

LEGAL PROFESSION TOWARDS A NEW VISION OF PROFESSIONALISM

*Suman Gupta**

I. INTRODUCTION

The Law is the bedrock of a nation. Law is the supreme regulator. Whether nationally or internationally, it is the glue that holds together the constituent parts of society. Law is the invisible substance, which sustains social well-being, moral consensus, mutuality of interest and trust.

The world is going through a period of dynamic change, presenting new problems to nations and to the international community. Societies are now more complex. People are better educated, more demanding and much more conscious of their rights. The position of women has changed radically. Attitudes about homosexuality, marriage and illegitimacy have altered. The rigid divisions between classes have broken down. The police and security agencies have technology, which raise questions of privacy. Law has a central role to play in this new landscape. The legal systems must learn to adapt or they will lose the confidence of the people. The three basic principles, which should underlie any legal system, are equality before the law, fairness and respect for human rights. In addition a good legal system must have committed and knowledgeable legal profession to enforce these three principles.

The legal profession is wounded and suffering. This has been catalogued in numerous books, studies and personal anecdotes¹. The ailment of the legal profession is complex. It has occurred because of many decades of neglect. Various commendable attempts are being made to address this malaise by the profession and law schools. But the problems gripping the legal profession are wide and deep and will take time to heal. It will take decades of attention to rebuild and restore what has been lost. But the important thing is that it can be done.

The legal profession sometimes behaves as it is waiting for a knight in shining armor to rescue it from the evils. But the practice of law is not a fairytale, and there is no knight in shining armor coming to the rescue. One

* Reader, Campus Law Centre, Faculty of Law, University of Delhi, Delhi.

¹ Robert Kurson, *Who's Killing the Great Lawyers of Harvard*, ESQUIRE, August 2000 at 82.

of our great weaknesses has been extraordinary willingness to see greener grass in other systems. It is frequently wrong. This is not because the ways of the Americans or Europeans are less good but because they are not always right for us. Taking bits of other systems and trying to stitch them on to ours is more a folly. The mistake is a failure to see that law is cultural and consent is essential to effective legal systems. If the legal profession is going to save itself, we are the people who must do it. It is we who must take up the long and difficult quest that will lead us to probe the darkness of this landscape in the hope of shedding some light on how we got there, where we are. We have the capacity. We have the people. We have the ideal. We lack only the effort and desire, and even that is present but come to life in pieces. We have to work consciously and collectively, and not let the things to take natural course, we have already seen where it will lead us.

II. ROLE OF LEGAL EDUCATION

Legal education is one of the most important issues, which affects the whole society. The proper system of legal education is essential for the rule of law and justice delivery system. It plays a pivotal role in making the democratic system of the country more vibrant and effective. Legal education has the advantage of enhancing a person's analytical and presentation skills, which are useful in almost any occupation. Foundations of good lawyers can only be strong if the legal education system is strong. A quality of judgment is as good as the arguments made before the judge and the arguments are as good as the legal training a lawyer got when he was a student of law.

The concept of legal education is comprehensive and may include four aspects:

1. Legal education to students at grass-root level.
2. Clinical legal education & Practical training to students to equip them with appropriate training and expertise to make them efficient professionals.
3. Legal education (appropriate legal training) to judicial officers to enable them to discharge their function of administration of justice in the right perspective.
4. Higher legal education for equipping research scholars with the development of law.

However, the present system of legal education has contributed to the decline of legal craftsmanship. Enough emphasis is not placed on the judicial process or practical training. The resulting loss of legal craftsmanship has

proved very expensive. In order to rebuild the profession, the legal academy must find ways to recontextualize its educational process. This does not mean abandoning the teaching of rigorous legal analysis. Rather, it requires undertaking something more difficult: continuing to teach rigorous legal analysis as well as other lawyerly skills. Law faculties will require a reorientation on this purpose of legal education².

There are other impediments as well, for example, the inaccessibility of faculty to students has long been a major problem in legal education. There are two very strong reasons for it. One is the high faculty/student ratio in law schools. These high ratios were once justified as well as suited because the dominant methods of law school teaching were the lectures and the socratic method. A second counterforce to accessibility of faculty is the attitude of many faculty members that they have little in common with students. Socratic dialogue and lecture method, beside from justifying high faculty/student ratios, separate students and teachers physically as well emotionally. This system places the professor at the front of the classroom, on a different physical level from students. Until these faculty/student ratios change students cannot expect much time for meaningful contact with faculty members. It will also be impossible to make the clinical or other process programs more effective and successful.

There is a growing movement among law professors to investigate new methods of teaching that involve more participation of students in teaching and learning process. But the resistance to such a movement is strong. Innovation and introduction of other methods are often resisted. The legal academy has traditionally viewed the Socratic method as superior to all other forms of teaching, and the lecture method used as a technique when it is necessary to save time and cover material faster. Making structural and substantive changes in faculty/student contacts and opening teaching methods to allow more student participation will take time, as it requires fundamental attitude shift among law faculties. The good news is that some of this shift has begun to occur as law schools have developed clinical programs, mediation programs, inter-disciplinary training, and many other innovative approaches to teach legal ethics and law & literature. These all can be placed under the head, what we now call, the Legal Training – learning to think like a lawyer.

² The most innovative work in new methods of law school teaching occurs at the annual conferences hosted by Gonzaga Law School's Institute for Law School Teaching. Information on the conferences can be found at <http://www.law.gonzaga.edu/ilst/ILST.htm>.

The most dramatic and widespread reform in legal education has come through the clinical programs, now in place at most of law schools. Clinical education began a method of teaching law through hand-on experience and by providing legal services to the poor³. The cornerstone of this new approach – which served real clients rather than teaching through simulation – was the reality of practice. Clinics provide a different approach to legal education from the formal classroom experience. Unlike the traditional classroom, the focus in clinical education is no longer upon students and their mastery of the material. The focus is upon the needs of the client, it is the client's story, which must be listened to, understood, researched, analyzed, and advocated. Students are required to work together in teams and attend a clinical class as a group. In the class they cooperate to address problems of the real-life cases that they are handling. Student's performance is measured by how well he works for, and with someone else. The clinical education is a very natural and highly effective method of bringing students face-to-face with real legal issues in a close-to-real life context.

Two more effective ways for reforming legal education are the Seminar – called oral histories of lawyers and judges, and a Mentoring Program where students are matched with lawyers and judges in an intense yearlong mentoring experience⁴.

In the Seminar, students will select a judge or lawyer as a subject, to interview, research his life, and then go “into the field” i.e. homes, courts, and law offices of their subjects and record their life stories. Student will bring these stories back to the seminar in the form of oral presentations and seminar papers, which will reflect on the professional life and how that life informed his/her own life story. In the Mentoring Program, students will be matched with a lawyer or judge as their mentor. They will attend a law-school sponsored weekend workshop with their mentors, and spend the remainder of the academic year meeting and visiting with their mentors at work.

In both the seminar and mentoring experience, students will be exposed to professional work through examples of real people. These contact programs present an opportunity for deep learning reflection upon one's life and purpose. They also provide opportunity for practical advice on practicing

³ Robert McCrate, *Educating a Changing profession: From Clinic to Continuum*, 64 TENNESSEE LAW REVIEW, 1997 at 1099.

⁴ A detailed description of these programs appears in Walter H. Bennett Jr., *The University of North Carolina Intergenerational Legal Ethics Project: Expanding the Contexts for Teaching Professional Ethics and Values*, 58 LAW AND CONTEMPORARY PROBLEMS, 1995 at 173.

law, professionalism, and ethical responsibility. Its effect upon students will be to reassure and inspire them and open their eyes to the legal profession.

Some of these effects can also be achieved through a course on *Law and Literature*⁵. This course will take a hard look at images of lawyers and other professionals in various literary sources as Herman Melville's *Billy Budd*, Leo Tolstoy's *The Death of Ivan Ilyich*, and Kazuo Ishiguro's *Remains of the Day*⁶. Because of emphasis upon narratives, as teaching tools for law schools, this course will represent another step toward bringing more context into the curriculum.

Thus, we can imagine that a scene of a classroom of a law school can be like this. The students are sitting in a circle along with the professor and five guests: two lawyers, a judge, and two ordinary persons. These guests are related to complex legal action that has been decided. The class has already studied the concerned law case. Students have researched the law in concerned case, interviewed these participants and others involved in the case and have made oral and written reports to the class on their findings. The class has examined the conditions that lead to the filing of the complaint; the economic and policy decisions that lead to those conditions; the actions of the lawyers in investigating the case, their actions in attempting to negotiate, prepare for trial and to litigate; the action of judge during the entire court process; the results of the trial and the positions of the parties after the trial.

The class is now collected to hear in person from these participants about their role in case, and its effect upon them. The students will ask questions specifically about the context of the legal action and the conditions leading to it; whether the race or gender affected the parties; not only the legal results but also the emotional costs of the case. The class will ask questions about the purpose and effect of legal action in terms of public policy, and look for the principles of justice and fairness in the case and determine how well those principles were honored. The class will examine particularly the lawyers' and judges' roles – not only in this case but in the greater contexts of the justice system and the political structure; their professional behaviour.

⁵ The resurgence of law and literature courses in law schools owes a great debt to Professor James Boyd White, whose pioneering book, *THE LEGAL IMAGINATION* (Boston: Little, Brown and Company, 1973) has served as inspiration and text to introduce narrative techniques into law school classrooms.

⁶ An excellent bibliography for law and literature courses appears in Elizabeth Villiers Gemmettee, *Law and Literature: Joining the Class Action*, 29 *VALPARAISO LAW REVIEW*, 1995 at 665.

The class will examine the human dimension – the effect on the participants in terms of emotional costs, and the effects on the participant's families and personal lives. At the end of course, they will have a relatively complete story of an important legal case and people in it. They will exercise their new found skills of legal reasoning and analysis and write a comprehensive, analytical paper that critiques the quality of the legal work and the outcome of the case in terms of overall social purpose. Each student will also write three short papers: one from the standpoint of the average citizen which critiques the lawyer's roles and the ideals of justice as they manifest in the case; one from the lawyers' standpoints defending their actions on the same basis; and one fictional account of themselves as a lawyer or judge that how they would have dealt with the case.

III. THE ROLE OF BAR

In regard to professionalism, the Bars and law schools resemble those two cricket fielders who let the ball drop between them because each assume the other player will catch it. Law schools were not established to teach professionalism. Professional behaviour was assumed as part of one's upbringing and code of honor as a gentleman. Bars assumed the same thing, however this assumption proved to be no longer true. Yet neither the Bars nor law schools accepted the responsibility of educating law students and young lawyers about the tenets of professionalism. Law schools grudgingly began to teach courses on professional ethics but held the attitude that teaching professionalism was the job of profession and that the profession was "*out there*" and not really present in the law school. The bar looked to law schools to teach the rules of professional ethics and consoled itself that 'law school courses on professional ethics' were sufficient to insure professionalism among law school graduates.

A part role of the lawyer should be the obligation to teach other lawyers. This obligation is commitment of being a member of a profession. It implicitly assumes that we have a professional heritage that must be preserved. Without a professional commitment to teaching and serving as mentors to other lawyers, this professional heritage cannot be nurtured, and passed on. So the first step for the bar and bar leaders must be to devote energy and provide resources to programs that promote this kind of professional teaching.

Bar council of India is acting in a bureaucratic manner by thrusting upon the law schools, the curriculum that cannot be implemented in law and spirit. Autonomy of law faculties should be maintained, as they are the laboratories in which the lawmen are being trained. Nothing should be

imposed from above as it blunts the intellectual growth. The teaching of law is not restricted to the production of lawyers and judges but it has much wider role to serve the society in disseminating knowledge for making people aware of their rights, duties and privileges. The law students may not join the profession but may play an equally important role in making aware the general public the notions of justice and human rights in the society. There are many other fields that a law graduate can join.

Law teachers should decide in fixing the curriculum, laying down standard of education and infrastructural faculties to be provided in the law schools. Faculty knows better what is to be taught and what are their problems. They have the tools. They have the better understanding. The laws are multiplying. There is an enormous increase in the legislations. There is need to introduce papers to study such legislations and for that reason it is better that it must be left to the faculty that which Act should be combined with which paper. The Bar and the Bench also have an important role to play in making the law schools academically sound and socially relevant, so the advice of eminent judges and lawyers is necessary.

The Legal education committee should consist of 10 law teachers, two judges of the Supreme Court, two judges from High Courts, four eminent advocates, one representative each of UGC, MCI, AICTE, Ministry of Education, Ministry of Industry, Law, Finance, and Science and Technology to make recommendations in the development of legal education.

Lapse on the part of the BCI has also resulted in over production of lawyers with no skills. BCI should take abundant care and should insist for stricter compliance of standard requirements. Unless the requirements of appropriate building, library, faculty etc., are met it should not give permission to open a new college. BCI should make yearly evaluation and cancel the affiliation if they found any failure to comply with the requirements.

There cannot be uniform curriculum and uniform policy to project all law schools in same category in whole of the country. Various law schools in the country may cater to various kinds of students. There should be flexibility in syllabus so that students can combine for a particular field. One institution may not be able to take all specialties so that there must be five or six institutions in the country with different specializations.

We have elitist kind of institutions which may compete with international standards, on the other hand we have law schools which are in developing stage and law schools which are absolutely under developed. Some law schools should be declared as autonomous institutions to built

themselves in such a way that the product, which they produce, must be able to compete with the best in the international legal market. They should be developed as role models for other law schools. In all the internationally famed law schools, their autonomy and structure is designed in such a manner that they get complete autonomy in designing curriculum, engaging faculty and making inter-disciplinary studies.

IV. COOPERATION BETWEEN THE BAR AND LAW SCHOOLS

Law schools and the Bar must see themselves as part of the same professional community with interdependent duties to promote and pass on the tenets of professionalism. Law schools must understand their critical role and responsibility of producing young professionals and not merely persons highly educated in the skills of legal reasoning and advocacy. Law school curricula must be changed to support that professional commitment. Law teachers should believe in and support commitment to the profession. For this, it is necessary that law professors must think themselves as members of the legal profession as well as the academic profession. It will mean establishing through practice a close relationship with bar. Every professor should be required to maintain membership of the Bar Council of India and of the State Bar Association in which his law school is located. He should be invited to participate in the work of bar associations – such as membership on disciplinary boards and ethics committees, bar admission committees, professionalism committees, and committees to study problems of the profession and practicing lawyers. This work will bring legal academicians together with real lawyers. It will tell them about the profession, which they are teaching the students to enter.

A change in the attitude of legal academia toward the law practice and lawyers is equally important. Currently many law professors see themselves above the rough and tumble life of practice and superior to lawyers.

The Bar should also accept responsibility for the professional education of law students and young lawyers. There must be an interaction between the lawyers and law teachers to bring quality in teaching as well as practice of law. This will require cooperation between the bar and legal academy, which is often, not present. Improving these relations is the job for law school deans, heads of law schools and Bar leaders. Law professors should be invited to serve on various bar committees and should be given carrier incentives for it. They should be encouraged to find ways to bring lawyers and judges into classrooms. Bars should seek ways to assist law schools in promoting professionalism among students from the first day they enter into a law school.

V. THE ROLE OF THE UGC

The quality of teacher, the quality of teaching and the quality of lawyer and judge is ultimately a matter of resources. You cannot expect the quality of Harvard, Columbia, Michigan or London school by providing bare minimum infrastructure and peanut salaries, perks and facilities. The role of UGC should be to make proper grants to the law schools and to audit it that they are properly utilized.

Legal education is an inter-disciplinary study. In order to become a good lawyer one must have the knowledge of sociology, economics, political science, psychology etc. No judge, no lawyer can claim to be well equipped by merely learning the lessons in law. He has to be versatile genius, equipped with knowledge stretching to the field of science and technology, economics etc. One who ceases to grow begins to perish.