

Making the Law Work for Everyone: Legal Empowerment in Public Schools

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ABSTRACT

Legal education is not meant for law students alone. It is for the mass public. Law contain rules and regulations which target principally towards the proper administration of the general public. Basically, law entails legal rights and duties of all citizens, therefore lacking this crucial knowledge, social justice is meaningless. Society would not be able to achieve the ultimate structural harmony it hopes to establish. Disputes will keep on increasing and court cases will multiply. Sentencing and remedies clouds the society. The legal maxim Ignorantia Juris Non Excusat (ignorance of the law excuses no one) should be seen as an encouraging the enhancement of legal consciousness rather than a negative connotation of it. Global society lacks this legal knowledge and awareness which are the critical tool to overcome many legal issues faced throughout their life. Current legal awareness of most people is more about knowledge of procedural rules as compared to substantial laws, which in reality, are more significant. It is the aim of this paper, to investigate this unrealized stigma of the society. This exploratory research invites future research, qualitative or quantitative methods, in discovering the possibility of implementing such awareness program in schools via the proposed 'empowerment model' using the reflexive law concept. The model is expected to enhance the empowerment of law in the society by ensuring that law knowledge is for everyone and not only for a certain segment of the population. The paper concludes that even though legal illiteracy is a social fact, there are great possibilities for further research towards acknowledging and substantiating the importance of empowering the public in legal education in achieving a global social legal justice.

Keywords: *social justice, public legal education, empowerment model, legal illiteracy, substantive law.*

Introduction

Knowledge is a tenet of human progress. It is a human survival instinct.¹ Our brain kick start us to evolve. We do not want to just survive, we want to flourish.² Evolution of mankind can be seen through the formation of structural system of society. Man cannot live alone and definitely cannot progress alone³. We have this intense surge of curiosity that invokes us to learn and seek advancement and progress. Education is, therefore, central to human progress as it imparts us with knowledge of which what makes us human beings. Law, on the other hand, integrates and strengthens administration and governance of society; a social fact.⁴ Its natural adaptations into formal and legal coding are merely a facade to the basic truth that law is the binding glue towards human existence and survival.⁵ Given the significant importance of

the subject, various studies have been conducted into looking at verifying the status of society knowledge of law.⁶ However, few studies have been done on the possibility of disseminating legal knowledge through school as a medium of delivery.

The aims of this paper not only to explore the importance of legal education but also to investigate its relationship towards knowledge-based society in terms of how best to deliver that knowledge. The belief is that, if a current established society lacks legal knowledge concerning their fundamental rights and duties, will ultimately harm the social integrity of that society. The second section of this composition, examines the significance of sound teaching and its relationship with society awareness towards law. It then goes along to the third section, where investigation on the effects of legal illiteracy is highlighted to signify the importance of gaining and improving public legal knowledge. The last piece is a discussion about legal education and its kinship with the legal system towards finding an acceptable formula or method of implementation in public schools. The article closes with the verification of the importance of public legal education and the diverse subjects that could later take place to iron away the problem of disseminating legal knowledge to the general public through public schools.

Legal Education and Social Awareness

Legal education *per se* is the tertiary education of legal skills and knowledge prior to practicing law or before calling to the bar for law students.⁷ This theoretical and practical learning of legal knowledge basically towards the ability to enforce various laws for adjudication and practice in court. Legal education in a larger perspective is about imparting ideas and values for usage for the public interest in mind concerning injustice, inequality, poverty, exploitation, abuse of power and disregard of liberty. It is about legal empowerment; using the law to empower the disadvantaged within society.⁸ Empowering the poor through improved dissemination of legal information is also identified to be one of the first-step towards justice.⁹ Public legal education or public legal empowerment will subsequently provide people with sufficient knowledge, consciousness and the ability to appreciate further about their fundamental legal rights and would therefore give them the capability, skills and confidence to handle certain legal issues by themselves. Therefore enabling them the ability to gain further access to justice.¹⁰ This moves toward legal literacy education and awareness among the urban as well as the rural folks and especially the poor is not to make lawyers out of them, but to increase the population capacity hence enabling them to use the law and its resources effectively. Unless the people are aware of their rights, they cannot live in consonance with the true dictates of democracy and the rule of law.¹¹

Formal legal education for the general public worldwide is never heard of except in China.¹² In Canada such proposal to implement similar program is yet to take place.¹³ The current method of disseminating legal knowledge are made with the efforts of legal institutions, non-governmental organisations, consumer associations, legal councils and government departments using non-formal methods.¹⁴ Such efforts are on the increase in Malaysia due to the need for awareness given numerous increase of legal issues faced by the general public.¹⁵ Their overall aim is at reducing the injustice or unfairness that will or have already taken place in the society.¹⁶ It is commendable, but these efforts, however, do not produce a positive outcome, judging from the ever increasing number of legal cases¹⁷ and crimes that have been taking place recently¹⁸. Thanks to the development of information technology, majority of individual legal awareness originates from information they gathered by reading or/and listening to various forms of mass media.¹⁹

Lening Zhang, Steven F. Messner and Zhou Lu found that legal knowledge is vital in preventing or solving legal issues and helps promoting and enhancing the citizens of The ISSN 1675-1302

People Republic of China adherence and respect towards the nation's law and its legal system.²⁰ Whereas the National Survey of Canada on Physical Punishment of children reveals that the majority of Canadians did not even realize about the apex's courts (Supreme Court's) decisions on physical punishment of children law.²¹ This is an indication of disparity of legal knowledge despite the advantage of Canada over China in its infrastructure, financial backing and knowledge sharing efforts. Preliminary studies conducted on students of law at a local public university reveals that 63% of law students have no knowledge on the area of the law in which they are about to study.²² This indicates their state of mind prior to engaging into an in-depth knowledge in the specific area of the law. Similarly, a preliminary study conducted on non-law students of various faculties in the same university also reveal that more than 95% are legal illiterates.²³ Therefore, both studies reflect the level of awareness of the general public about the law. The students' awareness of legal knowledge in areas which concerns their daily activities such as areas of contract, crime and tort. A study conducted on the status of legal literacy of urban public school administrators in Malaysia, which was conducted in 2012 also showed that the level of legal knowledge of school administrators is still low despite the majority of them having obtained knowledge concerning school law from attending several legal courses on it.²⁴

Legal Illiteracy and Its Effects

The relationship of literacy and law abiding is cohesive.²⁵ The International Adult Literacy Survey defines literacy as being "the ability to understand and employ printed information in daily activities, at home, at work and in the community, to achieve one's goals and to develop one's knowledge and potential".²⁶ Western society traditions of written law publications and exposure to written law have help them to form civilised society which guides civil adherence and its functionality based on literacy.²⁷ Literacy is the key for their development in legal system as without it the feeling of intimidated and alienated from the law would arise. The deficiencies in literacy level can easily create circumstances resulting people coming into conflict with the law, feeling lost and unable to obtain help from it²⁸. One of the main factor for this would be the language surrounding law itself, the justice system is extremely intricate and jargon usage are sometime complex where non-legal person even for those with high literacy encounters finds difficulties in understanding the discourse and eventually cannot successfully participate without the assistance of a professional legal assistance²⁹.

Studies conducted in Australia on literacy and numeracy demand of Alternative Dispute Resolution (ADR) processes illustrates the lack of usage of ADR by Australians. This is despite the fact that ADR is a medium of lesser bureaucracy from the formal method of court system litigations. The main cause was due to the illiteracy of law.³⁰ As for the established judiciary, legal systems, judges also acknowledge that the lack of legal understanding of parties in trials may lead to monetary losses for those individuals.³¹ There is even suggestion that superior court decisions do not get the impact it should have on the general public, making it ineffective in giving needed protection to the intended segment of the society that needs protections.³² The English and Welsh Civil and Social Justice Survey among others found that inaction to resolve problems are as a result of a belief that nothing could be done to their problems and it is closely linked to the fact that they are basically unaware of the local services available.³³ This ends up having many of these poor and unfortunate individuals simply avoid themselves altogether from engaging with any given state institutions due to their impression that such interactions would be difficult and

sometimes almost impossible, causing them to believe that law is basically meant only for the rich.³⁴

In the educational system, a study in the United States found that fear of litigation amongst educators was about their lack of legal knowledge rather than the actual possibilities of being involved in a particular lawsuit.³⁵ Similar finding from Botswana³⁶, Australia³⁷ and Canada³⁸ carry similar conclusion. Within the school system, teachers and school administrators make dozens of quick judgment which might conjure legal actions unlike any other professions.³⁹ Many of these judgments end up in litigious actions against the education board. A sum of 85 percent of teachers did not attend legal courses concerning school law, but instead gather most of their legal understanding from their fellow colleagues who are often themselves uninformed.⁴⁰ School administrators are in fact often subject to legal actions due to the fact that their status as professional with responsibilities and positions.⁴¹ A national survey on Principals' Education Law Survey to check the secondary school principals' knowledge of the rights of students and teachers results shows that "most principals are uninformed or misinformed about school law issues and that 85% of the principals said they would change their behaviour if they knew the answers to the law survey questions".⁴²

On top of the knowledge issues, lingers the legal cost for being legal illiterates. The cost to individuals, health and other public services is estimated at least £13 billion.⁴³ This effect is further compounded, when taking into view the status of legal plurality faced by a particular nation. For example, the Indonesian archipelago legal conflict over the unification issue is mainly centred upon the unresolved problem of legal uniformity versus pluralism in its multicultural world.⁴⁴ Legal uniformity made difficult by the vast differences of religious belief, ethnic, customs, education, literacy level, multiple lingual, vast region and low level of legal literacy would be a daunting task indeed. Looking elsewhere, the experience of Southern Sudan and Liberia in legal pluralism threatens to worsen access to justice as the increasing emphasis on legal forms – written codes and jurisdictional limitations.⁴⁵ Empowerment strategies, including awareness, education, and legal assistance, can therefore promote the ability of less powerful to shape the system through Contestation. This is reflected in a survey concerning attitudes towards approaches to lowering crime rates in the United States from 1989 to 2010, which stated an average of 62% participant wanting more money to be spent towards better education in attacking the social and economic problem compared to 32% who wishes that more money should be allocated in improving legal enforcement.

Legal Education and the Empowerment Model

As stated earlier, China has been successful in enforcing their legal education to the public via public schools and various other methods and has a positive track record in their ability to sustain social order throughout their land. Basing on their successful implementation, the paper is proposing that similar implementation plan for public schools. In inventing or proposing a new approach to increase legal knowledge through public legal education, we need to rethink its conceptual foundations. This is because current efforts made through other activities are neither sufficient nor successful in eliminating or reducing the ever increasing legal problems arising from legal illiteracy. This paper suggests a rethinking by discussing the implementation of legal knowledge of public school students through reflexive law approach⁴⁶, with an emphasizing on the knowledge in substantive law.

For any legal system, law comprises of substantial law and procedural law or some combination of both based on various philosophers' views.⁴⁷ Substantive law is the main

legal principles set up by statutory law in addressing the legal relationship of individuals between one another or their relationships with the state. It refers to the legal rules of law developed to govern the behaviour of individuals in the society, laws which associate with the functionality of rules.⁴⁸ Basically, it is about the core functionality of law (its substance), concept like one cannot kill or take someone else property without legal justifications. Procedural law on the other hand, describes methods of punishment for transgressing those duties or enabling compensation from ignorance towards such rights. Mainly the purpose is to assist the progress of lawsuits throughout the legal system by ensuring all parties are given fair and impartial treatment, making the concept of justice properly administered towards disputing parties'.⁴⁹ As in the example given above, it's about the procedures or how to regulate persons' behaviour to avoid them from committing the offence or how to determine whether they are responsible for such acts and furthermore the methods of how to bring about punishment.

H.L.A. Hart describes two types of legal rules of which when in union is to be regarded as the "essence of law: primary rules (substantive) and secondary rules (procedural), both as being the heart of the legal system"⁵⁰. Primary rules focuses on the prevention of an act or require certain actions by creating the primary duties for such obedience and duty, whereas secondary rules on the other hand, are about the rules where it concerns a method for the primary rules can be acknowledged, altered and adjudicated⁵¹. A society might initially able to survive basing only on its primary rules, however, it will eventually experience deterioration from unavoidable three shortcoming; uncertainty as to what the principal roles are and their nature of scope; secondly the principal roles which is often static would make it difficult to either to eliminate or introduce new rules; third is when the social pressure of maintaining the primary rules would be inefficient because there is no agency for settling disputes in its violations.⁵² Even though Hart admits that the secondary rule are more important due to the inability of the primary rules in maintaining its existence, but it is to be stressed that for the *layman* the main concern is about the primary rules rather than the secondary rules because without knowing the existence of substantial rules how can any member of the society able to appreciate the procedural rules. People must know their rights first, in order to know how to gain those rights.

Society today seems to reassess its commitment towards the formal law (procedural) and also the bureaucratic and legal framework that are associated with it. Society cannot just blindly accept procedural law just because it is made by the authority. The positivist rationality towards classical model legal system and the concept of an authoritative state is rapidly fading with the emergence of welfare and regulatory state which are based more on substantive rational law as open-ended rules with purposive and goal-oriented intervention.⁵³ Substantive laws have shifted from being an autonomous independent branch into regulations based in order to suit this new society demands. This ultimately gives further reliance and emphasis on the formal law to keep up with such new demands of substantive law. It now assumes increasing importance despite what has been stated by Hart. Gunther Teubner who introduces reflexive law said that apart from formal and substantive law as having social purposes, just like substantive law, reflexive law aim to achieve it in a different way. The reflexive legal strategy generally is about creating self-regulatory procedures by giving a full mandate to certain groups who encourage all parties involved to constantly or progressively reassess and readjust themselves to achieve setup goals rather than being told directly what needs to do be done in all cases.⁵⁴ In a more simple terms it is about the ability to self-reflect oneself to improve, adapt or change to achieve a goal. Policy tools based on reflexive law have become common in the United States and elsewhere. The best example is concerning

the Toxics Release Inventory in the United States⁵⁵ and on the EU Working Time Directive implementation in the UK⁵⁶.

The proposed model for implementation of the Public Legal Education in public schools using reflexive law is by creating a self-reliance program using the current school infrastructure and workforce but not incorporating them into the current school syllabus. Presentations of all factual situations, data, surveys and statistics pertaining to the current status of crimes together with the importance of legal education are to be made to the Parent-teacher Associations (PTA) of the respective school by Non-Governmental Organisations (NGOs) or local university's law faculties enable discussions, suggestions and hopefully agree on the acceptable content for implementation in their school. MOU could be made between the PTA and these NGOs to establish working relationships. Given the location of certain schools which are located within a specific geographical area might need a particular area of law to be accentuated to their children to better equip them in facing certain local social challenges. Communities in the urban area might want to emphasise more in knowledge about criminal and tortious law like trespass to persons, trespass to goods and penal code provisions to be taught to their children to cope with the increasing social problems like bullying, assault, battery, false imprisonment, drugs, theft whereas people in the rural areas might want to emphasise more on knowledge in the area of constitutional rights, contract, negligence, trespass to land rather than on crime, mainly due to the degree of crime is perhaps less prominent in their community. This flexibility gives PTAs the ability to self-cater and tailor the legal knowledge contents to suit their specific social needs.

The content providers of legal knowledge could then formulate the teaching modules. The modules should be first tabled to the PTA for determination and approval based on the agreed area of importance for dissemination to targeted students. Using these teaching modules, voluntary school academic staff will then conduct classes using open access method for students of all level to participate in any of their learning modules classes set up based on levels of difficulties of understanding. Such activities are to be conducted outside the school teaching hours and are not bound to any formal education syllabus. This ensures independence and flexibility of such implementation. Students could accustom themselves at the lower level areas of choice and then freely self-progressed to the next level of choice. If they wish to repeat any given areas, they are allowed to freely access any level of their choice. The PTA role is restricted to only monitor the implementation and get feedbacks using university academic researchers' who would then conduct periodic studies on the students to gauge the success of the running modules. Any modifications to improve the programme can further be made to the PTAs by suggesting additional data or information to strengthen the expected outcome.

In summary, it is the society's own public education programme, formulated, tailored, implemented and monitored by the school joint force between school administrators, staff, teachers and parents which aimed at educating students over matters concerning law. It's a form of holistic education as its philosophy of education.⁵⁷ This model being a statement of concept however requires further explorations towards actual implementations, perhaps a pilot test study. The overall process of the Empowerment Model can be seen from figure 1.

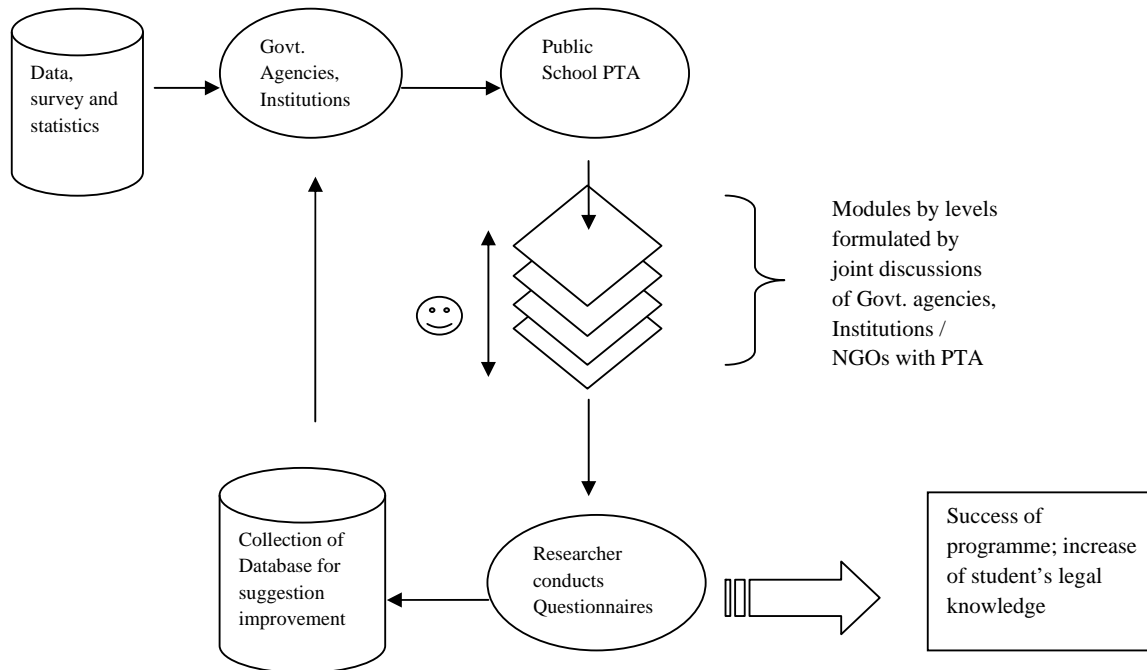


Figure 1: Public Legal Education in Public Schools using Empowerment Model

Conclusion

To conclude the above discussion, there is an unrealized social stigma in the society whereby the absence of legal literacy will ultimately lead to failure in the maintenance and sustenance of justice, fairness and equality. It would be a grievous failure of the law for not being able to realize these fundamental aims. Legal educations are not for the elite few. Knowledge of the law is for everyone. Its dissemination to the general public in a simple yet effective method is commendable, a crucial step towards bridging this gap. However, further studies must be carried out to confirm or otherwise, for its effective and successful implementation of such proposal. Studies could be conducted with public and private schools participations to verify and reinforce the expected outcome. The ability to recognize and embrace this shortcoming by remedying the issues is imperative as the country will definitely benefit from the reduction of civil injustice and social inequality with an increase of law literate citizens.

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