LAW AND SOCIETY TRUST

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OBJECTIVES

The Law and Society Trust Fortnightly Review keeps the wider Law and Society community informed about the activities of the Trust, and about important events of legal interest and personalities associated with the Trust.

In this issue we publish a statement by the Civil Rights Movement, extracts of proposals for reform at the Sri Lanka Law College together with a comment on the proposed reforms, and a report on a recent paralegal training programme for women.

Legal Education and Legal Literacy

IN THIS ISSUE

Statement of the Civil Rights Movement of Sri Lanka

HUMAN RIGHTS, SOVEREIGNTY, AND DEVOLUTION

Issued by Suriya Wickremasinghe, Secretary

Two themes receive sporadic but sustained attention in our daily papers.

When there is criticism of our human rights record from abroad we hear, all too often, the sentiment expressed that other countries should mind their own business and that what happens here is solely our own affair.

Such a viewpoint, though morally wrong, would have been legally correct some years ago. But today it is legally wrong as well. This is due to a revolution that has taken place in international law. It is accepted law today that the doctrine of sovereignty of states no longer holds good *so far as a state treats the fundamental rights of its subjects.* The concept of national sovereignty has in this respect given way to the concept of international responsibility. As one expert has lucidly put it:-

> *"Had a well-meaning delegation from abroad called on Chancellor Adolf Hitler in 1936 to complain about the notorious Nurenberg laws, and the manner in which they were being applied to persecute German Jews, the Fuhrer would probably have dismissed such an initiative with the classic phrase of 'an illegitimate interference in the internal affairs of the sovereign German State', pointing out that these laws had been enacted in full accordance with the provisions of the German Constitution, by an assembly constitutionally and legally competent to enact them, and that neither they nor their application were the concern of any meddling foreigners. And, in international law as it then stood, he would have been perfectly right - and so would Party Secretary-General Josef Stalin have been if a similar delegation had called on him at around the same time to complain about the wholesale liquidation of the kulaks in the Soviet Union.*
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> *Were such delegations to call today on some of the world's living tyrants to complain about the injustice of some of their laws, those protests too would be doubtless be dismissed with the same phrase. But in international law as it stands today, those tyrants would be wrong. For since Hitler's and Stalin's time there has been a change in international law so profound that it can properly be called a revolution. Today, for the first time in history, how a sovereign state treats its own citizens is no longer a matter for its own exclusive determination, but a matter of legitimate concern for all other states, and for their inhabitants."*
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> *Sieghart: The Lawful Rights of Mankind*

The writer then goes on to explain that "The formal product of that revolution is a detailed code of international law laying down rights of individuals against the states which exercise power over them, and so making these individuals the subjects of legal rights under that law, and no longer the mere objects of its compassion." (ibid). It is now necessary that both the existence and the contents of this code become known more widely, not only by lawyers and politicians, but by the ordinary citizens for whose protection they exist.

The other theme that is often talked and written about in Sri Lanka today is that of various forms of devolution. The All Party Conference is supposed to be trying to reach a consensus on this. The Parliamentary Select Committee headed by Mangala Moonesinghe would, presumably, look into possible models of devolution, or modifications of the Provincial Council system created under the 13th Amendment to the Constitution. H.L. de Silva's booklet opposing a federal system and saying that instead the Provincial Council system must be given a proper chance to work, has been widely reproduced and discussed in the national press. Dr. G.L. Peiris, Vice Chancellor and Professor of Law of the University of Colombo, on the contrary, argues that federalism can be

the only viable mechanism for holding together a nation torn asunder by cultural, religious and ethnic differences. More recently, discussion has centred on a different aspect of the mode of government – the Executive Presidency versus the "Westminster" parliamentary model.

The question of securing fundamental rights has so far not figured in these debates. It is very important that the human rights factor be given its due place in all these discussions. Whatever the mode of government (the present or a revised Executive Presidency, the old or a revised "Westminster System"), whatever the model of devolution, certain fundamental rights must be made non negotiable, and must be enforceable throughout the country. There must also be provision to challenge legislative or administrative acts by the administration of a devolved unit if they transgress fundamental rights. Devolution must mean more, not less, democracy; it must mean enhanced, not weakened, protection of fundamental rights. An aggrieved person may be required to seek his remedy initially within the judicial machinery of the devolved unit, but in the last resort a remedy must be available at central level, ie. by a Supreme Court or other such body which is drawn from and which serves the whole country.

In order to make this acceptable to the devolved units, it is essential that the central government itself makes its own actions in the area of human rights reviewable. All legislation must be reviewable by the courts to see if it is inconsistent with the Constitution, not merely as now at the Bill stage. The government must sign the Optional Protocol to the International Covenant on Civil and Political Rights, and other like instruments which enable an individual who claims his fundamental rights are infringed to appeal to an international tribunal *as a last resort.* And, course, the fundamental rights provisions in the Constitution must be amended to bring them into line with our obligations under the International Covenant on Civil and Political Rights. Our duty to do this was forcefully and repeatedly stressed to the representative of our Government who appeared before the UN Human Rights Committee in April this year.*

These steps should be taken by the Sri Lankan state for the benefit of its inhabitants even if there was no ethnic problem or question of devolution. But it is all the more essential to do it as part of any "devolution package". The Centre must be able to say to the devolved units: "Retaining ultimate control over human rights questions is not incompatible with devolution, is not an unreasonable limitation of your autonomy. Look, we too are making our laws and actions subject to review outside our territory". And the Centre will be able to go further and say to the inhabitants of the devolved unit – "You too, in the last resort, will have access to an international tribunal if you remain dissatisfied after going through the provincial courts and the national system."

Attempts should be made to get all "sides" to the conflict to see the advantages to themselves of this approach. Therefore it should be campaigned for not only among the government, "dissidents", the traditional opposition parties, and sectors of public opinion in the South, but also among the Tamil militants, including the LTTE, and the civilian population in the North and East. The State should offer it as an expression of good faith and a reassurance against the centre acting oppressively; the militants should see it as a vital concession obtained in agreeing to accept a solution less than Eelam. People of all ethnic groups and all political persuasions will welcome it as a guarantee of their fundamental rights against transgression by any governmental authority, be it central, provincial or district, present or future.

* CONSTITUTION SHOULD CONFORM TO INTERNATIONAL COVENANT
– 17th Amendment Needs Reappraisal. CRM statement E01/7/91.

PROPOSED REFORM OF LEGAL EDUCATION

Extracts from the Report of the Advisory Committee of the Council of Legal Education

BACKGROUND

In consequence of representations made to the Chief Justice, in late 1989 the Council of Legal Education (the governing body of the Sri Lanka Law College) appointed a Committee consisting of Justice Mark Fernando (Supreme Court), Justice Sarath Silva (Court of Appeal) H W Jayewardene Q. C., Desmond Fernando P. C. (former President of the Bar Association) and Professor G L Peiris (University of Colombo) with the then Principal of the Sri Lanka Law College as Secretary. The Committee submitted a report in March 1990 recommending extensive reforms.

One recommendation was for the establishment of an Advisory Committee on Legal Education, to advise and assist in the implementation of the reforms. The Committee would assist both the Council of Legal Education and the Principal.

The Council of Legal Education accepted almost all the recommendations, and appointed an Advisory Committee consisting of Justices Mark Fernando and A R B Amerasinghe (Supreme Court), Justice Sarath Silva (Court of Appeal), Professors G L Peiris (University of Colombo) and Savithri Goonesekere (Open University), and Shibly Aziz P.C. and Lakshman Kadirgamar P.C. (representing the official and unofficial Bar) and the then Principal.

We publish here extracts from the proposals submitted by the Committee.

1. LEGAL EDUCATION AND PROFESSIONAL TRAINING

5. EXPANSION OF LEGAL STUDIES:

5.1 There is a need to increase the intake of students for several reasons.

(1) There is an increasing demand for legal education; knowledge of and respect for the Law is vital to a democratic society; there must be a positive response by the Council to this demand;

(2) The legal profession today, unlike 25 years ago, cannot be regarded as consisting only of those who practice law in Courts and tribunals, by actually appearing therein; the judicial process, and particularly the legal profession, is acknowledged to have functions and responsibilities outside and beyond the arena of conflict and confrontation in an adversarial process in the court-room. This has several consequences; so far as the judiciary is concerned, the role of conciliation, mediation and arbitration as a means of settling disputes has to be recognized and encouraged; so far as the legal profession is concerned, in addition, the importance of the prevention of disputes has to be recognized and encouraged; so far as the legal profession is concerned, in addition, the importance of the prevention of disputes by proper legal counselling has to be recognized; further, much the greater part of the implementation of the laws takes place outside the court-room: in public and private offices, and in other places of work; lawyers in employment, whether in the public service, the corporation sector or the private sector, whether in administration, trade, industry or commerce, have a significant role to play in regard to the proper and fair implementation of the law. This is not the traditional practice of the law, in the court-room, and may lack glamour and prestige, but it is nevertheless, in today's context, an equally, if not more, important sphere of legal practice. The Bar Association itself has for over fifteen years been conceived of as consisting not only of those who practice law in the court-room but as including those who are employed, regardless of the nature of that employment; some occasionally

practice law in the Courts, in the course of such employment, some do work connected with the law but do not practice law in the Courts at all, while others do work having little connection with the law. There is a national need for an increasing number of competent lawyers in all these fields;

(3) There is a special need, in the national interest, for qualified lawyers in certain spheres, so that fairness, and respect for the Rule of Law and human rights, may be advanced; in the public service, in financial institutions, in corporation and company administration, in personnel management, etc.

5.2 Apart from the need to increase numbers, it is now essential to widen the scope of legal studies, in order to equip the lawyer for the many different spheres in which lawyers actually function. This requires review of, and change in, the subjects to be taught, and in the syllabus of each subject; in the manner in which law is taught; in the emphasis to be placed on fundamental legal principles and the acquisition of skills rather than on a mere accumulation of legal knowledge. A re-appraisal of the scope and adequacy of the practical training given at the stage of apprenticeship and soon after enrolment is vital. In the light of the expansion of the law, both statute law as well as subordinate legislation, there are areas of law which cannot be taught in the Law College due to constraints of time, or which are of relevance to specialists only: there is thus a need for continuing legal education. Such education in specialised branches can usefully be extended to certain crucial categories of non-lawyers as well.

5.3 It is accepted that in any event the quality of legal education needs improvement, in the interests not only of the lawyer, but also of the litigant, the administration of justice, and the community in general.

5.4 It is in this background that we make the proposals and recommendations set out in this Report.

6. SUBJECTS:

6.1 We recommend a change in the distribution of subjects, as set out in the annexure "A", page 10 (This must be reviewed from time to time thereafter). The reasons for the principal changes are as follows:-

(a) First Examination subjects:

Constitutional Law: the syllabus must be changed so as to place greater emphasis on areas related to the Provincial Council system; Local Government as a separate subject cannot be justified, but should be part of the area dealing with Devolution and Decentralisation; Public Corporations and a brief outline of Administrative Law should be included; there should be two papers, instead of one.

Administrative Law: is better taught in the Second Year, after the student has a grasp of some basic principles of law and a general understanding of the legal system; one full paper.

Criminal Procedure: we see the Third Year as the stage at which emphasis is placed on "practitioners' subjects"; accordingly, Civil and Criminal Procedure, and Evidence should be Third Year subjects.

Roman Law: it is time to drop Roman Law as a subject by itself. However, since the influence of Roman Law, through the Roman-Dutch Law, continues in several branches of our law, we recommend that those particular aspects of the Roman Law should be taught, in the course of teaching other subjects; e.g. in the Law of Contract, the Roman Law in relation to causa, etc; in Delict, the Lex Aquilia and the Aquilian action, and the actio injuriarum; in Property, the Roman Law in relation to prescription, etc. In addition, a brief reference to historical aspects of the Roman Law should be included in Legal System perhaps in relation to Roman-Dutch Law.

Criminal Law: the scope of this subject should be extended beyond the Penal Code; while important sections of the Code need to be studied in detail, the student must grasp the fundamental principles of the Criminal Law, and must know, broadly, how these are to be applied to all offences in the Code, even though some of these

offences need not be studied in detail. In addition, the syllabus must enable the student to understand how these fundamental principles are to be applied to offences under other statutes.

Contract: We recommend that this be taught in the First Year.

(b) Second Examination subjects:

Persons and Succession: We recommend that there be one paper, instead of one paper on Persons and another on Succession and Trusts.

Trusts: We do not think Trusts needs to be taught as a separate subject in detail; it is sufficient to teach the basic principles of the law of Trusts, and it is important to include the principles of Equity.

Property: We recognise that two papers in this subject are essential. The principles of Equity and Trusts could appropriately be included, covering half a paper or less. [Alternatively, principles of Equity and Trusts could be half a paper by itself, Professional Conduct and Ethics being also half a paper.]

Professional Conduct and Ethics: This is now a Third Year subject, with only six hours of lectures; and is part of one paper together with Trust Accounts and Book-keeping. We recommend that this should be a paper in itself, covering also Advocacy and the Role of the Lawyer in Society; in any event, six hours of lectures are grossly inadequate for Ethics, and there should be a minimum of 30 hours. [However, if Equity and Trusts cannot be included in Property, there should be a separate paper, covering Equity and Trusts, and Professional Conduct and Ethics.] There should also be seminars and discussions, commencing from the First Year, dealing with various aspects of a lawyer's work, in court and out of court.

(c) Third Examination subjects:

Compulsory subjects:

Interpretation and Conveyancing: It is essential for any lawyer, whether in practice or in employment, to have a good grasp of the basic principles of interpretation of statutes and documents, as well as the ability to draft legal documents. Conveyancing requires an understanding of the principles applicable to the interpretation of documents. We therefore recommend that Interpretation of Statutes and Documents should be compulsory, with a minimum of 30 hours (as against 15 hours at present), and should form part of a paper together with Conveyancing.

Trust Accounts and Book-keeping: should be a paper by itself (with more than the present 30 hours of lectures); the syllabus should be re-examined to ensure that it meets the needs of the lawyer of today, rather than the needs of an accountant.

Options: We recommend two broad options (of 7 papers each): the first in which the emphasis is on "practitioners' subjects", and the second in which the emphasis is on subjects more relevant to those who may opt not to practice in the Courts. The first option will consist of two papers in Civil Procedure (including Executors), one paper each in Evidence and Criminal Procedure, and two papers in Commercial Law; there will be a choice for the 7th paper - from among Public International Law, Conflict of Laws, and Tax Law. The second option will consist of two papers dealing with General Principles of Procedure (both Criminal and Civil) and one paper in Evidence, as well as four papers in Commercial Law. The papers in Procedure will emphasise the more important aspects and principles, and will not go into as much detail as in the first option. The papers in Commercial Law in the first option will lay stress on principles, while in the second option more topics will be covered and in greater detail.

(d) English: Special consideration is essential. The recent report of the Youth Commission highlights the role of English (or rather the lack of knowledge of English) as a contributory cause of youth unrest:

> ".....the use of the English language by the urban elite as a sword of oppression, "kaduwa", to deny social mobility to rural youth;.....the hypocrisy of the urban elite promoting Sinhala and Tamil

education for the people, while they ensure English – even foreign – education for their own sons and daughters....."

There is no doubt that educated youth proficient in English have a tremendous advantage over those lacking such knowledge; access to knowledge of the law, local and international, continues to be most readily available through English; even if translations were possible these cannot keep pace with the flow of legal literature from abroad. The facilities hitherto provided at the Law College do not seem to have been adequate to ensure that law students gain a high degree of proficiency in English; this must be corrected so that future lawyers will not be disadvantaged by being unable to have ready access to legal literature in English. In teaching English, special attention must be devoted to those aspects of importance and relevance to lawyers; students must acquire a degree of proficiency in English, sufficient to understand legal concepts and to enable legal research. [We have already recommended that bonus marks be given, at the stage of admission to Law College, for students having Distinctions in English].

We recommend the introduction of a paper in English, to be taken at the first examination (not English in a general way, but "English for lawyers"); students who do not pass will be entitled to proceed with their studies, and to attempt the paper several times thereafter, perhaps with no limit on the number of such attempts; they will be required to pass in this paper before enrolment.

We also recommend other methods of enabling students to acquire proficiency in English: the systematic use of "Case studies", regularly during the year, and in one or more examination papers, based on extracts in English from text-books or decisions; the inclusion of one (compulsory) question in certain papers, for which the candidate will be permitted access to specified extracts in English from text-books and decisions; extra-curricular activities in English (see para 7.5).

6.2 In all these subjects, the emphasis must change from a mere accumulation of knowledge, to ensuring a grasp of fundamental legal principles and the acquisition of the skills necessary to analyst legal problems and to find and apply the relevant legal principles to such problems.

6.3 The actual syllabus of each subject should be determined by the Council, preferably after considering the recommendations of an Advisory Committee (see para 8), and in consultation with the Law Faculties. In any event, there must be greater co-ordination with the Law Faculties in regard to subjects and syllabus.

7. TEACHING METHODS AND EXAMINATION SYSTEM:

Improvements in the course content and teaching methods, including the examination system, are essential; financial constraints, if any, must be overcome by an adjustment of priorities in regard to expenditure.

7.1 LINGUISTIC AND OTHER SKILLS:

Throughout the period of study, emphasis must be placed on enabling the student to acquire the skills necessary for comprehension, analysis, legal research, and the application of legal principles to factual situations; course material tutorials and assignments, case studies, and examination questions must encourage this (rather than the mere cramming and reproduction of lecture notes). Familiarity with law reports, digests, journals – and the library in general – must begin at this stage [ENGLISH has been referred to in paragraph 6.1(d).]

7.2 LECTURES: The present system of instruction by visiting lecturers only (almost entirely practitioners) has disadvantages; sudden cancellation of lectures, under-utilisation of lecture halls during "prime-time" (9 a.m. to 1 p.m.), lack of reasonable specialisation in many "non-practitioners" subjects, such as International Law, Jurisprudence, Legal Systems, unavailability for assisting students outside lecture hours, etc.

(a) We recommend a nucleus of PERMANENT STAFF; 3 lecturers, each broadly responsible for one class. The subjects in which they are to lecture should be carefully selected so as to obtain the maximum benefits from their services, for the students as well as others: subjects such as Commercial Law, Contract, and Constitutional and Administrative Law, would be more suitable, since their services would then be available for short Diploma-type courses (evening, weekend and vacation), for lawyers as well as outsiders.

Their duties will include the co-ordination of the academic activities of that class (lectures, tutorials, assignments, case studies, etc), assistance in the preparation and review of course material in all subjects, student relations, extra-curricular activities, all aspects of examinations (co-ordination with examiner, supervision and invigilation, correction and checking of scripts, etc.). With adequate remuneration, and reasonable opportunities for further education and research through scholarships, expertise in these areas will be built up and retained for the benefit of the students. The Principal should also lecture in at least one subject, so as to establish contact with the student other than at an administrative or disciplinary level; preferably, first or second year subject, so that students get to know him early.

(b) Every effort should be made to get good VISITING LECTURERS; higher payments should be made, but conditional on adherence to time-table. Certain subjects are essentially practitioners' subjects (Criminal Law, Civil and Criminal Procedure, Evidence, Professional Conduct and Ethics, Conveyancing, Industrial Law; probably Interpretation of Statutes, Persons, Property.) Some subjects are essentially more suitable for lawyers not practising in Courts (e.g. Tax Law). Non-lawyers would be required only in one or two subjects (e.g. Accounts).

(c) VISITING LECTURERS from the Law Faculties should be encouraged (in the scheme outlined above, they would be most useful in subjects such as Jurisprudence, International Law, Private International Law).

(d) "GUEST LECTURERS" : Judges, Senior Lawyers, Academics, (including visitors from abroad) should be invited to lecture in particular topics in which they have special expertise; this would greatly enhance the value of each course, making it more useful, attractive and interesting to the student, and would reduce the burden on the regular lecturer. It would also create greater rapport between the student and the profession.

7.3 LECTURE SYSTEM : The present emphasis on lecture notes, whether cyclostyled or dictated, must be greatly reduced; students must be provided with an improved lecture note (similar to the COURSE MATERIAL now used by the Open University, with specific reading material - text books, articles and cases - for each topic, intended to be read in advance of the lecture); there could then be a reduced number of lectures per subject (e.g. 40 hours instead of 60), and lectures would be devoted to questions, clarifications, and discussions designed to stimulate the students' reasoning and analytical skills. The lecture hours so saved could be used for other activities, such as TUTORIALS and CASE STUDIES on important topics, in smaller groups. Students should also be given ASSIGNMENTS to be done by themselves. At examination time, instead of an interview to determine borderline cases, performance at tutorials, case studies and assignments may be taken into account.

7.4 EXTRA CURRICULAR ACTIVITIES : Debates, mock trials, moots, address to the jury type competitions, seminars, talks. The permanent Lecturers will have a major role to play in organising these activities, but the co-operation of Judges and practising lawyers must also be obtained.

In general, there must be a much greater degree of contact with the profession - visits to Chambers of Judges and lawyers, Attorneys-General's Department and other Legal Departments, and law firms, for discussions, so that students will become familiar with different aspects of legal work and employment.

They should also be encouraged to work in Legal Aid Clinics, Citizens' Advice Bureaus, and the like, during vacations.

7.6 EXAMINATION SYSTEM : The object of the examination system must not be to test how well the student can reproduce portions of the lecture notes; while some emphasis on knowledge is necessary,

more emphasis needs to be placed on testing the student's grasp of the basic principles, and his ability to apply them, as well as his ability to analyse legal problems. The type of question must therefore change; the number of questions to be answered should be about five or six (out of nine or ten) per paper; some papers should include a "case study" type question, with material (such as an extract from a text-book or decision) given in advance; or questions which may be answered with (e.g.) a law report being made available.

There seems to be insufficient co-ordination between lecturer and examiner, resulting occasionally in questions being set which have not being covered in the lectures; further, the system of selection of examiners sometimes results in the examiner not being sufficiently familiar with the subject. This can happen particularly where a lecturer in what is very much a "practitioners" subject is appointed as examiner in a "non-practitioners" subject, such as Jurisprudence. It is important that the examiner should, as a general rule, be the lecturer in the subject (certainly, in the case of permanent lecturers); in those instances where this is not possible, there must be adequate consultation between examiner and lecturer. There must be some degree of consistency in successive papers: without extreme variations in regard to type of questions, degree of difficulty, etc. Every examiner should provide model answers, together with his scheme of marking. This should be reviewed by the Board of examiners, or a moderator.

There have been suggestions of irregularities in matters such as leakage of question papers, correction, etc. Whether true or not, it is of fundamental importance that the examination system must not only be fair, but must be seen and accepted to be fair. There must be no room for doubts or suspicion. The possibility of requiring alternative questions to be provided, so that a final selection is made only shortly before the examination, should be considered. In time, a "question bank" may be built up in each subject.

The lack of a system of external examiners, or moderators, and of any provision for a re-scrutiny, also adds to the doubts that have been expressed. Such grievances may be unjustified, but the system should ensure that they do not arise. We have considered whether re-scrutiny of answer scripts should be permitted, but we feel that this may give rise to new problems, pressures or rivalries, especially where one practitioner is appointed to review a particular script, which has previously been corrected by a colleague, upon a specific application. We would instead suggest that there should be a moderator for every paper, who would participate in the examination process from the outset: reviewing the paper, the model answers, and the scheme of marking, and who would be required to review every paper which is on either side of the pass mark (e.g. from 37 to 43 marks), and a random selection of other scripts (e.g. 25% of those between 55 and 65, and 10% of all other scripts). If this reveals serious discrepancies, the moderator will be required to review all scripts, and the Council will decide which set of marks should be accepted (or take the mean of the two sets). This will ensure that examiners discharge their duties responsibly. The moderator should be paid on the same basis as an examiner.

These improvements involve some financial costs, which would be relatively small in comparison to the benefits; if the Council cannot meet these costs out of its other income, an increase in examination fees would be fully justified.

With these improvements in the examination system, we feel that the present "Card Test" would be superfluous, and should be discontinued.

9. PROFESSIONAL TRAINING:

We feel that the existing arrangements for professional training are inadequate, both during the period of study as well as during apprenticeship and soon after enrolment.

9.1 PROFESSIONAL CONDUCT AND ETHICS: It is essential to give students a much better understanding and training in respect of professional ethics and practical aspects of advocacy and legal practice. We have recommended an increase in the number of lectures together with regular seminars [para 6(1)(b)]; our recommendations in the succeeding paragraphs will also help to give the student a better understanding of the practical aspects of a lawyer's work.

9.2 CONTACT WITH THE PROFESSION DURING COURSE OF STUDIES: There should be a systematic program of activities, designed to bring the student into contact with the profession; this should take place both in the Law College, as well as in the Chambers and offices of Judges and practitioners. Such contact will ensure that the student, and later the young lawyer, readily fits into the profession, without any feeling of alienation; it will also enable the student to learn something about the law, about practical aspects of a lawyer's work, and about the traditions of the profession, in a way that is not possible in the classroom. In many professions – Architects, Accountants and Doctors are examples – there is contact between the profession and the student during the period of study, and this is undoubtedly beneficial to the student.

9.3 LEGAL AID SCHEMES, CITIZENS' ADVICE BUREAUS ETC.: As part of the practical aspects of a lawyer's work, and in order to emphasise the social responsibilities of the lawyer, it is very desirable that students should be encouraged, particularly in the vacations, to work in these schemes. It is understood that many years ago students were involved in free legal aid work.

9.4 APPRENTICESHIP: In the majority of cases, it would appear that apprenticeship does not achieve its objective. It may be that many senior lawyers cannot find time, in between their heavy burden of professional commitments, to give apprentices individual attention on any systematic basis. In England, although an apprentice, or pupil, is required to make payment to the senior, or pupil-master, there are nevertheless complaints of shortcomings in the system. We do not recommend that payment should be required, but it is nevertheless necessary to devise other means whereby seniors undertake and discharge the obligation of giving a reasonably adequate training to apprentices. We would recommend, as a starting point, that it should be part of the professional obligations of a practicing "silk" to take at least two apprentices every year.

This may also be one of the criteria for the appointment of President's Counsel. The Council should also formulate guidelines for apprenticeship: these should not be mandatory, but would operate as a "checklist" reminding both the senior and the apprentice of the matters which should be covered during apprenticeship. The former practice of reporting two cases every week cannot easily be resuscitated; however, it may be possible to introduce a requirement that the apprentice should submit to the Law College, perhaps monthly, copies of pleadings, research notes, case reports, etc. produced by him during the preceding month. Where this appears to be inadequate, the Council may require an extended period of apprenticeship.

These matters are best considered by an Advisory Committee, as recommended in para 8, as they involve an investigation as to what senior practitioners consider reasonable and feasible.

We also recommend that apprenticeship may be served, not only under lawyers in private practice, but also under lawyers in specified public and private sector institutions, such as the Departments of the Attorney-General and the Bribery Commissioner, and possibly with Judges, especially in the original Courts.

9.5 RESEARCH ASSISTANTS: Since the practical training received during apprenticeship is inadequate, since July 1989 a few young lawyers have had the opportunity of working, on a part-time basis, as Research Assistants to Judges of the Superior Courts. (The Youth Commission has recommended a scheme of "judicial interns" which would be even more useful.) This has now been extended to the Attorney-General's Department, and to legal and other firms, as well as private lawyers. The operation of the scheme should be reviewed, perhaps by the Advisory Committee, with a view to increasing its usefulness.

PROPOSED LIST OF SUBJECTS

[As amended by Advisory Committee after discussion]

FIRST EXAM

1.	Constitutional Law	Two papers	to include Federal & Unitary systems, devolution, provincial councils, local government, Public Corporations.
2.	Principles of Criminal Law	One paper	Wider than Penal Code, but all offences not to be in detail.
3.	Outline of Legal System of Sri Lanka	One paper	sources of law in general; sources of our law; Roman L in relation to RDL; English Law; Pers. Laws; System of Courts.
4.	Law of Contract	One paper	** for certain topics relevant RL aspects would be covered.
5.	English	One paper	

SECOND EXAM

1.	Jurisprudence and Principles of Equity	One paper	
2.	Principles of the Law of Delict	One paper	emphasis on principles; details of important Delicts; Environment ** relev RL aspects
3.	Family Law (Persons & Succession)	One paper	incl aspects of Personal laws

4.	Property & principles of Law of Trusts	Two papers	** relev RL aspects Propty incl statutes dealing with land and aspects of Personal laws
5.	Administrative Law	One paper	incl "fairness in administration"
6.	Industrial Law	One paper	incl pers. management aspects
7.	Professional Conduct and Ethics	One paper	Covering aspects of Advocacy, role of Lawyer in Society, as well as professional ethics.

THIRD EXAM

A. Two Compulsory Subjects:

1.	Accounts	One paper	including book-keeping and some aspects of management
2.	(a) Interpretation of statutes & documents	One paper	
	(b) Conveyancing		

B. Option 1:

Civil Proced. & Pleadings including Executors	Two papers	[NOTE: the question papers will be different, for the two options. In Option 1, less detailed knowledge of Commercial Law will be required, and more detailed knowledge of procedure, and vice versa for Option 2.
Criminal Procedure	One paper	
Evidence	One paper	
Principles of Commercial Law	Two papers	

And one other subject:

Principles of Public International Law	One paper	
Principles of Private International Law	One paper	
Tax Law	One paper	
Environmental Law	One paper	

C. Option 2:

General Principles of Procedure	Two papers	[Civil and Criminal]
Evidence	One paper	
Commercial Law I	One paper	[These four papers will cover Agency, Partnership, Sale of Goods, Hire-purchase, Leasing Bills of Exchange, Banking, Company Law, Trade, Shipping and Insurance Law, Tax Law & Intellectual Property]
Commercial Law II	One paper	
Commercial Law III	One paper	
Commercial Law IV	One paper	

2. CONTINUING LEGAL EDUCATION

1.7 A computer centre and a language laboratory can probably be equipped at a cost of around Rs 1 million. The former will provide an introduction to computers for law students; it will also be very useful for preparation and periodical updating of course material, general administrative and accounting purposes, and examination purposes. Foreign assistance, in the form of finance, equipment, books, etc., can easily be obtained.

2. CONTINUING LEGAL EDUCATION:

2.1 While attempting to improve the quality of legal education at Law College, it has to be recognized that the subjects covered will be (a) limited in number, and (b) restricted in depth. Further, difficulties in regard to English will restrict the student's ability to read widely. For this reason, continuing courses after enrolment on various topics of special interest will help to widen the student's area of knowledge and to deepen his grasp of important subjects.

2.2 Such courses should be designed to benefit several categories:

(a) practicing lawyers;
(b) lawyers in employment;
(c) judicial officers;
(d) judicial administrators;
(e) others with special needs or interests (e.g. public officers having administrative functions).

Courses should be designed so as to avoid duplication of courses which are satisfactorily conducted elsewhere, and in collaboration with other institutions conducting similar courses (e.g. Judges Institute, University of Colombo, B.A.S.L.).

2.3 Some of the courses suggested are:

Business Law, Trade Law, Intellectual Property, Industrial Law (including Personnel Management), Company Law, Administration and Practice (including aspects of Management), Banking and Finance (including credit appraisal for lawyers), Administrative Law (including practical aspects of inquiry procedures, natural justice, fundamental rights), Judicial Ethics, Case-Management, Court Administration, Procedure, Evidence, International Law.

2.4 Each of these Courses should be awarded on appropriate number of "credits"; on completion of a specified number of Courses, in approved combinations, a Diploma may be awarded.

MATTERS FOR DISCUSSION WITH THE LEGAL PROFESSION

1. NEED FOR SUPPORT : Many of the changes proposed need the support and co-operation of practicing members of the Bar, official and unofficial. Relevant extracts from the Reports have already been sent to the BASL. It is intended to arrange a discussion between members of the Advisory Committee and the BASL, especially members of the BASL committees dealing with Legal Education, Continuing Legal Education and the Junior Bar, as well as recently-qualified Attorneys who will be more aware of the needs of the Law student and the shortcomings of the existing system.

2. GUEST LECTURERS : Senior members of the Bar have to be encouraged or persuaded to accept assignments as Guest Lecturers, not for entire subjects, but for important topics in which they have special expertise or experience.

3. **APPRENTICESHIP :** It is accepted that the training received during the period of apprenticeship is quite inadequate. One reason is that no guidelines have been laid down. The content of the training required, and of such guidelines, can only be laid down after discussion with practitioners; if not, it is probable that whatever rules the Council may make will be more honoured in the breach. It is possible to devise a checklist of various items which should, as far as possible, be covered during apprenticeship – various types of work (e.g. civil, criminal, labour, etc.), in various courts (original and appellate), different practical skills (interviewing clients, researching legal points, drafting pleadings, etc). It may also be possible to require some "written work" to be submitted to the Law College (similar to the reports of cases submitted 25 years ago).

4. **OTHER CONTACT BETWEEN THE PROFESSION AND THE STUDENT :**

Methods of bringing the student into contact with the practitioner, and thus learning practical skills, need to be discussed; Legal Aid work is just one example.

5. **PRACTICAL TRAINING :** how can this be improved ?

6. **COURSE MATERIAL :** the preparation of Course Material requires the support of the Bar, and discussion will help to secure this.

7. **CONTINUING LEGAL EDUCATION :** this can be discussed in outline only, as it is not as urgent as some of the other matters.

PROJECT : COUNCIL OF LEGAL EDUCATION

PREPARATION AND PUBLICATION OF COURSE MATERIAL FOR LAW STUDENTS

THE PROBLEM : There is a dearth of Sri Lankan text-books on Law, written specifically for the law student; there is also a shortage of competent and experienced lecturers and tutors; the lecture system presently followed tends to encourage dictation and note-taking, and since many law students do not read text-books, journals and reports, the examination system tends mainly to test the student's ability to remember and reproduce his lecture notes.

THE PROJECT : It is intended to produce suitable course material virtually a series of students' text-books – for almost every subject on the curriculum of the Law College. Each of these text-books will, if possible, have a companion case-book containing selected extracts (and summaries) from law reports, text-books and journals.

This will enable the lecture system to be modified in two important respects. Firstly, it will no longer be necessary for a disproportionate amount of time to be spent on dictating and taking down notes; more time during each lecture can be devoted to explanations, clarifications, questions, discussions, etc; if the course material is well prepared, it will be of superior quality to the present lecture note, as well as more comprehensive. Secondly, it will be possible for students to be required to read relevant portions of the course material **in advance,** in which event the lecture itself will be even more productive than otherwise. If case-books are also prepared, it will facilitate the reading habit; by making important reading material easily accessible, and by a form of "pre-digesting" which is perhaps essential for those students who are deficient in linguistic skills.

These will be cyclostyled initially, so that they can be made available fairly cheaply, and also enable frequent updating (in whole or in part) so that inevitable errors, omissions and defects can easily be rectified. Printing will not only make the course material much more expensive, but will inhibit such updating.

The course material (but not the case-books) will also be translated into Sinhala and Tamil in due course.

These books will be sufficiently simple to facilitate comprehension even by students with poor linguistic skills, and an attempt will be made to make them suitable for (non-law) students following other courses (e.g. Accountancy students offering Company Law
for I.C.A.). They will thus be useful for a much larger group than new students, or students, including executives and administrators.

PREPARATION: It has been decided to set up an Editorial Board responsible for the entire series, consisting (mainly or wholly) of members of the Advisory Committee of the Council of Legal Education. The preparation of the course material and companion case-book in each subject will be entrusted to a lawyer (lecturer, practitioner or Academic), with one or more seniors as Consultants who will be available for discussion and guidance; a time-frame (maximum six months) will be specified, in the hope that the entire process of revision and review can be completed in one year. Each such assignment will be given only after the syllabus in each subject has been approved by the C.L.E. (the Advisory Committee has set up the mechanism for the approval of the syllabuses). The completed course material will be subject to final review by the Editorial Board. It is hoped to encourage the use of computers in the course of preparing the test, so as to facilitate amendments and additions, as well as easy reproduction. Since the course material may benefit students of all three institutions concerned with legal education, it is hoped to obtain the co-operation of all Law teachers.

After final approval of the English text in each subject, it will be cyclostyled; simultaneously, the process of translation will commence, and when this is complete (after appropriate checks as to accuracy), the translations will also be cyclostyled.

Each assignment will include review and amendment, to take account of suggestions made in the first year after publication as well as changes necessitated by statutory amendments or judicial decisions.

FUNDING AND SPONSORSHIP: It is hoped to obtain a grant to meet the greater part of the costs involved. Further, since these books would have a wider use, appropriate institutions will be requested to sponsor specific subjects.

SUBJECTS: Course material and Case-books: Constitutional Law, Principles of Criminal Law, Outline of Legal System of Sri Lanka, Contract, Delict, Family Law (i.e Persons & Succession), Property, Principles of the Law of Trusts, Principles of Equity, Administrative Law, Industrial Law, Professional Conduct & Ethics, Interpretation of Statutes & Documents, Conveyancing, Civil Procedure & Pleadings, Criminal Procedure, Evidence, Commercial Law (divided appropriately into several parts), Tax Law, Environmental Law. Course material, other than case-books with selected reading material, may perhaps not be necessary for Jurisprudence, Public International Law (already available with O.U.S.U.), Private International Law. In regard to accounts, a decision can be taken after reviewing the syllabus.

ENGLISH AND LEGAL SKILLS PROJECT

1. The development of language (English) skills should be combined with legal skills, in order to make the course more useful and more attractive to the student.

2. The course would attempt to develop the following skills:

   READING – Several "levels" e.g. "scanning", superficial, intensive, critical, etc.

   – Comprehension

WRITING	–	Taking notes (lectures, evidence, interviews, etc.)
	–	Summarising (lectures, texts, etc)
	–	making notes (for examinations, speeches, cross-examination etc)
	–	drafting letters (for various purposes)
	–	pleadings
	–	opinions, written submissions, notes on the law
	–	judgements
	–	drafting statutes and subordinate legislation
	–	contracts
SPEAKING	–	In court
	–	Discussions and negotiations with others (lawyers, officials, and others)
	–	Conducting interviews with clients, witnesses, etc.
	–	Negotiations and negotiating skills
LISTENING	–	taking notes (lectures, evidence, interviews)
	–	comprehension

3. **Material:** for this purpose – for reading, writing and speaking will be selected –

   – not only in a manner related to ensure rapid development of language (English) skills, but specifically related to law; and

   – closely related to topics currently being studied as part of the legal curriculum.

   Such materials have to be identified, and adapted where necessary, or designed and prepared specifically. Foreign models will be obtained, studied and adapted if possible.

4. Developments of new techniques of teaching, examination and student assessment :

   – better tutorials and assignments
   – "open book" and case study examination techniques.

5. FINANCE: While recurrent teaching costs should be borne by the Council, it is suggested that Asia Foundation be requested to fund the initial costs of the project, including some equipment.

EXEMPTIONS

On 10.10.90, the Advisory Committee reviewed the question of exemptions and agreed that the following principles be applied:

1. No exemptions should be granted in respect of subjects considered to be essentially "practitioners' subjects"; at the present time, these would be Civil Procedure, Evidence, Conveyancing, Trust Accounts, and Professional Ethics. When the new list of subjects is adopted, Interpretation of Statutes and Documents will be included.

2. The grant of exemptions in respect of all other subjects should be according to a rational and objective principle. Where a student –

(a) has obtained an academic or professional qualification in Law recognized by the Council, from an institution of higher learning recognized by the Council, and;

(b) has achieved in any subject a standard which the Council considers acceptable (i.e. as being equivalent to the Law College requirements: this would normally be a "pass" mark, but may exceptionally be higher), the syllabus in that subject being comparable (though not identical) to the corresponding subject at the Law College, such student shall be entitled to an exemption in respect of that subject; irrespective of whether it is a first, second or third year subject at either institution.

3. As a corollary, the grant of exemptions should not be based on reciprocity. The fact that Harvard or Oxford or the Inns of Court do not grant similar exemptions would not be a bar to the grant of exemptions by the Council to graduates of those institutions. Particularly in view of serious shortcomings in respect of the teaching and examination systems at the Law College, an approach based on reciprocity would be unjustified. In any event, the Council should be concerned to determine whether the particular student seeking exemption has the requisite knowledge and competence, and not the existence of reciprocity between institutions.

4. The grant of exemptions to graduates in Law of the University and the Open University should be based on the above principles. This should be reviewed periodically, and exemptions may be withheld if at any time it appears that the conditions specified in paragraph (2) are not satisfied (e.g. if teaching and examination standards at Law College improve dramatically).

5. Barristers, and graduates in Law of recognized foreign Universities, should be granted exemptions on the basis, and only on the basis, of the same principles. It would be unfair, and probably discriminatory, to grant them exemptions more leniently. The fact that a student has passed, or obtained a distinction, in Land Law at an American, English, Indian or Malaysian University or Law School, should not entitle him to an exemption from Property, because the syllabus is not at all comparable: it would be quite unsafe, from the point of view of the public, to treat such a student as having attained the required competence, because he himself would not only be unaware of the Sri Lankan law, but may even be unaware that there are significant differences between the two systems of law.

WHAT SORT OF LAWYERS DO WE REQUIRE?

(A few comments on the Advisory Committee's Report)

by

Mario Gomez

The law the lawyer knows about
Is property and land
But why the waves disturb the seas
...
Why faith is more than what one sees.
And Hope survives the worst disease
And Charity is more than these
They do not understand

[Weeramantry: 219]

On the education that is imparted, depends the lawyer that is produced. On the debate generated in the classroom, depend the vision of the lawyer. On the perspectives created, depend the issues lawyers take up.

Legal education no doubt stands at the core of a legal system. It shapes to a large degree the attitudes and approaches of those who 'run' or implement the system: primarily judges, lawyers and legal administrators.

On legal education also depends, the values the legal system endorses. What values does the judge bequeath and what causes will the lawyer canvass. The values imbibed in the law school are often those which the lawyer goes out with.

While no doubt the process of legal education is a continuing one, and the values and perspectives of a lawyer will change after leaving law school, in the majority of cases, the education and the training received at the law school makes the biggest impression on the lawyer. (Lawyer is here viewed in the broad sense as including academic, judge, legal activist and practitioner.)

Yet the subject of legal education is not addressed to any significant degree in the curriculum of our centres of legal education, except perhaps the Open University. Law students at the Faculty of Law in the University of Colombo and the Sri Lanka Law College are very seldom asked to question the nature and the type of legal education they receive, or the methods of teaching employed. Research and publication in this area is also inadequate.

It is for this reason that the proposals submitted by the Advisory Committee appointed by the Council of Legal Education are to be welcomed. They look at the nature, the structure and the methodology of education imparted at Sri Lanka's oldest institute of legal education – the Sri Lanka Law College – and submit several proposals for reform.

Every law school needs to periodically re-examine its course content and teaching methodologies. This needs to take place against the backdrop of new ideas and new knowledge, and new skills that may be required of the lawyer. It needs fundamentally to be considered against the changing role of a lawyer in society. The proposals of the committee then are a part of this process of re-examination and attempt to situate legal education in the social and political context of the tail end of the 20th century.

The committee is composed of people from all sectors of the legal community (except perhaps the legal NGO community) and consists of representatives from the academia, the judiciary and the official and unofficial bar.

The reforms of the committee come at a time of upheaval in the area of legal education. Sri Lanka now has three institutions of legal education and the Open University – the country's newest institution of legal education – has begun to produce law graduates; the Faculty of Law in the University of Colombo is contemplating major changes to its curriculum; and the members of the bar, without a law degree but with a professional qualification, are lobbying strongly for admission to the Master's programme at the University of Colombo. Furthermore, as the Committee notes, there has been a 'noticeable decline in standards'.

The reforms also come at a time when the Sri Lankan bar seems to be undergoing a metamorphosis of sorts. The bar has become more activist and begun to concern itself with broader socio legal and socio political issues.

The Committee makes wide ranging recommendations, most of which are salutary. Among the Committee's suggestions are the introduction of course materials as in the Open University, the revamping of the teaching methodology, including the recruitment of permanent lecturers, and a change in some of the subjects, including the exclusion of certain subjects (like Roman Law) and the introduction of new subjects like environmental law.

The Committee notes that the emphasis in legal education

> must change from a mere accumulation of knowledge, to ensuring a grasp of fundamental legal principles and the acquisition of the skills necessary to analyse legal problems and to find and apply the relevant legal principles to such problems. [para 6.2]

The Committee also stresses the need for linguistic and other skills that will enable students to comprehend, analyse, research and apply legal principles to factual situations. The course materials and methodology must promote such skills, the Committees notes.

The Committee recommends the recruitment of a core group of permanent lecturers, though noting that certain subjects, especially the procedural ones, will require visiting staff.

A change of approach with regard to teaching methods is also envisaged. There is a proposal to introduce course materials in a manner that is now followed by the Open University. The course materials would contain specific reading material which would include extracts from text books, cases, articles etc., which the student would be required to read in advance of the lecture. Lectures would then 'be devoted to questions, clarifications, and discussions designed to stimulate the students' reasoning and analytical skills.'

Practical and Forensic Skills

The Committee is of the view that greater emphasis should be placed on 'professional ethics and practical aspects of advocacy and legal practice'. [9.1]

The Committee recommends more time for these areas and seeks to promote greater interaction between students and the profession so that the student may learn more about the practical aspects of the lawyer's work.

However 'debates, mock trials, moots, address to the jury type competitions' etc are <u>not</u> be included as part of the formal curriculum and are seen by the Committee as part of the extra curricular activities of the student. [7.5]

In many universities in the Commonwealth and outside, students obtain academic credit for participation in activities like moot courts and mock trials. Some law schools also have optional subjects like 'Trial Advocacy' which attempt to give the student certain forensic skills. This is based on the assumption that lawyers need to be equipped with courtroom skills when they leave the law school and these skills should not be left to be acquired while in practice.

At certain law schools, participation at an internationally recognized moot like the Jessup's Moot, will exempt a student from an entire subject. This exemption is given because of the intense preparation the moot involves.

Moreover in today's context, skills in arbitration, mediation, conciliation, negotiation, bargaining, and skills in the use of other alternative forms of dispute resolution are becoming important. They will become more important in the 21st century. It is imperative therefore that the law student of today be given the opportunity of cultivating and developing these skills at the law school.

In this respect the Committee's proposals are disappointing. While noting that the practical aspects of the law are important and while seeking to encourage greater interaction between the student body and the bar, the Committee does not make any concrete suggestions for providing these practical skills as part of the formal curriculum.

Exams

In relation to the examination system the Committee notes that the objective should

> not be to test how well the student can reproduce portions of the lecture notes; while some emphasis on knowledge is necessary, more emphasis needs to be placed on testing the student's grasp of the basic principles, and his (sic) ability to apply them, as well as his (sic) ability to analyse legal problems. The type of question must therefore change; the number of questions to be answered should be about five or six (out of nine or ten) per paper; some papers should include a "case study" type question, with material (such as an extract from a text-book or decision) given in advance; or questions which may be answered with (e.g.) a law report being made available. [7.6]

The Committee also stresses the need for adequate consultation between examiner and lecturer in the setting and marking of exam scripts.

Human Rights

It is disappointing that the Committee has not thought it fit to introduce a course in Human Rights Law.

Human rights jurisprudence and writings have expanded enormously in the last two decades. Despite the multiplicity of approaches and different emphases, human rights as a concept has been debated and researched in several disciplines, not just law. It is unlikely that a course in constitutional law can cope with this growing jurisprudence. This is more so given the expanding nature of constitutional law and need perhaps for a second course in the subject (as the Committee notes).

It is surprising then that with the growing awareness of the concept and growing credibility of the concept, it was not thought fit to include a subject which would address comprehensively, the evolution, the theory and the practice of human rights.

Environmental Law

A notable inclusion though is environmental law. No vision of development at the tail end of the 20th century can afford to ignore the concepts of sustainable development and environmental protection, as much as no vision of development can ignore the massive worldwide move towards political pluralism, democracy, women's rights and minority rights. The inclusion of a subject dealing with the interaction of the legal system and the environment then must be welcomed.

The Role of the Lawyer

Absent however in the recommendations is any attempt to define the role of a lawyer at the tail end of the 20th century. What sort of 'lawyer' are we attempting to produce? What sort of skills and knowledge should a lawyer have? What sort of tasks and function would, and more importantly should, a lawyer perform in society? These questions need to be addressed in attempting to revise and refine curricula. Absent are any attempts in the proposals to seek answers to these questions.

An understanding of these fundamental question is essential for any degree of significant reform. Effective reforms have to be predicated on an understanding of what the role of a modern lawyer should be. If we do not know what sort of lawyer we require and should have, then it is not possible to deal effectively with the question of what sort of skills should be taught to the student. As Lon Fuller argues, to train practitioners well, legal educators must have a general conception of the lawyers's responsibilities and tasks.

The Committee notes (in the extracts published) that there is 'a special need, in the national interest, for qualified lawyers in certain spheres, so that fairness, and respect for the Rule of Law and human rights, may be advanced'. [para 5.1 (3)] and also that 'knowledge of and respect for the Law is vital to a democratic society;' [5.1(1)], but apart from these comments no vision of the lawyer is offered.

There will no doubt be different opinions with regard to the role of lawyers. These could range from those which see the lawyer's role as being solely to argue a client's case; to a more activist conception which views the lawyer as having an obligation to concern herself or himself with the social and political issues of the day and the social advancement of the society in which he or she works and lives.

For example Fuller has a broad vision for lawyers. They should be concerned with law reform. They should also strive to see that legal services are made available to the poor, and that the champions of unpopular causes are duly represented. [Summers: 137 – 141]

Fuller loathes the 'black letter mind' – the mind that is neglectful of the purposes of legal precepts, content with mechanically applying the law, incapable of analysing problems into their constituent elements, and unable to bring an independent judgement to bear. [p 139]

And to former Canadian Chief Justice Brian Dickson

> The primary goal of legal education should be to train for the legal profession people who are first, honest, second, compassionate, third, knowledgeable about the law; and fourth committed to the rule of law and justice in our society. [Dhavan et al: 37]

Although there may be different perceptions of a lawyer's role, some overriding philosophy would need to guide any proposals for legal reform. This is lacking in the committee's report.

The Role of the Law School

Absent also from the Committee's recommendation is a vision of the role of the law school. What role does an institution of legal education play in our society, and what role or roles should it play? Does the obligation of a law school extend only to those within its portals? Or does the law school have an obligation to the communities around it? How far does this obligation extend? Do institutions of legal education have an obligation to meet the thirst for legal knowledge that members of disadvantaged communities have?

Furthermore, should educational institutions confine themselves solely to providing legal instruction? Or should they become institutions of reform and change? Should the academic and student community within the law school focus on this aspect too as part of their programme of activities? It is submitted that law schools can no longer remain institutions of instruction only, but should become centres of research and reform.

Law and the Disadvantaged

It is also disappointing that the Committee offers no proposals for dealing with the problems of the poor and the disadvantaged. At a moment when much is being written and spoken about a socially responsible legal profession, the lack of a course (even an optional course) designed to look at the interaction of the law with the lives of the poor and disadvantaged is a big gap in the curriculum.

The Committee notes that students will be 'encouraged' to work in Legal Aid Clinics etc during 'vacations' [7.5] but this is not seen as a matter important enough for the formal curriculum to address.

It perhaps appropriate to consider whether law schools should not be paying more attention to what might be called 'creative skills'. Law schools have conventionally focussed on exposing students to a body of knowledge and in developing analytical skills. Sometimes there has been an emphasis on practical skills.

However in a situation which law is being increasingly used (especially by the non governmental communities across the South) as a method of social advancement, then perhaps institutions of legal education need to address themselves to some of the theory and practice in this area of the law.

Commercial Law

In suggesting a greater emphasis on commercial law and related aspects the committee notes that

> the legal profession, unlike 25 years ago, cannot be regarded as consisting only of those who practise law in the Courts ...; the judicial process and particularly the legal profession is acknowledged to have functions and responsibilities outside and beyond the arena of conflict and confrontation in an adversarial process in the court-room. [5.1]

The committee here is referring primarily to those in the public service, in financial institutions, in corporations and company administration, and in personnel management etc. The Committee thus recommends that students be given the option of taking as much as four papers in commercial law in their final year. This is to cater to those who do not practise law in the courts but practise law in government departments and private sector firms.

Conclusion

If as Fuller argues

> the prevention of indecencies in the use of governmental power must depend ultimately on the pressures of public opinion, particularly the opinion of the legal profession, [Summers: 139]

then it is vital that we produce a profession that it capable of playing such a role. There is no doubt that the Sri Lankan bar, judiciary and academia, are going through a significant period of change. There is a need then to ensure that the legal curricula of our institutions of legal education reflect these changes and seek also to promote more effective changes.

We need a system of legal education that will do more than expose students to a body of knowledge and give them analytical and practical skills. We need that, but we also need a system that will produce lawyers with an understanding of some of the major social, economic and political problems of our times, and with the skills and aptitude to help solve some of them.

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PARALEGAL TRAINING FOR WOMEN

THE TRAINING OF WOMEN LEADERS IN THE "DEVELOPMENT OF LEGAL STRATEGIES FOR EMPOWERMENT"

Report of the Workshop held on 13th, 14th & 15th September 1991, at Mutwal, Colombo

Introduction

In 1989 at the APWLD Lahore Conference on Legal Literacy, it was decided that national level programmes strategies and co-ordination are important for the empowerment of women. This was further emphasized at the Regional Forum of Women & Economic Rights held in Colombo in August 1991. Several women activists and lawyers who represented Sri Lanka at this Forum recognized the urgent need to initiate and co-ordinate the programmes at national level. Para-legal training was recommended as an alternate legal strategy.

In Sri Lanka much data has been collected and research done on women's issues during the last decade. Many workshops and seminars have been held to discuss and identify the issues and strategies. The need for para-legal training for trainers, as an important action oriented strategy has been highlighted over and over again. This recognition was a reiteration of the commitments made at the Lahore Conference for alternate legal strategies for the empowerment of women.

Training of women leaders in "Development of Legal Strategies for Empowerment" was accordingly held at Mutwal a suburb of Colombo, and conducted in Sinhala, Tamil and English. The participants representing all ethnic groups in the island were delegates from women's NGOs from several districts. The workshop was designed to sensitize the participants on current women's issues in the present changing environment of socio-economic development, and train them as Para-legal trainers who will in return be able to train members of their respective communities.

The regional co-ordinator (Nimalka Fernando) and the training co-ordinator (Irene Fernandez) of APWLD also participated together with 4 local resource persons (Manouri Muttetuwegama, Kamalini Wijetillake, Nandini Samarasinghe and Shantha Pieris).

The workshop was conducted on the themes of - Women in the Economy, Violence against Women and Women and the Family. This was followed by a discussion on demystification of the Law & Development of legal strategies in keeping with International Conventions and relevant legislation. Para-Legal Training concluded the programme.

Women in the Economy

It was conceded that the constitution and the laws in Sri Lanka per se are not discriminative against women but it is the implementation and the delivery of it that has created a situation in which women are treated unequally. This response is created not only by men but also by women who had allowed themselves to be used as instruments to perpetuate the oppression. The need to change the image of women therefore has to be a well scrutinized gradual process. The status of women is intrinsically linked to the economic conditions which have helped to develop the "dependent syndrome". The exception perhaps may be a few upper middle class women.

Women are the dominant contributors to all the main four pillars on which the Sri Lankan economy rests. (FTZ, migrant labour, tourism and plantation industry.) Neither the economic development nor change of policies in other mechanical spheres has helped women since the social/political attitudes towards them remain the same. This is not confined to national level discrimination against women. The same exploitative attitudes towards women continue unchanged in the international labour market as well. Therefore, action for the betterment of women must be undertaken at international, national and local levels.

Violence against women

The usual physical and mental harassment of women were highlighted through Audio Visuals. Once again the illustrations stressed how the lack of social empathy and understanding and support of other women within the respective communities/sectors helps to perpetuate violence against women. The fact that violence against women has no ethnic, religious or class bias, was also focussed upon. Violence at different levels was discussed including rape, domestic violence and sexual harassment at places of work, among displaced persons, in hospitals, prisons etc. The urgent need to reform the existing rape laws and sensitize different sectors such as the law enforcement authorities, the families of the victims and society at large surfaced once again.

Women and the Family

The theme had 2 distinct sections –

a) Single women, widows and divorcees.

b) Women and marriage.

a) Single women, widows and divorcees – An attempt was made to explore possibilities –

i) to help this category of women to be financially and socially independent;

ii) to explore ways and means to combat/eradicate negative social attitudes;

iii) to create an environment of support and solidarity for them to have peaceful and harmonious lives;

iv) to work towards affording them equal social dignity and make them no more feel discarded or lesser human beings.

v) to promote actions to integrate them into the national mainstream.

b) Women and marriage

The much discussed multiple burdens of woman as wife, mother, house-wife and the financial supporter to supplement the increasing demand for family necessities was looked into. The lack of understanding by the husbands as well as the immediate and extended families were perceived as a major problem.

The specific matrimonial problems in different communities and the remedies available under common law and personal laws were detailed. Breach of promise of marriage, judicial separation, divorce, maintenance and alimony were taken up as separate subjects.

Decentralization of professionally trained counselling services to the village level integrating the existing grassroots women's organizations and giving them the necessary guidelines and training was recognized as an urgent necessity.

Conclusion

The need to propagate broad liberal perspectives which would give women equal social status and freedom and the formation of new concepts. guidelines and training framework towards empowerment of women emerged as a primary concern. Apart from addressing in depth the critical issues on women it was decided to develop strategies for empowerment of women towards equal partnership in human society without remaining satisfied at her increased social mobility. For national level co-ordination, Regional Councils were to be established in four units for the entire Island. The local women activists from grass-root levels are to take the initiative in the consolidation of the national co-ordination network.

To our readers.....

In view of the reduction of working days during the holiday season, Issue No. 29 of the Fortnightly Review will be a joint issue of December 1st and 16th,1991.

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