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THOUGHTS ON THE REFORM OF LEGAL EDUCATION IN THE BOMBAY PRESIDENCY

By

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The Legal Profession in the Presidency of Bombay consists of diverse elements. There is difference of status and there is difference of training. There are six different classes of Legal Practitioners in the Presidency viz ;

1. Barrister-at-Law, 2. Advocates (O. S.), 3. Advocates (A. S.) of the Bombay University, 4. Advocates (A.S.) of the Bar Council, 5. Solicitors, and 6. Mukhtyars, who have the right to practise in the Courts in the Bombay Presidency. The extent of legal training which is required from these six classes of practitioners varies considerably. The Barrister's legal training extends over three years plus one year in Chambers. The Advocate (A.S.) of the Bombay University is a graduate of Bombay University who has had a compulsory training in Law extending over two years in a recognised Institution. Thus, in all he spends six years after his matriculation before he becomes entitled to practise. The Advocate (A.S.) of the Bar Council is, unlike the Advocate (A.S.) of the Bombay University, only a Matriculate and is not required to undergo compulsory training in Law in any recognised Institution and entitled to appear for the Bar Council Examination without any interval being allowed to pass. The Advocate (O.S.) is an LL.B. like the Advocate (A.S.) and he has had altogether five years of legal training. After an interval of two years after taking his LL.B. degree, he appears for the Examination of the Advocate (O.S.). He does not even then become entitled

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College Notes

We, however, note with satisfaction that Mr. Fyzee has handed over charge to no less a person than Dr. Ambedkar. A lawyer of repute, he is a close student of Economics, an authority on Constitutional Law and a personality known throughout India and elsewhere. To write more about him would be otiose. Expecting much from our Principal we shall not embarrass him now. We prefer to wait and see.

to practise unless, in addition, he spends one year reading in the Chambers of a senior practitioner, thus spending altogether nine years from his Matriculation. The Solicitor is required to be either a B. A. or an L.L.B. before he signs Articles with a firm of solicitors. His examination is held three years after he has signed his Articles. His previous training, therefore, is either seven years if he joins the firm as a B. A. or nine years if he joins it as an LL.B. At the lowest rung of the ladder is the Mukhtyar. He need have no training in Law nor is he required to pass any qualifying test. The situation is further complicated by the existence of two other circumstances. First is the existence of different authorities having the right to examine candidates appearing at the Law Examinations. So far as the two classes of Advocates (A.S.) are concerned, there are two different authorities which have the right to examine. One class is examined by the Bombay University and the other by the Bar Council. With regard to the Advocate (O.S.) and the Solicitors, the examining body is the High Court. It must be noted that none of these examining bodies undertakes the responsibility of teaching those whom they examined. The second circumstance which adds to the complexity of the situation is the difference of status among the legal practitioners in the Presidency. The Advocates (O.S.) and the Barristers have the whole field open to them. They can practise in any Court and on either side of the High Court though they can only plead and cannot act. The Advocate (A.S.) is restricted so far as the High Court is concerned to the Appellate Side. But he can plead as well as act. The Solicitor, on the other hand, can practice anywhere and so far as the High Court is concerned, on the Original Side he can only act while on the Appellate Side he can act as well as plead.

That, there should be such a diversity is the matter of qualifications, in the matter of Examinations and in the matter of Status among persons practising the same profession is a very unfortunate fact. But while it may be admitted that all this is very unsatisfactory and even deplorable, I do not think it can be argued that all this constitutes a problem. Because I am not convinced that the system complicated and illogical as it produces any injurious results. That, there are anomalies in the situation is beyond

doubt ; but there are anomalies also in other Departments of Education. To take only two examples, one from the Medical and the other from the Engineering Profession. The University of Bombay has instituted a course of Medical studies on the passing of which a person becomes entitled to the M. B. B. S. Degree. Parallel to it and alongside, there is the L.C.P.S. course conducted by the Government on the completion of which a person becomes entitled to a Diploma. The University of Bombay has prescribed a course of Engineering at the end of which the Degree of B.E. is conferred on the successful candidates. The Victoria Jubilee Technical Institute has also a Course of Engineering at the end of which the student gets a Diploma. Both the person who gets the University Degree as well as the person who gets his Diploma in Medicine or Engineering practise the profession and find employment both under Government and also outside Government. No one complains about this because each class finds a place that is suited to its training. This is exactly what happens in the Legal Profession if one cares to understand the way it functions. The Mykhtyars are confined to Criminal Courts of the lowest order and take up petty cases. The Advocate (A.S.) of the Bar Council who has become an eyesore to many practitioners practise in the Mofussil Courts of Sub-Judges and Sub-Divisional Magistrates in Taluka. It is the Advocate (A.S.) and the Advocate (O.S.) who alone practise in the District Courts and the High Court. Turning our attention to the way in which the profession functions in practice it cannot be said that there is anything very seriously wrong with the system for Legal Education. That the system is complex and asymmetrical is true but mere complexity and absence of symmetry can not be taken to constitute a problem especially when by the law of gravitation so to say each person settles down to the position and the class of work which is but commensurate with his training.

Assuming that there is a problem, it is necessary to make certain distinctions to avoid confusion of the issue. The problem of overcrowding of the Legal Profession must be separated from the problems of legal education. It would be indefensible both from the stand-point of education and also from the stand-point of social justice to frame a scheme of Legal Education on a basis which would make legal profession the preserve of the few. The question

what sort of Legal Education should be given so as to produce an efficient lawyer is a purely educational question and must be settled by the Educationist without being influenced by what might ultimately happens if the number who took to law as a profession was so great that it exceeded the point of saturation. Another distinction which I think must be made is this : the question of Legal Education has no inherent connection with the question whether the Institutions charged with legal instruction should be whole-time or part-time. It is possible to conceive and to frame a system of legal education tolerably good and easily workable with a Law School or a Law College working part-time.

With these preliminary observation, I address myself to the considerations of the problem of reform of legal education. There are four questions that emerge for consideration :–

1. At what stage of his education student should be permitted to commence his study of Laws ?
2. What should be the period for a complete course of legal education ?
3. What subjects should be curriculum for a complete course of legal education include ?
4. How should the Law College be organised so that the curriculum prescribed is dealt with in the most efficient manner ?

Question No. 3 seems to me to be pivotal. On a correct answer to this question depends the solution of the remaining three questions. The best approach to the subject is furnished by the reports made from time to time by the Examiners appointed by the Bombay University at the LL.B. Examination containing the impressions formed by them of the work of candidates. The perusal of these reports will show that the examiners have along emphasised the following defects in the work of the examinees.

1. The absence of any indication of a correct understanding of the fundamental principles underlying the laws which he is required to study.
2. Absence of any grounding in general knowledge.
3. Want of orderly presentment of the subject ?
4. Absence of any sense of relevancy of the answer given to the question asked.
5. Absence of any sense of precision in stating facts, arguments and opinions.

6. Inability to express in clear language what the student has in his mind.

These are undoubtedly very serious defects in a student of Law and something must be done to remove them. How can these defects be removed ? We must first of all understand what these defects are due to. In my opinion these defects are due to two things, viz. a faulty curriculum and a faulty method of instruction.

From the educationist's point of view the study of Law requires a study of certain other auxiliary subjects without which the study of Law alone would be incomplete equipment for the practice of the Profession. What these auxiliary subjects should be will not be difficult to enumerate if we remember that a lawyer must have a legal mind. In the opinion of a keen observer whom Augustine Birrell quotes approvingly in his Obiter Dicta, a legal mind chiefly displays itself by illustrating the obvious, explaining the evident and explatiating on the common place. Disregarding for the moment, the quip conveyed in the observation, I think it contains an important bit of truth in so far as it suggests what the real business of a lawyer is. According to the observation, the business of a lawyer is to argue. So important a part does argument play in a lawyer's business that I am prepared to say that argument is the summum bonum of a lawyer's being. The essential requisites for the development of the argumentative ability are :

a. A knowledge of the individual and how he functions in society.
b. A knowledge of the working of the human mind.
c. A mind trained to drawing logical inferences.

In addition to those fundamental requirements of argumentative ability, there are other requisites, purely ornamental but none-the-less necessary, of grace of language and of orderly presentment. To put it in concrete terms, a lawyer's training apart from the study of law must include the study of the following subjects: (1) Sociology, (2) Psychology, (3) Logic, (4) Rhetoric and the art of public speaking, and (5) Command over language. None of these subjects form a part of the present curriculum of the Law course. The first step, therefore, is to reform the curriculum and to see that these subjects are included in it.

If the curriculum is expanded in the way suggested, then it seems to me that the one and the only answer to the second question namely what should be the period for a complete course of legal education is that it cannot be a two years' course as it is now. It must be more than two years. What exactly should the period be is a question on which there might be a difference of opinion. In my view, the period should be four years. I would divide this course of four years into two periods each of two years. At the end of the first two years, there is to be an examination to be held either by the University or by some other body appointed for the purpose, which examination to be called the First LL.B. Exmination. At the end of second two year's period, there is to be another examination held by the same authority and to be called the second LL.B. examination.

I will next deal with the question of dividing the curriculum between the first LL.B. and the Second LL.B. under my scheme. The course of the First LL.B. should include the following subjects :–

1. Sociology and Psychology. 2. Logic and Rhetoric. 3. English. 4. Law of Contracts. 5. Legal Philosophy and Legal Maxims. 6. Constitutional Law. 7. Government of India Acts. 8. Law of Crimes and Criminal Procedure.

The Course for the second LL.B. will include the course of study now prescribed for the First and the Second LL.B; minus Constitutional Law, the Government of India Acts, the Law of Crimes and Criminal Procedure and Contract which are under my scheme transferred to the First LL.B. I would, however, like to add the following Acts to the curriculum of the second LL.B. :–

(1) Provincial and Presidency Small Cause Court Acts, and

(2) Bombay Civil Courts Act.

I am not in favour of omitting the study of Civil and Criminal Procedures as is suggested in some quarters from the course of Collegiate studies especially as under my scheme there would be ample time for their study.

Having given my views on the questions relating to the course of studies and the period of studies, I take the consideration of the

first question, namely, at what stage of his education, a student may be permitted to commence his study of law. I have no hesitation in saying that it should begin immediately after he passes his matriculation. I am driven to this conclusion by my inability to answer satisfactorily to myself the following two questions :–

(1) Why should the study of law be regarded as a postgraduate study.

(2) Does the undergraduate curriculum gone through by a boy in an Arts College gives him the training which is necessary as a preliminary for making him an efficient lawyer and the want of which has been a matter of constant complaint by the Examiners.

With regard to the first question, it may be pointed out that in the Bombay University no Degree in any Scientific subject, such as Engineering, Medicine, Chemistry and Physics is treated as a postgraduate Degree requiring the passing of the B.A. as a condition precedent for being admitted to the Degree Course. Why Law alone should be treated as an exception, I can see no good ground for justification. Secondly, what the boy studies during his four years in an Arts College for obtaining B.A. Degree. *Ex-Hypothesis* has been found as of no material benefit to him in the study of Law. It is the consideration of the matter from this point of view which has forced me, as I have said, to come to the conclusion that Law should not be treated as a post-graduate study but should be treated as a graduate study commencing right after the matriculation. There is nothing so inherently or particularly good in the present-day graduate course of the Bombay University which can be said to add to the make-up of a good lawyer as to compel us to hold that it must be a necessary prerequisite for the commencement of the study of Law. I may mention in passing that the Barrister's course is not a post-graduate course.

There is a view that a student may be permitted to take to legal studies after the Intermediate. The suggestion is a good one in so far as it implies a return to the old system when law was not regarded

as a post-graduate study. Nonetheless in my view to adopt this suggestion would be a mistake and for two reasons. Experience has shown that a B. A. is not good enough. With this experience behind us, it seems to me somewhat odd to think that if we descend to the lower and inferior strata of the Intermediate, we could turn out a more finished product from the Law College than we do now when we draw our raw material from the higher and better strata of the B.A. If B.A. is not good enough, I cannot understand how it can possibly be maintained that the Intermediate would be better. Secondly, why leave the boy even though it be for two years in the hands of an Arts College which does not give him the preliminary training necessary for Law. If the boy is deficient in his preliminary training, why not take him in your own hands from the very commencement and give him the training? Why send him for two years to an Arts College which does not profess to give a course of instruction designed for the ultimate benefit of a lawyer ?

I see three distinct advantages in my proposal of allowing a student to commence the study of law immediately after the Matriculation :

1. The first advantage to which I attach the greatest value is this. At present, a student who joins the Law Course has not the fixed objective of studying law for the purpose of qualifying himself for the profession. He comes there merely for the purpose of adding one more string to his bow. It is his last refuge to which he may or may not go for shelter. Probably, he comes to the Law College because he is unemployed and does not know for the moment what to do. Due to this unsteadiness in purpose, there is no seriousness in the Law student and that is why his study of Law is so haphazard. It is, therefore, necessary to compel him to stick to it. A boy, who is a B.A., cannot have this fixity of purpose, because as a B.A. he has other opportunities in life open to him. My scheme has the advantage of compelling the boy to make his choice at the earliest

stage at which every one in this country is required to make a choice of his career.

2. The second advantage of my proposal lies in its combination of economy and efficiency. A boy will be able to complete his legal education within 4 years. This is a saving of two years over the present system. The alternative suggestion also requires six years. From the standpoint of poorer students, it has no advantage over the present system. From the standpoint of training, I venture to say that the existing system as well as the alternative suggested by the Committee suffer in comparison with mine. The existing system allows only two year for the study which is undoubtedly very inadequate. The alternative scheme allots three years. But my scheme provides four full years. From the standpoint of efficiency, it is, therefore, superior to both.

3. The third advantage is that it will introduce a process of selection. Those who have not the definite object of entering the profession will be weeded out. Only those with the definite object will join. It will, thus, held to prevent the overcrowding of the profession.

There is only one objection which may be urged against it by some with whom I have discussed it. It is that a Matriculation student will not be able to follow lectures in law. My reply to this is twofold. My friend, Mr. S. C. Joshi, M. A., LL.B., Advocate of the Bombay High Court, assures me that there is no substance in the objection. He is conducting the classes for the Bar Council's Examination for the last several years with great credit as the results show. He has had first-hand experience of teaching Law to Matriculates and I attach much importance to his opinion in this connection. My second reply is that under my scheme, the course for the LL.B. is of two years and the study of Law need not commence from the first year. It may commence in the second.

Coming to the last question of the reorganisation of the Law Colleges, this question was considered by a Committee appointed in 1898 as also by another Committee appointed in the year 1915

known as Chandavarkar Committee and the proposal was rejected. I confess, I have a prejudice against the proposal of making the Law College whole-time. It is a fact that many of the students who are studying law at present are working during the day to earn their living. Indeed, Legal Education would not be possible to many a student and if he was not in a position to earn his living while he is studying. And if the total course of study were to extend over a period of six years as it happens today, I would still oppose the proposal of a full-time College. No educationist would be justified, in my opinion, in devising his scheme of education in such a manner as to impose upon the parent the burden of maintaining a student for six years assuming that there are no failures. But in view of the fact that my scheme requires only four years for the completion of the course and also in view of the fact that the boy is to be taken in hand in a somewhat immature state, I have brought myself as a matter of sheer necessity to favour the proposal of full-time College.

With regard to the staff of the College, I would organise it in two Divisions– the Tutors and the Professors. I am anxious that the actual teaching of Law should be done by persons drawn from the practising members of the Profession. In the absence of any touch with the practising members of the profession, a student in the Law College is likely to get into the academic groove so to say. He must be given a bias in favour of the practical. Only contact with the practising members can give a practical bias to his training. The professors, therefore, should not be required to be permanent members of the staff. Only the Principal and the Tutors should be permanent members of the staff. The work of the Tutors should be to give tuition to the boys and to coach them up, while the Professors and the Principal will do the lecturing.

The object of dividing the staff into two classes is primarily to remove the defects in the method of instruction. The faults in the method of instruction now in vogue will be obvious to any one who has any experience of teaching in Law College. Under the present system, the share which the student takes in his own legal Education consists merely in taking notes of lectures delivered by the Professors. This system at the most acquaints the students with the

provisions of the different Acts. But it is doubtful whether the system of mere lecturing affords a sufficient training of the student's mind so as to enable him to apply legal principles to the complicated series of facts which arise in practice. There is also nothing in the system which can compel the student to follow up the lectures by reading the text-books prescribed with the result that student reads nothing till a few days before the date of the examination, when in order to work out the huge arrears he resorts to the notes and the cram books.

There are different views as to the proper method of giving instruction in Law. Some prefer the case method; others prefer the text-book method, supplemented by lectures. No one can dogmatise as to which of the two is the correct method. Methods of instruction must, of course, be left generally to the discretion of the individual members of the Teaching Staff. But, I believe that some positive direction is necessary to the teaching staff to being to its notice the fact that the present system is faulty and that it is necessary to introduce some change in the method, which will demand a larger share of intellectual effort from the student and which will, while instructing him, also train him. I am of opinion that instead of mere lecture there should be a combination of lecturing work and tutorial work; unless the tutorial method is used to supplement the method of lecturing, there is not much hope of the new college producing a new and a better class of lawyers.

The reform in the system of legal Education should in my view be accompanied by reforms in three other directions :–

(1) All the different Examination in Law should be abolished and should be replaced by one Examination common to all practitioners and the distinction between Advocate (A.S.) and Advocate (O.S.) in so far as it is founded in difference in Examination should be done away with. If the distinction is to be retained, it should be founded on the choice of the practitioner who should be called upon to make his decision at the time he applies for the Sanad whether he would practise as an Advocate (A.S.) or as an Advocate (O.S.) or as a Solicitor.

(2) There must be one common Examining Body. As a part of this scheme of re-organisation, I think a Council of Legal Education for supervising Legal Education and also for conducting Examination in Law should be established. The body should consist of the following :–

(i) Representatives of the University.

(ii) Representatives of the Judges of the High Court.

(iii) Representatives of the Bar.

(iv) Representatives of the Professors of Law Colleges.

(v) Representatives of the Public.

I am not prepared to hand over the function of the Examination to the Bar Council. There is a danger of the Council developing the Trade Union mentality. It would be fatal to the whole system of the Legal Education if such a mentality became an operative force in the conduct of Examination. Already the system of Examination has resulted in killing all interest in the study of Law. Care should be taken to see that there is no aggrevation of this unfortunate result.

(3) The granting of the Sanad should not merely depend on the mere passing of the Examination. It should be made dependent upon the passing on three conditions. :–

(a) The holding of a Degree in Law.

(b) Reading in Chambers of a senior for one year and passing of an Examination in the Law of Pleading and the Ethics of the Profession. And in addition

(c) (i) in the case of a person who wishes to take the Sanad of an Advocate (O.S.) the passing of an Examination in High Court Rules (Original Side).

(ii) in the case of a person who wishes to take the Sanad of an Advocate (A.S.) the passing of an Examination in the Appellate Side Rules of the High Court.

(iii) in the case of a person who wishes to take the Sanad of a Solicitor the passing of an Examination in (a) High Court Rules (Original and Appellate Side) and (b) Conveyancing.

(d) Production of a certificate of good moral character.

There is no justification left for the existence, diversities and anomalies when the system of education is made common to all and is extensive enough for any class of practitioners.

With respect to the question of practical training in the Chambers of a Senior Lawyer it is necessary to mention the following points which arise for consideration :

(1) Are there facilities for training ?

(2) What would happen if no senior lawyer was prepared to admit a law student in his Chambers for training or those that were prepared demanded exorbitant fees ?

All these points must be settled if the test of training is to be practicable. With regard to point No.1, I cannot be absolutely certain. But, I think it is possible to find a sufficient number of Seniors in Bombay and in the District Towns to provide facilities for practical training. On the second point I am sure that unless the High Court was prepared to compel a Senior to admit student to his Chamber for training the system would fail. The habit of not showing the tricks of the trade to one who may be possible rival and the fear that the student while under training will get into touch with the clients and will run away with some of them is so ingrained in the mind of the Seniors that I am sure, they will never consent to take student in their Chambers unless they are compelled to. In relation to third point I think

the High Court should lay down the fees for training in Chambers. Otherwise, the fees are likely to be prohibitive which would have the result of making the legal profession the preserve of the rich.[1]

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[1] Govt. Law College magazine : Vol. VII; No. 1 ; January, 1936.