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RECASTING THE LLM: COURSE DESIGN AND PEDAGOGY

Sudhir Krishnaswamy* and Dharmendra Chatur**

The introduction of the one-year Master of Laws (LLM) has been touted as a game changer for post-graduate legal education in India. This paper argues that, despite the unclear rationale for the course and the hastily put together course structure, the one-year LLM may transform post-graduate legal education if rigorous intellectual effort is invested in the process of translating the curriculum into active learning materials allowing for a critical pedagogy to emerge in the classroom. Using the Law and Social Transformation course in the two-year LLM as an example, the paper shows that despite a well designed curriculum, the syllabi and textbooks developed subsequently effectively neuter the objectives of the course. The new decentralized institutional environment for the development of the one-year LLM, with the emergence of new private Universities taking the lead with course development, offers hope that the promise of the one-year LLM will be realized.

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On 18 January 2013, the Universities Grants Commission (UGC) approved the Guidelines for the one-year Master of Laws (LLM) degree programme in India¹ and initiated the most significant change in post-graduate legal education in India since the late 1970s. It is suggested that the constriction of the two-year to the one-year LLM may potentially do to post-graduate legal education what the expansion of the three-year LLB to the five-year BA, LLB did to undergraduate legal education in India. Notably, while the introduction of the five-year BA, LLB proved to be a game-changer² for undergraduate legal education, the LLM did not substantially benefit from the establishment of the new National Law Universities. The ‘success’ of the five-year BA, LLB programme was possible because of a new course structure and curriculum for an integrated degree in the Arts and Law; the adoption of a new critical pedagogy; and by attracting a new constituency of eighteen-year-old school-leavers from middle and upper middle class homes across India, who anticipated and contributed to the development of the transactional lawyering bar.³ The National Law School of India University, Bangalore was the first to adopt the five-year model and introduced the Socratic Method and Case Method of teaching and learning which allowed for a new critical pedagogy to emerge in the law classroom. These teaching methods were neither institutionalized nor supported by casebook materials to ensure continuity. After two decades, the five-year BA, LLB programme displays only vestigial traces of the curricular and pedagogical reform that motivated its introduction, but exudes some vitality by continuously attracting talented students to the programme. To have any chance of success, the one-year LLM programme must at the very least have clarity of goals, integrate curricular and pedagogical reform, and attract a new constituency of students to post-graduate legal education in India. In this essay, we assess the prospects of such success and focus our attention on the curricular and pedagogical challenges that we need to contend with for any success to be possible. We begin by considering the articulated goals of post-graduate legal education in India.

1 *Guidelines for introduction of One Year LL.M. Degree Programme, 2012*, UNIVERSITIES GRANTS COMMISSION, available at http://www.ugc.ac.in/pdfnews/4968873_LLM_one-year.pdf.

2 Jayanth Krishnan, *Professor Kingsfield Goes to Delhi: American Academics, the Ford Foundation, and the Development of Legal Education in India*, 4 THE AMERICAN JOURNAL OF LEGAL HISTORY 492-494 (2005).

3 *Id.* at 480-484.

I. GOALS OF THE LLM

In 2007 the National Knowledge Commission Working Group on Legal Education lamented the ‘steady decline in quality of LLM programmes’⁴ and offered bald suggestions on future reform, none of which made it to the final Commission recommendations to the Prime Minister.⁵ However, the Round Table on Legal Education set up by the Ministry of Human Resources Development pushed for a one-year LLM to match the duration of LLM programmes in developed countries such as the USA and UK.⁶ The full report of the Round Table and the UGC Expert Committee Report in 2012 may articulate a fuller rationale for the one-year LLM, but these are unavailable in the public domain. Hence, the only publicly available justification referenced in the UGC announcement suggests that the commercial interests of Indian Universities to compete with foreign LLM degree providers drove this round of post-graduate legal education reform.

This is in stark contrast to the earlier efforts to recast the LLM in the 1970s and 1980s. Upendra Baxi, in a working paper titled ‘Notes Towards a Socially Relevant Legal Education’ prepared for the UGC Regional Workshops in Law (1975-77), laments that “the LLM curriculum primarily involves studying at an ‘advanced’ level what was studied at a ‘preliminary’ level in LLB”.⁷ He then goes on to propose a restructuring of the LLM programme by adopting as “the starting point for a debate on post-graduate legal education...the fact that LLM is the basic qualification for Indian law teachers.” Hence, he concludes: “the most immediate need is of recasting LLM curricula and pedagogy in terms of *teaching the future law teachers*.”⁸ The UGC and various law faculty invested considerable effort to develop an LLM degree curriculum for law teachers, which at its core was a research-focused

4 Working Group on Legal Education, National Knowledge Commission, Report of the Working Group on Legal Education 10 (2007), http://knowledgecommission.gov.in/downloads/documents/wg_legal.pdf.

5 Letter from Sam Pitroda, Chairman of the National Knowledge Commission, to the Prime Minister of India (Oct. 15, 2007), *available at* <http://www.knowledgecommission.gov.in/downloads/recommendations/LegalPM.pdf>.

6 Universities Grants Commission, *supra* note 1, Preamble.

7 Upendra Baxi, *Notes Towards A Socially Relevant Legal Education: A Working Paper for the UGC Regional Workshop in Law 1975-1976*, 5(1-3) J. OF THE BAR COUNCIL OF INDIA 1, 3 (1976).

8 *Id.* at 27.

inter-disciplinary engagement with law. Despite these extensive efforts at curricular reform of the LLM programme in the past, dour and unchanging classroom pedagogical practices and the lack of well put together teaching materials ensured that the LLM remained a backwater in Indian legal education.

While Dr. Madhava Menon and Vice Chancellor Faizan Mustafa⁹ may insist that the one-year LLM will remain focused on those who seek an academic career in the law, several others including the current Vice Chancellor of the National Law School of India, Bangalore, R. Venkata Rao acknowledge that the LLM will hereafter train students to tap manifold opportunities in a globalizing world.¹⁰ It may well be that clarity about the goals of the new one-year LLM will emerge from its enthusiastic and rapid adoption by various Universities.¹¹ The absence of a pioneering National Law School and the emergence of a new institutional landscape with several private universities may lead to divergent goals and strategies being pursued by different Universities. It is possible that a large number of Universities will refocus the primary purpose of the one-year LLM away from the training of future law teachers to training for specialization with 'advanced' legal courses catering to demand in the commercial bar. However, the capacity of Universities to reshape this LLM to diverse goals will depend to a large extent on the curricular formats mandated by the UGC to which we now turn.

II. CURRICULAR REFORM

The UGC Guidelines for the one-year LLM provide very broad curricular guidance. The course has three components: three foundation/compulsory papers; six optional/specialization papers and a dissertation. The three prescribed foundation courses are titled: Research Methods and Legal Writing; Comparative Public Law/Systems of Governance; and Law and Justice in a Globalizing World. The two-year LLM mandated four compulsory courses: Law and Social

9 *New Boost to Legal Education One year LLM gets UGCs seal of approval*, BAR AND BENCH (Oct. 10, 2012, 10:54AM), <http://barandbench.com/content/new-boost-legal-education-one-year-llm-gets-ugcs-seal-approval#.UdqC6TvIuWM>.

10 *One year LLM Law honchos say yes*, BAR AND BENCH (Nov. 29, 2009, 7:30 PM), <http://barandbench.com/content/one-year-llm-law-honchos-say-yes#.UdqCjvIuWM>.

11 Apart from 5 National Law Universities, at least five private universities have offered the one-year LLM degree including Jindal Global Law School, Tata Institute of Social Sciences, Christ University, Indian Law Institute and Amity Law School.

Transformation; Indian Constitutional Law; Judicial Process and Legal Education; and Research Methodology. While the Research Methods and Legal Writing course may have much in common with the Legal Education and Research Methodology course, the two other mandatory courses in the one-year LLM have little resemblance to the other mandatory two-year LLM courses. If the stated goal of the one-year LLM is the same as the two-year LLM—to train legal academics—there are no reasons articulated in the Guidelines as to why the core courses have changed. Arguably, both the Comparative Public Law course in the one-year LLM and the Indian Constitutional Law course in the two-year LLM will expose students to advanced perspectives in public law. However, the third mandatory course titled ‘Law and Justice in a Globalizing World’ has no parallels in the two-year LLM, or for that matter in any course currently taught in most LLM programmes. Without careful development of the syllabus for these new mandatory courses it is unlikely that there will be a common core programme across the various Universities offering the programme.

The Annexure to the Guidelines provides that ‘[t]he six clusters of specialization subjects *tentatively* can be’ international and comparative law; corporate and commercial law; criminal and security law; family and social security law; constitutional and administrative law; and legal pedagogy and research. Under each of these specialization streams, the guidelines compile a laundry list of 12-13 potential courses, which are not always easy to integrate in a single intellectual or sub-disciplinary framework. For example, it is not clear how transportation law or housing and urban development should be an important course for a specialization in constitutional and administrative law! There are several such incongruities but as long as these specializations are understood to be merely illustrative and not binding, these lists may not do much harm. The two-year LLM course design provided for more than fifty courses organized around ten subject clusters. While almost all law schools followed the prescribed mandatory courses in the two-year LLM, no law school adopted the optional subject matter clusters in the manner set out in the guidelines and syllabus prepared by the UGC. Early evidence with the one-year LLM programmes announced so far suggests that the same pattern is likely. For example, the Tata Institute of Social Sciences has announced a one-year LLM programme on ‘Access to Justice’: a topic which is absent from the list of subject clusters in the Guidelines.

In any event, the primary challenge for post-graduate legal education is not curricular overhaul but the capacity to translate a curriculum into meaningful course syllabi, substantive learning materials and supportive teaching and learning practices. The two-year LLM process went through a substantive process of syllabus development and there was a flourishing textbook market which supported these courses. However, it is a mistake to assume that syllabus development and the presence of a textbook market will automatically lead to a rigorous LLM programme. In the rest of this essay we pay close attention to the development of a syllabus and the course materials for one compulsory course in the LLM programme, as this offers us sharp insights into the challenges that the one-year LLM programme faces today.

III. DEVELOPING THE COURSE SYLLABUS

In this section of the essay, we examine the curricular design and pedagogy of one course titled 'Law and Social Transformation in India' for which detailed syllabi and learning materials have been prepared. While the Law and Social Transformation in India course has not been prescribed as a compulsory or foundation course in the one-year LLM, it is the course that best exemplifies the ambitions and challenges of the LLM programme—interdisciplinary and theoretical engagement with law as a social phenomenon and as an academic discipline. The best way to identify the challenges and potential for LLM pedagogy/curricular reform is to focus our attention on the translation of curriculum into syllabi and then into several textbooks for this course.

The UGC Panel in Law then went on to sketch a sample syllabus for a course titled 'Law and Social Change Problem with Special Reference to India' in Annexure B of the same Report.¹² Two aspects of this sample course deserve attention: first, the course is not organized around legal doctrinal debates and hence compels a multi-disciplinary perspective, and second, the course avoids a mechanistic view of the relationship between law and social change, treats law as one element of social change, and does not elevate it to be a primary cause or catalyst. The core vision of the UGC Panel in Law is to create post-graduate law students who are grounded in social science methods and have the ability to approach legal problems nested in their social and cultural context.

12 Upendra Baxi, *supra* note 7, at 32-33.

In 2001, the Curriculum Development Committee for Law (hereafter ‘CDC’) of the UGC sought to revise and update the syllabus for the LLM programme. The CDC changed the Law and Social Transformation in India course in two significant ways: first, it combined two existing courses titled ‘Law and Social Transformation in Ancient India’ and ‘Law and Social Transformation in Contemporary India’. It’s puzzling why two courses of this description existed in the first place as there is no hint of such a division in the course design proposed by the UGC Panel in Law. Secondly, it developed a model syllabus for this course,¹³ which retained the course title suggested by the UGC Panel in Law but effectively replaced the multi-disciplinary social science approach with a more pedantic doctrinal approach. In the nine modules of the course, only the first and last module titled ‘Law and Social Change’ and ‘Alternative Approaches to Law’ respectively are grounded in social science theory. The rest of the module titles are varied prefixes to the phrase ‘... and the law.’ These prefixes include religion, language, community, regionalism, women, children and modernization. The syllabus effectively inverts a course designed as a social science enquiry into law, to a legal doctrinal enquiry into selected social issues. In the latter format, the law student is invited to deepen her understanding of the legal system and legal doctrine as it applies to pathological social problems. Though the bibliography annexed to the course refers to some high quality materials,¹⁴ these materials adopt a method orthogonal to that adopted in the syllabus.

So in a two-step process spread across three decades the design of syllabi for the Law and Social Transformation in India course effectively undoes the primary motivations for such a course. Moreover, UGC Model syllabi operate as standard guidance for a large majority of Universities offering the programme and to textbook writers who slavishly copy the syllabi as their table of contents. Hence, this activity of syllabus design decisively shapes the experience of the LLM student more significantly than the high minded principles that animate curricular design.

13 See Universities Grants Commission, *Curriculum Development Committee on Law: Report*, 195-198 (December 2001), available at <http://www.ugc.ac.in/oldpdf/modelcurriculum/law.pdf> (last visited Dec. 20, 2012).

14 ROBERT F. MEAGHER, *LAW AND SOCIAL CHANGE: INDO-AMERICAN REFLECTIONS* (1988); LAW AND POVERTY: ESSAYS (Upendra Baxi ed., 1988); UPENDRA BAXI, *THE CRISIS OF THE INDIAN LEGAL SYSTEM* (1982); LAW AND SOCIETY IN MODERN INDIA (Marc Galanter ed., 1997); ROBERT LINGAT, *THE CLASSICAL LAW OF INDIA* (1998); DUNCAN DERRET, *THE STATE, RELIGION AND LAW IN INDIA* (1999); FLAVIA AGNES, *LAW AND GENDER INEQUALITY: THE POLITICS OF WOMEN’S RIGHTS IN INDIA* (1999).

IV. TEXTBOOKS FOR THE LLM CURRICULUM

A casual academic observer may on first impression be optimistic that 'law and social transformation' is a major field of enquiry in Indian legal academy. There are at least two recent books with the same title.¹⁵ A search for books with cognate terms such as law, justice and social change in their title suggests more depth to this field.¹⁶ If this is evidence of a serious and sustained engagement by the legal academy with problems of law and social change in India, then this optimism is justified. However, on closer scrutiny of the content of these books, one recognizes that this publishing trend is an attempt by textbook publishers to exploit a new market for books designed for a mandatory course with the same title in the LLM programme. So the proper approach to reviewing these books is to assess whether they satisfy the academic and professional motivations behind the inclusion of the 'Law and Social Transformation in India' course in the LLM programme. The two primary motivations for the course are to equip law students to use social science disciplinary methods to understand law as a social phenomenon and to critically assess the role of law in social transformation. In this essay, we critically assess the extent to which these books satisfy these goals.

We focus our attention on what is arguably the best and most used LLM textbook for this course - 'Law and Social Transformation' by Ishwara Bhat. Professor Ishwara Bhat's 'Law and Social Transformation' adopts the model syllabus for the UGC LLM Foundation Course 001 titled 'Law and Social Transformation in India' in its entirety. This 1032-page tome is divided into four parts that accommodate twenty chapters. The chapters in *Part I* address theories of law and social transformation, history of social transformation in India, alternative accounts of social transformation (such as Gandhism, Sarvodaya, Marxism and Naxalism) and constitutional aspects of social transformation respectively. *Part II* titled 'Multiculturalism and Social Transformation' contains chapters on religion, language, regionalism and ethnicity. The next *Part* titled 'Social Transformation by Empowerment' contains chapters on social transformation of backward classes, women and children. The fourth

15 G.P. TRIPATHI, *LAW AND SOCIAL TRANSFORMATION* (2012); K.P. MALIK & DR. K.C. RAVAL, *LAW AND SOCIAL TRANSFORMATION IN INDIA* (2011).

16 B.S. SINHA, *LAW & SOCIAL CHANGE IN INDIA* (1983); LAW, JUSTICE AND SOCIAL CHANGE (D.R. Saxena ed., 1996).

and final *Part* is titled ‘Modernization and Social Transformation’ and has individual chapters on family law, economic reforms, reforms of the justice delivery system and participative democracy. The book goes beyond the UGC prescribed syllabus by including a chapter on the use of English and regional languages as the official language of the High Courts and the Supreme Court.¹⁷

Any book that addresses such a wide range of topics is bound to be unwieldy and is unlikely to prosecute a coherent set of arguments. Each chapter and each section of the book is relatively self-contained and there is no effort to build an argument across the book. The sheer scale of the book and the patchwork of issues it addresses indicate why slavish adoption of the UGC Model syllabi makes the task of textbook writing unenviable. In this essay we focus on two key claims and thematic concerns in the book, and respond to them in a critical manner. First, that it develops a coherent social science method to the problem of law and social transformation. Secondly, that law in India has contributed positively to social transformation in India. We show that though the book fails to support either of these two claims fully, the substantive attempt to respond to these claims may well illustrate the complexity of the problems of textbook development and the intellectual challenges inherent in LLM pedagogy.

1. Social Science Method in the LLM Classroom

In the section above we briefly traced the institutional history and motivations for the Law and Social Transformation in India course in the LLM programme. While the author does not engage with this history at any length, he is aware that “law’s role cannot be looked at in isolation” and that “inter-disciplinary analysis” is necessary to understand “law-society interactions”.¹⁸ However, he then goes on to claim rather obtusely that the book adopts “a holistic analysis” and advocates “an activist role for state and society.”¹⁹ He suggests: “instead of lawyers’ law analysis [the book] has tried to look into the *social dimensions of important facets of the legal system*. *Understanding law as a social phenomenon* will not only elevate the role of law in social action and in its mission of social justice but also rectify its

17 P. ISHWARA BHAT, LAW AND SOCIAL TRANSFORMATION 353-379 (2009) (*hereafter* ‘PI BHAT’).

18 PI BHAT, *supra* note 17, at XII (Preface).

19 PI BHAT, *supra* note 17, at XIII (Preface).

defects and sharpen its cutting edges.”²⁰ This statement of method suggests that studying the social dimensions of the legal system is the same as understanding law as a social phenomenon. The failure to sharply distinguish between the two approaches is the core methodological and disciplinary weakness in this book.

In order to understand the social dimensions of the legal system we usually place the law, the legal system and legal doctrinal analysis at the core of the enquiry. Then we assess the social impact of the law and legal institutions. The internal perspective of law and legal analysis shapes the enquiry, and we engage with social science in so far as it illuminates the legal project. On the other hand to understand law as a social phenomenon, we begin with the contours of the social phenomenon that is the focus of the study. Then we deploy a range of social science disciplines and methods to analyze the social phenomenon. The presence or absence of law as a binding institutional normative system with its specialized form of practical reasoning is simply one more aspect of the social phenomenon. By decentering the law as the primary or sole object of study, the law student develops the intellectual ability to look at the law as an embedded social practice.²¹ This book at its best adopts the first method: a study of the social dimensions of the law.²²

20 PI Bhat, *supra* note 17, at XIII (Preface).

21 For e.g. the books in the *Law in Context* series of the Cambridge University Press highlight the necessity for understanding law in its context. An explanatory note in the preliminary pages of one of the *Law in Context* books reads: “*Since 1970 the Law in Context series has been in the forefront of the movement to broaden the study of law. It has been a vehicle for the publication of innovative scholarly books that treat law and legal phenomena critically in their social, political, and economic contexts from a variety of perspectives. The series particularly aims to publish scholarly legal writing that brings fresh perspectives to bear on new and existing areas of law taught in universities. A contextual approach involves treating legal subjects broadly, using materials from other social sciences, and from any other discipline that helps to explain the operation in practice of the subject under discussion. It is hoped that this orientation is at once more stimulating and more realistic than the bare exposition of legal rules. The series includes original books that have a different emphasis from traditional legal textbooks, while maintaining the same high standards of scholarship. They are written primarily for undergraduate and graduate students of law and of other disciplines, but most also appeal to a wider readership. In the past, most books in the series have focused on English law, but recent publications include books on European law, globalisation, transnational legal processes, and comparative law.*”

22 For a perspective on the relationship between law and humanities, see Jack M. Balkin & Sanford Levinson, *Law and the Humanities: An Uneasy Relationship*, 18 *YALE JOURNAL OF THE LAW & HUMANITIES* 155 (2006).

The difference between the two approaches is best illustrated by reference to Chapter 5 on Secularism.²³ We will carefully review this Chapter to reveal the limitations of the method adopted as well as the chaotic and incoherent manner in which the discussion in the book is organized. The Chapter begins impressively by paraphrasing Duncan Derrett's views on the nature of religious membership. We are then acquainted with the views of Amartya Sen on the dangers of emphasizing a single identity; the NCRWC's platitude on the plurality of India; and Durkheim, Weber and Marx's views on the nature of religion. While each paragraph may be understood standing alone, there is no clarity how or why these paragraphs come together to advance an understanding of the social phenomenon or the place of law in it.²⁴

The Chapter then moves on to consider the concept of secularism in India. Even here, a similar pattern emerges. The Chapter begins with D.E. Smith's expansive definition of secularism, and then we are acquainted with P.K. Tripathi's views on the place of secularism in the Indian constitution. The author hints at the need to go beyond a full separation of the state and religion to a position where the state is neutral. However, there is no clear argument that this is the model adopted in the Constitution or the best model to resolve religious conflicts. In the next section we are led through a broad historical account from ancient to post-colonial India with impressive references to Akeel Bilgrami, T.N. Madan, Romila Thapar, Gurpreet Mahajan and Bipan Chandra. This excursion concludes with the claim that 'secularism' has evolved from "India's own social experience and genius."²⁵ The footnote credits this claim to Jawaharlal Nehru though the provenance of this reference is unclear. Further we are unsure how this concludes the discussion as the section seeks to demonstrate the capacity of secularism to settle religious conflicts.

The Chapter now turns to consider legal and constitutional discourse on secularism. In some ways this part of the Chapter is most insightful, as the author suggests that the Indian model of secularism is as concerned with the

23 *Id.* at 225-266.

24 PI BHAT, *supra* note 17, at 225-232.

25 PI BHAT, *supra* note 17, at 237.

State-religion relationship as it is with achieving social justice in the spheres of religious practice. The author surveys various Supreme Court cases and legislative reform measures in a scattered manner to show that secularism has been applied in various contexts. The cases and the legislative efforts are interrupted by a brief discussion of a debate between T.N. Madan and Ashis Nandy on the one hand and Andre Beteille and Gurpreet Mahajan on the other, ostensibly representing a 'separationist' and 'non-discrimination' approach to secularism respectively. The Chapter concludes with an elaborate paraphrasing of the Sachar Committee Report and the role of Minority Commissions but fails to mention proposed legislation on the Communal Violence Bill. It concludes with pithy suggestions like: "Basic unity of approach in all religions does not leave them as crusading faiths. Harnessing of the common elements and lowering down of the harmful inferior practices amidst religions in the light of humanism and welfare constitute a sound strategy to escape from the opiating effect of religions."²⁶

The elaborate survey of the Chapter on Secularism clearly demonstrates three aspects of the book. First, it brings together more references to non-legal materials than standard Indian law textbooks do. These sources are used prolifically but in an emblematic fashion: there is no careful engagement with the arguments in social theory or with their interaction with the legal materials.

Secondly, the organization of materials in this Chapter and elsewhere in the book does not come together to make an argument. At the end of the Chapter the reader is not persuaded to any end: is secularism desirable? What model of secularism does or should India adopt? There are undoubtedly insightful comments at some points in the Chapter: for example, the reference to the debate on the constitutional validity of Article 290A,²⁷ which permits grants by State governments to maintain Hindu religious institutions, is one that deserves greater attention in the context of the recent *Prafull Goradia v. Union of India* case.²⁸ However, these useful details are not wrapped up in an overall understanding of

26 PI BHAT, *supra* note 17, at 264.

27 PI BHAT, *supra* note 17, at 239.

28 *Prafull Goradia v. Union of India*, (2011) 2 SCC 568. *See also* Manavi Belgaumkar & Sudhir Krishnaswamy, Case Comment, *Prafull Goradia v. Union of India*, (2011) 2 SCC 568, 3 J. INDIAN LAW & SOCIETY 337-343 (2012).

the nature of Indian secularism or the place of law in it. Though the development of an overall structured argument may not be an essential function of a textbook, we can all agree that unless the material is presented in a coherent and predictable manner the readers are left to fend for themselves in a maze of ideas.

Thirdly, if we begin with the idea of secularism as a solution to the problem of inter-religious group co-existence, then a serious engagement with the theoretical literature would require us to parse different disciplinary and sub-disciplinary enquiries and explore the relationship between them. For example, we may ask whether the European origins of the idea of secularism make it unsuitable for other political societies (Nandy, Madan, Sanjay Subrahmaniam, Rajeev Bhargava).²⁹ Then the enquiry may proceed to outline the history and content of the idea of secularism in European and other societies: anti-establishment, religious freedom and equal citizenship of different religious groups (Balgangadhara, Bhargava, Charles Taylor, Gurpreet Mahajan). Further, we must reassess the role that the idea of secularism plays in recent Indian political history³⁰ and legal history.³¹

The Indian legislative and judicial contributions to the evolution of the idea of secularism from *Shirur Mutt* to *Shah Bano* right up to the recent Gujarat communal massacres (not “Godhra riots” as the author describes it!) must be woven into the theoretical debates discussed above. We must be able to show how they have to often choose between various theoretical alternatives as they frame legal policy or advance a particular interpretation of the constitution or the legislation. By locating legal discourse within this wider understanding of a social and historical phenomenon, we slowly abandon a socially unrealistic and mechanistic view of

29 RAJEEV BHARGAVA, *SECULARISM AND ITS CRITICS* (1998).

30 Shefali Jha, *Rights versus Representation: Defending Minority Interests in the Constituent Assembly*, 38 *ECON. AND POL. WEEKLY* 1579-1583 (2003); R. Bajpai, *Minority Rights in the Indian Constituent Assembly Debates* 1-39 (QEH Working Paper No. 30, 2002), available at <http://www3.qeh.ox.ac.uk/pdf/qehwp/qehwps30.pdf> (last visited Dec. 26, 2012); R. BAJPAI, *DEBATING DIFFERENCE: GROUP RIGHTS AND LIBERAL DEMOCRACY IN INDIA* (2011); *THE CRISIS OF SECULARISM IN INDIA* 1- 44 (A. Dingwaney Needham and R. Sunder Rajan eds., 2007).

31 Pratap Bhanu Mehta, *Passion and Constraint: Courts and the Regulation of Religious Meaning in POLITICS AND ETHICS OF THE INDIAN CONSTITUTION* 311 (2009); Brenda Cossman & Ratna Kapur, *Secularism: Bench-Marked by the Hindu Right*, 31 *ECON. AND POL. WEEKLY* 2613-2630 (1996).

law as a tool of social transformation and change that operates autonomously of society to alter or shape our world. Hence, we are forced to conclude that while this book has more references to the social science academic literature than any other Indian law textbook with the same title, it does not develop an interdisciplinary “understanding of law as a social phenomenon”.

2. The Role of Law in Social Transformation

This book advances the general proposition that the “most dependable instrument to plan and bring orderly change even amidst critical situations is law, because of its ability to restructure the relations and its influential institutional framework.”³² While it does acknowledge that social transformation may take place for a variety of reasons independent of the law,³³ including economic, cultural and technological factors, it is optimistic about the Indian legal system’s competence to contribute to social transformation through the pursuit of justice, multiculturalism and modernization of the economy.³⁴ At other points, the author does acknowledge that law may have a complex relationship with social change³⁵ and also presents non-legal alternatives to social transformation, such as Naxalism, Marxism, Gandhism and Sarvodaya. As pointed out earlier in this essay, the book does not highlight or synthesize the contradictory views expressed in various sections of the book. So the readers are left to work through these stark contradictions and arrive at their own conclusions. However, it is fair to say that the overall tenor of the book is to endorse the potential and performance of law and legal institutions.

In examining the role of law in social transformation, we have to be alert to the various legal instruments available – legislation, precedent, and custom³⁶ – as

32 PI BHAT, *supra* note 17 *paraphrasing* ROGER COTTERRELL, THE SOCIOLOGY OF LAW: AN INTRODUCTION 57-58 (1992).

33 *Id.* at 17.

34 PI BHAT, *SUPRA* NOTE 17, *in passim* Chapter 20 Conclusion 929-939.

35 *See, e.g.*, PI BHAT, *supra* note 17, at 35-39 (the discussion of K. Subba Rao on the interactions between law and social transformation). *See also* RICHARD H. THALER & CASS R. SUNSTEIN, NUDGE: IMPROVING DECISIONS ABOUT HEALTH, WEALTH, AND HAPPINESS (2009) (for a very similar view of the relationship).

36 PI BHAT, *supra* note 17, at 10-11.

well as the modes of operationalizing various legal institutions like the executive, legislature and the judiciary. Any book examining the interplay between law and social transformation must adopt an institutionally disaggregated view of the relationship between law and social transformation. While the role of the legislature, executive and constitutional courts in social transformation receive some attention,³⁷ the book fails to develop a keen understanding of the capacity and limitations of these institutions to aid social transformation and social change.³⁸ It may well be an unfair expectation for a book of this breadth and scope to offer a comprehensive account of the role of law in social transformation unassisted by substantial academic literature in each of these fields. However, the one field where primary materials already engage with these questions in considerable detail is the area of gender law reform. Hence, in this part of our review we will examine the approach to ‘gender justice’ in Chapters 12 and 13 to assess the author’s approach to an evaluation of law’s promise of delivering social transformation.

Chapter 12 begins with a broad excursion into the idea of gender justice, drawing on the works of Iris Marion Young, Hilaire Barnett, Catharine MacKinnon and Carol Gilligan, among others. We are then briefly acquainted with international human rights for women, before being immersed in a reconstructive account of Hindu philosophy where, despite literary evidence to the contrary, the author reassures us that the “core approach of Hindu philosophy... could hardly look down women as mere objects.”³⁹ We then glide into the constitutional debates and cases on equality where the author does not criticize the less than remarkable performance of the Supreme Court. Next, we turn to consider a surprisingly brief section on maintenance followed by an insightful section on the use of habeas corpus orders to protect women against private detention. We rapidly course through small sections on constitutional decisions on political reservation, pornography, foeticide, sati and prostitution.

37 PI BHAT, *supra* note 17, at 208-213 (Chapter 4) and 891-898 (Chapter 19).

38 See, e.g., AHARON BARAK, *THE JUDGE IN A DEMOCRACY* (2008); RICHARD A. POSNER, *HOW JUDGES THINK* (2008). Compare MARK TUSHNET, *WEAK COURTS, STRONG RIGHTS: JUDICIAL REVIEW AND SOCIAL WELFARE RIGHTS IN COMPARATIVE CONSTITUTIONAL LAW* (2008).

39 PI BHAT, *supra* note 17, at 528.

Two features of the discussion in these two Chapters about gender equity stand out and deserve careful attention. First is its emphasis on constitutional law. Unlike most of the Chapters in the book, there are references to legislative reform in the context of sati, domestic violence, rape and female foeticide in Chapter 12 and 13. However, it is nevertheless clear in these Chapters that the author is primarily concerned with the role of the Constitution and the Supreme Court in social transformation. As two of the first year LLM courses—Indian Constitutional Law and Judicial Process—already emphasize constitutional decision-making, there are pedagogical reasons for this course to emphasize non-constitutional law. Arguably, legislative efforts have had greater impact on social transformation than constitutional law decisions.⁴⁰

Secondly, the book fails to refer or respond to the extensive Indian academic and activist debates on issues of law and social transformation. This is a puzzling and striking failure as one of the significant strengths of this book is the extensive reference to academic sources. On the practice of sati, the author relies on the work of P.V. Kane, Romila Thapar and A.L. Basham, but fails to engage with contemporary feminist debates on the origin and practice of sati⁴¹ or the contemporary popular account of the practice by Mala Sen.⁴² The enactment of domestic violence legislation is one of the most intensely debated legislative reform measures in recent Indian history. Indira Jaising,⁴³ Flavia Agnes⁴⁴ and Madhu Kishwar,⁴⁵ among others, have engaged in a wide-ranging and heated debate on

40 Sanjay Ruparelia, *Enacting Socioeconomic Rights: Lessons from India* (2012), <http://www.worldwewant2015.org/fr/node/291507>.

41 See RAJESHWARI SUNDER RAJAN, REAL AND IMAGINED WOMEN: GENDER, CULTURE AND POSTCOLONIALISM 15-60(1993); Julia Leslie, *Suttee or Sati: Victim or Victor?* in ROLES AND RITUALS FOR HINDU WOMEN 175-192 (1993); LATA MANI, CONTENTIOUS TRADITIONS: THE DEBATE ON SATI IN COLONIAL INDIA (1998).

42 MALA SEN, DEATH BY FIRE: SATI, DOWRY DEATH, AND FEMALE INFANTICIDE IN MODERN INDIA (2002).

43 INDIRA JAISING, LAW OF DOMESTIC VIOLENCE: A USER'S MANUAL FOR WOMEN (2008); Indira Jaising, *Bringing Rights Home: Review of the Campaign for a Law on Domestic Violence*, 44 ECON. AND POL. WEEKLY 50-57 (2009).

44 Flavia Agnes, *Protecting Women against Violence-Review of a Decade of Legislation, 1980-89*, 27 ECON. AND POL. WEEKLY 19-33 (1992).

45 MADHU KISHWAR, ZEALOUS REFORMERS, DEADLY LAWS: BATTLING STEREOTYPES (2008).

the value of legislation in this field. Similarly, dowry and sex work⁴⁶ have been discussed at length in the women's movement. The author's optimism about the place of law in social transformation in the gender context is the subject of a book-length work by Nivedita Menon.⁴⁷ None of these materials find any mention in the book. This failure to locate a discussion of the Supreme Court's views on various gender issues in the intellectual context of the academic debates in this field ultimately defeats the primary enquiry in the book—to assess the capacity of the law to aid social transformation. Instead, we are left with an asocial and ahistorical anecdotal account of law's attempts to secure social transformation.

In the sections above, we have suggested that the book fails to provide the reader with an understanding of law as a social phenomenon or to critically account for the role of law in social transformation. Despite these criticisms, the book's value rests in its ability to reference a wide range of legal materials, which marks it out as one of the better Indian textbooks on this subject available today. Though the author's treatment of the legal materials is lucid in most parts,⁴⁸ the motivation for and the utility of the frequent invocation of Sanskrit *shlokas*⁴⁹ is unclear. Nevertheless, the major weakness in the book is the absence of an overarching argument that pulls the wide-ranging enquiry together.

The book's repeated invocation of the metaphor of "change and continuity"⁵⁰ to explain social transformation leaves the reader no better informed about the mechanics and impact of law and does not offer an overall structure for the book. The author may have developed either of the two themes discussed briefly in the book—Law and Development⁵¹ or Courts and Social Change—as the fulcrum around which the book is organized. The Law and Development approach has reasonably well-developed analytical frameworks and substantial inter-disciplinary

46 PRABHA KOTISWARAN, DANGEROUS SEX, INVISIBLE LABOR: SEX WORK AND THE LAW IN INDIA (2011).

47 NIVEDITA MENON, RECOVERING SUBVERSION: FEMINIST POLITICS BEYOND THE LAW (2004).

48 See PI BHAT, *supra* note 17, at 663-700 (for a discussion on modernity and modernization that is difficult to untangle).

49 PI BHAT, *supra* note 17, at 514.

50 PI BHAT, *supra* note 17, at 125, 167 and 672-673.

51 PI BHAT, *supra* note 17, at 63-68.

and comparative literature.⁵² However, the author does not embrace the inter-disciplinary method whole-heartedly and hence this may be an unlikely choice. The bulk of this book hints at but never fully develops an analysis of the courts and social change. There is an interesting discussion of Siri Gloppen's work⁵³ on the measuring of the transformative potential of court decisions, and this could potentially be the best framework for the entire book. Going beyond Gloppen's work this perspective could benefit from the work of Gerald N. Rosenberg,⁵⁴ Charles R. Epp,⁵⁵ Daniel L. Horowitz⁵⁶ or Roberto Gargarella.⁵⁷ The diligent student will benefit immensely by reading the entire book as an extended enquiry into the relationship between courts and social change. Read in this way, the book escapes the self-imposed limitations of an Indian law textbook and allows students to develop a critical inter-disciplinary approach to law and social change. A careful review of Ishwara Bhat's 'Law and Social Transformation' points to the central challenge to the one-year LLM programme: the availability of learning materials and textbooks that support a critical and rigorous pedagogy in the classroom.

V. CONCLUSION

The announcement of the one-year LLM programme has been enthusiastically welcomed as a significant break from the past and a critical inflection point in the history of Indian post-graduate legal education. As discussed earlier, the

52 See DAVID TRUBEK & ALVARO SANTOS, *THE NEW LAW AND ECONOMIC DEVELOPMENT: A CRITICAL APPRAISAL* (2006); Kevin E. Davis & Michael J. Trebilcock, *The Relationship between Law and Development: Optimists versus Skeptics*, 55 AM. J. COMP. L. 895 (2008).

53 PI BHAT, *supra* note 17, at 210-212.

54 GERALD N. ROSENBERG, *THE HOLLOW HOPE: CAN COURTS BRING ABOUT SOCIAL CHANGE?* 7 (2008) ("Court decisions, particularly Supreme Court decisions, may be powerful symbols, resources for change. They may affect the intellectual climate, the kinds of ideas that are discussed. The mere bringing of legal claims and the hearing of cases may influence ideas. Courts may produce significant social reform by giving salience to issues, in effect placing them on the political agenda. Courts may bring issues to light and keep them in the public eye when other political institutions wish to bury them. Thus, courts may make it difficult for legislators to avoid deciding controversial issues").

55 CHARLES R. EPP, *THE RIGHTS REVOLUTION: LAWYERS, ACTIVISTS, AND SUPREME COURTS IN COMPARATIVE PERSPECTIVE* (1998).

56 DANIEL L. HOROWITZ, *THE COURTS AND SOCIAL POLICY* (1977).

57 See also ROBERTO GARGARELLA, PILAR DOMINGO & THEUNIS ROUX, *COURTS AND SOCIAL TRANSFORMATION IN NEW DEMOCRACIES: AN INSTITUTIONAL VOICE FOR THE POOR?* (2006).

Guidelines issued by the UGC do not clearly articulate the goals of the new programme but develop a skeletal curricular framework for the programme. From this point, the one-year LLM programme may develop in two divergent institutional settings: first, by the decentralized development of curriculum, syllabi and learning materials by Universities, or secondly, by the UGC developing centralized syllabi through the Curriculum Development Committees or analogous institutions, as it has done in the past. Irrespective of the institutional environment for the academic development of the programme, the core challenge remains the capacity to translate the curricular vision of a rigorous academic engagement with law as an academic discipline⁵⁸ into learning materials and pedagogic practices that transform the current insipid LLM programme into a dynamic and exciting new academic endeavour. In this essay we have argued that this challenge has to be met through the concerted efforts of legal academics to develop learning materials that appreciate the nature of law as an academic discipline that intricately draws on the social sciences and the humanities while retaining a distinctive and complex intellectual method.

In 1976, Upendra Baxi warned us that a banking concept of legal education dominates the law textbook market in India:⁵⁹

*“No changes in curriculum or pedagogy will be really fruitful unless good quality text-books and other reading materials are made available to the teacher and the taught. Almost all available text-books in law are oriented to the ‘banking concept’ of legal education. They are by and large repositories of legal information and exegesis; they do not stimulate any critical thinking on the subject ... [I]n any case, it is worth repeating that almost 90% of law text-books in circulation today endeavour to ‘submerge’ the critical consciousness rather than to help it emerge.”*⁶⁰

In 2013, the one-year LLM programme faces the same challenge. In this essay, we show that what is arguably the most inter-disciplinary and intellectually ambitious course designed for the two-year LLM is transformed by curricular

58 See also Hanoch Dagan, *Law as an Academic Discipline*, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2228433 for a recent defence of a conception of law as an academic discipline that balances the claims of legal theory with the insights of the social sciences and the humanities.

59 Upendra Baxi, *supra* note 7, at 11.

60 Upendra Baxi, *supra* note 7, at 21.

development processes and textbook writers into a collage of excerpts from cases and scholarly articles unaided by a central argument or a coherent perspective. Unless a dozen sustained efforts at developing quality learning materials and textbooks are seeded right away, the promise of a new dawn for post-graduate legal education in India will remain just that: a promise.