

# The Indian Advocate

JOURNAL OF THE BAR ASSOCIATION OF INDIA

- Advocating improvement and change in the system of judicial appointments
- Constituting an effective National Judicial Commission
- The missing Constitution Bench
- Supreme Court's unique judicial activism
- Public policy in arbitration law
- Criminal jurisprudence and constitutional remedies
- A Controversial Lokpal Bill
- Bar Events

Volume XXXVIII

2012-2013



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# Legal Education – India's Place at the High Table

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In 1986, the legislature of Karnataka enacted what was to be the precursor to many such legislations across the country - The National Law School of India Act. Incorporated under the auspices of the Bar Council of India as a University for higher learning in law, there was much promise at the inception. Helmed by Prof. Madhava Menon and a selectively picked team of teachers, the University combined a challenging entrance test with a well laid out curriculum modeled on those of the American universities to bring what was hitherto considered a lower rung career option to the forefront. With case study approaches, project papers and clinical and practical courses, the institution sought to also create a multi-disciplinary approach with economics, sociology, political science and history added to the mix. The combination seemed potent, and despite the skepticism with which it was first received, NLSIU soon began to produce some finely honed talent to the legal profession.

## *A quarter century*

It has been 25 years since the first of the brood entered the hallowed portals of NLSIU. In that period, it has risen rapidly to hold its own against many of the world's leading law schools, and is widely regarded as law's equivalent of the IITs and IIMs. The accolades have been

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several – major world moot victories, top level international placements and visits by world experts have put NLSIU firmly on the world map.

In the two decades since the first batch graduated, alumni from NLSIU have made their way to top international institutions – the United Nations, the International Court of Justice, the IMF, the Supreme Courts of the UK, USA and India, Yale, Cambridge, Oxford, LSE, Harvard and NYU, not to mention the top white shoe and magic circle law firms, and blue riband corporations and banks. At any given time, NLSIU prosecutors would be at work in Rio de Janeiro, Paris, Mumbai and Melbourne. With the War Crimes Tribunals, the International Criminal Court, the WTO's Settlement Body, the International Commission for the Red Cross and Amnesty International, the sky is literally the limit for those choosing to spread their wings.

Seeing the success that the NLSIU experiment has brought in its wake, many law schools have been set up by State Governments across the country along its lines, many attracting its founding faculty in high administrative positions. In the new millennium, the annual lists prepared by India Today and Outlook show how these Universities match up, as they all vie for a piece of the legal pie. As with all great academic histories, these are already seeing their share of rivalries – ones which are healthy, and ought to be encouraged, so that the institutions are improved.

This narrative would suggest that an NLSIU education is rightly treated as a prize – a rare privilege which rewards, bringing with it great glamour and prestige. For the large part, the view of the common man comports with this – that an NLSIU graduate is a truly accomplished professional whose premium services are a rarity not easily obtained. However, grim introspection may yield some uncomfortable answers about whether NLSIU is deserving of these encomiums, and whether there is substantial scope for improvement.

In this author's view, there are clear weaknesses within the system, and these need to be identified and addressed at the earliest if NLSIU and others of its ilk are to consolidate their positions.

### *Teaching the Law*

Law is not a simple discipline. Over a period of five years, the essentials of the Constitution, property, crime, taxation, procedure, international relations, family, labour and commerce are to be introduced at a fundamental level. This is in keeping with the prescription of the Schedule to the Bar Council of India Rules providing for the essential subjects to be taught for the LLB. It is imperative that separate departments are devoted in each University to these basic streams, so that enough expertise would be available to mould a comparative understanding of the area from a variety of approaches.

Unfortunately, for the large part, NLSIU has had difficulty with even having one qualified representative in each of these fields, leave alone entire departments. Areas like public law, intellectual property and international relations seem to attract the best of academia, while niche but important subjects like land acquisition, insurance, competition and taxation do not find lecturers readily available. As a result, it has almost become a tradition for the surplus teachers from one discipline to be assigned a completely different subject and to then learn on the job. However competent the individual, such an approach brings about disgruntlement among the students, and a loss of morale among the young faculty entrants who feel displaced and unappreciated.

The website of NLSIU ([www.nls.ac.in](http://www.nls.ac.in)) provides a Faculty Directory, and when accessed in August 2013, the details as far as the legal subjects are concerned, provided for disturbing reading:

- Apart from 7 Chair Professors (of whom 4 do not possess doctorates and are yet referred to as Professors), there seem to be only 2 full-time Professors, of whom one is 'on lien', and the other 'on deputation'. Whether the appointment of the latter as Vice-Chancellor of the National Law University Odisha could be described as a 'deputation' may be open to question.
- It is also unclear as to what parameters are applied for the appointments to Chair Professorships. The present incumbent of the Chair on Urban Poor and the Law is a former commercial tax officer whose admitted teaching interests lie in the areas of

international law, environmental law, jurisprudence and family law. Undoubtedly a legal polymath for having mastered such a variety of subjects, there seems little to canvass his present position.

- Nearly half the teachers are engaged in a variety of areas, many of which are not of their principal expertise, and do not have anything in common with one another. This only strengthens the impression that the faculty are treated as flexible workmen rather than the highly skilled individuals they are.
- Of the 8 Assistant Professors, 4 are 'ad-hoc' and 1 is 'on lien', leaving the University essentially with 3 Assistant Professors to carry the workload of a trimester oriented Undergraduate course and a seminar-oriented LLM programme, not to mention several distance modules.

In grave contrast, Harvard Law School boasts nearly 200 Professors and Lecturers with forbidding resumes, while Oxford University's BCL programme details groups of 8 Lecturers and Scholars headed by a Professor or 2 for each of its 42 study areas. The comparison may be unfair, keeping in mind the fact that both these icons have been teaching the subject for nearly 200 years, but they stand as examples of what is necessary to be truly world class.

Remember also that the annual budgets available to the foreign Universities are far in excess of that afforded to the poor Indian cousin. While large corporate and family endowments (not to mention overseas student fees) bring in millions to fund teaching programmes and libraries at Harvard and Oxford, NLSIU barely survives on the pittance given to it by a few Governmental bodies and the interest earned on endowments for Honorary Chairs. Without a serious consideration in this direction, preferably by inviting Corporate Social Responsibility (CSR) initiatives from leading Indian and international law firms, large corporations and banks, little headway will be made in recruiting deserving teaching talent and in providing for paid research scholarships and residencies.

At the moment, every trimester, a teacher at NLSIU needs to conduct classes on a daily basis through the week for at least one batch of students, evaluate projects, set and correct test papers, conduct viva-

voce and also discharge allied administrative functions. With this being the regimen for nearly 9 months a year, little time is available for research output and publications of any reasonable standard. Understandably, the reputation of the University stagnates and there is little incentive for the faculty members to learn and challenge themselves. If more teachers were to be recruited, it would considerably ease the burden on the existing handful, making academic excellence an attainable goal for each of them.

### *Non-compliance with the Law*

The UGC Regulations of 2010 providing for the minimum standards for appointments and maintenance of standards apply squarely to all Universities including those incorporated by Central or State legislation (Regulation 1.2). Unfortunately, there are several provisions of these Regulations which NLSIU seems to fall foul of, and must address at the earliest:

- Professors may only be those with PhDs who have a minimum teaching experience of 10 years and contributed to the field by designing new curricula and courses. Exceptionally, it may include outstanding professionals with established field reputation which is to be substantiated by credentials (Regulation 4.1.0). In fact, there is a specific prohibition against an individual sans a PhD being appointed as a Professor (Regulation 6.4.8). Nearly half of those referred to as Professors seem to be disqualified on the basis of both sets of criteria.
- Assistant Professors ought to have cleared the National Eligibility Test (NET) or its equivalent, this requirement being suspended for those with PhDs. Barring 2 of the 8 Assistant Professors, none of the others seem to possess such a qualification.
- Teaching posts are supposed to be in a pyramidal structure, with 2 Associate Professors for every Professor in a department, and 2 Assistant Professors for every Associate Professor, and so on (Regulation 12.1). At the moment, there are no clear Departments, and the Professors outnumber both the Associate and Assistant Professors.

In addition, the Common Law Admission Test (CLAT) which is utilized by NLSIU to recruit students allows for the statutory SC/ST reservation quota which is not restricted to the reserved category students of Karnataka. This flies in the teeth of the Constitution Bench decisions in *Marri Chandra Shekhar Rao v. Seth G.S. Medical College*<sup>1</sup> and *Action Committee on Issue of Caste Certificate v. Union of India*<sup>2</sup> which make it clear that State University reservation policies can only extend to the reserved categories from within that State and not from outside. In fact, the decision of the Karnataka High Court in *Lolaksha v. The Convenor, CLAT & Ors.*,<sup>3</sup> had settled the position, but it continues to be honoured in breach.

It is ironic that the very University that is supposed to dispense high learning in the law should eschew it as far as its own administration and admission policies are concerned. If firm, independent steps are to be taken, they can only be with the knowledge that the law is strictly observed and all violations rectified forthwith.

### *Learning the Law*

At the inception of NLSIU, its' founders proudly touted the phrase – “social engineers” – to define the new breed of lawyers that were to be produced from within its fold. Strangely, this ambiguous expression did not lend itself to a happy understanding as to exactly how such an individual was to be created. After having observed the institution for many years, and having been within it for five, one can only presume that a ‘social engineer’ is to be created from hours in libraries poring over dusty tomes, in competing mindlessly for moot courts and high CGPAs, in building glowing CVs on the back of mediocre publications, and in displaying painstaking diligence to conformist thought. Barring the teachers of social studies at the institution, many of whom have been challenging and thought-provoking, the discipline of the law is largely taught in isolation – without any reference to other disciplines or the world around us.

<sup>1</sup> (1990) 3 SCC 130.

<sup>2</sup> (1994) 5 SCC 244.

<sup>3</sup> Judgment dated 10.09.2009 in W.P.18534/2009 (EDN-AD)

Wizened seniors at the Bar often tell their fresh juniors to read and imbibe from the world as much as one can, because it is in all aspects of human activity that the seeds of law are sown. Theatre workshops, literary festivals, social work and sport competitions go a long way in giving life lessons to a law student – a sense of drama, of timing, of delicacy and turn of phrase, of understanding disadvantage and want, of character and context, of being a just winner or a good loser – they all mould a well-rounded personality, which is a greater lesson for a career in law than any textbook can provide.

In not understanding the necessity for this balance between the study of the law and that of its practice, the founders did the institution a great disservice. Extra-curricular activities and avenues remain limited and discouraged, and almost all of it has been a product of student initiative. With a system that relies majorly on classroom lectures and frowns on non-academic extra-curricular activities, the personality of someone young and impressionable can very easily become uni-dimensional. To this, a few balk and rebel, while others try to toe the line. Of course, an equal number of prescient souls would very justifiably look forward to what they had been promised with eagerness. But the questions remain – is it not the responsibility of our institutions to open our eyes to all possible options? Is not the value of a University enhanced by the different directions taken by its own? Would it not be unfair and unimaginative to limit the potential of these children by catering to only some and not the others?

Administrative approaches have also been inconsistent, dictated largely by the philosophy of the Vice-Chancellor of the moment, swinging in a wide arc between initially promoting litigation as a career option to later championing corporate transactions. Even the choice of seminar courses has reflected this ambivalence, without really considering on whether an institution's task is to make the choices or to offer alternatives.

In the midst of all this stands a young boy or girl, barely out of school, hostelled far away from home, buffeted for 5 years on these uncertain seas, to be finally thrown on some unknown shore. Twenty five years on, and several unfortunate incidents later, NLSIU still fails to have fulltime psychological counselors on campus. Young college

students have a number of emotional upheavals both academic and otherwise, which require a ready ear and a professional hand. Without this, the danger of a skewed Social Darwinism is nigh.

### *Apathy in Governance*

Peopled largely by nominees of the Bar Council of India and the State Bar Council, the Executive Council of NLSIU is primarily responsible for the ills that plague the institution. There has been no effort by these political appointees to address these issues, particularly the fall in faculty numbers and the lack of intellectual direction. Even the appointments of Vice-Chancellors has left a lot to be desired, with little attention paid to their administrative capabilities.

In furtherance of their retrograde worldview, the Members of the Bar Council complain that the University which was established to create 'social engineers' is now producing transactional lawyers, completely overlooking the fact that the more careful the transactions, the less likelihood there is of the parties disputing for years in our overburdened courts. Realizing the potential of transactional work with up and coming law firms and corporations, the students themselves sought to invite recruiters on campus to consider hiring them. Strangely, the Vice-Chancellor and much of the administration were discouraging, and it took years for the annual recruitment process to become formal and structured, with a majority of the graduates strengthening the in-house and retainer oriented legal firmament.

A definite step in the right direction would be for the next Vice-Chancellor to be an independent, capable, no-nonsense administrator, who will be in a position to make tough decisions in the interests of the University.

### *A note to clarify*

The object of the present piece is not in any way to besmirch the fine reputation that NLSIU has built for itself. Nor is it meant as a study of NLSIU alone, but more as a mirror of the NLSIU experience for the others that have followed. Much of the criticism here holds true for all the other National Law Universities, and they would do well to avoid the inevitable pitfalls.

There is a lot of good that NLSIU has done, not least of which is to provide a clutch of confident, thinking, questioning lawyers, who

relish the challenges of the professional workplace. It would be appropriate to recall some of its foremost achievers, specifically those that make humanity proud:

- The First Gay Rights Seminar on an academic campus in India was at NLSIU in 1997. In July 2009, the Delhi High Court delivered a path-breaking judgment reading down Section 377 of the Indian Penal Code after 150 years on the statute book. The connection? Six of the lawyers appearing for the Petitioners were from NLSIU, and included the very students responsible for that seminar 16 years ago.
- NLSIU alumni founded the Alternative Law Forum (ALF) in Bangalore in 2000 which deals with human rights, open source and critical research, and have done great work in not only working with and representing grassroots communities, but have also raised awareness on cultural issues hitherto unexplored.
- Conceived by NLSIU graduate and NUJS Professor Shamnad Basheer, the IDIA Project seeks to reach out to poor and underprivileged school children across India and foster in them the knowledge of a career in law, and promising youngsters are personally tutored and financed through the courses. In its third year, more than 40 IDIA scholars are presently in leading law schools across the country.
- InclusivePlanet.Com is the world's largest online tool and social network for the visually impaired, with users from over 80 countries utilizing it on an everyday basis. Its founders are NLSIU alumni who have also set up a Centre to advice, reform and formulate municipal laws in line with the needs of the disabled. One of them, the late Rahul Cherian, was instrumental in drafting WIPO's Treaty for the Visually Impaired.

There would be a hundred other examples, both from NLSIU and elsewhere, which go to show that the National Law Universities of the country continue to provide sanctuary to independent thought and public weal. These institutions have helped create several competent professionals, and our nation's institutions are richer for it. But if they really want to compete at the international level, it is time to get back to the drawing board.