

# Building Competency of Legal Education: Need for Innovative Approach of Teaching and Methodology

*Yubaraj Sangroula*

## **Perspective:**

Nepal practiced an indigenous legal and judicial system till 1951, the key character being the 'enforcement of rules' deeply saturated by customs mostly evolved out of background of Hindu values. Hinduisation of Nepalese legal system started taking place from 4th century, when the dynasty of 'Lichhavi' kings replaced that of 'Kirats'. Nepal's first Code of Law was promulgated in 14th century, which provided an elaborate set of laws, ranging from land measurement system to caste obligations. As noted by a group of Nepalese legal historians, the said code was based on "Narada Smriti". Largely, the Code was a compilation of the prevailing customs, based on patriarchal and caste value system. The prime objective of the code was to reinforce moral sanctity that had been increasingly eroding in wake of lack of consolidated body of rules of law. The code obviously made attempt to 'concretely entrench' Hindu moral codes in the body of laws. The classification of caste and gender obligations was the main cord Nepalese legal and judicial system.<sup>1</sup> In 1854, *Muluki Ain*, a comprehensive code of laws, was promulgated. The *Muluki Ain* too was heavily influenced by Hindu values and practices. But this code imported a number of ideas from the French Code concerning the judicial procedures, in relation to the criminal justice system in particular.<sup>2</sup> The courts of Nepal both under the 14th Century Code, known as "*Manab Nayasastra*", and the *Muluki Ain* practiced an indigenous inquisitorial judicial system, the continental system being a great inspiration under the later one.

The British Common Law system which was imposed in India by the colonial power was effectively resisted by the Nepalese regime till 1950s.<sup>3</sup> In Nepal, the Anglo-American system started consolidating its position only after the advent of lawyers and judges educated in common law legal system in India. The advent of the adversarial judicial system from 1950s thus gradually replaced the inquisitorial system. Theoretically, Nepal in the present position falls in a category of the countries following the Anglo-American legal system. In practice, however, the influence of inquisitorial system is pervasive, which often creates a serious confusion to the smooth and

---

<sup>1</sup> . For detail study, see Kaisher Bahadur K.C, "Judicial Customs of Nepal", Ratna Pustak Bhandar. Mahesh Chandra Regmi "Nepalko Baidhanic Parampara". Tanari Prakashan. CeLRRd, "An Analysis and Reforms of Criminal Justice System of Nepal".

<sup>2</sup> . A number of provisions concerning the criminal judicial administration had been brought from the Napoleon Code. For instance, the Napoleon Code prohibited arrest of persons and search and seizure of evidences during the time in between the sunset and sunrise. The provision is still exists in the Nepalese criminal procedural law. Similarly, the deposition of suspects is taken without an oath taken. This provision exists in the continental legal system to avoid the application of the law of perjury in the case of suspect. The suspect is not obliged to self-incriminate. The practice of obtaining deposition of the suspect at the court without oath is still prevalent in Nepal.

<sup>3</sup> . Mr. Hari Parsad Pradhan, the first chief justice of the Apex Court, was a career judge in India. India then under the British colonial rule practiced common law system, which practiced accusatorial approach in the criminal justice system. By 1951, the Indian judiciary had been practicing fairly developed adversarial system, where the suspects' procedural safeguards had been protected. The jurisdiction of the Apex Court in Nepal was established by the Apex Court Act in the similar line. The right to legal counsel, and the defense of case in the court was one of the remarkable provisions in the Act, which dragged the criminal justice from the inquisitorial line to adversarial one. So that the role of the first chief justice is crucial in introducing the accusatorial system Nepal. See, CeLRRd/HUGOU, 2002. p. 21. Also, ILRR, 1999.

progressive development of the legal and judicial system.<sup>4</sup> The following developments geared up the consolidation of the Anglo-American System in Nepal:

- Apex Court Act 1952, which provided for the establishment of the Pradhan Nayalaya, envisaged for the independence of the judiciary. An extra-ordinary jurisdiction to issue writs in order to protect people's fundamental rights has been conferred on the court. The adoption of writ jurisprudence called for the emergence and consolidation of the legal profession – the Bar.
- Appointment of Hari Prasad Pradhan as Chief Justice, who had been trained in India, was a good lawyer familiar to the adversarial system in India. He therefore developed the judicial practice in Nepal in tune with the adversarial system.
- In 1960 (2017 B.S.), the State Cases Act was promulgated which distinctly outlined the roles and responsibilities of prosecutors and adjudicators. It institutionalized the system of the state prosecuting and defending criminal cases as a party. In principle, the judiciary then was given the role of an umpire, independent of executive control over its procedures.
- In 1974 (2031 B.S.), the Evidence Act was promulgated which placed the burden of proof of criminal charge on the state.
- The Constitution of the Kingdom of Nepal, 1990 (2047 B.S.), fully recognized the suspects' right to remain silent. Further, the following provisions of the Constitution fully consolidated the adversarial system in Nepal:
  - independent and competent justice and protection of human rights of individuals are regarded as one of the basis structures of the Constitution,
  - human rights guaranteed under part three of the Constitution are inviolable, and the supreme court has absolute jurisdiction to grant redress when such rights are violated,
  - the judicial system has been granted full independence in its procedures, and appointment and tenure of its actors, and
  - universal principles of justice provide a basis for interpretation of statutes.

The rapid consolidation of the Anglo-American legal system significantly attracted the Nepalese students to train themselves in the system. The Apex Court in 1952 (2009 B.S.) further encouraged a group of Nepalese students to obtain legal education from Indian institutions, which had been tremendously influenced by the Anglo-American legal system. The emergence of legal education in Nepal took momentum with the multiplication of lawyers trained in foreign

---

<sup>4</sup> . The danger of confusion between the inquisitorial and accusatorial systems is obvious. The treatment of the 'statement of admission of fact' and the 'statement of commission of offence' alike is vulnerable to subject the suspect to a condition of miscarriage of justice. This condition may result in throwing the burden of proof on the suspect, which is not only undesirable but prohibited in the system that follows the accusatorial system. The definition of the 'confession' in confusion with 'admission of the fact' may deprive a person from benefit of an offence for 'self-defense'. Similarly, accidental and unintentional acts of offence may be defined as culpable crime resulting in severe sentences to suspects. The failure in distinguishing the term "*swikarokti*" (admission of facts) from *sabiti* (confession) is vulnerable to create disuniformity in application of the "statements" made by suspects. Obviously, persons admitting the "facts" may be witnesses to the commission of crime. Nevertheless, the admission of fact being potential of taken up as confession, the person who is merely a witness of the crime may be prosecuted as a co-accused.

legal systems. The following few characteristics should not, therefore, be ignored while considering the development of the Nepalese legal education:

- The curriculum since the inception legal education in Nepal is immensely influenced by the Anglo-American legal system, mostly in the shape adapted in India.
- The teachers and students are used to view legal problems and interventions from the perspective of the principles, practices, approaches and methods prevalent in the Anglo-American system.
- As it is obvious from the historical facts, the transformation of the indigenous inquisitorial system to adversarial system took place without systematic need assessment and planning of the legal system based on adversarial system. This lacuna hampered the process of systematic development of the institutions necessary for effective, efficient and smooth implementation of the adversarial system.

However, in lack of proper planning and failure to establish the concrete objective behind the transformation of legal and judicial system to adversarial system, the prevailing practices based on indigenous system were forgotten to be addressed objectively. The century-long practices thus remained unchanged affecting the smooth implementation of the adversarial system. The legal education too failed to address this problem. It is one of the reasons that the legal education has been frequently changed without any difference in consequence.

### **Story of Repeated Failure of the Legal Education in Nepal:**

Legal education in Nepal has passed almost a half-century with several experiments, without much success in its each restructuring. The following cursory glance presents an unusual trend in its development:

1. A B.L. degree was introduced in affiliation with Patna University. It was a two years after-graduation course based on the Indian laws. Teaching was fully based on lecture method. Orientation on skills of communication, drafting, etc was non-existent.
2. The same course, with a superficial change, was adopted by the Tribhuvan University following its establishment. The curricula exposed students to Anglo-American jurisprudence. The Nepalese jurisprudence is hardly explored. Students had been indoctrinated in western jurisprudence, so that the problems of law and justice had hardly been concern of the then legal education. The production of committed and community-concerned lawyers and legal experts had not been an objective of the legal education wanted to address. Obviously, no students came from the common or grassroots background. The legal education was simply a mater of privilege for dominant class or caste families. Emphasis on theory of Anglo-American system overshadowed study of the core problems and values of the Nepalese society, like:
  - protection of unprivileged and marginalized sections of the Nepalese society
  - protection of gender relations
  - the social welfare and benefits
  - the justice system, which largely remained the feudalistic in character.

The legal profession became monopolized by a handful of peoples from so-called higher strata. The vast majority from the grassroots community could have hardly been reach of

the legal education. The justice therefore meant a process of formal interpretation of the statutes rather than the pro-active enforcement of laws for the benefit of vast majority.

3. Five years' (2+3 years proficiency certificate and diploma in law respectively) course replaced the two years' B.L. program during 1970s. This new curriculum comprehensively included the components of Nepalese law, and as such was envisaged to generate legal human resources adequately familiar with the Nepalese legal and judicial system. Since the legal education was made available in many parts of the country, it became reachable for many in the grassroots. This system destroyed the monopoly of handful of elites in the legal education. A number of lawyers and legal experts then came from the grassroots communities, thus making the legal profession accessible common peoples. However, its teaching approach was largely based on the lecture method. The component of research was insignificant, and it lacked the clinical teaching component as well. The course also failed to address the emerging socio-legal issues as it ignored to inspire students to empirical study of such issues.
4. In 1984 (2041 B.S.), the five years' semester-based course was abruptly changed for no reason. A three years B.L. after proficiency certificate level was introduced. Subsequently, a decision was taken to do away with the certificate level, and a three years' LL.B. program after graduation was introduced. The interest for doing with the system is obscure. The 10+2+3+3 (8 years in total) course system thus destroy the possibility of reach of common people to legal education again, as it is simply financially not-affordable to students from poor and lower middle class community.

Interestingly enough, none of these changes in the series of courses were outcomes findings of any type of research and empirical studies; rather they were outcomes of individuals' whims. It is obvious that every time the change was sought through change in the structure of the course but not in substance. No one at the policy level made attempt investigate that the low quality of the legal education was caused by the lack of vision, inefficient, inadequate and inappropriate components of curricula and obsolete teaching methodologies. Merger of the two or three subjects in one or the bifurcation of one into several was thought to be a timely change in the course to update its quality. Finally, the blame was put on students; they condemned to have been involved in politics, having absent of motivation to legal education, and so on. Indeed, the policy makers of legal education in Nepal never felt seriously that

1. Legal education is a part of social science, and therefore it is essentially influenced by the societal phenomena. The legal education exists to address the contemporary legal problems of the time, and as such it is essentially concerned with the contemporary social development and issues. No legal education can ignore the socio-economic and political development of society. The legal education policy makers in Nepal hardly thought the relevancy of contemporary socio-legal problems in legal education. For them the legal education meant nothing but indoctrination of theories of the western jurisprudence.
2. The legal education lacked research component as an essential part of the regular teaching activity. Students were encouraged to become "good orators" of the principles of western jurisprudence, but not "talented intellectuals" capable of addressing the legal problems of their own society. They had been taught to be "tricky", "magical" and "clever". They were invariably told that they ability was to manipulate the issue in a tricky way. Their role of social engineers was absolutely forgotten. They were taught to be 'rich' and sophisticated citizens, who own foreign cars and big buildings pocket a large amount of wealth and maintain a dubious and prolific lifestyle. This method simply forgot to motivate or inspire students "creative and innovative".

3. Ideals of professions and professional responsibilities were not the components of the course. The legal education totally forgot to emphasize the 'legal profession's responsibility' to the community. The use of technology was not inspired. The link of socio-political and economic development with legal profession was ignored. Students were thus simply left on the streets with nicely printed out degrees. The legal education never took accountability for the miserable failure of students in the practical life.
4. Legal education failed to become responsive to the community, its needs and potentiality. The “delivery of service to the community” was emphasized, but the “community was defined as a market for lawyers”.
5. Concepts of globalization, privatization and market economy rapidly invaded the traditional regimes of human relations. They had tremendous bearings on the legal judicial systems. However, students were kept unaware of these implications.
6. In 1990 (2047 B.S.), Nepal entered into an open society with a strong commitment to apply the rule of law in practice. Nepal also accepted the challenge of competing internationally in trade and commerce. It endorsed a new system of tax. Legislation to encourage induction of foreign investment was promulgated. With gradual expansion of the regime of international trade; foreign banking systems, security systems, and stock markets made their appearance in Nepal. However, the legal education could not pay attention to these new developments. Hence, lawyers found themselves in a state of great confusion to address the emerging problems. The legal education then became a platform to create a “confused mass of legal professionals”. This in turn created a vulnerability to mal-practice by lawyers, leading to deterioration of the confidence of people in the legal profession.
7. On the whole, legal education in Nepal failed to produce competent legal professionals. A large number of students were then forced to seek education from foreign institutions, which had two major negative results:
  - students who had been admitted into LL.B. program in foreign institutions were deprived of the opportunity for orientation on Nepalese law, and as such faced difficulties in joining the legal profession upon completion of their degree in foreign countries,
  - Students who had to participate in foreign courses lacked adequate exposure to socio-legal issues of Nepalese society, which indirectly obstructed the development of independent Nepalese jurisprudence.

### **Present Reality: Predictability of Dearth of Efficient Legal Human Resource:**

The after-graduation three years' LL.B. program is not giving a satisfactory result in terms of number of students as well as the quality. The participation of students in academic pursuit and induction of graduates into legal profession both are grossly affected. A number of reasons are responsible for that.

1. A student in the present context of the academic calendar has to loose two years for nothing by the time he/she finishes the LL.B. course. There is a gap of one year in between intermediate and bachelor level, and similarly, one more year in between bachelor and LL.B. The LL.B. course is a three years full time course. As such a student has to spend 10 years (8 academic calendar years + 2 years' loss) to obtain the degree. No student in a poor country like Nepal can afford to continuously engage him or her for a period of ten years in university. No education system can simply snatch a productive

period of students for no meaningful reason. Students who have to engage themselves in earning their bread and butter cannot afford a three years' LL.B. course subsequent to graduation. Consequently, a large number of students who enroll the law school join the work, leaving the legal education merely as a matter of secondary interest. The quality of legal education thus suffers terribly.

2. This trend has negatively affected the induction of fresh groups into the legal profession. A fresh group is always expected to introduce new concepts and developments in the legal profession. However, the absence of the induction of new or fresh graduates in the profession with motivation for legal profession is obviously hampering the quality of the bar, and eventually the course of justice itself.
3. Since students are not turning up in the classrooms, teachers are irregular in their jobs. They do not become involved in research works and academic activities. The quality of law teachers is therefore vulnerable to deteriorate. A large number of law teachers therefore appear in the colleges only to receive their salary.
4. If students are not exposed to research works and current socio-legal issues, they fail to compete in any level. In the wake of foreign investment's induction in the country, indigenous lawyers are not capable to address the needs of foreign companies. Hence, the jobs created by the development of trade and commerce are being taken away by expatriate lawyers. The situation is thus forcing Nepalese lawyers to engage themselves in unethical practices.

### **Need for Innovation, Commitment and Dedication:**

An innovation in legal education is therefore an urgent necessity to address the following immediate needs and challenges facing Nepal:

1. The fast increasing trend of globalization and open market economy is posing a challenge to the legal professionals of Nepal in competing with professionals from other countries. The trend of foreign investors to employ alien lawyers is becoming phenomenal, subjecting Nepalese professionals to unequal competition. Hence, the country has to have a legal education system competent enough to generate legal experts in the country who are capable of competing with expatriates.
2. Many students from Nepal are forced to seek legal education from other countries. Thus, their mastery is confined to foreign laws. They evidently lack expertise on Nepalese laws and the judicial system. The importation of knowledge of foreign laws alone does not properly address the problems facing the country. Such students have to spend a considerable time after graduation to obtain orientation on Nepalese law before assuming the profession. This causes both a loss of time and resources.
3. The training in foreign country is expensive, so students with talent that lack resources are deprived of higher education in law. This problem is vulnerable to render the legal education a 'privilege' of the elites. The progressive legal education should be conveniently accessible to those who cannot afford spending a large cost for becoming a lawyer.
4. The value system, with which laws and judicial systems maintain a close relation with, is different in foreign countries and thus it often creates a problem for graduates trained in foreign laws in accommodating with the reality and environment of the judicial system of Nepal. This problem results in frustration of students to legal profession.

5. With the growing tendency of young people joining the foreign institutions, it is blocking the process of transference of the professional experience of native senior legal experts to the coming young generation.
6. The country has a democratic system with pluralism. The principles of democracy and rule of law require rationalization of the traditional systems in accordance with international trends and values. However, in the lack of a legal education to address such needs, democracy may suffer underdevelopment.

The five-year' LL.B. program is therefore introduced as a timely response to the need of a viable and competent legal education system, which has been very effectively and meaningfully implemented in countries like India, a next door neighbor. The five-year's LL.B. is an emerging trend in the legal education in many countries in all continents. The effectiveness of and attraction to the course is rightly proved by preference of immensely large number of students to the five-year' course and increasingly large number of institutions being established in India as well as other countries. The following positive traits have been identified in this program:

1. Students join the course as a 'preferred option' to the course with perfect commitment to develop the career of legal professionals. Hence, this program is expected to effectively address the problem of students' disinclination to active participation in academic pursuit. The Kathmandu School of Law has been able to establish this result. The commitment and dedication shown by students is not only inspiring but praiseworthy.
2. The five years' program provides for an adequate time span for acquainting students with social studies, clinical practice and research skills. Since, students have adequate time for clinical practice, their professional skills can be fully developed during school time and as such they do not need to spend extra time learning professional skills.
3. Since the course runs consecutively for five years, students are relieved from losing a year while waiting for their results.
4. The five years' course has an adequate time span to introduce specialized knowledge to students. Like the Bangalore School of Law and many other universities in Australia, New Zealand, UK, and South Africa, Purbanchal University has adopted a course which provides the opportunity for students to develop a field of specialized expertise right from LL.B.

The five years' LL.B. program has been developed to face the challenges left unaddressed by the traditional system. Definition of the objective is one of the prime concerns, which considers the need of the country as well as the changes the time must address. There is a need of reviewing the history and contemporary needs that the legal and judicial system must address.

### **Efforts to be made for Making Legal Education Timely and Efficient to Address Challenges:**

**Compulsory Law Firm Placement as Interns:** Like medicine and engineering, legal education is a vocational education. Students are expected to utilize their knowledge and skills learned in the schools in practice. Hence, involvement of students in a professional career is necessary right from the stage of studenthood. They should get the chance to develop a professional behavior from the moment they enter the law school. The placement of students in law firms is therefore essential. Hence, the universities must encourage a legal education that emphasizes practical learning and development of the professional behavior of students.

**Involvement in Research Activities:** Law is indispensably related with social issues. The study of law is not only incomplete but also inefficient if it ignores social issues and the process of social development. Research is therefore an indispensable element of the legal education. Hence, legal education must be fully research oriented.

**Clinical Approach in Teaching:** Socratic lectures largely destroy the creativity of students, as they do not develop a habit of innovative and logical thinking. Law is a matter of frequent interpretation and the environment and the needs influence the interpretation. If creativity is ignored, a law school will be doing nothing but generating a confused mass of people. The clinical approach is especially developed to help students:

- To link themselves to community problems, which is in itself an opportunity for them to use their theoretical knowledge on actual problems,
- To build a community based approach to justice,
- To identify problems needing legal interventions, and
- To deliver service to community through building awareness.

**Developing Excellence:** Development of excellence should be a focus of universities. As a multi-ethnic and diverse society, the legal relations of individuals are not set up in a stereotypical pattern. The relations are fragile and volatile as they are governed by multiple value systems. Similarly, the problems of environment, development, equitable distribution of resources and participation in governance system are acute, requiring the service of talented jurists to design a workable legal framework. This task is not possible to be performed by legal experts who have no in-depth knowledge on the complexities of the Nepalese society. Only the jurists who have keenly observed the problems and have developed insights to address problems can deliver this service. This capacity can be developed only by a native institution. Hence, the need of the time is how to develop such an institution in the country to cater for the need.

Purbanchal University has made a breakthrough by adopting timely and efficient curricula for five years' LL.B. and two years' specialized course on Master of Laws. Both the courses have been developed through extensive research on experiences of successes and failures of the legal education system in the past. The process involved participation of academics as well as stakeholders. However, the development of the course itself is a fair guarantee for excellence. The following elements play a vital role in achieving the desired goals:

1. **Appreciation and Punishment:** Evaluation of teaching staff is indispensable element for monitoring and maintaining the quality of legal education. This is where legal education has terribly suffered in the past. Purbanchal University must be serious in this regard. A few suggestions are drawn up for future actions:
  - The status of educational institutions with profit making ventures and non-profit making ventures must be made separate. A grant should be given to non-profit making institutions.
  - The status of teachers is a major issue for affiliated colleges. The University must develop a system where teachers may, without subjecting the University to financial burden, be able to promotion. The University should develop a system to recognize the status of teachers involved full time in the college. Similarly, teachers who have undertaken academic administration should not be undertaking responsibility in other institutions.

- Teachers who are engaged full time in teaching should not be allowed to practice beyond a limit of three cases a week.
- 2. Legal institutions should conduct clinical programs. This is essential for the development of students' professional skills.
- 3. Legal journals are a necessary feature of the life of every law faculty. Hence, university must require publication of journal necessarily.
- 4. There should be adequate space for a moot court and clinical activities in legal faculties. Moot court practices should be compulsory and observed by a panel constituted by the University.
- 5. Masters degrees should be absolutely research based. Students research papers should be highly standard.

**Evaluation System of the Students:** Effective evaluation system is necessary to ensure that the students have met the necessary goal. In order to compel the students into academic activities internal evaluation system is a measure to meet this end. Home assignment, class test and periodical terminal examinations or oral examinations can be adopted in this regard. This twenty percent of the total mark can be set aside for internal evaluation and eighty percent for the external examination. This is the policy that has been adopted by Kathmandu School of Law from the very beginning of its academic activity. If internal evaluation system is effectively carried out, it dispenses with semester system of academic operation. Semester system is more emphatic upon formal examination rather than actual learning of the students. The twenty and eighty percent of evaluation mechanism may be also use to evaluate the efficiency, devotion and honesty of the teachers and examines concerned. Teachers and examiners must be accountable to the great disparity if any in twenty percent internal exam and eighty percent external exam result. This could operate as a check and balance between internal and external examiners. Too much reliance upon external evaluation only is traditional and not fruitful to meet our goal. If students are made to work from the very beginning of the academic year and if internal evaluation is made effective, they would be less tempted to leave the class and peruse illegal activities in the examination. Extra curriculum activities can be carried out immediately after the examination. Teachers framing external examination questions must be subjected to provide evaluation guideline on each question framed by him. This approach would make him to be more objective to this standard of students expected by him. It would also help to the external examiner to evaluate the answer book fairly. If he wants to make any comment on the question or on the examination guideline he may do so and draw the attention of the concerned authority in this regard.

**Teaching Methodology and Teachers:** Teaching is a technical profession requiring skills of communication, manipulation students and honest and devoted approach of academic excellence. New teacher must be made trained for some week through experience teachers and experts. Let us redefined the term "Teaching". Teaching is not what the teacher taught in the class. Teaching is what the students learned from the class. Lecture method is the traditional method of teaching. It may be reversed the other way. Student participatory method is the alternative to it. Students can be made to work to their level best by providing synopsis of class they are to face before hand. They may be encouraged to find solutions by providing some questions on the related issue and work in the library. So they come to the class not with blank knowledge but with some quarries and comprehension of their level. Such class would be more interesting and fruit-full. New teachers may not be aware of such things. He/she must be made proficient in this

knowledge of the subject matter, the evaluation techniques and the methods of helping and encouraging the students.

**The Role of the University:** Academic institution and the campuses must be given wide range of autonomy to run their internal activities. The experts of the university or the authority must limit itself to monitor the campuses or the institutions as the case may be from time to time to see whether the institutions have maintained the required standard or not. It may guide the institution for the betterment; link the institutions for the exposure to the outside world. Provide financial support where the institution shows encouraging result. University activities must be predominantly concerned with academic upliftment. Examination activities of it are important of course, but not the sole activity. The university must be fair, boastful of its academic performance, autonomous and free from party politics.

University is for the nation, university is for the academicians of the whole world.