

Educating Lawyers for Transnational Challenges : A Time Demanding Attempt

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Before I proceed to substantiate with the relevancy of the theme of the subject, set to be discussed here in the Conference, I prefer to let you be acquainted with the position of the legal curriculum being followed in the country I am from, since it is immensely correlated with the proceeding of the subject. Most of the Indian sub-continental countries follow almost uniform legal curriculum like this that the students preferring to study law, get themselves admitted into four years' LL.B. Honors course in the university after completing Higher Secondary Examination (equivalent to 'A' level). The students having graduation may also study two years' LL.B. course in colleges exclusively run by the part-time teachers. Here in Bangladesh only the honors course students get privilege to obtain one year LL.M. degree from the law faculty of the university.

For legal practice they need to occupy a certificate from the Bar Council facing written and viva-voce examinations. Being qualified for legal practice they primarily attend the court under the juniorship of some senior lawyers for a period before they go for the practice independently.

The irregular students either employed elsewhere or remaining unemployed having no job for the time being, generally attend the law colleges at night. The law colleges, running by the part-time teachers and students having enormous break of studies, have at all, no scope to go beyond the minimum contribution necessary for passing the examinations only. No real research works can be hoped there.

The law faculties under the universities have ample opportunity to be engaged in research works what they generally do, but because of the method of teaching

mainly lecture-oriented, cannot provide adequate atmosphere flourishing research works. The students are mere listeners in the class-rooms.

Up-dated national and international information and documents are inevitably required to carry on research works, but in other words, the privileges of its lacking cannot ignite the environment favorably. Only a few having personal privileges and scholarly attitude are eligible to cope with the standard of research works.

Lawyering is something much more than extra academic activities. They need to be well-prepared before they go for lawyering. They are to be educated and conversant with the proceedings of the suit but we have little opportunity to be provided with.

Lawyering on transnational jurisdiction has been emerged in recent days amidst the viability of economic globalization under the institutionally of GATT, presently WTO. Standardization of information technology has brought the world so close to the door of each and every man that the offshoots like these are just waiting to come out from the womb. The conference on “Educating Lawyers for Transnational Challenges” has, at this moment, added a new dimension to the arena of legal education. This write-up is designed to have a glimpse over the relevancy of the subject in the shortest possible manner, as it seems to be alien to us specially viewing from the standpoint of the system of legal education of this sub-continent, we are running with. ‘Educating lawyers’ does not need much more requirements, which intrinsically being carried with the personal skill, zeal and intelligence of the lawyers than the provisions of legal field they are supposed to be legally ventured with. Lawyers need to be trained than to be educated. They need to be supplied the materials of legal provisions for establishing or defending rights and interests of their clients. Generally a law student learns legal provisions, through the institutional curriculum he studies in and gets the eligibility for legal practice after the completion of the curriculum - all these are known to all of us. But the conference aims to explore something beyond, which are unknown and in my opinion stress should be given to the provisions so that the lawyers are enriched to face the challenges legally and

admittedly at present we cannot disown the impossibilities of making uniform legal provision for transnational lawyering.

The world, as a whole, is heading towards the adventurism of novelty and newness in all the disciplinary fields of education keeping pace with the changing demands of the society. Law, the most useful arresting tool of human anarchism, should be dealt with generously making room as much as possible to be flourished. The world's economy has reached such a meaningful height that movements of capital, services, goods and people all over the world, have gained almost free access disregarding the countrywide borders. Legal education cannot be neglected rather be allowed to ponder the conception of transnationality. It should be viewed from the context of new direction i.e. interdisciplinary study to law, taking transnational issues, such as the environment, human rights, or trade for relevant legal approaches are first hand conceptualized. As the free economy works effectively around the world removing the territories of the sovereign countries, so, law too, may happen to work interdisciplinary study. For doing so joint study of inter-disciplinary subjects may also be required and for lawyering they have to be global professionals without being physically available to the foreign country for law practice. It could have been possible likewise the global businessmen. But a lot of groundwork is to be done for the execution of this conceptualization such as, infrastructural works which we may call intellectual environments are needed to be introduced by the academics.

Law is a professional education requiring the applicability and enforceability of its provisions. So, important thing is that mere theoretical framework is not sufficient for global professionalism but the provisions of execution are much more sufficient which will further be required for multi-jurisdictional authority. The infrastructural framework of the institution for preparing global professionalism demands healthy amount of financial support which the developed countries can easily meet up but the developing countries specially the least developed shall have to face strong hardship.

The International Court of justice, the principal juridical organ of the United Nations, under the provision of its statute has not been able to adjudicate any core

international issue due to its optional clause [Art. 36(2)] in its long span of nearly sixty years unlike its predecessor the Permanent Court of International Justice of the League of Nations. The activities of the International Criminal Court (ICC) are yet to be seen, and surely absence of leading major powers from the jurisdiction of the ICC shall invariably repeat the same story. But apart from all these, we should be optimistic to explore the challenges with an attempt to fill the unfilled portion of the glass of water rather than to vacate the filled portion. Here I shall try to pinpoint the probables.

Admittedly major legal systems prevalent in the world are Common Law System, Civil Law System, Philosophical Law System and Socialistic Law System. Procedurally all the systems differ significantly having little uniformity only in essence. Provision should be made so that unity in diversity is maintained. Transnational jurisdiction should be made room to all the sovereigns so that legal provisions remained open to enter for the purpose. The United Nations is the biggest platform to make it transnationally practicable. But effective and fruitful result may be brought by the regional organisations as they are composed of like minded countries having nearness of so many cultures. The European Union (EU) can take leading role in this regard. It has adopted common euro currency; its decisions are mandatorily carried out by all the members and recently in its summit at Hague it was proposed to adopt its constitution instead of treaties. So, transnational legal application can easily be possible in Europe as in coming days more European countries mostly eastern countries are going to become members of the Union.

The European Union can make uniform laws suitably applicable for transnational lawyering. Likewise, Organisation of African Unity has been renamed African Union (AU) following the path of EU. ASEAN is also going to launch similar provisions of EU and it is hoped that the South Asian Organisation is also in a mood to make room for more Indo-Chinese countries and may be shaped as EU. The remaining regional organisations are likely to be inspired by these examples. As a matter of fact, the continental regional organisations are supposed to play vital role in making provisions for lawyering transnationally which will legally ensure its viability.

The world's major legal systems differ verily almost in all corners and the field of transnational jurisdiction for lawyering would not be easy one, henceforth initiatives should positively be taken to bring uniformity in diversity. The accusatorial and inquisitorial procedures followed by the Common Law System and Civil Law System shall invariably be in contrast for adjudication. Similarly, Philosophical and Socialistic Systems would not be cultivable by the same plough. So it is important to pinpoint the contrasts and accordingly the countries included in the system should come forward to extend their hands for smooth running of transnational lawyering in their territories. Much more complications are there within the legal systems itself such as, all countries remaining inside the same legal system do not, in toto, follow the exact rules, so to speak, significant variations are bound to exist. Say for example, the United States of America does not necessarily allow the rules of Common Law System to be followed exactly likewise those are followed by the United Kingdom, although both are included in the same legal system.

Socialistic Law System does not have much more aspects to be dealt with. It was first introduced at the inception of the United Nations in 1945 providing room for the judges of International Court of Justice of all the legal systems of the world. But the splitting of the USSR, the spearhead of the system, has brought it nearly to the tune of little discussion. The followers of the Common Law System are mostly Asian, African and Australian countries. Of them, the Asians and the Africans are dominated by the 'Family Laws', but there is significant dissimilarities among the Family Laws due to religious faith with regard to the mode of alienation of property, marriage, divorce, gift, will etc. Step should be taken to bring minimum uniformity which will further lead to the maximum. However, the Civil Law System has the privileges and feasibilities to lead from the front. Apart from all these, lot of important things need to be facilitated to enrich the academics with intellectual environment by launching effective clinical legal projects focusing mainly on transnational lawyering, accommodating link-programs between the universities of developed countries and those of developing countries, arranging international conferences on the topic possibly in all the continents. Mobilization of opinion for transnational lawyering should be prioritised first.

Conclusion :

Tomorrow's transnational lawyer's conception is the demand of the age, not only because of mere focusing on thinking but also for the reality which the coming generations will no doubt, be working on. It is just like the spontaneous, gradual and natural growth of any living substance. Man is to live on law for his disciplined administration which acts to each and every country of the world this way or that way. Information technology has brought the world to the grip of all and law should not be deprived of these privileges and facilities. So, we, the law students of today must do something fruitful and meaningful for the students of tomorrow so that they can reasonably fulfil the demands of the days.