

DRAFT MEMORANDUM  
ON  
INDIAN LEGAL EDUCATION

By

Carl B. Spaeth

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At the request of the Indian Law Institute and The Ford Foundation Dean Spaeth recently spent four months in India discussing problems of legal education. The Institute helped to arrange for him to meet with interested Indian lawyers, judges, officials, educators, and students in many parts of India. At the conclusion of his visit, he drafted the attached memorandum which the Institute and Foundation are making available to those interested in Indian legal education. The memorandum is called a "draft" because Dean Spaeth may wish to revise and expand it in the light of further thought and consideration of comments and discussions.

## A. INTRODUCTION

My present study of legal education in India began on October 1, and ended in January, 1960. Preparation for this study had extended over a rather long period during which I had become somewhat familiar with the major problems of legal education in this country. As long ago as 1950, during a three weeks conference at Lucknow, I spent many hours with the late Dean Singh. We compared the American and Indian systems and he told me of his plans and hopes for law study at Lucknow. Although my visit in 1956 with Mr. Merillat was concerned primarily with research capabilities, we were also told a good deal about legal education. In the intervening years Stanford Law School has helped support a lawyers exchange program, Professor Ebb of our faculty organized and directed a summer seminar that helped to lay the groundwork for the first research program of the Indian Law Institute, and comparative studies of Indian Law are an integral part of the School's teaching and research program. All of this is to say that I did not come to my present assignment without substantial earlier preparation and exposure to questions concerning both legal research and legal education in India.

During my recent four months in India I have examined the reports on legal education of state and national commissions. In addition to the recent report of the Law Commission I have studied the reports of the University Education Commission of 1948-49, the Bombay Legal Education Committee of 1949, the All India Bar Committee of 1953 and the Rajasthan Legal Education Committee of 1955. I have visited nine universities and fifteen law colleges. I have talked with Judges and Advocates, Ministers of Law and Education, Vice-Chancellors, Principals and Deans, with Professors, Lecturers and Readers, with candidates for the LL.M. degree, with apprentices and with candidates for the LL.B. degree.

## B. BACKGROUND FACTORS

I found the task much more difficult, much more complex, than I had anticipated. I am aware that on some issues I have not got all the essential facts. I have learnt that a study of Indian legal education compels consideration of a large complex of political, social, cultural and economic issues that mark the present period of India's history and development. Perhaps this is so with any significant problem. At any rate, a growing awareness of many lines of uncompleted inquiry have made me reluctant to submit either an analysis or a diagnosis. In the paragraphs that follow I submit a tentative analysis of some of the fundamental questions, in the hope that these comments from one who has been deeply interested in Indian legal education may be of some assistance to those who are seeking to improve legal education.

## 1. Indian Attitudes toward Legal Education

Although for many years high-level commissions have been reporting the condition of legal education, the condition seems to get worse not better. Recommendations of commissions are endorsed by conferences of teachers, judges and lawyers but there has been little action. The political and educational leaders of the country continue to place a very low priority tag on proposals for improvement of legal training. Although as a constitutional democracy India requires well drafted legislation, carefully conceived administrative machinery and a smoothly functioning judicial process, most leaders with the necessary power seem to believe that a dynamic legal order can be constructed without a strong legal profession consisting of practicing lawyers (in private or public practice) legislative draftsmen, legal scholars and judicial statesmen.

Some leaders feel that the courts and the legal profession as a whole are obstructionists who on narrow technical grounds delay and hinder the efforts of government to accelerate the social and economic development of the country. To urge the strengthening of legal education in this context may appear like advocacy of new resources for obstructionists.

I am convinced that there can be no fundamental and wide-spread improvement in legal education until the most powerful leaders of the country recognize and acknowledge that to develop and live under the rule of law, Indian democracy must have a body of lawyers who are well-trained from the first days of their law study.

## 2. University Education in Law: Purposes and Objectives

Few Indians have looked upon legal training in the university as an important or even necessary step in the training of the lawyer. As in England, where so many leaders of the Indian bar have been educated, it is felt that the training of the lawyer need not begin until after he goes to work. After about five years as a junior or clerk (or as a subordinate officer in a government law ministry) the young lawyer may be considered "ready" in the sense that he has completed his legal education. Many English and Indian lawyers studied the Classics, History, English or some other discipline at Oxford or Cambridge, and began their first reading of law and attended their first lectures at the Inns of Court in London in preparation for the bar examination. Out of this tradition has come

the view that if the university has any function in the training of the lawyer, it is to give him theory, legal history, jurisprudence; it is not the function of a university to provide a curriculum and methods of instruction that will prepare the young graduate for the actual practice of the law. Time and again I have heard statements by Indians that have varied but little from the observation by one leading lawyer:

"I rather enjoyed reading law at the University in England. The lectures and dinners at the Inns of Court were enjoyable. But my education as a lawyer began when I returned to India to work under the guidance of my senior."

The view that there is not really very much that the university can do (no matter what its human and material resources) to provide professional training in law is an important reason for the widespread indifference to the sad conditions of legal education. Successful practitioners, leading jurists, government lawyers, and high government executives, who look back on their own university exposure to law as a "lark", find it difficult to become alarmed or concerned by the fact that thousands of young people now seem to be wasting two or three of the best potential growth years of their lives in the law colleges of this country.

A question that must be understood and answered more widely is whether there is a role to be played by the universities in the professional training of the lawyer.

Consideration of the university's role will require sustained, painstaking and rigorous analysis of the purposes and objectives of university education in law. I agree unreservedly with those who maintain that most of the difficult questions concerning Indian legal education have their origin in the lack of clearly defined and generally accepted objectives. Attempts to define objectives are now frustrated by the semantic difficulties inherent in the abstract use of terms like academic, professional, vocational, theoretical, practical, and liberal training for citizenship that now punctuate and confuse most written and oral discussions with respect to curriculum, teaching qualifications, admission to practice, the year of apprenticeship, and graduate study.

Because I had heard a good deal about law as a training for citizenship, I began most of my conferences with law teachers by inquiring as to the relative emphasis which they give to training for citizenship as compared with training for the profession. The following observations were prompted by these discussions:

(i) Although many of those with whom I talked have been in law teaching for many years it was evident that they had given relatively little thought to the aims and purposes of legal education.

(ii) At most institutions the objective of education for citizenship is considered an independent - sometimes the primary - objective and not merely a by-product of good professional training. The reason given for emphasis on the objective of education for citizenship is that from 80 to 85 per cent of the students do not intend to practise law. Whether 80 to 85 per cent of the law students require additional general education, whether India needs more people who receive general education through the study of law, and how the law school curriculum is designed to provide general education, are questions that have received very little, if any, consideration.

(iii) Most of the full time law teachers think of their lectures as "liberal" or "theoretical" in contrast to what they say the part-time teachers, the practising lawyers, purport to do in their lectures.

(iv) A few law teachers believe that legal education should be reorganized and directed toward professional objectives but most argue for a continuation of what they call "academic training in law".

(v) With rare exceptions the terms general education, practical, professional and academic were used in the discussions with a wide range of meanings. However, through questioning I learned that many teachers think of "professional" training exclusively in terms of the drafting of papers and knowledge of court house procedures. The idea of professional training that begins with a thorough grounding in theory and history, analysis and synthesis, and moves to sophisticated study of complex contemporary legal problems but does not include law office and court house practice is almost totally unknown.

The consequences of confusion and uncertainty with respect to purpose will be noted at several points in this report. It may serve to sharpen the issue to observe that most American law schools would subscribe to the following statement by the Harvard Law School:

"The School seeks as its primary purpose to prepare for the practice of the legal profession, wherever the common law prevails."

#### 5. Mass Demands for Higher Education

India has begun to face the expectations and demands of hundreds of thousands of young people who seek higher education, college and university education, as a birthright of the new democracy. As in the United States, this right is often asserted most vigorously by those least qualified for college work in the arts and sciences, or indeed in any discipline. The successful pressure for admission to college and university tends to lower standards and to reduce the training of all to a low common denominator. This dilemma of countries like India and the United States -- how to give superior training to the

best qualified while satisfying the educational demands of all -- is an issue into which one is necessarily drawn by a study of Indian legal education.

Some officers of the universities and most of the administrators of the law colleges agree that admission to the study of law should be restricted, that the ratio of students to law teachers is fast becoming a farce, but with a few notable exceptions, the same authorities declare that it is politically, some say sociologically, impossible at this time to institute a strict selective system for admission. At most institutions the fear of pressures, student "strikes" and political intervention rules out proposals that would place the better qualified law students in separate full time colleges or in special divisions within the same college. Since our visit in 1956, enrollment of law students at several universities has more than doubled and the ratio of students to teachers, fairly calculated, is now often as high as 200 to 1. The law college is the haven for the unemployed arts or science graduate who is unable to qualify for admission to more demanding disciplines such as engineering and medicine.

#### 4. The Struggle for Control over Higher Education

Very early in my study another line of inquiry led to questions of power, control and authority. Who has the power to make the important decisions on standards of legal education? An answer to this question requires consideration of the total structure for the government of higher education: the relation between the center and the states, between the legislature and executive, between the ministers of education and the universities, between the universities and the colleges, and among the formal governing faculty of law college, the dean or principal, and the members of the teaching staff. It is in the context of this range of overlapping and often conflicting jurisdictions that one hears charge and countercharge as to authority, fault and responsibility. According to one view, the main fault lies with those wielding political power in the ministries and the legislature. By another view the fault lies with academic leaders who lack the courage to fight for the standards and principles in which they say they believe. The pattern appears to vary from state to state and with the strength of particular leadership,

whether in government or university. The persistent fact is that there is an underlying conflict of power and authority that affects all higher education and all proposals for its improvement.

##### 5. The Economic Position of the Bar

Throughout my investigation I was told that not more than 10 to 15% of the thousands of law graduates go into "actual practice", by which was meant that ultimately the income of this percentage of graduates is derived mainly from legal work. There have been no studies of the need for lawyers in India or of the economic position of those now in practice. Such studies are needed as a basis for a rational long-term state and national policy for legal education. To be helpful the studies would have to probe difficult and often delicate areas. How do so few members of the profession in India manage to monopolize so large a part of the most lucrative business? To what extent do the economic interests of those already in practice affect policies with regard to admission to the bar? What has been the effect of new economic and social programs of the welfare state on the "business" of practising lawyers? What evidence is there in cities like Bombay and Calcutta that the volume of the lawyers' business and the character of his role are being affected by expanding commerce and industry? Precision in the answers to such questions cannot be expected. But they have a direct bearing on the policies and plans for legal education of the future.

##### 6. The Problem of Language

Beyond political, social and economic factors which challenge diagnosis of and prescription for Indian legal education is quite a different problem. I refer to the present and future effects of deterioration in the command of the English language. At all the universities I visited, principles and teachers referred to the growing number of students who are unable to understand lectures in English and request translation of technical legal terms and concepts into their regional language. A few weeks ago the Union Law Minister, Mr. A.K. Sen, inaugurated the tenth conference of the Madras Lawyers' Federation with a plea that English be retained "in courts in the interests of the legal profession and for the sake of uniformity in the interpretation of laws". Professor S. Venkataraman, head of the Department of Law at Waltair (Andhra University) recently made the following comments on the language problem:



"Other factors also have contributed to the decline (in legal education). The fall in standard regarding English knowledge is a major contributory cause. The English knowledge of the average holder of the first degree in Arts, Science, or Commerce is such that he is at a loss to read and understand the prescribed text-books and legal journals and literature. He is driven to guides and made-easies. He abandons thinking for himself and begins to memorize information. When he emerges after taking the law degree he is in many cases helpless as well as useless."

### Problems and Recommendations

It is clear that no comprehensive, decisive or early solution of the many problems of Indian legal education can be anticipated in a setting as complex as that described above. It is also clear, however, that no matter how some of the larger issues are resolved, there is and will continue to be a need for well-trained teachers. Beyond the recruitment and continuing education of teachers, it may be possible to begin to test ideas on some specific problems of law school policy and administration. The direction of my thinking on these problems - admissions, examinations, curriculum graduate study, and the recruitment and training of teachers - is suggested in the following pages.

### C. ADMISSIONS AND THE STUDENT BODY

#### 1. The Present Situation

The Law Commission recommends that the B.A. degree be required for admission. It also proposes special entrance examinations when applications exceed a reasonable maximum for admission to any law college. The All India Law Conference sponsored by the Indian Law Institute recommended that applicants for admission should be "screened" by the University but did not recommend a method of doing so. The resolutions adopted by the first conference of the All India Teachers Association make no reference to qualifications for admission to law study.

During my visits I heard no dissent from the requirement of a B.A. degree as a condition of admission. At a meeting in Bombay which was attended by representatives of the four Bombay colleges as well as by judges and practising lawyers, it was agreed without dissent that the University of Bombay should return to the B.A. requirement for admission. I was told that only a very small percentage of applicants (5 to 6%) now take advantage of the Bombay rule that a student may begin the study of law after only two years of college training.

The notes of my many discussions of the possible requirement of something more than the B.A. degree -- e.g. first or second class honours in the B.A., or a combination achievement-aptitude test -- record a wide range of opinions. At some universities, particularly in the north, there is sufficient support among teachers and an occasional administrator to warrant explorations and an effort by the University Grants Commission or other appropriate body to induce the beginning of a selective system. However, even where there would be support for such a system, there is little doubt that almost any screening process would soon encounter political opposition.

At many law colleges, the numbers have more than doubled in five years. At most law colleges in major cities, the test suggested by the Law Commission - availability of teachers, classroom, library facilities etc - would dictate an immediate sharp reduction in admissions. The following paragraphs describe the situation at a few institutions and demonstrate the range of present attitudes on admission policies.

University A - The LL.B. enrollment is now approximately 1300 of whom 800 are in the first year. The Dean deplors the steady growth of the school, but believes that the University and the Law School are duty bound to admit holders of the University's under-graduate degrees who are unable to gain admission to any other graduate school and who are unemployed. He states that some of those who would not be admitted under more strict standards may one day benefit by their legal education. He said that he hopes to hold the first year class to 800 students, and stated that the 800 admitted this year were selected from 1600 candidates. Classrooms are shared with Arts and Science students, and even the small library room has been invaded by undergraduates.

University B - The Dean expressed himself as unqualifiedly opposed to any standard of admission beyond the undergraduate degree. He stated that in a democracy it is important that there be a "wide-spread understanding of legal rights and duties." He places major emphasis on the so-called "citizenship" objective of legal education. Other members of the faculty argued for a selective system, either by competitive examination at the time of admission or at the end of the first year when only a carefully limited percentage would be permitted to go on to a final two years of study.

The Vice-Chancellor, has suggested that admission to the University Law College be limited and that instruction in law to be offered to the less well qualified applicants by two affiliated colleges that have asked permission to begin legal instruction. There may be an opportunity, therefore, to experiment with a system under which admission to one college of the University would be strictly limited whereas only a B.A. degree would be required for admission to the other two colleges.

University C - Although both the top administrative officers in the Law College said that they regretted the fact of very large numbers, they are also of the view that it is "politically" impossible to restrict admissions. One stated that the University is obligated to admit as many students as can be "accommodated" since if they are not admitted to the law school, many of them have no other place to go -- either in the university or in employment. He acknowledged that the opportunities for practice and for the use of legal training are very limited.

There are now 2500 students in the three year course. The students attend either from 8 to 10 in the morning or from 5 to 7 in the evening. Forty per cent of the students are also studying for the M.A. degree and an additional thirty per cent are employed either by the government or by private business firms.

University D - There are several law colleges affiliated with the University. All of them are money making institutions. One Principal agreed that the student body is much too large for the facilities and for the teaching staff, but he doubts that the University Administration would approve any cutback. The other law colleges, all part-time, are committed to the admission of as many students as can be handled by shifts in the morning and evening.

University E - The head of the Law College told me that nothing can be done to improve the quality of training for the LL.B. degree in this Southern State at the present time. This is because it is "politically impossible" for the Ministry of Education to approve admission and examination standards that would limit study and graduation to well qualified students. One lawyer explained that the present practice of unlimited admissions was necessary to give opportunities to communities that in past years were unable to get a good education. A policy of limited admissions would favour the more highly educated communities.

There are 1300 students in the Law College, four sections of 180 in Law I, and 3 sections of 170 in Law II. There are five full time instructors and 10 part-time instructors. Each full time instructor gives the same lecture to three sections on the same or successive days.

University F - Although I did not visit the University, I met the Principal in New Delhi. He told me that at the three law colleges where he had served he found that no more than 12 to 15 per cent of the students were qualified for law study and of those who are qualified more than one-half are studying law in order to help them prepare for the I.A.S. or other government examinations. He said that only 29 students would have been admitted to his law college in the present academic year if he had required a first or second class in undergraduate work. It was decided that the University cannot now afford a small law school enrollment. The Law College has recently inaugurated day time instruction and during the past year ran a deficit.

University G - The enrollment is now 900, including in this figure the third year certificate students. With the approval of the Vice-Chancellor the school is decreasing the size of the entering class by 70 students each year. The goal is said to be a total enrollment of 720. A little over 300 students are now admitted from over 1000 applications. Although the Law College has a selective system, its teachers are agreed that the great majority of the students are neither serious nor well qualified and the ratio of students to teachers is much too high. The student-faculty ratio makes it impossible to achieve the purposes of the tutorial program of seven papers per student per year which is designed to induce students to work throughout the school year. In the course of my discussion with members of the faculty it was suggested that a new law college should be established for part-time students and that the present college should be strictly limited to full-time students on whom a much greater demand would be made both during the school year and on the final examinations.

## 2. Recommendations

The following recommendations on the admissions problem are tentative and require the additional study and considerations to which I refer in the first paragraph of this memorandum.

(1) Steps might be taken, perhaps by the U.G.C. to test the feasibility of the proposal made by one Vice-Chancellor that candidates for admission to one law college at selected universities be screened either by reference to their standing in the B.A. examination or by an entrance examination. Two or three other universities appear to be ready to consider support for one law college of high standards with one or more other colleges at the same university continuing to admit students on the basis of their B.A. degree.

(2) The U.G.C. or other interested body, official or non-official might charge a qualified individual or committee with development of a combination achievement-aptitude test for admission to the law colleges. Testing authorities in England and the United States could be consulted. Although sociological and political factors will, for sometime, continue to compel admission of all or most who apply to the law colleges, the breaking point may soon be reached even at large universities which will not now entertain proposals for limitation on enrollment. When that time comes a testing mechanism should be ready.

(3) The U.G.C. might encourage (again at selected universities) a very strict weeding out process at the end of the first year. To give the weeding out process a constructive and affirmative character, it is also recommended that U.G.C. fellowships for the second year of law study be awarded to the ten to fifteen top ranking students on the basis of the first year examination.

D. THE EXAMINATION SYSTEM1. The Present Situation

The Law Commission deploras the low standards of the law examinations, refers to evidence to support the suspicion that there is "nepotism" in the conduct of some law examinations, and states that "the examinations have to be drawn so as to encourage and award recognition not to the student who memorizes a certain amount of information but the student who has devoted some thought to the subject and shows a capacity to apply legal principles to given facts."

The All India Conference recommends that a certain proportion of the total marks should be assigned to class work (seminars, tutorials), that questions be framed so as to "test the capacity of students to think independently", and that at least 50% of the examiners should be "external", some of them being from other universities. The All India Teachers Association made substantially the same recommendations and added that "at least one-third of the marks be allotted to problems."

At all universities visited and in most of my discussions there was agreement that the law college examinations are now easy tests of memory. Students with whom I spoke, usually recent graduates, estimate that about four weeks of fairly hard work are necessary to pass the year end examinations. The cramming is done with "make-easy" outlines and cheap question-answer pamphlets. Only the rare, strongly motivated student reads textbooks or other literature. Not only do the cram pamphlets suffice for a pass, but the knowledge of English of many students is not up to an understanding of legal literature. Although attendance at lectures is "required" a high percentage of students at most schools leave the room after the roll call. At one law college the faculty and students say that by giving two examinations a year the total time of hard work has been doubled - from four to eight weeks a year; but they say that the year-end examination is now easier because it covers only the second term.

I have reviewed many examination papers of the past five years and found few problem questions. When so-called problems are put they usually appear in two parts, the first part, for example, asking for a definition of contributory negligence, and the second part putting a contributory negligence "problem" in five sentences.

It is difficult for a foreign visitor to learn all the facts concerning the use of external examiners. The stated reason for outside examiners is that internal examiners, teachers of the college where the student took his lectures, would not be able to resist student pressures for lenient or special treatment. It is ironical, to say the least, that external examiners are well aware that their chances of "being asked back" are slim if their questions are too demanding or their grading too

interests, provides the practitioner, be he advocate or solicitor, with a context within which he can confidently pursue his case.

(b) Subjects like Procedure and Taxation should be integrated with the first two years of instruction and be made the responsibility of the law colleges for another category of reason. In a legal system built in large measure on the authority of judicial precedent the lawyer should be trained from a very early point in his student days to understand the procedural setting from which the court, whether trial or appellate, declares the substantive rules. The law reports are full of cases which cannot be understood from a substantive point of view unless the student or lawyer understands procedural decisions made in the course of trial or appeal. As to Taxation, it is becoming increasingly evident as local, state and national tax systems expand, that vital choices in almost every transaction (Contracts, Sales, Partnerships, Property, Succession and Wills) are affected more by tax considerations than by any other single factor. It is no exaggeration to say that if the teachers of the subjects bracketed above are to perform their tasks well, they must know the law of taxation as it relates to their subjects.

(c) Although the Law Commission has stated that there is no antithesis between academic and practical training, its division of assignments between the universities and the Bar Council recommends and perpetuates the view that there is such an antithesis. At several points the Law Commission comments approvingly on the status of the law teacher in the American legal profession and in American society generally. One very important reason for this status is that most American law teachers are well qualified to "hold their own" with the bench and the bar in matters "practical" as well as in matters "theoretical". They are able to do this because in their studies for the LL.B. in their experience, and in their instruction, the American teachers integrate and seek to synthesize theory and practice.

### 3. Full-Time and Part-Time Study of Law

The Law Commission has recommended that law teaching should be imparted only in full-time institutions.

The All India Law Conference recommended that law should ordinarily be studied for three years full time "and not along with any other course or vocation". The same Conference recommended that part-time students be required to pursue the same syllabus for a period of four years.

The objectives of these recommendations of the Commission and the Conference are certainly commendable. But the fact is that no so-called full-time division at any Indian law school today is making a full-time demand on its students. The full-time divisions are distinguishable from the part-time divisions only in that the latter are offered early in the morning or late in the day so that their students may be employed during the regular hours of most employment. With rare exceptions, students attending law classes between the hours of 10 a.m. and 3 p.m. at colleges

that have mid-day lectures must be wasting a great deal of time unless they have part-time jobs in the morning or evening. Students and teachers of the so-called full-time divisions acknowledge that law study in India does not begin to be full time until the three or four weeks before the final examinations; during the same weeks, it is also "full-time" for the part-time students.

I have talked with a fairly large number of part-time students. Many of the young men and women who earn while learning impressed me as able, serious and ready to take and give more to their law studies than is necessary or possible with the present curriculum, teaching and examination methods. Moreover, I have been told that year in and year out the part-time students receive more than their share of first class honours in the final LL.B. examination. This is not surprising since they include government officers (already a select group) and many able young men from commerce and industry.

#### Recommendations

(1) The appropriate authorities should take note of the recommendations of the Law Commission and of the All India Conference that law study should ordinarily be studied for three years full-time and should invite a committee of from three to five full-time teachers of law to recommend a program that would provide a real full-time demand. Instructions to the committee should request a statement of optimum teacher-student ratio to achieve the recommended full-time demand.

(2) The appropriate authorities should take note of the legitimate interest of the working part-time student in obtaining a legal education and should appoint a committee of three full-time and two part-time teachers to recommend ways and means of improving education facilities for the student who must earn while he learns.

### F. THE LAW TEACHER

#### 1. General

Because post-graduate programs (LL.M. and LL.D.) have been planned for and are now considered essential preparation for a full-time academic career, I treat the two subjects (Post-Graduate Study and Qualifications of Law Teachers) in a single section of this report.

The Law Commission has recommended that the law colleges be manned by full-time teachers. Throughout its report the Commission holds to the view that training for an academic or teaching career requires post-graduate study (LL.M.) with emphasis on Legal History, Jurisprudence, and the "theory" of the courses which are offered during the first two years of the LL.B. curriculum.

The recommendations of the All India Law Conference specify degree and research qualifications for the grades of Lecturer, Reader and Professor, and propose salaries "on a par with teachers of technical and other professional subjects like medicine and engineering". The heavy emphasis in the Conference recommendations on research degrees and the failure to refer to experience in practice as a qualification for full-time teachers suggest that the Conference accepted the Law Commission's view and definition of the full-time teacher as an academic person neither trained (nor qualified) for practice.

The Law Commission found that throughout the country most teachers are legal practitioners who give lectures before and after court hours, and that many law colleges are staffed entirely by part-time instructors. Of the 15 colleges which I visited, only two have predominantly full-time faculties. Four other colleges have no full-time teachers. The rest were staffed for the most part by young practising members of the Bar.

## 2. Post-Graduate Study in Law: The LL.M. Degree

Early in my investigation I learned that the University Grants Commission has been supporting post-graduate studies as a first step toward improving higher education. Several considerations apparently combined to induce this approach. The masters and doctoral programs not only train teachers but help to develop the research scholars whose product over the years is essential to the growth and vitality of any field of knowledge. Apparently at the post-graduate level there is less resistance to change, and the universities may create departments that are independent of the constituent colleges.

During the past three years (1957-1960) the U.G.C. has made grants to nine universities for post-graduate studies in law. Although most of the grants are conditioned on supplementary (matching) grants by the universities, there are no limiting conditions beyond very general references to "post-graduate" studies.

Because of the many obstacles to effective action in the near future at the LL.B. level, I feel that everything possible should be done to capitalize on the readiness of the U.G.C. to aid post-graduate programs. To this end there should be an early comprehensive re-examination of the objectives, curriculum and methods of the LL.M. programs by reference to the needs of the years immediately ahead.

### a. Objectives of Present LL.M. Programs.

As noted above, the LL.M. programs are now designed almost exclusively for students who plan an academic career. Law colleges which are making appointments of full-time teachers now usually stipulate an LL.M. degree for new appointees. I found that where faculties have recently been expanded to help meet the needs of large student bodies, the appointees are young men who had taken their LL.B. and LL.M. degrees



during the four years immediately preceding their first year of teaching.

All of the LL.M. programs require two years of study. With rare exceptions the requirements for graduation can be satisfied by part-time study. The theoretical and academic character of the programs is illustrated by the curricula at two colleges from which I found very little variation elsewhere.

In the first post-graduate year at one the student prepares for examinations in six subjects: Indian and English Legal History, Indian and English Constitutional Law, Analytical and Historical Jurisprudence. In the second year, the candidate selects one subject on which he writes two examination papers and a thesis. In the first year at the second college the LL.M. candidate is examined in four subjects: Jurisprudence, Legislation, Legal History of England and India, and Constitutional Law of India. In his second year the student writes two examination papers in each of two fields, elected from among ten groups of courses, e.g. Commercial Law, Public Law, International Law. No thesis is required although a student may elect to write a paper in lieu of examinations in one of his elected fields.

I learned that at most colleges there is now no thesis requirement for the LL.M. degree. Although at least three post-graduate programmes require some research and writing, the LL.M. degree may be obtained at most institutions by passing examinations. The reason given for no training whatsoever in research and writing in a two year post-graduate program is that the demands on the teaching staff for the many divisions of the growing LL.B. student body are so great that there is no time for supervision of the research and writing of LL.M. candidates. Candidates for the LL.M. degree at one law college, for example, take only one set of examinations at the end of the two years, prepare for the examinations by independent study, and are not required to submit any written work.

I have examined LL.M. examination papers at three colleges. Although somewhat more sophisticated than the LL.B. questions, the form and pattern are very much the same: the candidates are asked to define, comment on quotations, trace historical development and illustrate concepts, but they are rarely required to apply what they know to concrete problems. But even if the examinations were more demanding, the fact would remain: most post-graduate students obtain their LL.M. degrees and frequently proceed to teaching posts without receiving even the beginning of training in research and writing. And during their early years as teachers at most of the colleges they are so burdened with lecture schedules that they have neither the time nor the energy to do independent research.

b. Admission to the LL.M Course

The formal requirement for admission to the course at most institutions is a second class in the LL.B examinations. I learned that a very high percentage of the students who begin the first year LL.M course at three colleges I visited are also studying for government service examinations. If successful in these examinations, they withdraw from the LL.M. course. Only a very small percentage of those who begin the course are seriously committed to an academic career. At one college, for example, in 1959-60, there were 30 LL.M. students of whom 24 were in their first year. The Dean told me that three-fourths of the first year LL.M. students are preparing for the government service examinations. Those who pass will leave the University.

I met with five of the six students who are now in the second year of their LL.M. course at that college. All of them had elected to write examinations so that even though they are in their second year of post-graduate work none of them has ever done any directed research. Four of the five hope to obtain teaching positions at their own law college or elsewhere. The fifth student a man of about forty who holds a senior position in the State Government, is pursuing a program in Constitutional Law and Legislation which he has found to be of considerable practical benefit to him in his work.

c. Special Programs

If the post-graduate programs in law are to provide significant new strength for legal education, it is believed early consideration should be given to the following questions:

1) If, because of the inadequacies of the present LL.B. course, it is concluded that future teachers should do graduate work for at least two years, is the typical LL.M. course well conceived for teacher-training? On what assumptions, expressed in terms of the

qualifications of the teacher and scholar, do schools place such great emphasis on Legal History, Jurisprudence and Constitutional Law?

2) Would the U.G.C. be justified in stipulating as a condition of its assistance for post-graduate programs that the recipient institutions shall provide significant supervision of legal research and writing for all candidates for graduate degrees? What additional funds are required to enable the colleges to replace the typical LL.M. examination course with intensive training in the elements of legal scholarship?

3) Is there a place in major cities for graduate work for practitioners in subjects like Taxation, Commercial Law and Industrial Relations whether or not they have an interest in an academic career?

### 3. Qualifications of Law Teachers

It has been my privilege over the years to come to know a small number of Indian law teachers quite well. I have a high regard for these men and women as well as for others whose acquaintance I made for the first time during my recent visit. However, morale among even the best of the teachers is distressingly low. The reasons are many: very heavy teaching loads, little or no time for independent scholarship, inadequate libraries, poor salaries, little or no voice in the development of law college policies, and an awareness that the law teacher is often classed as a "reject" by other branches of the legal profession. The deadening effect of teaching assignments that call for the repetition of the same lecture time after time is increased by the teacher's knowledge that only a small percentage of his students are seriously interested in law and that the great majority of them are indifferent to what he has to say because the "made-easy" outlines adequately cover the questions that are asked year after year by external examiners.

It is not surprising that the most able young lawyers will not consider a full-time teaching assignment. The best of the young part-time teachers leave the law colleges as soon as they are quite well established in practice. The security, status and challenging assignments of many government legal positions, state and national, executive and judicial, are attracting some of the most able young legal minds of the country.

Students who are strongly motivated toward a legal career are bitter in their criticism of the teaching faculties at most institutions. Most of the criticism is directed at young teachers (among whom there is a very high turn-over), but I learned that the students are also critical of senior teachers who, over the years, have found little incentive for revision of lectures or for experimentation with more challenging teaching techniques.

### Recommendations

It is clear that two closely related efforts must be undertaken to raise the standards of law teaching in India. The first effort, a series of measures, should be designed to attract able young people into law teaching on a full-time career basis. The second effort, again consisting of a series of measures, should be directed to the strengthening of the teaching and research capacities of promising members of existing faculties. Because the measures I have in mind do tend to serve both objectives, I have not placed them in separate categories in the list of proposals that follow:

- (i) Because law schools, like medical and engineering schools, must compete with private practice and government service for able teachers of a professional subject, the salaries of the law school teachers should not be governed by the schedule of pay set for university appointments in the Humanities and Social Sciences. It would be well to raise all university salaries but if this cannot be done there is a realistic and practical reason for taking into account the alternative opportunities of the outstanding and able law trained man. I recognize that for an entire career a really outstanding lawyer cannot be given the income as a teacher that he would probably earn as one of the few top advocates or solicitors of the country. However, it is submitted that for the first five to ten years law teaching salaries can and should be made competitive with incomes in private practice and in the government service. By paying our young teachers more than they can earn during their first years in practice in the United States we have managed to attract many of our best law school graduates to life-time careers in the universities.
- (ii) Incentives for the faculty should include foundation-supported grants for periods of sustained research at the home institution, at other institutions, Indian and foreign, and for internships with government agencies or with the courts whenever the scholar's field of research will benefit by close observation of the law in action.
- (iii) Teaching assignments should gradually be adjusted downward with a target of 7 to 8 teaching hours per week.
- (iv) Each full-time faculty member should be required to formulate and adhere to an annual schedule of research and writing for publication. Only if this condition is firmly stipulated and respected will there be justification for the reduction in teaching hours. In brief, stimulation of research and writing must be made an integral part of the proposed program.

(v) Part-time instructors should be employed only if they have a special contribution to make, e.g. because actual contemporary practice is essential to effective teaching of the subject assigned to them. No part-time teacher should be employed who is too busy with his practice to give a firm commitment that his lectures will be carefully prepared and will reflect the significant underlying theoretical developments of his specialty.

(vi) A program of seminars for teachers of law.

- (a) At least one seminar of six to eight weeks duration should be held each summer. The purposes of the annual seminar would be to acquaint teachers of law with new developments in the law of the subject with which the seminar is concerned and to encourage the participating teachers to consider and to experiment with new teaching and examination methods.
- (b) In addition to the annual summer seminar, an effort should be made each year to conduct regional seminars of shorter duration (two to three days) on selected problems of legal education. For example, three regional seminars might be held in 1960 on changes in the curriculum that should be made to reflect the changing pattern of legal problems in independent India. If the short regional seminars are concerned with the same subject, one central servicing staff could provide necessary background documentation for all participants. To illustrate, three conferences on curriculum problems might be held during 1960 at Lucknow, Madras and Bombay on successive weekends. The central secretarial staff could attend and help conduct each seminar. In subsequent years the weekend seminars could be concerned with teaching methods, examinations, or new developments in selected fields of the law.

(vii) Fellowships and Awards for Law Teachers

- (a) A small number of senior fellowships and a larger number of junior fellowships should be awarded to law teachers for research at the Indian Law Institute each year. Programs for the fellows at the Institute should include:
1. Research on a topic or topics to be specified in the fellowship application. It is probable that a few recent graduates of American, English or Australian law schools could be enlisted each year to assist the junior fellows at the Institute in their research and writing projects.

## 2. Seminars on legal developments.

one seminar on teaching methods.

Law fellowships for promising LL.M. graduates and young teachers might provide for three years of study abroad to permit the future teacher to take the full basis course of foreign study. In America this would be the regular LL.B. course. Participation in seminar work at American law schools with only limited course study as part of a one year LL.M. program does not provide adequate exposure to, and participation in the learning process as conducted by the foreign law schools.

- (c) Annual prizes should be awarded for original and creative scholarly works, articles or books, by teachers of law.

(viii) Teaching and research by qualified government legal Officers.

- (a) The appropriate authorities should be asked to consider ways in which able and relatively young legal officers might be induced and authorized by government (both state and national) to spend a year or two in teaching at the government rate of pay and without losing promotion rights.

4. The Teaching Faculty: A Voice in Policy Making

I have noted that morale among law teachers is low for several reasons. It is essential that I underscore one reason that I have not found in any of the reports on Indian legal education. I refer to the fact that the law teachers as a group have little or no opportunity to be heard on matters of academic policy. The most serious consequence of the lack of power and authority in the teachers is that there is no sustained group thinking at any Indian law college today on fundamental matters of educational policy. At most universities the so-called Faculty of the Law College is composed of retired judges, former leaders of the bar, ex-Deans or ex-principals and at most two or three members of the teaching faculty. This formal "Faculty" is the governing body of the Law College subject to the over-riding authority of the University Syndicate which may or may not include a person who actually teaches law. Not only do the law teachers lack formal de jure authority but at most institutes they have no de facto influence on any significant matter of policy or appointment since they are rarely consulted by the Dean or Principal.

2. Seminars on new legal developments.

3. At least one seminar on teaching methods.

(b) A few fellowships for promising LL.M. graduates and young teachers might provide for three years of study abroad to permit the future teacher to take the full basis course of foreign study. In America this would be the regular LL.B. course. Participation in seminar work at American law schools with only limited course study as part of a one year LL.M. program does not provide adequate exposure to, and participation in the learning process as conducted by the foreign law schools.

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I am aware that the cumbersome and, to an American teacher, the "undemocratic" character of the organization of Indian universities is a legacy of earlier days. I believe that many Indians agree that twentieth century demands on higher education require a drastic reorganization of the inherited university structures. Vice Chancellors, Syndicates and the present so-called Faculties, will not readily grant autonomy - or anything approaching it, - to the teaching faculties of the several disciplines. But until they move in the direction of significant delegation of academic policy authority to the permanent full-time teachers, under the chairmanship but not the dictation of the dean or principal, efforts to improve Indian higher education will continue to be seriously and unnecessarily handicapped.

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In concluding, I repeat my personal conviction that there can be no fundamental and widespread improvement in legal education until the most powerful leaders of the country recognize and acknowledge that to develop and live under the rule of law, Indian democracy must have a body of lawyers who are well trained from the first days of their law study.