 2, at 169.

<sup>13</sup> GUPTA, *supra* note 2, at 71.

<sup>14</sup> See generally Bhavani, *supra* note 2. See also Jayanth Krishnan, *Professor Kingfield Goes to Delhi: American Academics, the Ford Foundation, and the Development of Legal Education in India*, 46 AM. J. LEGAL HIST. 447, 455–60 (2004).

<sup>15</sup> Section 7(h), Advocates Act, 1961.

<sup>16</sup> Section 19(2)(b), Advocates Act 1961.

introduce the 3-year LLB programme in the law colleges in India.<sup>17</sup> Some of the State Bar Councils also recommended for the introduction of a professional course—on procedures, codes, limitations, evidence, registration, drafting and professional etiquettes—to be under the control of the bar councils.<sup>18</sup> In the words of A.N. Veeraraghavan, the conferment of power to regulate legal education by the BCI by the 1961 Act is a progressive act, as it has resulted in a uniform pattern of legal education', without compromising the autonomy of universities.<sup>19</sup>

In 1965, the BCI enacted its Rules, which authorized it to set standards of legal education by issuing directions to legal educational institutions from time to time.<sup>20</sup> The Rules reiterate the constitution of the Legal Education Committee to inspect law colleges and universities, make recommendations for the recognition of such institutions and their degrees, and approve affiliations of law colleges to universities.<sup>21</sup> In order to further enhance professional standards and make improvements in legal education, the BCI established the Bar Council of India Trust (BCI Trust) in 1974. In achieving this goal, the Trust is mandated to establish schools of excellence and to promote legal research.<sup>22</sup> Further, the Trust is also meant to provide continuing legal education, 'legal aid to the disadvantaged; publication of textbooks for students and law reports; and activities promoting welfare of the members of the Indian legal profession'.<sup>23</sup>

While the BCI continued to regulate legal education throughout the 1970s and 1980s, the UGC, established through the University Grants Commission Act, 1956 (UGC Act), too had a say in legal education by virtue of section 12 of the UGC Act, which authorized UGC to take steps for the 'promotion and co-ordination of University education and for the determination and maintenance of standards of teaching, examination and research in universities'.<sup>24</sup> While the BCI continued to set standards of legal education, UGC norms validated the degree programmes offered in the law colleges of the country. As per Section 22 of the UGC Act:

The right of conferring or granting degrees shall be exercised only by a University established or incorporated by or under a Central Act, a Provincial Act or a State Act or an institution deemed to be a University under section 3 or an institution specially empowered by an Act of Parliament to confer or grant degrees.<sup>25</sup>

For the purpose of Section 22, the UGC, through its notification dated 1 December 1958, has relayed that an institution that satisfies the requirements of Section 22 can award the degrees of Bachelor of Laws (BL or LLB), Bachelor of Civil Law (BCL), Master of Laws (ML or LLM), Doctor of Law (DL) and Doctor of Laws (LLD).<sup>26</sup> Later on in 1969, through a notification dated 22 December 1969, the UGC has also approved the award of the degree of Bachelor of General Laws (BGL).<sup>27</sup>

One of the major landmarks in the field of legal education in India was in 1982 when the BCI, based on the Report of the Legal Education Seminar, 1977, introduced the 5-year law degree course for students

<sup>17</sup> Aggarwal, *supra* note 5, at 237.

<sup>18</sup> *Id.*

<sup>19</sup> A.N. Veeraraghavan, *Legal Profession and the Advocates Act, 1961*, 14 J. INDIAN L. INST. 228 (1972).

<sup>20</sup> D.N. Jauhar, *Legal Education: A Case for Five Year Law Programme*, 41 J. INDIAN L. INST. 66, 68 (1999).

<sup>21</sup> *Id.*

<sup>22</sup> GUPTA, *supra* note 2, at 82–83. See also 'Bar Council of India Trust', available at <http://www.barcouncilofindia.org/about/bar-council-of-india-trust/>.

<sup>23</sup> *Id.*

<sup>24</sup> Section 12, University Grants Commission Act, 1956 (UGC Act, 1956), available at [https://www.ugc.ac.in/oldpdf/ugc\\_act.pdf](https://www.ugc.ac.in/oldpdf/ugc_act.pdf)

<sup>25</sup> Section 22, UGC Act, 1956.

<sup>26</sup> UGC Notification NoF. 879/58 (CUP), dated 1 December 1958.

<sup>27</sup> UGC Notification, No.F.159/66 (CDN), dated 22 December 1969.

who have completed 10+2 years of secondary and higher secondary education.<sup>28</sup> The 5-year course imparts education in liberal disciplines during the first 2 years alongside foundational legal subjects and on various branches of law for the next 3 years.<sup>29</sup> The central idea behind the introduction of liberal disciplines was to help students gain a context (social or market) to understand the functions of law in society through theoretical courses and ‘skill-based’ clinical courses in law.

Mid-1980s and the 1990s witnessed many colleges and universities introducing the 5-year law courses; for instance, the Bachelor of Academic Laws (BAL) and Bachelor of Laws (LLB) were integrated to form the BAL, LLB degree programme, and the National Law School of India University (NLSIU), established under the National Law School of India University Act, 1986, began offering a BA, LLB (Hons.) programme. However, though the BCI set standards for regulating the 5-year law programmes, it did not show a high level of enthusiasm until 1997 when it decided to substantially revise the curriculum for the 5-year law courses.<sup>30</sup> Gurjeet Singh likens this shift in the posture of the BCI to the ‘effort to make legal education more modern and contemporary and to make it socially relevant and humanistic for the teacher and the taught’.<sup>31</sup>

As legal education moved to the new millennium, many legal scholars urged the BCI to revamp its activities on legal education in a much more organized fashion. For example, reflecting on the premillennial reforms, Krushna Chandra Jena writes: ‘Now the time has come to realize how to prepare our law students to cope with [the] rapid changes and also how to adapt our legal system to new vistas with a view to fulfilling the justice promised in the preamble to the Constitution of India’.<sup>32</sup> He further states that ‘the new curriculum prescribed by the BCI has enlarged the scope of legal knowledge and caters to the needs of both academic and practical aspects of legal education’, making it possible to realize the millennial aspirations.<sup>33</sup> Responding to such and similar sentiments, the BCI amended its Rules in 2008, thereby formulating the BCI Rules on Legal Education, 2008.<sup>34</sup>

## **The Regulatory Framework of Legal Education in India: The Old Normal**

### *Bar Council of India Rules on Legal Education, 2008*

Legal education in India is governed within the triangular regulatory framework, comprising the BCI, the UGC and the relevant regulations of the university whose school/college of law, or the schools/

<sup>28</sup> GUPTA, *supra* note 2, at 90–91.

<sup>29</sup> See Krishnan, *supra* note 14, at 478–80.

<sup>30</sup> Jauhar, *supra* note 20, at 68. For the efforts leading to the said revision, see Gurjeet Singh, *Revamping Professional Legal Education: Some Observations on Revised LL.B. Curriculum of Bar Council of India*, 41 J. INDIAN L. INST. 237, 244–45 (1999). See also Bar Council of India Circular No.4/1997.

<sup>31</sup> Singh, *supra* note 30, at 237.

<sup>32</sup> Krushna Chandra Jena, *Role of Bar Councils and Universities for Promoting Legal Education in India*, 44 J. INDIAN L. INST. 555, 567, 568 (2002).

<sup>33</sup> *Id.* at 568.

<sup>34</sup> As Part IV of the Bar Council of India Rule, named as ‘Rules on standards of legal education and recognition of degrees in law for the purpose of enrolment as advocate and inspection of Universities for recognizing its degree in law under Sections 7(1)(h) and (i), 24(1)(c)(iii), and (iiia), 49(1)(af),(ag),and (d) of the Advocates Act, 1961 made by the Bar Council of India in consultation with Universities and State Bar Councils’.

colleges affiliated to such university, that offers degree programmes in law.<sup>35</sup> Of the three bodies, the BCI is primarily responsible for setting standards of legal education and recognition of degrees in law.<sup>36</sup> Section 7(h) of the Advocates Act, 1961, confers on the BCI the responsibility to ‘promote legal education and to lay down standards of such education in consultation with the Universities in India imparting such education and the State Bar Councils’. In furtherance to this vested responsibility, Section 7(i) of the Act confers on the BCI the power to

[R]ecognise Universities whose degree in law shall be a qualification for enrolment as an advocate and for that purpose to visit and inspect Universities 3 [or cause the State Bar Councils to visit and inspect Universities in accordance with such directions as it may give in this behalf].<sup>37</sup>

This regulatory power of the BCI has not been free of criticism; the BCI has attracted criticism from educational commissions and courts on its mandate and by scholars on its competency.<sup>38</sup> Reflecting on a challenge of the BCI’s mandate apropos of legal education, the Supreme Court of India held that the BCI cannot exercise its powers under Section 7(h) and Section 7(i) of the Advocates Act to make rules unilaterally. Rather, it should consult the universities in India and the State Bar Councils ‘and that the said consultation had to be effective consultation because the universities are engaged in imparting the legal education’.<sup>39</sup> However, the court has not struck down the standard-setting powers of the BCI with regard to legal education. In *V. Sudheer v. Bar Council of India and Others*, the Supreme Court recommended that the BCI improve its standards of legal education and post-qualification training of lawyers: ‘We hope and trust that at least now the Bar Council of India may do well to look into these suggestions [recommendations of educational reform committees] as well as the observations made by us [ ] for salvaging the situation for the entire legal profession in India’.<sup>40</sup> Notwithstanding the widespread qualms about its mandate and competency, the BCI continues to regulate legal education at the undergraduate and graduate levels.

#### *Validity of Degrees and Eligibility for the Bar*

The BCI Rules on Legal Education, 2008, requires that every educational institution in India imparting instruction in law, be that a university or a law college affiliated to a university, shall be approved and enlisted by the BCI.<sup>41</sup> Only candidates passing out from such educational institutions will be eligible for enrolling as advocates under State Bar Councils. Rule 37 further allows law degree holders of foreign universities (which are listed as per Rule 38 and recognized by the BCI through the test of recognition laid down in Rules 39 and 40) to enrol with the State Bar Councils, provided that such degree holders have attained 21 years of age, and that they have studied law for a period of 3 years after graduation in any discipline or 5 years after passing the higher secondary school examination. The foreign university in question shall also be a university recognized by the BCI. Additionally, the BCI requires the foreign degree holders to pass ‘the examination conducted by the Bar Council of India in substantive and

<sup>35</sup> Shamnad Basheer and Sroyon Mukherjee, *Regulating Indian Legal Education: Some Thoughts for Reform*, available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1584037&download=yes](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1584037&download=yes) (2010).

<sup>36</sup> See BCI Rules on Legal Education, 2008.

<sup>37</sup> Section 7(i), Advocates Act, 1961 including Section 3 (i) of the Advocates (Amendment) Act, 1993.

<sup>38</sup> See Basheer, *supra* note 35. See also A.K. Avasthi, *Powerless of the BCI to Improve Standards of Legal Education*, 46 J. INDIAN L. INST. 55 (2004).

<sup>39</sup> As quoted in Avasthi, *supra* note 38, at 65.

<sup>40</sup> S.B. Majumdar and S.N. Phukan, JJ in *V. Sudheer V. Bar Council of India and Others*, MANU/SC0167/1999.

<sup>41</sup> Rule 3, BCI Rules on Legal Education (hereinafter BCI Rules, 2008).

procedural law subjects, which are specifically needed to practice law in India and prescribed by the Bar Council of India'.<sup>42</sup>

The BCI also recognizes for enrolment in three law degree programmes offered by foreign universities, which are not preceded by a graduate degree but by a Legal Practice Course (LPC) or Bar Vocational Course (BVC) and 'followed by a contract of service with a Law Firm for two years to be entitled to be enrolled as a solicitor or take pupillage for a year in a Chamber of a qualified Barrister to be a Master'.<sup>43</sup> The BCI also recognizes 4-year law degrees, which are coupled with another liberal discipline or language 'to be immediately followed by one year full time LPC/BVC from a College of Inns of courts/ Solicitors Society or a Master degree in Law'.<sup>44</sup> In order to further equalize the law degree programmes of foreign universities, the BCI, through the 'Decision by the Equivalence Committee held on March 2016 and Legal Education Committee on 21 May 2016', set a 'bridge course' of 2 years in case of 3-year law degrees and 1 year in case of 4-year degrees obtained by 'Indian students'.<sup>45</sup> The bridge course—which comprises subjects such as the constitutional law, civil and criminal procedures, property law, professional ethics and a few elective courses—will be administered by the national law universities at Bangalore, Delhi, Hyderabad and Kolkata.<sup>46</sup> The question of equivalence of foreign degree is emphasized and elaborated in the BCI Rules of Legal Education (First Amendment) Rules, 2016, which has broadened the scope of acceptability of such degrees in India.

The above said inclusive approach by the BCI is an emerging sign of openness on the part of the Council—it is, in fact, a small step in the move towards a larger scheme of things, what C. Raj Kumar refers to as, a 'reinvention' for facing the challenges of globalization.<sup>47</sup> But there is quite much left to be done.<sup>48</sup>

#### *Admission to Law School*

The BCI has approved 3-year law programmes and 5-year law programmes in educational institutions in India. Any individual who has obtained a graduate degree in any discipline from a 'University established by an Act of Parliament or by a State legislature or an equivalent national institution recognized as a Deemed to be University or foreign University recognized as equivalent to the status of an Indian University by an authority competent to declare equivalence may apply for a three years' degree program in law'.<sup>49</sup> As far as 5-year law degree programmes are concerned, any individual who has passed the senior secondary school

[F]rom a recognized University of India or outside [or from a Senior Secondary Board or equivalent, constituted or recognized by the Union or by a State Government or from any equivalent institution from a foreign country

<sup>42</sup> Rule 37, BCI Rules, 2008.

<sup>43</sup> 'Foreign Universities Whose Degrees Are Recognized by the Bar Council of India', available at <http://www.barcouncilofindia.org/about/legal-education/list-of-foreign-universities-whose-degrees-in-law-are-recognised-by-the-bar-council-of-india/>.

<sup>44</sup> *Id.*

<sup>45</sup> 'Decision by the Equivalence Committee held on March 2016 and Legal Education Committee on 21 May 2016', Item No. 2/2015-A(EQ.C), available at <http://www.barcouncilofindia.org/wp-content/uploads/2010/05/Decision-by-Equivalence-Committee-held-on-19th-March-2016-and-Legal-Education-Committee-on-21st-May.pdf>.

<sup>46</sup> *Id.*

<sup>47</sup> C. Raj Kumar, Legal Education, *Globalization, and Institutional Excellence: Challenges for the Rule of Law and Access to Justice in India*, 20 IND. J. GLOBAL LEGAL STUD. 221, 234 (2013).

<sup>48</sup> See Aditya Singh, *Globalization of the Legal Profession and Regulation of Law Practice in India: The 'Foreign Entry' Debate*, in THE INDIAN LEGAL PROFESSION IN THE AGE OF GLOBALIZATION: THE RISE OF THE CORPORATE LEGAL SECTOR AND ITS IMPACT ON LAWYERS AND SOCIETY 363 (David B. Wilkins, Vikramaditya S. Khanna, and David M. Trubek, eds., Cambridge University Press 2017).

<sup>49</sup> Rule 5(a), BCI Rules, 2008.

recognized by the government of that country for the purpose of issue of qualifying certificate [ ] may apply for and be admitted into the program.<sup>50</sup>

However, if the said basic qualifications are obtained through any Open University's learning systems 'without having any basic qualification for prosecuting such studies', they are ineligible for admissions to law programmes.<sup>51</sup>

While the BCI only sets minimum qualifications for law programmes, including minimum scores of eligibility (which is not less than 45% for students in the 'General' category and not less than 40% for 'Scheduled Castes' and 'Scheduled Tribes' applicants), students are admitted to the law schools through various channels. The most common and widely used (mostly by the national law universities) is the Common Law Admission Test (CLAT). CLAT is administered by the participating national law universities through a CLAT Consortium. The Consortium performs its functions through an Executive Committee and a Core Committee represented by the Vice Chancellors of participating national law universities.<sup>52</sup> Private universities interested to admit students through CLAT can participate by signing a Memorandum of Understanding (MoU) with the CLAT Consortium.<sup>53</sup> CLAT tests students on their knowledge of English, current affairs and mathematics, in addition to their legal aptitude and logical reasoning. However, despite the popularity of CLAT, the test has come under expert scrutiny for its many shortcomings. One such shortcoming is that CLAT does not test students on those skills which are essential in law schools like analytical and descriptive skills. In an analysis of the 'merit quotient' in highest education systems, Shreya Atrey observes that CLAT does not test a 'broad array of intelligences' essential for lawyering like 'intelligences like bodily-kinesthetic intelligence by organising pre-moots or stand-up presentations during interviews'.<sup>54</sup>

In fact, the BCI, in an affidavit filed before the Supreme Court of India, requested that, given its experience in conducting the All India Bar Examination (AIBE) and the powers to regulate legal education in India by virtue of Rules 7 and 49 of the Advocates Act, 1961, it may be allowed to conduct CLAT through the Legal Education Committee.<sup>55</sup> The BCI has also questioned the statutory recognition of the CLAT Consortium. The petitioner Shammad Basheer, in his rejoinder, challenged the rule-making power of BCI, as it was quashed by the Supreme Court in *V. Sudheer v. Bar Council of India*.<sup>56</sup>

As a departure from CLAT, as if to overcome its shortcomings, the Law School Admission Test (LSAT)-India, a special version of LSAT-USA, was adopted by Jindal Global Law School (JGLS) of the O.P. Jindal Global University in 2009 with the support of the Law School Admissions Council (LSAC).<sup>57</sup> According to the LSAC, the philosophy behind LSAT is that 'students acquire critical thinking skills over their educational lifetimes, and that these skills are the most important for the study of law'.<sup>58</sup> LSAT,

<sup>50</sup> Rule 5(b), BCI Rules, 2008.

<sup>51</sup> Explanation to Rule 5, BCI Rules, 2008.

<sup>52</sup> See [https://clatconsortiumofnlua.ac.in/clat\\_composition\\_core.html](https://clatconsortiumofnlua.ac.in/clat_composition_core.html)

<sup>53</sup> See [https://clatconsortiumofnlua.ac.in/private\\_universities.html](https://clatconsortiumofnlua.ac.in/private_universities.html)

<sup>54</sup> Shreya Atrey, *Making the 'Smartness' Brand: Fortifying the Merit Quotient in Indian Higher Education System*, 18 ANNUAL REV. L. & ETHICS 583, 590-91 (2010).

<sup>55</sup> *BCI to SC: We Should Hold CLAT*, LEGALLY INDIA, available at <https://www.legallyindia.com/pre-law-student/bci-asks-sc-we-want-to-hold-clat-because-our-aibe-is-most-fair-and-transparent>.

<sup>56</sup> SC asks NLUs for CLAT Suggestions, LEGALLY INDIA, available at <https://www.legallyindia.com/pre-law-student/sc-asks-nlus-for-permanent-clat-body-suggestions-also-asks-asg-if-nlus-have-national-importance-20180426-9314>.

<sup>57</sup> Anand Prakash Mishra, *LSAT-India: 5 Reasons Why Law Aspirants Must Apply*, CAREERS360, 4 May 2018 (on file with the author).

<sup>58</sup> LSAT-India, available at <http://www.pearsonvueindia.com/lsatindia/#>



in fact, tests students on logical and analytical reasoning and skills in reading and comprehending texts, which not only are essential for lawyering but also for understanding the epistemology of law and the phenomenology of legal imagination.<sup>59</sup> Today, in addition to the LSAT pioneer JGLS, 52 public and private universities use LSAT as their admission test.<sup>60</sup>

In addition to CLAT and LSAT, many public and private institutions offering legal education have designed their own institution-specific entrance tests, for example, the Delhi University's DU-LLB Entrance Exam, the All India Law Entrance Test (AILET) of the National Law University, Delhi, and the Symbiosis Law Admissions Test (SLAT) of the Symbiosis Law School. Many law colleges in the country also admit students through state-specific entrance examinations, for example, the Kerala Law Entrance Exam (KLEE) for admissions to law colleges in Kerala. Many private law schools also offer admission through their management quotas, provided the applicants satisfy the minimum marks in the qualifying examination set by the BCI.

The BCI Rules do not allow registration of students in two programmes of the same university or different universities, except in the integrated degree programme of the same institution.<sup>61</sup> However, the Rules allow students to enrol in short-term certificate courses or in courses run in the distance education mode. It is not uncommon, therefore, for law schools to offer certificate courses to its graduate students on any branch of law or to create 'tracks' within its course structure, leading to a certificate. The BCI has also prohibited lateral entry into any of the 5-year integrated courses 'on the plea of graduation in any subject or exit by way of awarding a degree splitting the integrated double degree course'.<sup>62</sup> This prohibits entry to any of the integrated law degree programmes through a graduate degree in liberal disciplines or sciences and exiting after completing 3 years of study, claiming a graduation in any of the disciplines, by severing the degree which is integrated to the law degree. In *Tejasvi Rana v. Punjab University and Others*, the High Court of Punjab and Haryana held that the rule prohibiting lateral entry and exit of the BCI will prevail over any of the particular university regulation to the contrary.<sup>63</sup>

In addition to the BCI, the UGC also sets minimum standards on admission to the educational institutions in India, although such admission standards are to be implemented by the universities for admission to all their departments and to the affiliated colleges under them. Section 26 of the UGC Act, 1956, allows the UGC to make rules, including interim regulations, from time to time on various aspects of university education including rules on admission to professional institutions.<sup>64</sup>

### *Academic Affairs*

Mindful of its mandate of standardizing legal education, the BCI has set a model syllabus for the law schools. This includes 20 compulsory 'theory and practice' courses in law and 4 clinical courses in law.<sup>65</sup> An institution that offers an honours programme in law, in addition to the above said 24 courses, should offer 6 honours courses in law (without any specialization, in particular) chosen from Schedule II, Part II (C) of the BCI Rules on Legal Education, 2008. If the institution offers a law degree with honours in a given branch of law (a specialization), it has to offer eight honours courses chosen from a group of

<sup>59</sup> Mindful of this 'depth' in LSAT, Shamnad Basheer referred to the question setters of LSAT as the leading 'psychometrists' of the country. See Shamnad Basheer, *An Extra-Legal League of Extraordinary Gentlemen*, WIRE, available at <https://thewire.in/law/an-extra-legal-league-of-extraordinary-gentlemen>.

<sup>60</sup> See <http://www.pearsonvueindia.com/lsatindia/associated-colleges.php>.

<sup>61</sup> Rule 6, BCI Rules, 2008.

<sup>62</sup> Rule 13, BCI Rules, 2008.

<sup>63</sup> CWP No.24534 of 2016 (O&M), decided on 30 January 2017, available at <https://indiankanoon.org/doc/111659906/>.

<sup>64</sup> See, for example, UGC (Admission to Specified Professional Programmes) Interim Regulations, 2003.

<sup>65</sup> See Schedule II, Part II, BCI Rules, 2008.

courses on a given branch of law provided in Schedule II, Part II (C).<sup>66</sup> For example, a university can offer a BA, LLB (Honours) degree or a BA, LLB (Honours in Labour Law) degree. The latter provision helps many universities with the particular mission of promoting a certain discipline to offer an integrated law degree programme in law with special honours.<sup>67</sup>

Institutions offering integrated programmes in law (e.g., BA, LLB; BBA, LLB; BSc, LLB, etc.), in addition to the above said compulsory and honours courses in law, should offer 14 courses in liberal disciplines or sciences including language(s).<sup>68</sup> In designing the syllabus of the courses on liberal disciplines, their syllabus should be comparable to the syllabus of such liberal disciplines taught in 'leading universities' in India, which offer graduate degrees in such disciplines.<sup>69</sup> In Rule 9(c), the BCI emphasizes that integration shall be well 'planned' and 'meaningful'.<sup>70</sup> This is for the reason that the central philosophy of such integration is to provide students with a 'perspective' on law that will help them overcome the commonplace perception about law that it is nothing but 'an expression of the rational, neutral, and coherent exercise of power'.<sup>71</sup> Law, in fact, is much more than that—it is a means of socialization, as Philip Allott puts it, 'Law is the willing and acting of society in the willing and acting of individual'.<sup>72</sup> Through liberal disciplines, individuals develop that fine-grained understanding of law that is needed for the said socialization.

However, the standards set by the BCI are minimum standards only. Nothing in the Rules prevent a legal education institution from setting higher standards of academic affairs for achieving institutional goals. In order to keep the standards uniform and high, the BCI is also authorized to constitute Curriculum Development Committees (CDC) 'to design various courses in both liberal discipline and law'.<sup>73</sup> The first CDC of the BCI since the enactment of the BCI Rules, 2008, was constituted on 18 December 2009 under the convenorship of Professor N.L. Mitra, which submitted its report in 2010. The Report urged the law teachers in India to ensure inter alia three things:

- (a) the course design is up-dated each time and keep the study-materials dynamic; (b) develop appropriate methodology of teaching-learning based on the object and objectives (variables) of the study; and (c) evaluate the standard achieved by the learners without unduly pressuring only the memory level but emphasizing the skill of application of law and in detailing the fact analysis with lawyers' analytical precision.<sup>74</sup>

However, the Report emphasizes on the sovereignty of law teachers in designing the courses and offers assistance to them through continued consultations.<sup>75</sup>

In order to ensure that there is sufficient hours of instruction in each law school, which are adequate to provide a meaningful learning of the discipline, the BCI requires that each course—in law as well as liberal discipline—offered in legal education institutions shall be of four credits.<sup>76</sup> Every four-credit

<sup>66</sup> See Schedule II, Part III, BCI Rules, 2008.

<sup>67</sup> For example, the University of Petroleum and Energy Studies, which has the motto of promoting specialized knowledge, offers BA, LLB Honours programmes in Energy Law, Labour Law, Criminal Law, and Constitutional Law and a BBA, LLB honours programme in Corporate law.

<sup>68</sup> See Schedule II, Part I, BCI Rules, 2008.

<sup>69</sup> *Id.*

<sup>70</sup> Rule, 9(c), BCI Rules, 2008.

<sup>71</sup> A. Lakshminath, *Legal Education, Research, and Pedagogy: Ideological Perceptions*, 50 J. INDIAN L. INST. 606, 622 (2008).

<sup>72</sup> PHILIP ALLOTT, *EUNOMIA: NEW ORDER FOR A NEW WORLD* 230 (1990).

<sup>73</sup> Schedule II, Para 5, BCI Rules, 2008.

<sup>74</sup> Report of the Curriculum Development Committee, Volume I, Bar Council of India, p. 2.

<sup>75</sup> *Id.*

<sup>76</sup> Schedule III, Para 18, BCU Rules, 2008.

course shall have 4 h of instruction per week in addition to 1 hour per week for tutorials, moot court, project work, etc.<sup>77</sup> On a semester basis, each course shall continue for 18 weeks (15 weeks in case of the LLB degree) before completion.<sup>78</sup>

Unlike many other regulatory bodies, the BCI has set standards on the minimum attendance for students to become eligible to appear in examinations. As per Rule 12 of the BCI Rules, 2008:

No student of any of the degree program shall be allowed to take the end semester test in a subject if the student concerned has not attended minimum of 70% of the classes held in the subject concerned as also the moot court room exercises, tutorials and practical training conducted in the subject taken together.

Provided that if a student for any exceptional reasons fail to attend 70% of the classes held in any subject, the Dean of the University or the Principal of the Centre of Legal Education, as the case may be, may allow the student to take the test if the student concerned attended at least 65% of the classes held in the subject concerned and attended 70% of classes in all the subjects taken together. The similar power shall rest with the Vice Chancellor or Director of a National Law University, or his authorized representative in the absence of the Dean of Law.

Provided further that a list of such students allowed to take the test with reasons recorded be forwarded to the Bar Council of India.<sup>79</sup>

Reflecting on the rationale of the minimum requirement on attendance by the BCI, the Delhi High Court in *Vandana Kandari v. University of Delhi* has observed that in imparting legal education, one should be mindful of the difference between ‘getting a degree’ and ‘having an education’.<sup>80</sup> Drawing on the eminent Indian jurist Nani Palkhivala, the Court observed that lawyers’ education is a continuing process through various phases of learning, and the basic capacity of this learning has to be developed in the law school. In the Court’s opinion, while the BCI has ensured that students attend certain number of classes, which are the minimum for learning a discipline meaningfully, it has not been inconsiderate towards the exigencies that may arise in certain cases.<sup>81</sup> The minimum required attendance of 70% is set by the BCI, mindful of the fact that students may miss attendance on account of sickness or reasons beyond their control, although the remaining 30% is ‘fairly a large percentage of lectures’.<sup>82</sup> The Court also expressed dissatisfaction that a few ‘wayward students’ use this provision to ‘wriggle relief’ from courts.<sup>83</sup>

On 3 February 2014, the BCI sent a circular to all universities, departments and colleges imparting legal education, emphasizing on the Resolutions of the Legal Education Committee of the BCI, stating that there shall not be any procedural irregularity in terms of the implementation of the Rule 12 requirement on minimum attendance.<sup>84</sup> The BCI has also urged all universities, departments and colleges

<sup>77</sup> *Id.*

<sup>78</sup> Rule, 10, BCI Rules, 2008.

<sup>79</sup> Rule 12, BCI Rules, 2008.

<sup>80</sup> W.P. (C) No. 8302/2009, available at <https://indiankanoon.org/doc/80307634/>.

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> BCI:D:97:2014 (LE: Circular No.2/2014), available at <http://www.barcouncilofindia.org/wp-content/uploads/2010/05/Circular-2.pdf>.

to build an online attendance system for students.<sup>85</sup> The students of every legal education institution shall have an identity number, which shall be entered in the database meant for the purpose.<sup>86</sup>

### *Internship*

Internship is an opportunity for students to understand and apply the theoretical knowledge through the ‘perspective’ that they have gained in law school. Internship, in other words, is an opportunity for students to apply their imaginations to real-life contexts. As Judge Frank puts it, it is learning the application of law through ‘face-to-face relations, with flesh-and-blood human beings’.<sup>87</sup> Mindful of this part of the learning process, the BCI has set minimum standards for internship. As per Rule 25 of the BCI Rules, 2008, students of the 3-year and 5-year LLB courses will have to complete internships of a minimum of 12 weeks and 20 weeks, respectively.<sup>88</sup> Internships can be carried out under

NGO, Trial and Appellate Advocates, Judiciary, Legal Regulatory authorities, Legislatures and Parliament, Other Legal Functionaries, Market Institutions, Law Firms, Companies, Local Self Government and other such bodies as the University shall stipulate, where law is practiced either in action or in dispute resolution or in management.<sup>89</sup>

Internships will have to be carried out during the session breaks either as summer internship or as winter internship.<sup>90</sup> The internship, however, cannot be for a period of more than 4 weeks continuously.<sup>91</sup> In fact, the internship in legal education is an essential component of learning, as law is a profession wherein knowledge and skills are combinedly put to use. In legal education, internship has a pedagogical relevance as it is experiential learning and learning through realistic simulations.<sup>92</sup> Accordingly, the BCI requires students to maintain internship diaries, which will be subject to evaluation by the ‘Guide in Internship’ and also by a core faculty member of the respective institution.<sup>93</sup>

In addition to all of the above said standards, mindful of the holistic development of students and the need for a congenial environment for learning, the BCI also has set standards on sports facilities, halls of residence, classroom infrastructure and libraries. Since the BCI is the primary regulator of legal education in India, it is vested with the power to give approvals for the commencement of legal education institutes, either as a school of a university or as a department within a university or as a college affiliated to a university. So as to ensure continuous monitoring of the observance of the standards, the BCI also conducts periodic inspection to law schools. Based on such inspections, the BCI can revoke or suspend the approval, if major lapses are found on the part of the institution or conditions of granting approval are not met.<sup>94</sup> The BCI also sets norms for accreditation of the legal education institutions through its Accreditation Committee.<sup>95</sup>

<sup>85</sup> BCI:D:24 (LE: Circular No.1/2014), available at [http://www.barcouncilofindia.org/wp-content/uploads/2010/05/BCI-24-2018-LE.Cir\\_No\\_-1-of-2018-Regarding-Online-attendance-system.pdf](http://www.barcouncilofindia.org/wp-content/uploads/2010/05/BCI-24-2018-LE.Cir_No_-1-of-2018-Regarding-Online-attendance-system.pdf).

<sup>86</sup> Rule 41, BCI Rules, 2008.

<sup>87</sup> As quoted in ALBERT J. HARNO, *LEGAL EDUCATION IN THE UNITED STATES* 151 (2004).

<sup>88</sup> Schedule III, Para 25, BCI Rules, 2008.

<sup>89</sup> *Id.*

<sup>90</sup> BCI Circular BCID: 1478/2014 (LE) dated 11 September 2014.

<sup>91</sup> Schedule III, Para 25, BCI Rules, 2008.

<sup>92</sup> See & Cf. Wilson Chow, *Adding Realism to Professional Legal Education at the University of Hong Kong*, in *LEGAL EDUCATION: SIMULATION IN THEORY AND PRACTICE* 231, 236 (Caroline Stevens, Richard Grimes, and Edward Phillips, eds., Routledge 2014).

<sup>93</sup> Schedule III, Para 25(b), BCI Rules, 2008.

<sup>94</sup> Rule, 27, BCI Rules, 2008.

<sup>95</sup> Rules 28–31, BCI Rules, 2008.

As of today, the BCI, despite being subject to severe criticism from various corners, for failing to achieve excellence in legal education in India, can claim a fair share of success in creating a framework of minimum standards on legal education in India. The enactment of BCI Rules, 2008, motivated by and in conformity with the National Knowledge Commission Report, 2007 (National Knowledge Commission, NKC), itself is a sign of the commitment of the Council for the promotion of legal education.<sup>96</sup> However, the BCI leaves much work undone and to be done, especially with regard to a global outlook that gives legal educational institutions the space to innovate and improvise in the interest of quality education.

Motivated by the ‘rapid global integration of legal regulations for trade, commerce and industries and technological innovations in global economy’, the BCI has issued the Draft Rules of Legal Education, 2019, as a substitute to the BCI Rules on Legal Education, 2008. The draft is yet to get legislative approval.<sup>97</sup>

### *The University Grants Commission*

The UGC regulates postgraduate legal education in India, as postgraduate legal education departs from the ‘rigidly dogmatic’ teaching–learning, as is in the case of undergraduate legal education.<sup>98</sup> The former has an emphasis on ‘intense specialization in a subject area from a distinctively sociological standpoint involving a ‘drastic retooling’ of facilities of legal education’.<sup>99</sup> Hence, the regulatory approach followed in the case of undergraduate legal studies cannot be followed in the case of postgraduate legal studies. Therefore, minimum standards of postgraduate legal education have been set by the UGC though the UGC (Minimum Standards of Instruction for the Grant of the Master’s Degree through Formal Education) Regulations, 2003 (hereinafter the ‘Regulations’).

As per the Regulations ‘No student shall be eligible for admission to a Master’s degree programme in any of the faculties unless he/she has successfully completed three years of an undergraduate degree’.<sup>100</sup> While that sets eligibility criterion for 3-year law degree holders to join a master’s degree in law, the ‘Regulations’ has also created scope for graduates of integrated 5-year law programmes to obtain admission in the master’s programme in law.<sup>101</sup> The Regulations has set the time period for the completion of master’s degree as 2 years after graduation.<sup>102</sup>

However, unlike in the case of integrated law degree programmes, the UGC allows lateral entry to the second year of master’s programmes:

[I]f the student has either (a) successfully completed the first year of the same programme in another institution, or (b) already successfully completed a Master’s degree programme and is desirous of and academically capable of pursuing another Master’s degree programme in an allied subject.<sup>103</sup>

<sup>96</sup> See K.L. BHATIA, *TEXTBOOK ON LEGAL LANGUAGE AND LEGAL WRITING* 426 (2010).

<sup>97</sup> Rules of Legal Education, 2019, available at [Draft-Rules-of-Legal-Education-2019-1.pdf](https://www.barcouncilofindia.org/draft-rules-of-legal-education-2019-1.pdf) (barcouncilofindia.org).

<sup>98</sup> See Upendra Baxi, *Notes Towards a Socially Relevant Legal Education: A Working Paper for the UGC Regional Workshops in Law 1975–1977, TOWARDS A SOCIALLY RELEVANT LEGAL EDUCATION: A CONSOLIDATED REPORT OF THE UNIVERSITY GRANTS COMMISSION’S WORKSHOP ON MODERNIZATION OF LEGAL EDUCATION*, available at <https://www.ugc.ac.in/oldpdf/pub/report/1.pdf> (Report on Socially Relevant legal Education).

<sup>99</sup> *Id.*

<sup>100</sup> Clause 2.1, UGC (Minimum Standards of Instruction for the Grant of the Master’s Degree through Formal Education) Regulations, 2003 (hereinafter, the ‘UGC Regulations, 2003’).

<sup>101</sup> Clause 8.1, UGC Regulations, 2003.

<sup>102</sup> *Id.*

<sup>103</sup> Clause 2.5, UGC Regulations, 2003.

The 2-year LLM programme in law, generally offered in legal education institutions in India, provides instruction in courses such as 'Law and Social Change', 'Legislative/Judicial Process' and 'Research Methodology', in addition to courses in a given area of specialization. Most of the above said compulsory courses were introduced by UGC mindful of the constitutive role of law in society.<sup>104</sup> The 'UGC Report on Socially Relevant Legal Education' emphasizes that great care should be taken in designing the syllabus of LLM programmes, to ensure that the LLM is not just a continuation of the LLB by imparting more knowledge and information; rather, it should be for the 'development of *critical* awareness' and should have the 'potential for perception of socio-legal problems and inter-disciplinary problems'.<sup>105</sup>

Until 2013, the duration of LLM programmes in Indian universities was 2 years. However, in 2013, the UGC, based on the recommendations of the Expert Committee it constituted, approved the introduction of the 1-year LLM programme.<sup>106</sup> The UGC requires that such a programme shall be offered through a Centre for Post Graduate Legal Studies (CPGLS), which should have a 'dedicated team of senior teachers competent to guide post-graduate scholars including Ph.D. students'.<sup>107</sup> The UGC also requires that reduction of years of study to 1 year should not compromise the 'academic quality and standards'.<sup>108</sup> The philosophy of the 1-year LLM programme is, in fact, not to fast track the studies, but to standardize postgraduate legal studies at par with the LLM programmes in other parts of the world, where the LLM is a 1-year programme of study. This is in addition to the fact that the introduction of 1-year LLM is a response by the UGC to the declining standards of postgraduate legal education in India as observed by the NKC Report, 2007.<sup>109</sup>

For the successful completion of the 1-year LLM programme, students should complete a total of 24 credits.<sup>110</sup> This includes three mandatory courses of three credits each such as 'Research Methods and Legal Writing', 'Comparative Public Law/Systems of Governance' and 'Law and Justice in a Globalizing World'.<sup>111</sup> In addition to the compulsory courses, students should complete six optional courses of two credits that will form a cluster of specialization on a given branch of law, for example, 'Corporate Law', 'Intellectual Property Law' or 'International and Comparative Law'.<sup>112</sup> The students should also write a dissertation of 3–5 credits.<sup>113</sup>

For the effective implementation of the 1-year LLM programme through institutionalization, the UGC requires that the CPGLS is properly staffed with a minimum of 10 faculty members, 4 of whom should be Professors or Associate Professors.<sup>114</sup> There should also be a Committee to formulate courses and to continuously keep them updated.

One advantage that the 1-year LLM programme has over the 2-year LLM programme, according to those who support the 1-year LLM programme, is the curriculum. Unlike in the case of the latter, which mostly had undergraduate courses either as an extension from or as advancement of undergraduate

<sup>104</sup> See Report on Socially Relevant Legal Education, *supra* note 98, at 48.

<sup>105</sup> *Id.*

<sup>106</sup> See UGC Letter D. O. No.5-1/99(CPP-II), dated 18 January 2013.

<sup>107</sup> Para 2 (1), Guidelines for Introduction of One Year LL.M. Degree Programme, 2012, available at [https://www.ugc.ac.in/pdfnews/4968873\\_LLM\\_one-year.pdf](https://www.ugc.ac.in/pdfnews/4968873_LLM_one-year.pdf) (UGC Guidelines, 2012).

<sup>108</sup> Para 2(iv), UGC Guidelines, 2012.

<sup>109</sup> Sudhir Krishnaswamy and Dharmendra Chatur, *Recasting the LLM: Course Design and Pedagogy*, 9 SOCIO-LEGAL REV. 101, 101, 103 (2013).

<sup>110</sup> Para 2(v), UGC Guidelines, 2012.

<sup>111</sup> Para 7.2, UGC Guidelines, 2012.

<sup>112</sup> Annexure, UGC Guidelines, 2012.

<sup>113</sup> Para 2(v), UGC Guidelines, 2012.

<sup>114</sup> Para 5(1), UGC Guidelines, 2012.

studies, the 1-year LLM programme offers courses that are contemporaneous. Specializations start as the programme starts and are based on the foundation built during undergraduate studies and not based on a rehash of the undergraduate courses.<sup>115</sup>

However, there have been criticisms that, while the 1-year LLM programme has a forward-looking curricular structure, the vision of the programme is yet to be articulated in policy.<sup>116</sup> While courses like ‘Law and Justice in a Globalizing World’ and ‘Comparative Public Law/Systems of Governance’ raise up to meet the social-transformative aspirations of the 1977 UGC Report on Socially Relevant Legal Education, devoid of a policy and framework, they remain in the discretionary considerations of universities.

### ***The General Regulatory Structure: Constitution of India, National/State Legislations, First Ordinance of Universities and By-laws***

As per Article 246(1) of the Constitution of India, the Parliament ‘has exclusive power to make laws with respect to any of the matters enumerated in List I (“Union List”) in the Seventh Schedule’ of the Constitution. Entry 63 of List I, thereby, brings institutions ‘known at the commencement’ of the Constitution like the Banaras Hindu University, the Aligarh Muslim University, the Delhi University and ‘any other institution declared by Parliament by law to be an institution of national importance’ under the scope of Article 246(1).<sup>117</sup> Entry 64 further broadens the scope of the Central Government to legislate on institutions ‘for scientific or technical education financed by the Government of India wholly or in part and declared by Parliament by law to be institutions of national importance’. ‘Institution of National Importance’ (INI), a status that is conferred on institutions in India through an act of the Parliament, has so far not been conferred on any law school or national law university.<sup>118</sup>

Entry 66 extends the law-making power of the Parliament to the ‘Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions’. The UGC, Act 1956, and the Advocates Act, 1961 (which established the BCI), are enactments resulting from the law-making power of the Parliament as per Entry 66.<sup>119</sup>

As per the Constitution, the responsibility to institutionalize and regulate higher education in India is vested with the central government. The central government, in fact, gets this responsibility from Article 77(3) of the Constitution (delegation of executive authority) and then through Rule 2 of the Government of India (Allocation of Business) Rules, 1961.<sup>120</sup> Rule 2 lays down that the ‘business of the Government of India shall be transacted in the Ministries, Departments, Secretariats and Offices specified in the First Schedule to these rules’. Accordingly, the Ministry of Human Resources Development (MHRD) is responsible for the formulation of policies and rules on higher education in India, including legal education.<sup>121</sup>

<sup>115</sup> See Princi Sharma, *Gear-Up for One-Year LL.M.*, CAREERS360, available at <https://www.careers360.com/articles/Law/Gear-up-for-one-year-LLM>.

<sup>116</sup> Krishnaswamy and Chatur, *supra* note 108, at 119.

<sup>117</sup> Entry 63, List I, Seventh Schedule, the Constitution of India.

<sup>118</sup> See Institutions of National Importance, available at [https://mhrd.gov.in/sites/upload\\_files/mhrd/files/raa/National\\_Importance.pdf](https://mhrd.gov.in/sites/upload_files/mhrd/files/raa/National_Importance.pdf).

<sup>119</sup> The Constitutional Provisions Regarding Indian Higher Education, available at <http://egyankosh.ac.in/bitstream/123456789/8439/1/Unit-5.pdf> (‘The Constitutional Provisions’).

<sup>120</sup> Allocation of Business Rules, available at <https://mhrd.gov.in/allocation-business>.

<sup>121</sup> *Id.*

While regulation of higher education remains mostly with the central government, state governments are not without any role in regulating higher education. However, there is a certain lack of clarity on this matter.<sup>122</sup> This lack of clarity is particularly given that, originally, higher education, apart from being an entry in the Union List, was also part of Entry 11 of the State List (List II) of the Constitution, which read as: 'Education including universities, subject to the provision of Entries 63, 64, 65 and 66 of List I and Entry 25 of List III'. Entry 11 was later omitted by the Constitution (Forty-second Amendment) Act, 1976.<sup>123</sup> The omitted clause was shifted to Entry 25 of the Concurrent List (List III), which read as 'Education, including technical education, medical education and universities, subject to the provisions of entries 63, 64, 65 and 66 of List I; vocational and technical training of labour'. As part of this process, Entry 25 of the Concurrent List was substituted by Section 57 of the Constitution (Forty-second Amendment) Act, 1976.<sup>124</sup> As a result of these changes and shifts, higher education has become a 'concurrent responsibility' of the centre and states.

As higher education is a topic in the concurrent list, state governments can establish universities through acts of state legislatures. Most of the national law universities in India are created by state legislations, for example, the NLSIU (created by the National Law School of India Act, 1986, passed by the Karnataka State Legislative Assembly),<sup>125</sup> the National Academy of Legal Studies and Research (created by the National Academy of Legal Studies and Research University Act, 1998, passed by the Andhra Pradesh Legislative Assembly)<sup>126</sup> and the West Bengal National University of Juridical Sciences (created by the West Bengal National University of Juridical Sciences Act, 1999, passed by the West Bengal Legislature).<sup>127</sup> In addition to the NLSIU, the Karnataka State Legislative Assembly has enacted the Karnataka State Law University Act, 2009, establishing the Karnataka State Law University, which has numerous affiliated law colleges under it.<sup>128</sup> Similarly, the State of Tamil Nadu has enacted the Tamil Nadu Dr. Ambedkar Law University Act, 1996, establishing the Tamil Nadu Dr. Ambedkar Law University, which has brought 'every college or institution situate [sic] within the University area, which conducts any course of study or imparts any training which may qualify for the award of any degree, diploma or other academic distinction in law by the University'.<sup>129</sup>

Section 3 of the UGC Act, 1956, also has the power to declare any institution as a 'deemed university'. Such a university shall be deemed to be a university for all regulatory purposes. By virtue of Section 3, the UGC has declared the Indian Law Institute (ILI), founded in 1956 with the objective of promoting research and training in law under the Societies Registration Act, 1860, to be a deemed university in 2005.<sup>130</sup>

The UGC plays a huge role in linking the centre to the state in matters relating to higher education. Exercising powers under Section 26(1)(f) and (g) of the UGC Act, 1956, the UGC has enacted the UGC (Establishment of and Maintenance of Standards in Private Universities) Regulations, 2003. Section 3(1) of the latter Act requires that, 'Each private university shall be established by a separate State Act and shall conform to the relevant provisions of the UGC Act, 1956'. For example, around 20 private

<sup>122</sup> The Constitutional Provisions, *supra* note, 18 at 9.

<sup>123</sup> See Fn.3, List II, Seventh Schedule, the Constitution of India.

<sup>124</sup> See Fn.2, List III, Seventh Schedule, the Constitution of India.

<sup>125</sup> Karnataka Act No.22 of 1986.

<sup>126</sup> Andhra Pradesh Act 34 of 1998.

<sup>127</sup> West Bengal Act IX of 1999.

<sup>128</sup> Karnataka Act No.11 of 2009.

<sup>129</sup> Tamil Nadu Act No.43 of 1997.

<sup>130</sup> *Indian Law Institute Gets Deemed University Status*, THE HINDU, 5 June 2005, available at <https://www.thehindu.com/2005/06/05/stories/2005060513260500.htm>.



universities have been established as per the Haryana State Private Universities Act, 2006, and a similar number of universities have been established as per the Gujarat Private Universities Act, 2009. All private universities established under state acts shall have a sponsoring body 'registered under the Societies Registration Act 1860, or any other corresponding law for the time being in force in a State or a Public Trust or a Company registered under Section 25 of the Companies Act, 1956'.<sup>131</sup>

The state acts that establish the universities, public or private, generally delegate to universities the power to make ordinances and/or statutes for the governance of the universities. Universities ensure that the First Ordinances are not inconsistent with the state act that established them. This is generally done by adding a clause on the overriding effect of the state act or through a reference to the state act for all questions relating to the interpretation of the ordinance.<sup>132</sup> First Ordinances allow universities to make subsidiary legislations, by-laws and policies for internal governance.

The regulatory system for legal education in India, like the Indian education system at large, is built on strong constitutional foundations, predicated on the underlying principle that education is a fundamental right under Article 14 of the Constitution of India. It is this very embedding in the constitutional rights and values, which gives the regulatory framework on education, including the regulatory framework on legal education, a legitimacy which is supremely sacrosanct. Further, the constitutional emplacement of the regulatory framework of legal education in India gives it a rule-of-law character, which qualifies legal education as a process of social production. Reiterating this point, A. Lakshminath writes, 'Law, legal education and development have become inter-related concepts in modern developing societies which are struggling to develop into social welfare states and are seeking to ameliorate the socio-economic condition of the people by peaceful means'.<sup>133</sup> The regulatory framework, thus, sets up an 'ecosystem' of legal education that has the nature of a socio-polity characterized by order, change and resilience.

## **The Challenges of the COVID-19 Pandemic on Regulations: Towards a New Normal**

One year into the outbreak of COVID-19, the world is still grappling with the pandemic, although the invention of the COVID-19 vaccine has given the world some hope. As much as in certain other parts of the world, the condition in India has started to show signs of abatement. However, the pandemic trampled normal life in India in its monstrous gait so much so that that even after a return to the normal, the memories of the pandemic will remain etched in social memory. More than the memories, the lessons learnt during the pandemic are certain to have a positive impact on human thought and action. Years and decades later, the COVID-19 pandemic, one of the rarest of the rare episodes of modern social history, will be recorded in the annals of history as the toughest reality check on human condition. Hence, every response to the pandemic, every act of adaptation and resilience and every imagination for sustenance

<sup>131</sup> Section 2.1, UGC (Establishment of and Maintenance of Standards in Private Universities) Regulations, 2003.

<sup>132</sup> See, for example, Sec.3 of the First Ordinance of O.P. Jindal Global University which states that 'Any powers or functions of any Officer, authority, body, committee or board conferred by this Ordinance are subject to the provisions of the Haryana Private Universities Act, 2006'. In the similar vein, Section 2(ddd) of the First Ordinances of the Bennet University states that "'Words and Expressions" used but not defined in these Ordinances shall have the same meaning as assigned to them in the Act [P.P. Act no.24 of 2016]'.  
<sup>133</sup> Lakshminath, *supra* note 71 at 606.

and survival will get deposited in the human memory to grow in spirit and translate into human willing and acting. The remainder of this article aims to capture the said response.

### *Academic Affairs: The Shift to Virtual Classrooms*

Amidst the pandemic, the higher education sector in India found itself in a quagmire, although individual and collective efforts by higher educational institutions and regulatory bodies sustained the system. When the pandemic struck, law schools, like many other higher educational institutions, suspended physical classes to avoid the cluster-spread of the COVID-19. Residential campuses evacuated students, allowing them to go to the safety of their homes, and non-residential universities closed their campuses. This was followed by many law schools arranging classes online, some instantaneously, whereas some after a preparatory recess.

The shift to virtual classrooms was easier said than done. Many underprivileged law schools even could not make this possible. And, those law schools which could afford to hold online classes, large-scale effort had to be put in from their side to implement the idea of virtual classrooms. This includes purchase of necessary software; training the faculty, students and staff to use online platforms; providing faculty members necessary assistance to reimagine their course contents and pedagogy; redesign the modes and patterns of evaluations and assessments, which were originally set for physical classrooms; making sure that there is a policy framework to accommodate the 'new life', which is not in breach of the regulatory standards; and, most importantly, to ensure the emotional well-being of faculty, students and staff.

Even though online classes prevented the freezing of all academic activities, they failed to create the homogeneity that physical classrooms created, as students were pushed to diverse domestic conditions. The BCI requirements on minimum hours of instruction per week and minimum duration of courses were severely threatened, though law schools ensured, and in many cases insisted, that virtual teaching-hours remain the same as the physical teaching-hours. Although the virtual teaching-hours demanded different approaches and pedagogies and different timescales, the concern associated with breaching regulations and absence of any guidelines eclipsed all considerations of efficiency, which rendered the response of law schools more or less knee-jerk.

However, rising to the occasion, faculty members, exercising the 'sovereignty of law teachers in designing the courses' laid down by the CDC of the BCI, in the spirit of experimentation and innovation and relying on their education and experience, redesigned the course packs, including the pedagogy in no time. Despite the promise by the CDC to extend 'continuous consultations' to faculty members, it remained only in the glory of regulatory semantics. It would have been ideal on the part of CDC to promptly issue guidelines and models to the faculty members in the wake of the pandemic. Interestingly, many professional guilds like the International Association of Law Schools (IALS), through its Doctrinal Study Groups, provided subject-wise models of online curriculum and pedagogy to its member law schools, which is the type of support law schools expected from the regulatory bodies.<sup>134</sup>

Further, the various academic policies set by law schools based on the guidelines of regulatory bodies like the BCI and the UGC, which range from 'minimum requirement for attendance in classes' to 'holding of time-bound examinations', came under resistance, as they were premised on classrooms which are

<sup>134</sup> See Doctrinal Study Groups, available at <https://www.ialsnet.org/programs/study-groups/>.

homogenous in every way. Continued application of existing policies engendered a sense of unfairness among students—and policies became akin to equal laws of an unequal world.

### *Law School Admission During the Pandemic*

Admission to the law schools also faced severe challenges. Due to the prevalent social distancing norms, many law aspirants could not complete the qualifying examinations conducted by school boards and graduate colleges. This has led to many aspirants failing to meet the standards of ‘eligibility for admissions’ set by the BCI. Admission to the postgraduate programmes was also affected, as law schools also were in the same situation as other educational institutions.

Holding admission tests to law programmes at various law schools also became a challenge, given that physically holding tests would risk the health and safety of students. Under this concern, CLAT 2020 had to be postponed multiple times, whereas many law school-specific entrance tests were held in abeyance. Many law schools contemplated to replace entrance tests with performance in the qualifying examinations, which was also responded by concerns surrounding falling standards. Whatsoever, the primary need of the time was a balancing between the standards of legal education, the sanctity and credibility of LSATs, and the health and safety of students.

However, responses from certain quarters have been revolutionary. For example, LSAC, prompted by the COVID-19 public health emergency and the need to ensure ‘fairness and integrity in law school admissions, which advances access and equity in legal education’, made a transition from computer-based onsite testing to remotely held, artificial intelligence (AI)-proctored testing called ‘LSAT-Flex’.<sup>135</sup> LSAT-Flex provided a seamless solution to the students and the institutions to smoothly sail through the admission process, helping them overcome the delay in law school admissions caused by the pandemic.

That, however, is not the complete story, the credibility and fairness of home-proctored entrance tests were questioned by test-takers both in media and before courts. In a petition filed before the Supreme Court of India, it was alleged that ‘home-proctored test does not fulfil the requirement of fair and transparent test’, which has been upheld by the Court.<sup>136</sup> It is perhaps the case that India is not prepared to depart from conventional ways, judging institutional ambitions against pre-pandemic standards.

### *Internships and Placements Against Uncertain Industry Conditions*

The absence of social spaces has deprived students of the opportunity to intern with various organizations, especially in the way and as per the timeline within which the BCI Rules require the internships to be taken. This is primarily due to the slowdown of economic activities, which, in turn, has its ripples in the legal industry and profession. The shifting of court hearings to virtual mode reduced opportunities for interns in law offices. It therefore becomes the responsibility of law schools to think imaginatively and innovatively so as to create more opportunities for students.

Despite the slump, many law firms have provided opportunity for virtual internships, which certainly have limitations and cannot substitute the real-time learning that occurs in the physical work spaces of law firms. Many law schools tried to provide qualitative substitutes for internship, at least in terms of the

<sup>135</sup> *About the LSAC-Flex*, available at <https://www.lsac.org/update-coronavirus-and-lsat/lSAT-flex>; *LSAT Entrance Exam to be Held Online Due to COVID-19*, THE HINDU, 8 May 2020.

<sup>136</sup> *Rakesh Kumar Agarwalla and Anr. V. National Law School of India University & Ors*, Writ Petition (Civil) No.1030 of 2020.

outputs, for example, research internships under faculty members and teaching fellowships. The idea behind law schools' proactive approach is, more than to re-create a climate of opportunities, to convey the sentiment that 'we care'. Such an approach will help students stay positive and persevere against all odds of the time.

### *The Regulatory Response by the Bar Council of India and the University Grants Commission to the Challenges*

The situation demanded a reimagining of the academic policies and redesigning of the academic ecosystem. At a juncture like this, quite naturally, law schools turn to regulatory bodies for guidance, as the ecosystem of legal education was sustained by these regulations. The first guidelines in this regard came from the UGC on 27 April 2020, 'UGC Guidelines on Examinations and Academic Calendar for the Universities in View of COVID-19 Pandemic and Subsequent Lockdown' (hereinafter, the *First UGC Guidelines*).<sup>137</sup> When COVID-19 began to spread in India immobilizing social life, law schools, like many other institutions, were preparing for their semester-end examinations. Hence, the *First UGC Guidelines* focused on the modes of holding examinations. However, by the time the Guidelines were issued, many of the premier institutions had acted on their policies by adopting a 'flexible approach' to academic affairs through COVID-19 action plans based on scenario mappings. Many such actions were in departure from normal practices and beyond the scope of existing regulations, for example, using internal assessment scores for assessing overall performance, using preceding year's scores, etc. However, they were the best actions that could have been taken under the circumstances that existed.

Given the uncertainty that prevailed all over, the *First UGC Guidelines* were more in the nature of self-reflections and considerations rather than regulatory guidance. In fact, the idea of the UGC was to create a policy climate within which institutions could take decisions. In that spirit, the *First Guidelines* allowed universities to design alternatives to time-bound examinations like 'MCQ/OMR-based examinations, Open Book Examination, Open Choices, assignment/presentation-based assessments'.<sup>138</sup> The *First Guidelines* also gave further freedoms to universities:

In case the situation does not appear to be normal in view of COVID-19, in order to maintain "social distancing", safety and health of the students, grading of the students could be composite of 50% marks on the basis of the pattern of internal 6 evaluation adopted by the universities and the remaining 50% marks can be awarded on the basis of performance in previous semester only (if available). The internal evaluation can be continuous evaluation, prelims, mid-semester, internal assignments or whatever name is given for student progression.

...

In the situations where previous semester or previous year marks are not available, particularly in the first year of annual pattern of examinations, 100% evaluation may be done on the basis of internal evaluation.<sup>139</sup>

The very spirit of the *First UGC Guidelines* was to maintain a fine balance between 'the health, safety and security of the students, faculty and staff' and 'maintaining the sanctity of academic expectations

<sup>137</sup> *UGC Guidelines on Examinations and Academic Calendar for the Universities in View of COVID-19 Pandemic and Subsequent Lockdown*, available at [https://www.ugc.ac.in/pdfnews/4276446\\_UGC-Guidelines-on-Examinations-and-Academic-Calendar.pdf](https://www.ugc.ac.in/pdfnews/4276446_UGC-Guidelines-on-Examinations-and-Academic-Calendar.pdf).

<sup>138</sup> *Id.*, Para 1.

<sup>139</sup> *Id.*, Para 5.

and integrity of examination process'. The BCI also endorsed the position taken by the UGC in a letter dated 27 April 2020 addressed to the heads of all law schools in India. The *First BCI Guidelines* required graduating batches to take online or regular mode of examinations and students of all other batches to 'be promoted on the basis of performance of previous years and marks obtained in internal examination of the current year'.<sup>140</sup>

Following this, on 9 June 2020, the BCI released the 'Guidelines for online and offline Examinations, for all the Centres of Legal Education (CLE)' (hereinafter, the *Second BCI Guidelines*).<sup>141</sup> The *Second BCI Guidelines* reinforced the position in the *First BCI Guidelines* and the *First UGC Guidelines*, allowing law schools to adopt 'any other appropriate method which they feel is adequate to satisfy the requirements of regular examination'.<sup>142</sup> The BCI further stated that 'all Students, except Final year students, will be promoted on the basis of performance of previous year's marks and marks obtained in the internal examination of the current year'.<sup>143</sup>

As most of the universities and law schools acted on the basis of the *First UGC Guidelines*, the *First BCI Guidelines* and the *Second BCI Guidelines*, the UGC issued the 'Revised Guidelines on Examinations and Academic Calendar for the Universities in view of COVID-19 Pandemic' (hereinafter, the *Second UGC Guidelines*) on 6 July 2020. The *Second UGC Guidelines* required the Universities 'to complete the examinations ... in offline (pen & paper)/online/blended (online + offline) mode following the prescribed protocols/guidelines related to COVID-19 pandemic'.<sup>144</sup> Recollecting the need to balance between student and faculty well-being and academic standards, the UGC emphasized that:

[It] is very crucial to ensure academic credibility, career opportunities and future progress of students globally. Academic evaluation of students is very important milestone in any education system. The performance in examinations gives confidence and satisfaction to the students and is a reflection of competence, performance and credibility that is necessary for global acceptability.<sup>145</sup>

This contradiction in the UGC guidelines and in the guidelines issued by the UGC and the BCI left many law schools high and dry and uncertain on the course of action.

Against these guidelines of the UGC, a few individuals, youth organizations and teachers' associations moved the Supreme Court of India, challenging inter alia the *Second UGC Guidelines* and seeking the Issuance of a 'Writ in the nature of mandamus or any Other appropriate Writ, Order or Direction to quash and set aside' the *UGC Second Guidelines* and other related orders by the Ministry of Human Resources.<sup>146</sup> The many matters contended before the Supreme Court include the UGC's legislative competence over examinations, the nature of the UGC's guidelines, breach of the UGC's duty to consult universities as per

<sup>140</sup> Bar Council of India, Letter dated 27 April 2020 BCI:D:1401/2020, available at <http://www.barcouncilofindia.org/wp-content/uploads/2020/06/Letter-to-VC-Registrar-Principal-Dean-BCID-1401-2020-1.pdf>.

<sup>141</sup> *Guidelines for online and offline Examinations, for all the Centres of Legal Education (CLE)*, Press Release, dated 9 June 2020, available at <http://www.barcouncilofindia.org/press-release-dated-09-06-2020-guidelines-for-online-and-offline-examinations-for-all-the-centres-of-legal-education-cle-by-bar-council-of-india-in-continuation-of-the-earlier-guidelines-dated-27-0/>.

<sup>142</sup> *Id.*, Para 2.

<sup>143</sup> *Id.*, Para 4.

<sup>144</sup> *UGC Revised Guidelines on Examinations and Academic Calendar for the Universities in view of COVID-19 Pandemic*, available at [https://www.ugc.ac.in/pdfnews/6100894\\_UGC-Revised-Guidelines-on-Examinations-and-Academic-Calendar-for-the-Universities-in-view-of-COVID-19-Pandemic\\_06\\_07\\_2020.pdf](https://www.ugc.ac.in/pdfnews/6100894_UGC-Revised-Guidelines-on-Examinations-and-Academic-Calendar-for-the-Universities-in-view-of-COVID-19-Pandemic_06_07_2020.pdf).

<sup>145</sup> *Id.*

<sup>146</sup> See *Praneeth K. vs. University Grants Commission ...*, Writ Petition (Civil) No.724 of 2020, available at <https://indiankanoon.org/doc/9107318/>.

Section 12 of the UGC Act and violation of the Fundamental Rights under Articles 14 and 21 of the Constitution of India.

However, dismissing the writ petition and all other joint petitions and upholding the UGC's legislative competence, the Court upheld the *UGC Second Guidelines*. In reaching this decision, the Court relied on the constitutional legitimacy of the UGC's guidelines, reiterating that the 'Government has some voice in the determination of standards of teaching and examination in Universities'.<sup>147</sup> The Court also observed that the alleged inconsistency between the *First UGC Guidelines* and *Second UGC Guidelines* does not exist, as one is a continuation of the other. In fact, there is a disinclination apparent on the part of the Court to examine the guidelines in terms of their content; rather, the Court proceeded to reinforce the standard-setting powers of the UGC:

UGC as an expert body has been entrusted with the duty to take steps as it may think fit for the determination and maintenance of standards of teaching, examination and research in the University. For attaining the said standards, it is open to the UGC to lay down any "qualifying criteria", which has a rational nexus to the object to be achieved, that is for maintenance of standards of teaching, examination and research.<sup>148</sup>

Following this order, many universities and law schools held their end-term examinations for the graduating batches, even by asking the 2020 graduates to return to take the examinations, while others sought extensions from the UGC for holding the examinations, as laid down by the Supreme Court in its order.

The said contradictions and the absence of timely issuance of guidelines during a crisis like COVID-19 prompted a rethinking on the nature and role of regulations and regulatory bodies. The purpose of regulation is to get the desired social effect by altering social practices such that better outcomes, than what prevailed when the regulations were absent, are achieved.<sup>149</sup> However, in this process, regulation must not create countervailing effects on the subjects they regulate. Although regulations need not create a false symmetry, especially during crisis, they should avoid incoherence. In explaining the normative impact of regulations, Benedict Sheehy and Donald Feaver observe that:

A normative regulatory framework that is incoherent is a set-up for failure. For example, where a normative framework includes two opposing norms, the policy and practices developed under the framework will undermine each other, leading not only to a waste of resources, but more importantly, a failure to achieve the intended governance objectives.<sup>150</sup>

Educational institutions, including law schools, and stakeholders look at the UGC as the sole guidance during the pandemic—a time when information becomes asymmetric, and conditions become unpredictable and unstable. Therefore, there is no need to reinforce the UGC's regulatory supremacy either for the UGC or for the Supreme Court. Rather, what is required at this stage is to understand stakeholder expectations, that the sense of 'normal' has been lost, and that standards have to be reimagined to get the best possible, yet efficient, outcomes. In response to the said scenario, the *National Education Policy 2020*, released during the pandemic in September 2020, observed, 'The regulatory system is in

<sup>147</sup> *Id.*

<sup>148</sup> *Id.*

<sup>149</sup> Benedict Sheehy & Donald Feaver, *Designing Effective Regulation: A Normative Theory*, 38 UNSW L. J. 392, 392–93 (2015); See *Better Economic Regulation: The Role of the Regulator*, Roundtable Report, OECD (2011), p. 76.

<sup>150</sup> Sheehy & Feaver, *supra* note 149, at 393.

need of a complete overhaul in order to re-energize the higher education sector and enable it to thrive'.<sup>151</sup> The *Policy* requires regulations to be 'light but tight'.<sup>152</sup>

The crisis is unprecedented. Hence, perfect symmetries and anticipated results are minimum possibilities. However, this is a time that demands revolutionary thoughts and daring actions. The guiding force should not be old ambitions; rather, it should be renewalist sensibilities and revolutionary spirit.

## Moving Beyond the COVID-19: A Regulatory Manifesto for Legal Education

In his essay *Eternal Return*, Friedrich Nietzsche pointed out that 'the eternal hourglass of existence will be inverted over and over again, as will you'.<sup>153</sup> In this Nietzschean vein, we are born again, by the oppression of the pandemic, through our own reimaginings. We are building a new world for us, the post-pandemic world, perhaps a non-linear world, full of uncertainty and unpredictability. But has there ever been a time in postmodernity when we were free of such ambivalences? Perhaps COVID-19 is yet another temporal phenomenon, which is part of the larger erosion of all regularities and the subsequent emergence of disparate phenomena as the new normal. But we need not be overly pessimistic that there will never be a return to the old normal. Let that be a faint possibility or an impossibility, but that cannot eliminate the many lessons COVID-19 has taught us and the many possibilities in the governance of law schools which the pandemic has shown us.

The existing regulatory framework, which set standards of legal education and provided guidelines on law school governance, appeared straightjacketed as the pandemic altered the conditions. In fact, let alone the regulations on various sectors, even the very idea of rule of law came under friction in the changed circumstances, questioning the validity and competency of our public institutions.<sup>154</sup> That, however, is not a weakness of rule of law or the regulations. While despite the odds, rule of law as a social constant continues to be the hope for rebuilding the post-COVID world, that is not the case of regulations. Regulations are only meant to be temporally relevant, which does not transcend time or distant contexts. But regulations have many practical potentialities, which they achieve through the scope of reasonability, as L.W. Spolyar observes, 'a regulation is a calculated compromise between the ideal and what is reasonable yet designed to provide reasonable comfort and reasonable security'.<sup>155</sup> It is the freedom to travel reasonable distance from what is the perceived as ideal which makes regulations relevant during the COVID-19 pandemic—and regulations on legal education are no exception.

The new reality of socializing online, including online education, is a type of social production. If it is a social production, how does online socializing fundamentally differ from corporeal socializing? Isabel Wu points out that online socializing is a means for being in the community to those who are remotely placed—being online helps people feel the emotions of sharing a community space as much as being in a physical community.<sup>156</sup> That means, it is the potential to replicate the phenomenology of spaces, which makes online spaces relevant. Accordingly, online space is not an ersatz imitation of

<sup>151</sup> National Education Policy 2020, Para 8.1, p. 46.

<sup>152</sup> National Education Policy 2020, Para 9)3)(h), p. 34.

<sup>153</sup> FRIEDRICH NIETZSCHE, *SELECTED SHORT STORIES* 165 (2017).

<sup>154</sup> See *Rule of Law and COVID-19 Policy Brief*, INTERNATIONAL DEVELOPMENT LAW ORGANIZATION, available at [idlo-rule\\_of\\_law\\_and\\_covid19-policy\\_brief-final.pdf](https://www.idlo-rule_of_law_and_covid19-policy_brief-final.pdf).

<sup>155</sup> L.W. Spolyar, *The Philosophy of Regulations*, 30 J. MILK & FOOD TECH. 82, 83 (1967).

<sup>156</sup> ISABEL WU, *THE MICHAEL ANGELO PROJECT* (2019).

material space; rather, it is an extension of one's experience in physical space. What prompts such an extension is simply the desire of the subject to experience certain other spaces, and many times without even the faint notion of the real–virtual divide separating such a desire.

The COVID-19 pandemic has moved students to virtual classrooms, which made participation in classes limited through remote-linking. Remote-linking cannot reproduce the homogeneity of a physical classroom due to the lack of equal accessibility, which renders the learning of many students asynchronous, prompting them to rely on recordings and transcriptions. This defies the mandatory attendance policy of the BCI for law students, as neither can students be simultaneously present in classrooms nor law schools make sure whether students have received the necessary instruction or not. Given this scenario, many law schools have relaxed their attendance policies by removing the penalty for non-attendance. While such measures by law schools may give relief to students, they put larger responsibility on students to watch the class-recordings either live or later on, or read the transcriptions available, and also to obtain the instruction necessary to meet the standards of legal education and profession. Tele-mentoring and other computer-mediated communication between students and faculty can generate the notion of 'apprenticeship', which can qualitatively correspond to a large extent to the student–teacher connection through classrooms.<sup>157</sup>

The pandemic inter alia has altered the context in which courses are taught. Education through remote-linking is not something within the standard teaching–learning models followed in law schools, as online education in India has always been a special category under special regulations, for example, the UGC (Online Courses or Programmes) Regulations, 2018. Further, there was also a prohibition by the UGC for professional courses like law to be taught online. It is against such a regulatory backdrop that the UGC has allowed the resumption of higher education online. The regulatory climate prior to the pandemic pretty much explains how deeply ingrained the discursive practices in law schools were—the reimagining of which must take into account the deep intertwining between discursive practices and pedagogy.

Hence, rather than disturbing the apple cart, it would be better to explore possibilities within existing regulations. A 'flexible' approach would be ideal, as it would create more 'space' for the decision-makers to accommodate the many contingencies which might arise due to the pandemic. Flexibility would be needed on various matters, including curriculum, nature and timings of classes, attendance of students, examinations, assessments and other related matters. However, flexibility is not a loose norm such that it can be adopted outside the regulatory framework through administrators' free pen-strokes. Such non-normated decisions are likely to be threatened in a future audit. Hence, for the decisions to claim validity, institutions should make certain, what Zoltán Farkas points out, that 'the control of the actions falling within its [norms, flexibility in this case] validity scope is normated'.<sup>158</sup> Therefore, a framework, like an 'action plan', which is the alternative policy space of the regulations due to there being an extension of regulations and their regulatory paddings, would be needed. Action plan thus could become a framework within which flexible decision-making can occur.

Lastly, the pandemic has broken the historical continuity, prompting us to return to the Eden, to the very idea of legal education and legal profession, although such a loss of continuity and abrupt happenings are the very characteristics of postmodernity. The return to the Eden—the primordial state—is due to the fall of pre-held meanings caused by the dissimilarity of meanings and contexts. In a sense, the return

<sup>157</sup> Pamela Whitehouse et al., *Online Pedagogy Design and Development: New Models for 21st Century Online Teacher Professional Development*, in *ONLINE LEARNING COMMUNITIES AND TEACHER PROFESSIONAL DEVELOPMENT: METHODS FOR IMPROVED EDUCATION DELIVERY* 247, 255 (J. Ola Lindberg & Anders D. Olofsson, eds., IGI Global 2010).

<sup>158</sup> Zoltán Farkas, *The Concept and Coverage of Institution*, 31 *RATIONALITY & SOC'Y* 70, 79 (2019).



helps one get a glimpse of the source of every imagination, free from historical practices as against the historical narratives that bear the scars of time. The organic freshness of ideas, starting with the very idea of law school *to* the practice of student placements in uncertain industry conditions, should get situated through application in the newer contexts created by the pandemic. Hence, as imitation defies reconstruction, imagination becomes the force as ideas re-create new meanings in legal education.

Law schools all over the world are onto a collective willing and acting, under a common undivided consciousness, united in solidarity. COVID-19 has homogenized their experiences, as the evolution has started yet again under common conditions. Henceforward, strength of resilience and adaptation will determine evolution, willingness to innovate and improvise will determine efficiency and the power of imagination will determine the speed of advancement towards excellence. While there might not have been a return to the 'old normal', a new dawn is on the horizon.

## Conclusion

Earlier, this article pointed out that legal education in India is an ecosystem built on a rule of law imagination and, accordingly, that it contributes to the progressive development of society and, hence, to the social production at large. The rule of law, nature of laws and regulations on legal education in India helped the legal education sector to rise up to face the challenges posed by the COVID-19 pandemic. However, as much as society rediscovered the possibilities of rule of law during the pandemic in providing access to justice, in fighting inequalities, and in ensuring the physical and mental well-being of citizens, the regulatory bodies relied on the possibilities of regulations for greater resilience and effective adaptation to change in order to ensure access to education, equal opportunities, and the emotional and physical well-being of faculty and students.

The pandemic has also been edifying in many ways, such that it helped us understand the possibilities of technology in teaching–learning—be that in conducting AI-proctored, home-based admission tests or remotely connected asynchronous classrooms. What is noteworthy about all this is that the disruptive results, which the pandemic-times produced, did not render regulations meaningless; rather, the broadened scope of regulations was discovered. The many experiments, which became possible during the COVID-19 pandemic, are due to the inherent heuristic quality in regulations, and regulations on legal education became a case in point. As regulations achieved extraordinary outcomes, their constitutional embedding kept the sense of rule of law unscathed. On balance, the COVID-19 pandemic has reinforced the model of regulatory governance, predicated on constitutional values and rule of law, as the most effective model for sustenance and progress of legal education in India.

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