



# Ethics Versus Commercialiability: An Analysis of the Impact of Neo-Liberal Philosophy on Ethics of Legal Education

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Neoliberalism as a school of thought emphasizes economic liberalization, privatization, and deregulation. The tenets of this theory thus emphasize competition and taking individual responsibility, thereby achieving economic efficiency. Neoliberalism has not left the education system untouched. In the context of education, neoliberal policies favor market-driven values and outcomes, such as employability and economic efficiency. The theory emphasizes competition amongst higher education institutions, consumer choice, and reliance on private funding and partnerships. An evident outcome of the application of neoliberal policy to the legal education system is the sudden emergence of multiple institutes offering legal education. The application of neoliberal thoughts however does not go well to the ethics of teaching and learning. While legal education, no matter liberal to whatever extent, would rely on intellectual exploration, critical thinking, and a deep understanding of principles of legal theory, in contradiction, the neo-liberal theory in disregard to these factors, relies only on market-driven factors such as employability and efficiency. This has resulted in the commodification of the legal education system. Quality of education has taken a back seat while the needs of the market and employers have taken priority. Once a noble profession, the education sector today thrives on exorbitant tuition fees. Critical thinking has been replaced by employability skills alone. The negative effects of neoliberal thoughts on legal education can be seen in the rampant privatization of legal education. Private institutes have mushroomed like never before but are rather infected with the vices of the greed of market consolidation and earning fame, not driven by the spirit of imparting legal understanding and creating good lawyers, judges, or even academicians. There is a casualization of academic labor. Recruitment of faculties is made with disregard to qualifications or experience and are made to work on meagre salaries resulting in a lack of incentive for faculties to enhance their knowledge while also bringing down the graph of intellect. It is argued that a blind inclination to neoliberal principles in legal education is harmful and the negative effects need to be addressed. To maintain the integrity of legal education, it is necessary to actively work on combating the negative effects of neoliberal thoughts on legal education. A balance must be created between the neo-liberal ideas and the ethics of the profession. A potent way of achieving that would be to adopt an interdisciplinary curriculum structure. Enabling a holistic approach to learning for students where they can critically think and ethically reason, thus ensuring that they become socially responsible citizens. The need is to put in place a legal education system that prepares the students for the demands of the legal profession while also equipping them with the knowledge and values necessary to contribute to a democratic society. By working on the tensions between neo-liberal thought and legal ethics, the legal education sector can play a significant role in shaping the future of legal practice and promoting the ideals of justice, fairness, and equality.

The world has become a rhetorical weapon, but it properly names the reigning ideology of our era- one that venerates the logic of the market and strips away the things that make us human

Stephen Metcalf

## I. Introduction

Neoliberalism as an economic policy emphasizes free market capitalization. It is a policy that favors free trade, privatization, and concepts like globalization. Neoliberal thought purports to transfer control from the public sector to the private sector. (Sahoo, 2023) The tenets of this philosophy imbibe the concept of economic freedom and hence endorse capitalism and minimal governmental intrusion. There is no uniformly accepted definition of neoliberalism, however, it is generally defined as “*a revival of the twentieth-century classical liberal ideas of free market capitalization(modified to address the challenges of the twentieth century)*”. Neoliberalism as a philosophy arose in the late 1940s as a response to three main ideologies of the twentieth century that advocated: communism (as the most prominent form of socialism), fascism, and social democracy. The idea of neoliberals was to confine state power to only a certain range of functions. (Vallier, 2021)They ardently vouched for a limited role of the government. Neoliberal thought proposes to replace the state as the main actor in deciding the affairs of the country while giving the right to make the choice to the individual, who according to the theory must be made to play an active role while the government, a minimal role, in the managing the affairs of the country. This is how the theory supports privatization. The reason why this theory puts the individual in high regard is basically the assumptions on which the theory relies:

- a. The theory regards the individual as an economically self-interested subject who is rational and in the best state to assess his own interests.
- b. The theory regards the free market as the most efficient way of allocating resources.
- c. The theory considers that a free market is a self-regulating order in itself and requires no government or outside regulation to control and regulate it. The theory suggests that the Governments must confine their regulatory powers to the protection of individual rights and liberties.
- d. The theory ardently advocates free trade devoid of any state-imposed protection or regulation in the form of tariffs or subsidies.

Before discussing the impact of neo-liberal theory on the policies of the countries, it is necessary to delve into the reasons, that led to the popularity of neoliberal thought. The following reasons can be cited as the reason for the popularity of neo-liberal thought:

**Economic Downfall:** A major reason attributed to the emergence of the neoliberal thought process was the economic downfall in the wake of the economic crisis of the 1970s. High Inflation, along with soaring unemployment, raised questions on the practicability of the then-existing economic model, which was dominantly the Keynesian Model. The policymakers were, as a result, forced to think of new economic approaches.

**Teachings of Leaders:** The neoliberal thought process was greatly inspired by the teachings of economists like Milton Friedman and Friedrich Hayek, who vouched for free markets, limited government intervention, and deregulation. The result of the teachings of such leaders was that the era witnessed an intellectual shift.

**Political Inclinations:** The coming into power of politicians like Margaret Thatcher in the UK and Ronald Reagan in the US, established a political inclination towards privatization and deregulation.

**Globalization and Technological Advancements:** Globalization supported by technological advancements, especially in the field of transportation and communication, also became a factor in the growth of neoliberal thought. The opening up of markets and reducing of trade barriers was seen as important for economic growth. Thus the significant growth of the economy due to the benefits of globalization reinforced the neoliberal thought.

The implementation of neo-liberal ideas proved to be successful (at least at the initial stages), and this led to the entrenchment of neoliberal ideas as a dominant ideology.

## II. Neoliberalism and its Impact on Society:

Neoliberalism had both positive and negative impact on the society.

**Economic Growth vis a vis Economic Inequality:** Neo-liberal ideas promoted free markets, and entrepreneurship and also attracted foreign investment, leading to economic growth. The neo-liberal ideas, however, are accused of sowing the seeds of inequality, benefitting the rich(through tax deductions) while ignoring the poor. There was a disproportionate distribution of wealth, making the rich richer and the poor, poorer.

**Economic Growth vis a vis Economic Destability:** Neo-liberal thoughts facilitated globalization leading to enhanced international trade and greater opportunities for economic development. Globalization backed by technological advancements greatly helped in improving the standard of living of the people. However, it was the neo-liberal thoughts that were blamed for the financial crisis of 2008, which came to be known as the Global Financial Crisis of 2008. The deregulation of financial markets was regarded as the main cause of the occurrence of the crisis.

**Privatization vis a vis Social Cohesion:** As the neo-liberal ideas vouched for limited government intervention, in the form of lesser regulations, privatization got a boost. Privatization, as a concept, symbolized individual freedom in making choices both economically and lifestyle. While privatization benefitted by giving more say and control in the hands of the individual, it significantly affected the social safety and welfare fabric of the country. Privatization of essential services like education, healthcare, etc, coupled with increasing income inequalities, led to concerns as to affordability and accessibility of them by weaker sections of society. Excessive focus on privatization and market competition, led to the decline of social cohesion and community spirit, replacing quality with quantity and dividing the society into haves and not haves.

**Environmental Degradation:** The neo-liberal ideas promoted prioritization of self's success over collective success. This narrow thinking made man insensitive towards others and became a reason for selfish exploitation of natural resources leading to environmental degradation.

## III. Neoliberalism and impact on education:

With the passing years, Neoliberalism did not just remain an economic concept but became a political ideology. The governance of the country began to be done in accordance with the neo-liberal ideas. The neo-liberal ideas, thus happened to impact the education systems too. The neoliberal philosophy propagated that the education system, must function according to free market principles and that they must be privatized both endogeneously and exogenously. The theory suggests giving control into the hands of parents and students as to the matters concerning their education by giving them more say in their education matters.

Neoliberal structure for education works on the following parameters: (Thompson, 2023)

- A. **Competition between schools, popularly called Egenous privatisation:** It refers to the process by which public services or assets are gradually transferred to private ownership. This is done through internal reforms or market mechanisms and not through explicit government mandates or actions. It involves the gradual expansion of private involvement in education. An example of endogenous privatization has been the Education Reform Act of 1988 in the UK(passed under the reign of Thatcher who was greatly influenced by the neoliberal views.) The Act gave parents the right to choose which school to send. Funding of the schools was directly linked to the number of students attracted for admission. This method of privatization while providing benefits such as flexibility and innovation, is often criticized for causing cream skinning and polarisation. The schools are rated as good or poor, based on the admissions achieved by them. Since choice is given to the students and parents to choose the college in which to study, the schools with good ratings end up attracting the best lot of students, while the colleges with poor ratings are left with students who are left behind. The good-rated colleges have an incentive to remain good(as their funding is directly linked to the admissions garnered by them), such colleges deliberately avoid students with lower academic performance, in order to avoid the downrating of their colleges. The endogenous form of privatization for this reason is criticized for having commodified education and

undermining the public nature of education as a common good. It has also resulted in inequalities in access to education. Other issues relating to endogenous privatization are the accountability of educational institutes, keeping a check on the quality of education imparted by them, infrastructures, etc.

**B. Exogenous Privatisation:** Exogenous privatisation is where private companies take over services that were previously undertaken by the public sector. This can happen due to deliberate action taken by the government like transferring of public services to private through explicit policy decisions. An example of exogenous privatization is:

*Outsourcing of career services:* Counselling as to career was earlier done by the colleges themselves, however today, this work is delegated to companies claiming to be experts in career counseling services. These companies collaborate with colleges and work for profit, their aim is to counsel the student as per his academic record and ambitions.

**FIG: 1 : Outsourcing Career Services Companies**  
<https://www.mindler.com/>

Overall the impact of exogeneous privatization can be summarized as following:

- Privatisation of colleges: Government selling or changing the ownership of public colleges into private, which are then run for profit by the private owners.
- Outsourcing of Education Services: Government contracting with companies to provide services like curriculum development, textbook publication, training of teachers, development and maintenance of infrastructure.
- Public Private Partnership Model: Government entering into partnership with private owners to generate finance and build infrastructure and technology.
- Outsourcing testing and evaluation services: Governments hire private companies to standardise test as well as provide evaluation services.

The exogenous privatization is based on the ideological belief of making use of the efficiency of the private sector into the deliverance of education and boosting competition amongst the educational institutions. However, this form of privatization is also criticized for raising inequalities, undermining educational standards, and prioritizing profit over welfare.

- C. Choice to parents and students:** The neoliberal philosophy believes in giving the right to make a choice to parents and students in respect to their education matters. The education system is disguised as a market where both the colleges(buyers) and the parents and the students(consumers) meet, and colleges with their ranking and rating, entice parents and students to opt for them, over the other. Colleges compete amongst themselves to secure the maximum admissions for themselves.
- D. Personalized learning:** The student is regarded as a consumer and the college is expected to cater to the needs of the students, who are their consumers and accord them maximum satisfaction. Teaching is imparted in a personalized form. Teachers are expected to analyze their students and devise teaching methodologies that fit the needs of every student. An example of personalized learning is the LMS system.

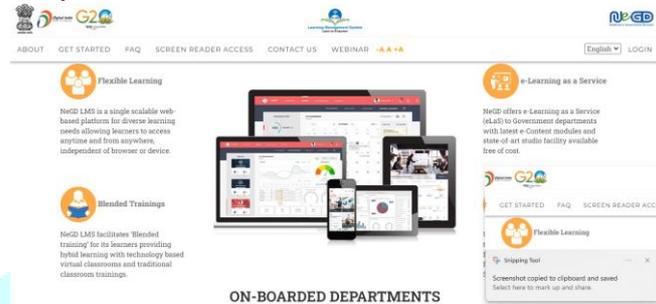


Fig: 2: LMS – a personalized way of learning

<https://lms.gov.in/home.aspx>

*Learning Management System (LMS) is a software application for the administration, documentation, tracking, reporting, and delivery of electronic courses (e-learning) and training programs.*

- E. Surveillance of teachers:** The satisfaction of the student(who is a customer) is considered paramount. The teachers are regarded as service providers who are expected to provide services( teaching etc) to the students, to their utmost satisfaction. The more the consumer happy, the greater the chances for him to come back. The colleges focus significantly on achieving the satisfaction of the students and for this, they keep a monitoring mechanism whereby the performance of every employed staff, especially teachers is monitored. Nonperforming or poor-performing teachers are ousted, for they may bring bad repute to the college.

#### IV. Pros and cons of neo-liberal policy:

##### Pros of Neoliberal Policy

Today the neo-liberal education policy has been adopted by most of the countries in the world. Supporters of the policy perceive the neo-liberal ideas as valid and having a potential for growth. They believe that the implementation of the policy as led to: the massification of higher education and increased student-faculty ratio.

Benefits attributed to the implementation of neoliberal policy can be summarised as follows:

- *Competition among higher education institutions leading to quality education imparted through institutions:*

Neoliberal tenets are looked upon as a major force that can be used to make technical, economic, and political changes in the education sector.

- *Neoliberal ideas have helped in the creation of knowledge-based societies and economies.*

It is argued that the neo-liberal principles can help in better allocation of state resources. State at times due to its limited resources and burdened by welfare activities, may not be in a position to spend as required for the education system. Under such circumstances, private sector facilities can be used to enhance the education sector.

- *The neoliberal policies help in establishing a better model of public-private partnership.*

The Governments can partner along with their private counterparts and reform the education system. By partnering with the private, the resources mainly in the form of huge finances can be availed as well as the regulatory check of the Government can also be ensured.

#### Criticism of Neoliberal Policy:

Critics of the policy however criticize it mainly on the grounds that it has led to the commodification of education. Some of the points on which the policy is being criticized are as follows: (Ben Fine&Saad-Filho, 2024)

*Inequality as to access to education:* Privatisation of education has created a divide amongst students as wealthy ones and poor ones. Wealthy ones are able to take admission in prestigious, colleges, while the poor ones are left for the poor-performing, poorly-rated colleges.

*Commercialization of education:* It is argued that neoliberal policies have reduced education into a commodity, sold by the educational institutions and purchased by the students.. The focus is on materialistic aspects like sophisticated infrastructures, and promises of campus placement rather than on quality of education. A culture of consumerism has been put in place, replacing the public good element of education. Schools and universities prioritize profit over educational outcomes.

*Market-oriented Curriculum Changes:* The curriculum is tailored according to market needs, emphasizing courses in fashion in the market, sidelining subjects like arts, and humanities. Thus in law, the focus is on courses like business administration, international business laws, etc, while core subjects of law like jurisprudence, and legal theory are overlooked.

*Standardized testing and accountability measures:* Institutes focus on test preparation, stifling creativity and critical thinking. This impacts the overall quality of education, as teachers might just "teach to the test" rather than focus on fostering a deeper understanding of the subject matter.

*Stress on Students and Teachers:* The purpose of education has been reduced only to score a high percentile. Test papers are designed to check theoretical knowledge, the student has to just learn the lesson and write it down in the examination as it is. There is no attempt to check the understanding of the subject, with the support of critical thinking questions or otherwise. This is killing the ability to critically think and is also making the student a bookworm. Marks alone are the criteria for judging the ability of the student. Teachers' ability to teach is also hampered for, there remains no motivation to try and adopt new methods of teaching.

#### **V. Neoliberalism and the Indian Economic and Political Reforms:**

Neoliberalism continues to dominate the political philosophy across the world. India is no exception to it. The neoliberal economic reforms have been adopted through the General Agreement on Trade in Services (GATS), later followed by the constitution of the World Trade Organisation (WTO). (Maio, 2022) The term 'neoliberalism' is used to refer to global market liberalism also known as capitalism and free trade policies. Today almost every sector has been transformed to fit in the tenets of neoliberalism. Financial Crisis and Economic Downfall witnessed by some countries made the belief in neoliberal ideas as a potential source of economic growth, reinforcing neo-liberal ideas in the governance policies of the nations. Globalization and the quest to hold a strong position at the international stage, pressurized the developing countries to adapt neoliberal ideas into their economic development policies. It became imperative for them to adapt neoliberal provisions into their economic matters if they wanted any financial assistance from institutions like the World Bank and the International Monetary Fund. The signing of the WTO Agreement including GATS in 1994 further fortified the willingness of India to adopt neoliberal ideas into their policy making.

## Neoliberalism and the Indian Education System:

The enactment of the Private Universities Act (1995) is seen as the first step towards the implementation of the neoliberal policy agenda into the education system in India. Through this Act, higher education was classified as a 'non-merit good,' while school education was classified as a 'merit good.' Later a report on Policy Framework for Reforms in Education by the Ambani-Birla, (2000) advocated for the complete removal of subsidized structure in the education sector. This report played a significant role in the corporatization of the education sector in India. The report emphasized that the higher education sector be entrusted to the corporate sector. It can be said that it was under the influence of this report, that the UGC recommended restructuring the higher education system in a corporate style promoting corporate values (constitution of a head institution over all the higher educational institutions that shall be prescribing the rules and regulations for the establishment of educational institutions, their implementation with also provisions for a penalty for non-obedience to the prescribed rules). Thus education became a tradeable service, not just domestically but globally too. (Globalization contributed to removing the barriers to education). Today education has become a service, teachers service providers, and students consumers. The purpose of education no longer remains to inculcate good values in students but to train students enough, only to fit in the employability criteria prevailing in the market. Universities have become skill developers rather than knowledge creators. The aim of educational institutions remains only to provide trained students who can fit in This shift was the international competitive labor market. Later the recommendations were given by the National Knowledge Commission, the Yashpal Committee Report (recommended private investment to increase access to higher education in India.), and the report by the Narayan Murthy Committee,( advocated for the engagement of the corporate sector investment, research and faculty development, vouched for privatization of education. These educational reforms entrenched the neoliberal ideology into the education system in India.

## The intersection of neoliberalism and the Legal Education system:

The intersection of neoliberalism and the liberal education system has significant implications for education as well as the practice of law. The neoliberal policies in regard to education favor market-driven values like employability and economic efficiency while the legal education system purports to provide a deeper understanding of the various theories and aspects of law, inculcating virtue and ethics in any graduate of law.

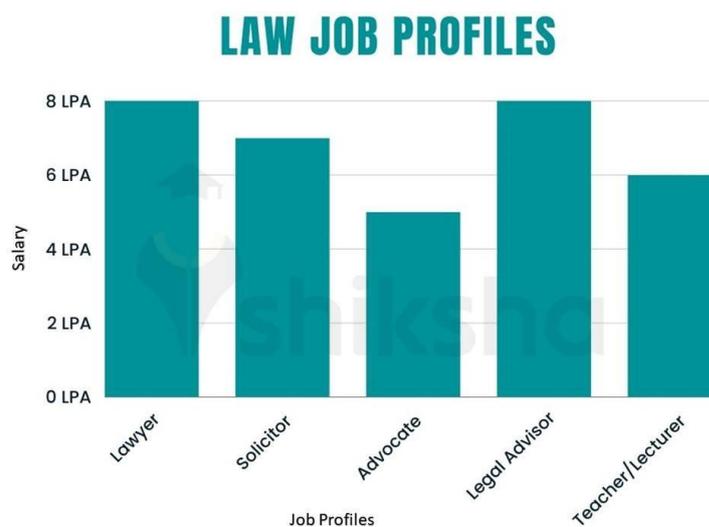


Fig: 3: Profile of legal jobs available in the market

[https://www.google.com/search?q=growth+of+private+legal+schools+in+india+2024&sca\\_esv=acc4d604aee1a7ed&udm=2&biw=1366&bih=633&sxsrf=ADLYWIJ4Ttix](https://www.google.com/search?q=growth+of+private+legal+schools+in+india+2024&sca_esv=acc4d604aee1a7ed&udm=2&biw=1366&bih=633&sxsrf=ADLYWIJ4Ttix)

## Liberal legal education vis a vis Neoliberal Philosophy:

When trying to understand the adaptability of neoliberal ideas into the legal education system, it becomes necessary to understand what a liberal legal education system would mean. A liberal legal education system is envisaged as one that purports to accord all-round development to the student. The idea of such a system is rooted in the principles of intellectual exploration, critical thinking, and broad understanding of legal theory and principles, and aims at developing analytical skills, ethical reasoning, and development of commitment to social justice. The conflict between the two however lies in the intention of both theories. The intention of neoliberal theory is to structure the education system as per the needs of the market, delivering what is required and in the manner that the market wants. (For example, if the demand is for corporate lawyers, law schools must produce corporate lawyers). On the other hand, a liberal legal education aims at broadening the mindset of the student from the confined parameters of societal norms and exploring the intricacies of what it is and what ought to be while delving deeper into the depths of the principles of justice and equity. The principles of neoliberal theory overlook the need to maintain the basic standards of education that impart knowledge and virtue to the student, under liberal legal education these basic standards of education are not intended to be compromised under any circumstances. The principles of liberal legal education is not just to produce lawyers doing mechanical interpretations and serving the corporations but to produce lawyers with knowledge along with virtue, ethics, and a commitment to serve society, with the courage to think beyond the shown facts and to fight for what is right irrespective of the fact it may be criticized or not acknowledged at the particular moment.

The conflicting principles of both theories have put a serious question before the academicians and the Governments. The question is at *what cost?* The influence of Neoliberal principles can today be seen in various aspects of legal education such push for vocational training and skills-based education, and the pressure to produce graduates who are immediately employable. These influences have limited the scope of legal education, narrowed down the focus to technical skills alone, and have significantly undermined the critical and reflective aspects that are fundamental to a liberal legal education.

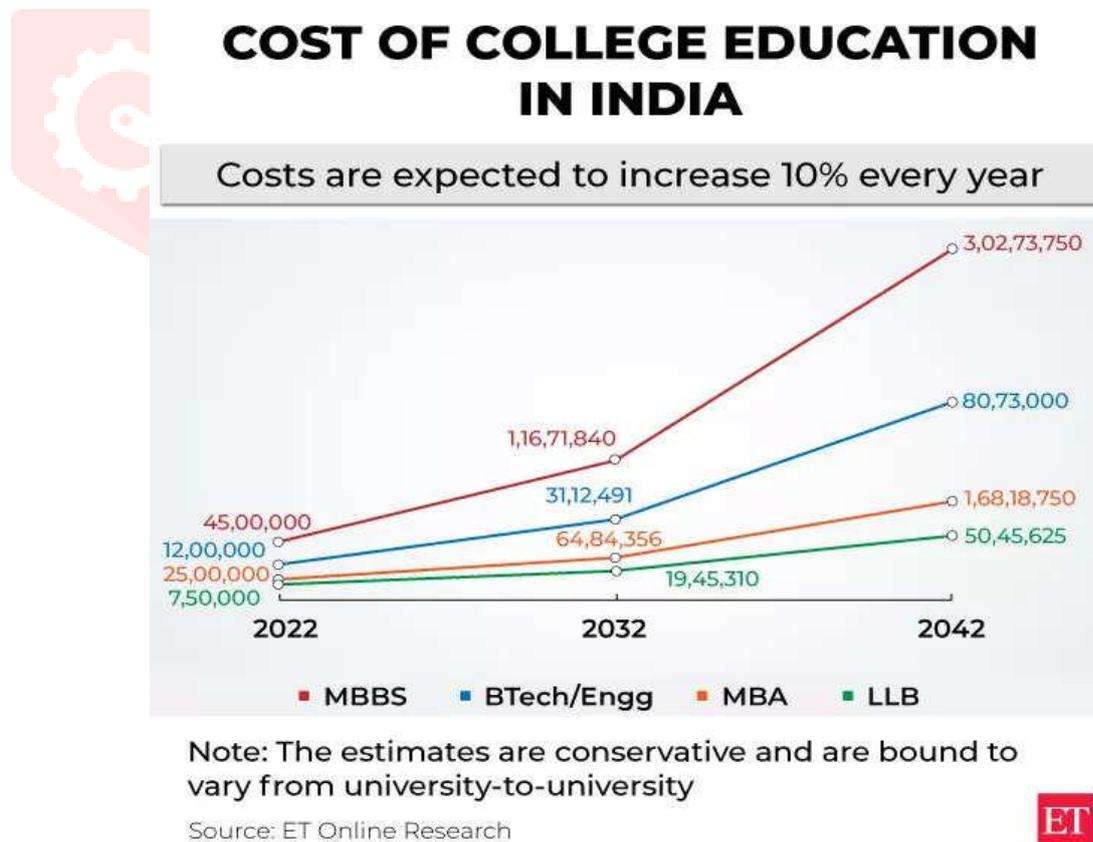


Fig: 4: Cost of Legal Education In India

[https://www.google.com/search?q=growth+of+private+legal+schools+in+india+2024&sca\\_esv=acc4d604aee1a7ed&udm=2&biw=1366&bih=633&sxsrf=ADLYWIJ4TixhEIKWr](https://www.google.com/search?q=growth+of+private+legal+schools+in+india+2024&sca_esv=acc4d604aee1a7ed&udm=2&biw=1366&bih=633&sxsrf=ADLYWIJ4TixhEIKWr)

## VI. Conclusion

The drawback of blind adherence to the neoliberal principles can be seen in present legal education system as it exists in India. One of the striking features of the existing legal system is that it is aimed at producing corporate lawyers who can be employed by multinational companies (eg: LPOS, KPOS). India being a country with unexplored potential and cheap availability of skilled and knowledgeable youths, the demand for corporate lawyers from India is much greater. To meet this demand, there has been a significant increase in law colleges, mostly private, offering law degrees. These colleges are structured to meet the rising demand with a curriculum inclined towards offering courses that suit the needs of the corporations. Many fancy courses classified as specialized or elective courses are offered right after the second year, deciding the course of their education. Focus on core subjects like the Constitution, Jurisprudence, and Legal theory is diminishing, depriving the students of legal intellect and turning them into mere robots working at the direction of legal corporations.

Law is a beautiful subject. Its essence lies in the ability to critically think. Killing this ability would mean killing the soul of the subject. Neoliberalism is going to stay, but it is the duty of legal academicians and policymakers, to protect the legal profession from its possible demise. It is true that in order to keep pace with the changing times, legal education will have to be modified, but it should not happen at the cost of its basic virtues and standards. Maintaining the integrity of the legal profession is essential, especially in the face of the pressure of neoliberal thought. To achieve this it is essential that legal educators and policymakers engage in critical thinking of the ways by which the negative effects of neoliberalism upon legal education could be resisted. One of the ways this can be achieved is by incorporating an interdisciplinary perspective into the study of law that shall promote critical thinking and provide a broader outlook towards the problems of society. The need is to strike a balance between the pressures of the new world and the ethics of the profession. The introduction of integrated courses like B.A.LL.B(H), BBA LL.B(H), and B.COM LL.B(H) is a good step in this regard, however, efforts must be made to provide equal attention to all subjects of law and not to be inclined only to selective certain laws. Globalization has already made the countries vulnerable to international tensions. The sovereignty of countries often gets challenged in international disputes. Under such circumstances, good lawyers shall be required who explore sovereign aspects of countries and guide the country in its course of action. Society too is undergoing tremendous change. Moral degradation is at its apex, leading to the commission of heinous crimes. Once again it is through good lawyers and judges that society can be directed to the right path. I believe that navigating the tensions between neoliberalism and legal education, legal education can play a crucial role in shaping the future of legal practice and promoting the ideals of justice, fairness, and equality.

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