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## Law schools and legal services for the poor: The Malaysian experience

RAJESWARI KANNAIAH

### Introduction

Much research has been done and seminars organised to discuss the inappropriateness of the legal system and its remoteness from the needs of the indigenous population of many formerly colonised third world nations. Such critiques encompass the legal education system, the law making process, the judicial system, the legal profession and the judiciary. The source of the problem stems from the fact that these former colonies had imposed upon them alien systems essentially far removed from their needs and understanding. These systems were introduced to enhance and justify the expansionist policies of the colonial forces.

In the present day, it is becoming more and more apparent that the legal system is now being used as a tool for the oppression of the majority. The legal system is now being abused to consolidate power and marginalise the dissenters and the impoverished. This is being done in the following manner:

(1) *The law-making process.*—A small group of law makers to which the majority have little or no access determine the laws to be made. In essence laws are proposed and initiated by politicians to protect themselves. Corporate power has also started manifesting itself as an over-riding influence on law makers. Such laws ensure that power and rights are placed in the hands of vested interests with little or meaningless concessions given to the 'other side'. Thus laws to restrict the freedom of students and teachers in universities, trade unions and workers, the press and journalists, social action groups and political opponents have been passed. Laws which deny individuals basic human rights which under normal circumstances are guaranteed by the Constitution have also been passed. Laws conferring property rights are heavily weighted in favour of the owners while other laws exist to tip the balance in favour of the businessman against the consumer. Such a law-making process is non-participatory and authoritarian. It denies the rights of specific groups and individuals to present their views and representations while taking into account the views of a selected group.

(2) *The courts, lawyers and judges.*—The legal process is far removed from the everyday life of the ordinary man. The layman has little or no access to it, mainly because it requires of him knowledge and skills he does not possess and which carry a price tag he cannot afford. The entire court atmosphere is another world he fears to enter and would rather avoid. His own perception of his problem is quite different from that of the court or the lawyer. When the judicial means is taken, the confrontational framework reduces the issues of injustice to mere and often inadequate legal principles and arguments far removed from the human problem.

Not only is the legal process and the legal language alien and intimidating to the small man, but the non-availability of legal services prevents him from obtaining legal resources. In Malaysia, some 3000 lawyers mainly practising in the urban capitals

"Service" a population of 17 million. The lawyer is not interested in the problems of the poor, as the poor do not have the means to grease the wheels of the legal machinery.

Judges can neither comprehend nor involve themselves in the struggles of the poor and disadvantaged. Today's judiciary is largely a product of a privileged background, and there is a *public impatience with judicial remoteness, conservatism, lack of vision and creativity in an era* when society is experiencing unprecedented change. There is a growing disenchantment with the undue deference to the executive.

Most judges in Malaysia must have at least ten years of experience in the bar or in the judicial and legal service before they can be elevated. The majority of them come from the middle and upper class, having received their legal education in England. There is a preponderance of male judges with only one woman being elevated several years ago. Because of their class backgrounds and their sterile legal education in a foreign land, it can be supposed that they cannot comprehend the poverty and deprivations experienced by the poor and consequently tend towards conservatism and observing what to their mind is the rule of law.

By the time most of them are elevated they are already in their middle ages and beyond. One can imagine that they would already have made up their minds about the order of the world and prejudices would already have set in. Their lifestyles and social circles does not give them the opportunity to see the reality of social inequalities. They live and move in a closed world that shuts out the real world, devoid of challenges and tragedies. Nothing can shake them for they are ensured security of tenure by the a Constitution. One cannot expect dramatic judgements from class of people who are cosy, comfortable and secure and have known no other existence all their lives.

**(3) Legal education.**—The values perpetuated by any system of education determines the nature of society in which we live. In Malaysia legal education has been and still is the privilege of a few. It is these few who in turn dominate the legal system when they graduate. The study of law, when devoid of social content and divorced from the reality of human existence, serves to reinforce materialistic self-interest goals. Law then becomes an instrument of self attainment and power concentration rather than as a medium of much needed social change. The elitism of universities and passive teaching methods insulate law students from the problems of the poor and the under-privileged. They come out of law school to fit into the mould prepared for them thus effectively becoming the tools of the oppressor or substitute the oppressors themselves.

The legal system has a dynamic role to play in political, economic or social change. In order that such structural change can be facilitated the mystification of legal knowledge, the aloofness of the legal profession, the inaccessibility of the courts, the remoteness of the judges and the cloistered nature of legal education all need to be transformed so that the legal system can become responsive to the needs of the neglected, poor and oppressed majority.

### **Socialising legal education in Malaysia**

In Malaysia, apart from the University of Malaya (UM), the International Islamic University (IIU) and the National University of Malaysia (NUM) also offer degree courses in law while the Institute Teknologi Mara (ITM) offers diploma courses in law. In 1986, the advanced diploma course in law of ITM was offered recognition which means that these graduates will be allowed to practise law after their pupillage.

**(1) Curricula review.**—From the 1980s curricula review has been taking place in the Law Faculty at the University of Malaya. Socially relevant Law Courses such as Law and Society, Consumer and Law, Environmental and Natural Resources Law, Population

Law have been introduced. However due to the shortage of motivated law teachers to teach these courses several of these courses have not been offered presently. Of late, the substantive courses have also incorporated within them aspects of the socio-political reality of events happening in the country. Although these changes initially took place not as a result of deliberate planning by the law faculty itself, but because of the persistent lobbying efforts of the Consumers' Association of Penang, of late the law faculty has been more encouraging to law teachers who wish to pursue a public interest line in their courses. However, unless the law faculty makes it a policy to introduce a social content into all the courses taught and ensures that all law teachers it recruits are motivated and take an active interest in implementing such a policy, it will not be long before even the existing courses will not be offered, should there be a dearth in sufficiently motivated law teachers.

Following the example of the UM law faculty, IIU and NUM are considering offering Consumer Law Courses to their students. However, apart from this course which is still in the pipelines, there do not seem to be other such courses offered or any stated policy towards that direction. It is heard from sources that these universities are pre occupied with producing law graduates to meet the high standards of professionalism required by the Bar and in ensuring that their graduates will not be compared unfavourably with graduates from UM. (UM law faculty began in 1972, while NUM took in its first intake of law students in July 1986. Since the ITM advanced diploma only received recognition in 1986 for sometime UM had the monopoly of being the exclusive law school in Malaysia).

It cannot be denied that the curriculum of the law schools will always be wrought with competing and conflicting demands from the government, the Bar and social action groups. What is needed is a balance between professionalism and social responsibility. This can be achieved if law teachers do a fair and sincere job of teaching law courses keeping in mind these demands on the quality of students produced by the law schools.

(2) *Clinical legal education.*—For a long time, the only real contact law students had with the outside world where they could 'practice' what they had learned was the attachment programme in the second year. This attachment programme requires law students to attach themselves to a lawyer, the courts, the Attorney-General's Chamber or the legal aid bureau for practical experience. For some it would have been useful, for others boring and uneventful, depending on the degree of supervision and involvement they had in legal work. There was no real systematic follow-up from the law faculty with the students.

A more systematic approach was adopted with the courses mentioned earlier when they were first introduced in the 1980-81 session. This time law students were required as part of their course to attend an exposure programme organised by the Consumers' Association of Penang in Penang. During this 4 day exposure programme students were taken to meet communities affected by development projects and encouraged to explore the legal avenues available to impoverished communities such as these. The students saw for themselves that legal protection which may appear adequate on paper is hardly the reality in most cases. The exposure programme brings into focus the development work of social action groups such as CAP.

Establishing links with social action group is vital to ensure that students can be drawn back to social realities. It is a testimony of the success of such programmes that students go back during their vacation to learn and experience for themselves public interest legal work with NGOs like CAP.

The experience of social action groups are the dynamic and 'live' material which law

schools can make use of as teaching materials. At present UM is the only law school that has regular contact with social action groups and has worked it into the structure of a course.

CAP has approached the other law schools to establish similar links and it remains to be seen what kind of relationship will be established.

Both students and teachers need to be exposed regularly to the needs of society if there is going to be any sustained sensitivity and consciousness.

(3) *Teaching methods.*—Too often teaching in any institution of higher learning becomes a passive monologue with the teachers talking and the student scribbling notes trying to take down everything his teachers says word for word. Students can't be blamed since they have been taken through 13 years of schooling on this method of rote learning and regularisation during the exams. Class participation, questioning, analysis and criticism are not experiences familiar to the vast majority of Malaysian students and this is further frustrated by the sheer number of students in classes.

While this cannot be avoided where classes are big, different approaches can be adopted for smaller groups of students during tutorials and classes for optional papers. A successful model was adopted in the Law and Consumer class and is certainly worth noting. Since this was a class of 17 students, it was possible to conduct it according to the seminar style where a student chairs each session and the teacher sits in as a participant. Each student takes turns to research and present a paper after which there will be discussions. All students in the class write an assessment of the paper presented and grade it. The teacher then grades the student on the average of the marks awarded by the class and also gives his own assessment and grades. In this way, active discussions were encouraged since the class was essentially run by the students unlike tutorials and lectures where the teacher assumes the dominant role.

#### **Legal aid by the government and the bar**

Traditionally the government legal aid Bureaus have provided the link between the state and the people and that too only in a limited sense. Legal aid took a welfare approach where the poor had to travel to the city to request aid and they would only receive such aid if they qualified for it under a stringent means test. Even then any complaint they had against the state could not be taken up as it would put the Bureau in a conflict of interest position. There was no effort to educate or to reform unjust structures. There was therefore no structural legal aid. Most indigents did not even perceive their problem as legal and hence never approached the Bureau, let alone being aware of its existence.

The private bar in Malaysia is at present attempting to salvage its image by opening up legal advisory centres to assist the man in the street with his legal problems. These centres are funded wholly by the Bar. Although these centres have attracted many cases, access to such centres is somewhat limited to the rural poor as a result of their location and a means test. Since these centres are in their pilot stage very little comment can be made on their effectiveness in rendering legal aid. But it is clear that they are not equipped to play much needed roles such as conducting legal literacy campaigns in rural areas, organising communities to acquire legal knowledge, opposing unjust structures and so on. Apart from the fact that they will take up cases against the government, they are not very different from the legal aid Bureaus. They could, of course, be restructured to play a very much bigger role than envisaged, if the Bar is more committed towards assisting the poor to resist oppressive structures.

In this regard there will be an opportunity for lawyers to increase their effectiveness

of service to people who really need their help. The image of the bar as self-seeking, profit motivated professionals can be altered, if more of their members were to devote at least part of their time and energy in taking up public interest cases, or in cases where they are pitted against the poor, they make efforts to negotiate a settlement that would be acceptable to both sides. This will be possible if the bar as a professional body could influence its members to be more socially responsible and through such structures as the advisory centres, pursue a more aggressive social service stance.

### **Conclusion**

The efforts at reform by the Law School of the University of Malaya has had some impact on the law students who have graduated from these courses.

Two students who graduated from this law school in 1982 set up the first full time and still the only public interest law centre in association with CAP in Penang, Malaysia. The activities of this Centre are well known in Malaysia, and include public interest litigation, social-legal research, community organising and training of law students. The link with the law schools has been maintained by the law centres through annual training programmes for law students to expose them to "Law in action" and occasional guest lectures in the law school.

Several students of this law school have gone back to teach these very courses at this law school and maintained an active linkage with their colleagues in the public interest law Centre and other NGOs. This has meant that there has been mutual reinforcing of ideals as well as a sustained effort to continue this tradition.

Law Schools in Malaysia, have not at an institutional level, taken a policy stand on socialising legal education. The efforts taken so far have been the result of the motivation of a few concerned individuals, tinkering at their level of authority, to make whatever changes were possible. There has no systematic or organised effort by law schools to get together to discuss their role in society especially in addressing the needs of the rural poor and other disadvantaged groups. However, it is possible in the Malaysian context for law schools to reform legal education and work together with NGOs as has been demonstrated in the case of the University of Malaya, without there being a backlash of repression by the relevant authorities. It remains to be seen how law schools in Malaysia will take up these challenges in creative ways so as not to attract the censure of the State.