NOTES AND COMMENTS

TRAINING IN LEGAL EDUCATION: SOME COMPARATIVE INSIGHTS FROM INDIAN AND AMERICAN EXPERIENCE

WHAT ARE the educational objectives that a law school should seek to attain? Preparing students for practice is an inadequate explanation of the objectives as it can mean many things in different situations. One talks of litigating lawyers, transactional lawyers, consulting lawyers, public interest lawyers, corporate lawyers, government lawyers, transnational legal practitioners etc. assuming that they do different things differently to achieve different outcomes. While there is some degree of commonality in knowledge, skills and values in all types of legal practice, there are wide variations in approaches, strategies and value systems that condition their varied work as lawyers. Does legal education prepare the students for all types of legal practice and, if so, how adequately? What is the measure of education on professionalism and how is it evaluated and by whom? These are questions now being asked within the legal community and outside engaging the attention of law teachers everywhere.

The reform agenda

Among the significant concerns that shape the reform agenda in legal education in India are the following:

(1) Dilution of standards of ethics and professional responsibilities and the failure of legal education to inculcate the right values and professionalism.

(2) The inadequacies in imparting instruction in skills and attitudes which a legal professional is called upon to employ for negotiating justice within and outside litigation.

(3) The relative neglect of comparative law, international law and conflict of laws in the legal curriculum resulting in the legal community taking a back seat in the processes of globalization and development of legal regimes supporting it.

(4) The lack of capacity for integrated and strategic thinking resulting from compartmentalized learning and learning at the cognitive level only.

(5) In the context of multiplicity of languages for legal transactions, the issue of language also contributes to the concerns particularly when English continues to command a dominant role in legal discourses.

Some insights from the American experience

It will be interesting to discuss briefly two recent publications on the subject from United States of America – one from Carnegie Foundation for the advancement of teaching on educating lawyers[1] and the other from the Clinical Legal Education Association (CLEA) on best practices for legal education.[2] The Carnegie study is an attempt to interrogate the relevance of the dominant goal in legal education characterized by the idea of "enabling to think like a lawyer". Acknowledging the fact that professional schools set their students apart form others "by providing systematic involvement into a distinctive knowledge base, binding them into a shared pattern of thinking and acting", the report gives credit to the pedagogical power of the so-called case-dialogue method in shaping law students from different social backgrounds in a short period of time with capacities of legal research, writing and argumentation. Compared to other professional fields, which often employ multiple forms of teaching through a more prolonged socialization process, legal pedagogy is remarkably uniform across variations in schools and student bodies. The consequence is a striking conformity in outlook and habits of thought among law school graduates.

Limitations of case-dialogue method

The heavy reliance on one "signature pedagogy" to accomplish socialization of young students, the Carnegie report argues, results in certain unintended and possibly undesirable consequences. For example, it makes abstraction of the legally relevant aspects of situations and persons from the everyday contexts and tends to give an understanding of doctrines and rules far different from the commonsense understandings of lay persons! "Students discover that thinking like a lawyer means re-defining messy situations of actual or potential conflict as opportunities for advancing a clients' cause through legal argument before a judge or through negotiation." In the process, the role of

1. William M. Sullivan *et al*, *Educating Lawyers: Preparation for the Profession of Law* (2007).

2. Roy Stuckey et al, *Best Practices for Legal Education: A Vision and a Road Map* (2007).

thinking through the social consequences or ethical aspects of the conclusions, remain outside the case-dialogue method.

The report says that if issues such as social needs or matters of justice arise in classrooms, they are almost always treated as addenda and students are told to set aside their desire for justice if they want to succeed in legal practice. "They are warned not to let their moral concerns or compassion for the people in the cases they discuss cloud their legal analyses." Students have no way of learning when and how their moral concerns may be relevant to their work as lawyers and when these concerns could throw them off track.

The near exclusive focus on systematic abstraction from actual social contexts in legal education also leads to unforeseen results such as not focusing the issues comprehensively and not appreciating the ethical and social dimensions of the profession. Law schools rarely pay consistent attention to the social and cultural contexts of legal institutions and the varied forms of legal practice. Whenever these concerns were taken on board, law schools adopted an additive (adding one or two additional courses) approach rather than employing an integrative strategy (of the cognitive, the practical and the socio-ethical aspects), which builds on holistic educational reforms. "The goal of greater integration", according to the report, "means that the common core of legal education needs to be expanded in qualitative terms to encompass substantial experience

Vision of an integrative model

The major recommendation of the Carnegie report is integration of the students' work experience (apprenticeship and summer employment) in the educational programme (clinical courses particularly) to allow serious, comprehensive reflection with faculty and peers for professional development. In an integrated model, the practical apprenticeship stands not subordinate to but in a complementary relationship with legal analysts. Students need, the report argues, a dynamic curriculum that moves them back and forth between understanding and enactment, experience and analysis, as they strive to become mature legal professionals. The challenge lies in developing a model where the cognitive (knowledge based), practical and ethical-social components of legal education are weaved together in such a way that they become aware of their social responsibilities while imbibing professional skills and developing legal knowledge base.

"Best Practices" to provide a vision and a road map

While endorsing the findings of the Carnegie report and building on it, the Roy Stuckey study on "Best Practices" commissioned by the CLEA have "distilled out of the continuing dialogue a consensus of understanding of an alternative vision of all the components of legal education: an integrated combination of substantive law, skills and market knowledge, and embracing the idea that legal education is to prepare law students for the practice of law as members of a client-centered public profession."[3] The "Best Practices", have been identified based on well known principles of curriculum development involving four distinct stages, namely, identification of educational objectives, selecting activities appropriate to attain those objectives, organizing the activities in the form of effective instructional modules and designing methods for evaluating the effectiveness of the selected learning experiences. Without a clear defined mission and a plan to achieve that mission, the curriculum of law schools, Stuckey argues, remain a collection of activities without coherence and measurable effectiveness of its educational goals. The book is a clarion call to law schools for clarification and expansion of their educational objectives, diversification of their instructional methods and improvement of evaluation strategies. It is heartening to find that the book did gather ideas from the experience of the Global Alliance for Justice Education (GAJE) that was born in Trivandrum (Kerala, India) in 2000 in a conference of clinical teachers, which the author of this paper helped organize towards promoting experiential learning in legal education.

The CLEA study wants the law schools to make an institutional commitment articulating their educational goals and a "shift of emphasis from content-focused programmes of instruction to outcomes-focused programmes of instruction. In developing the programme of instruction, law schools should aim to develop knowledge, skills and values progressively and to integrate theory, doctrine and practice through out the three years of law study. In delivering instruction, the study desires that such methods which enable context-based instruction using practicing lawyers and judges be employed. Multiple methods of assessment should be used in evaluating student learning. Finally, the book wants law schools to regularly evaluate the success of the programme of instruction. The author of the "Best Practice" study concludes by saying that, "….we are convinced, however, that the major impediment to reforming legal education is a lack of vision and commitment, not a lack of resources."

3. Robert Mac Carte, Esq. in the Foreword to the book *Best Practices for Legal Education*.

Indian experience in reforming legal education

The purpose of this paper is to give some comparative insights on how similar concerns in India resulted in introduction of an integrated five-year LL.B. programme on an experimental basis two decades ago which, within a short period, changed the course of legal education in the country. In mid 1980s, the experimental programme addressed practically all the missing links brought out in the two American reports discussed above. As a result an integrated curriculum for an extended period of five years got introduced as an alternative method of legal education in India. The National Law School idea which was also launched around the same time helped the experiment in a big way by providing the necessary learning environment of a residential campus and the academic freedom to experiment, innovate and make corrections as frequently as necessary.

The Indian experiment, yet to be completed, offers interesting lessons to some of the concerns and challenges articulated in the Carnegie Report and the CLEA document on legal education. The author's credentials in attempting the comparison is his exposure to the two significant contributions of American system of legal education, namely, the case-dialogue method of instruction and the clinical legal education programme propagated by CLEPR (Council of Legal Education for Professional Responsibility) in the 1960s and 70s. It is not the author's position that the new scheme of Indian legal education is any way superior or worthy of emulation elsewhere; in fact, traditional legal education which is continued in most of law teaching institutions in India is still in shambles and continue to suffer from all the ills that the two reports have pointed out and more. That is the reason why the Indian experience under the five year integrated curriculum is said to be still an experiment. However, the period of twenty years is sufficiently long to pass judgment on the academic and professional efficiency of the new experiment particularly when more and more governments and institutions are seeking to replicate the five-year integrated LL.B. programme on the National Law School model. What is written here on that model is not a scientific evaluation of the Indian experiment which awaits experts evaluation; rather it is an insider's[4] response to what

4. The author of this paper, was Secretary of the Bar Council of India Trust and later member of its Legal Education Committee when the integrated five-year LL.B. Programme and the revised general law curriculum were conceived by the Bar Council of India in early 1980s. Later, when the Bar Council of India sponsored the National Law School in 1986 to experiment and develop the new LL.B. programme evolved by the council, it again entrusted the task to him who made it a success initially at the National Law School, Bangalore (1986-1998) and later at

have been identified by the American experts as barriers to better legal education.

For purposes of comparison, this paper will consider the following issues in relation to the Indian experiment:

1. Integrated curriculum broadening the objectives of legal education and the goals of professionalism.
2. Instructional activities which aim to combine learning of core knowledge, skills and values through integration of theory and practice.
3. Employment of multiple methods of instruction and best practices using the services of lawyers, judges and social activist.
4. Continuous assessment of student learning through transparent, participatory methods based on objective criteria.
5. Periodical evaluation of the law school performance by outside experts.

Integration with a vision

Integrated knowledge is, no doubt, the outcome expected of higher learning. In the case of professional education, the integration is to happen not only in respect of knowledge but also in respect of its application to be able to resolve problems in ethical and socially acceptable ways. Law is a subject eminently suited for integrated learning because of the multiple roles law performs in the development of modern societies. The question before legal educators, therefore, is integration with what, and how, given the constraints of time and resources. The Indian experiment attempted to answer these questions of what and how in the following ways:

In terms of objectives, while preparing students for legal practice remains the major premise, it is to be acknowledged that legal practice needs to be expanded to include a variety of significant roles that law-trained persons are called upon to perform in governance, in development and in civil society. Such a view of legal practice would require almost all knowledges in appropriate modules to be brought progressively in the teaching/learning of law. This would also require looking at the eligibility qualifications for those seeking to enter the study of law. Naturally, the prevailing three-year period for law study

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of Juridical Sciences, Kolkata (1999-2003). Such intimate involvement of the author in the experiment makes this insider's story.

(after a basic degree) is inadequate for the purpose. Therefore, the first step was to increase the duration of the law course to five years and to determine eligibility as higher secondary school examination (which one obtains after 10 years of school and 2 years of pre-university education). In fact, as a next step the duration should be extended to six years which anyway is the period one would be spending if one were to study law through the alternate programme (i.e. after a basic university degree of 3 years and then a three year LL.B. study).

The next question was selection of knowledges for purposes of integrated learning of law in its multiple roles in society. The object was not only integration at the theoretical level but in terms of methods and application as well. This was indeed a challenging task yet unfinished. It was agreed that this could be done only incrementally. Initially, the curriculum was designed to include subjects like history, political science, sociology, economics and psychology apart from English language. In later stages even physical and natural sciences are to be brought within the law curriculum. Many questioned the relevance and practicality of this move; others predicted that the experiment is bound to fail in the absence of suitable study materials and non-availability of teachers equipped to teach in an integrated manner without diluting the objective of legal practice. Constraint of space does not permit a detailed discussion as to how this was done in the five-year integrated LL.B. programme at the National Law School, Bangalore and what are the enhanced outcomes of this experiment. The fact is that the programme is now being extended to more and more law schools and the products are making a distinct difference in legal practice, broadly understood.

For managing such a diverse and expanding curriculum, the National Law School limited annual admissions to 80 students only and divided the academic year into three teaching terms (trimester) with five subjects of 3 credits each in each trimester. The number of working days in each trimester was 80 or more with each subject receiving at least 80 class hours. There was only a 10 to 15 days' gap between two trimesters within which grades of students were announced. During the summer vacation of two months, all students are put on placements (externship) in different locations of their choice. While the first year students usually go to civil society organizations, political parties and social work institutions, in subsequent years they were rotated in lawyers/ judges' chambers, law firms, corporate enterprises, prosecutors' office and legal divisions of government/public sector agencies. There is lot of flexibility in externships and are not structured excepting a briefing on what to learn, how to use the opportunities to learn and few instructions on personal conduct. Students record their experience in a diary, which they submit to teachers for comments and guidance. It is assessment of this record and the changes noticed in the quality of

interaction of the students that give the faculty a measure of learning they have acquired during externship. No grade is given to students for the externships as they are considered outside the prescribed curriculum and, therefore, not evaluated. At the same time, these placements during study remain the single-most powerful integrated learning opportunity for students. Besides, for many, it turned out to be a method of choosing their employers in their early career.

Another step in broadening the curriculum was in respect of the range and variety of optional subjects offered from the beginning of the third year of the five-year programme. Nearly half the curriculum consists of optional papers. They are so chosen to promote inter-disciplinary research-based learning largely through self-study and guided seminars. An element of specialization naturally gets into the scheme of optional curriculum. Furthermore, research and writing skills are tested and refined in this exercise. The quality of papers prepared by students in these courses was so good that many of them get published in Indian and foreign legal periodicals even while the students were continuing their studies. Some of these optional subjects are developed out of large research projects which the law school undertake for government or private sector establishments and students get rewarded for their participation monetarily as well. Thus, on an average, National Law School students study at least fifty subjects in five years, some even more, which is almost double the number of subjects a three-year LL.B. course student does as per bar council rules. More importantly they do it in an integrated manner contributing to the development of professionalism. The courses on law and poverty, law and development, public interest litigation etc. give rare social insights into social reality and the laws functioning to generate or ameliorate poverty. This enables the law students to ask the right questions in their professional engagements afterwards. The cultural pluralism of Indian society and the social justice concerns of Indian laws and the Constitution provide ample opportunities for the students to explore areas outside private litigation and discover for themselves why law performs the way it does and what can change it, if desired. Perhaps the ease with which many lawyers in India move in and out of politics and governance even while they continue in legal practice demonstrates a wider conception of legal practice in Indian social context.

It is also important to point out that under the National Law School scheme, one third of the credit in each course is given to what is called a project assignment. Project topics are related to the course (though not necessarily so required) and are settled between the teacher and the student at the beginning of the course. The student is expected to write an outline stating the problem, the issues he wants to probe, the methodology for it including field visits if any and get the approval of

the guide. The final product in the form of a written paper is to be presented in a seminar before the close of the trimester where the teacher grades the performance and advises follow up action, if required. Writing fifty project assignments in all types of topics in five years' study develops in the student a variety of lawyering skills and value systems in better ways than traditional methods of instruction.

The case-dialogue method, which has not been part of legal education excepting in Delhi and a couple of other places, became central to the National Law School experiment. It additionally involved the preparing/ editing/updating of the study materials for each and every course, making heavy demands on the faculty and the law school resources. As there are still no standardized case books available in the Indian market, each law school wanting to teach through case study method has to assemble its own materials. For National Law School, it was a blessing in disguise in as much as it allowed freedom to borrow materials from outside law and integrate it with law study to open up new vistas for legal enquiry. Inevitably, the case method of teaching changed the style of questions in examinations. From mere descriptive and memory-based questions, the examinations came to have problem-type, application-oriented questions, testing skills along with knowledge.

The status that clinical methods and experiential learning acquired in the experiment is worth mentioning. Again, clinical method is understood here in a more comprehensive sense than is the case in the American situation. For example, the case study discussion, the legal method course in the first trimester, the moot court exercises, the project assignment, the summer placement, the legal aid support activities, the community-based law reform activity, socio-legal audit of welfare laws, para-legal work, law enforcement assistance, legal literacy camp, drafting of legal documents, legal research and writing, mentoring of weak students, law journal work, assistance in the preparation of study materials, development of question banks etc. are all considered part of the clinical programme, whether they come within the required curriculum or outside, whether they are supervised or not, whether they are given academic credit or not. Participation in many clinical activities, some of which are sponsored by students themselves, is optional though students try to get involved in as many of them as possible. Instruction for the basic skills as prescribed by the bar council is, of course, the law schools' primary responsibility. Beyond that, law school sought to encourage, facilitate and support innovative activities with learning potential without waiting for them to earn a place in the curriculum. Such an approach enabled the law school to be a fertile ground for experimentation and innovation keeping every student involved in number of activities relevant to the community while enabling him to appreciate the social realities in his own way. The law school assumed

greater visibility in society which indirectly helped it to enrich its academic activity through wider networking outside the traditional legal world.

The National Law School experiment was evaluated by an international panel of distinguished law teachers[5] appointed by the Visitor (the Chief Justice of India) who gave a report appreciative of its academic programmes and the quality of its outcomes. However, it was apprehensive of its sustainability at the same level of performance and felt that its success may itself become a source of worry in future. The finding is today shared by many legal educators within the country and outside. Nonetheless, the success of the experiment is today sustained by hundreds of its alumni in legal practice all over the world and thousands of students who every year seek to join the institution for their legal education. In fact, law has become a priority option for many bright students because of the NLS experiment. The criticism justifiably raised by a section of lawyers is that the National Law School graduates are not practicing in the lower courts in adequate numbers and that they do not seek judicial positions. Well, if that was part of the expectation when the experiment was launched, the reasons for its not happening have to be sought more in the profession rather than in the law school.

Professionalism is an attitude and a culture developed and sustained by the legal practitioners including judges. Unless they themselves put their houses in order, law schools can do very little to influence changes in standards of professionalism in its ranks.

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5. The panel consisted of Marc Galanter, Professor, Wisconsin Law School, William Twining, Professor, London University and Savitri Gunasekere, Professor, Colombo University.

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