

**DISTINCTIVE CURRICULUM:
CONSIDERING TEACHING LAW AND
JUSTICE FROM CONTEXTUAL INNOVATION
AND STUDENTS AND CONSUMERS OF
JUSTICE ORIENTED PEDAGOGY**

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1. BRIEF BACKGROUND:

Education on law and justice, generally across South South and particularly in Nepal, has not yet been able to receive required attention of the society as well as the government.² Even universities are oblivion of the importance of modernizing and enhancing the standard of legal and justice education.³ Frankly speaking, the concept of justice education is largely absent.⁴ What the universities of Nepal are habitually indulged in teaching under rubric legal education 'is the skills of interpreting statutes and indoctrinating prospective laws in conventional common principles and practices. Candidly speaking, the system of legal and justice education is still acutely suffering from subdued attitude of the government, universities and larger community of legal professionals.⁵ The investment in and planning of legal and justice education remains obviously neglected state, which has consequently been hindering in its standard and trustworthiness. The attraction of bright and promising students to the legal education is seriously affected, thereby forcing an overridingly larger number of brilliant students to seek opportunity in European and American universities. The impact of this undesirable state of affairs is detrimental in smooth development and modernization of education of law and justice in Nepal.

One of the factors responsible for this unwanted state of legal education is associated with the history of colonization of South Asia. The legal education system of Nepal, in complete ignorance of the notion of justice education, like other members of the South Asian region, continues to suffer from congenital problem, i.e. the practice of indoctrinating conventional principles of common law practices and principles without complete disregard of local contexts and realities. As a matter of fact, the legal education system continues to be detached from need of developing a sound legal culture focusing on contextual realities and needs of the larger part of the population and burgeoning changes in the society. Some misconceptions loom large: (a) the legal professional is essentially elitist; (b) it is essentially political in nature; (c) it has nothing to do with development endeavors and enhancing productivity; and (d) thus is not a primary field of promising bright students and scholars.

Consequently, the contexts and innovations in pedagogy continue to be disregard as primary thrusts while framing curriculum and engaging methodology of teaching. While Nepal remained out of the helm of colonial rule, the political and psychological impacts were overarching. Hence, the objectives of legal education in Nepal, for being thus excessively influenced by common law principles and practices, failed in contributing to align legal education with the need of promoting access or interest of common people to justice and building, as a tool of society for positive transforming, a brighter prospect of a

². Prime Minister of India, Manmohan Singh, while inaugurating a two day national consultation on second generation reforms in legal education, slammed country's (India) legal education system, describing it as "a sea of institutionalized mediocrity". He said, "we do have a small number of dynamic and outstanding law schools but I am afraid there remains an island of excellence amidst a sea of institutionalized mediocrity". He further said "We are not even marginally nearer to profound scholarship and enlightened research in law". See at PM Slams legal education in Legal News, www.blog.taragana.com/law/2010/05/01/pm-slams-legal-education-in-india-21839. Visited on 8/1/2010

³. The budget allocated for legal education and research is negligible. Most law schools' physical infrastructure is poor, and the availability of efficient teaching faculties is in a great want.

⁴. Justice education takes the pragmatic attention to access to justice. While the theory emphasizes the theory of ignorance of law is not excused, how is it possible for ignorant and illiterate people to have access to justice. The legal education takes notice of needs of empowering lawyers' skills alone, but not the impacts of the system on people.

⁵. "A lawyer in society is expected to work like a harmonizer and a reconciler. He/she must be more than simply a skilled legal mechanic; he/she must be an architect, engineer, builder, and from time to time, an inventor as well". See, R. Singh, Enhancing the Role of the Law Schools: As a Facilitator of Access to Justice; Law Asia 93, S 19, 2.8 (1993).

communitarian legal culture. Rather it contributed to forge out a system with overindulgence in building 'dogmatism' within the system, which with an implicit notion that justice is what is established by the court through interpretation of established precepts, contributed to institutionalize the misconceptions mentioned above.

2. INITIATIONS FOR DEPARTURE

In the context of restoration of democratic system in 1990, some initiations were taken to reform the prevailing paradigm of legal education. The introduction of clinical apparatus and methods in legal education was one of the most students acclaimed efforts, which only lasted shortly amidst indifferent attitude of university authorities and indirect but forceful denial of senior faculties to rely on methods of teaching law by such methods. The attitude of senior faculties reflected in their opinions was that 'no proper and accurate intellectual thrusts of jurisprudential principles and philosophy of law could be inculcated in the minds of students without rhetorical lectures'. The attempt to popularize clinical teaching methods thus died silently in 1995, unfortunately to say, by indifferent attitude of the university to legal education and conventional dogmatic approach of teaching laws as values by senior faculties. A group of law teachers associated with Tribhuvan University Law Faculty, the national and government undertaking university, had to resign in order to set up a new law school, the Kathmandu School of Law. However, there were several challenges in this new mission, the first and foremost being the 'indifferent dogmatic attitude of the government and legal professionals' who, if not despised, resisted change in the given paradigm of legal education. Nothing could be acceptable to them that would raise question on 'formalist approaches and methods of understanding of law and justice'.

Amidst these challenges, a task force for developing a new curricula and pedagogies of concerning legal education was formed under Purbanchal University, in 1989, then a newly established university to be run by community undertaking. With a hard struggle for persuasion of university authorities, a new curriculum was introduced in 1999, which introduced a *ten plus two plus five years* course of law in Nepal, and specialized LL.M. programs.⁶ The curriculum was innovative in many ways:

- a. It introduced the clinical approach of teaching, thus introduced a scope for students to engage themselves in actual works of professionals from the beginning of their entry into the course. The clinical method included (i) understanding of code of conduct of legal professionals in actual working setting, (ii) community works through outreach programs along with supervisors, the professors, (iii) representation of clients, as assistants to supervising lawyers, and (iv) legislative research, focusing on empirical impacts of laws.
- b. The notion of constant research aligned with clinical activities was another aspect of the new curriculum. Within this paradigm, students were required to write 'short descriptive research papers' on problems and possible interventions thereof in the field of their works. In Master Degree (LL.M) program, 20 percent of credit was assigned to this work, whereas 20 percent was assigned for over all clinical works. In the graduate level (LL.B), the proportion of 10 credits for each.

⁶. LL.M. program has three facets, International Trade and Business, Human Rights and Gender Justice and Criminal Law and Justice. The comparative jurisprudence, focusing on Hindu Philosophy, Buddhism, Confucianism, Modern Chinese Legal System, Japanese Legal System, Common Law and Civil Law System and intensive legal research methodology are two important aspects of teaching besides specialized areas.

- c. Moot court, legislative hearing and negotiation skills practicum was another aspect of pedagogy, which encouraged students' interests in learning without tears.

The struggle for institutionalizing these aspects of pedagogy was not easier though. The criticisms and gossips were random and occasionally frustrating, sometimes immensely discouraging. The reluctance of the Bar Council to recognize the degree posed a serious challenge, which was addressed after immense efforts of lobbying in all relevant institutions and authorities. Happily enough, in decade of struggle, the curriculum has obtained appreciation and widening interests of bright students from all across the country. The curriculum and methodology of teaching required substantial changes after an experience of a decade. The situation of resistance from professionals and senior faculties in national university disappeared by this period, if not totally vanished. The Tribhuvan University Law Faculty in the meantime came into pressure of students and young faculties to make changes in its course and introduce a five years course similar to that being run by Kathmandu School of Law. It ultimately happened and has been running for three years now. In view of these developments, Purbanchal University reviewed, in 2012, its curriculum with intent of enhancing the standard and making the pedagogy further stronger in terms of clinical teaching activities. The revisited curriculum has introduced some new features and methods as follows:

- a. Introduction of science of logic for enhancing students' capacity of cognitive/analytical power.
- b. Introduction of oriental philosophy of law in order to prepare students of comparative capacity of legal and justice values and theoretical underpinnings thereof.
- c. Minimal specialization opportunity in matters of human rights, criminal justice, international law, comparative constitutionalism, administrative law and development laws. The minimal opportunity for specialization is considered important for promoting multi-disciplinary approaches within legal education.
- d. Alignment of political science, history, sociology, economics and management with legal studies with a view to expose students to multidisciplinary domains of knowledge. Roughly, 10 percent, of the total credit hours, is dedicated to these disciplines as foundation study.
- e. The clinical activities are scattered throughout the course: (i) community works (popularly called street law program) and learning about community problems of law and justice in the first year; (ii) community works coupled by prison and legislative research in the second year; (iii) engagement under supervising lawyers in legal aid activities—about six hundred cases of indigent prisoners are now being handled by the legal aid clinic, and human rights clinic focusing on rights migrants workers is now currently established— is placed onwards third years; (iv) six months outreach program is implemented in the fifth year—this activity includes participation of students in legal awareness of the community members.
- f. The community responsive legal education, 'as implicit in the description above, is the primary thrust of the existing curriculum. The underlying objective is to help build a 'sound legal culture', which exists as prerequisite for functionality of rule of law.

With these developments, a substantial change in the traditional paradigm of Nepalese legal education system is materialized. Nevertheless, the change in the attitude of the judiciary, bar and other government apparatus is still not happily encouraging. The government of Nepal still moves with a belief that 'legal and justice' sector is a non-productive sector.⁷ The investment in these

⁷. The government of Nepal has defined sector of justice as a field of non-productive sector. Hence, the conventional definition that only the infrastructure projects as development endeavor is found phenomenal. As a matter of fact,

sectors is still considered undue expenses. The legal academia of Nepal has yet to convince the government that 'the mission of economic development and social transformation' cannot be achieved fully without emergence of vibrant experts of law and justice.

3. SOME USEFUL AND IMPORTANT ASPECTS OF PEDAGOGY OF LEGAL EDUCATION

Considering state of want of adequate legal resource, teaching faculties as well as intellectual works, as well as the need of cross-cultural learning and gaining from international experiences, Kathmandu School of Law has encouraged international residential schools. These programs are effective in many ways as described below:

- a. Promotes teamwork of teachers as well as students, and both together. This approach is crucial for developing critical, fair and non-biased attitudes of students.
- b. Exposes students and teachers both to the experiences concerning formulation and enforcement of similar laws in different contexts and differed approaches.
- c. Enhances international collaboration of professionals, as the participants find access to communication between them and develop cooperation in future.
- d. Mitigates want of resources as such programs provide access to learn from each other.

In this regard, some prominent activities included as the part of curriculum in Kathmandu School of Law are outlined below:

- a. **Winter Residential School on Economic, Social and Development Rights (ESDR):** This course is run for three weeks intensively. It is an international program, generally regularly participated by faculties and students from Nepal, India, Bangladesh, Sri-Lanka, Pakistan, China, Thailand, Bhutan and occasionally from other South East Asian Countries and even Africa. The emphasis of this program is to promote 'justiciability and enforcement' of economic, social and development rights. The school is founded on rejection of the 'generation theory of human rights'. This program engages students in workshop discussion, research and presentation and visits of communities. Country presentations and critique by faculties from participating countries is a significant activity of the program. In order to develop a concept of community responsive legal education, the contribution of this program is found significant.
- b. **Himalayan Field School Program:** This program is collaboration between a Sydney University Law School and Kathmandu School of Law on issues of law and development. Students of both schools are placed in field for research and presentations, followed by comments, lectures and further works by professors. One of the objectives of the program is to encourage 'international jurisprudence on law and development'.
- c. **Thematic Residential Schools for Students of Kathmandu School of Law:** Each level of students in both LL.M. and LL.B. programs has an opportunity for residential programs, which are characterized by brief empirical research activities, presentations and follow-up research activities. According to the present curriculum, philosophy and research

the government and university giving overriding emphasis on medical and engineering emphasis did overly overshadow the significance of social science like law. Even within social science, the economics in university constituted the priority. This defective attitude largely pushed the development of legal education in shadow.

methodology, international law and relations, legislative drafting skills, professional ethics of lawyers and role of lawyers in social engineering are some regular thematic areas for residential schools. These residential schools generally range from seven days to ten days. These schools are found important in developing skills of resolving problems by teamwork.

- d. **Internship at Government Offices:** This activity is important to link students to their prospective workplace.

4. CONCLUSIONS

Aforementioned changes and features of curricula and methodologies have contributed to reform the legal education system of Nepal significantly. The discoursed curriculum has been considered important to shifting emphasis to justice education. The concern of the education model currently in practice is founded on some cardinal principles and thus pays attention to the notions that (a) legal professionals are service providers but not the businesspersons, hence the professional ethics of legal professionals must find a due attention in legal education if needs to be aligned with the concept of justice (b) the community and victims of crimes must be focus of administration of justice, (c) protection of the worth of human person is an undeniable value of the legal education, in order to link it up with education of justice (d) the interactions of legal systems across the world is significant to promote change in legal and justice system, and (e) legal education is a scientific education, hence it needs to adapt scientific methods of teaching and learning. We have long way to go. Hopefully, enhanced and frequency of academic interactions will help to build more convincing and meaningful education of law and justice in the days to come. Kathmandu School of Law believes on increased collaboration and enquiry about properties of curriculum.