

**HOW TO TEACH? WHAT TO TEACH?
SOME REFLECTIONS ON PEDAGOGY**

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Every educational system has to pay serious attention to two of its major concerns, firstly, what to teach? and secondly how to teach? The first one refers to content of curriculum and the second one to pedagogy. Response to the first question is dominated by purpose and mission of the education, political ideology and socio-economic structure of a nation. Answer to the second question is determined by availability of resources, finances and teaching-learning environment which may include teacher-student relationship, psychological involvement in teaching and learning etc.

In the present new economic world order which is dominated by globalization, free markets, liberal economic policies, the two questions mentioned above have assumed a great importance than at any time before in the history of legal education. For the first time, a need is felt to look at the legal curriculum from an international perspective, and to think of non-conventional teaching methods.

Assuming that legal education all over the world is redesigned by incorporating the comparative and interdisciplinary approach, another equally important question needs further attention – How to teach the curriculum? What teaching-learning methods be adopted to prepare an effective transnational lawyer? A relevant curriculum may fail to produce desired results if effective methods of teaching are not used.

The definition of teaching as creating an atmosphere for learning expresses responsibilities and challenges before an educator. In order to evolve effective teaching methods for a transnational lawyer, it is necessary to focus on the purposes of revamping the curricula by incorporating comparative and interdisciplinary approaches. Undoubtedly, the purposes are to equip the lawyer with sound theory and skills of practice relevant to international lawyering. A lawyer practices theory and theorizes the

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practice. Skills of practice, court craft, skills of communication are tools necessary for

practice of law itself. The methods that may be used to achieve these purposes would be different but complementary to each other. It is felt that the teaching process should become learning process. A teacher should view the teaching process from the student's point of view. Participatory learning-teaching method would be more appropriate, and would be preferred to passive methods where student participation is nil. This writer proposes to discuss methods for teaching theory and skills of practice separately.

A. THEORY AND PEDAGOGY

Student-Faculty exchanges indeed benefits both the host law school and the guest visitor at a time. Both the ends have the advantage to learn the foreign law relevant to their own jurisdiction. The exchange helps them build their capacity to appreciate the foreign law with better ability.

However, student-faculty exchange requires traveling personally to other jurisdiction. It may not be possible due to many valid reasons. A strategy may then have to be evolved where one may get involved in exchange process without leaving one's hometown. Such exchange of thoughts, ideas and opinions are made possible by advance technology of internet, telecommunications, various modes of distance education, etc.

In order to help student to learn more about laws of other jurisdiction, 'consultation in cross-border issue' can be obtained from students with the assistance of modern technology. This kind of interaction presupposes international linkages between law schools, lawyers' firms and availability of legal material.

For example :

- I) A lawyer's firm in India is seized of a cross-border issue involving American and Indian Law.
- II) The Indian firm having linkages with American Law Schools and Indian Law Schools may –
 - a. ask the American students/faculty to opine on issues relating to Indian Law; and to Indian students on issues relating to American Law, **or**
 - b. ask the Indian and American students to research and to opine on Indian and American law respectively, **or**

- c. ask both the Indian and American students to study both the sides of the issue and opine.

In situations 'a' and 'c', not only the exchange of ideas and thoughts will take place, but it will be an intense exercise for the students to learn the theory governing the transnational issue. In situation 'b', the student will research issues pertaining to their own jurisdiction but will not learn about the foreign law. It will not involve exchange of ideas or thought.

Law schools may try for linkages which can be used for 'consultation on cross-border issues'. Such cases may also come up in a legal aid clinic and similar method may be followed. The writer feels that such consultations by students and faculty jointly will work as effective participatory teaching-learning method.

B. HOLDING EXERCISES/COMPETITIONS ON DRAFTING UNIFORM LAW ON TOPICS RELEVANT TO CROSS-BORDER ISSUES -

A law school or university may design a competition calling the law students and the faculty to prepare draft legislation on subjects where a need to have uniform law at international level is felt. Participating students will be required to study political, social and economic dimensions involved in law making and it will bring in comparative and interdisciplinary approach in legal studies.

For example a competition to draft a uniform law of civil liability for SAARC countries may be taken up, a uniform law on domestic violence for some of common law countries may be taken up. Faculty guidance will have to be provided to students.

Needless to state that both the teaching-learning methods of 'obtaining consultation' and 'drafting a legislation' competition will be used for students who opt for such participation. Those who are willing to take up challenges of transnational lawyering, will certainly feel motivated to participate.

C. SKILLS OF PRACTICE AND PEDAGOGY

The positive role of a lawyer :

In cross-border issues, the paradigm of law practice is experiencing a total shift from litigative lawyering to persuasive lawyering. Alternate dispute resolution methods are resorted to more than litigation in a national court. Arbitration is, of course, preferred in many disputes. Role of a lawyer is that of adviser, mediator, negotiator, facilitator and lastly of litigator. The role of lawyer has become more positive. It requires persuasive skills. The beginning to acquire them has to be made at the law schools. The learning methods to acquire such skills must be used.

Language and skills :

As a prelude to acquisition of such persuasive skills, a law student must overcome the barrier of foreign languages. Depending upon his choice which is largely going to be determined by market forces, a law student must learn in addition to English, other foreign languages like French, German, Japanese, etc. Otherwise she will be at a tremendous disadvantage while dealing with cross-border issues. The entire exercise to impart persuasive skills will be a failure in absence of proper training and adequate knowledge of foreign languages. Law schools will have to pay serious attention to this aspect.

Communication skills :

Mediation, negotiations, client counseling and interviewing and moot courts are well settled teaching methods at Indian law schools. Mediation, negotiation, counseling and interviewing impart persuasive communication skills; moot courts impart adversarial lawyering skill. The Indian law schools have put in lot of creativity in clinical methods. Following discussion takes account of various inputs added to clinical methods in India.

1. A trend is emerging to hold moots in specialized areas. Some law firms have dedicated national moot court competitions to technology laws, human rights, intellectual property, etc.
2. Students are assigned role of judges in a moot court. As judges, they were required to give a judgment. While students are now used to act as lawyers, to act as a judge is entirely a new experience. We have observed that it took a long time for them to digest that a judge is confined to pleadings and has to be creative within those constraints. Students realized that it was a skill to be creative.

3. In client counseling competitions, an area of law is communicated in advance to the student e.g. medical negligence. A dummy client is to be provided by organizers and student interview and counsel the unknown client. They are expected to offer best course of action for the client at the end.
4. A moot arbitration competition was conducted. The Arbitrator, the parties and the lawyers were required to sit across the table and lawyers were required to argue when in her seat. Students felt a bit uneasy to sit and to argue, and also when required to address the Arbitrator as 'Sir' and not as 'Your Honour', or 'My Lord'. They were also not comfortable at the feeling that the Arbitrator and lawyers were equal in the proceedings.

The experience clearly shows that the transnational lawyer would need lot of flexibility of mind. It is only then he will be able to shift from his role as litigating lawyer to persuasive lawyer and vice-a-versa as circumstances demand.

5. Lastly, this writer suggests that since we need good teachers to teach theory and skills of practice, we must also concentrate on preparing good teachers at law schools. A Best Student Teacher Competition can be set up to prepare the next generation of good teachers.

In conclusion, it may be stated that all the non-conventional methods of teaching and learning will be certainly effective for a limited group of students. Other methods will have to be evolved for larger groups.