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The state of legal education in Pakistan

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After independence there have been many changes in Pakistan. Constitutions have been enacted and abrogated, the pace of legislation has quickened and slacked as dictatorial regimes and democratic governments have changed hands, existing laws have been Islamised and Islamic laws have been introduced. These changes no doubt have not been without an impact on the legal system. These have, however, contrary to the popular belief, not completely transformed the system. Even in its present revamped and semi-Islamised state the legal system predominantly remains a contribution of the blueprint prepared by the British for the sub-continent.

Law in the pre-independence sub-continent was primarily an instrument of order. It preserved the existing stratification of society and was designed to stabilise the structure of government. The judiciary was a part of the machinery of law and order set up by an alien power to govern the local people. It could not and did not view law as an instrument of social change. Its job was to apply the law to answer a question which arose before it. The judges did not perceive it as their duty to carry out any investigations to discover the spirit of the law or its social purpose.

The study of law as a discipline and its interpretation has not registered much of a change after the departure of the colonial rulers. Old habits have continued. A Constitution has been enacted and the citizens have been guaranteed fundamental rights. Its influence is apparent in some recent judgments of the superior courts where a greater emphasis is placed on the purpose of the law and the classes of persons it seeks to protect rather than a dictionary meaning of the statutory language.[1] In general, however, judges and lawyers consider it safe and proper to follow the blackletter approach. They do not consider it a part of their duty to travel beyond the letter of the law and make its language serve its purpose.

This approach in all its stringency is nowhere more apparent than in the manner and style in which law is taught in the colleges. With a few very minor exceptions curricula in the law colleges consist of a list of different statutes which the student must cram in order to pass his law examination. This list, of course, is quite exhaustive. A law student must familiarise himself with scores of enactments ranging from crime, contract, property and tort to statutes of procedure to laws relating to tax, rent, arbitration and sale of goods in his two year law course. A student who, therefore, applies himself will come out with a broad based smattering of statute law. He will also have read a bit of Islamic law, interpretation of statutes and Islamic and secular jurisprudence.

In the law college the primary focus of attention is the statutory law. It is taught in the form it has emerged after judicial interpretation. The case law in itself, however, does not receive much attention. The law student is not required to know how the subject has

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1. *Miss Benazir Bhutto* v *Federation of Pakistan* PLD 1988 SC 416, *Miss Benazir Bhutto* v *Federation of Pakistan* PLD 1989 SC 66, *Sharaf Faridi* v *Federation of Pakistan* PLD 1989 Karachi 404 and *Muhammad Anwar Durrani* v *Province of Balochistan* PLD 1989 Quetta 25.

taken shape in the hands of the judges, the common law influences which affect the interpretation of statutes and how the confluence of common law and statutes has formed our jurisprudence.

The skills and the abilities to conduct an interview with a client, develop a facts sheet, envisage the legal aspects of a social problem, research and apply case law in the resolution of a problem, draft basic documents and prepare a cross-examination or an argument are either not imparted at all or are taught in a very half hearted haphazard manner. Though they teach a bit of conveyancing and the law of pleading and carry out some practical exercises in the art of cross-examination and appellate advocacy, the law colleges do not consider it a part of their responsibilities to train the students in these skills which are indispensable to anyone who desires to make a career of the law. It is only over the years in the chambers of a senior lawyer or through trial and error on his own that the young lawyer will learn these and many other basic skills.

This singular failure on the part of the law teachers to impart training to their students in the practical skills which are the elementary tools of a lawyer is overshadowed by an even greater failure to educate the student about how the law's empire[1] extends into and impinges on, the private lives of each one of us. In a legal system the state is authorised by the law to employ a considerable amount of coercive power not only to meet emergencies but in the day to day administration of its affairs. The type of persons who wield this power on behalf of the state, the terms on which such authorisation is given and the extent to which the state can use this authority concerns every citizen.[2] A student of law ought to be able to understand these concerns and to examine the moral basis of legal rules.

Law students cannot develop the ability to argue a case beyond rattling off relevant statute and case law if they do not have an understanding of the subject which extends beyond the basics.[3] The moral issues involved, the socio-economic structure of society and the political implications of legal questions are no less important in helping shape the argument of a lawyer than the legal rules on the subject. It is these extra-legal surroundings which provide the basis for examining the strength and validity of legal arguments.

Jurisprudence and legal theory are taught indeed. These are, however, taught in much the same manner as statutes of limitation and rules of evidence. The student runs through his Salmond or Paton and acquires a familiarity with the origins, nature and scope of law and the various theories of law and criticism of these theories. This kind of study does not provide any insights into the way law operates within the society. The way in which established implementive mechanisms or devices can be utilised[4] to reach an end sanctioned by law and the analysis of the varieties of ways in which these devices can be made to serve particular interests is not part of the syllabus.

Laws cannot exist in a society unless they serve some interest. The interest may be that of the community at large, certain powerful interests within the community or the disadvantaged sections of the society. The neutrality of law is a myth and quite often, under the guise of such neutrality, the law is being made to serve an interest. Those who work with the law should be taught to recognise this reality. Only then can they influence

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1. The expression is borrowed from Ronald Dworkin, see Ronald Dworkin, Law's Empire, Harvard University Press, 1986.
2. ". . . .how can a system of state-organized violence create obligations?": Tony Honore, Making Law Bind. Essays Legal and Philosophical , Oxford, Clarendon Press, 1987.
3. William Twining (ed), Legal Theory and Common Law, (Oxford, Blackwell, 1986) pp. 246-247.
4. R.S. Summers, "*Naive Instrumentalism and the Law*" p. 126 in P.M.S. Hacker and J. Raz, Law Morality and Society, Oxford, Clarendon Press, 1977.

the outcome of the issues for in the area of legal outcomes and policies there are always winning and losing sides.[1]

Taught in this indifferent fashion and trained so poorly the student who walks out of a law college armed with a law degree has hardly any clue about the practice of law. The awareness about the social content of the law, the ability to use the law in favour of the weak and the disadvantaged and a perception of how the system discriminates in favour of the haves develops only after one has understood the discipline and the manner in which it functions.

The problem is not restricted to the teachers and students in law colleges. Over the years there have been many law books written in Pakistan. All of these cater to the need of the practitioner. These are good reference sources to the decided cases on the subjects. There has been no research on how legal concepts, processes and institutions function in the resolution and prevention of conflict in the society, how legal mechanisms and institutions emerge and are created, what is their relation with non-legal mechanisms which complement them and how these can be made more effective and efficient.[2]

The legal practitioner is too busy for such work. The academic profession could have provided this insight. This part of the legal profession to this day remains almost non-existent. Law colleges are largely part time affairs both for the student and the teacher. Lawyers take up teaching as an extra-curricular activity, an added feather in their cap. They teach law in their spare time. Jobs are not advertised, people are not appointed lecturers or professors of law on the basis of their contribution to the advancement of legal knowledge. Law teaching is an elite club of practising lawyers to which entry is available by invitation only.

These teachers have neither the time to study law as a social phenomenon nor to involve themselves in any detailed or intricate analysis of the subject. They teach law as they understand it. To them it is a career, a profession, a source of income. Whether it is or ought to mean anything more than that, the more successful amongst them do not have the time to find out. It is little wonder that there has been virtually no examination of the extent to which the law has helped in preserving the imbalances within the society and its possible uses in the service of the rural and urban poor.

Lawyers with a social conscience and those who have political affiliations or care for civil liberties have acted as one-man legal aid cells. On an individual basis they have worked without fee for the client, at times even paying the costs of litigation out of their own pockets. Such activities have, however, been sporadic and unorganised. While these lawyers have rendered invaluable services during the long years of Martial law to political prisoners and generally to the poor and the weak it had no effect on the plight of the disadvantaged sections of the society or the development of the law. They have also not been able to carry out a critical study of the laws in question and to turn the system on its head by employing them to serve the poor.

During the Zia-ul-Haq years the enactment of laws which discriminated against the minorities and women and political repression brought home the need to provide legal services to those who cannot afford it on a more organized basis. Women Rights activists were in the vanguard of such thinking. They started working in a far more organised manner than was hitherto the case to provide legal support to those women who were the victims of these discriminatory laws.

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1. Edwin M. Schur, Law and Society, New York, Random House, 1968, p. 84.
2. Austin T. Turk, "Law as a Weapon in Social Conflict", p. 105 in William M. Evans (ed), The Sociology of Law, New York, Free Press, 1980.

Much of this activity was, however, restricted to traditional legal aid. If these organisations came to know of someone who was the victim of oppressive laws and could not afford a lawyer they stepped in to arrange legal help. Often these organisations themselves did not have the funds to pay the fee of a lawyer. They sought help from those who were sympathetic to the cause and agreed to work without a fee.

In the last few years a few legal aid centres have come up. With one or two exceptions all of these are organised on the pattern of a law office. They have lawyers employed to provide advice and other legal aid to those who approach these centres and do not have the finances to afford private legal services. The skills are restricted to litigating disputes in the law courts and drafting of documents.

Even these lawyers have an incomplete perception of the problems of their clients. They have not worked in the areas or communities to which the litigant belongs. They are not aware of the social, economic and political pressures which influence his decisions. They have hardly any knowledge of the type of problems which this litigant encounters in his daily life. They examine the problem brought to them in isolation and attempt to answer it with the kind of skills available to them. The outcome is by and large unsatisfactory.

Given the delays of the law, litigation is no longer a satisfactory solution to the problems of the poor. They do not have the time, the money and the holding power of the rich to await a decision while the law takes its course. They want immediate attention and quick solutions. The nature of their problems is such that even if they want to they cannot afford to wait for a decision by the law courts. Lawyers, including those involved in full time human rights work, on the other hand have not developed an awareness about these problems and the expertise to work out solutions by skirting the available institutional legal remedies. Concepts such as negotiation or a mediated settlement of the issue remain alien to them.

Traditional legal aid is also ineffective for these sections of the society for the problem is not only the lack of means to pay a lawyer. An even greater impediment for them is the absence of information about their rights and remedies. To provide this information it is the individuals and groups concerned with legal aid programmes who will have to reach out to these people. The disadvantaged do not have either the will or the knowledge to bring their problems to the doors of the legal aid centres.

A couple of these non-governmental legal aid organisations—to bridge this gap—have started training paralegal workers and are using these to develop a more comprehensive knowledge about the problems of the poor and to increase their awareness about the mechanisms within the structure of law which they can use to their advantage. The extent of their success and the degree to which they will succeed in providing access to justice to these poor and disadvantaged sections of the society cannot be determined at this stage, as it is too early to subject it to any meaningful analysis.

It is also apparent that in the feudal set up of the society in Pakistan it will not always be possible to reach out to many of the disadvantaged groups and raise their levels of consciousness. Educating people about their rights is a political issue. The lawyer, the social worker or the paralegal who makes this attempt will be taking sides. It will alienate the dominant section of the society, which will perceive this work as being directed against its interests rather than for the protection of the disadvantaged.

Many of these organisations which are concerned with issues of health, sanitation and basic education may not concern themselves with legal rights. Some have already voiced this fear and others may apprehend that such an approach may place in jeopardy the work done by them over the years. They regard provision of potable water, food, health care,

sanitation and education about these subjects as issues of primary concern, matters of such high priority that these cannot be put at risk simply for the sake of some legal rights.

In some parts of Punjab and the NWFP and most parts of rural Sindh and Balochistan it is impossible to function in an area without the blessings of the feudal lord. He will never welcome individuals or groups who inform the peasants of his area about tenancy rights, property laws, the rights of women and remedies available for the redress of legal wrongs.

A change in the political consciousness of the people of these areas will follow not precede, their economic emancipation. Unless the hold of the notables is broken by effective land reforms and the establishment of autonomous grassroots political institutions it will be impossible to provide equal justice under the law to the majority of the population or even to inform these people about it. Such a change is not possible while remaining without disturbing the *status quo* of the present legal order.

Within the parameters of the system however the present disparate and nascent attempts to provide legal aid can receive a positive impetus by the cadres of law students and young lawyers who have an elementary knowledge of their subject and are prepared to create an awareness in the people about their rights and educate them about the laws which specifically concern them.

Even this will require some basic re-thinking about the way in which the law colleges have been allowed to work so far, the courses which are taught and the manner in which the knowledge of law is imparted as a whole. It will also be necessary to pay special attention to the practical skills which are required of a lawyer and enable the student to acquire these. The teachers and students of law can in spite of this oligarchic form of parliamentary democracy help promote the growth and strengthen autonomous popular institutions like the trade unions which in their turn can play a formidable part in protecting at least some of the rights of the urban poor.

They can also use non-conventional modes of lawyering like political pressure, lobbying, educating the lawyers and the judges about the plight of the downtrodden, use of the media and street power to draw attention to the problems of these people and demand that the rulers of the day address their needs. This may be all right in theory but in real life the success and failure of this venture like all other such efforts shall depend on the ability of the have-nots to organise themselves in such a fashion and negotiate themselves into such a position that it becomes impossible for any government to ignore their collective interests.