



## **NOTES AND COMMENTS**

### **LEGAL EDUCATION – IN SEARCH OF NEW VISTAS**

THE POSITION of legal education in India during the last six decades after Independence could be captured from the observations made by the bodies which have had the opportunity to examine it then and now.

In 1949, the University Education Commission painfully noted thus:<sup>1</sup>

We have no internationally known expounders of jurisprudence and legal studies. Our colleges of law do not hold a place of high esteem either at home or abroad nor has law become an area of profound scholarship and enlightened research.

...

The amazing fact is that we now have so many able practitioners and well qualified judges, rather than that there is a scarcity of gifted legal scholars and researchers.

In the course of discussion, the importance and relevance of constitutional and international law came to be stressed. With regard to the abilities to be acquired by the students of law, the commission noted thus:<sup>2</sup>

It is important that, whatever subjects may be offered, the student should acquire the powers of clear thinking, accurate analysis, and cogent expression. Without these qualities, he cannot hope for success as an attorney.

It is felt that the central idea of the Knowledge Commission in 2008 is not different though it speaks about the multifaceted approach that should be adopted. It observes:<sup>3</sup>

The vision of legal education is to provide justice-oriented education essential to the realization of the values enshrined in the Constitution of India. In keeping with this vision, the legal education must aim at preparing legal professionals who will play decisive leadership roles, not only as advocates practicing in courts but

---

1. *University Education Commission* (1949) Introduction to chapter on 'Law'. It is pertinent to point out that the Law Commission of India, *XIV (I) Report* 35 notes that Indian legal education had failed to promote the growth of juristic thought.

2. *Id.*, ch. VII

3. *Report of Knowledge Commission* (2008).



also as academics, legislators, judges, policy makers, public officials, civil society activists as well as legal counsel in the private sectors maintaining the highest standards of professional ethics and spirit of public service. Legal education should also prepare professionals equipped to meet the new challenges and dimensions of internationalization where the nature and organization of law and legal practice are undergoing a paradigm shift.

The commission has thus reopened the debate on the objectives of legal education.

There had been a lot of discussions on the objectives of Indian legal education. Scholars used to differ on this vexed question. While many argue that it is to produce lawyers, there are others who say that it is to produce law teachers and law researchers. In fact, this discussion is misplaced. While we consider the question of objectives of legal education, one should focus one's attention on the skills required by a person trained in law in as much as it is the person who is trained in law who may be asked to act as an advocate, judge, a law teacher or a law researcher. So the objectives of legal education should be to develop skills required by the person acting as a lawyer, judge or researcher.

The lawyer may be a finder of law. A person who is confronted with a legal problem may not be knowing the exact law that governs the situation. He may approach a lawyer for guidance. In that situation, the lawyer finds the law either in the statute book or in the realm of case law, locates the exact rule that governs the situation. In this process, he not only finds law, but also, indulges in a sort of interpretation and states that this is the law.

There could be another situation which may call for interpretation of a statutory provision or ratio of a decision on the point. In this case the person may be aware of the existence of the rule but may be incapable of getting any guidance from it in as much as he is not trained in law. The lawyer because of his training reads the law and advises the person concerned. Here he carries out the function of interpreting the law not in the sense of attaching finality to it but only in an advisory sense. Therefore, this function may perhaps be called advisory function.

A lawyer could be approached by a person who finds no law either in the statute book or in the decisional law with regard to a question confronted by him. In that situation also, the lawyer indulges in a sort of research into the statute law as well as case law and comes out with the conclusion signifying his view of the appropriate law. In arriving at this conclusion, what he does, is a sort of guess work having regard to the interplay between statute law and case law in the constitutional context and jurisprudential principles and precedents emanating from similar fact situations. The lawyer,



in fact, indulges in a sort of prediction of law.

There are situations which have not so far been envisaged by any law – statute law and case law. In such a situation, a new law may be called for. Here also if the affected party approaches the lawyer for a solution, what the lawyer does is, having regard to the position of the law, argues for a new rule either before the legislature or before the court. In either way, it would be legislative function. Here the lawyer functions as a law reformer.

In all these functions, the lawyer should display his abilities for argumentation, debates, discussions and the spirit of accommodation. There may be issues which one might not readily agree. If that issue is not material for the relief which he seeks for, the lawyer may show the ability of ignoring that issue to thrash out a consensus with his adversary. The issues thus ignored perhaps crop up in a subsequent case. Then they are independently taken up in the new context and resolved. In the course of debate also the lawyer should display his exemplary abilities. He may reject the plea of a person, refuse to admit the other's point of view, retaliate with equally effective argument, revolt against statements made by the other party but he should not rebuke his adversary. He should respect and recognize ethics of his profession.

A lawyer must also possess a rare combination of leadership and team spirit. He should have the ability to achieve cooperation. He should not only work constructively as team member but also be a visionary and leader. He should be able to comprehend the problem and render a decision using multidisciplinary skills. It is clear, therefore, that legal education in India must be geared to produce a new crop of lawyers who not only help in evolving new norms of his society but are continuously engaged in disseminating and implementing them.<sup>4</sup> Thus, a lawyer should not only have all the abilities to carry out the above mentioned functions but also to be a good human being who should be in a position to develop what is called sympathetic detachment from the issues even if they are close to his heart. Then alone, shall he be in a position to carry out his functions. In one way or the other, our law schools have these things in view while imparting legal education. But to our dismay, it remains a fact that many of them are not in a position to inculcate the values required to be cultivated in the legal profession.

Acquisition of these abilities calls for a reasonably higher level of knowledge not only in law but in subjects like History, English, Psychology, Sociology, Economics etc. Thomas Jefferson, the third President of US is reported to have mentioned to the students of Yale University that if one

---

4. See Gajendragadkar's forward to G.S. Sharma (Ed.) *Essays in Indian Jurisprudence* VI (1964).



happens to be a law student, there is no area of study which could be excluded from his curriculum.<sup>5</sup>

At present, in our country, a degree in law viz. LL.B. is the sole licence for practising law. Since the quality of the profession went down, it was thought necessary by the Bar Council of India to have institutions like National Law School of India University. At present the judiciary takes initiative to have national law schools in every state. It is a matter of satisfaction that the products of these law schools show the excellence in acquiring legal knowledge and lawyerly skills. But it remains a fact that most of them find employment in large corporate houses. The profession still remains a loser despite its best efforts to have better lawyers. Its compulsory curriculum helps a lot in maintaining standards of legal education scenario. But this has not produced any positive results.

The future of Indian legal education seems to be bleak despite the advancement established by national law schools in India. Reasons for this sorry 'state of affairs' are manifold. It is proposed to deal with the main reason for this in this note.

It remains an open fact that we do not have sufficiently trained teachers for deployment in the various law schools. Nor are the available teachers adequately equipped for quality teaching. It is because of the weak LL.M. curriculum and teaching programmes pursued by various traditional and national law schools in the country. In fact, national law schools do not give much importance to the post graduate programmes. Traditional law schools which offer LL.M. limit their curriculum to a foundation course during first year and then to some new advanced courses in the second year. Because of the lack of a sound LL.B. programme, the candidates who seek admission to LL.M. may not be adequately equipped to acquire the skills required by a law teacher in the course of 2 years of LL.M. programme. For this, overhauling of the curriculum is a must. It should

---

5. This aspect had been mentioned by the University Education Commission :-

“It is clear that law, its fundamentals and its applications are enmeshed in the whole wasp and woof of human knowledge and experience. The lawyer, unacquainted at least with the major areas of knowledge and their practical bearing on technical questions of law, is now almost without hope of success and is certainly greatly handicapped. Therefore, we feel that the lawyer should have as wide preliminary training as possible but no set programme of studies. There should be valuable groups of studies adapted to those who may expect to enter special fields of law such as commercial law, for example, but in general the Arts and Sciences should comprise the central core of the curriculum.”

*Report of University Education Commission (1949) Chapter VII*

Also see Desmond Manderson “In the Court of Shakespeare: Interdisciplinary Pedagogy in Law” 54 *Journal of Legal Education* 284 (2004).



have a broader perspective and should be scholarly and professional.

What are the qualities required by a teacher? He should be a scholar and willing to work hard. He should acquire knowledge in each branch of law by reading at higher level. His approach should be not to acquire what is law but what ought to be the law. To reach this level, he should have the foundation in the subject and then develop skills for higher thinking and argumentation. He should be in a position to impart the skills of analysis of case law and interpretation of the statute law. He should be in a position to perceive the trend law takes on important questions that arise in the socio-economic milieu. He should be a visionary. He can acquire this position only if he has got proper grounding in the fundamentals of law. Then only he will be able to create some knowledge and advance it in different branches and authoritatively teach. This can be possible only if he is caught young and subjected to the regimen of hard learning by an institution dedicated for teaching and research because the synergy of teaching and research could be experienced only in such an institution. It was with this idea that an integrated 4 year LL.B. LL.M. programme was designed by the Indian Law Institute. The idea is to catch young students who pass out of the colleges with graduation in different disciplines filtered through an All India Entrance Examination. The different disciplines would contribute to have a multi disciplinary approach in teaching and developing a multi disciplinary attitude among the students. The curriculum is designed in such a fashion that advanced courses in different emerging areas fit into the LL.B. curriculum prescribed by the Bar Council of India with usual addition having socio-economic undertones. Special exercises like legal advocacy, moot courts etc. have also been properly slotted in. A student pursuing this course could not drop the course in the middle because by the time he reaches the third year, he must have at least covered 2-3 advanced courses and he may think it better for him to pursue the course for one more year and have his LL.M. The LL.B. curriculum was to be fully covered because it is thought that a candidate emerging from this course should have the necessary qualifications and competence to practice the profession of law. However, the ultimate orientation of the course is teaching. A tentative integrated scheme is as under:

**Semester I (6 months)**

1. Torts + Consumer Protection
2. Contract I & II
3. Family Law I & II
4. Property Law
5. Human Rights



**Semester II (6 months)**

6. Labour Law
7. Administrative Law
8. Company Law
9. Constitutional Law
10. Environmental Law

**Semester III (6 months)**

11. Law of Crimes
12. Criminal Procedure, Juvenile Justice Act and Probation of Offenders Act
13. Law of Evidence
14. CPC
15. ADR
16. Moot Courts

**Semester IV (6 months)**

17. Conveyancing, Pleading and Drafting
18. Interpretation of Statutes
19. International Law (Public and Private)
20. Intellectual Property Rights Law
21. Moot Courts

**Semester V (6 months)**

22. Maritime Law
23. Law of Taxation
24. Banking and Insurance
  - (a) Law of Insurance
  - (b) Bankruptcy Laws
  - (c) Investment and Securities Law
25. International Trade Law
26. Research Paper I

**Semester VI (6 months)**

27. Jurisprudence
28. Research Methodology
29. Any one of the following :
  - (a) Judicial Process



- (b) Criminology and Penology
- 30. Any one of the following :
  - (c) Law and Medicine
  - (d) Women, Children and Law
  - (e) Law, Poverty and Development
- 31. Research Paper I
- 32. Research Paper II

**Semester VII (6 months)**

- 33. Advanced International Trade Law
- 34. Advanced Shipping and Maritime Law
- 35. Advanced Criminal Law
- 36. Advanced Intellectual Property Rights
- 37. Advanced Human Rights
- 38. Judicial Education

**Semester VIII (6 months)**

- 39. Dissertation

It is argued that we should have one year LL.M. programme as has been done by the American or English Universities. This suggestion is countered and rightly by the argument that since our LL.B. course is not sound, this should not be permitted. What is not done in the LL.B. level cannot be effectively done at a higher level in the LL.M. programme. This situation could be obviated by an integrated programme as suggested above. Our aim should not only be to provide training for the practice of law but also provide tools for training of law teachers, scholars and writers. We must strive for a course with a dual purpose of producing both scholars and lawyers. Furthermore, introduction of such integrated courses might help us to prevent our youngsters going abroad, spending a lot of money in search of one year LL.M. degree. Our experience with the candidates coming with one year LL.M. degree has not been encouraging. If these youngsters can be attracted to the integrated courses, this may help us prevent brain-drain and money-drain.

In the near future traditional two-year LL.M. may face competition from on line educational institutions as well. This in turn would demand a new strategy. The traditional two-year LL.M. will find it difficult to justify the financial as well as the time commitment. We cannot ignore technological revolutions but must preempt them. In this view condensing the LL.M. years by integrating it with LL.B. may be a welcome step.



It is not an innovation. We have already introduced integrated courses leading to M.Sc in basic sciences in several institutes like Central University at Hyderabad. Students who pass +2 are admitted to 5 years' M.Sc. programme with success. This should be practised in the professional course of law also. The earlier, the better for the country and the profession.

*K.N. Chandrasekharan Pillai\**

---

\* Director, Indian Law Institute, New Delhi. Jyoti Dogra Sood, Senior Asst. Research Professor and P. Puneeth, Asst. Research Professor helped the author in preparing this note.