Five Effects of Autonomy in the Arena of Law

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Recently in a very welcome move the UGC has granted autonomy to 62 Institutions both in the public and the private sector. This list includes among others some law schools and University law
departments. The question is whether this autonomy would improve the standard of legal education in the country. To begin with what is it that a law school must produce? Here are five facets of law industry in our country:

**Ancient structure of Judiciary**

At the heart of the legal profession in India lies a social contract. As the Supreme Court states in Bar Council of Maharashtra V M Dhabolkar that BAR is a not a private guild but a public institution that has been granted monopoly license, so that its members can serve as it is a public and socially useful function.

It is questionable if the Indian legal profession currently that function properly. One could point out to the episodes of violence involving the lawyers, the persistent allegations of wrongdoing and sharp practices in the profession and generally the unsatisfactory state of affairs in the nation’s judiciary as the evidence of such failure.

**Lack of Professionalism**

To put it simply the Indian legal profession lacks in the quality of professionalism. Professionalism implies not merely the acquisition of lawyering skills (problem solving, legal analysis and reasoning, legal research, factual investigation, communication, counseling, negotiation, litigation and alternative dispute resolution procedures organization and management of legal work) that will help a student “think like a lawyer” but also ethical mindset geared towards public service.

The task of the law school is to inculcate the skills as well as the mindset in a process that is often known as “professional identity formation” in the American discourse. In the USA the American Bar Association Guidelines for Accreditation of Law Schools specifically require the outcome that a law school education prepares the student for “effective and ethical lawyering”.

**Old Form of Pedagogy**

In the US the law schools ensure the outcome not merely through the traditional case law method (the principles of law through extracts from judicial decisions) but a series of innovative pedagogical measures directed at creating the requisite lawyering skills and the proper mindset. These include clinical legal education (students give legal advice to real world clients), internships and externships similar to a business or medical school.

This is complimented through an emphasis on soft skills like writing, communication, emotional intelligence and cultural competency etc. Professional responsibility and legal ethics is integrated
into the course curriculum and taught with every substantive and procedural law so that the student internalizes the norms (pervasive method). Thus professional identity formation in American law schools are always a work in progress. There is continuous research and innovation at the level of the law schools.

The American course, curriculum, pedagogy has been accepted almost in all common law jurisdictions and even in such diverse legal cultures as Japan and Korea. They made their late entry in India around 1987 when National Law School in Bangalore was set up. They are yet to be universally accepted.

**Lack of Initiative and Innovation**

Indian Law Schools and Universities have often lacked initiative and innovation. This in turn can be attributed to the regulatory pincers of the UGC and the Bar Council of India over funds, faculty and even curriculum. This autonomy will be granted by the UGC but it does not affect the regulatory powers of the BCI. The so-called autonomy would not lessen UGC supervision over the funds disbursed. The various state statutes would continue to bind in various ways. Still autonomy shall make a number of differences in a number of areas:-

Autonomy allows Universities/Law Schools would to open new course/programme/department/school/center that can create new avenues for income for the Universities. They can also initiate new degree and diploma with Top 500 Universities of the World. This would create new sources of income for the Universities that are outside the stifling control of the State.

**Difficulty in Hiring and Retaining Faculty**

Traditionally Law Schools in India have had traditional difficulty in hiring and retaining faculty. This is because of low pay, rigid division with the profession (for example an advocate cannot be a full time faculty) and governance issues at the level of the University. Faculty pay structure has traditionally been tightly controlled by UGC Rules. The autonomy allows the hiring foreign faculty members, as also creating an incentive-based pay structure.

The autonomy does not extend to the core curriculum. Where Indian law schools shall have to abide by the structures laid down by the regulator. More money and better faculty with international exposure will add to the ability of the law schools to form a better professional identity. Therefore the autonomy measures do give to law schools the initiative for professional identity formation. However, it might take a generation of students before any discernible improvement before the effect of autonomy percolates down.
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