TRILA and India: A Plea for its Restoration

By:

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"Elephant riders must fight with elephant riders, as one on foot must fight a foot soldier" – Ramayan, Sanskrit epic, 3rd century B.C.

Introduction

The above quote finds a place in the dedicated page of L. C. Green's *The Contemporary Law of Armed Conflict* (Manchester University Press, 2nd ed., 2000), one of the widely read books on international humanitarian law. The reference to the Indian epic *Ramayan* underlines that international legal principles were well entrenched in ancient India. The law-giver *Manu* also refers to the 'laws of countries'. In the west, evidence of international law is found in a variety of legislative acts, state documents and works of eminent jurists like Grotius, Vattel, Pufendorf and an array of other scholars. The sources of 'Law of Nations' in ancient India can be derived from the *Smritis* (200 B.C. to 200 A.D.), *Arthashastras* (300 B.C.) and the *Dharma Sutras* (600-200 B.C.). The chequered history of the country led to the destruction of its cultural heritage and the loss

of valuable manuscripts.

Further, the yoke of colonialism brought to fore the hideous Eurocentrism in international law. Prominent international lawyers like Oppenheim endorsed "special rights and responsibilities of great powers". The smoke is not without fire, and it is well established that legal instrumentalities—treaties of alliance, peace treaties and treaties of commerce—had facilitated the European colonizers to conquer the distant lands. They translated their factual dominance into law and thereby justified it. The articulation by the Indian international legal scholarship on the contribution of the Hindu religion has often proved to be contentious. Hence it has been neglected. The impact of non-ownership of the past has partly caused disillusionment as well as alienation among young international law scholars towards this western (Christian) ideology dominated subject.

The Teaching of International Law

The teaching of international law does not have a strong presence in the current legal education imparted at various Indian universities and law schools. Currently, the discipline remains as one of the compulsory subjects in the undergraduate studies (LLB) and is studied for just one semester. As per the Ministry of Human Resources Development (MHRD), a course is to be taught in the LTP (lecture, tutorial and practical) format – lecture (2 hrs), tutorial (1 hr) and practical (1 hr). In the case of the Master's degree (LLM), it is not a compulsory course and would depend if the institution chooses to offer a specialization in international law. In fact, a handful of law schools and colleges offer that specialization - National Law School Kolkata, Tamil Nadu Dr. Ambedkar Law University, ILS College Pune and Centre for International Legal Studies, Jawaharlal Nehru University (M.Phil and PhD). The list is not exhaustive. So, the understanding of international law and problem-solving skills of an LLB student tends to be superficial. Exposure to the subject is short and minimal. The students often rely on cheap guide-books and non-refereed textbook material merely for passing the examination. The language of the well-prescribed textbook like Malcom Shaw/Starke, can be challenging for a few students. It douses the passion for international law in the student who cannot see any utility of the subject in his/her future career, particularly litigation. The

case of LLM students who specialize in international law is slightly better. However, the teaching-learning method is quite rote. In the end, the student can hardly apply the textbook notes for solving the contemporary international legal issues that confront us all the time. The razor-sharp understanding that should have been transmitted remains elusive. Nevertheless, there seems to be some light at the end of the tunnel. There is a gradual increase in participation of the Indian teams at prestigious international moot court competitions like Phillip Jessup. The National Law University Bangalore has won the world title twice, in 1999 and 2012.

The international law curriculum for the LLB is mostly drawn from the table of contents of Shaw's book. Major global changes have significantly impacted the discipline that continues to reinforce its vitality and resilience in these uncertain times. Hence, teachers need to innovate and experiment by enriching the mundane international law syllabus with cutting-edge issues, for instance, the global health crisis, the Anthropocene, cyberspace, telecommunications, and so on. It would surely give an edge to the students to apply the knowledge gained to the current and futuristic international law challenges. These could be fascinating topics for the young mind.

The Expounder of International Law

Homegrown scholarship has seen a continual decline. The humble beginnings of the discipline in India started with the establishment of the Department of International Law at the University of Madras by Prof. Dr. Alexandrowicz, who also gave the prestigious Hague Lectures in 1968. Before him, Prof. C. Joseph Chacko delivered the lectures in 1958 and Prof. K R R Sastry in 1966. The lecture series that started way back in 1923 has seen only a handful of Indian scholars being invited. The selectivity in international law cannot be dismissed. While early career scholars do make a contribution to the field *via* research writings, theirs are mere fact-stating and contain scant critical legal analysis. The use of clear research methodology is often missing. Hence, the quality of research suffers, and rejection from a well-known publisher is not surprising. We need a more thorough theoretical, methodological and practical foundation to break into the charmed circle of western-controlled international law scholarship.

The teachers and researchers of international law should innovate and could use the approaches developed by fellow Global South academicians – Subaltern Studies and the Third World Approach to International Law (TWAIL). Interdisciplinary research has become norm of the day. Further, there is a long-standing need to fill the scholarship void through the publication of an international standard textbook on international law by Indian international law scholars. It should then be prescribed and actively prompted for international law course curriculum. To overcome the language barrier, it should also be translated in Hindi and other major regional languages.

The bureaucratization of international law in India seems to have played a detrimental role in hindering scholarly growth. Scholars often feel side-lined, and the field is almost run by government officials. The attitude can easily be gauged from the Indian government's failure to nominate scholars for positions in international organizations as well as international courts and tribunals. The influence of Indian academicians and lawyers has been washed out through assimilation and marginalization. The Indian international law scholarship has ' surrendered to the cold embrace of the bureaucracy'. Thus, concerted efforts are required to bridge the gap between the theory and practice of international law.

The Ministry of External Affairs (MEA) is the executive arm of the government and squarely deals with international law issues. It has in-house experts on international law in the Legal and Treaties Division. Recently, India has been party to many inter-state cases, like, *Enrica Lexie*, the *Kishenganga* arbitration, the *Bay of Bengal* maritime delimitation, etc. Although the initial inputs are generally given by the Legal and Treaties Division, the Indian government often hires and depends upon foreign international lawyers to represent it. The stance was reversed by taking on board the top-notch Indian lawyer Mr. Harish Salve in the Italian Marines case. The inhibition to engage homegrown lawyers and academicians stems from the failure to foster local scholarship.

Conclusion

The problems presented by international law are real, and they affect real-life people. The aspiration of citizens of the Global South for their international law

scholars lies in the democratization of the field. There seems to be a moral responsibility upon these scholars to shape a future international law that is more equal and representative. For the survival and progress of teachers and researchers of international law, there is an urgent need to nurture and promote the dwindling number of scholars. In legal education, the subject of international law deserves a place of prominence. It is essential for students to understand and respond to problems of the international society in which they live. It is equally important to use international law as a potent weapon to safeguard the vital national interest.

As noted by the UN Secretary-General, the world will not be the same anymore as the current 'pandemic has exposed the shortcomings, fragilities and faultlines' of the existing global system It remains to be seen if the evolving world order will be based on the rules of international law. It is a clarion call for Indian international law scholars to do collective work on strengthening and integrating the field within the domestic legal landscape and foreign policy, as well as with western scholarship. The restoration of the foundation of international rules well laid in ancient India is urgently required. The timely action could save the crumbling architecture of teaching and research of international law in India.

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