

# Legal Education and Legal Profession in Sri Lanka: Present and Future

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## Abstract

*In Contemporary times, the legal profession is seen as a three-way partnership among judges, practising lawyers and academics. Legal education plays an important role in sculpting the legal profession. The optimal functioning of the legal profession is vital in upholding the Rule of Law in a prosperous and effective democracy. Jurisdictions that are celebrated for developed legal education schemes such as the United Kingdom Singapore and Malaysia seem to have various regulatory measures in place to ensure that the most capable, knowledgeable and skilled members enter the noble profession. In Sri Lanka, in recent years, major concerns had been raised related to the standard of legal education of those who enter the legal profession and the high rate of the number of persons entering the profession. At a time where legal education all over the world is changing to address the current needs for advanced knowledge and skills in commerce, economics, and technology, and social changes, Sri Lanka must also step to the future through the implementation of regulatory measures to address the present issues faced and overcome the barriers which have slowed progress: It is time that legal education in Sri Lanka is uplifted to face the new era of professional standards, knowledge and skills of this noble and ever-developing profession.*

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***“The practice of the law is not a business open to all who wish to engage in it; it is a personal right, or privilege limited to selected persons of good character with special qualifications duly ascertained and certified; it is in the nature of a franchise from the State conferred only for merit and may be revoked whenever misconduct renders the person holding the licence unfit to be entrusted with the powers and duties of his office...”***

Per Mookerjee J. in *Emperor v. Rajani Kanta Bose*<sup>1</sup>

## **Introduction**

Legal education is a complex study with different emphasis on legal analysis, training for practice and development of professional identity. As asserted by the world-renowned legal scholar and a former Vice-President of the International Court of Justice, C.G Weeramantry, the dynamics of administration of justice has changed in that, in the common law world administration of the law was seen as a function of partnership between practicing lawyers and judges.<sup>2</sup> However, the legal profession is no longer seen as a two- way exchange but a three way partnership in which the academic branches of the profession is by no means less important.<sup>3</sup>

## **A Brief History of Legal Education in Sri Lanka**

The earliest part of entry to the legal profession was established under the British Colonial system and

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<sup>1</sup> 26 Cal WN 589; (AIR 1922 Cal 515).

<sup>2</sup>CG Weeramantry, *An Invitation to the Law* (Stamford Lake 2009), 215.

<sup>3</sup>Ibid,

facilitated under the 1833 Charter, Section 17 of which empowered the Supreme Court of Ceylon to "*admit and enrolled as Advocates and Proctors, persons of good repute and of competent knowledge and ability upon examination by one or more of the judges of the Supreme Court*". It had a less formal structure which required that a person endeavouring to enter the legal profession serve a period of apprenticeship with a practicing lawyer and take examinations conducted by the Supreme Court in order to satisfy the Judges of the Supreme Court that the apprentice had obtained the required skill and sufficient legal knowledge to enter the legal profession. The Charter introduced two groups of practitioners, Advocates who equated to the role of Barristers in England and Proctors who equated to the role of Solicitors in England. Their roles of advocacy and litigation were distinctively defined and while Advocates were usually members of the Bar Council, Proctors were members of the Incorporated Law Society of Sri Lanka.

Since 1973 changes were made to the legal structure and legal profession in Sri Lanka. With the coming into operation of the Administration of Justice Law No. 44 of 1973 of the National State Assembly, the two branches of the profession were fused and one group of practitioners was formed as Attorneys at Law. Formal legal education in Sri Lanka came into being with the establishment of the Council of Legal Education (CLE) in the year 1873. The Sri Lanka Law College was established under the CLE, in order to impart formal legal education to those who wished to become Attorneys at Law in Sri Lanka.

## **Legal Education and the Legal Profession**

Legal education plays an important role in sculpting the legal profession. It is the foundation for a career as an Attorney at Law. Thus, there is a close relationship between legal education and legal profession. Deriving from literature, the idea of ‘regulative bargain’ was emphasized by Justice Saleem Marsoof, P.C. as follows:<sup>4</sup>

*At the heart of the relationship between the legal practitioner and the State lies the notion of a 'regulative bargain'<sup>5</sup> whereby the State protects professionals from unfettered competition but trusts them to put public interest before their own. In exchange, “the profession promises to select and train carefully its members so that they can provide a competent and ethical service”<sup>6</sup>.*

The optimal functioning of the legal profession is vital in upholding the Rule of Law in a prosperous and effective democracy. Judge, Sanji Monageng, the First Vice-President of the International Criminal Court, in a speech delivered at the World Forum Conference Centre, The Hague, Netherlands on 20th November 2012 stated that:

*...the rule of law and the proper administration of justice, of which an independent judiciary and legal profession are prerequisites, play a central role in the promotion and protection of human rights.*

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<sup>4</sup>Foreword of the Chairman of the Committee in the Final Report of the Committee Appointed by the Council of Legal Education to Consider the Curricula and Syllabi of Sri Lanka Law College 2012.

<sup>5</sup>D Cooper and others, “Regulating the U.K. Accountancy Profession: Episodes in the Relation between the Profession and the State.”

<sup>6</sup>Eliot Freidson, *Professionalism Reborn: Theory, Prophecy, and Policy* (Chicago University Press 1994), 202.

It is famously stated that “*The Law is what the lawyers are. And the law and the lawyers are what the law schools make them,*”<sup>7</sup> demonstrating that a scheme of legal education which imparts standardized knowledge, skills and practical training are key to guaranteeing quality and competent legal professionals.

### **Professional Ethics and Responsibilities of Lawyers**

As stated by Dr A.R.B. Amerasinghe,<sup>8</sup> a professional is:

- i. identifiable by reference to some register or record,
- ii. recognized as having a special skill and learning in some field of activity in which the public needs protection against incompetence the standards of skill learning being prescribed by the profession itself,
- iii. holding themselves out as being willing to serve the public,
- iv. voluntarily submitting themselves to standards of ethical conduct beyond those required from the ordinary citizen by law, and
- v. undertaking to accept personal responsibility to those whom they serve for their actions and to their profession for maintaining public confidence.

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<sup>7</sup> Letter from Felix Frankfurter, Professor, Harvard Law, to Mr. Rosenwald 3 (May 13,1927) (Felix Frankfurter papers, Harvard Law School)

<sup>8</sup>A Ranjit B Amerasinghe, *Professional Ethics and Responsibilities of Lawyers* (Lake House Investments Ltd 1993).

Thus, competency (knowledge and skill), honesty and integrity, accountability, self-regulation and ethical boundaries set out the very traits of a legal professional.

Institutions such as the Supreme Court, the Incorporated Council of Legal education (ICLE), the Bar Association of Sri Lanka (BASL) and the Sri Lanka Law College (SLLC) which are responsible for producing Attorneys at Law in Sri Lanka, are also robed with the duty to ensure and guarantee standards and quality of legal professionals who enter the field of law.

This can be achieved, firstly, through a process of providing well-rounded legal education which encompasses knowledge and skill development, official credentials, training and ethical standards and; secondly, through standardizing legal education to ensure that the legal profession would be accessed by, and limited to, those with the minimum requirements and qualifications.

### **Development of Legal Education and Enhancement of the Legal Profession**

The growth and enrichment in legal education leads to knowledgeable, skilful, ethical and capable individuals entering the legal profession, thereby enhancing the standards of the legal profession in Sri Lanka. Thus, the continued progression of the profession of law is concomitant to the continued assessment and development of legal education. In light of this, it is clear that the future of the legal profession is primarily and predominantly

dependent upon upholding the standards of the legal education provided.

In this context, the significant question is whether we are on the right path and whether there is a need for reform. In studying various jurisdictions pertaining to qualification and training requirements, qualification schemes for Attorneys, standardized models of legal education and schemes of continuous professional development etc., three main areas have come into focus.

- i. Regulation of entry into professional legal education
- ii. Regulation, supervision and improving the standard of legal education provided at the Law College
- iii. Introduction of Continuous Professional Development (CPD)

Accordingly, it is important for Sri Lanka to look at and understand the present status quo of these focus areas and enhance the landscape for legal education in Sri Lanka.

### **The Present Status Quo and Lessons from Other Jurisdictions - *Regulation of Entry into professional legal education***

Jurisdictions which are celebrated for developed legal education schemes such as the United Kingdom (UK), Singapore and Malaysia seem to have various regulatory measures in place to ensure that the most capable, knowledgeable, skilled members enter the noble profession.

- a. Setting up a minimum entry qualification to the profession

*The United Kingdom* - a student intending to embark on a law degree requires a high grade as the minimum requirement. The Complete University Guide 2017, which is an accredited ranking league table for the UK universities outline that the top 50 universities in the UK require a 'minimum entry criteria' of three B's for Advanced Level and/or its equivalent which has resulted in an automatic imposition of a minimum entry qualification for the profession of law.

*Singapore* - a similar system had been adopted by setting up a list of approved universities under the Legal Profession Act,<sup>9</sup> read together with the Legal Profession (Admission) Rules 2011 which only recognize degrees from top ranked universities in the world.

- b. Requiring a Qualifying Law Degree (QLD) to gain entrance to the profession.

The Bar Standards Board (BSB) and Solicitors Regulation Authority (SRA), being the regulatory bodies governing access of graduates to the legal profession in England and Wales, prescribe graduates to have obtained a minimum of a Second Class Lower Qualifying Law Degree (QLD) and/or a Non-Qualifying Law Degree coupled with the Graduate Diploma in Law (GDL) from an approved

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<sup>9</sup>(Chapter 161) Revised Edition 2009. Original Enactment: Ordinance 57 of 1966.



academic institution.

Furthermore, QLD awarding university programmes or institutions are required to provide specified courses (i.e., Public Law, including Constitutional Law, Administrative Law and Human Rights, Law of the European Union, Criminal Law, Property Law and Equity and the Law of Trusts, Legal Research). Hence, the said requirement of a QLD would ensure that a graduate has the requisite standard of knowledge and skill to proceed to the Vocational Stage of training for the Bar of England and Wales.

This requirement of a QLD for recognition of a foreign degree is a practice adopted in many jurisdictions such as Singapore which requires that a course of study leading to a Law Degree to be a QLD.<sup>10</sup>

### c. Requirement of a course structure

*Singapore* - for example, a course/ programme leading to a law degree cannot be an accelerated course which is completed within a period less than 3 years and the degree must be read as a full time, internal candidate (as opposed to an external degree).

*In Malaysian and Indian jurisdictions* - it is pertinent to note that specific criteria for recognition of foreign degrees have also been set up. Thus, Malaysia requires that a degree shall be a minimum of 3 academic years and for a full-time study at a university and is required to be completed within

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<sup>10</sup>“Qualified Person: Approved Universities – United Kingdom” ([www.sile.edu.sg](http://www.sile.edu.sg)) <<http://www.sile.edu.sg/united-kingdom-approved-universities>> accessed December 15, 2020.

a period of 6 years from the date of initial registration. The recognition of a foreign degree also requires that a degree holder has completed a minimum of 12 substantive subjects inclusive of 6 core subjects (e.g. Law of Contract, Law of Torts, Constitutional Law, Criminal Law, Land Law, Equity and Trust). Upon examination of these various jurisdictions, it is clear that the aforesaid schemes and regulatory measures, amongst other, have been placed to ensure that a limited number of persons with standardized legal education are allowed access to the profession. The following tables provide data related the UK and Malaysia.

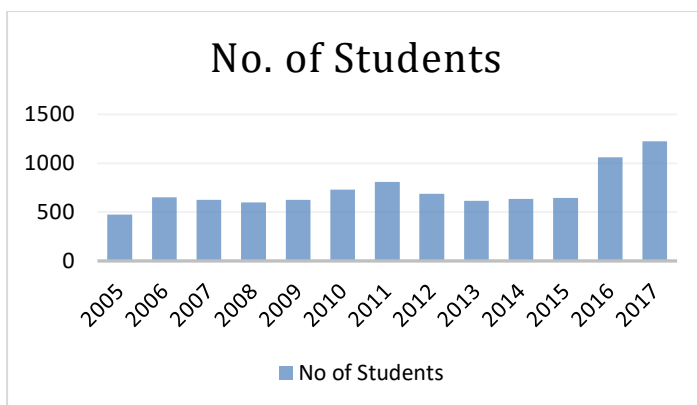
	No. of Law graduates	No. of Barristers who entered the profession
Year 2017/18	32,155	1,351
Year 2016/17	31,215	1,186
Year 2015/16	31, 510	1,300

Data pertaining to UK

In <u>Malaysia</u> local universities annually produced about 1,300 law graduates while another 200 students come into the profession after passing the Certificate in Legal practice.	No. of persons who entered the profession	
	Year 2020	Year 2016
	512	518

In Sri Lanka, the major concerns that have been raised in recent years relate to the standard of legal education of those who enter the legal profession through these pathways and the alarming rate of the number of persons entering the profession. It is alarming that the within a few years, the number of students entering the profession had doubled.

Students who entered the legal profession in Sri Lanka from 2005-2017 years are as follows:



### **Regulation, supervision and improving the standard of legal education provided at the Law College**

Sri Lanka Law College is ‘the only gateway to the legal profession in Sri Lanka’ and the only institution in Sri Lanka that is vested with the responsibility of educating and preparing those who aspire to enter the profession. It is tasked with the duty to provide legal education with advanced skill and knowledge.

Throughout the years, many recommendations have been made to advance an uplift the professional education

provided. These recommendations include reforms to the curriculum, development of the proficiency in the English language of students, revamping and developing the infrastructure of the SLLC and reforms to the administrative and financing structure, developments in IT facilities etc.

Justice Saleem Marsoof describes the need to change and revise the legal education as follows:

*Central to these debates about the contents of legal education are questions about the need for revised curricular and syllabi that reflects the increasingly diverse careers of law graduates and the international dimensions that are emerging more often in their work. This by itself is a continuous issue raising questions about whether the mere conferment of credentials by an institution such as SLCC would sufficiently prepare an individual to undertake the challenges faced by the modern legal practice. A combination of legal education that seeks to develop academic abilities (critical thinking, normative values and consciousness of professional ethics and responsibility), while providing practice- relevant training and skills development seems to be the need of the day.*

### **Introduction of Continuous Professional Development (CPD)**

Development of legal education can be through Continuous Professional Development (CPD). Many developed jurisdictions in the world have understood that legal education is a continuous process which requires

consistent and continuous updating. CPD refers to activities that enhance skill and knowledge of a professional throughout the legal profession.

In the United Kingdom, CPD is recognized by the Law Society as an important element of being a member of the legal profession and is the key to demonstrating continuing competence as a solicitor within the Solicitors Regulation Authority (SRA's) regulatory framework. The UK's CPD program has been re-designed to include a Continuing Competence (CC) scheme, and it is imperative that legal professionals comply with the said scheme which, *inter alia*, includes participation in courses working towards professional qualifications, coaching and/or mentoring sessions, writing on law or practice, research and development of specialist areas of law.

In New South Wales, CPD is a statutory condition imposed on the Australian practicing Certificate (Section 52 of the Legal Profession Uniform Law, NSW). It requires the certificate holder to comply with applicable requirements of the Legal Profession Uniform Continuing Professional Development (Solicitors) Rules 2015. Compliance with CPD is administered in terms of these rules. Accordingly, legal professionals are required to complete CPD units each year in the fields of (1) Ethics and Professional Responsibility, (2) Practice Management and Business skills, (3) Professional Skills, (4) Substantive Law.

## **Legal Education as an Academic Qualification**

Legal education obtained through a university or institute provides an academic qualification which opens doors for so many career paths in business, public interest, banking and financial sector, research-based careers, political sciences, law firms, law teaching, human resources, governmental institutions, corporate work, international institutions such as the United Nations etc.

However, there is a recurring question as to whether all legal academics in Sri Lanka should become practicing lawyers or whether the available career paths and job opportunities available for legal academics should be followed.

In looking at the experience of the UK and Malaysia, as set out above, it is pertinent to note that most students engage in legal education as an academic qualification which paves the way into fields of accountancy, banking and finance, public service and administration. A recent assessment demonstrates that over a quarter of law graduates working in the UK are law associate professionals, thus they work as law associates to firms, corporations, banks, auditing companies etc. The assessment further demonstrates that 47% of law graduates are employed, while others pursue further education in law and other fields of study.

## **Future of the Legal Education**

At a time where legal education all over the world is changing to address the current needs for advanced knowledge and skills in commerce, economics, technology and social changes, Sri Lanka must also step to the future through implementation of regulatory measures to address the present issues faced and demolish the barriers which has slowed our progress.

In an address to the Harvard Law School community, Dean Martha Minow offered a survey of “*The Past, Present, and Future of Legal Education.*” She called the present “a time of innovation and a time of renewal” in legal education and concluded with a discussion of her views on where legal education is headed in the near future. She predicted that lawyers will have opportunities to play new and important roles in response to dramatic economics, technological, and social changes presented by new communications technologies, new biological and bio-technology research, and globalization. They will deal with: integrating economies; legal and professional services; biological and computer viruses, cultural trends fostered through world-wide networks of exchange; resource scarcity and global climate change; and mass migrations of people, due to economic, political, and environmental changes.

Accordingly, it is clear that the possibilities for legal professionals are infinite. In the backdrop of globalization, advancement in technology and innovation, law as a part of society keeps expanding and the opportunities are

expanding. In such times it is important for the future of legal education to provide advanced knowledge and skill in order to access these opportunities. Hence, it is time that legal education in Sri Lanka is uplifted to face the new era of professional standards, knowledge and skills of this noble and ever developing profession.