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## THE DEVELOPMENT OF INDIAN LEGAL EDUCATION: THE IMPACT OF THE LANGUAGE PROBLEM

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THE legal profession in India has a proud heritage. In the earliest days of the independence movement and during the creation of the Indian Constitution, lawyers played a prominent role among those seeking social progress. But in recent years pride in the heritage has given way to concern about the present and alarm for the future by responsible officials. There has been a growing concern that Indian lawyers are not now playing a positive role in India's development. Rather, when in private practice, they are acting in the main as technical assistants to parties interested in manipulating or avoiding the impact of existing laws and legislation. In government service, they pose obstacles to change, create ambiguity in legislation, and are responsible for the growth of needless bureaucratic interference with economic and social behavior. Such a situation would constitute a serious problem in any society. It is much more serious in a developing society where new institutional arrangements are needed to facilitate orderly change.<sup>1</sup> In India the problem is made even more severe because the law and the legal system have long served as a unifying factor in a society beset by internal divisions between religious, caste, and linguistic groups.

The leaders of the legal profession in India are aware of the need for change. At the same time, they recognize that in order to change

\*The author was in India from July 1967 through June 1968 as a project specialist for the Ford Foundation, spending six months as Visiting Professor at the Law College of Banaras Hindu University and six months as Visiting Professor at India Law Institute in New Delhi. At Banaras I had occasion to observe many classes and to take part in a colloquium on legal education led by my colleague for the year, Professor Dallas Sands of Alabama. I worked regularly with three younger faculty members preparing material for a legal method course. I also visited law schools throughout India and attended a three day conference on Contract Law which brought together law professors from all over the country. I wish to acknowledge the valuable help given by my colleagues Ralph Fuchs and William Popkin and Professor Bertrum Wilcox of Cornell. I hasten to add that they do not necessarily agree with all of the conclusions reached herein.

<sup>1</sup> In the India of today "if society is to be adapted to the profound changes in the basis of social and economic life resulting from changes in world conditions after the War and in India particularly after 1947 we feel that it is mainly the lawyers that India must look to. The legal profession is called upon to take stock of this situation and to contribute to wide social adjustments. If it fails to, it will be eliminated from the revolutionary scene."

Report of the Bombay Legal Education Committee, 1949. See generally Von Mehren, "Law & Legal Education in India: Some Observations," 78 Harvard Law Review 1180 (1965).

fundamentally the legal profession it will be necessary to revamp Indian legal education.<sup>2</sup>

For some time now Indian law schools have attracted the poorest students. In almost all law schools in India the vast majority of students are unmotivated as they do not intend to practice law. They seek an easily obtainable advanced degree in order to improve their earning capacity in non-legal work. The caliber of law faculty has been generally poor (although there have always been a good number of distinguished exceptions), the texts undistinguished, and the curriculum badly constructed. Classes have been almost entirely by lecture, stressing memorization and the ability to manipulate words. Relations between faculty and students are generally formal.<sup>3</sup> Even at its best the teaching has tended to emphasize orderly categorization, as has much of Indian legal scholarship. All of this has been reinforced by the external examination system and by the low prestige and pay of Indian law teachers.

The correction of these problems poses a tremendous task. It will be difficult to improve the caliber of the student body because the legal

<sup>2</sup> The sharpest criticism of Indian legal education is contained in the 14th Report of the National Law Commission of India, 1958. (Hereinafter cited as 14th Report.) This is a strongly worded and insightful analysis which indicates clearly the nature of the problem and the importance of finding a solution for it.

(6) In the period of about ten years which has elapsed since the publication of the Report of the Radhakrishnan Commission, the position in regard to legal education in the country has, it appears, definitely deteriorated. Excepting in certain centres like Bombay and Madras where full-time law colleges exist, education is imparted in part-time classes held in the mornings or in the evenings. The teachers are mainly legal practitioners who give tuition outside court hours. Some of these institutions are run exclusively by part-time teachers. Many of these institutions have no buildings or libraries of their own and classes are held in buildings belonging to arts colleges and other institutions. Large numbers of the pupils serve in Government offices or elsewhere while attending the institutions and take the law course with a view to better their prospects in service by obtaining a law degree. Some are post-graduate students who, in addition to the post-graduate courses which they have taken and which are their main objective, wish to add to their qualifications a degree in law. Most of the students who crowd these institutions are young men who have not been able to secure employment; they take a course in law while waiting for a job with no intention of practising law as a profession.

(7) Owing to the growth of unemployment in the educated youth of the country, some of these institutions are so overcrowded that classes are held in shifts and there are on the rolls of each class a large number of pupils, sometimes exceeding hundred. It is to these crowded classes that the part-time lecturer imparts his instruction, and the attendance he commands is only due to the anxiety of the pupil to have his attendance marked when the lecturer calls the roll. It is not surprising that in this chaotic state of affairs in a number of these institutions, there is hardly a pretence at teaching and that the holding of tutorials or seminars would be unthinkable. A senior lawyer characterized these institutions as "a profit-making industry."

14th Report Indian Law Commission, Page 522. See also Report of Committee on the Reorganization of Legal Education, University of Delhi.

<sup>3</sup> The students do not teach each other much law either. I do not recall a single time during my six months at Banaras when I observed a group of students discussing law informally.

profession is overcrowded and underpaid and the law colleges do not have much money, even by Indian standards, for scholarships. More important, the dull and pedestrian nature of much of the classroom efforts of Indian law teachers is not merely a pedagogical flaw. It reflects a generally shared view of the legal process. Most Indian law teachers accept the premise that one who knows the articulated rules can predict the result of litigation. And they consider it highly important that the law be logically consistent and easily predictable. If this is one's view of the legal process, it follows that lectures which articulate the rules and reveal the conceptual pattern underlying an area of law will be considered the most effective method of teaching. It follows also that scholarship should be aimed at harmonizing the articulated rules and concepts. If Indian legal education is to be basically changed these attitudes will have to be altered.

Another factor which has tended to stifle change even where the need for change is perceived is the prevalence of autocratic administrative structure. There is a tradition of autocratic control of law colleges by the Deans. As a result, faculty members do not consider it to be their function to suggest change and they devote very little precise thinking to ways of improving the caliber of legal education. Furthermore, plans for progress, even if adopted by the law colleges, cannot be implemented without approval from the university generally; and obtaining approval is often very difficult.<sup>4</sup> A further prerequisite to progress is to convince the government of the importance of legal education so that it can get its proper share of the limited funds available for education. Right now there is some tendency to downgrade the importance of legal education and to welcome the low admission standards because this insures the availability of graduate training for all who desire and can afford it.

Indian jurists and educators who have been aware of these problems have increasingly tried to enlist American aid in countering them. In part this is because many have seen in American legal education a model toward which India might direct itself<sup>5</sup> and in part because it has been hoped that support from the government and American foundations would help to alleviate the chronic shortage of money from which Indian legal education suffers.

<sup>4</sup> This has proved to be a major stumbling block to progress in both Delhi and Banaras. While I was in Banaras the Dean spent most of his time trying to secure support for his programs within the University. It took a major effort to even get Delhi University to accept Ford Foundation money for legal education. Often administrators in other disciplines view programs to upgrade legal education as a threat to their own plans.

<sup>5</sup> "The inadequacy of our legal training to equip men for the profession can be easily realized if one compares the education and training imparted in our law schools with the intensive and scientific training given in some of the American schools of law." 14th Report, Page 52.

The need for improvement, clearly perceived by leading educators, together with the growth of interest in American legal education, has led to the initiation of major programs by the law colleges of Delhi and Banaras Hindu University, aided by the Ford Foundation. Both schools have imaginative Deans who have studied in the United States and both programs naturally enough are aimed at introducing into Indian legal education some features of the American system which might be usefully adopted in India.

An effort is being undertaken in both colleges to introduce a modified case method system of instruction in some courses and to increase the amount of student participation in all courses. Instructors are being encouraged to prepare new teaching material. Opportunity for special study in the United States for young instructors has been made available and the Ford Foundation has provided funds for a regular program for visiting American law professors at both schools.<sup>6</sup> Funds have also been provided for library improvements. The hope of the two Deans, the Ford Foundation, and others concerned with developing the programs at Banaras and Delhi is that these two schools will develop into models of excellence which will shape legal education throughout the country.<sup>7</sup>

The program at Banaras has had very limited success. In part this attests to the substantial nature of the problems already referred to. It is also very directly related to the language situation in Northern India. It is this situation which in my view makes rapid progress in legal education in the Northern areas outside of Delhi highly unlikely.

Throughout India legal education is conducted in English. The Constitution is written in English and proceedings in the High Courts and the Supreme Court are conducted in English. In addition, cases are reported in English. Indeed, English is the principal legal language.<sup>8</sup> However, knowledge of English is on the decline, particularly in the

<sup>6</sup> In 1966-67 Professors Pye of Duke and Wilcox of Cornell visited at Banaras, in 1967-68 the author and Professor Sands of Alabama. Professors Harry Jones of Columbia and Kenneth Pennega of North Carolina visited at Delhi in 1967-68.

<sup>7</sup> "The Ford Foundation has had a long-standing interest in seeking appropriate ways to assist Indian leaders to strengthen the legal process. One of the most effective means to accomplish this objective is the improvement of the quality of legal education. The Foundation believes that this can best be accomplished by assisting two schools to develop into models of excellence which other faculties may emulate." Memorandum of Understanding between Banaras Hindu University and the Ford Foundation Concerning Assistance to the Law College.

<sup>8</sup> The Constitution provides that "the official language of the Union shall be Hindi in Devnagari script." Constitution of India Part XVII Ch. 343(1). However, it provided for the continued use of English for official purposes until 1965 and gave parliament the power to provide for the continued use of English thereafter. The official status of English has been continued by the Official Language Bill passed in 1967. The passage of this bill led to widespread disorders in Northern India but it was necessary in order to preserve the unity of the country since the Southern states were unwilling and largely unable to conduct their affairs in Hindi.

Northern part of the country where most of the major law schools are located.

Hindi (or a variant, Hindustani) is the language most widely spoken in the populous areas of Northern India. It is the medium of instruction in the public schools. Only a very tiny fraction of the population learns English early in life or attends private English medium schools. The colleges in Northern India are increasingly using Hindi as the medium of instruction. There is fierce political pressure to do away with English entirely. During my stay at Banaras there were several outbursts of violence aimed at erasing all traces of English from Banaras Hindu University. They stopped only when all campus signs in English were removed and all but a small fraction of the classes were taught in Hindi. Students in English speaking sections or students from non-Hindi speaking areas were in constant danger of physical violence.

At Banaras and at every law school in the Hindi speaking North, except possibly for Delhi, the vast majority of the student body does not understand English well enough to read it easily or to speak it with anything close to fluency. Less than 10% of the 1967 freshman law students at Banaras Hindu University knew English well enough to explain the meaning of a simple sentence in a court opinion. There is reason to believe that the percentage is even lower in the 1968 entering class. Moreover, many of the younger faculty members were themselves far from fluent. Their language weakness made it very difficult for them to understand cases or to express sophisticated ideas in English. Under such conditions the use of case method or discussion in English was impossible, and the students responded to the experiments in classroom teaching technique by demanding that classes be taught in Hindi.

Their demands were justified. It is almost impossible for people to learn legal analysis in a language in which they can neither think nor express themselves. Only the use of the lecture method and the lack of communication between faculty and students have prevented the demand for instruction in Hindi from being made and accepted earlier. The pattern is the same at all other Northern Indian law schools except for Delhi. The general level of English ability is so low that meaningful use of case or discussion method in English is not feasible. Nor can sophisticated lectures be prepared or understood under these circumstances. It is likely that one reason for the generality which marks faculty discussions of legal topics in India is the difficulty which the participants experience in expressing precise concepts in English. Moreover, for the reasons indicated, the trend among the students and faculty is in the direction of less and less English capability.

This trend cannot be reversed. The level of English among the general population is poor and getting worse. The lower levels of the educational system are all increasingly discarding English as a requirement because of political considerations and the difficulty in obtaining qualified teachers.<sup>9</sup> Even students who study English now tend to do so later in their educational career and the level of instruction is poor. It would require a tremendous administrative effort which would be politically impossible at this time to reverse this situation. Nor can the law schools in Northern India attract their students from the very small English speaking minority. In Northern India, this group is small and dwindling and its members rarely choose law. Because of the linguistic rivalry, students from the South where the level of English is higher<sup>10</sup> are not coming North and they could not be recruited without exacerbating tensions. Neither the law college faculties nor their university colleagues would be willing to see Northern India universities become primary training grounds for students from Southern areas. In any case, it is necessary to train lawyers for the great Hindi speaking areas of the North and these people must in the main be people fluent in Hindi because that will be the language of their clients and of the lower courts. In sum, the language of the law and of legal education cannot for long be different from the language of the people.<sup>11</sup>

Although Hindi will ultimately be used in the law colleges in Northern India, it will not be possible for some time to provide high level legal education in Hindi. The cases, the treatises and commentaries, the laws themselves are all written in English. Although efforts are underway there is as yet no technical legal vocabulary in Hindi and this makes it difficult to express precise ideas or technical legal concepts.<sup>12</sup>

<sup>9</sup> A memorandum on the language crisis circulated by the Ford Office in New Delhi estimated that by the year 2000 there might be 40 million English literates in India and Pakistan out of a combined population of 700 million. Only a small fraction of these would be capable of studying law in English.

Office memorandum of 1967 from Ford Foundation Indian Representative Douglas Ensminger. Gunnar Myrdal, *Asian Drama*, 1967, p. 85.

<sup>10</sup> See e. g., Gunnar Myrdal, *Asian Drama*, 1967, pp. 83-89.

The fact that English capability is greater among students in the South is commonly agreed to by both Northerners and Southerners. The extent of the differences was quite noticeable to me in a series of short visits to the South.

<sup>11</sup> "But there can be no real national consolidation and responsible participation in local and sectional self-government and in cooperation if administrations, representative assemblies, law courts and schools continue to employ a language the masses do not understand." Gunnar Myrdal, *Asian Drama* (1967) pp. 86-87.

<sup>12</sup> Moreover, the most commonly shared language in Northern India is not Hindi but Hindustani which is a much simpler variant of Hindi mixed with Urdu. Hindustani as it is now spoken would not provide a base for the development of a technical vocabulary. Thus, in order to really broaden the base of Indian legal education it will be necessary to improve the level of Hindi which is spoken and understood. However, this is gradually being accomplished by the lower levels of the educational system.

In view of the linguistic turmoil, it is desirable that for some time the language of the appellate courts continue to be in English. The common legal system is one of the few unifying factors in a country beset with internal antagonisms. It would increase the tension and create profound technical problems if the Supreme Court were to switch to Hindi or any other Indian language. Problems of understanding would be created and great political resistance would be caused in the South. There was throughout 1967 and early 1968 violent anti-Hindi agitation in the South, particularly in Madras, where the state government came to power because of its anti-Hindi position and where the depth of feeling on the language issue can neither be described nor overestimated. So long as the decision of the Appellate Courts and the major commentaries are in English, it is unlikely that high level education can be provided in Hindi. Indeed, since the current materials are in English, the switchover is bound to be a slow one. The switch to Hindi will also be slowed by the fact that many of the senior professors and readers, the very people who wield the most influence in academic circles, have a personal interest in continuing to use English.<sup>13</sup>

Thus the law schools of Northern India are necessarily facing a long transitional period during which legal education will be conducted in a mixture of Hindi and English. During this period significant achievement is highly unlikely. Insofar as English remains the medium of instruction, progress will be hampered by the fact that the students (and many faculty) cannot speak it or read it fluently. On the other hand, since the legal system cannot, for a variety of reasons, eliminate English, and since much of the current educational material is in English, it is unrealistic to expect the switchover to Hindi to be rapid or easy. It is bound to be some time before enough experience and materials are accumulated to make it possible to achieve excellence with Hindi as the medium of instruction.

It seems likely that during this transitional period the law colleges of Northern India will lose the preeminent position in Indian legal education which has historically been theirs. Significant institutional development will only be possible in those areas in which a substantial portion of the student population is fairly fluent in English. Such places may be found in the South of India in Bombay or in Calcutta. In all of these areas, outside of Delhi, however, the current state of legal education

<sup>13</sup> To effectively utilize visiting American professors and the English books purchased with the money provided by the Ford Foundation, it will be necessary to maintain at least some English capability. This points to a potential problem for American funded and supported programs as they might have a tendency to discourage the switch to Hindi.



is such that it would take years to achieve significant improvement.<sup>14</sup> Even in such places the requirement that English be used severely limits the number of potential law students and faculty members, and current trends make it likely that the problem will be exacerbated. There is growing linguistic nationalism in the non-Hindi speaking areas, particularly in Madras,<sup>15</sup> and the level of English is declining. Accordingly it seems quite probable that the language difficulties which now prevent the development of first rate law colleges in Northern India will develop in the South and East as well. This likelihood lessens the value of

<sup>14</sup> At first blush Calcutta in the East or Bombay in the Upper South would appear to be likely places for the development of first rate law colleges. They each have many excellent lawyers, a rich cultural tradition, and the presence of a high court. With respect to Calcutta, neither the Hindi speaking areas nor the South feel the same bitterness toward the Bengali speaking East that they feel toward each other. Moreover, knowledge of Hindi is fairly widespread in West Bengal so that Calcutta might attract students from Hindi speaking areas and Bengali students might be willing to settle in other Northern areas.

However, the current state of legal education in Calcutta is deplorable. The Law College of Calcutta University has thousands of students in highly inadequate buildings. There is almost no full time faculty, almost no effort at teaching, and little evidence of desire for change. The University itself is in a state of administrative chaos. Several recent efforts at reform have collapsed. These problems are exacerbated by the political situation in Calcutta and West Bengal which is extremely volatile. Violence has been common in Calcutta and the University has been a particular center for strikes and riots. The other law schools in Calcutta are in even worse shape. There is no immediate prospect for progress.

In Bombay the situation is somewhat more hopeful but serious problems exist. Colleges are overcrowded and staffed almost entirely with part time people. There is little indication of any urge for improvement from within the colleges. The caliber of students and faculty is highly uneven. Moreover, Bombay is in the throes of an epidemic of regional conflict. There has been considerable political agitation aimed at reducing the influence and presence of people from Southern India. A right wing group known as Shiv Sena which advocates "Maharashtra for the Maharastrians" has become very potent politically and to the extent it succeeds in reducing the influence of Southern Indians in Bombay, it will reduce the English speaking capability of the area. Although anti-English agitation has not yet been a prominent part of the Shiv Sena program, there is some evidence to indicate this may occur.

In general the state of legal education in Southern India is not good. Building facilities are poor and classes are overcrowded. The faculties are almost exclusively part time and generally undistinguished. Most of the Deans are too concerned with day to day problems to develop programs of educational reform. Indeed, the state of legal education is so depressed that several of the best people in legal education in Southern India have opted out and are limiting themselves to special graduate legal education programs or undergraduate teaching. Moreover, those schools which offer the best prospect for progress are located in areas which would tend to minimize their impact. The same problem which made the immediate development of centers of excellence in Hindi impossible apply with even greater force to other regional languages such as Bengali, Teluga, Molciyami, or Tamil.

<sup>15</sup> The State government was elected because of its opposition to the central government's announced program for making Hindi the national language in fact as well as in theory. There was widespread rioting in Madras against the Official Language Bill because it was considered harmful to the continued dominance of Tamil in the State. The new government has refused to go along with the central government. Instead it has emphasized the teaching of Tamil and has de-emphasized the teaching of Hindi. It has also sought to change the name of the State to Tamil Land.

programs aimed at immediate institutional improvement since the level of excellence achieved in English would eventually have to withstand transfer of the medium of instruction into Hindi or one of the regional languages. Indeed, programs seeking to improve the level of instruction in English, unless carefully thought out, might hinder the switchover to Indian languages and thus actually be dysfunctional.

Currently the main hope for the development of a first rate law college in India is at Delhi University. Because New Delhi is the national capital and a center of commerce and industry, the University is a strong one. The level of English there is relatively high. The law school faculty and administration are among the strongest in India. Delhi is one of the few centers in Northern India with large Southern populations and the Delhi University and Law College attract students from all over the nation. Moreover, the presence of the Supreme Court and the Indian Law Institute provides additional resources upon which the college may draw.

As noted above, a program is underway at Delhi University aimed at increasing the student participation in the learning process, exposing faculty members to outside experience, and making the teaching materials more relevant to the needs of society. There are some encouraging signs of progress.<sup>16</sup> However, while successful change is possible at Delhi, it is not assured. The Law College still does not attract a superior student body and the University as an institution in general is not committed to upgrading legal education. Some segments are hostile toward the program for improving the Law College.<sup>17</sup> Indeed, many members of the law faculty are also resistant. Moreover, the language issue exacerbates existing difficulties at Delhi as elsewhere. The University is located in Northern India in a Hindi speaking region and there is even in Delhi considerable feeling, which may grow if the language turmoil in Northern India continues, against the use of English. Many of the brightest young people in India (including the sons of lawyers and judges) are concerned about entering the legal profession because they fear that the current turmoil might have the effect in the near future of reducing the advantages of being able to speak English fluently and might require them to practice in Hindi, a language in which they may be less at home than their contemporaries.

<sup>16</sup> For example, the use of case materials in Constitutional Law by the Dean was so well received that the students offered to spend their own money to assure its continuance when a problem arose with respect to the funds for reproduction of materials.

<sup>17</sup> The *New York Times* of July 12, 1968, carried a story titled "Indian Academics Decry U. S. Impact." The story describes Indian opposition to American supported programs, including the program at Delhi Law College, as academic imperialism.

If the program for improvement of the Delhi law faculty is successful it is likely to provide a center for training the elite of the Indian bar. It probably will not serve as a model for some time. As already indicated, the language problem is likely to prevent law colleges otherwise equipped to adopt similar programs from doing so. In sum, I am pessimistic about the possibility of real progress being made in the near future outside of Delhi. I am cautiously optimistic about the chances at Delhi, but doubtful that its development will be a sufficient model to expect it to lead to a general improvement of the quality of the Indian legal education.<sup>18</sup>

<sup>18</sup> In May of 1968 I attended a meeting which was called by the Chief Justice of India at which a council composed of leaders of the Indian legal profession was established for the purpose of improving legal education. The predominant feeling at this meeting was that a program which gave selected Indian law teachers an opportunity to become acquainted with basic American legal education would be most helpful to India. This would seem to be a worthwhile project. Insofar as such a program might affect fundamental attitudes towards the legal process it would achieve an immediate gain and one which would continue to be useful during a transitional period and beyond.

It is true that many Indian law professors have studied abroad in England, Australia, and particularly in the United States. However, almost all of this has been graduate work usually looking toward a doctorate. In general the combination of a basic Indian legal education with graduate work in American law schools has not served to revamp the students' conception of the legal process. Graduate programs in this country are not designed to redo the basic structures of legal concepts. It is for this reason that they are not responsive to the special needs of prospective Indian law teachers.

Another area in which new programs might be useful is graduate legal education. The number of students is small and the level of English is good. There are already some excellent people devoting themselves almost completely to this area. And its improvement will help to raise the level of law teaching in India. Because it is a relatively modest program its improvement would appear to be a realistic goal.