

Environmental Law : A Suggested Course for the Law School Curriculum

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Introduction

Today the industrialised civilization is facing a serious risk of its own existence. One of the risks of the modern technological development is environmental pollution. These developments have so much adversely affected the life and growth of organs of human beings, animals and plants that pollution has become a slow agent of death. This is not a problem confined to a particular nation, like the capitalist or the developed nation but it is a global phenomenon. And only recently, some countries of the world started recognizing the hazard of pollution. In these countries the technologists, the medical men, the botanists, the chemists, to include some amongst many, are busy in discussing, identifying, and solving the environmental problems.

Now coming to the lawyers and the academics, they did not give due recognition to such an important subject for a long time. It is only lately that in some of the countries, especially the developed countries, the law schools started giving serious thought for the development of the environmental jurisprudence. The American law schools, as an example, included environmental law as a separate course of study only since September, 1969.¹ This is the starting point in the history of the American law schools when they started seriously discussing the environmental problems. The Warrenton Conference, the Michigan Seminar and last but not the least the Cornell Symposium on "Law and Environment" were held during this period. This means that there is no ignorance in the legal world of the environmental problems. There did exist some contributions even before this period but no due recognition was given to them.

Coming to the Indian scene, the Indian law schools, except the Banaras law school, have lagged far behind in providing for such a study. The

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1. Since Sept., 1969 the Law Schools of Columbia, Fordham, New York University and Rutgers included "Environmental Law", as a full-fledged course in their curriculum.

Banaras school, have included in their curriculum, either at the graduate or post graduate level, "Environmental Law" as a separate course. The reasons for neglecting this course are : firstly, this subject did not become aged or respectable. India was coming up from an under-developed stage to a developing stage and so the environmental problem did not attract much attention of the lawyers and the academics; thirdly, the Indian law schools were still under the clutches of the traditional system to impart instructions in only those subjects which were already well developed and which concerned the practitioners more; and fourthly, the disassociated approach of the law schools with other disciplines of study had shut the doors for inter-disciplinary studies. These reasons are also prevalent in those countries where till today the study of environmental law did not gather any momentum.

Importance of the study

The modern technology has, if not upset, challenged the existing legal system. And, therefore, the need of the day is that law as an instrument of change should move with the changing needs of the society. If it does not respond to the neo-needs of the society either it will be discarded or it will lead to a revolution which will restrict the development process of the present civilisation. The law schools should also be receptive of modern developments. When there are multifarious developments of technology in the modern society, the law and the law schools cannot afford to sit back and allow the water to flow. India is a developing country and it has to take an example from the developed countries of the West and provide precautions before hand otherwise once there is a cancerous growth, it will destroy the fruits of the modern developments.

Environment means the aggregate of all the external conditions and influences affecting life and development of organism. The environmental factors play an important part in the development of all human beings. Similarly, these factors are important for the life and development of animals and plants. But when certain factors adversely affect environment then they will also adversely affect the life and growth of human life, animals and plants. Then comes the role of law to control such external conditions or influences. Once such a law exists, the law school must respond to the developing subject, which may be even in a formative stage. In some areas the law may not respond soon, but the researchers in the law schools may stimulate a thinking in that direction.

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2. The author of this paper is conducting the above course and in this paper he has given his experiences wherever the Banaras Scheme is mentioned.

Today the law courses in India have also attracted administrators, students of science, medicine, engineering, industry and management, to name a few.³ And therefore for them study of traditional courses is not only boring but also not of much help. Moreover, the majority of the Indian law graduates do not go in for practice⁴ and if these graduates are also given training of law courses of varied experiences then the law schools may avoid today's frustration of the law graduates. Thus the students of law will be able to fill up vacancies in different walks of life, and will play a more useful role in the society. The Banaras experience has shown that the students of science, especially of botany, took keen interest in the "Law and Environment" course and they wrote interesting report of the field survey. The study of this course will also educate common students and will gradually develop public awareness of the environmental problems. Moreover, such a study will generate environmental law experts. In this direction today one finds a vacuum in the environmental jurisprudence. These experts in turn will create an atmosphere of environmental consciousness, and thus will open new vistas for the lawyers, judges, administrators and the conservationist community.

It is no doubt true that to-day there are not many laws in the field of environment and, therefore, one may think that it is too early for the school to handle such a subject. To this, two replies may be given: firstly, there is a central legislation dealing with water pollution along with state and municipal legislations dealing with varied facets of pollution problem; and secondly, the function of a law school today, is not just to impart training of the stereo-type subjects but to stimulate a new thinking and to put more responsibilities on the shoulders of the students. Once the process of thinking and research starts, it will culminate in a recommendation for the growth of new sets of law. In this regard the law school can, after serious research, prepare a model code for the control of a particular aspect of the environmental problems.⁵ Thus the law school should not sit but take a lead in introducing neo-branches of legal studies.

In the closed world of today, the law school cannot shut itself in an ivory tower. It has to work in co-operation with other branches of bearing.

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3. The Delhi Law School because of its two evening centres get students from multi-farious disciplines. This year the Banaras Law School admitted 32% science students graduate and post-graduate as well.
 4. Anandjee : Dean's Report, 1 *B.L.J.* 14. (1965) "not more than 25% of law graduates stick to the profession." Times have changed but no much improvement is made till today.
 5. The Banaras study circle has prepared a model code for the control of Air Pollution.

Once the law schools throw away the cordon around them of the traditional system, it will broaden the outlook of the students. Introduction of such a course in the law schools will bring an inter-disciplinary approach amongst the students of law, science, technology, medicine, *etc.*

Our judges are trained in the traditional way. Now-a-days there is a cry that the judges should be re-educated in the light of the changing role of law. This becomes more appearing in the case of environmental law. In this area the judges will have to develop inter-disciplinary approach in view of the complexity of the problems involved. An introduction of imparting instructions in such a subject will greatly help the judges in the performance of their duties.

Last but not the least, in the present world man is coming closer and closer to the community and in future also he will come more near to the communities all around. In this changing world the law and the law schools must also concentrate on development which effectively promote basic community values. The pollution problems are not individual problems, they affect people not only of a particular village, city, country but also of the entire world. And, therefore, the Indian law schools should divert their attention to some of the important problems of the new era. This will be no less a great service by the law schools to the society.

Scope of the subject

There are many environmental factors affecting the life and the development of an organism. For example, air, climate, clothings, culture, food, drug, light, noise, soil, water, *etc.* Of all these, the air, noise and water, are the most important factors. This is the reason that in countries where environmental law finds a place in the law courses, they have mainly concentrated on air, noise and water pollutions. But this does not mean that the law schools should shut the doors for other areas. No doubt, so far as soil pollution is concerned, the students of science have done enormous work. But it has not attracted the lawyers and the academics in law. Similar is the position with respect to other factors mentioned above. The law schools at the starting point will have to be selective and they may in the beginning be confined to air, water and noise pollutions. In due course other areas also may be given due recognition.

What should be taught

This course will be designed to acquaint the students with the problems relating to environmental pollution; critical analysis of the legislations controlling pollutions to inculcate among students a thinking process which may

provide solutions for the future environmental problems. This course will also emphasize the inter-relationship with other branches of law and have an inter-disciplinary approach. The synopsis of the course could be as follows :

1. Meaning and content of environment.
2. Factors affecting environment and environmental problems.
3. Importance of the study and reasons for its inadequate development in India.
4. Historical background.
 - A. Primitive society.
 - B. Middle ages
 - C. Modern times
 - (i) under-developed and developed societies
 - (ii) Capitalist and socialist societies
5. Comparative study.
6. Related branches of law.
 - I. Constitutional law and pollution.
 - II. Administrative law and pollution.
 - III. Criminal law and pollution.
 - IV. Law of Torts and pollution.
 - V. Planning law and pollution.
 - VI. Law of Nations and pollution.
7. Specific pollution and legal control :
 - I. Water pollution.
 - II. Air pollution.
 - III. Noise pollution.

At what level to be introduced

Normally, in almost all the Indian law schools teaching of the related branches of law mentioned in the synopsis of the Banaras Scheme is covered by the end of the Fourth Semester of the second year of LL.B. course. By this time the students not only know the ABC of law but also become reasonably equipped with knowledge, training and experience in multi-branches of law. For example, the Banaras law school prescribes seventeen subjects, which are the basic subjects, upto the end of the fourth semester. Once the mental faculty of the student is developed to understand the complex problems of the basic law then they will be more responsive to a new branch of law than a student who is starting with the ABC of law. And, therefore, it may be suggested that the course on the environmental law should be introduced to the students in the final year of LL.B. course and in the fifth semester when the students normally get more time. If that is so, the law schools will have to reorient the courses in the fifth semester so as to give a place to the newly coming up subjects.

Whether a compulsory or an optional course

The subject can be made compulsory because it is a well developed subject, it interests a large section of the student community and it may be good to make the legal education broad based. But initially an elective course for the environmental law may be adopted. Since it is in a formative stage and there is not much Indian literature available on the subject though some comparative material is available, only interested students should opt. Once the course passes through the formative stage then the law school may run a full-fledged course in this area. In this connection it may be suggested that once this area becomes developed the optional course should then be divided into the minor group and the major group. The student offering this course will be required to take only one paper from the minor group in the fifth semester and one paper among the major group in the sixth semester. The minor group may consist of two papers : (i) Law and Water Pollution; (ii) Law and Air/Noise Pollution. In the major group three papers may be prescribed: (i) Pollution in the Capitalistic State; (ii) Pollution in the Socialist State; and (iii) Governmental Planning and Environment.

Who may be admitted

The subject of environment is in itself a complex and a complicated area which has puzzled the students of diverse disciplines. Moreover, to understand the problems of environment, one has to have some background of science, technology, medicine, industrial management and what not. A student with this background may better understand and respond to the complex

problems involved in this area than a student with other backgrounds. This will help in building up an inter-disciplinary approach. These students will definitely take this course seriously as compared to those who join the law courses as a pastime game. Once it is developed as a full fledged course then it may be thrown open to any student who opts for the course. And in this way ultimately we can put in action the above programme for the maximum benefit of our society. In this regard it may be suggested that initially the law school may allow not more than ten students to offer this course.

Mode of teaching

The method of teaching a subject in the formative stage may be left to the teacher concerned. He may be given full freedom to develop the course according to his choice. There are two methods of instruction: firstly, the case method where the students base their studies on the cases and materials supplied; and secondly, lecturing method where the teacher imparts instructions only. Some of the Indian law schools at one time were thinking to switch over completely to the case-method but because of difficulties involved, they have more or less adopted a lecture-cum-case method system. Now coming to the present course there is not much Indian literature on the topic and, therefore, in the beginning, the lecturing system would be most suitable. Then with a select body of students the teacher concerned may prepare a text book, which may be a basis for starting the lecture-cum-case-method system. Since the subject of environment involves multi-disciplinary study in the lecturing system it will be necessary to involve teachers from diverse disciplines. The law school may get the help of the teachers of technology, medicine, botany, *etc.* because such an approach will broaden the visions of the law teachers and the students who may otherwise dwell in the four corners of the traditional world. Of course, there are some practical difficulties involved : firstly, for the University like Banaras where all the faculties are situated in one campus, it may not be so difficult to adopt such an approach but for other law schools this may be a great hurdle in practising such an approach; and secondly, neither the University nor the University Grants Commission gives any financial assistance in adopting such an approach.

The Banaras scheme has adopted the following mode. In the beginning, the teacher concerned will impart instructions to the students on the topics mentioned in the synopsis. This will give the students a general perspective of the environmental problems and their legal control. Once the areas mentioned in the synopsis are covered by the teacher with the co-operation of other teachers from related areas, then the students may be asked to collect relevant data and material.

Mode of Examination

Normally the Indian mode of examination is based mainly on the memory test. The author remembers a LL.B. first semester student, who was caught red handed copying in the examination hall, said "when the lawyers, the judges, and even the teachers read their notes why cannot we also use our notes." There are scholars who have advocated the abolition of memory test. So far as the course on environmental law is concerned it may be suggested that there should not be any memory test or as it is called, a written examination. The students may be given different areas to collect data and literature. Mere copying the articles or literature should not be encouraged but the students may be asked to summarize the material so that they may at least apply their mind. They may also be required to make a separate field survey under the supervision of the teacher concerned. And thereafter, he shall be asked to submit a detailed report of the survey putting emphasis on three things : first, to record detailed observations; second, to identify the environmental problems; and lastly, to suggest remedies or reforms in the existing situation if any. Thus on the basis of the class performance, the material collected and the report, the student shall be awarded marks or grade as the case may be.

Advanced study in environmental law

Once the law school makes a start in this direction at the LL.B. level then the advanced study in the environmental law can be thought of. Today the function of law schools is not just to educate the student with the foundation of a subject or the systematic study of what the law is. They have to raise the level of the student to develop critical outlook, to help in solving current problems and to show a new path for the succeeding generation. These challenging jobs may be taken up by the post graduate students in law and also by those who intend to do their doctorate programme which would continually augment the preferred values of the society and raise the society to ever increasing heights.

Though the majority of the law schools in India have started reorienting courses at the LL.B. level, yet the traditional approach still holds good at the post graduate level—traditional subjects like, Constitutional Law, Hindu Law, Legal History, Law of Contract, Law of Property, *etc.* find place in the LL.M. degree course syllabus. It may be suggested that at the LL.M level there should be more scope for the study of contemporary problems of the society. It may be suggested that at this level, initially, a course on "Law and contemporary problems" may be started. In this course the students may be given option to elect any three burning problems of the society out of which some aspect of the environmental problems could be taken up. The students

will be required to collect literature and to participate in class discussions or to conduct a seminar, and finally to write a research paper on each problem. So far as the Doctoral programme is concerned, environmental law is an unexploited field for the academics in law. A research in such a branch of law will not only be rewarding but also be rendering a great service to the whole community. Let us hope that the law schools of future will encourage such a branch of study.

Conclusion

One of the curses of the modern technological advancements is the unnatural environment. Today pollution problems are causing world wide concern and a thinking has developed that a permanent oxygen mask and an air-conditioner chamber be used, and as the polluted environment is becoming a part of life death due to such pollution could be considered as a natural death. This shows the helplessness of the human race to tackle pollution problems. On the one hand, pollution problems are increasing by leaps and bounds, on the other hand, the Indian law schools are still in the traditional compus cut off from the social problems. In the social service state, the law school, which is a unit of it, should bridge the wide gap between the law and society by concentrating more on social problems than on the problems of a class or an individual. Once this trend starts, the legal education will get a rightful place in the society. Introduction of a course on environmental law in Indian law schools would be an important contribution in this direction.

In India cities like, Bombay, Calcutta, Delhi and Madras are facing more environmental problems as compared to other cities. The law schools of these cities may initially start a course on 'Environmental Law'. This will have two benefits : firstly, these law schools because of their location, will be dealing with practical problems and not just bookish problems and secondly, they will educate persons affected by pollution and thus will develop an environmental consciousness among them.

It will undoubtedly be a tedious job to build up such a new branch of Jurisprudence and therefore the law school should handle this course with great care and seriousness. Though in the past some of the law schools introduced certain new courses, yet because of one difficulty or the other, they had to give a second thought on continuing some of the subjects. Once such a careful programme is put in action and with select student body and a teacher or teachers, it will be a great contribution towards a liberal and dynamic approach in the Indian legal education.

We have seen the difficulties involved in the inter-disciplinary approach. These difficulties may be overcome by starting at the national level an Institute

of Advanced Legal Science Studies⁶ to serve the purpose. There, the academics in law with the collaboration of experts in other areas would publish projects and have a journal to cater to the needs not only of the legal technicians but also scholars of other branches. It will be a good laboratory for the research scholars with a vast library. The Institute may be allowed to confer doctoral degree in law on deserving scholars who in turn will be well-equipped to deal with the courses like the one on 'Environmental Law.

To conclude, present Seminar of the Indian Law Institute on 'Law and Environment' will in itself be a great contribution to the Indian legal education. This is the first time when the academics in law are debating on environmental problems to find out solutions. I hope that the seminar will stimulate a thinking in the law schools throughout India of introducing a course on "Law and Environment". Once the proceedings and the papers presented are published it will greatly help the law schools in the light of scanty Indian legal literature on the subject.

6. The Institute of Constitutional and Parliamentary Studies adopted the interdisciplinary approach but in a very limited area.