Winter December, 2007

Comparative Legal Education in India: An Inquiry

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Available at: https://works.bepress.com/sridhar/5/
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The object and purpose of this paper is to examine the rationale of including Comparative Law as a compulsory course of Legal Education in India. It is also an opportunity to gain insights into the operations and teaching methods best suited for Indian Legal Education. India is at a significant stage now positioned for a role as a major global player. Considering the growth of India in areas of technological and financial sectors, it is important to reflect upon these developments and assess the need to study Comparative Law. It can be said that in recent times the value of Comparative Law has been appreciated, however it is not yet made a compulsory reading. Recommendations of the National Knowledge Commission of India (here in after ‘NKC’) also emphasize that Legal Education should meet the needs of trade, commerce and industry, in the context of growing internationalization of the profession.\(^1\) The NKC constituted a Working Group in order to propose some key reforms in the field of Legal Education in India. The Working Group comprised of experts who are members of the Bar, the Bench and academia.\(^2\) The Chairman of the Working Group is Justice M. Jagannadha Rao. The Working Group of the NKC recognizes *inter alia* the importance of the study of Comparative Law, with the purpose of creating lawyers who can deal with differing legal systems and cultures, while remaining strong in one’s own national legal system.\(^3\)


\(^{2}\) Ibid. Other Members of the Working Group are: Justice Leila Seth, Prof. N. R. Madhava Menon, Prof. B. S. Chimni, Mr. P. P. Rao, Mr. Nishith Desai, Dr. Mohan Gopal.

Comparative law as a discipline provides various tools to the students to carry out comparative law research. Keeping in mind the relevance of the discipline of Comparative Law and the seriousness of the subject, a study was done by Professor Rahmatullah Khan under the auspices of the Indian Law Institute in 1971. Professor Khan discusses in this book a few methods as to how Comparative Law should be taught in India. These methods have been evolved after holding discussions resulting in a national seminar, with Professor C.J.Hamison of the Cambridge University. So far, it could be said that it was the only noteworthy work done in India on this area.

The discipline of Comparative Law as a study of legal systems by comparison with each other assumed importance due to globalization. Here it is pertinent to establish the relevance and importance of international law in the context of globalization. The term international law encompasses both public and private international law, including comparative law. The topic of methodology in international law has attracted the attention of scholars world over. Of late international trade law has become a popular choice among students. The relevance and interface of comparative law and international

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4 See generally, Rahmatullah Khan, An Introduction to the Study of Comparative Law, (Tripathi, Bombay, 1971). This study is intended to guide the teachers in the matter of teaching the subject and attempts to investigate significant areas for research in the subject.

5 Ibid. pp.150-155


trade law cannot be overlooked or ignored.\textsuperscript{8} However, for a major part of the law course, Comparative Law is an optional paper in the curriculum in Indian Universities.\textsuperscript{9} It is prudent and desirable to teach this subject.

The guiding question remains as to what kind of lawyers or law graduates are to be produced by the institutions of higher learning in law. It is important to attend to this question, which is to be addressed before we embark upon to revisit the curriculum and suggest some changes for making international law as a discipline more effective and influence students to read the subject in detail. This exercise to a large extent will influence the purpose of international law teaching and methodology. In this perspective, we cannot disagree with D’amato’s view that “International Law as a discipline is more exciting and challenging. As a law school subject, it is our window to the world…If there is going to be change, it has to come from student demand. To be more effective, students should demand international law courses not just because of subject matter, but also because of the light they throw upon the study of ‘law’ in general.\textsuperscript{10} It is precisely at this point learning Comparative Law can prepare students for effective participation in an increasingly global and diverse legal profession. Further, students can enhance their legal skills, collaborative learning and leadership.

With the growth of international and regional legal orders, an understanding of the forms and methods of comparative legal study has become essential to all those wishing to

\textsuperscript{8} For an interesting methodology of teaching comparative law, see Gert Steenhoff, “Teaching Comparative Law, Comparative Law Teaching”, \textit{Electronic Journal of Comparative Law}, vol. 64 (2002), pp 47-51. Available at \url{http://www.ejcl.org/64/art64-4.pdf}. Visited on 7.10.2007. Some group of scholars like Prof.Ugo Mattei, Prof Duncan Kennedy et al launched a new project and institution-International University College Torino, Turin,Italy in 2006. It is expected that the academic session will start in fall 2008. The aim of this project is advanced academic study of global capitalism and the preparation of international class of lawyers and finance experts with a highly integrated background of comparative law, economics and finance. Focus will be on legal, economic and financial specificities of Asia, Latin America and Africa and interdisciplinary studies like law and sociology, law and anthropology. See \url{http://www.iuctorino.it}. Visited on 30.09.2007.

\textsuperscript{9} A.Lakshminath, Comparative Law (Andhra Law House, Visakhapatnam, 2007) at p.53.

\textsuperscript{10} Anthony D’amato, International Law: Process and Prospect (Transnational Pub, New York, 1995) at p.294. Also see chapter on International Law as a Career, pp.358-370.
understand and engage in current legal debates.\textsuperscript{11} Amidst this scenario, it is necessary to transform legal education in response to present and future needs. The debates and theories relating to legal systems are important to be a compulsory part of the legal curriculum. It may be said that the purpose of Comparative Law\textsuperscript{12} is not to unify the different laws and legal cultures of the world, but to understand the multiplication of these laws, different traditions and cultures and in the process to get acquainted with the unfamiliar legal systems of the world. In this effort, Lawyers and Law Scholars will learn to appreciate the similarities and differences in systems of the world and will tend to look at issues in a rational manner. This situation will further the enrichment of understanding of the layers of complexity in a society. Some observations of David Gerber are apposite in this context. For instance, Gerber calls for greater attention to theory in the broad sense of conceptual structure, because theories are the mechanisms for structuring information and knowledge effectively. The object of the entire exercise is to structure knowledge about foreign legal systems.\textsuperscript{13} Analogous to this viewpoint, is the model suggested by Ugo Mattei. He argues for a classification of legal systems, which he refers to as taxonomy\textsuperscript{14} of legal systems for the purpose of learning from each other by rethinking the traditional boundaries drawn in the context of changing nature of global politics. This situation necessitates revisiting the classic categorization of legal systems as civil, common and socialist.\textsuperscript{15}

For a new beginning, one has to think within the paradigm of change and bring to the fore the need for developing new approaches to the ongoing challenges posed by globalization, which should be prioritized in the framework of legal education in a

\textsuperscript{11} See generally for geographical overviews of the development and current practice of comparative law around the world, Mathias Reimann and Reinhard Zimmermann (ed.), The Oxford Handbook of Comparative Law (OUP, 2006).

\textsuperscript{12} If laws differ because people disagree about principles, comparitists can describe the disagreement. Perhaps they can even help to resolve it. If laws differ because circumstances are different, comparitists can describe how the difference in circumstances makes each law appropriate. See James Gordley, “The Universalist Heritage”, in Pierre Legrand and Roderick Munday (ed.), Comparative Legal Studies: Traditions and Transitions (CUP, 2003), pp.31-45 at p.44

\textsuperscript{13} Gerber, note 6, p.971

\textsuperscript{14} Taxonomy is important in the Law as in any other discipline. It evolves to accommodate doctrinal, legal and social changes within itself. See Ugo Mattei, “Three Patterns of Law: Taxonomy and Change in the World’s Legal System”, The American Journal of Comparative Law, vol. 45 (1997), pp. 5-44.

\textsuperscript{15} Ibid. pp 6-8.
country like India for coping with the current and future pressures. The increasing demand of lawyers in a globalized world had given a fresh impetus to the study of international law in India. Therefore this demand testifies the requirement to revisit the present curriculum and pedagogy related to international law and teaching so as to set some new standards in the field of international law training in the universities\textsuperscript{16} and national law schools.\textsuperscript{17}

The Indian Society of International Law, as a focal point for international law in India and other developing countries is having a key role to play in this academic exercise and to coordinate the activities of all interested parties in solving the problems related to teaching and training in international law. At the outset, it is a humble suggestion from the author for designing innovative approaches to thinking of international law and its varied roles in the milieu of diverse legal phenomena.

\textsuperscript{16} In India, universities are classified as traditional universities, open universities, professional universities, institutes of national importance, deemed universities, which includes private deemed universities. These universities in India are supported by the Central Government and State Governments. These universities are members of ‘Association of Indian Universities (AIU)’. For more details see http://www.aiuweb.org. Visited on 6.10.2007. The other apex organization endowed with the responsibility of promoting and coordinating university education and determination and maintenance of standards in institutions of higher education, is the ‘University Grants Commission (UGC)’. See http://www.ugc.ac.in. Visited on 6.10.2007

\textsuperscript{17} In order to improve the quality of legal education in the country, several members of the legal fraternity debated a new system of legal education in the 1970s and 1980s. Thus the National Law School of India University (NLSIU), Bangalore was set up in 1987 as a bold experiment in legal education. Currently there are more than eight law schools established in different parts of the country offering five years B.A.LL.B(Hons), LLM and PhD programmes. See http://www.en.wikipedia.org. Visited on 8.10.2007, R.Khan, “National School of Law-A Proposal”, \textit{Journal of the Indian Law Institute}, vol.14(1972), pp.590-594. Also see generally, K.L.Bhatia, Legal Justice Education:Vision Plan For Legal School (Deep and Deep, New Delhi,2006).