

THE ICONOCLAST

Audi Alteram Partem introduces this column in reverence to those who are committed to make a difference in the world. The column seeks to inspire young minds to trust, support and follow courageous views of social change.

Igniting Iconoclasts

- Shamnad Basheer

Dr. Shamnad Basheer is an intellectual property lawyer, academic and nomad. He was till recently, the Ministry of HRD Professor of IP law at WB NUJS. He is also the founder of IDLA (a non profit that fosters access to legal education for the underprivileged), SpicyIP (a leading Indian IP blog) and P-PIL (an initiative to synergise the law schools and the legal profession to work towards common public interest causes). Unfortunately, despite founding these initiatives, he still struggles to find himself.

It's a wonderful honour to be invited to write this inaugural section for the NLU Delhi student newsletter. Though a bit daunting as I consider myself hardly qualified to reflect on an issue that I have no experiential wisdom of. But being an academic, let me give it a shot.

There is no gainsaying the fact that iconoclasm is a tall order, demanding as it does, a rare streak. A streak that challenges established wisdom time and again; a streak that refuses to stoop to the powers that be; a streak that thinks nothing of being attacked for attacking cherished beliefs! A streak that slammed slavery centuries ago when others had come to accept it as the natural order of things. A streak that refused to hail Hitlers' genocidal campaign when others thought it their patriotic duty to do so.

Today, these seem like universally abhorrent moral wrongs that brook no exception. And yet, how many of us living in those times would have protested these heinous inequities? Interestingly enough, only last

week, I happened to watch the televised version of the Nuremberg trials and the defense counsels' argument that government officials and judges serving under Hitler could not be punished, for they had merely applied the law of the land, the intrinsic immorality of it notwithstanding.

And this brings me to the very first attribute that is integral to "iconoclasm", namely courage. The courage to stand up against what is morally reprehensible and wrong. The courage to swim against the stream when it would have far more easier to go with the flow.

Secondly, one requires compassion of a very high degree. For it is only when we feel the pain of others as our own that we are compelled to speak out for them in as strong a manner as an iconoclast does. Compassion also means that we put others before ourselves. Indeed, the highest ideal that a lawyer can aspire towards is that of obliterating his own selfish self for the sake of another. That is true altruism. And the best of iconoclasts have shared this trait. Unfortunately much of our "social" lawyering (or engineering as the case may be) is more about the lawyer and less about the cause. The ego takes over quickly enough and the cause is only a platform in which to showcase the greatness of the being that advocates it. Sadly, the under-dog for whom legal cudgels are courageously wielded becomes a mere pawn in this ego boosting exercise. True compassion requires deep felt love, a selfless

one that thinks nothing of sacrificing personal comfort for the joy of another.

Thirdly, there is no point trashing a system when you do not have an alternative order in mind. And this is where creativity comes in: the ability to “imagine” new possibilities and new orders. As the inimitable GB Shaw once said: “You see things and ask: ‘Why?’; But I dream things that never were; and ask: ‘Why not?’” Unfortunately, we don’t even ask the “why”, much less dream up the “why not’s”?

In a world that is becoming increasingly more complex and uncertain, we need to craft more creative solutions. The old order simply will not do! For under this order, we’ve ended up perpetuating injustice of every kind, pretending that our superficial solutions actually help. Social injustice, where we placate our conscience with formal equality, and all but forget about substantive equality. Economic injustice, where we draw solace from a handful of handouts to the less privileged; forgetting that teaching the art of fishing is far more empowering than flinging a few fish their way. Environmental injustice, where we continue to pillage and plunder a nature that has given us so much without asking for anything in return. Where our narrow myopic solutions are geared towards protecting nature only to the extent that it selfishly helps our own material well being, sans any real care or concern for the millions of other beings that share this planetary space with us: what many call an “anthropocentric” view of the world.

Redressing these inequities will require radical “out of the box” thinking, and a deep appreciation of the fact that we are all interconnected in some way. That more than independence, what we really ought to aspire towards is a keen appreciation of our interdependence. And the need to break all those silly silos; in our heads... in our lives. The most creative thinkers were those that routinely broke the silos around them. Take Leonardo Da Vinci, the quintessential Renaissance man. His

prodigious creative sparks had much to do with his ability to draw from multiple domains that he traversed, science, architecture, painting and music: a cross pollination of ideas, if you will. In the same way, unless we evolve a true multidisciplinary mindset, how can we ever transcend the narrow confines of our specialization to craft truly ingenious ideas?

God knows there are enough “literal” lawyers amongst us adept at splitting hairs over legalese that only our ilk by their training have come to be orgasmic about. But how many “lateral” lawyers do we see around us? I still remember the day I was caught reading Edward De Bono’s wonderful classic “Lateral thinking” during a history class. Snatching the book away, my teacher exclaimed; “first learn to think literally. Then try the lateral!”

As though this was a clearly delineated two step process. Not realizing that the more you push someone into literal thinking, the farther away you take them away from lateral. An incident that pretty much sums up all that is wrong with our lopsided educational framework.

And this brings me to legal education and whether or not our law schools encourage iconoclasm? The less said, the better. It is no secret that our system expresses a strong preference for conformity with convention. Students have learnt that the best way to score in an exam is to faithfully reproduce notes taken in a class. Indeed, there is nothing more pleasing to an academic than to have his views parroted by students.

When I was in law school, I made the mistake of traversing beyond class notes and reading critical commentaries on a subject that I was particularly fond of. Naturally it reflected in my answers which I thought were provocative and nuanced. Unfortunately, I was rewarded with one of the lowest ever marks in class. When I approached the professor in question boasting all the wonderful scholarship that I had read to come up with what I thought were superlative answers,

“...there are enough ‘literal’ lawyers amongst us adept at splitting hairs over legalese that only our ilk by their training have come to be orgasmic about.”



his short response was: “Why don't you simply write what I say in class. Why make your life more difficult?”

This is not to paint all of our law schools and our earnest faculty with the same black brush, but to point to an issue that is more the norm than the exception.

More importantly, this is not to absolve our students and lay the blame on the doors of the institution only. Rather, iconoclasm by its very nature demands that individuals break free of established institutional structures. If the problem is the framework, then one must challenge the framework repeatedly till it yields. And yet how many of our students do this? We are more than happy with less than demanding courses, where highly inflated grades are guaranteed. We pursue only those activities that generate “CV” value. We sacrifice the pure joy of an intellectual exhilarating activity for an insipid one that is designed to enhance our employability. We draw comfort from our comfort zones, clustering in cocooned cabals and insulating ourselves from the harsh realities of an inequitable world that stares us from beyond the law school wall. We revel in rabid groupthink and look disdainfully upon those that look, feel, think and smell different than us. A far cry from iconoclasm, a term whose etymological roots suggest an embracing of diversity to the highest degree. For it expands out to: eikon (likeness)+ klan (to break).

Indeed, our groupthink is so strongly entrenched that we refuse to budge beyond the traditional career box. Rather, we pick comfortable jobs, and end up leading comfortably numb lives, sans any real interest in our professional work. No doubt, some of these choices are driven by financial compulsion and/or a genuine interest in corporate lawyering, but risk aversion and the

snob value that comes from high paying jobs have a significant role to play as well.

We seem to have resigned ourselves to a life of mediocrity, dragging ourselves dutifully out of bed and ploughing painfully through the day, driven by dreams of a consistent career graph and the cool vacations that all this sweaty work will bring us. And yet, when we hark back to the time when we first read “To kill a mockingbird” and the sheer elation at experiencing a sublime value that liberated us from the narrow confines of our petty lives, sparking up our interest in the law and justice, did we even think that we'd get to this point? So soon? Did we ever imagine that

we'd prefer the security of a regular job over our love for legal adventure and

thirst for justice? This is not to

say that the regular job space is bereft of any scope for legal adventurism or sublimity.

Just that the number of those who push the frontiers of this mainstream space are few and far between.

As the delightful Dickens once said: “These are the best of times. And these are worst of times.” The potential for iconoclasm is huge. But the

products (that translate the potential) so few. We need to do all we

can to propagate this virtue. For our sake; for the sake of future generations that will inherit this plentiful planet. Lets hope the law schools play a pioneering role in this propagation.

But make no mistake: iconoclasm does not come easy! It is a terribly lonely journey. A long drawn out fight. One that only the most resilient can endure without being crushed. A path for those that live life on their own terms and think nothing of losing all that is safe and secure. Those that tilt at windmills, derisive taunts notwithstanding. Guided only by the courage of their conviction and fuelled by a heartfelt hope. Yearning earnestly for a higher ideal, one that transcends the trite. Bursting forth to live life to the fullest. A spark that ignites, a spirit that liberates, a soul that soars!

As the
delightful Dickens
once said: “These are
the best of times. And
these are the worst
of times.”