

NALCON 2015

LEGAL EDUCATION AND ETHICS

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India, the biggest democracy, which became independent country in the year 1947 by the might, mental and physical, of leaders, mostly lawyers, is a great country and the Indian judiciary is an icon of our democracy to be proud of. After 67 years of independence, today the world looks to Indian judiciary with respect & people of India also look towards the Indian judiciary as an institution or pillar of democracy, heads & shoulders above the other two equally important pillars, namely; Legislature & Executive.

Falling standards of Legal Education : NLU's – Not Sufficient

Looking back in retrospect for last 20-30 years down the line, the falling standards of legal education in our country has been a matter of grave concern and that is why the eminent Professor Madhav Menon and others conceived the idea about 20 years back of establishing National Schools of Law for raising the standards in legal education and with the first law school taking shape in the name of National Law School, Bangalore, presently about 17 such law schools & some private law colleges providing 5 years Law Degrees with integrated courses, with limited seats are working in our country, which is not satisfactorily catering the need of bulk of law students. The National Law Schools & such colleges have also not provided complete solution to the falling standards of law education because

the experience shows that most of the graduates and post graduates from these NLUs & Colleges have joined corporate sector and big corporate law firms rather than serving the common litigants in our court system, where the improvement of standard was more acutely required. It is the common poor litigant who needs the assistance of competent good lawyers more than the big law corporate firms.

There may be several factors for the present state of lack of good quality lawyers and from top to bottom the general feeling is not very happy and that is why the saying goes in legal profession that, “*There is crowd at the bottom but room at the top*”. The number of lawyers has increased tremendously & rather uncontrollably but at the same time quality and competence level has gone down substantially. It is needless to say that over the long period, the lack of good quality lawyers has resulted in lack of good quality in Judges also, who come from that lot only and barring few exceptions, one should really feel concerned about such falling standards of legal education and large entry into the profession without any proper checks & balances, when it is compared with parallel professions like Chartered Accountants, Company Secretaries or even with medical professionals – Doctors, the legal profession still does not get the coveted position, which it should otherwise get.

Role of Bar Councils

The Bar Council of India with its federal units at State level is entrusted with the very responsible job of ensuring high standards of

legal education, but frankly put, the Bar Councils have failed to come upto the expectations of their desired role, statutorily conferred upon them in this regard and that is why in some of the judgments, Hon'ble Supreme Court of India has made suggestions from time to time for the need to raise the standards of legal education in our country so that the profession, which ultimately caters to the need of maintaining good law & order in the society itself does not become unhealthy and weak or a sick system.

Hon'ble Supreme Court in *V. Sudeer vs. Bar Council of India - (1999) 3 SCC 176*, while striking down the Training Rules, 1995, holding that once the express provisions vis-a-vis apprenticeship & bar examination i.e. Sections 24(1)(d) & 28 (2) (b) had been omitted by way of an express statutory amendment, therefore, by way of subordinate legislation such rules of 1995 could not be introduced, itself emphasized the need of such training in the following manner:-

*“31. Before parting with these matters, it is necessary to note that in the light of the experience of various Courts in which advocates are practising since the time the Advocates Act has come into force, the Law Commission of India and other expert bodies that were entrusted with the task of suggesting improvements in the standards of legal education and legal practitioners **felt it necessary to provide for compulsory training to young advocates entering the portals of the Court rooms.** Training under senior advocates with a view to equip them with court craft and to make them future efficient officers of the court **became a felt need and there cannot be any dispute on this aspect.** In fact, the question of making some suggestions regarding admission to law Colleges, syllabus,*

training, period of practice at different levels of courts etc., was taken up as Item No. 16 in the last Conference of the Chief Justices held in December, 1993. The Conference resolved that Hon'ble the Chief Justice of India be requested to constitute a Committee consisting of Hon'ble **Mr. Justice A.M. Ahmadi as its Chairman**, and two other members to be nominated by Hon'ble the Chief Justice of India to suggest appropriate steps to be taken in the matter so that the law graduates may acquire sufficient experience before they become entitled to practise in the courts. The said High Power Committee, after inviting the views of the Chief Justices and State Bar Councils as well as the Bar Council of India made valuable suggestions. The relevant suggestions in connection with legal education are suggestion Nos. 1, 12, 13, 15, 16 which are required to be noted. They read as under:

1. In laying down the standards of Legal Education, the Bar Council's "Legal Education Committee" constituted under Rule 4 of Chapter III of the Bar Council of India Rules, 1965 must reflect the participation of representatives of (1) the Judiciary, (2) the Bar Council and (3) the U.G.C. It is proposed that the Rules be amended and the **Legal Education Committee be restructured** to involve the bodies above-mentioned.

12. Rule 21 of the Bar Council Rules directing that every University shall endeavour to **supplement the lecture method with case method, tutorials and other modern** techniques of imparting Legal Education must be amended in a mandatory form and it should include problem method, moot courts, mock trials and other aspects and make them compulsory.

13. (i) Participation in **moot courts, mock trials, and debates must be made compulsory** and marks awarded, (ii) Practical training in drafting pleadings, contracts can be developed in the last year of the study,

and (iii) **Students' visits at various levels to the Courts must be made compulsory** so as to provide a greater exposure.

15. Entrance into the Bar after 12 months or 18 months of **Apprenticeship with Entry Examination**. For obtaining the License/Sanad from State Bar Councils it must be prescribed that one should secure **at least 50 per cent or 60 per cent marks at the Bar Council Examination**.

16. So far as the training under a Senior Lawyer during the period of one year or **18 months of apprenticeship**, the Act or the Rules must stipulate that the senior must have **at least 10 or 15 years' standing** at the District Court/High Court and the student's diary must reflect his **attendance for three months in the grass root level in a civil court and for three months in a Magistrate's court and at least six months in a district court**. The Advocate in whose office he works must also certify that the student is fit to enter the Bar. Unless these formalities are completed, **the student should not be permitted to sit for the Bar Council Examination**.

32. It is true that these suggestions of the High Power Committee clearly highlighted the **crying need for improving the standards of legal education** and the requirements for new entrants to the legal profession of being equipped with adequate professional skill and expertise. There also cannot be any dispute on this aspect..."

The Supreme Court was of the firm opinion that the requirements of apprenticeship and bar examination were very essential for the qualitative improvement of the legal profession; however, such requirements had to be introduced by way of statutory amendments, and could not be provided

for through subordinate legislation”

Suggestions

Though various suggestions have been made from time to time in different quarters for making improvements in the system, the following brief points, in my humble opinion, deserve attention of all concerned:-

Check Quantitative Explosion of Entrants

(i) *The entry in legal profession has to be restricted* and the system of *practicing advocates* and *non-practicing advocates* should be adopted to bifurcate the lot of entrants. Only the serious, full time & wholly devoted advocates to the law practice, who want to chose this profession as a career in their life must be granted the Certificate of Practice subject to their passing of a *fresh Bar examination and a minimum training of one year* under a practicing lawyer having minimum standing of more than 15 years. The training programme should be introduced with necessary amendment in law viz Advocates Act 1961, keeping in view the Hon'ble Supreme Court decision in *V.Sudeer vs. Bar Council of India - (1999) 3 SCC 176* and it should necessarily expose the entrants to the trial court working for at least half of such training period because it is there, that they can learn the nitty gritty of the profession and the basic laws, practices & procedures in action.

Examination Standard to be raised

(ii) The standard of law examinations have to be set high and a *combination of objective type questions and subjective questions* should be introduced to ensure wider knowledge of the candidates and also intensive knowledge & the ability to write long subjective & opinionistic answers touching the legal provisions and interpretation part can be evaluated by the examiner.

Case Study based Education

In the classrooms, imparting law education, the system of *case study based teaching with audio video tools* should be introduced with a *minimum attendance of 75% scrupulously maintained and ensured*.

(iii) *Frequent lectures by practicing lawyers, Judges & visiting faculties* should be encouraged so that the local faculty members and students remain in constant *touch with the current topics &* interpretative questions with such visiting faculties from the practical fields.

Renewal of Certificate of Practice

(iv) The system of *renewal of Certificate of Practice after every 5 years with level wise increasing renewal fees* should be introduced to screen away the non-serious practicing advocates. The checks & balances of *certificates & recommendations from a couple of senior advocates*, minimum number of institution of cases, reported judgments argued by them etc. can be introduced in the Rules &

Regulations.

Law Teachers may be allowed law practice

(v) On the other hand, *law teachers with minimum experience of 5 years of teaching can also be given the option to either practice law or they can be allowed to have legal clinics and consultation facilities* to be given by them so that the practical aspects of the theoretical law which they teach in class rooms is also comprehended by them properly and they remain in constant touch with the *current controversies pending in the courts. The case study base education* will not only keep the interest of teachers and students alive, but also help them in understanding the various legal provisions in a much more clear & applied manner rather than reading the statutory provisions in a monotonous way.

Summing up

Though everybody in this profession knows that studying law is an endless process and the life of the lawyers as a student never ends, even if he becomes a busy lawyer or a Judge, and one has to constantly learn and update himself with the various aspects of life relating to law including the politics, history, social science, psychology & medical science etc., but unless the students are imparted that education from the angle of their usefulness to the justice delivery system in the courts of law and unless the practicing lawyers have sufficient understanding of the applied legal provisions, they will be unable to put their study of theory into practice and that is

where our Universities & Law Colleges are utterly lacking. We are churning out the lawyers in large number, with no heed paid to their actual usefulness in the profession and they are made to fend for themselves when they come in the practical field as a lawyer. To give them sufficient orientation of the practical world, the training of minimum one year should be made compulsory for giving them the Certificate of Practice, which only should entitle them to appear in the courts of law.

Non-Practicing Advocates for Corporate Sector Employment

The non-practicing Advocates without such training can be made eligible for seeking appointments in the corporate firms, business and industry but those who want to serve the legal system in the courts of law, should come only with the Certificate of Practice. This distinction in C.As. practiced by the Institute of Chartered Accountants of India for last 60 years is an ample testimony to justify such a distinction.

Awake before it is too late

As Senior Advocates & Judges express their opinion frequently that new entrants in the profession are not up to the mark, instead of bemoaning and deprecating only, I feel it is their duty and obligation to take corrective measures and the Bar Council of India and State Bar Councils, who organize such conferences like the present NALCON 2015 should willingly and actively coordinate with Universities, Law Colleges and NLUs to ensure the good quality entrants in the legal

profession and if you start now, it will take next 10 years to see the results of your efforts now put in for the same. It is said that “*well begun is half done*” and if we fail to take any corrective measures now and early, the things may go out of control and may cross the no return point.

Reminder to Bar Councils

I also wish to draw the attention of Bar Councils towards their Vision Statement 2010-12 published on 2nd June, 2010 which talked of reforms in legal education and some of the aforesaid suggestions were envisioned in that Document also, but what has prevented them from implementing those reforms so far even after 5 years is a matter for them to again look into. Was it a political manifesto only or a meaningful agenda to work upon ?

Resolve for 'No Strike' by Lawyers

Before I conclude, I also intend to express with humility my anguish for the lawyers taking the path of striking the work more often than not. The recent call from the Bar Council of India itself to strike the work on Monday 16th March, 2015 for the Allahabad incident of a lawyer shot down in court premises, a very unfortunate event indeed, was not a happy precedent. What value such strike of one day has added to the legal system and judiciary is anybody's guess but the loss it has caused can only be said to be tremendous. The lawyers have to be more responsible, concerned about the plight of the litigants and the huge pendency in the system and without the cooperation of lawyers, the Judges alone cannot decide the cases.

Therefore, please resolve on this occasion “*No Strike of lawyers on whatever grounds*” at least from now onwards.

An American Judge, Joseph A. Wapner, has said:-

“Lawyers are given a place of privilege in this society. They are allowed to toil in the majestic edifice of law. This provides them with dignity, challenging work, social power – and often an excellent income. For those privileges, the least they can do is behave with respect toward the institution that gives meaning to their lives: the law.”

Swan Song

This Article may have sounded more critical than appreciative, but my submission is that it is more for introspection and coming from the heart of a lawyer, who adorns the robes of a Judge.