



LAW MANTRA THINK BEYOND OTHERS

(I.S.S.N 2321- 6417 (Online))

Ph: +918255090897 Website: journal.lawmantra.co.in

E-mail: info@lawmantra.co.in contact@lawmantra.co.in

CURRENT TRENDS ON LEGAL EDUCATION IN INDIA*

INTRODUCTION

History of legal education in a democratic society cannot be over emphasized. Knowledge of law increases one understands of public affairs¹. Concept of 'Dharma' in Vedic period also includes dispensation of justice by King who acquired specific legal knowledge. There was a time in the human evolution when law was a part of ethics and religion, of morals and values, of philosophy and consciousness. Ancient civilization particularly that of India, conceived a legal order based on the compendious Sanskrit expression "Dharma". The role of ethics and philosophy in explaining social problems and giving directions for social action is not adequately appreciated today. However, in making and interpreting law, no society can afford to ignore Ethics. One can say that law is an applied ethics. No civilized society can be structured without developing its moral fibre and consciousness either through law, religion, education or other instruments of social control. The gurushishya parampara has existed ever since Vedic era making education an integral part of human development. It is education which ultimately results in shaping or transforming the whole society in to human civilization. Spiritually, it is believed that the life on the earth is regulated by the laws of the Lord or the Divinity. It is 'rule of law', that draws the essential difference between human society and animal world. It is the legal education that plays a pompous role in promoting social justice. Education or awareness of laws, characterize the lawyers as 'Social engineers'.

A study of history reveals that in modern times shows that it is intellectuals alone who can give leadership to a nation. We can find that it was the lawyers who gave leadership to most nations. In our own independence Struggle, most of the leaders during that period were lawyers e.g. Mahatma Gandhi, Motilal Nehru, Jawaharlal Nehru, Sardar Patel, CR Dass, Dr. Rajendra Prasad, etc. The lawyers who gave leadership to the nations and not doctors or engineers or teachers or other professionals because of the reason those lawyers are intimately connected to the Society. Doctors deals with medical problems, engineers deals with engineering technology problems, teachers deals with academic matters etc, but it is lawyers who deals with the entire society.

In modern India legal education came in to existence in 1885. Constitution of India basically laid down the duty of imparting legal education. Advocates' Act, 1961 which brought uniformity in legal system. In the changed scenario the additional roles envisaged are that of policy planner, business advisor, negotiator of any interested groups etc. In the Era of Globalization legal system in India include catering the needs of new brand consumers or clients namely foreign companies, collaborators etc. Strengthening our legal education system is need to face the new challenges. Imparting of legal education has always been considered as

* Mr. Kshirod Kumar Moharana, Research Scholar of Sambalpur University, Odisha

¹ P.v. kane."history of Dharmasastras, volume-6, 1930-62

one to the noblest profession. Legal education which is part of general education cannot be viewed in isolation. Today, legal education derives its impetus from the economic, social and economic and political set up of the society.

LEGAL EDUCATION IN ANCIENT INDIA:-

In ancient India law was understood as a branch of Dharma. It is difficult to draw a distinction between secular law and religious ordinances in Ancient India². The Vedas were the original sources of law, and the Smritis announced the message of Vedas and Smritikars were great jurists. Smritikars, commentators and Nibandhakars [essayists] were the legal guardians of law. King made laws were also interpreted, thus, the commentators were virtually law-makers. Sadachara, custom, Nyaya or Yukti were the base of legal process in Ancient India. The King was advised by a Sabha which had both advisory and executive functions. The parishad was an expert committee comprised of ministers of officials, generally Brahmans, who advised the King authoritatively on law.³

The concept of dharma, in the Vedic period, can be seen as the concept of the legal education in India. Although there is no record of formal training in law, the dispensation of justice was to be done by the king on the basis of a self-acquired training. Justice was also administered by the King through his appointees who in turn were persons of known integrity and reputation of being fair and impartial. The guiding force for the King or his appointee was the upholding of the Dharma.

Britishers came to this country for the purpose of trade, which they started through a company, popularly known as East India Company formed in 1600 in England. In the beginning the courts were presided over by merchants who were having very rudimentary knowledge of law, but later on legally trained persons were put for the job.

First British court was established in Bombay in 1672 by Governor Gerald Angier.. First concrete step in the direction of organising legal profession was taken through Regulating Act of 1773 which empowered to enroll advocates and Attorneys-at-law to the Supreme Court. The Supreme Court was established in Fort William in Bengal through a charter issued in 1774. At that time Indian Lawyers had no right to appearance in the Courts. The position was same when the Supreme Courts with the same jurisdiction and power were established at Bombay and Madras later. The Bengal Regulation VII of 1793 which created for the first time a regular legal profession for the company's courts, which allowed the appointment of Vakils or native pleaders in the courts of civil judicature in the provinces of Bengal, Bihar and Orissa. In 1861 three High Courts were established at Calcutta, Madras and Bombay. At this time three bodies of practitioners viz, advocates, Attorneys and Vakils were in existence. Advocates were the barristers of England or Ireland but the Vakils were Indian Practioners. Bar Councils Act, 1926 unified two grades of legal practioners, the Vakils and Pleaders, by merging them in the class of advocates. It also provided for making rules for giving facilities of legal education and training.

The pattern of legal education which is in vogue in India was transplanted by the English; after the establishment of their rule in India. Formal legal education in India came into existence in 1855 when the first professorship of law was established at the Government Ephistone College

² S.K.Sharma, "Legal Profession in India" Sociology of Law and legal Profession, Ed.(1984) p.43

³ Derret J Duncan.M., "Essays in Classical and Modern Hindu Law

in Bombay and Madras and Hindu College at Calcutta. At that time the primary aim of legal education was to equip law students so that they could help the lower courts and the High Courts in the administration of justice by enrolling themselves as Vakils or becoming judicial officers, and thus serve the interests of the Administration.⁴

As majority of the population was rural and illiterate, the need was felt to bridge the gap between the existing law and the uneducated masses crying for justice, by rendering importance to formal legal education. Initially a law school had to be a self – financing institution, and if possible a money making concern so that it could feed the teaching of other disciplines in the University. There is no tradition of legal research and academic legal training. In the year, 1857 legal education was introduced as a subject for teaching in three universities in the presidency towns of Calcutta, Madras and Bombay. Thus, a beginning of the formal legal education was made in the sub-continent. The language of the British statutes being English, so any Indian who learnt English could study law and was considered qualified to practice the profession. At that time law classes were attached with arts colleges. However, if one aspired to something higher, he could go to England and join the Inns court, provided one could afford it.

For almost a century from 1857 to 1957 a stereotyped system of teaching compulsory subjects under a straight lecture method and the two year course continued. The need for upgrading legal education has been felt for long. Numerous committees were set up periodically to consider and propose reforms in legal education. It depicted a very gloomy picture of legal education. It was only from 1958 that many universities switched over to three year law degree courses. It was only by 1967, that it became onerous task for the three year law colleges to include procedural subjects into the curriculum of their law school.

LEGAL EDUCATION IN INDIA AND GLOBALISATION:-

The term 'globalization of law' refers to the degree to which the whole world lives under a single set of legal rules. Such a single set of rules might be imposed by an international body, adopted by global consensus, or arrived at by parallel development in all parts of the globe. In today's world of increasing international trade and inter-dependence the need for transnational law has increased many fold. As more and more countries open their economy, either partially or completely, there is a growing need to recognize and work towards a uniform system of law. This process of globalization is evident in all facets of law. The Importance of Comparative Legal Education.

India is at a significant stage now positioned for a role as a major global player. Considering the growth of India in areas of technological and financial sectors, it is important to reflect upon these developments and assess the need to study transnational law and Comparative Law. It can be said that in recent times the value of Comparative Law has been appreciated, however it is not yet been made a compulsory course. Recommendations of the National Knowledge Commission of India (NKC) also emphasize that legal education should meet the needs of trade, commerce and industry in the context of growing internationalization of the profession.

The NKC constituted a Working Group in order to propose some key reforms in the field of legal education in India. The Working Group comprised of experts, who are members of the Bar, the Bench and academia. The Chairman of the Working Group is Justice M.Jagannadha Rao. The Working Group of the NKC recognizes inter alia the importance of the study of

⁴ Legal Education in India: Some Suggestions, Dr.K.P.Singh, All India Report, Journal -1999 p.169

Comparative Law, with the purpose of creating lawyers who can deal with differing legal systems and cultures, while remaining strong in one's own national legal system.⁵

NEED FOR MODERNIZATION OF LEGAL EDUCATION:-

For modernization of legal education in India it may approach five objective of legal education. Those are encouraging clinical training, promote an inter-disciplinary approach of law with other social sciences, encourage proficiency in languages, personal characteristics, promote acquaintance with new technological developments.

In the past it was sufficient for those reading law to restrict their knowledge to the theories of law, codes or decided cases. However, in order to meet the new challenges of the present legal system, it is imperative that the law schools provide clinical legal education. 'Justice' must become central to the law curriculum and community-based learning must give the desired value orientation in the making of a lawyer. This concept of justice education in the field of legal education means that the law school curriculum should entail certain programs like Lok Adalats, Legal Aid & Legal Literacy and Para-legal training.

The complementary teaching methodology of learning by doing and the conventional classroom teaching, through the law school clinics, help in developing the advocacy skills in the law students. 'Mock' trials and Moot court competitions, structured as court trial; client interviewing and counselling sessions; legal research; editing of law journals; legal drafting and conveyancing; court visits etc. in the curriculum is one of the ideal ways to facilitate performance based education. It is a means of improving in students the basic skills such as the skills of critical thinking, presentation skills, participation skills, and the skills to work as a team, the leadership quality, in addition to the boost in students' knowledge of law.

Even though, in tune with the time, Clinical Legal Education holds an indispensable position, still its acceptance, existence and development in present legal education system, is at its nascent stages. Albeit the Bar Council of India, constituted under the Indian Advocates Act, 1961, is endowed with the responsibility by Parliament to prescribe and maintain the standards of legal education in consultation with State Bar Councils and universities teaching law, the curriculum adopted at various law schools⁶ has not been structured to give adequate time for clinical training programs. The divergence between law in books and law in action calls to strike a balance between the law curriculum and the teaching methods.

The monologue lecture scheme adopted in law schools, where practical training is either totally neglected or marginally implemented at the level of Moot Courts, Court visits and legal research will not make good lawyers in today's scheme of legal education. Most of the Universities due to lack of infrastructural support and lack of funds have failed to establish a clinic in the Law Schools which would facilitate the students to carry out experimental learning of law⁷. It is pertinent that the University Grants Commission facilitates, by funding, the establishment of functional clinics and for promoting the programs like Lok Adalats, legal aid and legal literacy, client interviewing and counselling etc.

⁵ Legal Education: Modern Trends and Challenges", by Dr.Shobha Saxena, All india Report Journal-1999 , p.160

⁶ Indian Advocates Act, 1961 sec-22 (B)

⁷ Indian Advocates Act, 1961 sec-22(C)

Even those law schools where the clinics do exist, the results are fruitless, for the reasons of lack of resource faculty who have the competence and knowledge in clinical training. The teachers associated with the clinical education should preferably have some practical experience in law. Association of retired judicial persons, as visiting faculty would be instrumental in selecting suitable clinical experience for the students and enhance amongst the students the commitment to learn.

Other constraints that curtail the law schools to foster higher standards of clinical legal education is the high teacher student ratio. Law being an interactive discipline there should not be more than 20 students to 1 teacher, so as to ensure adequate supervision, right guidance and extensive practical learning. There should be regular refresher courses organized by the authorities - 'training the trainers'. A person who studies law must have some proficiency in country's history, political theory, economics and philosophy, to enable him/her in becoming agents that participate in institutional changes.

Command over spoken and written language, effective oral skills, diction and extensive reading are pre-requisites that go without saying. Knowledge of a foreign language is important to be a lawyer in the global economy. Law students should be provided with the opportunity to learn a foreign language of their choice.

Lawyers, solicitors, legal executives all need good intellectual ability, the ability to assimilate and analyze facts quickly. Law students hence need to develop their ability to distinguish the relevant from the irrelevant, screen evidence, and apply the law to the situation under scrutiny. The law students are further required to enhance the ability to argue, explain and convince points of law. They need to maintain their complete integrity of character and need mental and physical stamina in order to cope with the long hours, travelling and stress.

Law schools and universities should be able to provide e-courses on the shelves. The teachers should put course materials on the Web, conduct on-line tests/assignments and grade students. Web-sites can lead learners to virtual class-rooms. Teachers and students should be oriented to look at the Web as an information provider. Law teachers should switch over to what is called as 'comparative method of teaching'. The law students should be mobilized to evaluate the existing or prospective draconian laws, participate in discussions on the latest developments and required amendments.

CONCLUSION

The conventional role of a lawyer is to step in after the event takes place, in order to resolve dispute and dispense justice to the aggrieved party. In the changed scenario, the additional roles envisaged are that of policy planner, business advisor, negotiator among interest groups, experts in articulation and communication of ideas, mediator, lobbyist, law reformer etc. In this the era of information capitalism, economic liberalization and WTO, legal profession in India has to cater to the needs of a new brand of legal consumer/client namely the foreign companies or collaborations. The law colleges are required to make strategic plans that set out a clear vision of justice delivery and also address the emerging realities of the market. Goal of the law schools should be to build a system of legal education that is able to meet the new challenges. Opening legal aid clinic, Loka Adalat for quickly solve the dispute matter in rural areas as well urban area will affect mostly for quick solution and creating awareness through law students from various law school to the people will create innovative idea to know what is legal and illegal right. Hence there must be large number of legal aid clinic, various Tribunals, Loka Adalats etc. for creating awareness about legal education.



LAW MANTRA

www.lawmantra.co.in