

Legal Education and Teaching Professional Ethics: Changes and Challenges¹

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Like other teachers, law school teachers are role models in the 'ethical template' sense. The manner in which faculty members exercise their responsibilities as teachers sets standards of how responsibilities ought to be exercised. As ethical templates teachers can set high standards or low ones. What law school teachers say and do suggests something to their students about what law school teachers ought to say and do. The conduct of law professors also carries general messages about the exercise of responsibility in adult roles other than teaching, especially the role of attorney and judge³.

I. Introduction:

The legal education in our country is facing radical changes for the last five decades after independence in the mid-twentieth century. When we talk about the legal education in India, it can not be mentioned in isolation for the simple reason that most of the leaders during the British regime and the freedom struggle happened to be the lawyers trained in the English style of profession either as Barristers or Solicitors. Although the University of Cambridge and Oxford deserved the credit to start the modern system of education in various fields for centuries, there was hardly the full-time regular course of law even in London University till 1967. As a legacy the Commonwealth countries which inherited the modern system of education in general and the legal education in particular inherited the English model. It is in this context that the legal education started in India through the constituent or affiliated colleges in the first half of the 19th century. In this decimal context there was hardly any full-time course of law pursued anywhere in the country during the British *Raj*. The reasons were obvious. Neither there were full-time teachers nor full-time students. The purpose of this paper is simply to highlight the rapid and radical changes which took place in the field of Legal education in the contemporary era during the latter half of the twentieth century the world over. A humble attempt has been made here to outline the role-model which may be debated, subjected to resentment and rejection but ultimately adaptation to the changing dimension of legal education.

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 - 3 Allen 1990-1991 in Le Brun and Johnstone 1994: 112.

II. Professional Ethics and Legal Professions:

It is a sheer paradox that unlike other disciplines of education the lawyers, judges, academicians and jurists have not been the product of law schools but such experts happened to be trained in the apprenticeship system. The traditional universities; pioneer in the development of education have never been the centers for producing the professional lawyers. This task was left to the Lincoln's Inn or the Inner Temple to produce Bar-at-Law or the Barrister-at-Law. The above scenario brings home the conclusion that for a long time the lawyers were produced not from the centers of Learning but from the chambers of senior advocates. The system of Legal education obtained in India was not much different as it obtained in England.

It may be pointed out here that no attempt was made to institutionalize the legal education in India even after independence till the enactment of the Advocates Act, 1961 and the formation of the Bar Council of India thereafter. It is interesting to note here that the LL.B. degree at that time was a two years part time evening programme which alternatively was allowed to be pursued simultaneously with the postgraduate degree. Surprisingly, there was no national machinery to supervise, control, monitor or execute a uniform system of legal education. In this direction some of the universities like Lucknow University under the leadership of Prof. R.U. Singh, the Banaras Hindu University under the leadership of Prof. Anandji and Delhi University under the leadership of Prof. P. K. Tripathi started evolving their own model, for regularizing and institutionalizing the legal education. Incidentally, when the responsibility of maintaining the standard of legal education was entrusted to the Bar Council of India and when it started search for the role-model they found and adopted the Banaras scheme.

It was only in the third decade after Independence that the LL.B. course was made a three years regular course. In the fourth decade the professionalization of legal education started raising it to five-years Course after 10 + 2 as an alternative to three years course after graduation. It was only in the fifth decade that the practical training in law schools was made compulsory including a separate subject on professional Ethics and all the law schools in the country were directed to implement the teaching there of latest by 1998. Subsequently after about a decade Legal Education Rules, 2008 came into force from the academic session 2009-2010 and made compulsory from the academic session 2010-2011. The above rule also included the accountancy for lawyers and Bar Bench relations in the Professional Ethics subject. It refers to Mr. Krishnamurthy Iyer's book on 'Advocacy' as the basic material and that book is nowhere available. It is not uncommon that in our country rules are made to come into force without development of desired institutions and apposite infrastructure. There are at present more than 800 law schools in the country out of which more than 500 such schools really wonder how to teach and evaluate the law students in practical training papers.

Legal Ethics or Professional Ethics is considered to be crucial to the needs of every lawyer and the administration of justice. Chief Justice Warren Burger stated that the law school has a “profound duty and a unique opportunity to inculcate principles of professional ethics and standards in its students.” As legal educators, we base our teaching on the premise that by exposing our students to the rules or codes of professional conduct and major doctrines governing legal ethics, we instill the requisite knowledge and, hopefully, modify our students’ attitudes leading them into ethical behavior as lawyers. Although we are aware that this is not always the case. We expect that ethical behavior will follow automatically and we are disappointed when this does not happen. An honest inquiry into the subject matter may be really provocative and involve searching questions, many of which would be unanswered. The common objectives of teaching professional Ethics are:

- To introduce students to the organization of the legal profession, its structure and responsibilities;
- To inform students of various perspective which have contributed to that organization;
- To enable students to evaluate the organization of the legal profession and its effectiveness in fulfilling its responsibilities;
- To introduce students to the responsibilities of lawyers in various professional roles and contexts;
- To enable students to identify responsibilities when they arise to enable students to develop attitudes towards and values about the legal profession and professional responsibility;
- To enable students to engage in the process of ethical reasoning so as to be able to:
 - evaluate the appropriateness of professional roles and their implications for the student;
 - develop framework for evaluating professional obligations and selecting appropriate courses of action when these obligations come into conflict; and
- To enable students to conduct professional work in a competent, efficient, organized and professional manner.

III. Teaching of Professional Ethics at the Department of Law, N.B.U:

The LL.B. professional education is primarily regulated by the Bar Council of India in respect of its syllabi and its structural requirement and also by the University Grants Commission being a university degree in the matter of qualifications, terms and conditions of teachers as well as other requirements for grants - in - aid.

Obviously, the role played by BCI vis-à-vis UGC becomes relevant. In the recent past the UGC has shown its sincerity in rationalizing and nationalising the

contents of legal education through curriculum development. Strangely, four practical papers were made compulsory by the BCI since 1996, neither the BCI nor the latest UGC Model Curriculum 2001 spelled out workable model on Practical Training in law Schools. Fortunately, the UGC Model Curriculum 2001 which propagated LL.B. Honors Course which was adopted by the Department of Law, N.B.U. since 2003 - 2004, contains an outline of Professional Ethics subject. Consequently, the teaching of Professional Ethics, the students' role and their assessment were substantially left to the Universities and in the ultimate analysis it falls upon the shoulders of teachers teaching the subject. How can we expect uniformity of approach and assessment when it generally varied not only from the institution to institution but also from teacher to teacher? Law can not be studied in isolation as rightly pointed out by Dennis Lloyd.

An investigation into reality simply reveals that most of the law schools are conducting the Practical Training only on papers and majority of the law schools and universities have either added another theoretical paper or simply awarding the marks without any training as such. The organising seminar is a step forward and simply a beginning in this direction towards curriculum development which aims at collecting the information and resources for further training of teachers and learning and assessment of students followed by subsequent workshops. The Department of Law, University of North Bengal has prescribed 80 marks for practical assignments and 20 marks for viva - voce conducted by a Board of Examiners consisting of internal as well as external members. In the practical assignment students are introduced to the nature and the contemporary need of legal profession through lecture - method.

The Code of Conduct laid down by the Bar Council of India; Rules regarding lawyer's obligation towards his clients, lawyer's duty to the court, and lawyer's obligation towards public are taught to the students. The Advocates Act, 1961 provides for punishment of advocates for misconduct under Section 35, that forms the part of the syllabus. Further, the Contempt of Courts Act, 1971 is also taught through lecture-method to make students understand and learn the attitude and behavior required in the Courtroom from the legal profession as the advocates are also the officers of the court. Finally, the students are asked to study, analyze and comment upon five judgments of the Supreme Court and five opinions of the Disciplinary Committee of the Bar Council as practical assignments.

The study of judgments of the Supreme Court and opinions of the Disciplinary Committee are changed every year so that the students may apply their mind afresh without resorting to copying the readymade materials from their seniors.

In India professional responsibility has not been high on the agenda of law schools. A large number of universities have a compulsory subject now but generally professional responsibility and ethics are viewed as peripheral to the real business of teaching law. But there is evidence that this approach is changing and that professional responsibility is starting to be recognized as a fundamental part of

legal education⁴.

Teaching professional ethics and responsibility is more than teaching a series of rules to be applied in standard situation. Such a narrow approach avoids any questioning of the legal system in which lawyers work or of the nature of 'lawyering'. In our view, and that of many writers, the teaching of legal ethics demands that the teacher leads students on a path of self discovery, guiding them to a recognition of the necessary interrelationship between the values of the legal system as encapsulated in the ethics rules and their own personal and moral values⁵.

Students need to develop the ability to recognise a question of professional ethics and the skills, knowledge and insight to resolve the situation. However, they need more than those technical skills if they are to become 'responsible in the practice of law' (Lesnick: 1986). They need to know that ethics issues provoke tension and conflict and are frequently difficult to solve. They need to and can learn to appreciate that there is a moral content to law and practice⁶.

An issue for law teachers is how to engage the student in the learning process? How do we enable the students to appreciate the relevant principles, issues and complexities and prepare them for resolving ethical dilemmas they may face in practice? How do we encourage students to think of ethical conduct in the context of justice? How do we produce 'critical and creative law graduates who are self-reliant, self determining, and self-motivating individuals who can communicate well and work cooperatively as well as independently'⁷?

4 Ross : 1995.

5 Lesnick : 1986.

6 Ross : 1995; Le Brun and Johnstone: 1994

7 Le Brun and Johnstone : 1994: xiii.