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LEGAL EDUCATION IN NEPAL

Three Day National Seminar

(December 24 - 26, 1992)

Seminar Proceedings Report

Published by :

International Commission of Jurists

Nepal Section

Ramshah Path, P. O. Box : 4659

Kathmandu, Nepal

(In Co-operation with International Commission of Jurists (ICJ) / Geneva)

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ACKNOWLEDGEMENT

This present publication is the outcome of a three day National Seminar on Legal Education In Nepal held on Dec 24-26, 1992 in Kathmandu and organized by ICJ/Nepal Section in collaboration with ICJ/Geneva, Switzerland.

I believe the seminar proved to be a successful forum for law teachers, law researchers, lawyers, education planners to come together and discuss issues, problems and priorities in elevating the standards of legal education in the country.

Some 245 participants both from the valley and outside representing law campuses, legal profession, judiciary, government agencies contributed meaningfully to the seminar deliberations. ICJ/Nepal Section, therefore, expresses its appreciation to all the seminar participants. Besides, ICJ/Nepal Section is thankful to the Minister of Education & Culture Govinda Raj Joshi for his inaugural remarks, and other distinguished guests from the ministries, law campus and other sectors for their thought provoking statments in the seminar.

Similarly, ICJ/Nepal Section is grateful to the ICJ/Geneva for assistance in organizing the seminar and owes a debt of gratitude to Dr. N. R. Madhav Menon, Director, National Law School of India University, Bangalore, Ms. Dilbur Parakh, Legal Officer for Asia ICJ/Geneva, Mrs. Bineta Diop, Programme Coordinator of ICJ/Geneva for their participation and thought provoking speeches at the seminar.

ICJ/Nepal Section acknowledge its indebetdness to chairpersons of the discussion sessions Mr. Chudamani Raj Singh Malla, Dr. Shanta Thapaliya, Mr. Prachanda Raj Anil, Mr. Bipulendra Chakraverty for deftly handling the discussions sessions; and the rapportuers Mr. Kashi Raj Dahal, Ms. Sapana Malla, Mr. Amir Ratna Shrestha, Mr. Matrika P. Niroula for their panistaking exercise. Acknowledgements are due to the working paper writers Mr. Madhav Prasad Achaya, Mr. Rajit Bhakta Pradhanaga, Mr. Kishor Silwal, Mr. Satish Krishna Kharel, Mr. Beda Prasad Siwakoti for their contribution in making the seminar a success.

Lastly, ICJ/Nepal Section is appreciative of the Mr. Mukti Rijal, Mr. Amir Ratna Shrestha and Trilochan Gautam for translations of Nepali texts into English. Thanks are due to Mr. Rijal and Mr. Shrestha for handling the task of editing and compiling the report.

ICJ/Nepal Section records its appreciation to Mr. Krishna Man Pradhan, Word Processor Mr. Ganesh Man Shrestha and Navin K. Verma for their help in brining out the publication in this form.

It is my firm belief that this Seminar Proceedings Report will come handy to all concerned with different aspects of legal education in the country.

10th June, 1993

Kusum Shrestha
Secretary General
ICJ/Nepal Section

Edited and Compiled by :

**Mr. Mukti Rijal
Mr. Amir Ratna Shrestha**

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National Seminar on Legal Education in Nepal
24 - 26 December 1992
Organised under the Co-sponsorship of
International Commission of Jurists/Geneva, Switzerland
&
International Commission of Jurists/Nepal Section

Introductory Note

The history of formal education and training in legal education is very short in Nepal. Till 1867 the Nepalese legal traditions were mostly based on religious traditions and scriptures. Even after the powerful Rana Prime Minister Jung Bahadur enacted in 1967 a Civil Code which many say was done through influence of Napoleonic Code. The interpretation and application of the Code had been left to the old traditions and conventions. Although no definite conclusions can be inferred about to the formal inception of legal education in Nepal, a relevant publication notes that the establishment of *Sresta Pathasala* in 1927 was the beginning towards giving the formal shape to the legal education in Nepal. But the inception of formal education in modern sense of the term was attributed to the establishment of law college under the initiative of late Mr. Ram Raja Pant. The law college was affiliated to the Patna University, and courses offered in it were drawn on Indian legal practices and contents. It was indeed the *Sresta Pathasala* that continued till early sixties as an institution imparting knowledge on Nepalese law and legal procedures. Furthermore, the relevance of the *Sresta Pathasala* obscured as the contents on legal education were incorporated into the School Leaving Certificate curriculum.

The major initiative in regard to the institutional development and growth of the legal education was taken in the early seventies coincidental to the introduction to New Education System Plan in the country. The NESP did not only had impact on the front of legal education but also on the entire realm of the education system in the country. The impact was so pervasive that all processes involved in education from curriculum designing, institutional arrangement to evaluation system were restructured. The semester system was introduced for raising efficacy of the evaluation and testing system. The legal education was

structured into two tiers, that is, Proficiency Certificate Level and Bachelor of Law. Those having completed the School Leaving Certificate were offered entrance into Proficiency Certificate Level in Law. Indeed, the new system established a new stream in the sphere of legal education.

Most of the aspects of the New Education System were directed at raising the quality of education and fulfilling requirement of manpower in the country. However, it was not able in meeting its objectives. However, after the failure of the New Education System Plan no new educational strategy has been devised and the entire education system is lurching in adhocism. The legal education has not been an exception to it.

Legal education has, in fact, undergone through a critical phase. The standard of legal education has declined considerably resulted from the lack of forward looking curricula, lecture based teaching & learning method, poor academic and physical infrastructure, and so on. Moreover, the legal education is not offered at the post graduate level consequent to which competitive high level manpower is not produced in the country. Although efforts in the direction have been made but they have not been able to achieve the intended results of in opening Masters Level programme in Law.

Another reason, as some attribute that the falling standards of legal education has been due to the introduction of Proficiency Certificate level in law. This, according to them, has also resulted in the deterioration of legal education in the country. Some concerned with the improvement of legal education in the country even see the need of doing away with the Proficiency Certificate level. This has, in fact, become a a subject of contention among law scholars and academics.

Presently, the academic circles are mulling over how to raise the quality of legal education and make it quality based and standardized at par with the South Asian level. The Commission appointed by the His Majesty's Government to report on the improvement and standardization of education has submitted its recommendation. It has reportedly suggested for doing away with the Proficiency Certificate level

But there has been the dissent voice over such recommendation and a section of law academics contend that the continuation of the Proficiency Certificate Level is necessary. It is argued that the Proficiency Certificate Level (PCL) has contributed in producing medium level legal manpower for the country.

It is at this juncture that the ICJ/Nepal Section took initiative in organizing the national seminar on legal education in Nepal. The conclusions of the Seminar are expected to highlight the status of legal education in Nepal and its recommendations are expected to provide direction for the development of legal education in country.

Summary of the Proceedings of the Seminar Inaugural Ceremony

International Commission of Jurists/Nepal Section organized a national seminar on legal education in Nepal in cooperation with International Commission of Jurists/Geneva on December 25, 26 and 27, 1992. Participants from a cross section of areas connected to the legal education took part in the seminar. Lawyers, law teachers, education planners, curricula specialists from different parts of the kingdom joined in the deliberations and expressed their views about what the shape of legal education should be.

The inaugural function of the seminar was packed to capacity with the seminar participants and other distinguished celebrities invited for the occasion. The inaugural session was presided over by the president of ICJ/Nepal Section Madhu Prasad Sharma. In his remarks from the chair Mr. Sharma emphasized on the need to arrest the deteriorating standards of legal education (Full text of speech on page 18).

Dean of the Faculty of Law, Prof. Shyam Kant Silwal thanked the ICJ/Nepal Section for organizing the seminar on a very topical issue and hoped that the discussions in the seminar would provide relevant inputs in setting direction of legal education in the country (Full text of speech on page 17).

Opening the seminar, Minister of Education & Culture Mr. Govinda Raj Joshi lauded the efforts of the ICJ/Nepal Section in convening a national seminar and assured of the Government cooperation in fully implementing the recommendations of the seminar (Full text of speech on page 8).

Secretary of Law & Justice Ministry Mr. Ved Byas Chhetri highlighted the importance of the seminar and stressed how important the field of legal education was in assisting the process of country's development (Full text on page 16).

Prof. N.R. Madhava Menon, Director, National Law School of India University delivered the keynote speech in which he emphasized on the need to

maximize the social relevance of legal education. (Full text of keynote speech on page 10).

Ms. Dilbur Parakh of the ICJ/Geneva, Switzerland expressed satisfaction over the involvement of ICJ/Geneva, Switzerland in organizing the seminar (Full text of speech on page 13).

Secretary General of the ICJ/Nepal Section Mr. Kusum Shrestha who welcomed the participants in the outset of the function pointed out the need to reform the legal education since its standards have fallen considerably over the past few years now. (Full text of speech on page 7).

Treasurer of the ICJ/Nepal Section Mr Anup Raj Sharma proposed the vote of thanks (Full text of statement on page 20).

**Summary of Speech by Mr. Motikaji Sthapit,
Vice- president, ICJ/Nepal Section, and
Attorney General of Nepal**

Mr. President,
Distinguished guests,
Participants,

The three day national seminar on legal education, organised by the ICJ/Nepal Section, is a significant initiative in improving the standards of legal education in Nepal. I am fully convinced that the national seminar shall recommend concrete measures, and also believe that these resolutions shall be immensely helpful in reforming the legal education in Nepal.

Though the history of the legal education in Nepal is very short, it has some achievements to its credit. The various levels of legal manpower have contributed fruitfully from their respective field. But the Master's Level programme in legal education is not yet started in Nepal. Besides, physical facilities available for the legal education are not adequate. As a result, the quality of the legal education is sliding downwards.

It is also widely accepted that the curricula, teaching methodologies testing and evaluation system of the legal education should immediately be reformed. Considering the present context, legal education should be made competitive and at par with the international standard. Qualified legal manpower are needed in the field of international law, trade and other areas. The time has come to take these requirements into consideration.

I hope, the participants of this seminar shall discuss on various issues of legal education thoroughly and adopt appropriate suggestions.

Thank you.

Remarks of the ICJ/Nepal Section, General Secretary, Mr. Kusum Shrestha

Mr. President,
Distinguished Participants

I am pleased to note it that the ICJ/Nepal Section has been able to convene this national seminar on legal education in Nepal in partnership with ICJ/Geneva, Switzerland, and provide a forum to exchange ideas on how the anomalies seen in the field of legal education could be eliminated to make it more standardized and competitive.

I would like to say it with all frankness that the Proficiency Certificate Level in Law which has been responsible partly to the decline of the standard of legal education in the country. Law is a complex discipline the crux of which can be grasped only by those who possess basic understanding and knowledge on the underlying attributes of it. But the Proficiency Certificate Level in Law completely ignored this fact and produced manpower without proper exposure on the basic attributes of the social science disciplines. As a result, I believe, the competitiveness and breadth of knowledge that the law students are supposed to possess are not obtained by them, This gathering of lawyers, law education specialists and curriculum planners will delve into all these aspects and recommend concretely on what needs to be done in injecting new positive elements in the framework of legal education in Nepal.

On behalf of the ICJ/ Nepal Section I assure you that the recommendations of the seminar will be apprised to the authority concerned and followup will be done so that the recommendations are considered in formulating policies plans in respect to the legal education in Nepal.

I am thank you to you all for your participation in the seminar. I am undebted especially to Ms. Dilbur Parakh, Mrs. Bineta Diop from ICJ/Geneva, Switzerland and Dr. N. R. Madhav Menon, Director of the National Law School of India University, Bangalore for their participation and stimulating and thought provoking speeches in the seminar.

Thank you .

Summary of the Inaugural Speech by Hon'ble Minister for Education and Culture, Mr. Govinda Raj Joshi

Chairman,
Foreign Guests,
Participants,

ICJ/Nepal Section has done a commendable work by organizing a national seminar in legal education in Nepal. His Majesty's Government, Ministry of Education has seriously taken the problems existing in the front of legal education. The outcome of this seminar shall provide proper direction to the legal education in Nepal. And I assure you that the Government shall give proper thought for the implementation of the recommendations adopted by the seminar. I feel that the existing education is not quality based and the Legal manpower produced in the country is yet to achieve competitiveness. Those holding bachelor level certificates in law are not confident enough in their field of knowledge and activities. They have not been able to excel in their profession as expected. In Nepal, if we look back workable knowledge on law and essential legal provisions was imparted to the learners at the secondary level. Certain knowledge of legal provisions were taught, during the previous years, to the students of the S.L.C. level also. Legal education is imparted at the Intermediate and Bachelor levels. However, the law degree holders seem hesitant to take up legal practice because of the lack of inner confidence in them. I myself was reluctant to enter the legal practice, after after I had B.L. degree. It is high time to standardize the legal education and make legal education more practice based and skill oriented to cope with the professional challenges.

Nepal is in need of qualified legal manpower so that we could minimize our dependency on foreign legal experts.

The entire gamut education policy should be discussed comprehensively while we sit for setting objective and curriculum of the legal education. Distinguished lawyers and educationist are participating in this national seminar. I hope concrete resolutions will be adopted by this seminar. In regard to the Proficiency Certificate Level in law, decision should be taken in considering the need of the national context.

I hope that this seminar shall identify the short term and long term perspectives in setting ground of the qualitative legal education. The quality of the legal education should be upgraded consistent to the national needs and requirements.

Lastly, I would like to reiterate my appreciation to the organizers for inviting me to inaugurate the national seminar.

Thanks.

Keynote Speech of Dr. N. R. Madhava Menon

Mr. President,
Hon'ble Minister,
Distinguished participants,

I bring to you the greetings of the academic community of India, and also congratulate the organisers for choosing the important topic of legal education deliberation in this seminar. After the restoration of multiparty system, Nepal has opened a new chapter. The role of judiciary embodied in the new constitution has been very significant.

I would like to note that law is bound to play a very important role in the democratic transformation of society. Especially the legal profession needs to be trained to cope with the social consequences of democratic change. In this context this seminar is very timely and thought provoking. My credential to speak to you and apprise on some aspects of legal education is my involvement in an exciting, innovative and challenging National Law School experiment in Bangalore, India. If it succeeds, I hope it will do, it will be a novel far-reaching experiment. However, the challenges and problems to encounter with are numerous and formidable.

I received the working papers prepared by the learned law teachers of the Nepal Law Campus for this seminar and I tried to read them as they are written in Devanagiri script. On the basis of what I could grasp and with my own experience as a law teacher I would like to dwell on some propositions very briefly.

My first proposition relates with objectives of the legal education curriculum. Today law is concerned in all areas-administration, governance and adjudication. The knowledge of law promotes strategies and capabilities. When resources are limited, planning is inevitable.

The situation today is such that most of the law graduates don't opt for practice. At present, there are about forty law colleges in Nepal. In the National Law School, Bangalore, the primary objective is to train the legal man power, but it can not be done in large scale. Admission has to be restricted. Therefore, in the

law school 80 students a year are admitted. It is the maximum number for the law school to cope with it has to impart meaningful professional education. The Law School is a residential institution. The law curriculum offered in the law school is so tailored as to elevate the standard of legal education. It combines legal knowledge with legal skills, appreciates legal processes in the context of larger social processes and equips the students to look at how in a developmental context.

The second proposition is continuing cooperation among law school, bar and judiciary. It is for the betterment of legal education that such a relationship needs to be established. The Chief Justice of India is the Chancellor of the National Law School. The president of the Bar Council of India is Chairman of the governing body of law school. It is indeed a joint enterprise of the bar the bench and the law academics of India. I think setting up of this type of institution would be significant in the Nepalese context too.

My third proposition is that the provision of competent, dedicated and motivated teacher is very much important for the success of legal education. The greatest impediment in our context is the lack of competent teachers. The teachers should work as a team. A sense of involvement and a new work culture must emerge. The situation should be made better through un-learning and relearning of knowledge and processes. This seminar is well advised to ponder over preparing teachers who are well motivated and can take up the challenge of bettering the standard and relevance of legal education.

My fourth proposition is concerned with curriculum. My submission on curriculum are following:—

- (a) The legal education curriculum needs constant revision. Curriculum planning and development is a continuing process consequent to which it can be made relevant to the changed context.
- (b) The curriculum should be based on core and peripheral contents. The core contents of the curriculum should be relatively steady whereas peripheral contents may change. The curriculum should draw on different sources so as to standardize and integrate its contents.
- (c) The curriculum should include clinical skills. In order for making the curriculum to be clinical, a lot of adaptation and experimentation is

necessary. It can be done through projects and placement for students at regular intervals, seminar, law journal work, and so on.

My fifth proposition is concerned with teaching materials and method. The conventional materials are of statute and cases inadequate for quality legal education. The teaching materials and methods should stimulate learning, and also be accessible to all. The National Law School has its own materials drawing on the statutes, case laws, commission reports and scholarly research. The National Law School is pleased to share the materials it has with it with other law teaching institutions.

The lecture method of teaching is a conventional method, and lectures are no doubt important in the hand of dynamic teachers. But clinical learning by doing method should also be applied. The legal aid programme offers opportunities for education on skills while serving the poor and the needy. Seminars, tutorials and discussion in class are good in legal education.

My sixth proposition is evaluation. It is in fact, a complex process. No annual examination is conducted in the National Law School. Open book examination, written papers, independent project work and viva voce should be essential parts of the evaluation system. Lastly, I would like to dwell on legal education through law school extension programmes. The community-based law-reform competition, interactive sessions and legal and camps are carried out to promote alternative and socially relevant legal education in the National Law School.

I have greatly enjoyed this pleasant land, and be with you to share my experiences on legal education.

Thank you.

Speech by Ms. Dilbur Parakh, Legal Officer for Asia, International Commission of Jurists at the Inaugural Session

Ladies and Gentlemen,

On behalf of the International Commission of Jurists (ICJ) I have great pleasure in welcoming you all to this seminar on Legal Education in Nepal.

I would like to begin by briefly telling you about the ICJ and its activities. The ICJ was founded in 1952 to promote throughout the world the understanding and observance of the rule of law and the legal protection of human rights. It consists of about 40 eminent jurists who are representative of the different legal systems of the world. We have 75 national sections and affiliated organisations, all over the world, who help in carrying out the work. The secretariat is based in Geneva and is headed by the Secretary General, who at present is Adama Dieng, a leading Senegalese Jurist. The ICJ has legal officers of Africa, Asia, Latin America and the Middle East, and our activities include:

- organising seminars, national (Like this one), regional and international
- intervening with governments concerning violations of human rights
- sending fact finding missions to countries. A fact finding mission may be on a particular issue or on the general human rights situation in a country.
- sending observers to trials of major significance
- activities at the United Nations Commission on Human Rights and its Sub-commission.

The ICJ has played a major role in standard setting and has also been instrumental in the development of regional human rights instruments as in Africa.

The Centre for the Independence of Judges and Lawyers (CIJL) was established in 1978 by the ICJ to promote the independence of Judges and Lawyers and to organise support by lawyers' organisations for victims of harassment and persecution.

In the 1980's the ICJ organised a series of seminars in Africa, Asia and Latin America on the relationship between human rights and the process of development and one of the major conclusions of these seminars was that the poor and disadvantaged view law as a tool that is used to exploit them and not as a tool that helps them secure their rights.

The ICJ therefore sought to establish links with legal services organisations that work with the poor and disadvantaged groups. Seminars were organised on the subject of legal services for the rural poor and other disadvantaged groups and the topics included the role of law schools in dealing with the problems of access to legal services of such groups. The seminars recommended that law school curricula should be reformed so as to educate students of their social responsibilities as lawyers.

In April 1990 the ICJ organised a seminar on the role of law schools in Asia in providing legal services to the poor and disadvantaged groups. The seminar was held in Bangalore, India and was organised jointly with the National Law School of India University, Bangalore. The participants included law teachers, lawyers and law students from Bangladesh, India, Indonesia, Malaysia, Nepal, Pakistan, Philippines, Sri Lanka and Thailand. A report has been published which contains the conclusions and recommendations of that seminar which we hope will be useful to law schools all over Asia. Copies of the report are available on the table at the back of the room with other ICJ publications.

We are very lucky to have Dr. Madhava Menon, Director of the National Law School of India University, here with us today. He will speak about the activities of the National Law School which was established in 1987, and which is committed to looking at law as an instrument for social change. Dr. Menon will also tell us how the clinical education programme is functioning at the National Law School. The National Law School is regarded by many as being one of the best law schools in India and this is largely due to Dr. Menon's vision and commitment.

This seminar on legal education is being organised at a time when there is a lot of discussion in Nepal on the existing legal education system. It is thus very

timely and sincerely hope we will come up with some concrete recommendations at the end of these three days.

We are very grateful to the Nepal Section of the ICJ and in particular to Mr. Kusum Shrestha for having organised this seminar. We are honoured to have with us the Hon'ble Attorney General, the Minister of Education, the Secretary of the Ministry of Law and the Dean of the Law Faculty, Tribhuvan University and I thank them for having taken off time from their very busy schedules to be with us today.

It gives us great pleasure to see many law teachers present here today who will be attending this seminar for the next three days. It shows how important the subject is, and shows your commitment to the cause. I would like to end by thanking you all for having come to this seminar. I am sure that it will be a very interesting experience for Bineta and for me and we are looking forward to it.

Thank you.

Remarks by the Mr. Ved Byas Chhetri, Secretary, Ministry of Law, Justice and Parliamentary Affairs

Mr. President,
Distinguished Participants,
Ladies and Gentlemen.

I feel privileged for this opportunity to speak a few words in the inaugural session of a national seminar on legal education in Nepal. I am grateful to the ICJ/Nepal Section for organizing the seminar on such an important topic with bearing on the education system in the country.

There is no denying the fact that the legal education should be toned up consistent to the need and requirements of the changed context in the country. Ministry of Education & Culture has taken particular note of it and is prepared to undertaking initiative in giving boost to the entire components of education in the country.

The education panel formed by the His Majesty's Government has submitted its recommendations, and the areas that need to be taken care of in reforming the legal education are definitely identified in the report. Besides, the suggestions offered by this seminar would be of immense significance and the Ministry is always receptive to any constructive proposals in revamping the legal education.

I again express my thankfulness to ICJ/Nepal Section for this meaningful initiative.

Thank you.

Remarks by Professor Shyam Kant Silwal, Dean, Faculty of Law, T. U.

Hon'ble Minister,
Distinguished Guests,
Colleague Participants

I express my gratitude to the colleagues of the ICJ/Nepal Section for organising this seminar on the very relevant issue. In fact, such type of activities should have been launched by the Faculty of Law itself. I am happy that the Faculty of Law was relieved of the onus of organising such type of important and fruitful activity. Today is the first day of the working session of the national seminar. Certain important issues relating to the legal education in Nepal are yet to be discussed in the seminar by the distinguished participants and concrete and fruitful outcomes are yet to emerge.

I feel that the standard of legal education has not fallen to the extent as many of my colleagues do speak about. The brilliant example in this regard is the decision taken by the Supreme Court in Tanakpur case and the respect shown towards the decision by the ruling party and the opposition parties. The pertinent issue, relating to the legal education, is whether to accept the status quo in the Certificate level in law or to do away with it. The National Education Commission has recommended to abolish the Certificate level in law. This seminar should weigh the pros and cons and recommend prudently in this regard even though National Education Commission has suggested for the abolishment of the Proficiency Certificate level in law.

On the other hand, the Post Graduate programme in law should be launched with immediate effect. Attempts were made during previous years in this regard. But the genuine problem in this respect has been the dearth lack of resources. Even foreigners have not shown interest to offer assistance for this programme.

Once again, I would like to express my gratitude to the ICJ/Nepal Section for organising national seminar on legal education and I am convinced that the seminar will be highly rewarding.

Thanks.

Statement delivered by Mr. Madhu Prasad Sharma, President of the ICJ/Nepal Section

Chief Guest Hon'ble Govinda Raj Joshi,
Minister of Education, Culture & Social Welfare,
Distinguished guest and participants,
Ladies and Gentlemen.

We have realised and noted it with concern that the standard of Education has declined in Nepal over the past years. The foundation of educational system has become weak and unproductive. The legal education is not an exception to it. However, thanks to the dedication and pioneering initiatives of some individuals and educationists the legal education could maintain some standards.

The pioneering role played by the educationists as Ram Raj Pant in the promotion and advancement of legal education bears testimony to the fact the individual initiative and drive counts much in giving impetus to the development of education in the country. It is on this occasion I would like to pay tribute to the efforts of the eminent educationists and derive inspiration to contribute our bit for the refinement and advancement of legal education in the country. The quality and standard of legal education in Nepal was maintained due to the provision which require that the entrance to the graduation study programme in law is permitted only after the completion of graduation in any disciplines. This provisions had in fact contributed to the maintenance of the quality and standards of legal education in the country.

But when the New Education System Plan was introduced during early "70", it also brought about a restructuring in the legal education system. A new provision was envisaged for the establishment of proficiency certificate level in legal education to be started after the completion of the secondary level education. It was done, as promised then, to fulfill legal man power requirement in the country. However, we have seen that the standard of legal education has fallen considerably. It has needed some forward looking and innovative steps to bring about qualitative transformation and bail it out of the falling standards.

The quality of the judiciary and other relevant state machineries, legal practitioners depends upon the quality and contents of the legal education. The legal education system has thus a determining influence in the promotion of rule of law in the country. We should not lose sight of the fact the country needs a fully equipped skilled legal man power to grapple with the emerging issues of the international law, multinational trade transactions to which Nepal gets or may get involved in the present global context. We still have to look to the foreign legal experts for assistance in the issues of international law, arbitration and trade transaction. It is therefore necessary to reorient our legal education system so that productive and competitive legal man power is produced in the country. The three day seminar, beginning from today, on the legal education in Nepal is expected to ponder over the different issues involved in renovating the legal education and furnish meaningful inputs for the same.

I would like to welcome you all and offer my thankfulness for your keen participation in this seminar. I owe my debt to the Hon'ble Minister Govinda Raj Joshi for his enlightening inaugural remarks and the distinguished guests from ICJ/Geneva, National Law School India University, Bangalore for their participation.

Thank you.

Vote of thanks by Mr. Anup Raj Sharma, Treasurer, ICJ/Nepal Section

**Mr. Chairman,
Distinguished guests,
Fellow Participants,**

I would like to thank all of you, on behalf of ICJ/Nepal Section, for your participation in this three day national seminar on legal education in Nepal.

Considering the falling standards of legal education the authorities concerned should think seriously about to upgrade the quality of the legal education in the country. Timely measures should be implemented to upgrade the quality of legal education, else it may be too late to yield any positive results.

Now the time has come to examine whether the Proficiency Certificate Level in legal education should be continued or not and whether the Proficiency Certificate Level in Law is responsible for bringing about the decline of legal education.

I am fully convinced that this seminar will come out with concrete suggestion, after the comprehensive discussions, to upgrade the quality of the legal education. Once again, I would like to express my gratitude to the representatives of the ICJ/Geneva, Professor Madhava Menon, Director of National Law School of India University and all the fellow participants for enthusiastic participation.

Thanking you.

Summary of the Recommendations of the Seminar on Legal Education in Nepal

The national seminar on legal education in Nepal discussed a number of issues affecting the legal education in Nepal. Altogether four theme papers prepared by the contributors known for their expertise in the respective areas were presented in the seminar in addition to the points of issues framed to keep the discussion on the track. About 140 participants had expressed their views. The seminar participants were split into two groups and the discussions had been conducted in two groups viz, Group 'A' and Group 'B'. A summary of the recommendations from Group A and Group B adopted by the plenary session of the seminar on the concluding day of the seminar are as follows —

Group A

Altogether sixty participants had aired their views on the theme papers and the issues provided for discussion. The discussions had been carried out for two days and discussion sessions were chaired by Advocate Mr. Chudamani Raj Singh Malla and Dr. Shanta Thapaliya. The participants had expressed their comments on issues raised in the theme papers on the Existing Curricular Structure of the Legal Education in Nepal prepared jointly by Mr. Rajit Bhakta Pradhananga and Kishor Silwal; and a Critical Assessment on the Evaluation and testing System of Legal education in Nepal prepared and presented by Mr. Madhav Prasad Acharya. And the rapporteurs were Mr. Amir Ratna Shrestha and Mr. Matrika Prasad Koirala. The major points of the recommendations of the Group A are as follows—

On declining standards of education

- An unrestricted and open admission policy; curricula without specific objectives; material and intellectual infrastructural constraints have contributed to the declining legal education standards.
- There is a lack of a well-equipped library and documentation centre.
- An atmosphere of confusion and uncertainty has loomed over the legal education due to lack of decision on the structural framework of legal education. A decision on the structural framework and level of the legal education, that is, whether to retain Proficiency Certificate Level in law

or not should be made immediately after proper analysis of its pros and cons.

- Testing and evaluation system is unscientific and haphazard. Copying and taking recourse to unfair means especially in moot court have defeated its objective. Testing and evaluation system should be made more specific and measurable.
- Law teachers should be provided opportunities to refresh and reequip themselves through short term refresher trainings and orientation courses.
- Law should be studied as a subject of specialized studies to produce competitive legal manpower in different streams of law.

On Post - Graduate Level Studies Programme

The country lacks in the facility for master level study programme. The Master level study programme should be started as immediate as possible. The programme should be made standardized and competitive through adequate physical and intellectual infrastructures.

On Proficiency Certificate Level in Law

Although the Education Commission has recommended for the abrogation of the Proficiency Certificate level in Law, the decision on it should not be taken without proper examination of pros and cons, or appraisal. A study is recommended in order to determine the validity on the retention, or abrogation of the Proficiency Certificate Level in Law.

Group B

Altogether eighty participants expressed their views on the issues raised in the theme papers on An Exploration into the Prospective Model of Legal Education System in Nepal prepared jointly by Dr. Shyam Kant Silwal and B. Prasad Shiwakoti and Clinical Legal Education an Assessment and Perspective prepared and presented by Mr. Satish Krishna Kharel in addition to the issue framed for discussions. The discussions had been carried out for two days and the group discussion sessions were chaired by former judge Mr. Prachanda Raj Anand and Advocate Mr. Bipulendra Chakravorty. And the rapporteurs were Mr. Kash Raj Dahal and Ms. Sapana Malla.

The major points of the recommendations of the Group 'B' have been presented as follows—

On Clinical Legal Education

Despite some provisions about the clinical legal education in the curriculum, this has not been effective enough. The clinical legal education should be effectively promoted in order to enhance the quality and practice-based skills of the legal manpower. A thorough study is recommended in order to devise the ways of enhancing the efficacy of the clinical legal education.

The clinical legal education programme conducted by the Non-Governmental Organization (NGOs) should be taken into account and promoted accordingly. A study should also be undertaken to devising ways and means for in furthering the effectiveness and developing the clinical legal education in Nepal.

On Bar Council Act

The Bar Council Act should be promulgated soon. It can help streamline the legal education and set some norms in the field of legal education too.

On Legal Education Curriculum

- Legal education curriculum needs a thorough overhauling. New subjects of the national and international importance on transit, trade, arbitration, environment should be included in the curriculum.
- The examination system offered for private examinees should be discontinued.

On Law Campus and Legal Aid Programmes

Law Campuses should undertake legal literacy and legal aid programmes through involvement of students. This allows the students to have an exposure on procedural and practical aspects of law and develops in them a commitment to deliver services to the underprivileged sections of the society.

A Critical Assessment on the Testing and Evaluation System of Legal Education in Nepal

- Madhav P. Acharya *

Historical Background

Law cannot be conceived of in isolation to and independent of the society. The study of law, its teaching and interpretation should be done in the broader context taking the political, religious, economic and cultural backgrounds into account. The society creates law and the vice versa. Law is a behavioural discipline. And the persons in conversant with the behavioural aspects of law alone can grasp its substance. It is also an occupation oriented discipline. Like doctors and engineers the students of law can initiate their own independent vocations and eke out their living without seeking any employment offers and opportunities. The students of law can serve their society better. The discipline of law is distinguished from other disciplines of social science and humanities because it is a vocation-oriented subject of specialized study. Lawyers' competence and dexterity has a direct bearing upon judiciary and the administration of justices.

Lawyers are always expected to be well acquainted with different aspects of social, political, economical and cultural domains. The wider scope of the study of law should not therefore be ignored if it is to effect a qualitative improvement of the legal education.

Legal education in the modern sense of the term was started in Nepal during mid fifties. Since then the legal education has traversed through a long journey. Many lawyers have been produced. However, the lack of committed efforts to operate post graduate studies in law in Nepal is a sad commentary on the existing state of affairs. During the early 70's when the *New Education System Plan (NESP)* was introduced, it brought about a restructuring in the educational set up of the country. Accordingly, the NESP had had a far reaching impact on the legal education front too.

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Two levels in the stream of legal education that is the Proficiency Certificate Level (PCL) and Graduate level studies on law were introduced to make it broad based and self-terminating. The Proficiency Certificate Level (PCL) had been so aimed as to fulfill the requirement of the medium level legal man power while the Bachelor Level aimed at producing the high level manpower requirement. This objective has been intact till now.

The New Education System Plan (NESP) introduced a new trend in the field of legal studies. The existing system of providing admission into bachelor level in law only after completion of graduation in any discipline was terminated. A new stream in the field of legal studies was initiated so that the students completing secondary level education could be admitted into Proficiency Certificate Level. Only those completing Proficiency Certificate Level in law were admitted into the bachelor level. Thus the pattern of 10+2+3 was created in the field of legal studies requiring five year studies to complete graduation in law. Initially, the New Education System Plan (NESP) had adopted the semester testing and evaluation system. But later this system was not found as effective in enhancing the standard of education. The yearly evaluation system was initiated consequent to which examinations were given on a yearly basis. The yearly examinations system is continuing for years now.

Recognizing that legal studies cannot be all encompassing and comprehensive unless it is supplemented by the knowledge of disciplines as political science, economics, English, Nepali, history, the legal studies syllabi were designed accordingly. However, now it is time to ponder over and assess if the existing contents of social science disciplines are adequate enough for the purposes of legal studies. Other aspects that should also be appraised at the present context are the existing curricular structure in the legal studies and the need of starting post graduate studies in law.

There had been deliberations conducted and sharing of ideas done about pattern of the education among law teachers academics in the past too. The deliberations had veered around whether to provide legal education only after completion of graduation in any disciplines or after completion of secondary level education. The existing pattern of 10+2+3 or five year legal studies after secondary level education has posed a difficulty in relation to recognition by the foreign universities. The India universities are reluctant to award recognition to the law

degree obtained in Nepal under this pattern. Even there is a resentment from the Private Students on the requirement that they should appear in examination of the subjects which they had passed earlier while completing the graduation. The National Education Commission constituted during the last year (1991) has recommended for studies of law in Higher Secondary Level and envisaging provision for bachelor levels studies in law only after graduation in other social science disciplines. This has evoked intense deliberations in the legal circle about the pattern of legal education in the country. The new recommendation relating to 10+2 has questioned the relevance of Proficiency Certificate Level (PCL) conducted under the purview of the Tribhuvan University. If the legal education has to be developed as an academic as well as occupation-oriented discipline, its studies should initiated only after completion of graduation in other disciplines. This opens doors for the graduates in commerce, science, arts and humanities to pursue studies in law. The field of legal studies becomes more attractive and productive also. Consequently, the persons matured enough in age, academic qualification and experience will pursue the studies in law. Considering all these factors it would be better if the graduates alone are provided access to acquire education in law. In fact, unanimity among all concerned in this respect is required in this context. In order to produce basic level legal man power one year legal course can be imparted for those having already completed the Proficiency Certificate Level (PCL). This point has not been well taken into account in the report of the National Education Commission. If the consensus is reached on this point, the concerned sector can be approached for giving due consideration to it. As we are in the crossroads how should the legal education be modelled and structured needs to be decided with all fairness.

2. Curriculum

While considering about the improvement and quality of education it is necessary to give proper attention to such aspects as curriculum, teaching methodologies and evaluation and testing system. The curriculum should be clear in its objective. It should spell out the level of manpower which is being sought to be produced. Even the curriculum should take the needs of the legal manpower absorbing agencies into account. At this context it behoves on the agencies as the offices of Attorney General, courts of law, Law Ministry that employ and absorb the legal man power and the individual law practitioners to account for the deficiencies and inadequacies existing in the curriculum. The feedback received

from the legal manpower absorbing agencies can help in improvising the legal studies curriculum. A carpenter does not select his tool unless he knows about what he is going to make with it. Similarly, a mason cannot plan about the building materials unless he knows what he is going to make. Similarly in order to design an appropriate curriculum the objective must be clearly spelt out.

According to the prevailing practice the person having completed the Proficiency Certificate Level is provided licence of pleader by the court of law and is entitled to plead upto the appellate court. Since so much is expected from the legal manpower having completed the Proficiency Certificate Level the major principles of law are being taught in this level. Thus the expectations from the Proficiency Certificate Level (PLC) manpower seem high and exceedingly ambitious. Without considering the ability level of the students it is counter productive to feed them the complex level contents. If the Proficiency Certificate Level (PCL) is to be geared to produce the basic level legal manpower, there should be a significant restructuring in its curriculum.

Presently, the following major subjects have been incorporated in the Proficiency Certificate Level curriculum—

1. Principles of Law
2. Constitution and Law of General Administration
3. Criminal Law
4. Civil Law
 - a) Family Law
 - b) Law of Property
5. Law of Contract
6. Procedural Law & Law of Evidence
7. Moot Court

Of the above subjects procedural law, law of evidence, drafting & moot court should be given emphasis in the Proficiency Certificate Level (PCL) while other aspects of theoretical and jurisprudential enquiry can not be of much benefit in this level. Only general informations on these aspects shall be enough for Proficiency Certificate Level. The subject of court observation has not been included in the present syllabus because, instead of taking students to the court and allow them have an informed observation on the procedure, they were given some notes in the

class room on the substantive aspects of the court activities. If the objective of PCL curriculum is to produce manpower to carryout drafting and conveyancing related activities only and not pleading the curriculum should be designed accordingly and amendments should be made.

The Bachelor level studies in law has its objective to produce high level legal man power. Those having completed the bachelor level studies in law should be able to make an analytical study of law. An analytical and in depth knowledge on the *principles of law should be acquired. They should know about how to apply the principles of law and precedents in the subsequent cases and disputes.* The legal practice should be adopted as a discipline of professional and academic exercises. After having determined the objective of the bachelor level studies curriculum in Law the teaching learning tools and strategies should be designed accordingly. The Bachelor Level studies in law requires three year exercise. Besides the subjects related with law, other general subjects as Nepali, english, political science, economics, history have been included in the Bachelor level syllabus. If the Bachelor level studies in law is allowed access to the graduates in other disciplines the subjects of arts and humanities included in the current syllabus can be excluded.

In the current syllabus of the Bachelor level studies in law the following subject are offered as compulsory and optional subjects.

Compulsory Subjects

1. Legal Theory and Jurisprudence
2. Interpretation of Statutes
3. Constitutional Law
4. Public Lnternational Law
5. Moot court
6. Criminal Law
7. Procedural Law and Law of Evidence
8. International Institutions and Human Rights
9. Legal Research
10. Property Law
11. Hindu Jurisprudence & Nepalese Legal System
12. Internship
13. Major Legal Systems

Of the following subjects, two subjects need to be elected during each year of the three year academic session.

1. Family Law
2. Equity and Tort
3. Administrative Law
4. Press Law
5. Population Law
6. General Fiscal Law
7. Company and Corporation Law
8. Election Law
9. International Trade Law
10. Industrial Law
11. International Air and Space Law
12. Taxation
13. Banking and Negotiable Instrument
14. Law of the Sea and International Rivers
15. Private International Law
16. Law of contract
17. Criminology
18. Environmental Law

Thus, the subjects offer for the bachelor level studies have been broad based and conceptually stronger. But the only area which should be improved to create is quality teaching learning situation. In this respect, I would like to dwell briefly on Moot Court. Presently, the students are required to draft the relevant documents relating to civil and criminal litigation. This has been the only practical class offered at this level. However, the students generally tend to take recourse to copying and other unfair means in preparing the documents relevant to the litigations. Especially the private students tempt to resort to unfair means. Furthermore, the students generally accord priority to preparing documents to a single case at the exclusion of other. In order to discourage this practices the moot court should be made a part of the Drafting and pleading. The Drafting and pleading should cover 50 Marks and a written examination should be given to test the drafting and pleading skills of the students. Besides, imparting procedural skill and contents to those having completed the Bachelor level studies in law through clinical legal education is significant in its place.

As the level wise objectives are important, similarly the objectives and behavioural expectations of each unit in curriculum are equally necessary. This has not been done in the existing curriculum. Furthermore, a calendar of operation in relation to the credit hours for the study of a unit in curriculum need to be allocated and specified. This is useful for both the teachers and students. The teaching-learning activities should be so conducted as to meet the objectives specified in the curriculum.

In fact, students should know about the tests they need to undergo before hand. This can be done by preparing test items and questionnaires for the whole curriculum and providing them to the students. This can expose students exposed to the model of questions and be prepared for the testing and evaluation accordingly. Thus, the students can be less confused and be prepared to furnish their answers in an exact manner.

3. Instructional Strategy

Only the standard curriculum is not enough for quality education. Competent teachers and effective instructional strategy are equally important in this respect. Teaching itself is an art. A competent teacher with expertly knowledge on the contents of curriculum may not be a good teacher. So a new teacher needs short term training and orientations on the technique and methodology of teaching. Teachers are generally guided by the notion that imparting point by point elaborate informations of the subject matter to the students make them competent and successful. Teachers seem not concerned over how much of the informations imparted by them are grasped by the students. In fact, the teaching technique that is stimulating and evokes curiosities is rated as a better teaching technique and methodology.

Teaching learning situation is mainly divided into teacher centred situation and student centred situation. In the teacher centred situation, teacher is more active. It is the traditional teaching learning situation. In this situation, the teacher makes himself or herself prepared on the textual message to be imparted, and transmits to the students accordingly in an allotted time frame. In the teacher centred situation there may not be any concern about whether or not the messages

imparted to the students are grasped. The teacher centred situation is considered as faulty and defective.

In fact, teaching cannot be said to have occurred only through the passing of messages, textual informations on to students. In this context, the teacher-centred situation is fully defective. So the student centred teaching situation is gaining popularity. The participation of students is ensured in the student centred teaching strategy. The interaction between educator and student is very much warranted as a result of which teaching becomes more attractive and participatory. Thus, group discussions, practical class, team teaching, independent learning and tutorial class are very popular these days.

In the traditional teacher centred situation it is presupposed that all the learners are endowed with same level of talents and abilities. So the learners are assembled together and taught with the general methodology in a formal way. The ability differentiation among the students are not taken into consideration. But in the new student centred methodology the ability differentiation of the students are taken into account. The learners are imparted education according to their taste, ability and readiness to learn.

While poring over the need to raise the standard of teaching, it is time now to take steps regarding improvement on the traditional teacher-centred teaching technique. Now campus and other educational institutions should not be considered as a vantage point where teacher and student converge. It should rather be turned as a place where fruitful teaching-learning interaction takes place. Not only that the teachers should devote their full time to enforce the quality teaching, but they should be provided a separate facility and room where they engross in reading and academic pursuits. The Tribhuvan University should pay heed to this aspect and initiate measures in consolidating & strengthening the teaching-learning process.

Evaluation and Testing System

The substance of teaching lies not in communicating the textual messages but in actual learning and grasping by the students. Whether or not students were able to learn could be ascertained by the evaluation. If someone is taught how to ride a cycle the only test that he has acquired the skill to ride could be ascertained

through demonstration of his skill. This is the proper technique of evaluation. The evaluation strategy is directly related with the objective of the curriculum. Educationists emphasize that learning is a behaviour or grasping a certain set of behaviours. When a student is taught his/her behaviour should be changed according to the objective of the curriculum. The objective of the curriculum should be clearly spelt out in determining the mode of evaluation and testing. If the manpower could not be produced according to the objective of curriculum there should be some reconsideration done on the curricular or evaluation aspects.

Short objective type answer questions, long analytical answer are necessary for evaluation and testing in the legal education.

Reviewing Process

In order to make curriculum, teaching and evaluation technique fruitful and productive a constant review, and re-examination is necessary. In this context benefit can be derived from the out going students through sharing of their experiences so as to pinpoint the drawback's. These drawback's could be ameliorated to make the legal education curriculum more useful and skill based.

Some options

On the basis of the preceding discussions on various aspects of the legal education, the following options should be considered —

1. The bachelor level studies in law should be offered to those who are graduates in other disciplines.
2. The PCL in law should be offered to those who have already completed PLC level in other Subjects.
3. Endeavours should be made to pool intellectual and material resources for post-graduate studies in law.
4. In Moot court the 50 Marks paper for drafting and pleading should be introduced and examination should be given thereof.

New teachers should be inducted into teaching profession only after short term training and orientations.

The infrastructural base in the Campuses should be strengthened and academic facilities for teachers should be augmented.

The curricular objective should be ascertained and the mode of testing and evaluation should be communicated to students in advance for exercises.

A opinion survey of the outgoing students and deriving their suggestions for improving the infrastructure, curricular and intellectual aspects of the legal education should be conducted.

The Existing Curricular Structure of the Legal Education in Nepal : An Analysis

- Rajit Bhakta Pradhananga*
- Kishor Silwal**

Prologue

Law is a means to regulate human activities. Discipline is the other name of law. Different activities are performed by the community. But these activities should be consistent to the legal provisions. Therefore, law does not allow anybody to claim that they are ignorant of the legal provisions. The basis of this conception lies upon the very old legal maxim "ignorance of law has no excuse". Consequently, each and every human being is supposed to know the basics of law. A person who commits an act that is contrary to the legal provision is liable to face the consequences. In other words, such a person shall be penalised. The letters of the legal provisions should be simple and understandable. And the legal materials should be cheaply available. Necessity to have knowledge on law requires that the legal materials be simple and understandable. A real means to spreading the knowledge of law is the provision of legal education imparted in different institutions. Moreover, the significance of legal education is higher in rule of law perspective. The purpose of legal education is to impart knowledge on legal provisions. In this context, certain factors are to be considered seriously, such as, to whom legal education should be imparted; how the legal education should be imparted; in what manner legal education should be imparted; for what interest legal education should be imparted; how many subjects should be taught, what are the fields open for the law degree holders and how the legal education could contribute to develop the society and nation. All these questions are inevitably raised in the context of legal education. The curriculum for legal education is considered the real foundation of the national legal education policy.

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The purpose of legal education should be analysed thoroughly prior to discussions curriculum on legal education. Indian jurist, Justice Gajendragadker has rightly observed that the purpose of the legal education is to enable the learners to find out the white pearl in the black letters of law, rather than to engross in the intricacies of legal profession. It makes us clear that objective of the legal education is not to enable learners to earn money for livelihood, rather to make them competent to think for the entire development of the society. This fact can be supplemented by quoting American jurist Roscoe Pound, as he says "law is a social engineering."

The aim of the legal education is not only to produce legal professionals, but to produce competent legal professionals and to produce impartial and qualified judges. Therefore, the legal education implicitly contributes for favour of independent judiciary. In order to achieve these aims, the curriculum for legal education should be given due consideration. As such the curriculum should be properly formulated and correctly implemented.

The curriculum is the basic foundation of the legal system. Thus, the curriculum should be formulated carefully. Also the curriculum should be formulated in the natural perspectives. In case, the curriculum is averse to the natural perspective it shall lead the education system nowhere and will not be able for achieving definite objectives. The curriculum for the legal education also should therefore be formulated by undertaking an examination of the issues involved. If the curriculum for legal education is not formulated properly, such legal education system will not be able to produce competent judge and qualified lawyer. Consequently, competent judge and qualified lawyer shall not be available in sufficient numbers. Ultimately, this may lead to a defunct and non-performing judiciary. The defunct judiciary can not help in strengthening democracy.

When we talk of curriculum of legal education of Nepal, we should go back to the formative stage of legal education. It can be said that the legal education was formally initiated establishing *Sresta Pathasala* on 1962 B.S. This School had started teaching three subjects, such as math, laws, legal drafting and writing. The students were duly examined also. Later on, one more subject was included in it. The certificates were also awarded to the students by the office controller of examinations. The objectives of this School was to produce clerk for

the court and to produce lower level manpower. The curriculum of this School was derived mostly from the then Civil Code. This Civil Code was in existence till the New Civil Code was enacted in 2020 B. S. During the Rana regime, the national development aim was not clear and the development in the education sector could not be achieved.

Since 2011 B. S., legal education has been imparted in the country in the modern sense of the term. This fact can be supplemented by the fact that the Law College was established, for the first time, in 2011 B. S. This College was affiliated with the Patna University as Nepal had no its own University. This College used to award the degree of LL. B. in the name of Patan University. Obviously, the curriculum of this College was completely in accord with the curriculum of the Law Faculty of Patna University. The curriculum of this College had not given any room to the Nepalese laws. By the establishment of the Tribhuvan University on 2016 B. S., this College was affiliated to this University. As such, the curriculum of this College was modified and included certain Nepalese laws in its curriculum. In fact, this event could be considered as the initiation of legal education in Nepal. The reason is that the School established in the Rana regime was to produce only lower level law professionals, and the Law College imparted education only on Indian Laws, for the period of 2011 B. S. to 2016 B. S. Thus, the year 2016 B. S. can be considered a landmark in the evolution of legal education in Nepal.

Though the Tribhuvan University had started to impart LL. B. level of legal education since 2016 B. S. incorporating Nepalese laws in its curriculum, very few people could take benefit of this education policy in the national context. Besides, this education policy was provided advantage only to the developed area as the Nepal Law College was established in Kathmandu and Morang Law College in Biratnagar. The LL. B. degree could not become qualitative enough. The reason was that the LL. B degree helped the government employees to receive extra marks. Such policy encouraged only to acquire LL. B. degree rather than to enhance knowledge on legal education.

In Nepal, New Education Policy was introduced in 2030 B. S. with a view to restructure the framework of education. It had its bit of impact in the field of legal education too. One of the objectives of the New Education Policy was to produce qualified legal manpower. With this objective the Nepal Law College

was named Nepal Law Campus and incorporated under Institute of Law under purview of Tribhuvan University Act. The five year law course, Certificate level for two years and Bachelor level for three years, was introduced. The five year law course was made open for those who had obtained the secondary level education.

The Proficiency Certificate level in law was considered as the basic qualification to get admission in the Bachelor Level. An academic year was divided into two semester system. This legal education system was introduced, under the New Education Policy, in the four cities of Nepal namely, Kathmandu, Pokhara, Nepalgunj and Rajbiraj. This education policy lost its steam gradually. However, the curriculum of present legal education system has had reflection of the semester system introduced by the New Education System Plan. With the implementation of the yearly legal education system, the curriculum of the two semester was simply merged for one year course. No new curriculum was formulated.

The academic calendar of the Tribhuvan University had not been implemented systematically from the very beginning of the introduction of New Education Policy to till the demise of the this policy. Eventually, the dawn of democracy also could not see the operation of the systematic academic calendar. This type of irregularities in the academic calendar has its affect corresponding in the legal education. Consequently, students joined the legal education course only for acquiring the certificates. Nevertheless, the few people are involved to standardise and to make legal education to consistent the national interest. One of the notable academic exercise on the legal education was the National Seminar on Legal Education of Nepal, held on Asar 12, 13, & 14 2034 B. S. organised by the Institute of Law. The constructive suggestions and recommendations adopted by this seminar were never implemented by the concerned agencies. As a result, the suggestions and recommendations were turned into a scrap of paper. Thus, this practice of not implementing the recommendations, and suggestions has not stopped even after the introduction of democracy.

The People's Movement of 2046 B. S. has brought an effective change in the political system and had its impact on socio-economic aspect also. With the promulgation of the Present Constitution, i.e. The Constitution of the Kingdom of

Nepal, 2047 B. S., the prartyless Panchayat system was uprooted and the fully democratic political system has been implanted. And, also the true rule of law has been established. In the context of new democratic political order reforms in the legal education has become inevitable in order to produce the qualified and appropriate manpower to the new Nepal. To materialies this objective, review on curriculum for the legal education in the perspective of changed political scenario has become a necessary. The Faculty of Law took this fact seriously and organised a workshop in collaboration of the Curriculum Development Centre, Tribhuvan University, with an intention to reform in Curriculum for Legal Education, 2048 B. S. The objectives of this workshop was to modify the existing curriculum and to formulate new curriculum in the context of the changed democratic political system. The workshop was held on Asar 2 to 8, 2048. Unfortunately, this workshop could not be that comprehense and broad based. However, it seems that certain important and useful suggestions, relating to curriculum, were tabled in the workshop. Among the tabled suggestions, some of them are implemented. As such, the curriculum for legal education has modified and amended. The modified and amended curriculum has been brought into effect from 2048 B. S.

A report was handedover to the Prime Minister on Jestha 14, 2048 by the National Education Commission, which was constituted at the time of Interim Period, 2046 to 2047. The report of the National Education Commission has taken the poor state of legal education in Nepal into account. This has led to think seriously about reforming legal education in Nepal. Now the time has come to adopt strategic and foreward looking policies for legal education, and implement them with all earnestness.

The National Education Commission was constituted after the restoration of democracy by the Interim Government. The commission was assigned the task to formulate clear cut education policy in the context of new political system. The Commission was to give due respect to the values guaranteed by the Constitution of the Kingdom of Nepal, 2047 B. S., such as, human rights, democratic values, social justice, equal opportunity to the education and so on. Equal opportunity to the education comes along with the human rights, democratic values and social justice. The necessity of legal education can not be ignored when we talk of equal opportunity to the education. The legal education in Nepal can not be implemented in the old fashioned manner. The legal education should be

implemented so as to make it at par with the international standard. Thus, the curriculum for legal education should be modified as per international standard. The legal education should be capable enough to produce qualified manpower alone. Thus, the existing legal education require thorough change and reform.

Existing Status of Legal Education Curriculum

Nepal Law Campus, Kathmandu, had started legal education programme under the New Education Policy with 60 students in 2030 B. S. At present, 13 Law Campuses have been functioning under the Tribhuvan University and 23 Private Law Campuses are affiliated to the Tribhuvan University. In total 36 Campuses are imparting legal education to the thousand of students. Seven University Campuses and two Private Law Campuses offer Bachelor Level of education in law. All these 9 Campuses are busy in their Intermediate and Bachelor level programme. It will be in order to discuss the curriculum for legal education in level wise.

Bachelor Level

The Bachelor level is fixed for three years. The syllabi are arranged in the yearly manner. For the first and second year of Bachelor level, some of the social studies papers also included alongwith the law subjects. For the third year, only law subjects are provided. This working paper is to discuss about only law subjects. The syllabi of the Bachelor level is divided into two parts namely compulsory area and optional area.

Compulsory Area

| First Year | | F. M. | HPW |
|------------|------------------------------------|-------|-----|
| 1. | Legal Theory | 100 | 4 |
| 2. | Constitutional Law | 100 | 4 |
| 3. | Procedural Law and Law of Evidence | 100 | 4 |
| 4. | Interpretation of Statutes | 50 | 2 |
| 5. | Legal Research and Methodology | 50 | 2 |

Second Year

| | | | |
|----|--------------------------|-----|---|
| 1. | Criminal Law | 100 | 3 |
| 2. | Public International Law | 100 | 4 |
| 3. | Moot Court | 50 | 2 |

Third Year

| | | | |
|----|--|-----|---|
| 1. | International Institution and Human Rights | 100 | 4 |
| 2. | Major Legal System | 100 | 4 |
| 3. | Property Law | 100 | 4 |
| 4. | Hindu Jurisprudence and Nepalese Legal System | 100 | 4 |
| 5. | Internship | 50 | 2 |

Optional Area

Two subjects are to be elected from among the following papers every year. The full marks of such papers has been fixed for 50. And the HPW is 2.

First Year

1. Family Law
2. Press Law
3. Equity and Torts
4. Administrative Law
5. Population Law
6. Fiscal Law
7. Company and Corporation Law

Second Year

1. Labour Law
2. Election Law
3. International Air and Space Law
4. International Trade Law

5. Environmental Law
6. Taxation Law

Third Year

1. Law of the Sea and International Rivers
2. Law of Banking and Negotiable Instruments.
3. Private International Law
4. Criminology
5. Law of Contract.

The students of Bachelor level are required to study law subjects 20 HPW in the First year, 13 HPW in the Second year and 20 HPW in the Third year. The Third year students are also required to submit a research oriented internship paper under a Supervisor.

Proficiency Certificate Level

| Subjects | FM | HPW |
|---|-----|-----|
| First Year | | |
| 1. Criminal Law | 100 | 3 |
| 2. Civil Law | 100 | 4 |
| 3. Constitution and Law of Administration | 100 | 4 |
| 4. Principles of Law | 50 | 2 |
| Second Year | | |
| 1. Procedural Law and Law of Evidence | 100 | 5 |
| 2. Law of Contract | 50 | 2 |
| 3. Moot Court | 50 | 2 |

The basic requirement to get admission in the Proficiency Certificate Level is Secondary Level Education (S.L.C). These S.L.C background students are required to study law papers for 350 FM out of 650 FM and will be attended 13 HPW in the First year. The Second year students are required to study law

subjects for 200 FM out of 450 and will be attended 9 HPW. The Proficiency Certificate Level studies do not have any optional papers.

Defects in the Existing Curriculum

The reform made in the curriculum of the Proficiency Certificate level and Bachelor level in 2048 B. S. are not adequate and satisfactory. Nevertheless, the workshop to reform curriculum was jointly organised by the Faculty of Law and Curriculum Development Centre, Tribhuvan University, on Asar 2 to 8, 2048, B. S. The workshop suggested to incorporate "Legal Research and Methodology" as the compulsory paper and "Environmental Law" as the optional paper for Bachelor level. In the both level Proficiency Certificate and Bachelor, certain subjects have been struck off. Such as "Seminar" paper has been struck off from the curriculum of Bachelor level and "Court observation" paper has been struck off from the curriculum of Proficiency Certificate level. "Law of Contract" has been included in the curriculum of Proficiency Certificate. Besides these changes, the whole curriculum has been left untouched. It does not seem that the constructive reform has been made in the curriculum for the legal education. This fact can be supplemented by the report of the National Education Commission, 2049 B. S. Following sentences are being quoted here from pages 58 of the Report, which justifies that the curriculum of the legal education are not being updated.

"The syllabi are too old. It seems that the attempt has been made to reform the curriculum. But this attempt does not hold any basis. It seems that the mere change of subjects were done in the name of reforming curriculum."

This para makes us to understand that the existing curriculum for the legal education is not properly organised and revised. For example, a paper named "Law of Interpretation" can be taken. This paper was merged with "Evidence Law" for sometime and for some period it was merged with Legal Theory." At present this subject is kept as an independent one. Same condition applied to the Law of Evidence and Criminal Law and also to the Procedural Law and Contract Law.

The reform of curriculum of the legal education has never been taken seriously and also never implemented seriously and properly. One of the appropriate examples for this fact is about the HPW. HPW signifies that the

certain hours to be spent in a week. For example, "Legal Research and Methodology" should be taught two hours a week, theoretically. But in practice the system of HPW has been neglected grossly. HPW has been translated for 50 minutes instead of one hour for the day programme and 40 minutes for Morning and Night Programme. Both the Programme, Day and Morning / Night Programme, have been running for certain academic year. It is not that the Morning / Night Programme runs for longer period than the Day Programme. The students bound for the Morning / Night Programme also require to appear the same yearly examination at which the students of day programme appear. The students bound for Day Programme will not get any benefit (extra degree) in comparison to the Morning / Night Programme as they have spent more time. The concerned authorities could not give proper justification for this practice. Simply, they said that the students bound for Day Programme do have more time than the students bound for Morning / Night Programme.

The authorities of the university are not bothered about the number of students to be kept optimally in a classroom for legal education. They have been busy in arranging section of 125 to 150 students in the name of student pressure for admission and lack of physical facilities. They are not interested to give satisfactory reply to the students seeking admission beyond capacity. Moreover, they do not have time to think on this issue. Teachers are compelled to deliver their lectures at the crowd of 150 students. Teachers do not have time to ascertain that how many of the students could follow his lectures. Rather, some of the teachers are busy in "dictation business" than to teach the students in real sense. The university administration is only concerned with the functioning of class. They do not go into details that how the classes are running. This is a bitter fact in the implementation of the existing curriculum.

The students, enrolled in the Law Campuses, have their aims to be a lawyer. They are just eager to get license of lawyer. They are impatient to get license of lawyer immediately after the completion of the course. They knock the door of the Supreme Court for license immediately after getting the law degree from the University. The Supreme Court of Nepal issues license to all of them who hold law degree certificate. A person who has completed his five years in the Law School is not necessary to know the professional ethics, rather he may not have time to learn the professional ethics in the Law School. Later on, these persons might be first, to raise voice against the new comer to the professions that

the newcomer do not respect the professional ethics. The existing curriculum for legal education is creating such type of absurdities. Senior Advocate Mr. Kusum Shrestha aptly observed, fifteen years back, that the separate syllabus regarding professional ethics should be formulated for the law students. But, this suggestion was not given due respect by the education policy makers of the Panchayat regime. Such a norm should be incorporated in the democratic education system in order to standardise the legal education.

Another absurdity in the curriculum for the legal education is the "duplication" of the subjects. Certain subjects are being taught repeatedly in the Proficiency Certificate level and also in the Bachelor Level. Such as, Law of Evidence Law, Law of Contract, Constitutional Law, Procedural Law and Criminal Law and being taught to the students of Proficiency Certificate and also to the students of Bachelor Level. Most of the content in syllabi are simply duplication of each other.

The Subject Committee should be cautions enough not to make the duplication of syllabus. Due to the duplication of subjects, most of the campuses are not able to identify the prescribed syllabus for the prescribed level. The subject, which should be taught extensively for the Bachelor level is not done. The campuses could not ascertain the load of subject to the Proficiency Certificate and to the Bachelor. The subjects that should be taught to the students at Proficiency Certificate is level taught at the Bachelor level and the vice versa.

Another absurdity in the curriculum for legal education is "insufficiency of HPW". It seems that the HPW is not fixed on a scientific basis. For example, HPW fixed for one of the subjects prescribed for the Proficiency Certificate level, i.e. Principles of law is not sufficient. At present 2 HPW is prescribed for that syllabus. All of the participants, teaching "Principles of Law" have tabled their experience that the 2 PHW is not sufficient. The workshop suggested that the HPW for the "Principle of Law" should be four instead of two. But this suggestion is not given due consideration and the consequence is that the teachers are busy in teaching the "Principles of Law".

The teaching methodology is not given due consideration in regard to curriculum for legal education. Generally, three types of methods of teaching have been accepted in education system. Among these method, appropriate teaching

method should be prescribed. The workshop on curriculum, held last year, suggested case study method. This suggestion has been implemented by incorporating leading cases decided by the Supreme Court of Nepal, in the respective syllabus. Appropriate agency should be assigned the task to evaluate the teaching methods adopted in the legal education. The leading cases, prescribed in the syllabus is rarely available even in central campus of Nepal, i.e. Nepal Law Campus. Obviously, it is difficult even to think that the campus located in eastern part of Nepal, "Ilam" and western part of Nepal "Baitadi" have adopted the case study method.

A Faculty Board and Six Subject Committees are constituted under the Central Department of Law to take necessary measures in regard to curriculum. These Subjects Committees are as follows:

- (a) Criminal law subject committee
- (b) Constitutional law subject committee
- (c) Family law and commercial law subject committee
- (d) Jurisprudence subject committee
- (e) International law subject committee
- (f) Procedural law subject committee

All these subjects falls under the periphery of the subject committees, mentioned above. The subject committees are obliged to look upon the content of syllabus of the law subjects of their respective jurisdiction and also oblige to forward the suggestion, if any, to the Faculty Board. Unfortunately, the Faculty Board and subject committees do not interact. In our context the workshop on curriculum, held last year, suggested to incorporate the "Legal Research and Methodology" in the syllabus of the Bachelor first year course. Accordingly, the subject was incorporated in the syllabus of said course without reference to Faculty Board. As per the bye-laws, no subjects should be taught and examined them until the subject has been approved by the Faculty Board. But this legal provision was ignored in the legal education system. "Legal Research and Methodology" had been taught to the students of Bachelor Level First year and also examined them even though the subject was not approved by the Faculty Board. This process of teaching and examination continued for one year and Faculty Board approved the subject with modification. The Faculty Board also needs strengthening and activated.

Some Options

The absurdities found in the curriculum for legal education are noted in this theme paper briefly. Following measures need to be adopted in effectively reforming the legal education in Nepal.

1. The curriculum for the legal education should be formulated in a democratic process. The curriculum should be formulated by a body in which clientele agencies, such as Bar Association, Ministry of Law and Justice, Supreme Court, Office of Attorney General have participated.
2. As the National Education Commission has emphasised in its report that the quality of the Nepalese education should be made at par with the SAARC members. Proper coordination and relations among the Universities of the SAARC members should be established to formulate the curriculum for legal education. .
3. Optional papers, offered to the students of Bachelor level, are not designed on any scientific basis. No students of Bachelor level could do spealization in a particular area, e.g. criminal law, civil law, commercial law. The optional papers should be designed in such a way that the students having degree of B. L. could obtain spealized study in a particular area.
4. The workshops on curriculum, held last year, and on 2034 B. S., have unanimously adopted that the case study teaching method should be adopted and the Faculty of Law should extend its assistance for the effective case study teaching method by making timely evaluation.
5. The number of students in a class should be limited upto 40 only. This suggestion was not implemented, even though the workshop on curriculum held last year, has unanimously recommended about it. Existing pattern of classroom, containing 125 to 150 students, should be abolished immediately, otherwise the utility of legal education may diminish.

6. The system of lesson plan should be introduced and made compulsory. This will help to bring uniformity among all the Law Campuses. Teacher's Manual System also should be developed.
7. The syllabus containing lawyer's, professional ethics should be formulated and be incorporated in the curriculum for legal education.
8. Report, submitted by the National Education Commission, 2049, emphasised in its page 54 that the curriculum for legal education is not upto the standard in the context of theory, profession and practice. On the other hand, the Report recommended for the abolition of Proficiency Certificate level and introduction of Master's level. His Majesty's Government is taking initiatives to implement the above mentioned recommendations without even doing academic exercise. The persons deeply related with the legal education also do not display their interest in this regard. Prior to the implementation of the Report of National Education Commission, 2049, an academic exercise on legal education should be done in an intensive manner at national level.
9. Teachers are important component for the implementation of the curriculum in a education system. For a qualitative education both, good curriculum and qualified teacher are desirable. Unfortunately, refresher course and opportunity for career development and training are not implemented effectively. The part time teachers are assigned with important subject, in central campus of Nepal, and they are in large number. Each subject committee should organise a workshop on its area in every year. It will help to identify the problems and find solution.
10. Report of the National Education Commission, 2049 clarified in its page 63 that investment to the legal education is comparatively least showing figures: Education - 2983, Humanities - 1690, Management - 1128 and Law, - 1088. On the one hand, investment to the legal education is least and on the other hand, the good students are not attracted to the legal education: For the establishment of rule of law, investment should be made high as well as admission also should be made limited either on merit basis or on entrance examination basis.

11. Clinical Legal Education program have been launched at the financial support of The Asia Foundation in the Nepal Law Campus, Kathmandu. This program helped the students in making professionally creative and capable. The students have also shown keen interest in this program. Thus, this program should be made one of the compulsory papers for the students of Third year students, in lieu of internship.

From the analysis, made hereinbefore, leads to conclusion that the absurdities relating to the legal education should be taken seriously. The very limited number of law degree holders could enter into the legal practice. This factor may play negative role in respect to the stability of democracy in the country like ours whose democracy is in infancy. Thus existing curriculum for legal education should be analysed extensively and be made consistent with the present societal demand.

Reference Materials

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An Exploration into the Prospective Model of Legal Education System in Nepal

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Background

It is difficult to exactly determine the period when legal education was introduced in Nepal. It will be improper to be particular on it since the legal education starts with the evolution of law, and law as a discipline grows and develops with the evolution of society.

Though, the history of legal education in Nepal is long, yet it was mainly influenced by the holy scriptures and traditions. Only certain classes had the privilege of studying religious scripture which also included prescriptions of legal nature therefore the separate study of law was not felt necessary. The study of holy scripture was considered study of all the subject.

Some provisions of law and legal enactments were made by kings like Ram Shah and Jaysthiti Malla, besides holy scripture, prior to the unification of Nepal. The new rules were framed as to address the needs of the society. Such rules were framed in consultation with the persons learned in religious scripture. There can not be two opinions on the important role of the persons learned in religious scriptures in ancient Nepal, whether in interpretation of religious literature or to enforce it or in the framing of new laws since all the Kings consulted them in the interpretation and framing of the laws.

The formal legal education could not commence, even after the enforcement of Muliki Ain in B. S. 1910. Though the new law was framed, yet its interpretation and enforcement remained unchanged.

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It can not therefore be said exactly about when the legal education started in Nepal. Two events are found highly emphasized in the text of curriculum published by the Faculty of Law, Tribhuvan University since the implementation of New Education System Plan in the country in B. S. 2029. And they are —

- (a) The provision of studying the general subject of law started with the opening of *Sresta Pathasala* in B. S. 1970 and
- (b) The modern legal education in Nepal has started with the opening of private law college in B. S. 2011.¹

But some educationists have expressed their disagreement in their first statement. An unpublished book states that the legal education in Nepal has started in 1962 B. S. This article claims that the *Sresta Pathasala* was established in B. S. 1962 and evidence has been found that those people who passed from this school were allotted certificate in 1964 B. S. Be it as it may, it is indisputable that the *Sresta Pathasala* was established to produce the clerks, whether it was established in B. S. 1962 or in 1970. The law college established in Nepal, for the first time, was affiliated to Patna University. Hence no Nepalese law was included in its curriculum. Therefore, the *Sresta Pathasala* too, remained as it is and on the other hand there was an optional subject of law offered in Secondary Level education. Consequently the *Sresta Pathasala* established with the objective of producing clerks and scribes was dissolved in 2021 B. S.

It is found that the Nepal law college established in 2011 B. S. has conducted its teaching and learning strategies up till 2016 B. S. in accordance with the curriculum of Patna University. Subsequently, Patna university had amended the curriculum and introduced Muluki Ain as optional subject whereas, Tribhuvan University developed its own curriculum and severed its relation with Patna University.

¹ Introduction Book - Tribhuvan University Faculty of Law, 2033, page 1-2.

New education Plan

New Education Plan was introduced in Nepal during the early seventies. This plan not only affected the legal education but effected the whole education system of the country. The new education plan prepared and implemented in 2028 B. S. was not bad in itself. This aimed at the production of manpower, according to the requirement of the country and mainly it aimed at doing away with the education system which was drawn up by Lord Macaulay and implemented in India and also copied in Nepal. And it attempted at producing manpower required for the country and maintaining standard of education.

The new education plan introduced semester system in all faculties of higher education inclusive of law. This system proved a failure within a decade though it was supposed to be an appropriate education system for quality legal education. However, system produced manpower required for the country but could not maintain the quality. In brief, the "new education plan" produced quantitative education rather than qualitative one.

Main Reasons for the Failure of New Education Plan

As discussed earlier, the New Education Plan was not bad in itself. The infrastructure was not studied prior to the implementation of this Plan and it was suddenly imposed, consequently the project itself failed. The system failed due to the following reasons.

- (a) Standard of school :- All the primary, lower secondary and secondary schools established in Nepal, do not have the same standard. Particularly, when the students pass out from the secondary school, they enter the campus. Since the secondary schools scattered all over the country do not have the same standard, it is not possible to impart the education, considering all the students entering the campuses, of the same standard. Science, engineering and medicine campuses have restricted admissions to the students who are found below standard whereas, commerce, law, arts and education are pressured to admit the students who are denied admission in Science, Engineering and medicine campuses. Hence the standard in the faculties of law, arts, commerce and education has come down. Consequently quality manpower, could not be produced as desired.

- (b) Pressure of the students :- The "new education plan" has fixed the minimum number of students (forty students in each class). But the lack of employment opportunities has made more than 90% of the students, who have passed their S. L. C. to apply for higher education. And the practice of admitting all the students has brought the number of students threefold or 120 in each class and this proved the very factor for the failure of the plan.
- (c) Lack of physical infrastructure :- Tribhuvan University of that time was not physically well off, and it is not, even today. Lack of class rooms and library could not help to reap the desired result.
- (d) Lack of competent teachers :- Competent teachers were needed to help achieve the results desired by new educational plan. But in spite of the new plan untrained teachers were employed as a result of which no new achievements were their to its credit result of the new project.

Current system

Though the new education plan desired to produce competent and standard manpower yet it produced larger quantity of rather than the qualitative one. It thus resulted in the failure of the education plan.

New educational plan has failed but we have not started any new educational scheme in place of it. Currently, educational system in Nepal, seems aimless. Nobody has any idea as to in which way we are working to produce what sort of manpower in which faculty. We have declared new educational plan as unsuccessful but no new innovative scheme is designed.

Current education system is operated is a mixed form of new education system and the education system devised by the Britishers for India, almost 150 to 200 years back. The current curriculum of the legal education also affirms that it has partially borrowed from the theoretical knowledge system prepared by the British educationist for India and partly from the practical knowledge system started by new education plan.

There were fundamental changes in the legal education system, with the introduction of new education plan. Subsequently, matriculates were admitted into the certificate level of law and those who completed the certificate course of law were admitted into the graduate level of law. and the traditional System (prior to the implementation of new educational plan) of admitting graduate of any discipline into the law graduate course was partially cancelled and such people were allowed to continue their study as private student.

Attempt was made to include some major subjects in the curriculum prepared in accordance with the policy adopted by the new education plan in the subject of law. Accordingly Moot Court and court observation were included besides the theoretical study of the main subjects of law apart from the subjects of humanities and language in certificate level. Simultaneously, it was agreed in policy level that only the exceptional student from the certificate level of law will be admitted into the graduate courses in law. But, due to the large number of students, the moot court remained confined to the formalities and forcibly the court observation was also taught in the class room without the observation of the court. As a result the objective of education by imparting theoretical and practical knowledge could not be fulfilled. And secondly, the lack of employment opportunities did not permit for an end the study of law in certificate level and almost all the students passing certificate level, started getting admission in graduate level. Therefore, the Bachelor level classes were also overcrowded like the certificate level. And due to the lack of physical infrastructure, the Nepal law campus located at in the capital, is compelled to admit upto 150 students in one class.

The Bachelor level is divided into the three parts of one year each in which, there is theoretical study of the main subject of law in addition to language and subjects of law in addition to language and subject of humanities. And there are practical subjects like Moot Court in first year, Seminar in second year and Internship in third year, and recently, some changes have been brought about whereby Legal Research Methods has been introduced in the first year in lieu of Seminar, Moot Court in the second year and internship in the third year and the study of some court cases have been made mandatory in the context of changed constitution and law. It would not be exaggeration, if it is said that except these ordinary changes, current legal education is based on the new education plan.

A programme known as clinical legal education is being run in the bachelor level, for the last two years under the financial assistance of foreign donor agency. Since this programme is in the initial stage it can not be said that how much effective will it be but even then it has an encouraging start. Since there is a separate working paper in this subject, this paper seeks not to dwell on it in details.

In totality, the system of legal education is not satisfactory. The standard of legal education could not be enhanced to the desired level due to the lack of physical infrastructure, building, furniture, library and unrestricted admission policy in the Faculty of Law. No body has seriously pondered over as to how the standard of legal education can be raised and this malaise also exists in other facilities of education as well.

Legal Education in Future Perspectives

There is no dispute that the state has to carry out its activities in every field in a planned manner. And on the top of that in a developing country like Nepal (where there are plenty of activities to be done and resources are limited) it is more important to carry out the activities in a planned way. It is for long time that we have started the aforesaid planned development activities in Nepal and currently we are running in the eight five year plan. It can not be said that the planners have not thought on the legal education and education system of the country but no concrete policy and specific ideas after could be implemented in this subject.

The government has invested in the field of education as she has done in transport, communication and agriculture, but there is no return from education like from other fields. Certain amount of investment in the field of transport creates a road of certain length. Similarly it can not be said that there can be return in education on investment of same amount. For example, there is 5 per cent result in secondary level and higher level education and some year there is 50 per cent result but the government investment is not less in the year when there is 5 p c or 25 p c result. Our educational system is in a state of dilemma, since there is an uncertain return on certain investment.

While considering the higher education of law, the system which we have currently adopted is purposeless, there is no research or investigation on what is the requirement of legal manpower in the country. And neither we have conducted study on what level of manpower is required. Whatever campuses are established with the given infrastructure and whoever applies for admission in these campuses, we admit them all and instruct them to sit in the class, whether they are accommodated or not. And as a matter of formality, we hold their examination after conducting some classes and award certificate to the successful ones then the government even does not care what this passed out students did afterwards.

Though we have commenced our work on the policy level foundation created by new education plan on legal subject as outlined in the above discussion yet we have to go back to square one, as we have to rely on the legal education system which existed prior to new education plan. Therefore, the model for the higher education in law is proposed as following.

1. The current system should be further improved and post graduate programme in legal education should be added in it.

or,

2. The current system of certificate level and Bachelor level should be done away with and the Bachelors from other faculties should be treated as qualified for admission into the three year Bachelor in law course for which curriculum should be prepared, where theoretical knowledge should be imparted for the first two years and practical knowledge in the third year. And arrangement should be made for inducting such students in legal profession, legal teaching, and there should also be arrangement for masters level of education in law. If there is a shortage of lower level legal manpower, then the students who have passed matriculation, should be taught one optional subject of law in intermediate level, and certificate in law should be awarded to such students. And the qualification for the lower level employee in the court should be fixed as I. A. (Law) and such manpower should get a chance to serve in the equal hierarchy of administrative services as well.

No other model, except these two, appears appropriate at this point of time. The writers opine that it is appropriate to recommend the second model. Almost all the countries of the world have the system of studying law, only after graduating in any other discipline. And the people who have passed B. L. are qualified to undertake the LL. M. studies. Secondly, the proposed legislation of the Bar Council Act, recently prepared by Nepal Bar Association does not have the provision of agent and pleader as envisaged by the current legal practitioner's Act. As such it is not appropriate to retain the certificate level of the law. Thirdly, the National education commission has also recommended for the abolition of certificate level of law, hence it is inappropriate to retain the certificate level in law. Therefore it should be removed. And only those students, who have had their Bachelor degree in any other discipline, should be admitted in the Bachelor in law course. The fourth basis for the removal of certificate level is that this is the product of New Education project, which has proved a failure since last one decade. Therefore there is no justification in retaining its product i.e. certificate level in law.

It is proposed that this seminar should recommend the following on the basis of above discussions.

- (a) The current certificate level in law should be abolished and one optional subject of law should be included in I. A. Level. And people passing their I. A. with the optional subject of law, should be conferred the certificate of I. A. (law), who should be qualified to study B. A. (Political Science). Such people should get the entry in the judicial and administrative services of the government.
- (b) Provision should be made that the people who have passed B. A. or equivalent degree should be qualified for 3 year full time study of law.
- (c) Provision should be made that only those people who have passed, B. L. should be qualified for the study of LL.M.

The Faculty of Law of the Tribhuvan University has proposed curriculum for the course of LL. M. Whole of the curriculum is not given here but the main subjects which are likely to be taught are as following.

1. **Compulsory Courses**
 - (a) Comparative Jurisprudence
 - (b) Legal Research

2. **Specialized Areas**

Any Two of the following

 - (a) International Law - I
 - (b) Constitutional Law - I
 - (c) Commercial Law - I

Second Year - Course Work

1. **Compulsory Courses**
 - (a) Legal System of Nepal
 - (b) Thesis Writing
2. **Specialized Areas**

Any Two of the following

 - (a) International Law - II
 - (b) Constitutional Law - II
 - (c) Commercial Law - III

This seminar is also expected to recommend, after thorough discussions on the above subjects prepared for the course of study of LL. M., about what further additions should be made in this respect.

Clinical Legal Education : An Assessment and Perspectives

Satish Krishna Kharel*

Prologue

The scholars of the political science have started to undertake study state through system approach. The state itself is a system, under the system approach, there are different sub-systems and under the sub-systems, there are interdependent branch systems and units. The subsystems of legislation, judicial adjudication fall under the main legal system of the state.¹ Even the legal education system of any country is intimately connected to judicial system. While undertaking the study of the legal system of any country, the legal education system of that country should be studied inseparably in proper perspectives.²

Nepal has geographical and cultural heterogeneity. The principles formulated in most of the countries of the world, may not apply in the Nepalese context. Therefore, it is very difficult to determine the place of legal education in Nepal applying the yardsticks evolved elsewhere. Judiciary, bar and legal education institutes are the parts of same legal system. Our country is in such a context that the institute involved in the teaching and study of the law — the only university of the country has no any statistics about the country's manpower requirement. And the objective of legal education is not also clear. The students join the campus as an alternative to unemployment and continue with their studies until and unless they are not employed. The fluctuation in the average number of graduates who pass out annually depends more not on how many students passed out the university examination but how many failed in the examination of the public service, while continuing with their studies.

The university has not formally received any feedback from judiciary or Ministry of Law on the area of specialisation of the graduates, standard, curriculum and their requirement. It appears that Bar has accorded least importance or not accorded any importance at all, to the subject of legal

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¹ Kolsa and Meyer, legal system, p. 17, prentice Hall Inc., N. S. 1978.

² Based on the introductory book by the organisation.

education. Under this situation, it is evident that these three sub-system are interdependent although there is least interaction among them in terms of planning legal education in Nepal.

It is discouraging to note the existing anomalies in attempting to make a comparative study of education system in general and discipline legal education in our country. Therefore, attempts has been made, in this theme paper, to share the ideas based on reality rather than attempting any comparative study.

Concept of Clinical Education

The lecture based system of education has been done away with even in the third world countries where attempts in making an all-round development in the field of education have succeeded to an extent. The lecture based system in the field of higher education has proved inappropriate, considering the difference in ability differentiation in the same class, comprehensiveness of the curriculum and and other limitations. The existing state in higher education is such that the students study and try to understand the incorporated in curriculum, and these contents are also discussed in the classroom with bother teachers and students participating in such discussion. In Nepal too, this method was adopted with a view to replace the lecture medium while implementing the curriculum under the new education plan. It was but implemented in papers, not in practice but we could not rise above the lecturer based.

There are some limitations in the classroom teaching methods as well. The information which is derived through discussion with teacher and among the students, can not be compared with the knowledge derived through practical experience. What will happen if the students of the medicines are imparted knowledge through lectures but not involving them in parctical classes. It will be most unfortunate situation. The following quotation of a researcher Donald Schon can be relevant in this context.

“Erik Erikson, the psychiatrist, has described each patient as a universe of one; and an eminent physician has claimed that 85% of the problems a doctor sees in his office are not in the book.”³

³ David and Brierley, Major Legal Systems of the World, p. 30-35, Free press London 1968.

Ellen Gagne has concluded through his research that the knowledge can that knowledge is basically divided into two parts i.e. declarative knowledge and procedural knowledge. Based on his conclusion it can be cited that if a student knows that a father should part share of the property his son according to his social status, pursuant to section 10 of the Chapter on partition of the New Civil Code. This is a declarative knowledge but, as a matter of fact if anybody goes to the court and files a plaintiff for not being provided by his father, then it is procedural knowledge. Declarative knowledge is less interesting in the absence of procedural knowledge and it can not be kept in mind. And on the other hand if declarative knowledge is imparted along with procedural knowledge, it can be more easily grasped along with its practical methods of application. Based on these reasons, the importance of clinical legal education is accepted in higher education of law. And under this system, the firsthand knowledge of procedural law is imparted to the students along with the theories of law derived from the class. There are differences in opinion on the form and practice clinical legal education in a country and universities within the country. Therefore, it is evident that different universities have followed different approaches about clinical legal education. This can clearly be felt if a comparative study is made of the graduate and post graduate legal education conducted by National school and other universities in India.⁴ But some universities consider the objective of curriculum, area of specialisation by the student and demand of the bar and judiciary while framing the policy and strategies for clinical legal education. University of Newcastle, Australia prepares its law graduates only for administrative ability and takes that students willing to enter legal practice should be limited by curricula. Whereas, Queensland University of Technology conducts a post graduate course in legal education under the name of "Graduate Diploma in Legal Practice" with the objective of producing legal practitioner. It has made the clinical legal education its main programme which is jointly run with the Queensland Bar Association.⁵

History of Clinical Legal Education in Nepal

If a question is asked as to since when the clinical legal education started in Nepal? And if it is responded that it was only after new education plan than

⁴ Based on the information received from the organisation.

⁵ Quoted from Learning to Teach, R. I. Arends, p. 54, McGraw - Hill Book Co., New York, 1989.

hardly any scope is left for contention. The system of studying law only after graduation in any other faculty was gradually replaced by New Education Plan. The Proficiency Certificate Level of Law was incorporated under new education system.

This was introduced in order to fulfill the assistant level manpower in judicial services and Ministry of Law and could also provide the second level professional services. Hence the certificate level of law also included the curriculum whereby one semester was devoted to the court observation and a report was required to be prepared with answer to some distinct questions regarding legal profession and court procedure. It had yielded some positive results in the beginning but gradually, the increasing pressure of the students, callousness of the campus and negative impression by the court have almost nullified the effectiveness of this programme.

Faculty of law has initiated a programme with a view to conduct clinical legal education, in the campuses affiliated to it, in around 2034 B. S. And under this programme, there was a clinic in each campus, where it was aimed that the desirous student could obtain competence and efficiency regarding legal profession under the guidance of a learned teacher. This was an appreciable concept in the sense that such clinic could provide free aid to the economically backward and disadvantaged classes of the society and economically poor students could also earn something besides having practical experience.⁶

Existing Status of the Clinical Legal Education

There was no system of imparting clinical legal education except moot court, which was taught in Bachelor and Certificate Level, after the above discussed law clinic was done away with. But the different donor agencies have taken a liberal approach in assisting to reinstate the clinical legal education programme after the restoration of multiparty democracy in the country. Subsequently, the Faculty of Law of Tribhuvan University has conducted clinical legal education. A brief account on it is provided in the following chapters.

⁶ E. D. Gagne, *The Cognitive psychology of school learning*, p. 12, Little Brown and Co., 1985.

Will it be appropriate that training programme for regular students, without any formal degree conducted by an institute affiliated to university ?

Will it be appropriate to conduct a programme, by an institute affiliated to university, not included in a regular curriculum ?

Are these clinical legal education programme giving the return on their investment ?

The serious students of the third year level are too busy with programmes like internship, as such they have no time for other activities. Therefore will it be an extraburden on students ?

How these programmes which are run on donation, can be maintained continuously, once the donors stop caring for such programmes ?

The significance of the above questions is in its own place. But the clinical legal education should be developed as required by nation. It is accepted from all quarters that the current system of registering fresh law graduates from university should be changed. It is a well known fact that Nepal Bar Association has already drafted Bar Council Act and the Act shall make many ambiguities clear. However, this seminar should also seek to clarify some ambiguities existing in this field.

The clinical legal education produces maximum members for the Bar. A candidate desirous of enrolling himself as legal practitioner, may gain additional knowledge through clinical legal education. Whether the graduates or those who are still studying in graduation should be included is also moot point to be discussed? If those students who have completed their formal education are enrolled, then they may do as a matter of additional inquisitiveness. Therefore, selection should be made conducive to enroll only those students who are seriously interested to join legal profession rather than unemployed people using it to pass off their time. And if clinical legal education is based on the amount of fee, and if such donation is raised from the students in the form of fees, then such programmes can be undoubtedly be continued.

It is not correct to say that if clinical legal education is attached with the Bar, than the role of University ends. The council of legal education (Inns of court, school of law) which has laid down modalities for participation in certain activities and programme, to complete the course of Bar at law in England, has started to hand over many of its educational programmes to different educational institutions.⁹ Under such circumstances, we are not in a situation to reject the role of a university, in the training and education programme related with bar, as we are in the initial stages.¹⁰

⁹ Queensland university of technology (QVT), prospectus for International Students - 1992 p. 5.

¹⁰ Guidance on completing the Academic and vocational stages of training for the Bar of England and Wales - 1991. The concept of legal Education (Inns of Court, School of law) 4 Gray's Inn Place, London WC1R 5DX.

Report of the Closing Ceremony of Three Day National Seminar on Legal Education in Nepal

Law teachers, lawyers and the educationists from different parts of the country took part actively in a Three Day National Seminar on "Legal Education Nepal" organised by ICJ/Nepal Section, in support of ICJ/Geneva on 24, 26 and 27 December 1993. The closing ceremony was held on 26th December 1993.

The closing ceremony was chaired by the President of the ICJ/ Nepal Section and Senior Advocate Mr. Madhu Prasad Sharma. Mr. Anup Raj Sharma, Treasurer of the ICJ/Nepal Section moderated the closing session. Distinguished personalities, namely, Rt. Hon'ble Daman Dhungana, Speaker of the House of Representatives and executive member of the ICJ/Nepal Section, Hon'ble Justice Man Aryal, Supreme Court, Mr. Iswari Prasad Upadhyaya, Secretary to the Ministry of Education and culture, Ms. Dilbur Parakh, Legal officer for Asia of ICJ/Geneva and Mrs. Bineta Diop, Programme coordinator ICJ/Geneva spoke in the closing session.

Rt. Hon'ble Daman Dhungana expressed his pleasure in having an opportunity to participate in the closing session as an executive member of the ICJ/Nepal Section. Mr. Dhungana felt that the value of education is important in the changed democratic context of the country. He stressed that those responsible for planning and development of education need to account for the changing realities and gear the education to cope with the situation. "Proper investment should be made for the education sector" he opined. Qualified manpower could only be produced by the quality education. Qualified manpower is the basis of a stable democracy and national development. Legal education is one of the main components of the education system. Mr Dhungana further remarked that extensive deliberations on finding modalities of legal education need to be undertaken. He admitted that the standard of the legal education has deteriorated considerably and called for efforts to upgrade the standards of legal education. The service of legal manpower should be made available all over the country. We need skilled legal manpower for the competent administration, judiciary and university. Beside we need legal manpower of international standards, he added.

Lastly, he expected that the views aired by the participants outside the valley, may substantially help to formulate policy in legal education.

Hon'ble Justice of the Supreme Court, Mr. Laxman Prasad Aryal narrated his experiences he gained when he was a teacher in the law campus. Mr. Aryal told that the students entering the Bachelor level from Profeciency Certificate level were not in a position to understand the concept of law. This was a paradox created by the New Education Policy. In his opinion, the students should have proper knowledge on social science discipline to understand the essence of law. Mr. Aryal recalled a seminar held in 2032 B. S. which recommended to impart legal education only to the students of having graduate background. He lamented that the recommendation was not implemented. It is high time to assess the existing status of legal education and initiate steps in curriculum modernization, supplying adequate reading materials and physical facilities. "Legal education is for specialization, but New Education Policy led legal education to degeneration. Students with good percentage gave up the idea of studying law", he said. "Law degree holders are facing lots of problems. They are not given admission for further studies by the reputed universities in different part of the world", he added and called for serious endeavours to give boost to the quality of legal education.

Mr. Iswari Prasad Upadhaya, Secretary to the Ministry of Education and Culture expressed that the objective of the present legal education system is to produce competent legal manpower needed for the country. Mr Upadhya stressed on the need imparting informal type of legal education to people in general through legal literacy programme. "Such an informal legal education is essential to infuse sense of law abiding in people" he added. He also emphasised for qualitative legal education and exhorted all the concerned to involve actively in making the legal education qualitative.

Foreign guests from the ICJ/Geneva, Miss Dilbur Parakh and Mrs. Bineta Diop also expressed their view on the legal education in Nepal in the closing session.

Ms Dilbur Parakh, Legal Officer for Asia, expressed satisfaction for the amount of interest that is generated in the three day long seminar. She noted that the Seminar has outlined the areas in which reform is required and

ified the changes required to be made so that legal education will produce r trained and most socially committed lawyers in the country. (see text of i on page 69).

The programme coordinator of the ICJ/Geneva, Mrs. Bineta Diop highlighted the objectives of the ICJ and added that the ICJ is devoted to the rstanding and observance of the rule of law in the protection of the human s. Mrs. Diop opined that the rule of law can only be upheld on condition that an rights are respected and promoted. (See text of speech on page 71).

Lastly, president of the ICJ/Nepal Section, Senior Advocate Mr. Madhu ad Sharma, from the chair, expressed his satisfaction over the outcome of seminar. He told the plenary session that the members of the ICJ/Nepal on have been encouraged to organise this type of seminars on contemporary s from time to time by the encourage remarks of, namely, Dr. Madhav Menon, Dilbur Parakh and Mrs. Bineta Diop. Mr. Sharma remarked that the assion an the various working papers was held in a very thought provoking ner. He felt that the enthusiasm demonstrated by the participants helped in ing unanimity in various resolutions. "Recommendation will be sent to the ernment, concerned offices and other institutions for necessary action", he rmed. He hoped that the government and other concerned agencies will take ecommendations of the seminar into account. The recommendations put forth he eminent scholars, jurists and the law professionals will definitely help us levating the standard of legal profession and law academics in the country. ly, he expressed his gratefulness to the participants for making the seminar ccess and hoped that the ICJ/Nepal shall receive similar cooperation in re.

Lastly, the executive member of the ICJ/Nepal Section and Senior vocate Mr. Krishna Prasad Pant proposed vote of thanks to the participants.

**Speech by Ms. Dilbur Parakh, Legal Officer for Asia,
International Commission of Jurists / Geneva
at the Closing Ceremony**

Ladies and Gentlemen,

We have now come to the end of this seminar on legal education in Nepal. I will not take very long as I am sure you are all very tired. You have worked very hard for the past three days and what was very encouraging to see was that you were all so interested in the subject.

As the Hon'ble Minister for Education pointed out at the inaugural session, legal education in Nepal should be revised and he expressed the hope that this seminar would help the government to determine ways of improving legal education. The Attorney General also expressed hope that this seminar would suggest ways to develop the skilled legal manpower needed today. Other speakers including the Secretary of the Ministry of Law, Justice and Parliamentary Affairs and the Dean of the Law Faculty, Tribhuvan University stressed the importance of reforming legal education so that law could be used as an instrument for social change and human well-being.

I think the seminar has done precisely this. We have outlined areas in which reform is required and identified what changes require to be made so that legal education will produce better trained and socially committed lawyers.

It is upto us all now to follow up the recommendations made. We are very pleased that the Nepal Section of the ICJ will take the lead in this field. The ICJ in Geneva will support this initiative and render all possible assistance. Dr. Madhava Menon, spoke about the activities of the National Law School. Whether such an institution is desirable and can be established in Nepal is a question which requires deep thought and which only you can answer. Efforts will have to be made by all concerned - law teachers, lawyers and policy makers to effectively bring about changes in the legal system. This will have to be an ongoing project with refresher courses being held at regular intervals.

For the clinical education programme to be effective, links will have to be established not only with lawyers but also with legal services organisations and other non-governmental organisations. We have seen that law students in other Asian countries play an important role in conducting legal literacy programmes and make effective paralegals. If this is being done in India and in Thailand, it can certainly be done in Nepal.

It has been very interesting for us to meet all of you from so many different parts of Nepal. The fact that you all found time to remain present through this seminar shows that you are convinced that changes are required in the legal education system and that you have the commitment to see that these changes will be made.

We are honoured to have with us here today the Hon'ble Mr. Justice Ramaxman Prasad Aryal, of the Supreme Court of Nepal, Mr. Daman Dhungana, Speaker of the House of Representatives, Mr. Motikaji Sthapit, Attorney General and Mr. Ishwar Prasad Upadhyaya, Secretary, Ministry of Education.

We would especially like to thank Mr. Madhav Prasad Acharya, Mr. Rajit Bhakta Pradhananga, Mr. Satish Krishna Kharel, Mr. Beda Prasad Tiwari, Mr. Kishor Silwal and Mr. Shyam Kant Silwal for preparing thought provoking working papers.

I would like to end by thanking you all for having participated so fully in this seminar. A very special thanks to the Nepal Section of the ICJ and specially to Mr. Kusum Shrestha and his team for having organised this seminar so efficiently.

Thank you.

**Contributory Remarks by Mrs. Bineta Diop
Programme Coordinator
International Commission of Jurists - Geneva**

Ladies and Gentlemen,

As expressed by my colleague Dilbur Parakh at the opening session, the International Commission of Jurists (ICJ), is devoted to the understanding and observance of the Rule of Law and the legal protection of human rights. Our presence here, today in Nepal, is to lend support to our Nepalese Sections towards its programme on legal education in Nepal.

The Rule of Law, the ICJ's prime concern, can only be upheld if human rights are respected and promoted. As is stated in the Preamble to the Universal Declaration of Human Rights:

It is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the Rule of Law.

Over the centuries, many declarations of human rights have attempted to give force to these rights. Their implementation by the international community is difficult, particularly concerning the right to education including legal education. The ICJ finds the efforts of the Nepal Section in this respect highly laudable and praiseworthy.

The Conclusions and Recommendations of the seminar have shown that a big step has been taken today in Nepal and the ICJ-Geneva is honoured to be associated to this programme.

Before we close this Session and on behalf of the International Commission of Jurists, Geneva and its Secretary - General, Mr. Adama Dieng, who regrets very much not being able to attend personally this important seminar, my colleague Dilbur Parakh and myself would like to thank you, each one of you, for coming to Kathmandu and participating so intensively in the discussions.

Dr. Menon is back in his country, but we should like to take this opportunity to congratulate him on the work he is doing in the field of legal education and in particular for his remarkable address to this seminar.

We should like to reiterate our sincere gratitude to ICJ Nepal Section and particularly its Secretary-General, Mr. Kusum Shrestha for hosting this meeting. A special motion of thanks also go to the efficient team which has organised it.

We will convey your conclusions to ICJ Secretary - General, and we feel quite confident that the headquarters will do its best to provide you with whatever support you may need in order to accomplish your new commitments.

Ladies and Gentlemen,

Back in Geneva, Dilbur and I will miss the traditional Nepali hospitality which have accompanied us throughout our stay in Kathmandu.

We wish you every success for the continuation of your work and look forward to future cooperation in the struggle for the ideals of peace, justice and development, essential pre-requisites for every individual and community to realise their full potential.

Thank you in the name of human rights.

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