

Article

Preparing Lawyers for Global Legal Practice - A Road Map for Introducing Mandatory Continuing Legal Education in India

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Abstract

Globalization has led to opportunities for legal professionals to engage beyond national boundaries in advising and representing their clients making legal practice a global affair. But the prospect of this global legal practice has met a strong protectionist counter as 'Right to legal practice' in a country has been conventionally right of its citizens only. To this extent the Hon'ble Supreme Court of India in the case of *A.K Balaji v. Bar Council of India* (2018) had held that right to practice of law in India including international law and matters concerning foreign laws should be exclusively limited to Indian citizens. However, some members of the legal and academic fraternity have expressed concerns about the competence of the Indian lawyers to meet the professional demands of global legal practice. It has also been widely canvassed that the restriction on foreign lawyers will cause a serious vacuum and strain on the legal system. In recent years the debate over entry of foreign lawyers have again come into prominence with the introduction of Bar Council of India Rules for Registration and Regulation of Foreign Lawyers and Foreign Law Firms in India, 2022 and the draft bill for amendment of the Advocates Act (2025). Correctness and feasibility of allowing entry of foreign lawyers in India is subject of a separate debate, but in this paper the objective is to analyse the opening up of opportunity for Indian lawyers to engage in the global legal practice and preparing them to encounter its challenges. Introduction of an effective and mandatory system of Continuing Professional Legal Education (CLE) has potential to make Indian lawyers partake this new professional role. CLE is a recognized tool for professional development of lawyers. Its objective is to augment the information, integrity and confidence of lawyer to enhance new skills, knowledge and competence to cope with the changes in the legal order. The paper recommends design of an effective CLE curriculum to strengthen the skills and competence of Indian lawyers for meeting the demands of global legal practice.

Introduction

Economic globalization has made it possible for increased flow of investment, business and economic activities beyond national borders. Every sector of socio-economic activities marks with presence of transnational and global actors. This has paved opportunities for legal and regulatory professionals to engage beyond national boundaries in advising and representing their clients making legal practice a

global affair. However, the classical contours of 'Right to legal practice' have been primarily a nationality-based approach. A debate has evolved whether right to practice of law before a sovereign court should be limited to only its own citizens with strong arguments on both sides.

The Hon'ble Supreme Court of India faced with this specific question in the case of *A.K Balaji v. Bar Council of India* (2018) held that right to practice of law in India including international legal matters and foreign laws should be exclusively limited to Indian citizens. The apex court arrived to this view based on its interpretation of the legal and regulatory framework governing legal practice. However, some members of the legal and academic fraternity have expressed concerns about the competence of the Indian lawyers to meet the professional demands of global legal practice. It has been canvassed that curriculum of legal education and professional training is intrinsically India centric and has negligible exposure to global legal practice. The restriction on foreign lawyers will cause a serious vacuum and strain on the legal system.

Correctness of the *Balaji* decision is subject of a separate debate, this paper considers that the decision has opened an opportunity for Indian lawyers to engage in the global legal practice and encounter its challenges.¹ The road ahead for India lies in improving the standards of its legal education and professional training. Although it is important to improve the standards of legal education for the new entrants to the profession, but this paper focuses on the professional training of person already enrolled and practicing law. The main argument is that introducing an effective system of Continuing Professional Legal Education (CLE) has potential to make Indian lawyers partake this new professional role. CLE is a recognized tool for professional development of lawyers. Its objective is to augment the information, integrity and confidence of lawyer to enhance new skills, knowledge and competence to cope with the changes in the legal order. CLE is already recognized by the regulators of Indian legal profession, but its reach and design is inadequate. The paper after undertaking a survey of CLE best practices recommends design of an effective CLE curriculum to strengthen the skills and competence of Indian lawyers for meeting the demands of global legal practice.

This paper is divided in five sections. It begins by examining the growing demand of transnational legal practice in the aftermath of economic globalization and contents of the contemporary global law and the scope for global legal professionals. In Section Two the paper analyzes the global reforms introduced to meet demand of global practice. In this section the paper provides the global evidences on use of CLE arguably as the most effective tool to meet lawyers continuous and life-long requirement of new knowledge and skills for legal practice. In Section Three right to practice in India is discussed and attention is drawn to the *Balaji* case and the opportunities before Indian lawyers to engage in global legal practice. The Fourth Section highlight the gaps and challenges in meeting global legal practice and argues the way ahead lies in introducing mandatory and compulsory CLE programs. Finally, the paper proposes a brief design and curriculum of a model CLE programs for Indian lawyers after a survey of CLE global best practices. The paper concludes that global experience suggest that effective use of CLE has been the proven path to meet the changing demands in professional legal market. The regulators of Indian legal profession must adopt a comprehensive and mandatory CLE curriculum to make Indian lawyers competent to deliver global legal service.

¹ In 2023 Bar Council of India had introduced the Bar Council of India Rules for Registration and Regulation of Foreign Lawyers and Foreign Law Firms in India, 2022, but the rules have not been implemented.

[I] Globalization of legal practice: Birth of Transnational Lawyers

The role of lawyers in society has undergone major transformation in the last thirty years. Over the years the nature of legal services has undergone transformation, from being merely engaged in courtroom based litigious practice, the functional dimension of lawyers has got significantly widened. The globalization of economy has also brought in the process of globalization of legal knowledge and legal practice. Today lawyers are part of policy planning, business advisor, negotiator, arbitrator, mediator, lobbyists, in addition to their traditional functions of counseling and legal representation.

New emerging areas of regulatory governance such as intellectual property rights, environmental concerns, cyber security, data protection, telecommunication and broadcasting issues etc. have compelled the legal practitioners to engage in international laws and cross-border legal issues. Similarly in areas of public law such as issues relating to rule of law, human rights, privacy and rights-based discourses, the domestic courts are looking towards other comparable jurisdictions in search of progressive interpretation of laws so that the rights of the citizens can be better protected. In an ever-transformative society, the legal professionals are required to assume the status of '*glocal*' which requires them to provide globalized services at the domestic level.²

The scope of global legal practice includes four major legal services such as (i) Legal advisory services, (ii) Legal Representational services, (iii) Legal arbitration and conciliation/ mediation services and (iv) Legal documentation and certification services.³ To meet with the challenges of providing competent legal services in a globalized environment different countries have adopted different approaches, Some countries have preferred to integrate foreign lawyers and law firms within their domestic system by imposing different eligibility criteria, while some states have allowed foreign lawyers to visit for a temporary period and advise clients exclusively on laws of their own country, and there are few other states which prohibit entry of foreign lawyers.⁴

A survey into the position on entry of foreign lawyers in different jurisdictions clearly indicates that legal practice is largely considered to be within the exclusive domain of local lawyers under the supervision of local bar. However, to meet the contemporary needs some countries have allowed limited and very restricted scope of practice for foreign lawyers.⁵ Some of these countries have permitted through limited licenses to foreign lawyers to offer their legal services whereas some other countries have prescribed for short-term services through 'fly-in, fly-out' assignments.⁶

Several restrictions have been imposed by different countries in the nature of prohibitions on the establishment of foreign law firms, restrictions on joint ventures between local and foreign law

² John Varghese, Global Legal Education and India – A Blueprint for raising Indian Legal Education to Global Standards, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1728451 (visited on 10.02.2025)

³ WTO, Communication from Australia, Canada, Chili, The European Communities, Japan, Korea, New Zealand, Singapore, Switzerland, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, and the United States, TN/S/W/37 S/CSC/W/46, 24 February 2005, Council for Trade in Services, Special Session, Committee on Specific Commitments, <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/S/CSC/W46.pdf&Open=True> (visited on 27.3.2025)

⁴ Wayne J. Carroll, Liberalization of National Legal Admissions Requirements in the European Union: Lessons and Implications, 22 PENN St. Int'l L. Rev. 563 (2004), p 589

⁵ John Flood, Legal Education in the Global Context Challenges from Globalization, Technology and Changes in Government Regulation, University of Westminster School of Law Research Paper No. 11-16 Legal_Education_in_the_Global_Context_Challenges.pdf (visited on 10.2.2025)

⁶ WTO, Council for Trade in Services, Special Session, Communication from Australia, S/CSS/W/67, 28 March 2001

firms, prohibition on the practice of home-country laws, restrictions on employment of local lawyers, restriction on the sharing of fees arrangement between local and foreign law firms, lack of reciprocity in recognition of law degrees and qualifications, unreasonable terms for licensing, complicated regulatory procedure etc.⁷

Hence unrestricted market access to foreign lawyers based on the principles of equality with local lawyers is almost non-existent, even though liberalization of legal practice has been in discussions for long. In the absence of easy and cost-effective access to foreign lawyers, it is necessary to look for alternative mechanisms whereby competent legal services on transnational matters can be provided at the domestic level. The need to develop competent legal practitioners in areas of transnational laws through alternative inward arrangements has become essential for Nation States.

[II] Reforms introduced by nation states to meet the demand of global legal practice

Many countries have restricted the right to legal practice to its citizens only and have totally prohibited entry of foreign lawyers or law firms. They have introduced reforms in their formal legal education and profession to meet the demand of global legal practice at the national level. These global approaches to evolve alternative inward arrangements to strengthen global legal practice has been multifaceted. It has been argued by legal educators that global legal practice “brings to the fore different theories of law, of different legal traditions, embedded in different cultures, with different professional roles for the practitioners”⁸ hence the legal education curriculum and pedagogy has to accommodate these needs. In the previous two decades it has been observed that legal education is undergoing a sea of changes globally wherein now the curricular focus is shifting to training students into national, international and interdisciplinary subjects. Imparting skills (e.g., negotiating transnational contracts, client-consultation, understanding psychology and working in cross-cultural dimension) education is an integral part of the contemporary legal education curriculum. The law schools are also trying to forge global cooperation with their counter-parts in other nations and establish student & faculty exchange programs, joint or dual degree programs, summer schools abroad and promotion of funding and grants in transnational collaborative research and learning projects.

Also, another common professional reform has been introduction of effective system of Continuing Professional Legal Education (CLE). CLE is deemed to be the effective tool for the purpose of ensuring qualitative growth of legal practitioners’ post-enrolment in the twenty-first century. It is considered to be a viable and sustainable solution of this challenge. CLE generally implies ‘*professional education of lawyers after the admission to the bar*’.⁹ The mission of CLE is to augment the information, integrity and confidence of advocates in a continuing basis to compete at international levels.¹⁰

Rochelle and Payne justifying the need of CLE for lawyers have observed “*When a citizen is faced with the need for a lawyer, he wants, and is entitled to, the best-informed counsel he can obtain. Changing times produce changes in our laws and legal procedures. The natural complexities of law require continuing intensive study by a lawyer if he is to render his clients a maximum of efficient*

⁷ Ibid

⁸ Stephen C. Hicks, Global Alternatives in Legal Education for a Global Legal Profession, *Parallax: A Journal of International Perspectives*, Vol. 3, p. 47, 2006

⁹ Prashant Singh Gaur v. State of Uttar Pradesh, WP No. 9925 (MB) of 2010

¹⁰ Ibid.

service. And, in so doing, he maintains the high standards of the legal profession; and he also increases respect and confidence by the general public.”¹¹

CLE enhance the capacity of the members of the bar for ensuring better dispensation of justice. As officers in administration of justice, it is the responsibility of every legal practitioner to abide by the duty of competence. Importance of imparting CLE is now recognized in legislations governing professional responsibility and conduct of legal profession in almost every jurisdiction of the world. The rules express in explicit terms that obligations of lawyers to act with competence and care. The rules mandate that lawyers to compulsorily undertake CLE and constantly update their skills and knowledge to competently perform their duties in this dynamic and fast changing legal world. CLE has become part and parcel for meeting the needs of continuous professional developments in these jurisdictions. A brief survey of the contemporary developments in legal professional in some selected jurisdictions will make it clear.

United Kingdom

In the UK, CLE is referred to as Continuing Professional Development (CPD).¹² CPD are mandatory for all lawyers, including both barristers and solicitors. Under the Code of Conduct as laid down by the Bar Standards Board (BSB), barristers are required to undertake CPD.¹³ For the newly qualified practitioners during their first 3 years of practice are required to obtain 45 credits of CPD per year. This must include a minimum of 9 credit points for advocacy training and 3 credit points for ethics which are part of the New Practitioners' Programme. All other barristers are required to obtain 12 credits per year as part of the Established Practitioners' Programme. The solicitors and all other registered European lawyers, working in England and Wales, and work for 32 hours or more per week are required to obtain a minimum of 16 credits per year. The lawyers are required to record all their training activities in their individual training record and register them with the Law Society of England and Wales. The Solicitors Regulation Authority requires the legal practitioners to individually assess their training needs and identify the activities within the CPD schemes which is likely to fulfil their training and developmental needs.¹⁴

United States

The responsibility of maintaining standard of legal profession in US is vested on the judiciary of each States. Law graduates after satisfactorily meeting the degree requirements are required to appear for bar examinations for obtaining license to practice law in their respective State jurisdiction of practice. Post enrolment in majority of US States CLE is mandatory. In states with mandatory continuing legal education, attorneys receive credits for attending lectures and seminars taught by respected attorneys, judges, and scholars. The courses cover a variety of topics involving virtually all areas of practice. The Code of Professional Responsibility adopted by every state maintains that lawyers must

¹¹ William J. Rochelle & Har-vey O. Payne, *The Struggle of Public Understanding*, 25 TEXAS B.J. 109, 160 (1962).

¹² CPD, What is Continuing Professional Development? <https://www.cpduk.co.uk/explained> (visited on 10.2.2025)

¹³ Bar Standards Board, BSB Handbook, Version 4.3, <https://www.barstandardsboard.org.uk/static/f0d114af-9c5a-4be4-9dbffa9f80b1e47f/8c50a665-79ee-4bfa-b36eb5c138798d72/Part-2-Code-of-Conduct18092019092228.pdf> (visited on 10.2.2025)

¹⁴ Solicitors Regulation Authority, <https://www.sra.org.uk/> (visited 19.2.2025)

remain proficient in their work.¹⁵ Continuing legal education is one way to achieve professional competence. In 2017, the ABA amended its Model Rule for Mandatory CLE (MCLE) credits, setting an example for licensing jurisdictions to use.¹⁶ The MCLE Model Rule requires an average of 15 credit hours per year over the course of the reporting period to be undertaken by every lawyer.¹⁷ Those credits must include three specific categories: (1) an average of one hour of ethics and professionalism credit per year; (2) an hour of mental health and substance abuse disorder credit every three years; and (3) an hour of diversity and inclusion credit every three years. The Model Rule provides various exemptions that would excuse attorneys from completing the MCLE requirements. Exemptions apply, for instance, for non-practicing attorneys with inactive licenses or those on retired status. But in adoption of the rule State jurisdictions have diverged from the Model Rule, resulting in MCLE requirements differing from each other in a number of ways, including, for example, the quantity of credit hours and the period over which those credits may accrue. In the US failure to abide by a State's MCLE requirements can, depending on the state, result in a range of penalties from fines to suspension from practice of law.¹⁸

Canada

CLE is referred to as Continuing Professional Development (CPD) in Canada.¹⁹ Under the Canadian CPD system lawyers are required to undertake at least 12 hours of study each calendar year of which 3 hours will be devoted to topics relating to ethics, professionalism and/or practice management. The Law Society of Upper Canada undertakes the responsibility to teach courses on ethics, professionalism and practice management as per the CPD requirement free of cost.²⁰ Credits are granted through a number of ways like-credit is based on actual time in attendance at a course, participating in 'real time' online courses, streaming videos, web-based conferences, telephonic conversations, etc., and two or more lawyers or paralegals reviewing a previously recorded course. Credit can also be obtained through participation in a registered course from a university or college, including distance education programmes, undertaking teaching assignments, mentoring or supervising a paralegal field placement, writing or editing of books or articles, participating in study groups or educational components of bar and law association meetings, etc.

Germany

In Germany, there is no statutory obligation on lawyers to undertake any formalized CLE programme. But under Section 43a BRAO (Federal Code of the Legal Profession) there is a professional obligation

¹⁵ Congressional Research Service, Continuing Legal Education: What's Required and Opportunities for Members and Staff to Satisfy those Requirements, Updated March 25, 2019, <https://crsreports.congress.gov/product/pdf/LSB/LSB10278#:~:text=In%202017%2C%20the%20ABA%20amended,course%20of%20the%20reporting%20period>. (visited 2.3.2025)

¹⁶ ABA Model Rules, ABA MCLE Model Rule Implementation Resources <https://www.americanbar.org/events-cle/mcle/modelrule/> (visited on 3.3. 2025)

¹⁷ Ibid

¹⁸ Continuing Legal Education: What's Required and Opportunities for Members and Staff to Satisfy Those Requirements, March 25, 2019 (<https://crsreports.congress.gov/product/pdf/LSB/LSB10278>)

¹⁹ CMC Canada, Continuing Professional Development (CPD), <https://www.cmc-canada.ca/cpdpoints> (visited on 2.3.2025)

²⁰ Law Society of Ontario, <https://lso.ca/home> (visited on 2.3.2025)

on every German lawyer to update his professional expertise.²¹ But for the purposes of being designated as Fachanwalt (a specialist lawyer), a lawyer needs to take part in advanced training for a minimum of 10 hours per year under Section 15 Fachanwaltsordnung. Lawyers can obtain specialization in 20 areas of practice such as criminal, family, property, inheritance, administration and labour.

Singapore

The Singapore Institute of Legal Education has been created under the Legal Profession Act to maintain and improve the standards of legal education in Singapore.²² The mandatory CLE scheme was introduced on April 1, 2012. Under the Legal Profession (CPD) Rules 2012 and the Guidelines on the CPD scheme 2012 all advocates and solicitors admitted to the Singapore Bar on or after January 2, 2009 and holding a license to practice law for more than five months are required to comply with the mandatory CPD activities.²³

CLE is the way-out to ensure greater sense of integrity and confidence to adopt new skills of the profession and deal with the changes in the legal system. CLE can provide a level of contemporary and updated knowledge to the legal practitioners engaging in multi-jurisdictional legal practice.²⁴ In most of the countries the formal legal education imparted in law schools largely caters to the domestic needs and doesn't focus on the skills necessary to deal effectively with transnational legal practice.²⁵ Majority of legal practitioners do not have the means or the capacity to develop these skills and knowledge independently and need specialized training. The cross-jurisdictional specialized curriculum of CLE program creates the opportunities for domestic lawyers acquire the knowledge and skills integral to transnational legal practice. Also, CLE can play a crucial role in ensuring continuous knowledge expansion and professional improvement.²⁶

[III] Right to legal practice and entry of foreign lawyers in India

Legal profession in India is deemed to be the second largest in the world.²⁷ The Advocates Act, 1961 is the governing legislation relating to regulation of the legal profession in India. The legal profession is governed by an unified national independent regulator known as the Bar Council of India (BCI).²⁸ BCI is entrusted with the responsibility to regulate the working of the legal profession²⁹ by laying down the standards of professional conduct and etiquette, exercising disciplinary jurisdiction over

²¹ Federal Ministry of Justice, Federal Code for Lawyers (Bundesrechtsanwaltsordnung – BRAO) https://www.gesetze-im-internet.de/englisch_brao/englisch_brao.html (visited on 2.3.2025)

²² Singapore Institute of Legal Education, <https://www.sile.edu.sg/> (visited on 2.3.2025)

²³ Singapore Statutes Online, Legal Profession (Continuing Professional Development) Rules 2012, <https://sso.agc.gov.sg/SL/LPA1966-S115-2012?DocDate=20170914> (visited on 1.3.2025)

²⁴ Wayne J. Carroll, Liberalization of National Legal Admissions Requirements in the European Union: Lessons and Implications, 22 PENN St. Int'l L. Rev. 563 (2004)

²⁵ Ibid, p 589

²⁶ Andrew Boon, Continuing Professional Development in Ethics and Professional Conduct for Solicitors, Solicitors' Regulation Authority, 2011

²⁷ Law Commission of India, Working Paper on the Review of the Advocates Act, 1961, <https://lawcommissionofindia.nic.in/working%20paper%20on%20advocates%20act,%201961.pdf> (visited on 10.02.2025)

²⁸ Yashomati Ghosh, Legal Ethics and the Profession of Law, LexisNexis, 2014, p 82

²⁹ O.N. Mahindroo v. The Bar Council of Delhi AIR 1968 SC 888

the enrolled advocates and by safeguarding the rights, privileges and interests of the advocates.³⁰ Under the prescribed rules an Indian citizen can be admitted as an advocate if he is above the age of 21 years and has obtained a degree in law from an university recognized by the BCI.³¹ The citizenship criteria is an essential legislative requirement for the purpose of admission and enrolment to the Indian bar.³² After enrolment the advocate has the right to practice throughout the territories of India before all courts, tribunals and other authorities, including the Supreme Court of India.³³ He has the legal right to practice all aspects of the profession of law in India.³⁴ But the BCI can recognize foreign lawyers and admit them as advocates on the basis of equal reciprocity and mutual recognition of law degrees between India and the other country.³⁵ At present there are no foreign country which has given at par recognition to the Bachelor of Law degree from an Indian university for the purposes automatic admission of an Indian citizen to their bar, hence BCI has not granted permission to foreign lawyers for the purpose of enrolment to the Indian bar.³⁶ Conditional and limited permissions for legal practice given by few of the other countries to foreign lawyers do not fulfill the criteria of equal reciprocity. Foreign lawyers have not been permitted entry by the Indian regulators.³⁷

This prohibitive approach of the Indian regulators towards foreign lawyers were challenged before the Indian judiciary in a series of cases. The first case was filed before the Bombay High Court in the matter of *Lawyers Collective v. Bar Council of India*.³⁸ The main argument made in favour of foreign law firms was that a distinction should be made between litigious and non-litigious parts of legal practice, and non-enrolled legal practitioners, including foreign lawyers should be permitted to engage in non-litigious works.³⁹ The Bombay High Court held that under the Advocates Act a lawyer has to be an Indian citizen for the purpose of enrolment with the Bar Council to be able to practice the profession of law as an advocate and foreign lawyers cannot be permitted to practice even in non-litigious legal matters such as drafting, counseling, negotiations etc.

The second case on the issue of eligibility of foreign lawyers was brought before the Madras High Court in *A.K. Balaji v. The Government of India*⁴⁰ where the core argument was to deliberate whether a foreign law firm without establishing any liaison office in India, could visit the country for a temporary period for the purpose of advising their clients on foreign law and leave thereafter. The Madras High Court upholding the prohibition on legal practice imposed on foreign lawyers and law firms, made the exception that foreign lawyers could visit India for a temporary period on 'fly in and fly out' basis for the specific purpose of giving legal advise to their Indian clients about foreign laws, foreign jurisdictions and international legal issues. It was also made permissible for foreign lawyers to come to India on matters relating to international commercial arbitration.

³⁰ Advocates Act, 1961 Section 6 and 7

³¹ Ibid, Section 24

³² *V. Sudeer v. Bar Council of India* AIR 1999 SC 1167

³³ Advocates Act, 1961 Section 30

³⁴ Supra Note 29, p. 118

³⁵ Supra Note 33, Section 24(1)(a)

³⁶ In 2023 Bar Council of India has introduced the Bar Council of India Rules for Registration and Regulation of Foreign Lawyers and Foreign Law Firms in India, 2022, but the rules have not been implemented. Prior to that in 2016 an attempt was made to prepare draft rules BCI Rules for Registration and Regulation of Foreign Lawyers and Law Firms in India, for liberalizing the legal profession, but it did not materialize.

³⁷ AIR 2012 Mad 124, MANU/TN/0192/2012

³⁸ MANU/MH/1467/2009

³⁹ The interpretation of 'practice the profession of law' was made by the Supreme Court in Harish Uppal case.

⁴⁰ MANU/MH/1467/2009

Finally, the issue of eligibility of foreign lawyers to engage in legal practice in India was put to rest by the Supreme Court of India under the existing provisions of the Advocates Act when an appeal was filed against the Madras High Court decision in the A.K. Balaji case.⁴¹ The Apex Court recognized the non-commercialization of the legal profession and the ethical norms on the Indian lawyers as unique features of the nobility of the legal profession in India.⁴² It re-emphasized that under the existing laws only Indian advocates have the legal right to practice law in India, and no other individuals, including foreign lawyers can engage in legal practice.⁴³ Further, the court rejected the ‘fly in and fly out’ concept and held that foreign lawyers could not be permitted to engage in any form of temporary legal practice, except in international commercial arbitration.⁴⁴

Although, it has been argued by the respondent foreign law firms before the Court that opening its legal services market would be in its advantage because it will allow international clients to access the international market of world-class services, increases creativity and innovation, will cause the domestic legal services market to grow, and the competition would increase the legal profession qualitatively and make it more effective.⁴⁵ But the Court was unwilling to accept these reasons weighed against the argument of shrinking opportunities for India lawyers, brain drain and the possibility of India firms being pushed out of the legal services market.⁴⁶ The Court was concerned with the negative experience in Singapore and other South Asian and African jurisdictions where post liberalization of the legal service market had adversely affected the domestic law firms and local lawyers.⁴⁷

The *Balaji* decision can be criticized for being inward looking and from a global perspective this decision defeats the obligations under GATS, but on a positive side this judgment can be considered as creating a new opportunity for Indian lawyers to look beyond domestic legal practice. Absence of foreign lawyers would imply creation of new opportunities for legal practice in the area of transnational legal services for Indian advocates. Appreciating the need for protectionist approach, Shri Anil Diwan, Senior Advocate Supreme Court of India had observed that allowing the entry of foreign lawyers and law firms would adversely affect the legal and political systems of host countries which are nascent democracies’ and the growth of legal profession in these emerging economies.⁴⁸

⁴¹ Bar Council of India v. A.K. Balaji MANU/SC/0239/2018

⁴² Some of the ethical norms are not applicable to lawyers from other jurisdictions such as Indian lawyers are prohibited from not only solicitation but also all forms of service related advertisements, including charging of fees based on the outcome of a case or contingency fees. Indian lawyers cannot be party to any form of funding of litigation nor can they enter into any form of sharing of fees arrangement with non-lawyers.

⁴³ Indian advocates have the exclusive right to engage in both litigious and non-litigious practice of law, including making appearance in courts, giving of opinions, drafting instruments, participation in legal conferences and discussions etc.

⁴⁴ Supra Note 41, para 42 - 43

⁴⁵ Writ Petition Filed Against 31 Foreign Law Firms and an LPO – Immigration Law Violations Also Alleged, BAR & BENCH (Mar. 22, 2010), <http://www.barandbench.com/index.php?title=writ%20Petition%20filed%20against%2031%20foreign%20law%20firms%20and%20an%20LPO%20%E2%80%93%20Immigration%20law%20violations%20also%20alleged&page=brief&id=597&gn=0>. (visited on 10.2. 2025)

⁴⁶ Arno L. Eisen, Legal Services in India: Is there an Obligation Under the GATS or are There Policy Reasons For India to Open its Legal Services Market to Foreign Legal Consultants?, 11 Rich. J. Global L. & Bus. 273 (2012)

⁴⁷ Cf. Weng Meng Meng, President’s Message, Foreign Lawyers in Singapore: Any Future for Singapore Law Firms?, SINGAPORE LAW GAZETTE, [http:// www.lawgazette.com.sg/2012-03/](http://www.lawgazette.com.sg/2012-03/) (visited on 10.2. 2025)

⁴⁸ Law Commission of India, Working Paper on the Review of the Advocates Act, 1961, <https://lawcommissionofindia.nic.in/working%20paper%20on%20advocates%20act,%201961.pdf> (visited on 10.2. 2025)

The IBA had also acknowledged the needs of individual nations to determine on the issue of cross-border legal practice based on their system of laws, historical factors and level of economic development.⁴⁹ The Supreme Court in the *Balaji decision* had also recognized the need of Indian lawyers to engage in transnational legal practice within the domestic walls, since practice of law includes practice of foreign laws.⁵⁰

The present challenge for the legal community is to equip some of the young legal practitioners to be part of the global community of transnational lawyers and provide competent services to their clients about the fundamental norms of international legal practice in areas such as protection and management of intellectual, business and industrial proprietary rights, environmental regulations, global financial and commercial law practices, anti-corruption guidelines etc. to name a few. With Indian corporates and citizens frequently engaging in transnational activities it is necessary to train Indian lawyers with the basic fundamentals of international law and foreign system of laws. The Law Commission had also observed that Indian lawyers would have to “*develop professional expertise on the laws of the home country of the company or the corporate body concerned as well*”.⁵¹

Post *Balaji* the responsibility of the Indian legal fraternity has increased many folds with the need to provide Indian clients and foreign clients with legal services comparable to the global best practices. At present there are only a handful of law firms working in the few large metropolitan cities which provide competent legal services to their clients in the area of business laws, international investment and commerce, IPR issues etc. The vast majority of lawyers working in different high courts and subordinate courts in the country are not equipped to provide competent legal services in niche business and transactional areas. The Indian Supreme Court has protected the internal market in the legal services sector for the time being, but it is necessary that members of the legal profession should consider this protective system as an opportunity to develop the quality and standards of legal services from a globally competitive perspective.

Last year the Bar Council of India had framed Rules for Registration and Regulation of Foreign Lawyers and Foreign Law Firms in India, 2022 permitting foreign lawyers limited scope of legal practice in the area of foreign law, international law and international arbitration based on the principles of reciprocity.⁵² Recently a draft bill to amend the Advocates Act have also been proposed to overcome the restrictions on the entry of foreign lawyers. In such circumstances it has become all the more necessary to equip the Indian lawyers with the necessary skills and knowledge to engage in the competitive world of global legal practice.

[IV] Reforming the Indian legal profession to meet the demands of global legal practice

⁴⁹ IBA Statement of General Principles for the Establishment and Regulation of Foreign Lawyers, IBA June 1998, <https://www.ibanet.org/MediaHandler?id=CE283F20-6D78-40D2-8F6F-50285D37A527> (visited on 10.2. 2025)

⁵⁰ Supra Note 41, para 37 - 41

⁵¹ Law Commission of India, Working Paper on the Review of the Advocates Act, 1961, p.60 <https://lawcommissionofindia.nic.in/working%20paper%20on%20advocates%20act,%201961.pdf> (visited on 10.2. 2025)

⁵² Bar Council of India Notification, Bar Council of India Rules for Registration and Regulation of Foreign Lawyers and Foreign Law Firms in India, 2022, The Gazette of India, 10th March, 2023, available at https://www.livelaw.in/pdf_upload/bar-council-of-india-rules-for-registration-and-regulation-of-foreign-lawyers-and-foreign-law-firms-in-india-2022-463531.pdf [visited on 1.3.2025]

The Rules have been further amended on 13.05.25 through Gazette Notification.

India has one of the largest legal markets with number of licensed legal professional working in the delivery of legal service. In 2011 the number was around 1.3 million,⁵³ but the number has increased to more than 2 million in 2023.⁵⁴ According to official records BCI there are approximately 1721 recognized law schools in 2022 in India, adding thousands of fresh graduates every year.⁵⁵ BCI estimates the average growth of licensed legal professional at a rate of 4 percent in five years between 2007-11.⁵⁶ Majority of these lawyers are self-employed and litigates before courts and tribunals. There are several law firms in India operating mostly from the major commercial centers and are principally engaged in providing legal advice on transactional legal services in commercial matters to corporate clients. Also, lawyers have been employed by industry to work in-house.⁵⁷ Further, in recent years growth of legal process outsourcing firms (Legal-Tech) has received a great amount of attention and lawyers are employed in these firms.⁵⁸

As discussed in the preceding section the legislation governing legal profession in India⁵⁹ has established BCI as the sole regulator for the profession and legal education in India.⁶⁰ Accordingly, BCI recognizes either a three-year LL.B. or an integrated five-year LL.B. degree obtained from any BCI recognized law school for the purpose to seeking enrollment to bar.⁶¹ There are principally three types of law schools in India. The first type is the law departments established in central or state funded universities or institutions. The second is the specialized single discipline law universities established by legislations passed by state legislatures called the National Law Schools. There are currently 26 such law schools.⁶² The statutes establishing these law schools have given them an autonomous status and they are mainly funded from the tuition fees collected from the students. The chancellor of these law schools is either Chief Justice of India or Chief Justices of the respective State High Courts. Except one at New Delhi the admission in these law schools is made by a common entrance test conducted by the consortium of NLUs.⁶³ The last category is private law schools having recognition and affiliation from any state or central university, or law schools in private universities established by legislation of state or center. These types of institutions are totally funded by private trust or other private sources.

⁵³ Lawyers in Indian States, Legally India, https://www.legallyindia.com/wiki/Lawyers_in_India_by_state (visited on 10.2. 2025)

⁵⁴ Latest News, Only 20 lakhs Advocates are registered in India – Law Ministry, 13 August 2023, <https://www.latestlaws.com/latest-news/breaking-only-20-lakhs-advocates-are-registered-in-india-law-ministry-203917#:~:text=Ministry%20of%20Law%20%26%20Justice%20informed,Uttar%20Pradesh%20%E2%80%93%200400016%20Lawyers> (visited on 2.2.2025)

⁵⁵ Ministry of Law and Justice, Unstarred Question No. 3892, March 25, 2022, <https://legalaffairs.gov.in/sites/default/files/AU3892.pdf> (visited on 2.3.2025)

⁵⁶ Supra Note 82

⁵⁷ Krishnendu Sen & Ritankar Sahu, Need for FLCs in India with Respect to Honoring GATS, 6 J. INT'L TRADE L. & POL'Y 25, 27 (2007)

⁵⁸ Rating India as the most attractive location in the world for outsourcing in 2009 by e Global Services Location Index (GSLI) 2009 Report, A.T. Kearney, <http://www.atkearney.com/index.php/Publications/global-services-location-index-gsli2009-report.html#> (visited on 10.2. 2025)

⁵⁹ The Advocates Act of 1961

⁶⁰ The Bar Council of India, Legal Education, <http://www.barcouncilofindia.org/about/legal-education/#:~:text=The%20Bar%20Council%20of%20India%20visits%20and%20inspects%20Universities%20Flaw,and%20the%20State%20Bar%20Councils> (visited on 10.2. 2025)

⁶¹ BCI Rules on Standards of Legal Education and Recognition of Degrees Rules, 2008, <http://www.barcouncilofindia.org/about/legal-education/education-rules-2008/> (visited on 10.2. 2025)

⁶² Edugraph Colleges, List of NLUs in India, <https://www.telegraphindia.com/edugraph/colleges/ranking/national-law-university-nlus/55> (visited on 2.2. 2025)

⁶³ Consortium of NLUs, <https://consortiumofnlus.ac.in/> (visited on 2.2.2025)

These Centre of Legal Education primarily focus on creating competent law graduates who are about to enter the profession.

India has emerged as a major global economic force, especially in the services sector and continues to attract large amounts of foreign direct and indirect investment. It is equally a reality that globalization of trade and business in India has led to a growing demand for legal advice that transcends the borders of one jurisdiction.⁶⁴ Several international law firms with offices around the world that provide their clients with legal services for all their international ventures are interested to enter into the Indian legal service market by various arrangements with Indian law firms.

The nature and character of the emerging global legal practice that the clients especially the transnational and globalized entities require is very unique, specialized and require highly trained and skilled legal resources. The opening up of the legal services market in a limited way would have facilitated the international transactions, as there would have been presence of international law firms that commands vast resources of legal professionals and the know-how of international law. In the absence of foreign lawyers, the Indian legal professional would have to advice and represent clients on foreign, international, and third country law problems arising in transnational transactions.⁶⁵ This presents a crucial challenge for the 2 million existing lawyers to meet up to the demands of global legal practice.⁶⁶

The quality and competence of majority of the Indian legal professionals have often raised questions about their adequacy to match the requirements of global legal practice. The average quality of the Indian Bar is not satisfactory to meet the demand of the global legal practice currently. Quality in Indian legal education is also a problem.⁶⁷ The National Knowledge Commission recommended drastic changes in the curriculum, pedagogy and skills enhancement.⁶⁸ Needless to say, steps to reform the curriculum of legal education are under way and the NLUs are the pioneer in this reform process. But the same will not help the 2 million currently enrolled legal professionals in India. It is equally critical to train a sizable proportion of them to the specialized knowledge, sophisticated skills and culture of global legal practice.

It is evident from the observations of the comparative position in other countries that CLE programs have become a globally recognized means to meet the continuous and sustained demands of evolving professional knowledge and skills for lawyers. Therefore, for the 2 million enrolled advocates of India there is hope to survive with the challenges of global legal practice and makeup for the gaps in their knowledge and skills by attending the CLE programs designed for enrolled advocates.

⁶⁴ Douglas Wong, India's 'Not For Sale' Legal Market Draws U.S., U.K. Law Firms, BLOOMBERG NEWS (June 16, 2009), <http://www.bloomberg.com/apps/news?pid=20601109&sid=AHz8zYy8.Vdg> (visited on 10.2. 2025)

⁶⁵ Zach Lowe, Still No Passage to India for Foreign Law Firms, THE AMLAW DAILY (June 16, 2009), <http://amlawdaily.typepad.com/amlawdaily/2009/06/waiting-on-india.html> (visited on 10.2. 2025)

⁶⁶ IBA, Communication to the World Trade Organization on the Suitability of Applying to the Legal Profession the WTO Disciplines for the Accountancy Sector 2003 https://www.wto.org/english/tratop_e/serv_e/workshop_march04_e/sess3_wto_resolution_tery_e.pdf (visited on 10.2. 2025)

⁶⁷ Krishnendu Sen & Ritankar Sahu, Need for FLCs in India with Respect to Honoring GATS, 6 J. INT'L TRADE L. & POL'Y 25, 27 (2007)

⁶⁸ Baseline for the Working Committee on Legal Education, NATIONAL KNOWLEDGE COMMISSION, <http://www.knowledgecommission.gov.in/downloads/baseline/legal.pdf> (visited on 10.2. 2025)

Embracing mandatory CLE is need of the hour for India. The regulators of legal profession require to introduce reforms to necessitate this process of change.⁶⁹

The CLE for Indian lawyers has to focus on training them effectively to face the challenges and contemporary issues in transnational and global practice. The aim of the CLE programs must not be to create individuals who can practice law in a number of jurisdictions, but to create lawyers who are comfortable and skilled in dealing with the differing legal systems and cultures that make up our global community while remaining strong in one's own national legal system.⁷⁰ The learning outcomes must be designed to achieve goals that helps to bridge the existing skills and knowledge gaps and transform the lawyers working in the local courts to a practitioner equipped with professional abilities to deal with laws of different jurisdictions and functioning of the transnational legal environment.⁷¹

[V] CLE curriculum to prepare Indian lawyers for global legal practice- A proposal

Law and legal processes are dynamic and evolving constantly to match with the progress of human society and its economic, technological and cultural changes. Therefore, legal education should be also dynamic and continuing process. The cognitive teaching-learning in law schools acquired by individuals before their entry into the profession represents a minuscule percentage of the actual knowledge and skills that a lawyer requires to pursue his carrier in law. Also, at that point majority of the knowledge and professional skills that are acquired is in an abstract sense. The individual has a very limited opportunity to the actual working realities of the legal profession. The actual share of lawyer's learning happens after joining the profession. This phase of his learning is a contextual learning wherein he is exposed to the actual legal setting, its procedures and the fundamental skills and values essential to perform his profession duties.⁷²

The task force established by American Bar Association in 1990 to examine and recommend measures for narrowing the gap between profession and legal education after examining the process by which lawyering skills and professional values are acquired: before law school, during law school and after law school emphasized that professional education for lawyers has to be a continuum attempting to ensure meeting the professional development need at all stages of their careers. According to the report the first phase is before entry to the profession where a lawyer acquires knowledge by formal legal education imparted by law schools. The subsequent phases of his legal education transpire by experiential and reflective method acquired from practice and complimented with the CLE aimed to constantly imparting new knowledge and skills.⁷³

Several literatures discussed in the foregoing parts have emphasized the importance of CLE for lawyers especially in the context of emerging transnational practice, but still CLE has not received much attention in India. Some in-person professional development programs are underway currently organized by the professional bodies of lawyers, law-tech firms, online entrepreneurs, corporate law

⁶⁹John Flood, *Legal Education in the Global Context Challenges from Globalization, Technology and Changes in Government Regulation*, University of Westminster School of Law Research Paper No. 11-16 *Legal_Education_in_the_Global_Context_Challenges_f.pdf* (visited on 10.2. 2025)

⁷⁰Wayne J. Carroll, *Liberalization of National Legal Admissions Requirements in the European Union: Lessons and Implications*, 22 *PENN St. Int'l L. Rev.* 563 (2004)

⁷¹Baseline for the Working Committee on Legal Education, NATIONAL KNOWLEDGE COMMISSION, available at <http://www.knowledgecommission.gov.in/downloads/baseline/legal.pdf> (visited on 10.2. 2025)

⁷²Report of the Task Force on Law Schools and the Profession: *Narrowing the Gap, Legal Education and Professional Development—An Educational Continuum* (Chicago, 1992)

⁷³Supra Note 71

firms and academic institutions, but they are not systematic, sufficiently visible, expensive and accredited properly. There are certain specific reasons for the same. *Firstly*, there is no compulsory obligation for legal professionals in India to undertake any specific credit hours of CLE like all other major jurisdictions. Unlike code of professional bodies of other countries, the BCI rules applying to lawyers in India don't impose any fine or penalty for not undertaking any skill development or CLE programs post enrolment to the bar. *Secondly*, although to ensure continuing judicial education judicial academies have been established at national and state level in India⁷⁴, but there is no such institution for lawyers. Currently, only some isolated programs e.g. seminars, workshops or conferences are being organized by the bar councils, bar associations and other professional bodies for lawyers. Participation in these programs is voluntary. The programs are also not adequately advertised and the takers of these programs are far less. *Thirdly*, many CLE programs have been introduced by corporate law firms, legal-tech platforms and academic institutions in both offline and online medium.⁷⁵ However their content and training methods are inconsistent and not always practice driven. Visibility of this program are also not sufficient. Majority of them have failed to penetrate the mass lawyers base as its takers. The online CLE programs conducted by legal-tech platforms are also of dubious character and quality of the program remains quite low. *Fourthly*, the cost of these CLE programs conducted by academic institutions and reputed law firms very high. The average earning of lawyers in India is not very high compared with many other common law countries and especially for young lawyers it is abysmally low compared to even other professions.⁷⁶ The high cost of quality CLE programs offered in India makes them not affordable for majority of Indian lawyers.

The CLE must be made mandatory for all enrolled lawyers and accordingly the BCI rules and allied legal norms are required to be amended. The proposed Amendment to the Advocates Act has empowered the BCI to provide for continuing legal education for advocates⁷⁷ with the aim of bringing legal profession and legal education with 'global best practices' and focuses on 'improving legal education, equipping lawyers to meet the demands of a rapidly changing world, and raising professional standards.'⁷⁸

The BCI should make it a part of continuous system to be organized by every State Bar Council. The teaching-learning methodology should include participatory exercises, trained instructors, concurrent feedback and evaluation. The CLE programs must be regularly examined in the light of the growing body of skills and knowledge required in the field of global legal practice. It should strive to ensure that the courses provide opportunity for active participation and immediate assessment of the participants through reflective and experiential learning tools.

The CLE curriculum must be transnationalised by making it a unique combination of globalization and cultural forces and accredited by BCI or State Bar Councils. The aim should be to

⁷⁴ The National Judicial Academy at Bhopal (<https://nja.gov.in/>) and State Judicial Academies in all states of India (<https://nja.gov.in/sja-programmes.html>).

⁷⁵ Government of India, Ministry of Law and Justice sponsored action research project titled "*Global Practices in Continuing Legal Education: Emerging Platforms for Professional Development of Advocates*", conducted by Indian Institute of Management Kashipur, June 2021
<https://cdnbbsr.s3waas.gov.in/s35d6646aad9bcc0be55b2c82f69750387/uploads/2021/11/2021112350.pdf>
(visited on 2.2.2025)

⁷⁶ Lawyer salaries in India, https://www.glassdoor.co.in/Salaries/lawyer-salary-SRCH_KO0,6.htm (visited on 2.2.2025)

⁷⁷ Draft Advocate (Amendment) Bill 2025 has introduced Section 7 (q) empowering BCI to provide for Continuing Legal Education for Advocates.

⁷⁸ Draft Advocate (Amendment) Bill 2025 - Preamble

make lawyers more intellectually and culturally flexible and exposed to comparative and international perspectives on a wider range of law subjects. Cultural competency skills should be included as a part of professional lawyering skills. This will help to transpire in the participants an ability to understand and navigate problems that involve systems and cultures other than one's own. Thus, institutional alignment with cultural competency as a learning outcome can become further legitimized.⁷⁹

Hence the basic learning outcomes for the CLE programs must aim at the following:

- (a) Knowledge and understanding of substantive and procedural law usually required in transnational practice;
- (b) Legal analysis and reasoning, legal research, *problem-solving*, and written and oral communication in multi-jurisdiction legal context;
- (c) Exercise of proper *professional and ethical responsibilities* to clients and the legal system; and
- (d) Other professional skills needed for *competent and ethical* participation by multi-jurisdiction legal profession

Also, the faculty involved in teaching or advising these courses or co-curricular activities should ensure that participants receive a basic overview of international law, either through direct instruction or provision of appropriate resources. As with any course, thoughtful and intentional curricular design is critical to achieving the learning objective of exposure to international law. Similarly writing requirement, some administrative coordination and articulation of the international requirement, including faculty responsibility, would be necessary. While no single course can deliver the full array of elements needed to gain global competency in a lawyering context, exposing students to international law can substantially enhance students' understanding and perception of it.

A Mandatory continuous legal education academy for lawyers to be established at national, state and district level in line of the judicial academies and affiliated to BCI. It should promote excellence in the practice of law and address on a continuing basis the entire process by which lawyers acquire and refine the lawyering skills and knowledge per requisite for global legal practice. It must aim to facilitate critical analysis and progressive refinement of the CLE programs; develop modes of instruction, course materials and teaching aids to assist CLE service provider to teach these skills and values more effectively. It should develop and serve as a clearinghouse for model curricula, instructional materials and teacher training for providers of continuing legal education and law office programs; and promote research and publication relevant to the understanding and enhancement of CLE programs. A step in this direction has been undertaken by the establishment of the India International University of Legal Education and Research (IIULER) at Goa as center for promoting transnational legal education and imparting of skill sets to Indian law students to work towards global legal practice.⁸⁰ The center has also introduced bridge course programme for Indian law students, who have graduated from foreign universities, to be trained in the fundamentals of Indian laws and legal principles so that the students gain the necessary skills for transnational legal practice. One of the

⁷⁹ Report of the Task Force on Law Schools and the Profession: Narrowing the Gap, Legal Education and Professional Development—An Educational Continuum (Chicago, 1992)

⁸⁰ India International University of Legal Education and Research, (IIULER) Goa, <https://www.iiuler.edu.in/home> (visited on 2.2.2025)

core functional objectives is to also engage in CLE programs as value addition and skills training course for professionals in varied areas of law and legal practice.⁸¹

Lastly, the advent of Massive Open Online Courses (MOOCs) in the recent years has been a game changer for all professional and universal education systems globally. These platforms can be used to design and deliver interactive as well as self-learning CLE courses with an assessment module to grant credits earned post completion of the course. The methodology employed by MOOC courses are mainly based on videos, with a large number of participants who are called learners. They would get feedback only from fellow learners and machine-evaluated quizzes, making it possible for a single professor to reach and teach virtually an unlimited amount of learners. Already the University Grants Commission of India has implemented MOOC in form of SWAYAM courses, WIPO (World Intellectual Property Organization) Course on intellectual property and UDEMY Courses to mention a few.⁸² BCI being the common regulator of legal profession and legal education requires to take a lead to develop and publicize MOOC's course for CLE in India. For the content development and delivery, it can partner with legal education institutions, law firms, legal-tech entities. But the course content, teaching and learning tools to be applied and assessment modules must be accredited adequately. The earlier proposed lawyers continuing education academy at national level in association with the directorate of legal education of BCI can be the body for granting accreditation to these courses.

Conclusion

The goal of education is to train individuals to accept the changing landscape in society and to equip themselves to easily adapt to the evolving professional demands within the global ecosystem. Lawyers after entering into the profession must be able to critically think and find solution to the legal and social problems by being innovative and adaptative taking into consideration the local and global needs of the society. Many studies on professional education for lawyers have identified it as a lifelong process and the continuum of legal education span over his entire professional life. CLE is a globally accepted tool to assist lawyers to manage their knowledge and skills progression in course of their professional life. So mandatory CLE can effectively assist the Indian Lawyers to deliver global and transnational legal service.

⁸¹ IIULER Continuing Professional Legal Education Series - Value Addition Courses and Certificate Courses, <https://www.iiuler.edu.in/info/certificate-courses> (visited on 2.2. 2025)

⁸² Government of India, Ministry of Law and Justice sponsored action research project titled "*Global Practices in Continuing Legal Education: Emerging Platforms for Professional Development of Advocates*", conducted by Indian Institute of Management Kashipur, June 2021 <https://cdnbbsr.s3waas.gov.in/s35d6646aad9bcc0be55b2c82f69750387/uploads/2021/11/2021112350.pdf> (visited on 2.2.2025)