NATIONAL SCHOOL OF LAW—A PROPOSAL

A PROPOSAL on the establishment of a national school of law warrants a few preliminary observations regarding the nature and scope of research that is taking place in the country today and the dire necesssity to do some rethinking on the same. It must be stated at the outset that I have in view a national school essentially devoted to research. But this need not preclude a training programme aimed at producing better teachers of law.

Most of the research done in India in the field of law is exegetical in nature based on textual criticism. Our legal periodicals are full of scholarly expositions on important decisions of the courts. The writers revel in laying only the stylistic and substantial peculiarities therein. They demonstrate uncanny intelligence in tracing the pedigree of the rule mentioned. And of course a good deal of labour is expended on the precedents—in searching for them and in exposing the subtle but fine differences that these precedents carried one from the other. Sometimes, they are weighed down by grave considerations of grammar and construction.

It is not my intention to belittle the efforts made in the above direction by scholars of great eminence. We need them. We owe a great deal to them for illuminating obscure points of legislative and decisional law of the land. But the point I wish to make here is that the scholar doing this kind of research runs the risk of falling into a trap and take law as a highly intellectual game played in the artificial vacuum so as to sharpen everybody's writ without being too much troubled by the realities behind it. The cardinal object of the legal research is the satisfaction of the desired needs of the society through law. The lawyer, therefore, has to place himself both inside the mechanism which the law uses for this purpose, and outside it to observe its operation with a fair measure of detachment. An evaluation of the interaction between law and society thus is a *sine qua non* of research in law. The study, in other words has to take into account the effect which a certain law produces on the society and *vice-versa*. Opinion polls involving sample surveys of the people affected by a particular law, or beneficiaries thereof, and the persons entrusted with the implementation of the law—tools of research employed by social scientists—became highly useful in legal research. Behavioural research in the field of law has been so well-developed in the West but it is surprising that this technique is yet to reach here in spite of the fact that many of our modern academic lawyers are trained in some of the better known universities of the West.

Behavioural study is pertinent to legal research from yet another angle. Law, after all, is man-ordained, man-interpreted, and man-enforced. It is unreal to divorce it from the thought-processes of men concerned in all these fields. True, there has been a good deal of research at the level of the thought-process of the legislators. But how many of us have cared to enquire what goes on in the minds of the judges when they set out to interpret the

law? What part do their educational, social and political backgrounds play in their thinking? As Cordozo said, the forces that lie deep below a judge's consciousness, the likes and dislikes, the predilections and the prejudices, the complex of instincts and emotions and habits and convictions which make the man, play an important role in his exposition of the law. And they are all relevant to research in law. I may mention in this connexion that an American Professor is so convinced about the effect on law of the background of the judges that he has evolved what he calls a computerized system of "*post* diction" (as opposed to *pre* diction). The computer is fed with data on a particular judge or set of judges, like their cultural, educational and political backgrounds, and the nature of decisions handed down by them in a set of social *mileu*. Te computer gives out the kind of decision the judge is likely to make in any given case.

Similarly, a study of the socio-legal problems faced by those entrusted with law-enforcement, be it a petty village official, the constabulary, the tax officer, and what have you, is bound to provide new insights leading to a law better observed and enforced. There are several laws on the statute book, again, which never get enforced. The obvious illustration is the one on dowry. What are the sociological and legal factors that inhibit its enforcement? Could an improved version ensure better observance? In this particular case, I have a hunch, it may not. But there are others a legal improvement of which may attract better results. The need for a sociological and behavioural orientation of legal research thus is self-evident.

If the above view of the law as a tool of social engineering is accepted the proposed national school of law will have to structure its programmes on two levels. First, select a cadre of researchers drawn from different disciplines, say, law, sociology, political science, economics, *etc.*, and have this cadre interact with those that interpret and enforce the law, and with those that the law aims to benefit—at least a carefully selected sampling of them. The findings of such studies, which certainly would enhance the quality of law, will have to be given the widest publicity. The second level of the school's activity will consist of exposing and associating talented young teachers from the universities to the kind of research taking place there. The idea is, such exposure and association will help the individual teacher's own comprehension of law as well as enhance the scope of his instructional methods. The prevailing *ex cathedra* method of teaching law in India, coupled with its cross professional orientation, is capable of producing legal technicians at best. The purpose of legal education is much higher than merely securing technical proficiency and material progress; law occupies a strategic place as the chief instrument by which peace and welfare of the society is systematically secured.

The proposed national school of law could be constructed on another model, *i.e.*, as an advanced research centre of comparative law. The discussion of this model must follow a few observations on comparative law as such.

Comparative law, a fairly new entrant in the university syllabi, is not entirely foreign to Indian scholarship. But the comparative method which is known to Indian scholarship until now is of a peculiar blend. In the field of constitutional law, for instance, the Indian writers draw heavily upon the comparable or contrasting provisions of the constitutions of, say, U.K., U.S.A., Canada, Australia, Switzerland and the USSR. One cannot dismiss such efforts in what might be called comparative constitutions or governments and hold that they do not constitute efforts in the direction of comparative law. But comparative law, *stricto sensu*, extends to a wider area. It covers comparision of a rule, a concept, an institution *etc.*, of *two or more legal systems* of the world. In this sense, a comparison of the Constitution of India with that of another or more of the common law countries cannot properly be subsumed under comparative law. To be so designated it has to be done with that of a country belonging to the civil law system, or other legal system, *e.g.*, France or the USSR. Comparative law of this variety is less known in India.

The Judiciary in India, too, has depended upon the law of England, the United States, Australia, Canada, *etc.* The judgments of the Supreme Court provide instructive parallels in the laws of these common law countries on a given rule or constitutional provision. The legislative and legal branches of the government, it can safely be presumed, draw inspiration from the law of these countries. It would be idle to speculate whether the law-making and the law-interpreting wings of the state have, or intend to have, one or more comparatist in the proper sense.

The academic legal community in the country does not seem to have quite realized the dimensions and necessity of grooming and having in centres of legal learning specialists in this branch of law. Those concerned with the promotion of legal education in the country seem to take comparative law as merely a superficial adornment of more bread-and-butter courses. I have shown elsewhere[1] that it has its utilitarian side too; that it can serve as an important tool in the hands of a practicing attorney called upon to handle a litigation involving foreign law; and that its utility to the legislator, the judge and the law reform agencies is too obvious to be demonstrated. As far as the student, the argument was that if the aim is to produce well-rounded lawyers who have not only a general culture but culture in their own vocation which today calls for a learning beyond the system they are to practice, then a course in comparative law becomes indispensable.

In order to achieve the above objectives the existing pattern of our legal education need not be disturbed. One can advance gradually. The first step is to groom law teachers with a new orientation in comparative law. But it is not as easy as one imagines. For one thing, it is expensive; and secondly it is time-consuming to get some one specialize in comparative law. One should possess a mastery of one's own legal system, then can learn

1. *An Introduction to the Study of Comparative Law*, I.L.I. Pub. (1971).

the language or languages of a different legal system, before one proceeds to concentrate on any particular aspect of that legal system. And on top of it, one should keep a constant watch on the legal developments in the countries belonging to that system.

We can learn from the experiences in the field elsewhere. Two trends in the development of comparative law in Europe and America could be noticed. In the Anglo-Saxon countries comparative law has grown with the individuals. The universities created chairs of comparative law to suit the scholar depending upon his availability. On the other hand, the Europeans have shown marked tendency towards establishing institutes of comparative law. The individual element does exist even here, as, for instance, Rabel's initiative in the establishment of the comparative law institute in Berlin (pre-war Germany), which later was split into two, one in Hamburg (for private law) and the other in Heidelberg (for public law). The point is, civil law countries, along with the East European, prefer institutes to individual chairs in universities; whereas the Anglo-Saxon academic world opts for the latter.

Both the above methods could be tried in India. Leading law schools in the country could pick up the brighter and younger members on their staff and send them for training to renowned law schools in England and America or to one of the more famous institutes of comparative law in Europe. The step, naturally, must be preceded by a careful choice of the legal system that the law school wants its scholar to specialize, and also by a crash course in the language concerned. Many of the law schools would perhaps choose the civil law system, with the concomitant language course in French or German. But it would be more challenging to have our schoolars take up the study of the Soviet, Chinese and the Japanese legal systems. The concerned languages are, of course, tougher to learn, and facilities to do the same might not be available in all universities. But wherever they are, it is worth taking up these legal systems for serious study. There are two important reasons to do so; one, we will be well-advised to learn the legal systems of our neighbours; two, the sociological base of these legal systems would be nearer to ours than the one underlying the civil law system.

The advantages of establishing a national school of law on the European pattern of comparative law institute are greater. The national school can collect able scholars from different parts of the country, groom them into specialists in varied foreign legal systems and use their services for a variety of purposes. It could advise the legislature on the solutions offered in different legal systems to meet comparable situations. It could act as a consultant agency to law firms dealing with international litigation. The school could also serve the judiciary by finding answers in other legal systems to questions that our legal system does not answer, or answers inadequately. The specialists could enrich the nation's legal literature by reviewing the norms and cases obtaining in the legal system of their specialization in a periodical, which is necessary for the school for publicizing its findings. The school eventually could serve as a training centre for future comparatists and

foreign law specialists, in addition to being a workshop for law teachers from different universities.

The specialists in the school should first be trained in the area of their interest in leading schools and institutes abroad. They should be authorized while abroad to collect classified literature for the school's library, and to establish institutional arrangements with sister bodies in different parts of the world. A cadre of such trained specialists could meet at the school periodically for review of the legal developments in their fields. Colloquia, seminar and symposia could be held once or twice a year in which selected teachers from most of the law schools could be invited to participate. The school could draw up projects of national relevance and evolve a common core on the issue from a study of the major legal systems of the world.

The two models presented in this paper for the establishment of a national school of law, it must be affirmed, are not necessarily mutually exclusive. In fact the school could be structured on both. A comparatist will first have to possess mastery of his own legal system in order to be described one. And a study of one's own legal system would be incomplete without a behavioural orientation. The specialists in the proposed school could thus offer better perspectives of law by placing themselves both inside the mechanism of the national law on the behavioural pattern, and outside it by the comparative method to attain objectivity.

Any of the bigger universities in India could establish such a national school of law. With some reorientation and shift in direction, the Indian Law Institute could be organized into such a national school. The Jawaharlal Nehru University also is ideally equipped to do so. Institutionally, it can extend its area of interest to law—which at present it does not. In addition to the School of Foreign Languages which can train foreign law specialists in the languages of their concern, Nehru University contains the necessary infra-structure in most of the disciplines to create the kind of inter-disciplinary interaction envisaged earlier. More importantly, it possesses the vision and funds to undertake such a challenging task.

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