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WHERE IS CLINICAL LEGAL EDUCATION LOCATED WITHIN BROADER DISCUSSIONS OF ACCESS TO JUSTICE IN INDIA?

Anamika Jha¹ & Ankita Das²

What do generations signify?

"Growth in self reflection and wisdom and capacity to serve the underprivileged"

- Prof. Upendra Baxi

ABSTRACT

Where is clinical legal education located within broader discussions of access to justice in India?' It is the question which has grabbed our attention the most. The reason is this question is joining two different aspects under an umbrella. We are not only talking about clinical legal education or access to justice but the relation between the two. The clinical legal education is something very important in today's legal education and access to justice is one of the most widely discussed subjects throughout the world. Thus, by this essay we are trying to explore the access to justice through the path of 'clinical legal education'. Through this essay, first of all we have tried to develop an understand the concept of clinical legal education and then we have proceed how including law students in legal aid can result in the achievement of the long term goal of access to justice. This is our attempt to show the close relation between the clinical legal education and access to justice is highly co related. Through our paper we have shown that the goal of access to justice can be achieved by taking the path of clinical legal education. This is because when students are making poor and illiterate people legal literate e.g. making them understand their right guaranteed by law, they are making access to justice to them. Further, we have focused the case of India where access to justice is the constitution mandate. We have also highlighted the role of national legal service authority in the promotion of clinical legal education. The last topic of our paper is the benefit of clinical legal education to the law student.

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INTRODUCTION

Clinical legal education is not something very new in India; the rise of clinical education can be traced back to 1960s and 1970s. The concept of legal education was always attached with the term access to justice. In fact the whole idea under clinical education was to train a generation of lawyers who can fight like soldier for social justice for unprivileged group. Thus, the history of clinical education evolution was similar to that of other part of the world. The 1960s and 1970s were an important time in the history of legal education in India, when the legal aid movement and various legal aid committees' reports started to draw attention to the importance of experiential learning, or learning on the job, in legal education. The main aim of involving law students in the national legal aid movement was to make them feel more responsible for the considerable part of the Indian population who, because of their socio-economic status, couldn't access justice.³

Clinical legal education focus on the system in which young law learner can directly interact with the public, understand their problem and try to find out the solution. In this way two benefits are generated. The law student gets chance to understand practical approach of legal education and society gets benefits at the same time.

We never deny that there should be a teaching method within the law school framework that will inculcate a spirit of public service, and help young law 'students to confront the uncertainties and challenges of problem solving for clients that often challenge precepts regarding the rule of law and justice. Clinical legal education aims at exactly this sort of teaching method and spirit of public service. Prof. N. R. Madhava Menon refers to '*clinical legal education as a pedagogic technique is its focus on the learner and the process of learning*⁴ not to create future lawyers who are '*mere craftsman manipulating advocacy skills in the traditional role of conflict resolution in court*⁵.

As we have already seen above what actually is clinical education, where young budding lawyers will impart their knowledge practically. Now we will talk about access to justice. The word access to justice is not very uncommon word.

The meaning which we understood from the word access to justice is that everybody can easily seek remedy in a fair just manner. But is it actually happening in the world. The answer is NO; there are

³ Shurvo Prosun Sarkar : Empowering the underprivileged : The Social justice mission for clinical legal education in India 19 Int'l J. Clinical Legal Educ. 321 2013

⁴ N. R. Madhava Menon, Foreword, in A Handbook on Clinical Legal Education (N. R. Madhava Menon ed., 1998).

⁵ N. R. Madhava Menon, Clinical Legal Education: Concept and Concerns, in id.

lot of people in the world who are being denied of justice and generally poor and marginalized fall under this. In the absence of access to justice, people voice will not be heard, will not exercise their rights or not being able to challenge discrimination or hold decision-makers accountable.⁶

The U.S. Department of Justice established the Access to Justice Initiative (ATJ) in March 2010 has given out three principles⁷ which are as follow:-

Promoting Accessibility — eliminating barriers that prevent people from understanding and exercising their rights.

Ensuring Fairness — delivering fair and just outcomes for all parties, including those facing financial and other disadvantages.

Increasing Efficiency — delivering fair and just outcomes effectively, without waste or duplication.

So seeing at these principles we can say that access to justice is something where no barrier will be there which can prevent the people for securing the justice and non-infringement of their rights. Moreover, justice should be fair and impartial to everyone and not to be discriminating on the basis of rich and poor. It is also said **Justice delayed justice denied**, so while imparting justice it should be kept in mind that it should not be too late that victim suffers. So, effective mechanism should be brought up for speedy justice.

Since access to justice is not defined anywhere in the international law, so it is used in different ways in different contexts. According Global Alliance Report, access to justice basically means opening of a system where disadvantageous group of society can secure justice. This includes removing legal and financial barriers, but also social barriers such as language, lack of knowledge of legal rights and intimidation by the law and legal institutions.⁸ So here we saw the meaning of access to justice in different context.

⁶ UNDP , “Access to justice and Rule of Law” , retrived from http://www.undp.org/content/undp/en/home/ourwork/democraticgovernance/focus_areas/focus_justice_law.html (last visited on 18th july , 2015 at 7:38)

⁷ The United States Department of justice, retrived from <<<http://www.justice.gov/atj>>> (Last visited on 18th july 2015 at 7:45)

⁸ Gaatw Access to justice,Global alliance against trafficking in women , retrived from <<http://www.gaatw.org/atj/>>

Now the question which arises is that how speedy justice can meet to the people and one of the answers is- Clinical legal education.

CLINICAL LEGAL EDUCATION AND ACCESS TO JUSTICE: ONE IS PATH AND OTHER IS GOAL

Access to justice is widely accepted as a central component of clinical legal education in the United States and in many other countries around the world. Indeed, this is inherent in the clinical methodology, which seeks to prepare students for the practice of law as competent and professionally responsible lawyers while delivering legal services and promoting social justice. Clinical programs worldwide place students face to face with what are often glaring inequalities in access to justice; in effect, legal systems lacking accessibility to justice provide the material around which a clinical curriculum for empowering future lawyers committed to full access for all can be built.⁹

The idea of involving law schools in legal aid can be seen as the first attempt to introduce some kind of clinical legal education framework in India. The legal aid movement of the 1960s in India 'assumed that law schools would have a significant role in dispensing legal services'.¹⁰

Indeed, in many countries the original aim of clinical legal education was to provide free legal services to the low income population, often coupled with an education mission linked to the students' exposure to social issues and the role that the legal system can play in solving social problems¹¹.

The question arises that whether clinical education and access to justice are the opposite side of same coin? There are differing views among clinical educators as to the proper balance between "service" and "teaching" in a clinical curriculum, but even those who argue for primarily teaching-oriented clinical programs recognize the import and unique value of incorporating 'access to justice' work into students' clinical experience.¹²

⁹ Frank S. Bloch, Access to Justice and the Global Clinical Movement, 28 Wash. U. J. L. & Pol'y 111 (2008)

¹⁰ Frank S. Bloch and Iqbal S. Ishaq, Legal Aid, Public Service and Clinical Legal Education: Future Directions from India and the United States, 12 Mich. J. Int'l L. 92, 96 (1990-1991).

¹¹ Frank S. Bloch & Iqbal S. Ishaq, Legal Aid, Public Service and Clinical Legal Education: Future Directions from India and the United States, 12 MICH. J. INT'L L. 92 (1990) (on the United States and India); Richard J. Wilson, Three Law School Clinics in Chile, 1970-2000: Innovation, Resistance and Conformity in the Global South, 8 CLINICAL L. REV. 515, 536 (2002) (on Chile).

¹² Leah Wortham, Aiding Clinical Education Abroad: What Can Be Gained and the Learning Curve on How to Do So Effectively, 12 CLINICAL L. REV. 615, 661 (2006)

Thus, when students are making poor and illiterate people legal literate e.g. making them understand their right guaranteed by law, they are making access to justice to them. Thus, by taking any root we are reaching at the common point that clinical legal education is highly related to access to justice.

This is the reason why law students not only in India, but every region of World are involved in clinical legal education. Let us see the examples:

In South America, for example, law schools in Chile, Argentina, Peru, and Colombia formed the Inter-University Program on Public Interest Clinics to support access-to-justice initiatives through law school legal aid clinics.¹³ In Columbia, law school legal clinics are the principal provider of legal services to the poor.¹⁴ In the United States and Canada, clinical programs provide significant amounts of free legal services that supplement the national legal aid programs. Law school legal aid clinics are among a number of different institutions that provide legal assistance to the poor in South Africa.¹⁵ Also in other counties clinical legal education is playing crucial role in proving access to justice, like improving access to justice is among the central aims of clinical legal education in China.¹⁶

The case of India - The dream of access to justice while there is struggle for bread: India is home to 194.6 million undernourished people, the highest in the world, according to the annual report by the Food and Agriculture Organization of the United Nations released¹⁷. Thus, India is the country where getting bread is the justice and so we can that the claim for legal right may be luxury at least for those 194 million people. Can we say this? We do not think that the question of access to justice can be a luxury because it is the basic right of all human being.

‘Access to Justice’ in its general term, means the individual’s access to court or a guarantee of legal representation. It has many fundamental elements such as identification and recognition of grievance, awareness and legal advice or assistance, accessibility to court or claim for relief, adjudication of grievance, enforcement of relief, of course this may be the ultimate goal of a litigant

¹³ Frank S. Bloch & Iqbal S. Ishaq, Legal Aid, Public Service and Clinical Legal Education: Future Directions from India and the United States, 12 MICH. J. INT’L L. 92 (1990)

¹⁴ Richard J. Wilson, The New Legal Education in North and South America, 25 STAN. J. INT’L L. 375, 384 (1989)

¹⁵ David J. McQuoid-Mason, The Delivery of Civil Legal Aid Services in South Africa, 24 FORDHAM INT’L L.J. 311, S123-25, S129-32 (2000) (describing state-funded and independent university legal aid clinics)

¹⁶ Adopting and Adapting: Clinical Legal Education and Access to Justice in China, 120 HARV. L. REV. 2134, 2140 (2007).

¹⁷ India tops world hunger list by 194 million people (July 21, 2015 11:40 pm)

<http://www.thehindu.com/news/national/india-is-home-to-194-million-hungry-people-un/article7255937.ece>

public.¹⁸ Thus, concept of 'Access to Justice' has two significant components. First is a strong and effective legal system with rights, enumerated and supported by substantive legislations. The second is a useful and accessible judicial/ remedial system easily available to the litigant public.

The Constitution of India is the living document of this Country and the basic law of this Nation. As disclosed in its preamble, it stands for securing justice to all the Citizens. In Article 39A, the Constitution retains its aspiration to secure and promote access to justice, in following terms; "The State shall secure that the operations of the legal system promote justice, on the basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities".

Apart from the Universal Declaration of Human Rights, the Constitution of India, guarantees, fundamental rights in its Part III, from Articles 14 to 32. This includes, right to equality, freedoms, right to life, religious rights, and minority rights and finally the special right, which guarantees constitutional remedies in cases of infringement of fundamental rights. Though these rights are not absolute, they are protected under Article 13 of the Constitution, which expressly prohibits enacting of any law inconsistent with or in derogation with the fundamental rights. Additionally, any action abridging the fundamental rights are subject to inherent or implied limitation, as per the Doctrine of Basic Structure or Basic Features.

The identification and recognition of one's grievance has a direct co-relation to his right. This bundle of rights includes natural rights or basic and human rights, fundamental rights, other constitutional rights and statutory rights. Identification and protection of these rights especially those of the poor and disadvantaged people must be the chief concern, while formulating the principles of access to justice.

One need not be a litigant to seek aid by means of legal aid. Legal aid is available to anybody on the road. Justice Blackmun in Jackson v. Bishop¹⁹, says that; "The concept of seeking justice cannot be equated with the value of dollars. Money plays no role in seeking justice."

During British rule, there is producing of clerks and not managers and advocates because of increasing of financial interest and not to reform local legal professions. After independence it was

¹⁸ Rule Of Law & Access to Justice (July 27, 2015 10 pm) <http://hcraj.nic.in/joc2014/16.pdf>

¹⁹ 404 F. 2d 571 - Court of Appeals, 8th Circuit 1968.

expected that legal education would be in tune with social, economic and political desires of the country.

Today's time law school can play a very important role in promoting and providing justice, particularly through the field of legal aid. But the different syllabus of law schools, the tradition way of teaching and no practical exposure, still makes a long way to go. But the commencement of clinical legal education can help us to achieve the dream of equality, justice and sociability throughout the country.

Article 39A of the Constitution of India provides that State shall secure that the operation of the legal system promotes justice on a basis of equal opportunity, and shall in particular provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disability.

Articles 14 and 22(1) also make it obligatory for the State to ensure equality before law and a legal system which promotes justice on a basis of equal opportunity to all. Legal aid strives to ensure that constitutional pledge is fulfilled in its letter and spirit and equal justice is made available to the poor, downtrodden and weaker sections of the society.

Sec. 304, Criminal Procedure Code: The Constitutional duty to provide legal aid arises from the time the accused is produced before the Magistrate for the first time and continues whenever he is produced for remand. Since 1952, the Govt. of India also started addressing to the question of legal aid for the poor in various conferences of Law Ministers and Law Commissions. In 1960, some guidelines were drawn by the Govt. for legal aid schemes. A committee was formed at national level in 1980 under the Chairmanship of Hon. Mr. Justice P.N. Bhagwati then a Judge of the Supreme Court of India. This committee came to be known as CILAS (Committee for Implementing Legal Aid Schemes) and started monitoring legal aid activities throughout the country.²⁰

For the first time in 1949, the Bombay Legal Education Committee recommended that practical courses should be made compulsory only for students who choose to enter the profession of law and the teaching method should include seminars or group discussions, moot court competitions etc. Later, in 1958, the 14th Report of the Law Commission of India recognized the importance of

²⁰ National Legal Service Authority (20 July 2015, 10 pm) <<<http://nalsa.gov.in/>>>

professional training and for a balance of both academic and vocational training. It recommended that University training must be followed by a professional course concentrating on practical knowledge to those who chose to practice law in the courts. The Commission's Report concentrated on institutionalizing and improving the overall standards of legal education. In that regard, the Report also discussed teaching methods and suggested that seminars, discussions, mock trials, and simulation exercises should be introduced.

Since here we are talking about legal education, how it developed in India and then slowly demand of clinical education arises, however in context first we will like to see types of legal education.

TYPES OF LEGAL EDUCATION²¹

Simulations- We all have heard about moot court in the law schools. So it comes under simulations and there are variety other simulations what happens in legal practice. Since it is basically introduce law school activity and introduce students to the intricacies of advocacy. Some other activity is mock trial sometimes involving professional actors in order to convey the difficulties of, for example, introducing evidence and establishing facts in what may be the rapidly changing environment of a first instance tribunal. Other simulations are negotiation exercise where realistic case files is given and asked them to solve in fair and economical manner. Some other are client interviewing exercises, transaction exercises etc.

The In-House Real Client Clinics- In this model the clinic is based in the law school. It is offered, monitored and controlled in law school. In this type of clinic the clients require actual solutions to their actual problems hence it is called as real client clinic. The client may be selected from a section of the public. The service is given in the form of advice only or advice and assistance.

Placements- Students can be sent out to work with practicing lawyers for short periods to encounter real problems, clients, and courts. They are then expected to bring back their experience to the law school and reflect upon it, using it to inform the remainder of their time spent in the academic establishment.

²¹ Richard Lewis , "Clinical Legal Education Revisited "Professor of Law, Cardiff University, Wales, United Kingdom at pg 5,6

However with time and demand, clinical education develops which is now actually needed for every law student. Keeping this in mind, in 1977, the BCI recommended practical training in the curriculum. Reports of University Grants Commission (UGC) also played important roles in the history of Clinical Legal Education by outlining the objectives of reformed teaching as making students more responsive to learning and making them demonstrate their understanding of law. Report made by UGC, emphasized need of teaching a variety of skills and sensibilities to develop legal education as a hermeneutical profession and also took some initiatives by constituting committee for development of curriculum in law.

On the basis of the report, considerable emphasis on clinical legal education was introduced in 1997, by increasing the number of subjects from 16 to 28. The Bar Council of India issued a circular, using its authority under the Advocates' Act 1961 directing all universities and law schools to revise their curriculums. It included 21 compulsory courses and 2 optional courses, leaving Universities free to add more subjects. The circular also mandated the inclusion of 4 practical papers.²² Law schools have been required to introduce these 4 practical papers since academic year 1998-99, which was viewed as a big step toward introducing Clinical Legal Education formally into the curriculum.²³

With time, clinical education gain popularity as it aim improves the quality of legal education. As in our country law graduates directly enter into profession without any exposure of practical accept or without any further training. Thus clinical education assumes more importance in India. The concept of practical problem solving, whether by working in a laboratory or in the field, as an important means of developing skills has been in acknowledged since time immemorial. However, it was in 1901, that a Russian professor, Alexander Lyublinsky, first proposed Clinical Education in law on similar lines on medicine. The global clinical movement started taking place in 1960s, where by the time; many schools in U.S started providing clinical education. Earlier the primary focus on clinical legal education was on giving legal aid, social justice but with time it shifted to client and community service.

²² Clinical Legal Education , Online article retrived from
<http://www.vmslaw.edu/UploadPages/Clinical_Legal_Edu.html>

²³ Practicability of clinical legal education in India – an overview , Journal of Education and practice ISSN 2222-1735 (Paper) ISSN 2222-288X (Online) Vol.4, No.26, 2013 retrived from <[http://pakacademicsearch.com/pdf-files/edu/413/157-162%20Vol%204,%20No%2026%20\(2013\).pdf](http://pakacademicsearch.com/pdf-files/edu/413/157-162%20Vol%204,%20No%2026%20(2013).pdf)>

SOME LANDMARK JUDGMENTS RELATING TO ACCESS TO JUSTICE

There are certain case laws which have talked about legal education which is mandatory as per Article 21 and clinical legal education helps in spreading legal awareness. One such case law is Hussainara Khatoon & Ors. (V) v. Home Secretary, State of Bihar,²⁴ Patna Justice Bhagwati held that: "it's the constitutional right of every accused person who is unable to engage a lawyer and secure legal services on account of reasons such as poverty, indigence or incommunicado situation, to have free legal services provided to him by the State and the State is under a constitutional mandate, to provide a free lawyer to accuse, if he requires.

If free legal services are not provided to such an accused, the trial itself may run the risk of being vitiated as contravening Article 21 and it is hoped that every State Government would try to avoid such a possible eventuality."

Suk Das v. Union Territory of Arunachal Pradesh²⁵, and said "It may therefore now be taken as settled law that free legal assistance at State cost is a fundamental right of a person accused of an offence which may involve jeopardy to his life or personal liberty and this fundamental right is implicit in the requirement of reasonable, fair and just procedure prescribed by Article 21."

NATIONAL LEGAL SERVICE AUTHORITY

On 5th December 1995, NLSA was constituted with the aim of providing free legal services to weaker section of the society and also to conduct Lok Adalats for amicable settlement of disputes. In every State, State Legal Services Authority has been constituted to give effect to the policies and directions of the NALSA and to give free legal services to the people and conduct Lok Adalats in the State. The State Legal Services Authority is headed by Hon'ble the Chief Justice of the respective High Court who is the Patron-in-Chief of the State Legal Services Authority.

In every District, District Legal Services Authority has been constituted to implement Legal Services Programmes in the District. The District Legal Services Authority is situated in the District Courts Complex in every District and chaired by the District Judge of the respective district.

Taluk Legal Services Committees are also constituted for each of the Taluk or Mandal or for group of Taluk or Mandals to coordinate the activities of legal services in the Taluk and to organise Lok

²⁴ AIR 1979 SC 1360

²⁵ (1986) 25 SCC 401.

Adalats. Every Taluk Legal Services Committee is headed by a senior Civil Judge operating within the jurisdiction of the Committee who is its ex-officio Chairman.

Section 12 of the Legal Services Authorities Act, 1987 prescribes the criteria for giving legal services to the eligible persons which include the women, children, member of SC,ST , mentally ill or disabled person , an industrial workmen and many more.²⁶

So National Legal service authority is one of great step taken to bring out legal awareness and provide justice to people.

Thus, we can say “Clinical Legal Education is essentially a multi-disciplined, multipurpose education which can develop the human resources and idealism needed to strengthen the legal system... a lawyer, a product of such education would be able to contribute to national development and social change in a much more constructive manner”²⁷

TO CLAIM LEGAL RIGHT IT IS ESSENTIAL TO HAVE KNOWLEDGE OF LAW

Legal literacy is the core basis of the rule of law and constitutionalism. In fact, the whole concept of administration of justice is premised on the presumption that the people are legal-literate; that is; they know their rights, which are recognized and protected by the law and Constitution. Legal literacy, thus, helps in avoiding conflict situation. It facilitates access to justice system. It helps in eliminating inequality and discrimination. Lack of legal literacy, on the other hand, makes the ignorant masses vulnerable to deception, deprivation, and exploitation of all sorts.²⁸

Clinical legal education is the best method to spread legal literacy. Law student can impart the knowledge of law to the people who is still legally illiterate. Basically, people who live in rural area generally do not have adequate knowledge of legal provisions.

Data from the Census of India, 2011 shows us how many people live in rural India: 833,087,662 persons live in rural India, amongst them 427,917,052 are men and 405,170,610 are women.²⁹

²⁶ Supra 2

²⁷ Kuljit Kaur , “Legal Education and social transformation”
[availableat: <http://alsonline.amity.edu/Docs/alwjlegkk.pdf>] [viewed on: 25/06/2009]

²⁸ OBSERVANCE OF NATIONAL LEGAL LITERACY DAY: WHAT SHOULD IT MEAN TO US? (July 27, 2015, 10:58 pm)

²⁹ Census of India (2011), (visited July 24, 2013).
available at <http://censusindia.gov.in/2011census/censusingodashboard/index.html>

The focus of this clinic model is on the reform of legal education to accelerate the empowerment of marginalized rural communities in India. This model is primarily inspired by the community lawyering movement of South African clinical legal education. The idea of community lawyering in India as a way to ensure access to justice and legal empowerment for the underprivileged is gaining importance as 'advocacy on behalf of a group is seen as more efficient and cost effective, particularly when the group as a whole is at odds with the social, economic, cultural, and political situation.'³⁰

Some law schools in have taken strong steps at clinical legal education and set ideal example for all other law schools in India. When we look at Jindal Global Law School (JGLS) and the Institute of Rural Research and Development (IRRAD), we can broadly determine the nature and duties of a clinic for the empowerment of rural Indians. Using clinical legal education methodology, IRRAD and JGLS train rural villagers in their locality about government programs enacted to help them. The training explains the Right to Information Act and the proper channels for following up on applications that become stuck in the system. Armed with the knowledge acquired over the course of the year-long training, villagers monitor the functioning of local government and share their findings at periodic feedback sessions. Residents of over 200 villages have been trained as of December 2011.³¹

Thus, it is undisputable fact that clinical legal education and access to justice are two sides of the same coin. As we have discussed access to justice includes the awareness of legal provisions and this clinical legal education is the best method it spread awareness among the masses.

BENEFITS OF CLINICAL LEGAL EDUCATION

Practical approach – When you learn something until and unless you don't bring out in practical aspect, then there is no point of just doing theoretical portion. One gets better understanding by doing things practical. The same goes in legal education. When you hear the client issues and solve their problem by the knowledge of law you have, you will gain more confidence. It gives students

³⁰ Sopiyo Routh, "Experiential Learning Through Community Lawyering: A Proposal for Indzan Legal Education", 24 Pac. McGeorge Global Bus. & Dev. L.J. 1,116 (2011)

³¹ Promoting legal education: O.P. JINDAL GLOBLE LAW SCHOOL (27th July 27, 2015, 11:22 pm) <http://www.jgu.edu.in/PDF/QAA/Annexure-12-Jindal-Cornell-Report.pdf>

the opportunity to explain why they are taking certain actions and they are able to discuss and reconsider their actions.³²

Student self motivation- One get more confident and motivated. Students will get more responsible in their work.

Professional Ethics and responsibility- There is need of study of ethics and the professional responsibility and conduct of lawyers. This is growing in recent years as Clinical Legal Education includes practical training.

Involvement of local community- By the clinical education, there can be more of legal awareness. People will get to more of their rights by interaction with the students. Also the students can be able to understand the problems of different generation and background.

CLINICAL EDUCATION IN FOREIGN COUNTRIES

Now we will see how clinical education working in other countries. The US started working on clinical legal education since the 1950s, since 1960s in Great Britain and Australia and in several African countries and Eastern Europe since 1970s and 1990s respectively. In 2010, Protection project³³ along with association with Alexandria University Faculty of Law in the establishment of the first legal clinic in Egypt. Here students provide legal aid by assisting pro-bono lawyers and to the victims of domestic violence, human trafficking etc.

The protection Project also runs an International Human Rights Clinic which offers graduate students from The Johns Hopkins University School of Advanced International Studies (SAIS), the opportunity to participate in practical programs aimed at promoting human rights around the world, in addition to learning about the international human rights legal framework.³⁴

CONCLUSION

Thus authors briefly like to conclude on this topic stating that clinical legal education is one of the very important aspects from every point of view, whether it is for the student or for the indigent

³² Richard Lewis, "*Clinical Legal Education Revisited*" Professor of Law, Cardiff university, Wales, United Kingdom Pg.7,11 [available at: <http://www.law.cf.ac.uk/research/pubs/repository/212>]

³³ Protection Project is a 501(c3) not-for-profit human rights research and training institute ,more information can be retrieved on << <http://www.protectionproject.org/about/our-mission-goals/>>>

³⁴ The Protection Project retrieved at <<<http://www.protectionproject.org/about/our-mission-goals/>>> [last seen 28-7-15 at 7:24]

people. There would be more of legal awareness and for the students more of practical knowledge they will learn. We also saw in the paper how legal education has slowly with time brought up the concept of clinical legal education. We also saw in the paper how clinical legal education access to justice which is one of the fundamental rights .Benefits of legal education is also been discussed in the paper for the aim that more clinical education will be encouraged and how legal education is there in foreign countries is also been discussed so that we can understand all how different countries are adopting clinical legal education.

NEED FOR A PROACTIVE APPROACH TOWARDS FULFILLMENT OF THE CONSTITUTIONAL OBLIGATION UNDER ARTICLE 39 A IN INDIA

*Dr. V. Sudesh**

ABSTRACT

The object of legal education is to furnish skills and competence for establishment of a just society. Legal education strives to identify the problems affecting the society and offer solutions to ensure social and economic justice through the rule of law. Social change can be brought about only by law in general and legal education in particular. Legal education constitutes the backbone of our society. Roscoe Pound rightly said that “law is tool for social engineering”. Article 39A of the Constitution of India provides that state shall secure the operation of the legal system promotes justice on a basis of equal opportunity, and shall in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disability. Post independence, legal education has strived to fulfill the constitutional commitment. However, a remarkable change in the direction and the role of legal education took shape with the introduction of 5year LL.B integrated programme by the Bar Council of India. The introduction of Practical training programme such as legal-aid and legal literacy in the curricula, gave an opportunity to law students to interact with the society at large, prior to getting the right to practice law. However, over the years, due to several reasons it is felt that the law colleges in general and law students in particular are chucking their responsibilities towards fulfilling their part of the obligation under Article 39A.

The scope of this paper to examine short comings in the implementation of clinical legal programme by the law colleges and the students and suggest measures to make it proactive towards fulfillment of the Constitutional obligation under Article 39A.

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I. The objectives and goals of a just society are very specifically mentioned in the preamble to the Constitution. Our progress as a nation must be directed towards securing justice, liberty, equality and fraternity of all citizens of India. In order to secure these objectives the Constitution secures fundamental rights and duties to all citizens. Further the Constitution directs that the policies of the government must be directed towards achieving a just society.

Article 39 A states,

“The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.”

The above was inserted by the 42nd amendment to the Constitution, by which a duty was cast on the State to secure free legal aid to its citizens who by reason of economic or other disabilities is unable to secure justice. The Supreme Court of India in the case of

*Hussainara Khatoon & Ors vs Home Secretary, State of Bihar*¹ observed that,

“Article 39A also emphasises that free legal service is an inalienable element of 'reasonable, fair and just' procedure for without it a person suffering from economic or other disabilities would be deprived of the opportunity for securing justice. The right to free legal service is therefore, clearly an essential ingredient of 'reasonable, fair and just' procedure for a person accused of, an offence and it must be held implicit in the guarantee of Art. 21. This is a constitutional right of every accused person who is unable to engage a lawyer and secure legal services, on account of reasons such as poverty, indigence or incommunicado situation and the State is under a mandate to provide a lawyer to an accused person if the circumstances of the case and the needs of justice so require, provided of course the accused person does not object to the provision of such lawyer

(3) The poor in their contact with the legal system have always been on the wrong side of the law. They have always come across "law for the poor" rather than "law of the poor". The law is regarded by them as something mysterious and forbidding-always taking something away from them and not as a positive and constructive social device for changing the socio economic order and improving their life conditions by conferring rights and benefits on them. The result is that the legal system has lost its credibility for the weaker sections of the community. It is, therefore, necessary to inject equal justice into legality and that can be done only by a dynamic and activist scheme of legal services” (emphasis supplied)

¹ 1979 AIR 1369, 1979 SCR (3) 532

Therefore it may be stated that free legal aid is a fundamental right which may secured by the following:

- (i) Making justice available at the door step of the citizen;
- (ii) Training law graduates and law students to serve at the grass root level.

While the first of the above is mainly concerned with the availability of courts and tribunals available at location very nearer to the litigants, the second is concerns itself with objectives of legal education.

II. Legal Education in India is regulated by the Bar Council of India (BCI). The BCI has been constituted under section 4 of the Advocates Act, 1961. The provisions of sec. 7(1)(h) of the Advocates Act, 1961 enable the Bar Council of India to lay down the standards of legal education required for students who seek enrolment to the Bar. Way back in the year 1958 the 14th report of the Law Commission on Legal Education in its conclusion commented that *“the legal education imparted in our country so far has been extremely defective and is not calculated to produce either jurists or competent legal practioners”*.² Since then the Bar Council of India has brought several changes in the structure of LL.B Course in terms of its duration and course contents. The introduction of 5 year LL.B degree course was one significant change in the duration of the LL.B course. The 5 year L.B course is structured in manner which enables a student to devote sufficient time for theory and practical classes. One aspect of the practical training is the legal aid and legal literacy programme. The objectives of the practical training programme in legal aid and legal literacy is to train the students in fulfilling their duties towards the society and thereby fulfill the directions under Article 39A of the Constitution. The 131st report of the Law Commission of India in its Report on the Role of Legal Profession in administration of Justice, states that *“Legal profession enjoys on the one hand uninhibited eulogy and on the other hand no holds barred condemnation. Free from either, objectively and dispassionately, the role of legal profession may be examined with a view to making its role justice and people oriented”*

The legal aid and literacy programme in the law school and law colleges were introduced with the idea that the law students fulfil their part of the obligation to the society. It is an opportunity for the students and their colleges to identify the vulnerable groups who may require legal aid. Further, as the colleges adopt nearby villages for spreading legal literacy and provide legal aid, it would go a long way in realizing the directions under Article 39 A. However, by and large the legal aid and literacy

² Available at www.lawcommissionofindia.nic.in, last visited on 22/02/12.

programme in law schools and law colleges seems to have not discharged their duties in this regard completely.

The Law Commission of India in its 131st report in the concluding chapter on The Role of Legal Profession in the administration of Justice, states as follows,

...the role of the legal profession has to be assessed in the context of constitutional mandate as set out in article 39A of the constitution...The State which has conferred a monopoly on the legal profession by permitting it regulate its own admission, qualification for admission and be the regulator of its own internal discipline, should so conduct itself as affording every facility for securing justice. To discharge this obligation, the legal profession must make its services available to those needy who otherwise cannot afford to pay the cost of legal services...

The above observation has to be seen in the context of legal education also. By merely imparting theoretical knowledge of law subjects and training them to become good research oriented and argumentative lawyers, the legal education would fail in its duties towards the society. If the future lawyers are not exposed to the real conditions of our society, they would in their profession life fail to secure justice as mandated under Article 39 A. It is interesting to note the following observation of the Law Commission of India on the attitude of the law students, quoting Charles Reich, it states-

“Finding themselves in law schools...(students) discover that they are expected to become ‘argumentative personalities who listen to what some on is saying only for the purpose of disagreeing; analytical rather than receptive people, who dominate information rather than respond it; and intensely competitive and self-assertive as well. Since many of them are not this sort of personality before they start law school, they react initially with anger and despair, and later with resignation...In a very real sense, they ‘become stupid’ during law school, as the range of their imagination is limited, their ability to respond with sensitivity & receive impressions is reduced, and the scope of their reading and thinking is progressively narrowed.”

Internships, moot court competitions and semester end examinations are limiting and restricting the extra-curricular activities of students. Legal aid camps by law colleges in some cases become annual ritual for the students to attend. In most cases they are compelled to attend to secure marks in the practical paper. Further, even when such camps are meaning fully held, only a few students take up active role and since there is no follow up to the legal aid camps, the whole exercise becomes a

formality. In view of the above the following observations may be made on the status of the legal aid programme in schools and colleges:

1. Legal aid remains as an agenda only on paper in the form of syllabus.
2. Rural and urban divide of law schools and law colleges presents lack of exposure to all students to the social problems.
3. Law schools orientation towards corporate life means that students neglect rural legal aid programme.
4. Lack of funds to organize legal aid camps in rural areas on a continuing basis, makes the legal aid programme a mere one day formality.
5. Law teachers' pre-occupation with acquiring points under the new UGC system for promotions gives them less time for such outdoor activities.
6. Lack of awareness of rural set up and not knowing the language means that the students are mere spectators in legal aid programme.

Suggestions for pro-active approach

1. Compulsory set up functional legal aid clinic in law schools and colleges.
2. Attach a practicing lawyer from the local bar to head the legal aid clinics
3. Make it obligatory for every law student do compulsory rural legal aid service once a week during the entire semester.
4. Give wide publicity in the area where the legal aid camps are to be conducted.
5. Follow up the legal aid camps by the next coming batch of students.
6. Making provision for legal aid in the budgetary allocation of Universities, Colleges, and Law schools.
7. Adequate training to be given to the students to take up rural legal aid and legal literacy programme.
8. Enrollment of law graduates as advocates subject to production of certificate from the head of the administrative area where legal aid service was provided.

Finally attention needs to be drawn to the final report of the 3 member committee on Reform of Legal Education which was appointed pursuant to orders of the Supreme Court dated June 29, 2009 and October 6, 2009 and as approved by the Bar Council of India vide Resolution dated October 24, 2009. The recommendation of the Committee on the establishment of Legal Aid Clinics/Centres is as follows:

“Apropos the principle enshrined under Article 39-A of the Constitution of India, the Bar Council of India, vide Resolution dated October 24 2009, resolved that all law schools/colleges should establish a legal aid clinic/centre for the purpose of providing inexpensive and efficient justice to the needy sections of our society. It was also resolved that a lecturer shall be the faculty incharge of a legal aid clinic/centre, and that final year students would be trained at such legal aid clinics/centres in imparting professional legal advice and client interaction. This Committee unreservedly endorses the Resolution passed by the Bar Council of India and recommends that establishment of such legal aid clinics/centres be made a pre-condition to the recognition of law colleges by the Bar council.”

The above recommendation must be seen to be implemented in all its seriousness.

CONCLUSION

In conclusion it may be said that unless law students in particular and legal education in general is not oriented towards serving the needy and vulnerable sections of the society the critics of legal profession will always say like what William Shakespeare has been quoted to have said, “*the first thing to do, let us kill all lawyers.*” The monopoly enjoyed by the legal education and legal profession must be exploited to make the poor realize that the law has social relevance. If the law colleges and law schools do not go beyond their class rooms and internship programme, society will curse such institutions for failing to discharge social obligation. Law schools/law colleges & law students must realize that unless they adopt a pro-active approach towards fulfilling their part of the obligation under Article 39A, the faith on the legal profession to bring about changes in the society by the creation of just and egalitarian society would be misplaced and the monopoly would be challenged.

CLINICAL LEGAL EDUCATION IN INDIA AN OVERVIEW: ROLES, GOALS AND CHALLENGES

*Prakhar Pandey**

ABSTRACT

In India, Clinical Legal Education has been witnessed as a significant part of legal education. The concept is growing and gaining recognition globally as well. Clinical Legal Education appears to be a necessity now to link and carry theory and practice together. Various attempts have been made in India, to have a sound and efficient clinical legal education program but they all ended in vain due to the lack of forethought by the authorities. The aim of this paper is to know the roles, goals and challenges faced by Clinical legal Education, its necessity in curriculum and current assessment in Indian Legal Education.

Purpose of this article is to highlight the role of legal education imparted by the law schools in shaping up of legal profession in India. This paper aims to throw light on the importance of teaching methodology and education system in building up of a legal professional. Clinical education in law is a progressive educational ideology and pedagogy and shall be implemented through university programs. The concept is expanding at a great pace across the globe also. Clinical Legal Education is necessary to bridge the gap between theory and practice. The pertinent question is "Whether a law school should teach students in a legal clinic where they deal with the problems faced by real clients or would only theory suffice?" This question is of growing importance not only in India but also in other countries. Clinical Legal education is the only way in which theory and practice can be brought together as it encapsulates many major issues in legal education. Under the supervision of clinical faculty expert in their practice area, a student goes through the process of developing the unique version of the lawyer waiting inside him/ her.

The paper also asserts that a law student who merely takes a variety of pure theory courses will be woefully unprepared for legal practice. That student will lack the basic doctrinal skills: the capacity to analyze, interpret and apply cases, statutes, and other legal texts. More generally, the student will not understand how to practice as a professional. He or

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she will have gained the impression that law practice is necessarily grubby, materialistic, and self-interested and will not understand, in a concrete way, what professional practice means.

Law students need concrete ethical training. They need to know why pro bono work is so important. They need to understand their duties as "officers of the court." They need to learn that cases and statutes are normative texts, appropriately interpreted from a public regarding point of view, and not mere missiles to be hurled at opposing counsel. They need to have great ethical teachers, and to have every teacher address ethical problems where such problems arise.

INTRODUCTION

"In law a man is guilty when he violates the rights of others. In ethics he is guilty if he only thinks of doing so."

- Immanuel Kant

Every profession has its own stance and a set of aptitudes. That is what makes it distinct from other vocations. What sets one apart as a professional is how and why they choose to use it. It is the combination of intellect, skill and aspiration brought together to bring oneself to bear on the world around. If it is done right, it can turn one's career choice into a calling.

A lawyer's job is no less important than that of a doctor's. In both the professions, the professional tries to save the life of a person who comes to seek their professional service. Though vested with vast powers, legal professionals are also imposed with vast duties and responsibilities to which they are morally as well as legally bound.

It depends upon the law schools, legal educators, lawyers, judges, and members of the public to evaluate the role and method of education at law schools in order to explore new ways of conceptualizing and delivering learner-centered legal education.

"A law school can best achieve excellence and have the most effective academic program when it possesses a clear mission, a plan to achieve that mission, and the capacity and willingness to measure its success or failure. Absent a defined mission and the identification of attendant student and institutional outcomes, a law school lacks focus and its curriculum becomes a collection of discrete activities without coherence. If a school does not assess its performance, it can easily be deluded about its success, the effectiveness of its pedagogical methods, the relevance of its curriculum, and the value of its services to its constituencies. A law school that fails to assess student performance or its performance as an institution, or that uses the wrong measures in doing so, has no

real evidence that it is achieving any goals or objectives. A law school that lacks evidence of achievement invites demands for accountability.”¹

Practical problem solving has always been acknowledged as an important means of developing skills. Such an approach is adopted either by the work done in a laboratory or on the field. Clinical legal education albeit has shown one of the most promising developments after being incorporated in the teaching methodology from the early twentieth century. In 1901, a Russian professor, Alexander Lyublinsky, first proposed Clinical education in law on similar lines as in medicine.²

Clinical Legal Education has been the consistent link for reform of legal education in India focusing on preparation and relevance. Students are exposed to the impact that the practice of law has on people through legal clinics. It is futile pretending that they are prepared to practice without a sense of this impact. This perspective has significant implications for the way legal education is approached in India. Law schools must foster a contextual understanding of what should be done by lawyers to meet the needs of the country. Connecting students with communities and involving them in creative solutions help them focus better on the common good.

CLINICAL LEGAL EDUCATION – “LEARNING BY DOING”

Clinical legal education is essential in preparing law students to practice law effectively. It involves teaching students to be lawyers by learning through experience or “*learning by doing*.”³ Clinical legal education is in the midst of an exciting period of growth and development, prompting clinicians around the world to reflect on what clinical education’s remarkable successes over the past forty years mean for its future.⁴

¹GREGORY S. MUNRO, OUTCOMES ASSESSMENT FOR LAW SCHOOLS 46, n.113 (2000).

A more recent book is PHILIP C. KISSAM, THE DISCIPLINE OF LAW SCHOOLS (2003). Kissam describes the paradoxes in legal education in which intentions and practices seem to be at cross-purposes, and he depressingly holds out little hope for significant change.

² Richard J. Wilson, *Training for Justice: The Global Reach of Clinical Legal Education*, 22 Penn St. Int'l L. Rev. 421 (2004).

³ N. R. Madhava Menon, 1998, “*Clinical Legal Education*”, chapter 2, Pg.25, Eastern Book Company Lucknow.

⁴ A. S. Anand, H.L. (1998) *Sarin Memorial Lecture: Legal Education in India – Past, Present and Future*, 3 SCC (JOUR) 1, 2.

The earliest reference on Clinical legal education in United States could be traced in the year of 1917.⁵ Since that time, Clinical teaching has become an integral part of legal education in most developed and developing countries.⁶

Clinical legal education is not a term of art; it can mean different things to different people. It has been defined as:

“A learning environment where students identify, research and apply knowledge in a setting which replicates, at least in part, the world where it is practiced.... It almost inevitably means that the student takes on some aspect of a case and conducts this as it would ... be conducted in the real world.”⁷

The sphere of clinical legal education is very wide; however for the present paper the focus of discussion is narrow. In broader sense replicating what goes on in the real world forms part of the curriculum of law schools. It can include a wide variety of activities such as:

Simulations- There are many simulation exercises through which students can learn about what happens in legal practice. The most commonplace among these are *Moot Court Competitions*. Traditionally they have formed an integral part of a law school activity and introduce students to the intricacies of advocacies. Use of *mock trials* by involving professional actors helps them understand the environment of a first instance tribunal. There are many other exercises such as *negotiation exercises* where students learn the art of negotiation, not just trial litigation. *Client Counseling Competitions* are another such competitions that help student develop the art and skill of handling clients. *Legal writing and drafting* exercises also hold an exceptional value in teaching law. Though these simulations may lack the complexity of real client work and the role play may not fulfill the same demands but these are all necessary and indispensable activities⁸ that help students understand the real side of law apart from the pure theoretical courses.

Internships and Externships- Internships provide an opportunity to work for a fixed, limited period of time at a real workplace. It offers students a period of practical experience in the industry relating to their field of study. Experiments on the other hand are experimental learning

⁵ The earliest academic reference is William V. Rowe, *Legal Clinics and Better Trained Lawyers — A Necessity*, 11, ILL. L.Rev. 591(1917). Most cited reference for the conceptual origins of Clinicallegal education in the United State comes from Jerome Frank, *Why Not a Clinical Layer — School?*, 81, U. Pa. L. Rev. 907(1933).

⁶ *Ibid.*

⁷ R. GRIMES, THE THEORY AND PRACTICE OF CLINICAL LEGAL EDUCATION, J. WEBB AND C. MAUGHAM (EDS.) TEACHING LAWYERS' SKILLS (1996) at p 138.

⁸ H. Brayne et al, *Clinical Legal Education*, Chap 5 (1998).

opportunities. They are generally offered by professional colleges which help students in experiencing a short practical experience in their field of study. An exposure to internship/externship helps students gain useful insight in actual practice of ADR methods as well.

In-house/Out-house Clinic- The clinics are either based in the law schools or are run by trade union councils or other statutory bodies. In in-house clinics the clients are interviewed and advised orally or in writing and also helped with preparation of their cases. The clinic may operate as a paralegal service. Out-house clinics involve students in exercising legal work outside the college or university. In this type of clinics, the real-client unpredictability and other risks are removed and same materials are used for many times which reduce the cost substantially.

The administration of these simulations is a little difficult but all these play an active part in Clinical Legal Education. Moreover, the objectives and aims of such clinics is the same as Clinical legal Education.

CLINICAL LEGAL EDUCATION IN INDIA

Legal education in India is predominantly regulated by the Bar Council of India in furtherance of powers vested in it under the Advocates Act, 1961.⁹ Legal education has been imparted by different Law Colleges in India, which includes those funded and managed by the Government; financially aided by the Government but privately managed; privately managed Colleges receiving no government aid; and University Law Colleges managed by the University Departments receiving government aid.¹⁰

⁹ Advocate Act, 1961 Section: 7 [(1)] The functions of the Bar Council of India shall be- (h) to promote legal education and to lay down standards of such education in consultation with the Universities in India imparting such education and the State Bar Councils; Section 49 [(1)] The Bar Council of India may make rules for discharging its functions under this Act and particular, such rules may prescribe.

(af) The minimum qualifications required for admission to a course of degree in law in any recognized University;

(ag) The class or category of persons entitled to be enrolled as advocates;

(ah) The conditions subject to which an advocate shall have the right to practice and the circumstances under which a person shall be deemed to practice as an advocate in a court;

(d) The standards of legal education to be observed by University in India and the inspection of Universities for that purpose;

¹⁰MANDAVA RAMA KRISHNA PRASAD, LEGAL EDUCATION IN INDIA: ROLE OF CLINICAL LEGAL EDUCATION IN DEVELOPING, INSTITUTIONALIZING AND IMPLEMENTING A SOCIAL JUSTICE MISSION FOR LAW SCHOOLS 12-14, The Goa University, Panaji, Goa (2010)

With the success of the NLSIU¹¹, many other States also adopted the same model and established National Law Schools. Some of such National Law Schools expanded on the experimentation process, introducing science, management and other liberal subjects in the first two years of the integrated course and offered the intermediate degree in different streams.

Until Clinical programs entered the scene, skills training and social justice work were for all intents and purposes, off the legal education agenda. Legal doctrines dominated the Law School syllabi in both countries, with virtually all instruction offered through classroom courses dominated by "Socratic" dialogue and appellate-court-oriented case books in the United States and traditional lectures in India.¹²

Now, generally most of the Indian law schools as a part of the syllabus offer clinical legal education programs. Usually, Indian law schools offer "legal aid cells" where students, largely without faculty supervision, perform legal services for poor communities. Clinics are important because they prepare students to practice law by teaching them valuable skills such as fact-finding, investigation, interviewing, and legal research and writing. Students also develop a sense of social justice and empathy through their work with disenfranchised groups.¹³

Clinical Legal Education in India has its roots in both the Legal Aid and Legal Education Reform Movements. Formal Legal Education started in 1855, in India. Many commissions and Committees were set up for the development of Clinical Legal Education in India. Legal Education has gone through many stages of development. Some of these stages are –

The Bombay Legal Education Committee concluded in 1949, recommended that practical courses should be made compulsory only for students who choose to enter the profession of law and the teaching method should include seminars or group discussions, moot court competitions etc.

The 14th Report of the Law Commission of India recognized the importance of professional training and for a balance of both academic and vocational training. It recommended that University training must be followed by a professional course concentrating on practical knowledge—but it suggested

¹¹ The National Law School of India Act (Karnataka Act 22 of 1986), which came in effect vide Notification dated August 29, 1987 in the Official Gazette of the Government of the State of Karnataka.

¹² Frank S. Bloch & M.R.K. Prasad, *Institutionalizing a Social Justice Mission for Clinical Legal Education: Cross-national Currents from India and the United States*, 13 *Clinical L. R.*, 167-168(2006).

¹³ Mrs. Archana K., *Practicability of Clinical Legal Education in India- An Overview*, *Journal of Education and Practice*, Vol.4, No.26, 2013.

that the professional course be made compulsory only for those who chose to practice law in the courts. The Commission's 1958 Report concentrated on institutionalizing and improving the overall standards of legal education. In that regard, the Report also discussed teaching methods and suggested that seminars, discussions, mock trials, and simulation exercises should be introduced--- in addition to lectures. Thus, although the Commission's Report didn't deal directly with improving skills, it did so indirectly by supporting the use of teaching methods that could be more helpful in developing various skills.

In India, the involvement of Law Colleges in legal aid activity began when the legal aid movement gained momentum in the 1960s. It was assumed that Law Schools could play a significant role in providing legal services and that they would do so through Legal Aid Clinics.¹⁴ As a result, Clinical legal education took its roots in India in the late 1960s.¹⁵ In the mid-60s, Delhi University introduced the case method in teaching law, and in 1969, the faculty and students established a Legal Service Clinic.

A link between expressed Legal Aid and Legal Education Reform was published in 1970s by the Expert Committee on Legal Aid of the Ministry of Law and Justice.

After 5 years of debate over a 3-year v/s 5-year L.L.B. course, which began during a 1977 National Seminar on Legal Education at Bombay, the Bar Council of India (BCI) unanimously agreed to introduce the new 5-year course from July 1982, open to students after 10+2. The BCI recommended practical training in the curriculum.

Reports of University Grants Commission (UGC) also played important roles in the history of Clinical Legal Education and report emphasized the role of legal education in developing law as a hermeneutical profession, explaining that lawyers must be taught a variety of skills and sensibilities. It outlined the objectives of reformed teaching as making students more responsive to learning and making them demonstrate their understanding of law.

The next important step in the evolution of Clinical Legal Education began at the conference of Chief Justice of India in 1993, which resolved that the Chief Justice shall constitute a committee to

¹⁴ Frank S.Bloch & Iqbal S. Ishar, *Legal Aid, Public Service and Clinical Legal Education: Future Directions from India and the United State*, Mic. J. Int'l. L., 96 (1990).

¹⁵See generally, MADHAVA MENON, LEGAL AID AND LEGAL EDUCATION: A CHALLENGE AND AN OPPORTUNITY, 25 (University of Delhi, New Delhi, 1986). See also Frank S.Bloch, and Iqbal S. Ishar, *Supra*, note 37.

suggest appropriate steps that should be taken to assure that law graduates acquire sufficient experience before they become entitled to practice in the courts. It was found that the general standard of law colleges in country was deteriorating and that the syllabus should be revised to include practical subjects so that the students could get professional training.¹⁶

After reviewing these recommendations, the BCI introduced a one-year training rule¹⁷ but discarded the suggestion for introduction of entrance examination. However, the BCI received a setback when this rule was challenged in the Supreme Court. In *V. Sudheerv. Bar Council of India*,¹⁸ the Supreme Court struck down the rule as *ultra vires* to the Advocates Act and held that the Bar Council of India was not competent to make such a rule. Further, it held that such a rule could be introduced only by the legislature. It suggested that these recommendations should be put into practice using appropriate methods.¹⁹ Unfortunately till now, no efforts have been made by the government of India to amend the Advocates Act to incorporate these recommendations.

Bar Council of India (BCI) report 1996 on NLSIU (The National Law School of India)—The Bar Council of India issued a circular in 1997 using its authority under the Advocates' Act 1961 directing all universities and law schools to revise their curriculums. It included 21 compulsory courses and 2 optional courses, leaving Universities free to add more courses. The circular also mandated the inclusion of 4 practical papers. Law schools have been required to introduce these 4 practical papers since academic year 1998-99, which was viewed as a big step toward introducing Clinical Legal Education formally into the curriculum.

In order to achieve the objects of the clinical program, NLSIU offers a wide range of opportunities in clinical programmes, compulsory as well as optional, to the students. At present the compulsory clinical courses are—(a) *Client Interviewing, counseling, And Alternate Dispute Resolution methods*; (b) *Litigation Clinic*; (c) *special Clinic integrated with compulsory placements* of two months from III year to V

¹⁶LAW COMMISSION OF INDIA, 184TH REPORT ON THE LEGAL EDUCATION AND PROFESSIONAL TRAINING AND PROPOSAL FOR AMENDMENTS TO THE ADVOCATES ACT 1961 AND THE UNIVERSITY GRANTS COMMISSION ACT 1956, 54.

¹⁷ Bar Council of India Training Rules, 1995 — Rule 2 to 15.

¹⁸ 1999 (3) SCC 176.

¹⁹ It was felt by the Bar Council of India itself before the Committee that for providing pre-enrolment training to prospective advocates, relevant amendments to the Act were required to be effected. Therefore, the Court strongly recommended appropriate amendments to be made in the Act in this connection. The amendments can be effected only by Parliament. Till the Parliament steps in to make suitable statutory required amendments to the Act for providing pre-enrolment training to prospective advocates seeking enrolment under the Act, the Bar Council of India by way of an interim measure can also consider the feasibility of making suitable rules providing for in-practice training to be made available to enrolled advocates.

year of the 5 year LL.B. course. The optional component of the scheme includes: *a) Moot Court (b) Legal services Clinics; (c) community-based Law Reforms Competition.* In addition to the above, NLSIU curriculum carries a full course of 100 marks taught outside the declared clinical courses. This is a compulsory course on Professional Ethics and Law Office management taught with assistance of legal practitioners.

The 2nd UGC report of particular interest to Clinical Legal Education²⁰ was prepared by a Curriculum Development Committee, which was asked to upgrade the syllabi of the LL.B. course. The proposed curriculum also includes several subjects which have a potential to be taught clinically in order to offer instruction in various values and skills required for a new lawyer. Also it introduced a clinical aspect in the LL.M. program.

184th Report of the Law Commission of India, 2002²¹ stated that “the Commission considers that Clinical Legal Education may be made mandatory subject.”

CLINICAL LEGAL EDUCATION AND SOCIAL JUSTICE MISSION

Legal education binds within its ambit the knowledge of the theory and philosophy of law and its role of social engineering in the modern democratic society.²² Though legal education should primarily aim at furnishing skills and competence, the basic philosophies and ideologies for creation and maintenance of a just society cannot be ignored.

In India the Legal Clinics operated initially as an extracurricular activity, however, in 1998, Clinical education was made mandatory and now many Law Schools offer legal services through Legal Clinics. Like all other countries, Clinical education in India was principally focused on providing legal aid to the poor. But unlike many countries, providing legal aid in India is not confined to representing individual clients. Rather, it has a broader goal of securing social justice. Approaches to achieving social justice must take into account not only those legal matters involving litigation but

²⁰*Supra*, note 13.

²¹ Law Commission of India, 184th Report on The Legal Education and Professional Training and Proposal for Amendments to the Advocates Act 1961 and the University Grants Commission Act 1956, 54., Chapter 10 Para 1 page 96 (2002).

²²Gajendragadkar. J, Report of the Committee on the Reorganization of Legal Education in the University of Law, Delhi, (1964).

also assist people in understanding and responding to legal matters,²³ and in securing their simple legal entitlements to improve the quality of life.²⁴

In 1976, the 42nd Amendment of the Indian Constitution gave a constitutional status to legal aid by inserting Article 39A in the Constitution.²⁵ The purpose of this amendment is to promote justice on the basis of equal access. It imposes an imperative obligation on the state to provide free legal aid to the needy. The Supreme Court extended this provision, read with Article 21,²⁶ and held that the State should provide grants-in-aid to all recognized Private Law Colleges on par with Government Law Colleges so that the private Colleges are able to function effectively and turn out a sufficient number of well-trained or properly trained law graduates.²⁷

In *Centre for Legal Research and another v. State of Kerala*,²⁸ the Court recognized the necessity of the people's participation in the success of legal aid programs. The Court said, "A legal aid program is not charity or bounty but it is a social entitlement for the people." Further, it advocated the adoption of "a strategic legal aid program consisting of promotion of legal literacy, organization of legal aid camps, and encouragement of public interest litigation and holding of *lokadalats* or *nitimelas* ..." ²⁹

Though every person is accorded a fundamental right to petition the Supreme Court of India for protection of fundamental right, strict interpretation of the rule of *locus standi* denies equal access to justice to those who cannot afford to approach the courts on account of poverty or social and economic disadvantage. To resolve this problem, the Supreme Court of India in 1975 relaxed the traditional rule of *locus standi*³⁰ and developed the concept of public interest litigation.³¹ Under this

²³ Francis Regan, *Legal Aid without State: Assessing the Rise of Pro Bono Schemes* 33 U.B.C.L. REV. 386 (2003).

²⁴ For e.g., Helping in obtaining ration cards, senior citizen cards, drafting affidavits, elections cards and even filling applications for welfare schemes etc.

²⁵ Article 39 A of Constitution of India provides that "The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities."

²⁶ Article 21 of the Constitution of India provides that "No person shall be deprived of his life or personal liberty except according to procedure established by law."

²⁷ *State of Maharashtra v. Manubhai Pragaji Vash*, AIR 1996 SC 1.

²⁸ AIR 1986 SC 1322.

²⁹ *Ibid.*

³⁰ Few important judgments are *S.P Gupta v. Union of India*, AIR 1982 S. 149; *People's Union for Democratic Rights v. Union of India*, AIR, 1982 SC 1473; *Olga Tellis v. Bombay Municipal Corporation*, AIR, 1986 SC 180; *Vishvakav. State of Rajasthan*, AIR, 1997 SC 3011; *M.C.Mehta v. Union of India* AIR, 1998 SC 186.

³¹ *Bar Council of Maharashtra v. M.V. Dabholkar* AIR, 1975 S.C. 2092; *Mumbai Kamgar Sabha v. Abdullbhai* AIR, 1976 SC 1455.

new concept, any member of the public or a social group or organization could invoke the writ jurisdiction of the Supreme Court or any High Court for violation of fundamental rights.³²

It is apparent that the Bar and the Bench are the "*two wheels of the judicial administration*" and that these two branches are the result of the number of Law Colleges spread over the length and breadth of the country.³³ In a country like India, a sizable percentage of people still live below the poverty line. For millions, school is a distant dream and the discrimination on the basis of sex, race, religion and caste still exists.³⁴

Providing legal representation to an individual client is only a small part of the social justice mission in India. In order to promote social justice, Law Colleges must play a key role, particularly in programs that promote legal awareness, legal literacy, and influence public policy. An effective way by which a Law College can successfully promote social justice is by adopting Clinical method of teaching law.

Clinical teaching in Law Schools has the potential to bring about change in the attitude of lawyers, judges and other law enforcement agencies, not only in relation to the traditional methods for resolving disputes but can also bring about structural changes in legal policy and implementation. Therefore, the prime function of Clinical legal education is to ensure that the legal system does not permit law to act as a tool to oppress the weaker sections of society.

Clinical legal education has been developed with different, though at times overlapping objectives, namely improving the quality of legal education and enhancing access to justice, in its various facets, in society. In India, Clinical legal education came to be adopted as an experimental tool to increase the access to the justice.³⁵

³² Indian Constitution Art. 32 (1) declares that "the right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed."

³³ M.B.Meher, *Reconstruction of Legal Education*, 20 J.I.L.I. 280(1978).

³⁴ Dr. Justice A.S.Anand, Chief justice of Supreme Court, *Inaugural address at The Second Annual Meet of the State Legal Services Authorities held at Hyderabad*, (1999).

³⁵ Legal Aid Clinic was established in Delhi University by the faculty and the students after accidentally they involved in providing legal aid to an under trial prisoner by name Ratnavelu in Tihar Jail. Prof. Menon Writes "... with the experience of the Rathnavelu episode it was decided to institute a Legal Aid Clinic in the Delhi Law School on an experimental basis." See MADHAVA MENON N.R., *Students Legal Services Clinic the Delhi Experience In LEGAL AID AND LEGAL EDUCATION A CHALLENGE AND AN OPPORTUNITY* 110 (Madhava Menon N.R. ed, Delhi University, New Delhi 1986).

ASSESSMENT OF CLINICAL LEGAL EDUCATION IN INDIA

Even the law schools have not given much importance to these types of practical training to their students because of several problems. According to this UNDP study, the key problems in developing clinical legal education in India are that:

1. No credit is given to students who undertake these activities, which is a disincentive to students to conduct them and discourages them to follow through on their commitments;
2. There is no workload reduction given to faculty who are designated to supervise legal aid cells;
3. Communities are not aware that the law schools provide free legal services; and
4. Under the Advocates Act, full-time law teachers and students are not allowed to represent clients before courts.

Besides these problems, there are some other problems, which are listed below:

- a) **The Integration of the clinic within the law school:** There is a danger that the clinic will become an isolated outpost of the law school, and not absorbed within its mainstream activity.
- b) **Resources:** Extra resources must be allocated to the teaching and running of the clinic. This can be another cause of resentment for traditional academics who are less involved in skills teaching, and it is another reason why the support and involvement in the clinic of the law school is needed. The pressures created by the high caseload may badly affect the morality of both staff and students.
- c) **Difficulties in supervision and assessment:** Supervising students in the clinic is difficult task.³⁶
- d) **The dangers of public service:** The idea of providing free legal advice is attractive but problems can develop if the public service aim takes precedence over that of providing a sound and well-rounded legal education.
- e) **Relationship with the local legal profession:** Some may fear that a legal clinic offering free legal work will upset the law school's relation with the local legal professionals.³⁷

³⁶Legal Education in India: Problems and Perspective, 19 J.I.L.I. 337, 337-48 (1977).

³⁷ Mohammad Ghouse, Legal Education in India: Problems and Perspective, 19 J.I.L.I. 337, 337-48 (1977).

Unfortunately, there is a general feeling that legal education in India is not "meaningful" and "relevant."³⁸ The way legal education has been structured in India appears to suggest that it is intended to provide students only with some knowledge of statutes.³⁹ The curriculum is neither helpful in shaping aspirin lawyers in their traditional roles of problem solvers nor in their expanded roles of arbitrators, counselors, negotiators or administrators.

Due to prolonged neglect of legal education, numerous substandard institutions and "teaching shops," with abnormally large number of students, grew up around the country. As a result, admissions to Law Schools became disorganized and the quality of the students was poor.⁴⁰ With few exceptions, the Law Colleges failed to attract brighter students to the legal profession.⁴¹

The approach used in classroom teaching was the outdated lecture method. More emphasis was given in verbal analysis of a rule or a judgment. Little or no attention was paid to the underlying principles or social intricacies that resulted in the making of a particular rule. Students had no exposure to the policy underlying the law, the function of the law, or the needs of the nation and the expectations of the people.⁴² No effort was made to understand the law in a social context. In the words of Prof. Mohammad Ghouse, "*they were not alive to the dynamic role of law in the development of the country.*"⁴³

CONCLUSION

Clinic, particularly live client clinic, provides a creative, enthusiastic and democratic environment for the learning of the law. A key reason for this is the way that engagement with the real world as affected by real laws challenges moral codes and refreshes ethical thinking. Failure to take advantage of this in dialogue with students would be an abdication of responsibility as a teacher and show a poverty of imagination. This is why, despite the absence of any external imperatives, the teaching of ethics in law clinics continues to be highly valued, debated and researched. Ethics without clinic is artificial; clinic without ethics is sterile. This mutual interdependence ensures a vibrancy that is rare in modern higher education.

³⁸I.P.Massey, *Quest for Relevance' in Legal Education*, 2 SCC (JOUR) 17 (1971).

³⁹*Ibid.*

⁴⁰*Supra*, note 37.

⁴¹ Taylor Von Mehren, *Law and Legal Education in India: Some Observations*, 78 HARV. L. REV.1186 (1965).

⁴²*Supra*, note 37.

⁴³*Ibid.*

The introduction of clinical legal education programs in Indian law schools is critical to teaching essential skills to law students and instilling in them the importance of social justice. Effective clinics provide legal services to poor and marginalized groups that would not otherwise receive them. Though the BCI has made it mandatory to have clinical legal education in the curriculum, the institutions are not showing much interest in adopting the necessary skills. But the purpose and scope of legal education is to prepare students for the practice of the profession of law. Therefore, the law and legal education which together constitute the backbone of society should change according to the changing needs and interests of the ever changing society.

Hence, not only the law colleges even the authorities have to take steps to initiate clinical legal education in an effective manner. To have effective mechanism, the author recommends following recommendations-

- The BCI has to amend rules to allow law professors to practice in the course of teaching a clinical class and encourage law schools to dedicate faculty to teaching clinics and offer students credits for participating in clinics.
- Vice-Chancellors and other law school administrators have to devote resources to hiring clinical faculty and offering clinical courses with low student-teacher ratios.
- Law professors should develop sustainable clinics and work with law school administrations to implement them.
- Non-governmental organizations have to collaborate with law schools to work with communities and advance the social justice mission of education.
- Legal services authorities have to broaden the scope of legal aid by supporting law schools to make legal aid and advice easily accessible to communities within the premises of law schools.
- Grant making or funding agencies have to allocate funds for school based legal clinics to engage with communities in strengthening democracy and improving governance for the advancement of justice and the rule of law.

CLINICAL LEGAL EDUCATION: REFORMING THE LEGAL PROFESSION

*Dharmesh Khandelwal & Amay Jain**

INTRODUCTION

Spurred by desires to make the law school experience more educational and relevant for students and to promote equal justice and the rule of law, scholars have devoted considerable attention and resources to creating or expanding clinical legal education in developing countries in the last twenty years. The introduction of more skills training into the curriculum has been related to this growth.

Clinical legal education is essential in preparing law students to practice law effectively. It involves teaching students to be lawyers by learning through experience or “learning by doing.” It teaches student various important skills such as fact-finding, investigation, interviewing, and legal research and writing, and in addition it encourages law students in a very noble habit of social work and by this social work lot of poor and educated people of our country gets legal help for free which in the end is beneficial for the country.

The term clinical legal education or law clinic, traditionally refers to a non-profit law practice usually serving a public interest or group in the society that are in a underprivileged or exposed situation and (for various reasons) lack access to legal system.¹

The use of the word ‘clinic’ prompts the analogy of trainee doctors meeting real patients in their medical clinics. Same can be said about legal aid clinics, where law students or interns help clients to solve their legal issues. The researchers strongly opine that clinical legal education should be

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¹ Emil Winkler, ”Clinical Legal Education: A report on the concept of law clinics”, available at: http://law.handels.gu.se/digitalAssets/1500/1500268_law-clinic-rapport.pdf , last accessed:3-08-2015, 1:12 IST

connected to social responsibility and legal aid aspect. Thus the researchers' definition for clinical legal education is a simple one. Clinical Legal Education incorporates practical and theoretical legal education with clinical legal aid programmes.

In the present scenario, Clinical legal education is at a very interesting stage of growth and development in our country.

HISTORY OF CLINICAL LEGAL EDUCATION

The emergence of clinical legal education first began in the United States, tightly followed by Canada, Australia and UK. Looking at the development historically, it can be clearly inferred that there were two major forces which drove the development. First, the need to reform legal education by bringing in more practical approach towards law practice and second, the need for legal aid in the society.²

The first wave of clinical legal education started in the beginning of 1900 when the practicing lawyers in US raised their voice regarding the training given to lawyers which according to them was insufficient in terms of practical experience. In 1921 Carnegie Foundation for the Advancement of Teaching noted that legal education was lacking practical training in comparison to technical or medical education. This we can say was the starting point of the educational reform that led to the incorporation of clinical legal education in many US law schools during 1960 and 1970.³

HISTORY OF CLINICAL LEGAL EDUCATION IN INDIA

Legal education in India before independence was deplorable state. Due to disinterest in change at the highest levels of the Academy, there was neither the vision nor the intention to prioritize the study of law. In India, lawyers were divided into categories depending upon the level of their legal training. Those educated in England were called barristers, having earned a barrister-at-law degree. Attorneys were those who actually did not have legal training and were the clerical staff of the courts or local traders. They used their wits to make money. By the per-independence the legal profession in India became dominated by those with English law degrees. This affinity for lawyers trained overseas had a detrimental effect on the quality of legal education in India, because the rich people

²Frank S. Bloch, "The Global Clinical Movement: Educating Lawyers for Social Justice", published by: Oxford university press, chapter 1, last accessed 3-08-2015, 16:00 IST.

³supranote 1

use to send their children to abroad to become barristers or attorneys and after their comeback they were rated higher than the lawyers who studied law in India. This long-standing prejudice ensured that legal education in India became a part-time and not a full-time course of study.⁴

After independence, with 500 law schools and 40,000 law students graduating every year legal education was expected to bring the legal system in tune with the social, economic, and political desires of the country. But at first social justice work and skill training were out of the legal education agenda. Legal doctrine dominated law school syllabi, all the instructions and legal education were given through traditional lecture method and there was no existence of practical education this concentration on “the law” pushed consideration of law practice to the background. At that time the idea was that law graduates will get practical education once they will start practicing.⁵

For the first time in 1949, the Bombay legal education Committee recommended that practical courses should be made compulsory only for students who choose to enter the profession of law and the teaching method should include seminars or group discussions, moot court competitions etc. later in 1958, 14th law commission report of India recognized the importance of clinical education and recommended that University training must be followed by a professional course concentrating on practical knowledge to those who chose to practice law in the courts so that a balance of both academic and vocational training is maintained in law schools. The report concentrated on improving the overall standards of legal education. The Report suggested that seminars, discussions, mock trials, and simulation exercises should be introduced and also discussed teaching methods.⁶

As a result of the growing concerns about maintaining the quality of law practice, in 1977 the Bar Council of India recommended practical training in the curriculum. Reports of University Grants Commission (UGC) also played important roles in the history of Clinical Legal Education by outlining the objectives of reformed teaching as making students more responsive to learning and

⁴ Samuel Schmitthener, “A Sketch of the Development of the Legal Profession in India”, 3 *Law & Soc’y Rev.* 337, 340 (1969), last accessed: 28-07-2015, 15:30 IST.

⁵ Mrs. Archana K, “Practicability of Clinical Legal Education in India- An Overview”, available at: [http://pakacademicsearch.com/pdf-files/edu/413/157-162%20Vol%204,%20No%2026%20\(2013\).pdf](http://pakacademicsearch.com/pdf-files/edu/413/157-162%20Vol%204,%20No%2026%20(2013).pdf), journal of education and practice, last accessed: 4-08-2015, 22:15 IST

⁶ FINAL REPORT OF THE 3-MEMBER COMMITTEE ON REFORM OF LEGAL EDUCATION, chapter-3, available at: <http://www.barcouncilofindia.org/wp-content/uploads/2010/06/3-member-Committee-Report-on-Legal-Education.pdf>, last accessed: 1-08-2015, 21:20 IST

making them demonstrate their understanding of law. The bar council of India also again issued a circular, using its authority under the Advocates' Act 1961 directing all universities and law schools to change their curriculum. It mandated the inclusion of 4 practical papers. Law schools have been required to introduce these 4 practical papers since academic year 1998-99, which was viewed as a big step toward introducing Clinical Legal Education formally into the curriculum.⁷

Further the 2nd UGC report prepared by Curriculum Development Committee also proposed clinical legal education in the syllabi of the LL.B. course. Primary focus of Clinical legal education of the proposed curriculum on that time was on legal aid, social justice, and professional responsibility.

TYPES OF LAW CLINICS

On the basis of their actions, law clinics can be divided into three types.

1. **Simulation Clinic**

In this type of law clinics, learning takes place through simulation of cases. Various stages of a case like client interview, initial instructions, negotiations and settlement are acted out. These sessions of simulation clinic can have great learning outcomes. Such sessions prove to be pretty helpful as it gives the participants an indication of what happens in actual practice.

2. **In-house real client clinics**

In these clinics, clients with real problems are helped to prepare their cases. They are offered oral or written legal advice. These clinics are monitored and controlled by law schools. Clients are procured randomly from public in general or from a specific section of the public.

3. **Out-house clinic**

These clinics encourage students to work outside the college or university with other practicing lawyers or in agencies. They generally restrict students to providing clients with legal advice only. These clinics are an opportunity for law students to secure placements before completing their studies.⁸

⁷ BAR COUNCIL OF INDIA Part –IV Rules of Legal Education page-21-22 available at: <http://www.barcouncilofindia.org/wp-content/uploads/2010/05/BCIRulesPartIV.pdf> last accessed:11:24amIST

⁸ K. Archana, "Practicability of Clinical Legal Education in India- An overview", Journal of Education and Practice, ISSN 2222-1375 Vol. 4 no. 26, 2013 available at www.iiste.org, last accessed 09/08/2015, 17:11 IST.

FLAWS IN INDIAN LEGAL EDUCATION

A crowd of Incompetent Law Graduates: According to the reports of University Grants Commission about four hundred thousand law graduates pass out every year.⁹ Despite of the law courts of India being flooded with advocates, there is a need for betterment in legal education because many of the lawyers are not competent enough due to lack of training and inadequacies and flaws in the teaching model used in their law schools. Legal Education is not proper and consequently, the quality of law graduates is not up to the mark. Clinical legal education promises dramatic improvements in the aforementioned.

Practicing lawyers not being allowed to work in the field of academics full time: According to the norms of Bar Council of India, practicing lawyers do not qualify for jobs in the field of academics as professors, assistant professors or others.¹⁰ A better alternative to this could be appointing a few lawyers practicing in different fields as full time faculty for internship coordination or recruitment or placement in charge. This would help law students in many ways. They will be getting help in securing internships and placements. They will be having better and more convenient access to practical learning of the subjects they are being taught in classrooms. Moreover, they will be gaining loads through experiential learning when they will get more and more opportunities for interaction with the lawyer as well as his clients.

This will also substantially improve the legal aid programmes initiated and run by numerous law schools throughout the country. The advantage of such a positive change is manifold. It will be of great help to those who need legal aid. Both qualitatively and quantitatively, it will bring about a positive change in delivering justice to the people as under the able guidance of practicing faculty members for such practical learning, law students will be able to provide better legal aid to more and more people.

Lack of competent teachers: Law schools in India suffer from a grave scarcity of competent teachers. This is the reason why so many bright law students migrate to United States or England for

⁹Dr. Rahul Choudaha, "Statistics on Indian Higher Education 2012-2013", available at <http://www.dreducation.com/2013/08/data-statistics-india-student-college.html>, last accessed 04/08/2015, 23:43 IST.

¹⁰ Part IV, Rules of Legal Education, Bar Council of India, available at <http://www.barcouncilofindia.org/wp-content/uploads/2010/05/BCIRulesPartIV.pdf> last accessed 04/08/2015, 23:56 IST.

further studies.¹¹ Post-graduation law degree is a pre requisite for teaching in law schools. Despite this, LL.M. programs, even in the best law schools of India do not attract many students. Students prefer to venture abroad to complete their masters in law as the programs provided in countries like U.K. and U.S. are much better than those in India.

Improper implementation of Scholarship programs: Scholarships are very effective instruments of help and encouragement for financially weak students. In Indian Legal Education system a sizeable fund is spent in the form of scholarships are given away to those who do not deserve or need these scholarships. Financial aid needs to be spent wisely to obtain the best results. Wastage of money as a result of misappropriation of scholarship funds should be checked as soon as possible.

Coordination problems in regulatory bodies: Law schools in India are facing problems due to the presence of too many regulatory bodies whose guidelines they must abide to. At present, law schools have to follow the regulations of four agencies i.e. University to which the law school is affiliated, the State Government, University Grants Commission and Bar Council of India. This hinders the output and dynamicity of the institutes with tremendous interference by these four masters. These agencies have varying interests and thus issue guidelines not always coherent each other.¹²

BENEFITS OF CLINICAL LEGAL EDUCATION OVER TRADITIONAL LEGAL EDUCATION

The study of law is valuable because it is the study of a working part of the social fabric rather than of models abstracted from reality; and any study which becomes too abstract becomes less valuable because it loses contact with the factual, or, put another way, divorces theory from practice. Instead of learning by means of traditional lectures, the students participate more actively in the learning process since they are "learning by doing". The key is not the mere learning or acquiring knowledge but learning its application. Many law graduates in India complete their education without acquiring even the basic skills that are required for practicing as advocates because of lack of practical training in their law school's curriculum. There are many benefits which our society and law students can get from clinical legal education:

¹¹ N.R. MadhavaMenon, "The Transformation of Indian Legal Education", Harvard Law School Program on the Legal Profession, available at https://clp.law.harvard.edu/assets/Menon_Blue_Paper.pdf last accessed 06/08/2015, 20:19 IST.

¹²ShamnabBasheer and Sroyon Mukherjee, "Regulating Indian Legal Education: Some Thoughts for Reform", Social Science Research Network, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1584037 last accessed 07/08/2015, 16:25 IST.

Experiential Learning: One of the most important plus point of clinical legal education is that it incorporates experiential learning (“learning by doing”). Rather than the orthodox lecture method, where students are often expected to be like sponges soaking up information reactively, students are more pro-active in this learning process. Students get to learn the significance of taking initiatives as future social engineers. Moreover in this type of learning, client problems are solely dealt by students which helps in making them realize that it is their commitment and hard work which will help them to achieve success. As a result the future lawyers will tend to vest greater reliance and belief in their capabilities than external factors.¹³How good the lecturer is, or what questions have previously been asked on the exam paper.

In addition, it also gives students an opportunity to implement the knowledge they have learned in the classroom and get the proper understanding of concepts.

Acquisition of skills: Some skills are very important to a lawyer. Clinical Legal Education is based on practical approach and hence it helps in acquisition of skills. CLE help students in improving various skills like:

Research skills: especially areas where the laws are completely new.

Communication skills: Advocacy before differing tribunals or bodies.

Interviewing Skills: It is much needed in the profession for interviewing clients and witnesses. The law student’s traditional indoctrination into a cross examiner’s style is revealed in clinical practice. In clinical practice students get to hone their skills.¹⁴

Drafting: In clinical practice students get to draft various real contracts in guidance of their superiors so it helps them to learn each and every aspect of drafting which can only be learned through practical work.

Formulating and advocating policy reforms: Some clinics aim to make policy-level changes as part of human rights advocacy. For example, students in the Cross-National Clinic conducted fact-

¹³ Brett W. B. Smith, “The Case for Further Integration of Clinical Legal Education in Law Schools”, available at:<http://www.collaw.edu.au/assets/Final-Brett-Smith.pdf>, last accessed: 25-07-2015, 02:43 IST

¹⁴ Richard Lewis, “Clinical Legal Education Revisited”, available at: <http://orca.cf.ac.uk/27655/1/CLINICED.pdf>, last accessed: 29-07-2015, 16:54 IST

finding and investigation on issues relating to the implementation of right-to-education policies in India and presented their findings to policy-makers in the form of a memorandum.¹⁵

Problem solving: In legal aid clinics problem solving goes both ways. On one hand, clients get much needed legal help and advice, whereas on the other hand, law students get greater clarity in their understanding of how law works in practicality in various situations.

Organizational skills: Communicating and working as a member of a team, helping to organize and maintain office procedures helps students to gain organizational skills which cannot be gain by classroom lectures. A team spirit is achieved where students assist each other rather than viewing others in the class as competition for grades or jobs.¹⁶

Boost in confidence: Legal clinics because of their 'close-knit' community help students to gain confidence. By working in small firms a supportive, secure atmosphere is, usually, forged. Students quickly feel at ease with other firm members through sheer exposure and feelings of shared experience. Equally, there is no hiding place in clinical education. Students are required to participate in meeting and discussions and this helps them a lot in boosting their confidence.¹⁷

SOCIAL BENEFITS OF CLINICAL LEGAL EDUCATION

One of the biggest advantages of clinical legal education is Legal Aid. There exists a common link between social justice and clinical legal education in India. Various law clinics are actively involved in the various programs devoted to spreading legal aid to remote areas, villages and persons of limited means and socially and educationally backward classes. Students while working for these legal clinics will get expose to real legal problems and this would benefit the students, the legal aid scheme, and the legal system as a whole. Students' encounters with the problems of poverty and exploitation would also change their outlook when they become lawyers, it will help them to develop a humanistic perspective and a social orientation and as a result they would not treat clients simply as facts but as living neighbours.¹⁸

¹⁵Anonymous, "Promoting Clinical Legal Education in India", available at:<http://www.jgu.edu.in/PDF/QAA/Annexure-12-Jindal-Cornell-Report.pdf>, last accessed:2-08-2015, 1:08 IST.

¹⁶ Ibid

¹⁷Van Hoorebeek et al, "The necessity of clinical legal education in university law schools", available at:http://shura.shu.ac.uk/2902/1/Marson_wilson_-_Necessity_of_clinical_legal_education.pdf, last accessed: 4-08-2015, 16:07 IST.

¹⁸ Supra note 5

Sharing one of the researchers' own experience, when he interned at Peoples' Union for Civil Liberties, it was an experience that changed the researcher's way of thinking. During the internship, the researcher and his fellow law students working as interns visited various remote areas to spread legal awareness and help people to fight for their rights. There, the researcher got acquainted with the poor conditions of these under privileged class of people. Their condition makes law students realize that after becoming lawyers, what they can do for those needy people in order to facilitate them a better life. In this way, law clinics with the help of students, promote legal aid and also make students to aware of the conditions of these backward classes so that students can know the ground reality and work for the betterment of the backward section of our society.

On more advantage of bringing law schools in legal aid programs is that students would become an inexpensive and enthusiastic resource for providing meaningful legal aid to India's vast population. This initiative would effectively reduce the burden on established institutions responsible to provide legal services.

CONCLUSION

Access to justice to all is the most important characteristic of an ideal society where all men and women can enjoy their rights and be protected from human rights violations. Development in the field of law, as a profession and as a career for law students is the only way to make sure that everyone in the society, has access to justice.

Clinical Legal Education in India is of great utility and is likely to produce better results in legal education and legal aid. This system not only has several aforementioned benefits but also addresses the pre-existing problems in Legal Education. It makes justice more accessible to public through various innovative programs like legal aid clinics which are organized by law schools to help students acquire practical knowledge and hone their skills through its application in simulation clinics or as in-house or out-house legal advisors.

In order to ensure our future social engineers¹⁹, a high quality legal education, there is a need to bring about many changes. The working of law schools gets interfered by too many regulating bodies in the present scenario. Universities offering clinical legal education programs should be allowed to exercise more autonomy.

Practical training or internship programs should be regulated more strictly by the college itself. The

¹⁹ Roscoe Pound, "The Lawyer As A Social Engineer", available at <http://heinonline.org/HOL/LandingPage?handle=hein.journals/emlj3&div=35&id=&page=>, last accessed 09/08/2015, 21:47 IST.

law schools must make sure that their students do not treat their internship periods like vacations. On the other hand, interns should be encouraged to extract the best possible learning outcomes from their training in the real world outside their college. Legal aid programs should be conducted more frequently as they help students as well as those receiving the advice or assistance in their legal affairs.

All in all, clinical legal education in India needs to evolve and get better with time in order to achieve the goals of bringing about positive changes in the field of law. The aforementioned steps need to be taken for producing better lawyers and judges in the country.

LEARNING BY DOING: A STUDY OF THE CONCEPT OF CLINICAL LEGAL EDUCATION

Sarbani Sarkar¹

“The ideal of all education, all training, should be this man-making. But, instead of that, we are always trying to polish up the outside. What use in polishing up the outside when there is no inside? The end and aim of all training is to make the man grow. The man who influences, who throws his magic, as it were, upon his fellow-beings, is a dynamo of power, and when that man is ready, he can do anything and everything he likes; that personality put upon anything will make it work” - Swami Vivekanand

INTRODUCTION

No education is successful without its proper utilization and application in suitable professional fields. Legal profession is also not an exception to it. Success of a lawyer does not depend on the blind memorizing of statutory provisions and studying legal jurisprudence without assimilating its proper meaning, but mostly on its true application in day-to-day legal problems brought before him. Legal profession is a technical one which requires special skills and experiences which cannot be gained from bookish knowledge only or within the four walls of the law schools but by personal experiences which can be gained by solving the legal problems applying the legal knowledge by the legal minds. That is why; the work of lawyers today requires a new kind of legal education, known as “Clinical Legal Education” which emphasizes problem solving, creativity, collaboration, professional ethics in addition to a strong grasp of legal theory. Critical to preparing law students for the work they will do is an opportunity to work on real cases, with real clients, before graduation—while students can prepare and reflect with trusted mentors whose job is to teach through experiential learning.²

¹ LL.M, University of Calcutta, Department of Law, Kolkata, West Bengal

² *Clinical legal Education* | Stanford Law School, CLINICAL LEGAL EDUCATION | STANFORD LAW SCHOOL, (30 July, 2015, 11 am.) <https://www.law.stanford.edu/areas-of-interest/clinical-legal-education>

WHAT IS CLINICAL LEGAL EDUCATION?

Clinical legal education is a legal teaching method based on experiential learning, which fosters the growth of knowledge, personal skills and values as well as promoting social justice at the same time. As a broad term, it encompasses varieties of formal, non-formal and informal educational programs and projects, which use practical-oriented, student-centred, problem-based, interactive learning methods, including, but not limited to, the practical work of students on real cases and social issues supervised by academics and professionals. These educational activities aim to develop professional attitudes and foster the growth of the practical skills of students with regard to the modern understanding of the role of the socially oriented professional in promoting the rule of law, providing access to justice and peaceful conflict resolutions, and solving social problems.³

Clinical legal education is a progressive educational ideology and pedagogy that is most often implemented through university programs. Clinics are interactive, hands-on classrooms that promote learning by doing.⁴

WHAT IS A LEGAL CLINIC?

A legal clinic⁵ also known as law clinic or law school clinic is a law school program providing hands-on-legal experience to law school students and services to various clients. Clinics are usually directed by clinical professors. Legal clinics typically do *pro bono* work in a particular area, providing free legal services to clients.

Students typically provide assistance with research, drafting legal arguments, and meeting with clients. In many cases, one of the clinic's professors will show up for oral argument before the Court. However, many jurisdictions have "student practice" rules that allow law-clinic students to appear and argue in court.⁶

For example, At Stanford Law School, clinical education accomplishes many goals. It is a vital part of their mission to prepare every student for the real-world challenges, responsibilities, and rewards

³ DEFINITION OF A LEGAL CLINIC, (30 July, 2015, 11 am), <http://encl.org/about-encl/definition-of-a-legal-clinic>

⁴ ABOUT CLINICAL LEGAL EDUCATION (CLE), (30 July, 2015, 11 am), <https://www.babseacle.org/clinical-legal-education/>

⁵ LEGAL CLINIC, (30 July, 2015, 11 am), https://en.wikipedia.org/wiki/Legal_clinic

⁶ *Ibid.*

of a career—any career—in law. At the same time, it helps instil in students a fundamental commitment to a lifetime engagement with public service and pro bono activities. In addition, it is one of the ways we give back to our community.⁷

IMPORTANCE OF CLINICAL LEGAL EDUCATION

In Clinical Legal Education students get opportunities of working with real clients and face real problems of professional life.

Mr. Kamran Arif Advocate, Legal Advisor of Foundation Open Society Institute and Co-Chairman Human Rights Commission of Pakistan in a seminar explained to the students about historical background and function of the Legal Clinics. He said that the essence of Clinical Legal Education is to provide an experiential knowledge to the students and give them understanding of social context in which the law operates he said.⁸ He highlighted the wider concept of rule of law and role of legal clinics for improving access to justice. He said that through this exercise students can help people facing human rights abuses and inequality.⁹

EMERGENCE OF CLINICAL LEGAL EDUCATION

Clinical legal education started in the United States of America in the early 20th century shortly after the emergence of casebook method in late 1890s which gained wide acceptance to become the dominant pedagogy of the law schools but was criticised from its starting as it focussed only on legal analysis being the objective of the early legal education by the legal educators' narrow view of legal education.¹⁰

In the UK, the skills of communication with clients, ethical considerations in practice and the ability to put legal education into practical situations have been ignored because of lack of available

⁷ *Clinical legal Education* | *Stanford Law School*, CLINICAL LEGAL EDUCATION | STANFORD LAW SCHOOL, (30 July, 2015, 11 am.) <https://www.law.stanford.edu/areas-of-interest/clinical-legal-education>

⁸ A Seminar held on “IMPORTANCE OF CLINICAL LEGAL EDUCATION” organized by School of Law, Quaid-i-Azam University (QAU). The objective of the seminar was to inform students and faculty about the role of Clinical Legal Education in bridging the gap between theory and practice of law.

⁹ *Seminar on “Importance of Clinical legal Education” organized by School of Law*, SEMINAR ON “IMPORTANCE OF CLINICAL LEGAL EDUCATION” organized by School of Law, (July 30, 2015, 11.10am)

<http://www.qau.edu.pk/seminar-on-importance-of-clinical-legal-education-organized-by-school-of-law/>

¹⁰ *Emergence of Clinical Legal Education*, Emergence of Clinical Legal Education: INTRODUCTION TO CLINICAL LEGAL EDUCATION, (30 July, 2015), <http://www.nycourts.gov/ip/partnersinjustice/clinical-legal-education.pdf>

expertise, funding, resources, time and accessibility. Despite these limitations universities have began a process of incorporating clinics into their academic framework due to the foresight of absorbing the higher costs, but viewing such expenses as providing a unique learning experience which offers a competitive advantage against similarly placed institutions. Universities have began a process of incorporating clinics into their academic framework due to the foresight of absorbing the higher costs, but viewing such expenses as providing a unique learning experience which offers a competitive advantage against similarly placed institutions.¹¹

In Australia also, clinical legal education is of paramount importance and its popularity is growing in many other countries. In his book Prof. Jeff Giddings¹² has written that clinical legal education has a distinct potential of combining community service with the process of student learning and this has made clinical legal education distinct from other method of law teaching. His book considers how to best recognise and realise the contributions that experiential learning methodologies can make to legal education. It identifies the contributions that clinical programs can make to student learning, social justice, community engagement and research. In this book, Jeff Giddings has provided a framework for understanding both the pedagogical and political dimensions of the establishment and sustainability of clinical programs. He has used in-depth historical case studies of major Australian clinical programs to identify how various interested groups can tie together the great potential of clinical legal education.¹³

In India, legal education began as ancillary to the English legal system introduced by the then British Government in India but between 1855 and 1955 the law faculties did not change much. In 1958, with the first law conference of Indian Law Institute the old system of legal education started changing. The Advocates Act, 1961 was passed which gave power on the Bar Council of India to improve the legal education system. The Council has given importance on clinical legal education

¹¹ Uploaded by James Marson, THE NESSECITY OF CLINICAL EDUCATION IN UNIVERSITY LAW SCHOOLS A UK PERSPECTIVE, (30 July, 2015 2pm)
http://www.academia.edu/244921/The_Necessity_of_Clinical_Legal_Education_In_University_Law_Schools_A_UK_Perspective

¹² Professor Jeff Giddings is Director of Professionalism at Griffith Law School. He was the Founding Director of the Griffith Clinical Legal Education Program and has written widely about the history and practice of clinical legal education.

¹³ Prof. Jade Giddings, PROMOTING JUSTICE THROUGH CLINICAL LEGAL EDUCATION, (29 July, 10 am),
<http://www.justice-press.com/publications/432-promoting-justice-through-clinical-legal-education-jeff-giddings>

and revised its curriculum by including clinical legal education (known as practical training) in its 5year integrated LL.B. syllabus.

THE NECESSITY OF CLINICAL LEGAL EDUCATION IN LAW SCHOOLS

Clinical Legal Education is an approach adopted by law schools of many countries for the benefits which have been witnessed by the number of university departments with a system of such education in place. Practical experience gained from work in real life situations has become useful to motivate students and stimulate their enthusiasm for legal practice, and students have to focus their attention to the needs of the commercial law sector which is increasingly more competitive.

Previously, universities were established on an academic basis with a focus on theory and critical discourse, however law students require exposure to a more practical form of education and clinics fulfil this criterion.

This can be best measured and assessed in the University setting where the students' learning is vital. The students do often gain experience in the vacations through work experience at law firms but this is often intermittent and unstructured. Whilst the larger firms do seek to educate and lead the students in their learning, many students identify that they often feel 'used' and even a source of 'cheap labour'. The university can offer the structure that would satisfy the need for education along with the ability for live client work that also provides an invaluable insight into legal practice beyond academic debate.¹⁴

CLINICAL LEGAL EDUCATION IN ENHANCING STUDENTS' EMPLOYABILITY

The main object of Clinical Legal Education is to place law students into active participation. CLE provides maximum opportunities to develop the ability of a student to perform their work in the optimal position by providing them deeper and a meaningful knowledge of legal process. Thus by such education law students get acquainted with the advocacy skill and lawyering process and

¹⁴ Uploaded by James Marson, THE NESECITY OF CLINICAL EDUCATION IN UNIVERSITY LAW SCHOOLS A UK PERSPECTIVE, (30 July, 2015 2pm)

http://www.academia.edu/244921/The_Necessity_of_Clinical_Legal_Education_In_University_Law_Schools_A_UK_Perspective

prepare them for the future profession from their student life. Thus it enhances student employability in the legal field because a present law student means a future lawyer or judge or a legal advisor or an academician – in fact, a legally trained person who after completing his study will face the real challenges outside the classroom. If they have necessary practical knowledge they will be considered suitable for any law related jobs otherwise the purpose of legal study will be futile if they lack the practical experience and fail to polish themselves when they are in colleges.

The real challenge for a law student is to find a job, because there are number of law graduates from the various universities every year and to be recruited as the best suitable for a job among other jobseekers with the same educational qualification for a post seems to be difficult because more jobseekers fighting for the same job or same post implies much more tough competition. The recruiters always prefer those candidates who have the minimum work experience i.e. the experience of practice in the field of law. Here comes the necessity and relevancy of clinical legal education. Students with practical experience are in most cases considered more suitable for a job.

METHODS OF CLINICAL LEGAL EDUCATION

Clinical methodology is a method of “Learning by doing” – a concept which is adopted in medical education where medical student learn to diagnose and treat patients under the supervision and guidance of senior doctors. In the context of legal education, it refers to a law school course where law students can have the opportunity to participate, in doing what lawyers usually do under the supervision of a senior lawyer or an experienced teacher. A legal education must contain both perceptual and operational components.

A law student must have the legal information, i.e. the origin of law; they should know analysing legal cases and statutes, fact discrimination, formulation and resolution of legal problems. In operational method, a law student will be knowing the implementation of legal knowledge, (through legal drafting, pleading, briefing, oral presentation and developing written exposition), client counselling, representation through negotiation, arbitral, administrative, and legislative and judicial processes, and most importantly – legal mechanism (like, routine of law offices, court houses, legislative chambers).

CLINICAL LEGAL EDUCATION IN INDIA

The Bar Council of India constituted under the Indian Advocates Act, 1961, has prescribed the standards of legal education in consultation with State Bar Councils and Universities teaching law.

(For e.g. National Law Universities, offer a wide range of opportunities in clinical problems). The BCI has been laying down rules from time to time, giving the wider goals of the law programmes and its methods to teach for the universities and law schools follow. The Council insists on strict standards in professional legal education and has laid down a required curriculum for accommodating social needs. Recognising the importance of imparting the legal knowledge the new curriculum of a five years integrated LL.B. course has been introduced which includes nearly two years of instruction in law related social science subjects and humanities and practical training for the last one or two years of the course. The emphasis given on practical training in this new pattern of legal education system indicates the concern of the Bar Council of India for the training to be provided to the students in developing their professional skills.

CLINICAL LEGAL EDUCATION CAN BE IMPLEMENTED THROUGH THESE PROGRAMMES

In India generally clinical legal education is implemented through some legal programmes which are conducted by mostly the law colleges, universities and sometimes in collaboration with the National or State Legal Service Authorities. The purpose of these programmes are twofold, firstly, the improvement in students' professional skills and secondly, to increase legal awareness among the common people. The students get the opportunity to solve the legal problems brought before them and the common people get the remedies for their legal problems.

- Moot Court
- Legal aid clinics
- Law reforms competition
- Lok Adalats
- Counselling
- Alternative Dispute Resolution Clinic
- Client interviewing
- Pre legal advocacy training
- Legal literacy camps
- Mock trial
- Legal Education Programmes organised by many N.G.Os, etc.

CONCLUSION

Legal education is a professional education which cannot be complete only through reading books. Most of the successful lawyers have agreed to the view that law books are only informative, that means to have the idea of what the law is on a particular topic thorough study of legal books or articles and journals or statutory provisions are necessary. But that does not open the legal minds and develop the intellectual power of a student studying law. Having some practical knowledge is no doubt necessary. Hence, adaptations of these two methods have to be incorporated in legal education. The students have to grow the capacity to think hard, the ability to analyse a complicated state of facts to disclose the legal problem therein, a powerful imagination to discover the possible solutions and the courage to act on his judgment independently if they really want to do well in their legal profession. This is the main reason to encourage clinical legal education in contrast to formal lecture method of law teaching which is without any scope of participation by the students to excel by themselves.

FREE LEGAL AID: A CONSTITUTIONAL AND STATUTORY RIGHT IN INDIA

*Dr. Neetu Gupta**

“From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him.”¹

INTRODUCTION

An independent and impartial judiciary is the guardian of individual rights in a democracy and for sustaining such guardianship, it is necessary that everyone must have equal access to the justice. Until and unless a poor illiterate man is legally assisted, the equal opportunity to seek justice is denied to him. Consequently, it involves the negation of principles of rule of law. Since the aim of our Constitution is to provide equal justice to all irrespective of financial status, it is the responsibility of the state to ensure that fair, effective and speedy justice is made available at the door steps of poor and economically weaker sections of society. The philosophy of legal aid as an inalienable element of fair procedure is evident from Mr. Justice Brennan’s well-known words²:

“Nothing rankles more in the human heart than a brooding sense of injustice. Illness we can put up with. But injustice makes us want to pull things down. When only the rich can enjoy the law, as a doubtful luxury, and the poor, who need it most, cannot have it because its expense puts it beyond their reach, the threat to the continued existence of free democracy is not imaginary but very real, because democracy's very life depends upon making the machinery of justice so effective that every citizen shall believe in and benefit by its impartiality and fairness.”

*Assistant Professor, Department of Laws, Panjab University, Chandigarh.

¹ Justice Hugo L. Black, U.S. Supreme Court. Available at, <http://www.nlada.org/News/Equal_Justice_Quotes> (accessed on August 8, 2015).

² Quoted by Hon’ble Justice Krishna Iyer in M.H.Hoskot v. State of Maharashtra, AIR 1978 SC 1548.

LEGAL AID: THE CONCEPT

In general terms, legal aid implies giving legal assistance to the persons who are unable to secure such assistance owing to financial constraints. Legal aid ensures that no one is deprived of professional help in representing his/her case before any court/authority/tribunal because of lack of funds. The term 'Legal Aid' has been defined by the Government of India, Report of Expert Committee on Legal Aid- Precessual Justice to the People, May 1973³ as under:

“The spiritual essence of Legal aid movement consists in inviting law with human soul: its constitutional core is the provision of equal legal service as much to the weak and in want as to the strong and affluent and the dispensation of social justice through legal order.”

The Encyclopaedia Britannica defines 'Legal Aid' as a phrase which is acquired by usage and court decisions, a specific meaning of giving to persons of limited means grants or for nominal fees, advice or counsel to represent them in court in civil and criminal matters i.e., the professional legal assistance given either free or for a nominal sum, to indigent persons in need of such help. Thus, the philosophy behind legal aid programme is that no one is deprived of the facility to seek enforcement of his/her rights only because of the fact that he/she belongs to economically weaker sections of the society.

The widespread insistence on free legal aid is even evident from the Universal Declaration of Human Rights⁴:

Article 8 - Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted by the Constitution or by law.

Article 14 (3) of the International Covenant on Civil and Political Rights⁵ guarantees to everyone:

“The right to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of his right; and to have legal assistance assigned

³ Available at, < <http://www.worldcat.org/title/processual-justice-to-the-people-report-of-the-expert-committee-on-legal-aid-may-1973/oclc/3512991>> (accessed on August 5, 2015).

⁴ The Universal Declaration of Human Rights (UDHR) is a declaration adopted by the [United Nations General Assembly](#) on 10 December 1948 at the [Palais de Chaillot](#), Paris. The Declaration arose directly from the experience of the [Second World War](#) and represents the first global expression of rights to which all [human beings](#) are inherently entitled.

⁵ The International Covenant on Civil and Political Rights (ICCPR) is a multilateral [treaty](#) adopted by the [United Nations General Assembly](#) on 16 December 1966, and in force from 23 March 1976.

to him in any case where the interests of justice shall require, and without payment by him in any such case if he does not have sufficient means to pay for it."

DEVELOPMENT OF LEGAL AID MOVEMENT IN INDIA

Pre-Constitution Period

The movement for free legal aid to the poor in India is not a sudden idea. This concept can be traced back to the ancient times. Rig Veda, the earliest of the four Vedas provides for mustering strength, including monetary assistance, i.e. 'Dann' for extending aid and assistance to those fearing or facing the attacks.⁶ During the reign of Shahjahan and Aurangzeb, the state vakils were directed to give advice free of charge to the poor. Such state lawyer known as vakil -e - sarkar or vakil -e - sharai were whole time and appointed by Chief Qazi of the province or sometimes by the Chief Justice, the Qazi-ul-Quzat.⁷ Britishers brought with them an expensive system of administration of justice, which made legal aid to poor an obvious necessity. For providing legal aid in the pre-independence phase, the Bombay Legal Aid Society (BLAS) was formed in 1924. The main object of the society was making justice accessible to the poor and reducing the cost of litigation, providing lawyers to the poor on the basis of need, rendering legal aid gratuitously and to make provision for payment of court fees. To qualify for legal aid, an applicant had to satisfy the means test and had to have a bonafide case.⁸

On 23rd March 1949, Government of Bombay appointed a committee under Chairmanship of Justice N.H. Bhagwati. In its report submitted on 31st October 1949, the Committee made the following recommendations:

1. Administrative machinery of legal aid should be constituted at four levels namely,
 - a) State level
 - b) High Court level
 - c) District level
 - d) Taluka level
2. The Committee suggested two tests for determining eligibility for legal aid, namely i) Means test and ii) Prima facie test
3. No aid should be provided in trivial and trifling cases
4. There should be a declaration on oath about "Disposable Income" and "Disposable Capital"
5. There should be a certificate from a respectable citizen or responsible officers regarding his means

⁶ Singh Govind, *Hindi Translation of Important Parts of Rig Veda* (Sadna Pocket Books, New Delhi, 1992)31-36.

⁷ Report of Expert Committee on Legal Aid, *Processual Justice To The People May* (1973) 43.

⁸ 14th Report of the Law Commission of India, *Reforms in the Administration of Justice* (1958,Appendix iv) 621.

6. A bond should be executed by the party that there is no champerty and he will not make compromise without consent of Legal Aid Committee

7. There may be cancellation of Legal Aid certificate in certain cases.⁹

Post Constitution Period

Indian Constitution came into force in 1950 and sets out its main goal as equal justice, liberty and equality. Fundamental Rights along with Directive principles of State Policy aim to create an egalitarian society where justice is available to all irrespective of social, political and economic constraints. Article 14 of the Constitution directs the State not to deny equality before law and equal protection of laws to any person in the territory of India. Equality before law necessarily implies equal opportunities of access to the courts of law and equal opportunities of legal representation. If access to justice is denied to any person only because of the fact due to poverty he is not able to secure effective legal representation that will be a mockery of Article 14. Further, Article 21 of the Constitution secures to every person the right to life and personal liberty and these rights cannot be taken away except by a procedure established by law. Now again the term procedure here implies fair procedure which includes right to hearing and right to be defended. Further, Article 22 states that no person shall be denied the right to consult, and to be defended by a legal practitioner of his choice. When a person is arrested, he has a right to consult a legal adviser of his own choice and to have effective interaction with the lawyer. The right extends to any person who is arrested, whether under the general law or under a special statute.

By the 42nd Amendment to the Constitution, effected in 1977, Article 39-A was inserted. This Article provides for free legal aid by suitable legislation or schemes or in any other manner, and ensures that opportunities for securing justice are not denied to a citizen by reason of economic or other disabilities. Article 39-A reads as follows:

39A. Equal justice and free legal aid - The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

⁹ Roma Mukherjee, *Women, Law and Free Legal Aid in India* (Deep & Deep Publications Pvt. Ltd, 2000) 31.

Thus, Article 39A of the Constitution gives the right to free legal services a constitutional status. This Article emphasizes that free legal service is an inalienable element of reasonable, fair and just procedure for without it a person suffering from economic or other disabilities would be deprived of the opportunity for securing justice. If a prisoner sentenced to imprisonment, is virtually unable to exercise his constitutional and statutory right of appeal, inclusive of special leave to appeal, for want of legal assistance, there is implicit in the Court under Article 142 read with Articles 21 and 39-A of the Constitution, power to assign counsel for such imprisoned individual “for doing complete justice.”. The inference is inevitable that provision of free legal aid is State's duty and its charity.¹⁰

FREE LEGAL AID IN INDIA- ROLE OF JUDICIARY

As a step towards making the legal service serve the poor and the deprived; the judiciary has taken active interest in ensuring that the legal aid is provided to such people. By judicial interpretation, the right to free legal aid has been considered as part of fair and reasonable procedure as implicit in Article 21 of the Constitution. It is now well settled, as a result of the decision of the Supreme Court in *Maneka Gandhi v. Union of India*¹¹, that when Article 21 provides that no person shall be deprived of his life or liberty except in accordance with the procedure established by law, it is not enough that there should be some semblance of procedure provided by law, but the procedure under which a person may be deprived of his life or liberty should be reasonable, fair and just. A procedure which does not make available legal services to an accused person who is too poor to afford a lawyer and who would therefore, have to go through the trial without legal assistance, cannot possibly be regarded as ‘reasonable, fair and just’. Thus, by necessary implication it is a constitutional right of every accused person who is unable to engage a lawyer and secure legal services on account of reasons such a poverty, indigence or incommunicado situation and the State is under a mandate to provide a lawyer to an accused person if the circumstances of the case and the needs of justice so require.

In *Hussainara Khatoon v. Home Secretary, State of Bihar, Patna*¹², Justice P.N.Bhagwati strongly recommended to the Government of India and the State Governments that it is high time that a comprehensive legal service programme is introduced in the country because it is not only a

¹⁰ Quoted by Hon'ble Justice Krishna Iyer in *M.H.Hoskot v. State of Maharashtra*, AIR 1978 SC 1548.

¹¹ (1978) SCC 248

¹² AIR 1979 SC 1369

mandate of equal justice implicit in Article 14 and right to life and liberty conferred by Article 21, but also the compulsion of the constitutional directive embodied in Article 39-A.

In *Khatri v. State of Bihar*¹³, taking a serious note of the failure of the States to provide free legal services to a person accused of an offence, the Court observed that the State is under a constitutional mandate to provide free legal aid to an accused person who is unable to secure legal services on account of indigence and whatever is necessary for this purpose has to be done by the State. Further, a State cannot avoid its constitutional obligation to provide free legal services to a poor accused by pleading financial or administrative inability. In same case it has been held up by Hon'ble court that the State is under a constitutional obligation to provide free legal services to an indigent accused not only at the stage of trial but also at the stage when he is first produced before the Magistrate as also when he is remanded from time to time.

*Suk Das v. Union Territory of Arunachal Pradesh*¹⁴ is another landmark case wherein the apex court reiterated the requirement of providing free and adequate legal representation to an indigent person and a person accused of an offence. In this case, Justice Bhagwati (the then Chief Justice of India) laid down a very important proposition that an accused need not ask for legal assistance. The court dealing with the case is obliged to inform him or her of the entitlement to free legal aid. It was further observed that it would be the mockery of legal aid if it were to be left to a poor ignorant and illiterate accused to ask for free legal services. Legal aid would become merely a paper promise and it would fail of its purpose.

A division bench of Bombay High Court in *Kisan Devka Pawar v. State of Maharashtra*¹⁵ set aside the conviction and sentence of the accused convicted for the offence under Section [302](#) of the Indian Penal Code and sentenced to life imprisonment, on the ground that legal assistance was not provided to him for defending his case. Speaking on behalf of the bench, Justice V.K.Tahilramani observed that trial without legal assistance cannot possibly be regarded as reasonable, fair and just and thus, is clearly a violation of the fundamental right of the appellant under Article 21 and the trial must accordingly be held to be vitiated on account of fatal constitutional infirmity.

¹³ (1981) 1 SCC 627

¹⁴ (1986)2 SCC 401

¹⁵ 2002 ALL MR(Cri) 2092.

In *Rajoo @ Ramakant v. State of Madhya Pradesh*¹⁶ a division bench of the Supreme Court held that neither the Constitution nor the Legal Services Authorities Act makes any distinction between a trial and an appeal for the purposes of providing free legal aid to an accused or a person in custody. Taking note of the fact that the appellant Rajoo was not provided with legal representation in the High Court, the Apex Court remitted the case back to the Madhya Pradesh High court to re hear the case after providing the appellant an opportunity of obtaining legal representation.

The above discussion conclusively shows that courts in India have taken a rather pro-active role in the matter of providing free legal assistance to persons accused of an offence or convicted of an offence.

RIGHT TO LEGAL AID- STATUTORY PROVISIONS

Besides the International Covenants, declarations, constitutional guarantees and judicial decisions referred to above, Section 303 of the Code of Criminal Procedure, 1973 gives right to any person accused of an offence before a criminal court to be defended by a pleader of his choice.¹⁷ Section 304 of the Code of Criminal Procedure contemplates legal aid to accused facing charge in a case triable by Court of Sessions at State expense and the same reads as follows:

"304. Legal Aid to accused at State expense in certain cases:

(1) Where, in a trial before the Court of Session, the accused is not represented by a pleader, and where it appears to the Court that the accused has not sufficient means to engage a pleader, the Court shall assign a pleader for his defence at the expense of the State.

From a plain reading of the aforesaid provision, it is evident that in a trial before the Court of Sessions, if the accused is not represented by a pleader and has not sufficient means, the court shall assign a pleader for his defence at the expense of the State. The entitlement to free legal aid is not dependent on the accused making an application to that effect, in fact, the court is obliged to inform the accused of his right to obtain free legal aid and provide him with the same.

¹⁶ 2012(8) SCC 553.

¹⁷ Section 303- Right of person against whom proceedings are instituted to be defended. Any person accused of an offence before a Criminal Court, or against whom proceedings are instituted under this Code, may of right be defended by a pleader of his choice.

Legal Services Authorities Act, 1987

Though the provision of legal aid was given statutory recognition in India as discussed above, still it was not really making any significant impact on the ability of the underprivileged people to get the judicial redressal for their grievances. Consequently, in pursuance of various decisions of the Supreme Court regarding provision of free legal aid, in 1980, a Committee at the national level was constituted to oversee and supervise legal aid programmes throughout the country under the Chairmanship of Hon. Mr. Justice P.N. Bhagwati (then a Judge of the Supreme Court of India). This Committee came to be known as CILAS (Committee for Implementing Legal Aid Schemes) and started monitoring legal aid activities throughout the country. The introduction of Lok Adalats added a new chapter to the justice dispensation system in the country and succeeded in providing a supplementary forum to the litigants for conciliatory settlement of their disputes. In 1987, Legal Services Authorities Act was enacted to give a statutory base to legal aid programmes throughout the country on a uniform pattern. This Act was finally enforced on 9th November, 1995 after certain amendments were introduced therein by the Amendment Act of 1994. Hon'ble Mr. Justice R.N. Mishra, the then Chief Justice of India played a key role in the enforcement of the Act.¹⁸

According to section 2(1) (a) of the Act, legal aid can be provided to a person for a 'case' which includes a suit or any proceeding before a court. Section 2(1) (aaa) defines the 'Court' as a civil, criminal or revenue court and includes any tribunal or any other authority constituted under any law for the time being in force, to exercise judicial or quasi-judicial functions. As per section 2(1)(c) 'legal service' includes the rendering of any service in the conduct of any case or other legal proceeding before any court or other authority or tribunal and the giving of advice on any legal matter.

A nationwide network has been envisaged under the Act for providing legal aid and assistance. The Act provides, *inter alia* for the constitution of a National Legal Services Authority (Central Authority), State Legal Services Authorities (State Authority), District Legal Services Authorities (District Authority) as well as Taluk Legal Services Committees. National Legal Services Authority (NALSA) is the apex body constituted to lay down policies and principles for making legal services available under the provisions of the Act and to frame most effective and economical schemes for legal services. It also disburses funds and grants to State Legal Services Authorities and NGOs for

¹⁸ Available at <<http://nalsa.gov.in/>> (accessed on August 2, 2015).

implementing legal aid schemes and programmes. It is headed by Chief Justice of India as Patron-in-Chief.¹⁹ The Central Authority performs following functions under the Act²⁰:

- (a) lay down policies and principles for making legal services available under the provisions of this Act;
- (b) frame the most effective and economical schemes for the purpose of making legal services available under the provisions of this Act ;
- (c) utilise the funds at its disposal and make appropriate allocations of funds to the State Authorities and District Authorities;
- (d) take necessary steps by way of social justice litigation with regard to consumer protection, environmental protection or any other matter of special concern to the weaker sections of the society and for this purpose, give training to social workers in legal skills;
- (e) organise legal aid camps, especially in rural areas, slums or labour colonies with the dual purpose of educating the weaker sections of the society as to their rights as well as encouraging the settlement of disputes through Lok Adalats;
- (f) encourage the settlement of disputes by way of negotiations, arbitration and conciliation;
- (g) undertake and promote research in the field of legal services with special reference to the need for such services among the poor;
- (h) to do all things necessary for the purpose of ensuring commitment to the fundamental duties of citizens under Part IVA of the Constitution;
- (i) monitor and evaluate implementation of the legal aid programmes at periodic intervals and provide for independent evaluation of programmes and schemes implemented in whole or in part by funds provided under this Act;
- (j) provide grants-in-aid for specific schemes to various voluntary social service institutions and the State and District Authorities from out of the amounts placed at its disposal for the implementation of legal services schemes under the provisions of this Act;
- (k) develop, in consultation with the Bar Council of India, programmes for clinical legal education and promote guidance and supervise the establishment and working of legal services clinics in universities, law colleges, and other institutions;

¹⁹ Legal Services Authorities Act, 1987, Section 3 (2).

²⁰ *Id.*, Section 4.

(l) take appropriate measures for spreading legal literacy and legal awareness amongst the people and, in particular to educate weaker sections of the society about the rights, benefits and privileges guaranteed by social welfare legislations and other enactments as well as administrative programmes and measures;

(m) makes special efforts to enlist the support of voluntary social welfare institutions working at the grass-root level, particularly among the Scheduled Castes and the Scheduled Tribes, women and rural and urban labour; and

(n) co-ordinate and monitor the functioning of State Authorities, District Authorities, Supreme Court Legal Services Committee, High Court Legal Services Committees, Taluka Legal Services Committee and voluntary social service institutions and other legal services organizations and give general directions for the proper implementation of the legal service programmes.

In every State a State Legal Services Authority is constituted to give effect to the policies and directions of the Central Authority (NALSA) and to give legal services to the people and conduct Lok Adalats in the State.²¹ State Legal Services Authority is headed by the Chief Justice of the State High Court who is its Patron-in-Chief. A serving or retired Judge of the High Court is nominated as its Executive Chairman. District Legal Services Authority is constituted in every District to implement Legal Aid Programmes and Schemes in the District.²² The District Judge of the District is its ex-officio Chairman. Taluk Legal Services Committees are also constituted for each of the Taluk or Mandal or for group of Taluk or Mandals to coordinate the activities of legal services in the Taluk and to organise Lok Adalats.²³ Every Taluk Legal Services Committee is headed by a senior Civil Judge operating within the jurisdiction of the Committee who is its ex-officio Chairman.

Section 12 of the Legal Services Authorities Act, 1987 prescribes the criteria for giving legal services to the eligible persons. Section 12 reads as under:-

Every person who has to file or defend a case shall be entitled to legal services under this Act if that person is –

- (a) a member of a Scheduled Caste or Scheduled Tribe;
- (b) a victim of trafficking in human beings or begar as referred to in Article 23 of the Constitution;
- (c) a woman or a child;

²¹ *Id.*, Section 6.

²² *Id.*, Section 9.

²³ *Id.*, Section 11A.

- (d) a mentally ill or otherwise disabled person;
- (e) a person under circumstances of undeserved want such as being a victim of a mass disaster, ethnic violence, caste atrocity, flood, drought, earthquake or industrial disaster; or
- (f) an industrial workman; or
- (g) in custody, including custody in a protective home within the meaning of clause (g) of section 2 of the Immoral Traffic (Prevention) Act, 1956 (104 of 1956); or in a juvenile home within the meaning of clause (j) of section 2 of the Juvenile Justice Act, 1986 (53 of 1986) or in a psychiatric hospital or psychiatric nursing home within the meaning of clause (g) of section 2 of the Mental Health Act, 1987 (14 of 1987); or
- (h) in receipt of annual income less than rupees nine thousand or such other higher amount as may be prescribed by the State Govt., if the case is before a court other than the Supreme Court, and less than rupees twelve thousand or such other higher amount as may be prescribed by the Central Govt., if the case is before the Supreme Court."

Section 13 of the Act further provides that persons meeting the criteria laid down in Section 12 of the Act will be entitled to legal services provided the concerned authority is satisfied that such person has a *prima facie* case to prosecute or defend. Legal Services Authorities after examining the eligibility criteria of an applicant and the existence of a *prima facie* case in his favour provide him counsel at State expense, pay the required Court Fee in the matter and bear all incidental expenses in connection with the case.

It is important to note in this context that Sections 12 and 13 of the Act do not make any distinction between the trial stage and the appellate stage for providing legal services. In other words, an eligible person is entitled to legal services at any stage of the proceedings which he or she is prosecuting or defending.

CONCLUSION

The prime object of any welfare State should be "Equal Justice for all". The legal aid strives to ensure that the ideals of equal justice and equality enlisted in Preamble to our Constitution are fulfilled in true spirit. No doubt, the courts in India have very profoundly developed the concept of legal aid and various instruments for the help of the people so that they may overcome the handicaps resulting from their poverty. They need much assistance not only from the political administration but also all the wings of the State. In spite of the fact that the right to free legal aid

has been raised at par with the fundamental rights, there is a wide gap between the goals set and the goals met. The major obstacle to the development of legal aid movement in India is the lack of legal awareness. The persons for whose benefit this movement started are still not aware that they do have such a right. One cannot lose sight of the fact that even intelligent and educated men, not trained in law, have basically no skills to defend themselves properly if charged with crime. A guiding hand of counsel at every step of the proceeding is needed for a fair trial. If it is true of men of intelligence, then one can imagine the plight of the ignorant and the illiterate or those of lower intellect. An accused without the lawyer faces the danger of conviction because he does not know how to establish his innocence.

NALSA has taken some active steps to spread legal literacy. 9th of November is being celebrated every year by all Legal Services Authorities as “Legal Services Day”. NALSA issues Press Releases in almost all the leading newspapers in the country in English, Hindi and regional languages to convey to the public salient provisions of the Legal Services Authorities Act, the important schemes introduced by NALSA for providing legal aid and the utility of Lok Adalats, so that people should know about the facilities being provided by Legal Services Authorities throughout the country. State Legal Services Authorities all over the country organise Lok Adalats, legal literacy camps and undertake legal awareness campaigns to make people aware of their legal rights.²⁴

A perusal of the above discussion makes it clear that we, in India, have plethora of legislative provisions as well as judicial decisions for imparting legal aid to the needy people. But the need of the hour is that one should focus on effective implementation of these provisions so that these provisions are not reduced only to a myth in the hands of countrymen. In this regard, following measures may be suggested:

1. Conduct of legal literacy programmes at the grass root level is required. For this, judiciary as well as State administration must work hands in hand.
2. While providing legal aid, the legal aid authorities at the national, state as well as district level must encourage adoption of Alternative Dispute Resolution (ADR) mechanisms so as to expedite the disposal of the case and to ensure that the matter is settled without further appeal.

²⁴ *Supra* note 18.

3. The Legal service authorities must be provided with sufficient funds so that no one is deprived of legal aid only because of paucity of funds.

We may conclude with the words of Justice Lewis Powell of U.S Supreme Court²⁵:

Equal justice under law is not merely a caption on the facade of the Supreme Court building; it is perhaps the most inspiring ideal of our society. It is one of the ends for which our entire legal system exists...it is fundamental that justice should be the same, in substance and availability, without regard to economic status.

²⁵ Available at <http://www.nlada.org/News/Equal_Justice_Quotes>. (accessed on August 8, 2015).

UNSHACKLING THE TIES OF PRISON, THE NON MONETARY WAY HUSSAINARA KHATOON CASE

*Soumya Bhargava*¹

*"Equal justice under law is not merely a caption on the facade of the Supreme Court building; it is perhaps the most inspiring ideal of our society. It is one of the ends for which our entire legal system exists...it is fundamental that justice should be the same, in substance and availability, without regard to economic status."*²

INTRODUCTION

The right to speedy trial enshrined under Article 21 of the Constitution of India has drawn appreciation from the accused under trial. Also, it is the primary obligation of the state to provide legal aid to indigent persons. These rights along with other few have taken its source from the 'mother of public interest litigation', Mrs. Kapila Hingorani. Pre 1979, a large number of people were held under protective custody for inordinately long period of time just because no financial security was deposited by them. It implied inequality as under trial prisoners who could afford bail would be granted freedom whereas the poor section of society could not. It simply pointed to buying of freedom, something which is an indispensable right in the Constitution. However, the *Hussainara Khatoon* case, for the first time, jolted the bench with a reminder of a legacy it is responsible to deliver as a court of justice. Hussainara epitomizes an active, almost explosive assertion of judicial power in the aid of the deprived sections of society.³

Facts:

The famous *Hussainara Khatoon* case which had such a deep impact on the administration of criminal justice in India, and where the Supreme Court was able to lay down some ameliorative principles with respect to the poor accused languishing in prisons, came before as public interest litigation.⁴ KF Rustamji, the then member of National Police Commission and a retired Inspector General of Police authored articles portraying the inhumane conditions behind the bars and describing the

¹Student, IIIrd year, BLS LL.B, Government Law College, Mumbai

² Lewis Powell, Jr., US Supreme Court Justice

³ R. Sharma, *Human rights and Bail* p 155

⁴ Krishna Deo Gaur, *Criminal Law and Criminology* p 576

plight of the undertrials in Bihar Jail, out of whom some spent their time behind the bars more than what they should have spent in case of conviction on grounds of multiple offences. In addition to this, numerous undertrial prisoners with petty offences had spent around 10 years in prison waiting for justice to be granted. This report as an article was published in January 1979 in Indian Express, a national daily which outraged and stirred up the curiosity of Kapila Hingorani and her husband. They moved the Supreme Court through a habeas corpus petition on behalf of the prisoners. The matter was heard by a bench lead by Justice Bhagwati and the matter was placed before the court several times.⁵

Applicable Legal Provisions:

The *Hussainara Khatoon* case was a landmark case dealing with the right of speedy trial of prisoners and breaking the shackles of dilemma faced by the prisoners. The case was an attempt to make prisoners aware of their rights and also, to make justice reach out to every strata of society. The case inter alia dealt with Article 21 of the Constitution. The under trial prisoners were deprived of their personal liberty and the procedure was not in accordance with law. Some prisoners were behind the bars even without a charge. The case also invited the applicability of Article 39A enshrined under Part IV of the Constitution dealing with equal justice and free legal aid. The case exemplified the significance of habeas corpus writ petition successfully filed by Ms Hingorani by moving the Supreme Court under Section 32 of the Constitution.

Sections 363, 368 and 395 of Indian Penal Code, 1860 and Sections 167 (2), 167 (5), 468 and 468 (2) of Criminal Procedure Code, 1973 were also invoked as there was unreasonable delay and the investigation was not in accordance with the stipulated time.

Among the international provisions, Article 3 of European Convention of Human Rights was cited by Justice Bhagwati in his judgment.

Judgment:

In the *Hussainara* case I, after certain investigation, the report of article by Indian Express was considered to be correct and the prisoners listed in the report were ordered immediate release on

⁵ *Hussainara Khatoon I* [1980] 1 SC 81; *Hussainara Khatoon II* [1980] 1 SC 91; *Hussainara Khatoon III* [1980] ; *Hussainara Khatoon IV* [(1980) 1 SCC 98]

account of personal bond. Also, in interest of justice, the Court laid eight alternatives to the traditional grounds for grant of bail:

- (1) *The length of his residence in the community,*
- (2) *His employment status, history and his financial condition,*
- (3) *His family ties and relationships,*
- (4) *His reputation, character and monetary conditions,*
- (5) *His prior criminal record including any record of prior release on recognizance or on bail,*
- (6) *The identity of responsible members of the community, who would vouch for his reliability,*
- (7) *the nature of the offence charged and the apparent probability of conviction and the likely sentence in so far as these factors are relevant to the risk of non appearance and*
- (8) *Any other factors indicating the ties of the accused to the community or bearing on the risk of willful failure to appear.*⁶

The court held that speedy trial is a comprehensive right embedded in the ambit of Article 21 of the Constitution. Justice Bhagwati focused on the basic freedoms which the prisoners had been deprived of. He condemned the bail system for the unreasonable delay and expressed that it suffers from a property oriented approach which seems to proceed on the erroneous assumption that risk of momentary loss is the only deterrent against fleeing from justice. Bhagwati blamed the bail system for proving to be a barrier to access of justice to the poor. He believed that monetary dimension was not the only angle to the grant of bail. Being a socialist republic, other considerations such as family ties, job security could also be the determinative factors.

Justice Pathak, while delivering his judgment pointed out that there was a lack of provision in Code of Criminal Procedure regarding the release of undertrial prisoners without monetary surety. The deprivation of the liberty for the reason of the financial poverty only is an incongruous element in a society aspiring to the achievement of this constitutional objective.⁷

The Hussainara Khatoon (II) case⁸ primarily dealt with Bihar government withdrawing all the “ordinary cases” under the Excise Act, Forest Act, Police Act and the Motor Vehicles Act wherein

⁶ Overflowing prisons, empty reforms,
<https://letstalkaboutthelaw.wordpress.com/tag/hussainara-khatoon/>

⁷ Judgment, *Pathak J.*, Hussainara Khatoon and ors. (I) v Home Secretary, Bihar Writ Petition No. 57 of 1979

⁸ (1980) 1 SCC 91

the prisoners were under trial and were behind the bars for more than six months. The court being content with the decision of the government directed the State Welfare Department to take care of the women and children who has nowhere to go.

In *Hussainara Khatoon (III) v State of Bihar*⁹, the Court had to tackle the issue of protective custody. The court held that the women who were imprisoned without having committed any offence and under protective custody should be released immediately. Justice Bhagwati while condemning the system of imprisoning under the guise of protective custody expressed, “The expression 'protective custody' is a euphemism calculated to disguise what is really and in truth nothing but imprisonment. It is an expression intended to appease the conscience. It cannot be gainsaid that women who have been kept in jail under the guise of 'protective custody' have suffered involuntary deprivation of liberty for long periods without any fault on their Article.”¹⁰

The Court pondered over the immense importance to legal aid in *Hussainara Khatoon (IV)* case¹¹. Bhagwati in his judgment points out that due to lack of legal awareness, several under trial prisoners are not even informed of the rights they are handicapped of. Additionally, on account of poverty, they are unable to engage a lawyer would apprise them of their legal right to apply for a bail. The court laid down an important point with regard to Article 39A. Even though forming a part of the Directive Principles of State policy, Article 39A inter alia forms a subset of Article 21 of the Constitution.

The case also expressed dire need to introduce a comprehensive legal service programme in the country to remove the ‘mysteriousness’ of law in the minds of the poor, improve their life conditions by conferring legal rights and restoring the faith of the credibility of the judicial system. This was a significant contribution to the introduction of the legal aid committee in India.

In *Hussainara Khatoon (V)* case¹², the Court held that the continued detention of under trial prisoners is illegal and in violation of the fundamental rights. In addition to this, the under trial prisoners who were of unsound mind should be kept separately, the cases be treated as summons case to ensure speedy compliance of the order. It was also held that the Magistrates would inform the prisoners about their right to bail.

⁹ (1980) 1 SCC 93

¹⁰ PN Bhagwati J., *supra* note 8

¹¹ (1980) 1 SCC 98

¹² (1980) 1 SCC 108

IMPLICATIONS OF THE CASE ON LEGAL AID

The Supreme Court has, through many decisions by Justice Bhagwati, clearly articulated the status of legal aid as a state obligation and a constitutional right of every accused in criminal proceedings. Improving upon the *Hoskot dicta*¹³ with the support of the “due process” interpretation was articulated by Justice Bhagwati in the case.¹⁴ In the case of *Bihar Legal support society, New Delhi v Chief Justice of India and anr*¹⁵, the Supreme Court held that the special leave petitions of “small men” had equal consideration as those of “big and influential industrialists” thereby signifying the importance of right to equality and legal aid to indigent people. However, mentioning and classifying indigent persons as “small men” was rather discriminatory.

The case of *Mr. Sajal Kumar Mitra and ors v State of Maharashtra*¹⁶ drew the same outline as the case of *Hussainara Khatoon* case and Justice VM Kanade observed the following:

“The Apex Court in *Hussainara Khatoon (I)* has observed that people have to suffer long years in pre-trial detention since the bail procedure is beyond their meager means. It has also observed that the antiquated procedure perpetuated by the new Code which insists on a bond with a monetary obligation, invariably supported by sureties whose solvency must be proved, operates very harshly against the poor, being beyond their means.”

The *Hussainara Khatoon* case dated February 12, 1979 cited the Legal Aid Committee emphasizing the glaring inequality in the following words:

“The bail system causes discrimination against the poor since the poor would not be able to furnish bail on account of their poverty while the wealthier persons otherwise similarly situate would be able to secure their freedom because they can afford to furnish bail. This discrimination arises even if the amount of the bail is fixed by the Magistrate is not high, for a large majority of those who are brought before the courts in criminal cases are so poor that they would find it difficult to furnish bail even in a small amount.”¹⁷

¹³ Madhav Hayawadanrao Hoskot v State of Maharashtra (1987) 3 SCC 544

¹⁴ Sampat Jain, *Public Interest Litigation* p 216

¹⁵ 1987 SCR (1) 295

¹⁶ Criminal Application No. 98 of 2010

¹⁷ Hussainara Khatoon and ors. (I) v. Home secretary, Bihar Writ Petition No. 57 of 1979

Emphasizing the importance of legal aid as a medium to bridge the gap of the lower strata of the society, Justice Bhagwati in his judgment expressed:

“The free legal service is an unalienable element of 'reasonable fair and just procedure for without it a person suffering from economic or other disabilities would be deprived of the opportunity for securing justice. The right to free legal services is, therefore, clearly an essential ingredient of 'reasonable, fair and just' procedure for a person accused of an offence and it must be held Implicit in the guarantee of Article 21. This is a constitutional right of every accused person who is unable to engage a lawyer and secure legal services on account of reasons such as poverty; indigence or incommunicado situation and the State is under a mandate to provide a lawyer to an accused person if the circumstances of the case and the needs of justice so required, provided of course the accused person does not object to the provision of such lawyer.”

The importance of “access to justice” will come into picture when the Court decides that no one, powerful, financially or otherwise would be given a special status in the eyes of law.

Let it not be forgotten that if law is not only to speak justice but also deliver justice, legal aid is an absolute imperative. Legal aid is really nothing else but equal justice in action. Legal aid is in fact the delivery system of social justice. It is intended to reach justice to the common man who, as the poet sang:

*“Bowed by the weight of centuries he leans
Upon his hoe and gazes on the ground,
The emptiness of ages on his face,
And on his back the burden of the World.”¹⁸*

¹⁸ *Supra* note 11

CLINICAL LEGAL EDUCATION – CONCEPT AND HISTORICAL DEVELOPMENT

Aditi Arora¹

INTRODUCTION

“A lawyer is not merely a craftsman – or even an artist. He has a special role in our society. He is a professional, specially ordained to perform at the crisis time of the life of other people: and almost daily to make moral judgments of great sensitivity.

And, of course, he is the custodian of the flaming sword of individual and personal liberty, as well as of the public order.” - Justice Fortas.²

Prof. Sathe opined – “a lawyer is not only a seller of services but he is a professional who renders services for maintaining the rule of law. He has to have commitment to certain values such as democracy, individual liberty, social and economic equality including gender equality and concern for the dis-advantaged section of society.”³

In State of **Maharashtra v. Manu Bhai Pragaji Vashi**⁴, the Supreme Court observed that, “the need for the continuing and well organized legal education, is absolutely essential reckoning the new trends in the world order, to meet every growing challenge. The legal education should be able to meet the ever-growing demands of the society and should be thoroughly equipped to cater to the complexities of the different situations”

The legal education in India has always been subject to criticism on the ground that it has failed to teach students how to practice law and develop court craft, and also for not providing social context

¹ 5th year, B.A. LL.B (Hons.), Jamia Milia Islamia, Delhi

² S.R. Bhosale, Legal Education in India: Restructuring and Reshaping, *Indian Bar Review*, Vol. XXVI (3 & 4), 1999, Pg. 37

³ S.P. Sathe, Community Responsive Legal Education : Trends in South Asia, Keynote Address in Round-table Discussion, November 27-28, 2001

⁴ AIR 1996 SC 1

education to focus on issues that have an impact on large sections of society⁵. The legal education in Indian Law schools has traditionally been confined to classroom lectures; text books; the law Journals and the library. Yet there is no denying the fact that there is a very wide gap between the law school's teaching and the courts, i.e. the present school and the expected future office of these students, and thus the majority of Indian Law schools fail to prepare adequately the students for the need and challenges of their future offices. Theory is necessary for understanding and for the expansion and extension of analysis, but it is alone not sufficient. It is therefore, necessary to bridge the gap in legal education by strengthening the present clinical legal education offered in the law school.

In India, there is a very wide gap between the people, especially the poor and the justice delivery system. The need of the lawyer to be sensitive to the causes and cases of the poor is all the more needed here than anywhere else in the world. If law in society is all about ensuring justice to all, legal education must ensure that the students develop the critical understanding of various disparities in society that result in denial of access to justice to various groups in society. The UGC Model Curriculum has reiterated the same saying "the Legal Education ought to be a device for Human Resource Development in law with object of attaining social justice and democratic development."⁶

As a matter of fact, Indian Legal Education is as strong as ever in doctrine and legal analysis. But it is strikingly weak in teaching other foundational skills and in imparting knowledge that lawyers need as counselors, problem solvers, negotiators etc. – roles that will pervade their professional lives. The need for these skills can only grow as law school graduates encounter problems with increasingly complex, technological and ethical dimensions. The problem is not that legal education has become adventurous, but it has changed so little to meet the needs of the changing society.⁷ The approach used in classroom teaching was the outdated lecture method. More emphasis was given in verbal analysis of a rule or a judgment, instead of the underlying principles or social intricacies that resulted in the making of a particular rule. In the words of Prof. Mohammad Ghose, "they were not alive to the dynamic role of law in the development of the country."⁸ Students had no exposure to the policy

⁵ Dr. Y.F. Jaya Kumar, Clinical legal Education and Law Schools in India – Some Problems and Remedies, *Supreme Court Journal (Apex Court Expression-Reverted-SCJ)*, Vol. 5(31), 2007 (Aug.), Pg. 36

⁶ University Grant Commission, UGC Model Curriculum Law 13 (2001)

⁷ Paul Brest, "The responsibility of law school : educating lawyers and counselors and problem solvers", *Law and Contemporary Problems*, 1996, pp. 5-11, at p.5;

⁸ Mohammad Ghose, *Legal Education in India: Problems and Perspective*, 19 J.I.L.I. 337 (1977) (Book review);

underlying the law, the function of the law, or the needs of the nation and the expectations of the people. No effort was made to understand the law in a social context.

According to Arthur Von Mehren, before Independence the Indian legal profession and legal education had not developed “a rationally functional approach to the problems of law and legal order” and the “Indian legal education inevitably tended to evolve in patterns that emphasized rote memory. To impart information – not critical understanding – remained the goal of legal education.” Consequently, when India gained independence, “its legal profession and legal teaching were thus not able to play the role they ought, by western standards, to have played.”⁹

Unfortunately, there is a general feeling that legal education in India is not "meaningful" and "relevant." The way legal education has been structured in India appears to suggest that it is intended to provide students only with some knowledge of statutes. The curriculum is neither helpful in shaping aspiring lawyers in their traditional roles of problem solvers nor in their expanded roles of arbitrators, counselors, negotiators or administrators.¹⁰

Law, legal education and development have become inter-related concepts in modern developing societies which are struggling to develop into social welfare states and are seeking to ameliorate the socio-economic condition of the people by peaceful means. There is a growing recognition in recent years that knowledge of the law is best understood in the context within which it operates in our complex society. This new approach to the study of law brought forth the concept of ‘Clinical Legal Education’ into limelight as a means of making legal education system more socially relevant and professionally significant. Clinical Legal Education has now become an integral part of the curriculum in undergraduate programmes of law and is placed high on the educational agenda of many reputed law schools and Universities throughout the world.

CONCEPT OF CLINICAL LEGAL EDUCATION

At its narrowest definition, the term “Clinical Legal Education” denotes the involvement of law students in the representations of the actual clients as part of their legal education. More broadly the term includes more structured methods of instruction which emphasize the learning of “practical skills” in addition to substantive and procedural rules of law, usually in ways which involve students’

⁹ A. Lakshminath, Legal Education, Research and Pedagogy – Ideological Perceptions, *Journal of the Indian Law Institute*, Vol. 50 No. 4 October-December 2008, Pg. 606

¹⁰ I.P.Massey, *Quest For Relevance' in Legal Education*, 2 SCC (JOUR) 17 (1971);

active participation beyond that normally followed in the lecture rooms, and thus also includes moots, courses of trial advocacy, courses in legal drafting all of which rely on orientation of lawyer-client based education.

Clinical legal education may be simply described as learning through practice, application, and reflection. The lecture and seminar method in the law school to teach the students does not meet the clinical demands. The aim and the object of clinical legal education is to expose the law students in practice and to provide analytical, management and problem solving skills. In fact the clinical legal education is a bridge which connects between theory and practice. What is learnt through books is easily forgettable but not what is learnt through practical experience. The purpose of clinical legal education is not only to make a student a perfect lawyer as a marketable commodity but also to expose him to the social realities, responsibilities, professional ethics, which is known as social-centered education and value education.

Clinical Legal Education denotes the involvement of Law students in the representation of the actual clients as part of their legal education. It is certainly not limited to the mere training in certain skills of advocacy, it has wider goal in enabling the students to understand and assimilate responsibilities as a member of a public service in the administration of the law, in the reform of the law, in the equitable distribution of the legal service in society, in the protection of individual rights and public interest and in upholding the basic elements of 'Professionalism'. A clinical experience in law school, therefore, is a unique opportunity for the students to learn under supervision, many aspects of the 'hidden curriculum' essential for preparation to think and act like a lawyer.¹¹ It is a system that directs the students to make an attempt to understand the theoretical and operational parameters of legal doctrines and statutory principles and the techniques of applying them in actual practice and real life situation.

Implemented in various ways around the world, clinical legal education is constituted by three key elements: Professional Skill training, learning through experience, and imparting professional values of providing access to social justice.¹² Clinical legal education introduces law students to social justice

¹¹ N.R. Madhava Menon, *Clinical Legal Education*, Eastern Book Company, Lucknow, 2009, Pg. 1

¹² Frank S. Bloch, *New Directions in Clinical Legal Education : Access to Justice and Global Clinical movement*, 28 WASH. U. J.L. & POL'Y 111, 121 (2008); as quoted in Dr. Lokendra Malik and Dr. Manish Arora, *Legal Education in India - Essays in honour of Professor Ranbir Singh*, Universal Law Publishing Co., New Delhi, 2014, Pg. 189

issues and the rule of law and imbues these future legal professionals with a greater understanding of law and the role of lawyers in maintaining the rule of law in society.

Clinical legal education is not a term of art; it can mean different things to different people. It has been defined as:

“a learning environment where students identify, research and apply knowledge in a setting which replicates, at least in part, the world where it is practised.... It almost inevitably means that the student takes on some aspect of a case and conducts this as it would ... be conducted in the real world.”¹³

Clinical education clearly gives opportunities for the knowledge to be applied, but it also goes beyond this and calls for reflection and self examination. It gives students the opportunity to explain why they are taking certain actions and they are able to discuss and reconsider their actions. Students, by contrast, can examine the legal and social issues in some depth, and they can form the basis for looking at the lawyer's role and at legal ethics within a practical context. The result is that what is learned is far more likely to remain with the student than the knowledge crammed for an extremely artificial examination paper. Treating students as merely empty vessels into which legal information can be poured (apparently without end) provides them with only a small part of what they need in order to understand the nature and processes of law, and to operate effectively as a practitioner.¹⁴

It is submitted that clinical legal education is essential to the student community and helpful to them in the following ways:

- To develop the professional skills and practical application of law
- To develop research, analytical and communicative skills
- To provide necessary experience and exposure to handle the cases independently
- To bring the law students closer to the people who are in need of their professional assistance
- To focus on social, moral and ethical values to a promising lawyer which are necessary in finding social reasoning in judicial decisions

¹³ Richard Lewis, “*Clinical Legal Education Revisited*” Professor of Law, Cardiff university, Wales, United Kingdom, Pg. 5 [available at: <http://www.law.cf.ac.uk/research/pubs/repository/212>]

¹⁴ *Id.* at Pg. 7

- To motivate the law students by creating a sense of responsibility to serve the community.

Efforts have been made to improve practical clinical training and to provide such training courses in the form (i) Post graduate training course, (ii) Internship programme, (iii) Student's legal aid clinic.

Post Graduate Training courses provide training in advocacy, drafting procedure, ethics and law office management in a classroom environment with heavy emphasis on stimulation. Internship involves a supervised work in the office of the Solicitor and Attorney house. The emphasis is more towards advisory and administrative work rather than the adversary process. But the most popular manifestation is the student's Legal Aid Clinic, the common feature of which is the direct student involvement in handling the legal problem of Indigent client. The role of law student as legal aid lawyer is potentially one of mutually benefit to the student, to the legal aid scheme in which the student works, to his university and to the community at large.

To improve the standard of legal profession and services by, the value of clinical components in professional legal education is being recognized. From the knowledge and experience gathered from different countries, it is suggested that the institution of legal aid clinics in an ideal and necessary device to impart education while serving the society and achieving in the process revolutionary reforms both in legal education and administration of justice.

HISTORICAL DEVELOPMENT

The concept of practical problem solving, whether by working in a laboratory or in the field, as an important means of developing skills has been in acknowledged since time immemorial. However, the concept of Clinical legal education, albeit one of the most outstanding developments, came to be incorporate in the teaching methodology only from the early twentieth century. It was in 1901, that a Russian professor, Alexander Lyublinsky, first proposed Clinical education in law on similar lines as in medicine.¹⁵

Clinical legal education is not a rare example. English legal education for centuries relied primarily on apprenticeship. In Japan, even before a distinct legal profession developed, the legal functions performed by *Kujiyado* or suit inns were transmitted from father to son through a loosely structured

¹⁵ Richard J. Wilson, *Training for Justice: The Global Reach of Clinical Legal Education*, 22 Penn St. Int'l L. Rev.421(2004);

apprenticeship. The arts of *vakils* of Moghal India were passed from generation to generations. Thus, apprenticeship has always been and still is an element of legal education in many countries.¹⁶

ORIGIN IN UNITED STATES

The earliest reference on Clinical legal education in United States could be traced in the year of 1917.¹⁷ However, according to most cited reference, the term, “Clinical Legal Education” was first used by Jerome Frank, in 1933 in U.S in his article, “Why not a clinical lawyer school”¹⁸ and has since then been the focus of attention for improvement of legal education and for creating a synthesis between the law school and the legal profession.

Since that time, Clinical teaching has become an integral part of legal education in most developed and developing countries. The global Clinical movement started taking hold in the late 1960’s; however, by that time Law Schools in the U.S. took the lead in providing Clinical legal education. The Clinical movement began to gain momentum in the United States only after the Civil Rights Movement and President Lyndon Johnson's War on Poverty in the mid 1960's. Since then, Clinical legal education has become an integral component of the curriculum at virtually all Law Schools in the United States of America.

INDIAN SCENARIO

In India the Legal Clinics operated initially as an extracurricular activity, however, in 1998, Clinical education was made mandatory and now many Law Schools offer legal services through Legal Clinics. Like all other countries, Clinical education in India was principally focused on providing legal aid to the poor.

In **Manubhai’s case**¹⁹, The Court opined that "In order to enable the State to afford free legal aid and guarantee speedy trials, a vast number of persons trained in law is essential.

Legal aid is required in many forms and at various stages for obtaining guidance, for resolving disputes in Courts, tribunals or other authorities... Legal education should be able to meet the ever

¹⁶ Shri Baidyanath Choudhury, Clinical Legal Education and the Role of Law Students, *Kanpur Law Journal*, 1992, Vol. 7, Pg. 29

¹⁷ The earliest academic reference is William V. Rowe, *Legal Clinics and Better Trained Lawyers — A Necessity*, 11, Ill. L.Rev. 591(1917)

¹⁸ 81 UPA. L. Rev. 907 (1933)

¹⁹ *Supra note 4*

growing demands of the society and should be thoroughly equipped to cater to the complexities of the different situation..."

In *Centre for Legal Research and another v. State of Kerala*²⁰, the Court recognized the necessity of the people's participation in the success of legal aid programs. The Court said, "a legal aid program is not charity or bounty but it is a social entitlement for the people." Further, it advocated the adoption of "*a strategic legal aid program consisting of promotion of legal literacy, organization of legal aid camps, encouragement of public interest litigation and holding of lok adalats or niti melas ...*"

EVOLUTION

Legal education during the British India period continued as a two-year program with traditional lecture method²¹. The process of formalizing legal education was slow and very little efforts were made on improving the content of legal education. Imparting information rather than developing critical understanding was the chief goal of the legal education. Therefore, not surprisingly most of the efforts to improve legal education were confined to institutionalize and regulate legal education and completely ignored the content pedagogy of legal education.

The quality of legal education was quite uneven in the colonial era, as summed up by the Unemployment Committee appointed by the UP government in 1935:

"[O]ur own view is that so far as Universities in these provinces are concerned legal education has not occupied the place to which its importance entitled it; and we are not prepared to say that the standard of legal education has risen to the extent to which it has risen in certain other departments."

Thus, a number of committees assessed the status of legal education and recommended reforms. One of the common recommendations of these committees was that a comprehensive legislation should be introduced to regulate the legal profession and legal education. Accordingly several legislative attempts were made in this direction, including the Sri Anugraha Narain Siha Bill, 1936; Sri Akil Chandra Bill, 1939; and T.T. Krishnamachari Bill, 1944.

²⁰ AIR, 1986 SC 1322.

²¹ 14TH LAW COMMISSION OF INDIA REPORT ON REFORM OF JUDICIAL ADMINISTRATION, Chapter 25 Para 32 (1958).

Legal education gathered momentum and acquired importance in free India. With the adoption of a democratic form of government, legal education was expected to bring the legal system in tune with social, economic and political desires of the country. Law Schools being recruit grounds for legal profession there was a need to inject a new spirit into the content of legal education to make lawyers and legal professionals socially relevant and professionally competent.

The Indian Constitution aims at securing social, economic and political justice.²² **Equal Justice and Free Legal Aid:** the State shall secure that the operation of the legal system promotes justice on the basis of equal opportunity, and shall in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reasons of economic or other disabilities.²³ The Code of Criminal Procedure 1973 under Section 304 revised for legal aid to an accused who is not represented by a pleader in trial before the court of session, provided that he has no sufficient to engage a lawyer. Order XXXIII of the Code of Civil Procedure, 1908, provides that indigent persons may institute suits and are not liable to pay any court-fee or fees payable for service of process in respect of any petition, appointment of a pleader or other proceeding connected with the suit.

The University Education Commission (Radha Krishnan Commission) set up in 1948- 49 observed in its report, “we have no internationally known expounders of jurisprudence and legal studies. Our Colleges of law do not hold a space of high esteem either at home or abroad nor has law become an area of profound scholarships and enlightened research.” The University Education Commission, which has had the opportunity to examine the legal education in India, has noted thus:

“It is important that, whatever subjects may be offered, the student should acquire the powers of clear thinking, accurate analysis, and cogent expression. Without these qualities, he cannot hope for success as an attorney.”²⁴ In the year 1949, the Bombay Legal Education Committee was set up to promote legal education. The committee recommended a three years scheme of legal studies comprising of the study of law for two years at the University for a Law degree followed by a third year spent in the study of vocational subjects ending with a professional examination conducted either by the Bar Council or Council of Legal Education.

²² The Preamble of the Constitution

²³ Article 39-A inserted in Part- IV of the Indian Constitution by 42nd Amendment Act 1976

²⁴ Report of the University Education Commission (1948-49), vol. I, at p.257

In 1954, the 14th Report of the Law Commission (Setalvad Commission) of India discussed the status of legal education and recognized the need for reforms in the system. It depicted a very dismal picture of legal education and thus a number of significant recommendations were made in the report for the improvement of standard of legal education. Taking note of the state of affair surrounding legal education of India noted as under:

“In the period of about 10 years which has elapsed since the publication of the Radha Krishnan Commission, the position in regard to legal education in this country has, it appears, definitely deteriorated. It is not surprising that in this chaotic state of affairs in a number of these institutions there is hardly a pretence at teaching... this character is followed by law examinations held by the universities many of which are mere tests of memory and poor ones at that, which the students manage to pass by cramming short summaries published by enterprising publishers, The result, Plethora of LL.B. half-baked lawyers, who do not know even the elements of law and who are let loose upon society as drones and parasites in different parts of the country.”²⁵ The Commission recognized the importance of professional training and for a balance of both academic and vocational training. The Commission observed that the absence of juristic thought and publications were the result of defective system of legal education.

In 1973, the Ministry of Law and Justice appointed a committee called the Expert Committee on Legal Aid, under the Chairmanship of Justice V.R. Krishna Iyer. Although the Committee focused specifically on the creation of Legal Aid Programs, it recommended that this be done through a network of legal aid groups in different settings, including Law Schools.

While dealing with legal aid, the Committee observed that "[t]he spawning ground for lawyer, jurist and judge is the Law School."²⁶ It felt that the direct participation of law student in handling legal aid would not only benefit the student but also to the legal aid scheme. Moreover, as part of its larger, view of India's legal aid needs, the Committee also recommended a number of steps aimed at preparing lawyers to provide legal services to the poor. These included the modifying of the Law School curriculum to focus on the needs of citizens; introducing Clinical Legal Education in Law Schools with a focus on socio-economic poverty; and requiring law student to engage in public service while in Law School. It therefore recommended the introduction of Clinical Legal Education

²⁵ The Law Commission of India in its 14th Report titled as “Reforms of Judicial Administration” (1958) pg 522

²⁶ GOVERNMENT OF INDIA, MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS, DEPARTMENT OF LEGAL AFFAIRS, REPORT OF EXPERT COMMITTEE ON LEGAL AID : PROCESSIONAL JUSTICE TO THE PEOPLE, 26.

in Law Schools with the idea that student exposure to real legal problems would mutually benefit the students, the legal aid scheme, and the legal system as a whole.

Many aspects of the Expert Committee and Juridicare Committee Reports were taken up by the Committee for Implementing Legal Aid Schemes (CILAS), appointed by the Government of India in 1981 and headed by the then-Chief Justice P.N. Bhagwati. CILAS agreed with both, the Expert Committee and the Juridicare Committee, that Legal Aid Clinics should be established in Law Schools and Universities, as a way to mobilize and motivate law students to provide legal aid to the poor. Thus, this report concentrated more on promotion of legal literacy, organization of legal aid camps to carry legal services to the doorsteps of people, training of para-legal persons to support Legal Aid Programs, establishing Legal Aid Clinics in Law Schools and Universities, and bringing class actions by way of public interest litigation.

Several Committees too stressed the need for institutionalization of legal aid and establishment of an autonomous body at the national level. To implement the scheme for legal aid in India, the Legal Services Authorities Act was passed in 1987, which came effective on November 9, 1995. It aims at providing a protective umbrella to the weaker sections of the society against all injustices. The National Legal Services Authorities setup under the Act, provides for the constitution of Legal Services Authorities at the national, the state and the district level, which are to provide free and competent legal services with the aim of securing equal justice to the weaker sections.

In 1994, the Committee headed by the Honb'le Mr. Justice A.M. Ahmadi observed in its Report that the syllabus of the law colleges was very unsatisfactory, the teaching methods were equally bad and there was lack of discipline in the law colleges²⁷. Justice Ahmadi Committee Report dealt elaborately with teaching methods. The Report recommended inclusion of the problem method, mootcourts, and mock trials in law college curricula. It also suggested supplementing the lecture methods with the case method, tutorials and other modern techniques for imparting legal education. Further, it recommends all these new methods be made mandatory.

After reviewing the recommendations made by Justice Ahmadi Committee, the BCI introduced a one year training rule²⁸, while it discarded the suggestion of bar examination as a free requisite to enrollment. However, it was challenged in the Supreme Court in **V. Sudheer v. Bar Council of**

²⁷ Report on Reforms in Legal Education and Entry into Legal Profession by Ahamadi Committee, Indian Bar review, Vol. XXII (4) 1995, at p.13

²⁸ Bar Council of India training, 1955 - Rule 2 to 15

India²⁹, SC struck down the rule as Ultra vires to the advocates Act and held that the BCI is not competent to pass such a rule, which can be introduced only by the legislature. While declaring the training rule as *ultra vires*, the Supreme Court recognized the crying need for improving the standards of the legal profession. It recognized the value of equipping lawyers with adequate professional skills and expertise, and held that "a right thing must be done in the right manner."

It was in response to the Apex Court's decision that the BCI introduced the four practical papers to improve the standards of legal education, namely³⁰-

- 1) Moot-Court, Pre-Trial preparation and participation in trial proceeding. This paper is designed to explore the possible skills as to legal analysis, legal reasoning, legal research, communication, trial participation, problem identifying and problem solving.
- 2) Drafting, Pleading and Conveyancing. The aim and object of this paper is to teach skills such as organizing the factual information gathered, written communication and effective method of presentation.
- 3) Professional Ethics Accountancy for lawyer and Bar-Bench relations. It deals with ethical dilemmas, such as the nature and sources of ethical standards, and the means by which they are enforced, and the process of resolving the ethical dilemmas.
- 4) Public Interest lawyers, Legal Aid and Para-Legal Aid Services. This involves the students in community services by participating in Lok Adalat, Legal Aid, Legal literacy and para-legal training. Further, it also develop skills like factual investigation, negotiation, mediation and counseling techniques.

These papers are aimed at providing practical training to law students. Until these papers were introduced in the curriculum, very little efforts were made by law colleges to train students in skills of advocacy. With the introduction of these practical papers, it is now mandatory for all law colleges to provide practical training. The BCI successfully thrust its responsibility of providing skills to the young entrants by incorporating for practical papers in LL.B. curriculum.³¹

²⁹ (1999) 3 SCC 176

³⁰ Bar Council of India, Circular no. 4/1997

³¹ Dr. M.Pinheiro and M.R.K. Prasad, "Revisiting Bar Council of India's Curriculum Regarding Four Practical papers"; as quoted in K.N. Chandrasekharan Pillai, Legal Education – In search of new vistas, *Journal of the Indian Law Institute*, Vol. 50 No. 3 July-September 2008, pg. 39

In **State of Maharashtra v. Manu Bhai Pragaji Vashi**³², the Supreme Court held that Article 21 read with Article 39-A mandated or cast a duty on the State to extend the grant-in-aid scheme to all Government recognized private Law Colleges according to the criteria applicable to the regular degree colleges. The purpose of giving grants to Law Colleges is to enable those colleges to function effectively and in a meaningful manner and turn out sufficient number of well trained law graduates.

Also the Law Ministers' Working Group on Legal Education at Bhubaneswar in 1995 considered reforms in the legal education and entry into legal profession in detail, and also expressed their concern at the deteriorating standards of legal education. They also suggested some important elements for improving the legal education, which were by and large approved by the BCI with some minor changes.³³

Legal education in India is predominantly regulated by the Bar Council of India in furtherance of powers vested in it under the Advocates Act, 1961. The Hon'ble Supreme Court of India has categorically ruled that as the Apex professional body, the BCI is concerned with the standards of the legal education, legal professional and the equipment of those who seek entry into that profession.³⁴ Also, The University Grants Commission Act, 1956³⁵, establishes the UGC as a regulatory body: to lay down the standards and threshold for the promotion and coordination of university education & for the determination and maintenance of standards of teaching, examination and Research in the university. Thus, the subject of Legal Education comes within the purview of two entities, the UGC and the BCI. The UGC can lay down the standards of education and the BCI can lay down the conditions for eligibility of a law graduate to enter the legal profession. Precisely to ensure harmony, the Advocates Act in section 7(1)(h) has required consultation by BCI with the Universities. The two are the partners with a common goal.

The Curriculum Development Committee (CDC) Report, 2001 of UGC admits of considerable harmony in the process of consultation between the BCI and the Universities. Thus it also accepts

³² AIR 1996 SC 1

³³ Bhubaneswar Statement of Law Ministers' Working Group on Legal Education, Indian Bar review, Vol. XXII (4) 1995, at p.36

³⁴ **Bar Council of India v. Board of Management Dayanand College of Law and Ors.**, Civil Appeal No. 5301-5302 of 2001 decided by the SC on 28th Nov, 2006

³⁵ Enacted in pursuance of Legislative power under Entry 66 of List I of the VII Schedule of Constitution

that there has been some consultation but it says that 'closer interaction' is necessary between the UGC and BCI³⁶.

The Committee has emphasized the faculty autonomy in designing and conducting the courses in the University. It expects the faculty of the Law Colleges to ensure that:

- a. The course design is up-dated each time and the study-material is kept dynamic;
- b. appropriate methodology of teaching-learning based on the object and objectives (variables) of the study is developed; and
- c. the standard achieved by the learners without unduly pressurizing only the memory level but emphasizing the skill of application of law and detailing the fact analysis with lawyers' analytical precision, is properly evaluated³⁷.

The Law Commission of India, in its 184th report, felt that legal education is fundamental to the very foundation of the judicial system and took up reformation of legal education, *suo moto*. The Commission followed up on a number of recommendations of the Ahmadi Report, including its recommendation that the Law Schools should supplement the lecture and case method with the problem method, moot courts, mock trials and other modern teaching methods. It also took note of the Rules of the Bar Council of India that direct Law Schools to include practical training, including 4 mandatory practical papers. The Report also noted the need to train new lawyers in the skills of analysis, language, drafting, and argument and suggested that various studies on training lawyers, including the MacCrate Report of the American Bar Association, could be consulted. With respect to the problem method of teaching, the Commission found that it is considered more important than either the lecture or case method, and in this regard the Report states that "the Commission considers that Clinical Legal Education may be made a mandatory subject." Drawing on the new Section 89 of the Code of Civil Procedure, which requires that every civil suit go through the ADR process (giving the parties the option to choose among various processes such as arbitration, mediation, conciliation, and settlement through Lok Adalats), the Report noted that the subject of ADR is not familiar to most lawyers. It therefore expressed the view that ADR procedures must

³⁶ CDC report, 2001 of UGC as cited in 184th report of law commission of India(2002) at p. 184.15

³⁷ Report of the Curriculum Development Committee (CDC), I, Bar Council of India, 6 (BCI, New Delhi 2010) available at www.barcouncilofindia.org/.../Preliminary_observationNew_Microsoft_A_Word_Document.doc

become a compulsory subject in all Law Schools and noted as well that "there is urgent need for training lawyers, who are already practicing in the courts, in these ADR procedures."³⁸

The National Knowledge Commission (NKC), constituted in 2005 as a high-level advisory body to the Prime Minister of India, has also taken cognizance of the importance of legal education. In its Report dated 15/07/2008 the Commission while recommending establishment of regulatory body under the name and style of "Regulatory Authority for Higher Education" (IRAHE) covering the field of legal teaching, has made the following observations:

"The vision of legal education is to provide justice-oriented education essential to the realization of values enshrined in the Constitution of India. In keeping with this vision, legal education must aim at preparing legal professionals who will play decisive leadership role, maintaining the highest standards of professional ethics and spirit of public service. Legal Education should also prepare professionals equipped to meet the new challenges and dimensions of internationalization, where the nature and organization of law and legal practice are undergoing a paradigm shift. Further, there is need for original and path breaking legal research to create new legal knowledge and ideas that will help meet these challenges in a manner responsive to the needs of the country and the ideas and goals of our Constitution."³⁹

It is heartening to note that on the basis of various inputs the Government of India has recently enacted two legislations. The first law is called regulating higher educational institution, including legal education, titled as "the National Commission for Higher Education and Research Bill, 2010" and the second law has been named as "Legal Practitioners (Regulations and Maintenance of Standards in Profession, Protecting the Interest of Clients and Promoting the Rule of Law) Act, 2010", for establishment of the Legal Services Board and to regulate the activities of the legal practitioners through an Ombudsman. In this way the government is also recognizing immediate need to raise the level of legal education and training of the legal professionals. Though the aforesaid two laws are yet to take the legal shape and become statutes a roadmap has been laid-out.⁴⁰

³⁸ Law Commission of India, 184th Report, Vol 15(2002), at P. 184. 14

³⁹ Justice B.D. Agarwal, *Legal Education in India - Essays in honour of Professor Rambir Singh*, Editors – Dr. Lokendra Malik and Dr. Manish Arora, Universal Law Publishing Co., New Delhi, 2014, Pg. 53

⁴⁰ *Id.* at pg 54

Informal inclusion of clinical component in legal education curricula

In India, the involvement of Law Colleges in legal aid activity began when the legal aid movement gained momentum in the 1960s. It was assumed that Law Schools could play a significant role in providing legal services and that they would do so through Legal Aid Clinics. As a result, Clinical legal education took its roots in India in the late 1960s.

In the mid-60s, Delhi University introduced the case method in teaching law, and in 1969, the faculty and students established a Legal Service Clinic. The efforts made by the faculty were purely voluntary and no attempts were made for institutionalizing and integrating Clinics into the curriculum. The Clinic was setup mainly to offer legal services to prison inmates. It worked more like an investigating and referral agency rather than providing services. Delhi Legal Aid Clinic organized two Lok Adalats in 1985-86 in association with Delhi Legal Aid and Advice Board, wherein over 150 students participated in the process. The Clinic also undertook another project of assisting victims of the Bhopal gas tragedy. The biggest achievement of this Clinic is its contribution to the learning experiences of its participating law students in a Clinical setup. The Clinic was more concerned about service oriented programs, with little supervision from the faculty and no emphasis on learning skills thereby contributing to its weaknesses. Nonetheless, and in spite of the fact that Clinical programs offered the students no credit, the Legal Aid Clinic attracted many students.⁴¹

A course on advocacy was introduced by Aligarh Muslim University in the 1980s, which exposed students to such topics as factual investigation, legal research and writing and litigation strategies. This University also organized a few Legal Aid Camps in the mid 1980s. In spite of these efforts, no steps were taken to institutionalize Clinical legal education. Again, the participation in Legal Aid Camps was voluntary and activities were conducted as a part of extracurricular activities⁴².

Banaras Hindu University was the first to introduce a course on Clinical legal education in early 1970s. This was an optional course offered to a limited group of 30 students with academic credit for 200 marks. The course included court visits, participation in a Legal Aid Clinic established by the institution, and an internship in chambers of lawyers. The Legal Aid Clinic was supervised by a retired judge on a token honorarium. Funding for the Clinical activities initially came from student's contribution and subsequently National Service Scheme and the University offered some financial

⁴¹ *Supra note 11* at pg. 18

⁴² *Id.* pg. 19

assistance. University Grants Commission also gave a special grant to the Clinic to extend its activities to the nearby rural areas. Students participating in the Clinic were generally required to participate in three kinds of activities. Once a week, such students were required to spend a day in court and report on the same; another day was required to be spent in the Legal Aid Office, and finally students and teachers associated with the Clinic were required to go to the villages and undertake programs of legal literacy, social surveys for implementation of welfare programs, and attempt to facilitate settlement of disputes through Legal Aid Camps⁴³.

NLSUI introduced both compulsory and optional Clinical courses. Three compulsory Clinical courses were introduced in the year of 1992. Students were given an option to choose any one of the course in each trimester of final year. In 1994 — 95 the Clinical courses were reorganized and two Clinical courses namely Client Interviewing and Alternative Dispute Resolution Clinic, and Trial Advocacy and Appellate Advocacy Clinic were made compulsory. Students could choose third Clinical course from several Clinics such as Corporate Clinic, Criminal Law Clinic and Labour Law Clinic. In addition to the above initiatives, NLSIU in cooperation with Shakti, a women's social welfare organization, established a Mediation Center cum Legal Aid Office using law students under the supervision of members of the faculty⁴⁴.

CONCLUSION

“Clinical experience puts colour in the empty outlines of the legal comic book... Questions which were dull and meaningless become important and exciting. Answers which seemed black and white become grey, red and green. Dull legal rules become memorable elements of unforgettable events.”⁴⁵ The lecture method which is generally adopted for the teaching of law, merely provides information and knowledge. However, the profession requires the students, not to merely recall the information they receive in Law Colleges, but to process such information in order to apply it to real life situations in the Court of law.

⁴³ *Id.*

⁴⁴ Madhava Menon N.R. & Nagaraj V., *A Handbook on Clinical Legal Education*, 1998, Eastern Book Company, Lucknow, at 241

⁴⁵ A. Conard, “Letter From The Law Clinic” (1973) 18(1) University of Michigan Law Quadrangle Notes Pg 10; as quoted in Richard Lewis, “*Clinical Legal Education Revisited*” Professor of Law, Cardiff university, Wales, United Kingdom, Pg. 16 [available at: <http://www.law.cf.ac.uk/research/pubs/repository/212>]

The proper place for training the law students is neither the law school alone nor the courts alone. They are to work together. The students must have a sense of professional identity and responsibility and must be actually involved in the activity rather than watching it from a distance. Student's participation in a Legal Aid Clinic can further his own legal education and his preparation for legal practice. The student is taken from the abstraction of the lecture hall and his textbooks to the world of lawyers, judges, prisoners, police. The student gains exposure in actual cases and to the lawyers' problems in dealing with litigants. Litigation strategy, the crucial skills of examination and cross examination of witnesses, the handling of evidences, the skill of oral advocacy- all come within the students' grasp. Law, as medicine, is an art devoted to the client's service, whose primary purpose is to solve the problem of people (curative law or curative medicine) or to help people in avoiding problems (preventive law or preventive medicine). Legal education in this process develops a humanistic education completely different from traditional classroom education. The clinic can serve as a laboratory for diagnosis of the social problems with the improved means of the legal technique.

All the members directly or indirectly involved in the legal profession, therefore, have a very important role to play in providing social justice, which is one of the chief goals of the Constitution of India. In order to promote social justice, Law Colleges must play a key role, particularly in programs that promote legal awareness, legal literacy, and influence public policy. An effective way by which a Law College can successfully promote social justice is by adopting Clinical method of teaching law. The complexities of modern life require lawyers to play multiple roles such as advisors, negotiators, arbitrators, mediators, and administrators. The present day legal profession calls for much more skills than what was required of a legal practitioner a decade or so back. Therefore, it is incumbent upon the institutions of legal learning to ensure that these skills which are now required for the profession are inculcated in the alumni.

It is the Clinical Legal Education which provides an opportunity to improve legal education and thereby the legal profession. Therefore, when the profession is unwilling to accept the notion of professional duty to meet the unmet legal needs of poor, and the legal service is virtually available to only those who can purchase it in the market place, the Clinical Legal Education is the only hope. Therefore, what we need is a dynamic integrated curriculum which brings together, the three aspects of legal profession namely knowledge component, skill component and social justice component.

Such a curriculum would encourage the students to shift their focus from mere doctrinal understanding of law to practical understanding and its social implications.

A sound system of legal education properly perceived and utilized, can make an important, positive contribution to national development and also determine the quality of the lawyers, which will ultimately determine access to legal services.⁴⁶ The following vision statement was delivered by the Law Minister, Veerappa Moily during the course of the second day at the Conference of National Consultation for Second Generation Reforms in Legal Education, held at the Vigyan Bhavan in New Delhi on 1 and 2 May, 2010:

“The Indian lawyer must not only have improved legal skills but most importantly, embody social responsibility and a strong professional ethic – a commitment to the integrity and working of the legal system. We will develop a system to create a cadre of paralegals in various sectors of legal practise who may then serve as legal secretaries and strengthen legal aid and literacy programs.

Our agenda for reform is bold, innovative and a paradigm shift, reorienting our system towards creating legal professionals that can meet the future challenges not only for India but the world. The autonomy of Universities including law schools is the foundation for higher education reform – this is the key message of the Yashpal Report on Higher Education. Competitive excellence cannot be compromised and the Universities shall have autonomy in deciding the content, method and scope of legal education.”⁴⁷

There is a growing recognition in recent years that knowledge of the law is best understood in the context within which it operates in the complex society. This new approach to the study of law brought forth the concept of ‘clinical legal education’ into limelight as a means of making legal education system more socially relevant and professionally significant. Clinical legal education is usually presented as an opportunity to add to the subject matter taught in law schools. Notwithstanding the tendency of legal education to resist reform, there are indications that the clinical education movement in India is making progress⁴⁸.

⁴⁶ LEGAL EDUCATION IN A CHANGING WORLD — REPORT OF THE COMMITTEE ON LEGAL EDUCATION IN THE DEVELOPING COUNTRIES, INTERNATIONAL LEGAL CENTER, NEW YORK, 13 (1975).

⁴⁷ Available at <http://www.barcouncilofindia.org/law-ministers-vision-statement-for-second-generation-reforms-in-legal-education/>

⁴⁸ Frank S. Bloch, The clinical method of law teaching, *Indian Bar Review*, Vol. XIV (2) 1987, Pg. 230

The need of clinical legal education has been emphasized by Madhava Menon, the pioneer of clinical legal education movement in India, in the following words “Clinical Education can in the future open up the social action role of legally trained persons”. Prof. Kenneth L. Penegar found a bright future for the Clinical Education in law and summed up his assessment stating:

... It seems to me the future challenge of Clinical Education is not just an integration of theory with practice, as important as that idea is, it is not just service to the poor and others ill-served by lawyer and legal institutions, as important as that is. Rather it is to find and develop new definitions, new conceptions of practice and professionalism in which new definition and conception give proper scope, proper reflection to the complexities of our age. To put the idea differently, it seems to me the Clinical Educator is in a unique position, and because of that position, has a unique responsibility to bridge the gap between and law and its traditional conservatism on the one hand and the frankly pragmatic, spiritual idealism of many of its practitioners including the future lawyers who sit at your feet through three years of Law School.⁴⁹

⁴⁹ Kenneth L. Penegar, “Clinical Education in its prime, Alumni Headnotes (A.A.L.S.), Vol. 10 Issue 1 (1981) pg. 447., In N.R. Madhava Menon, *Clinical Legal Education*, Eastern Book Company, Lucknow, 2009, Pg. 6

MIND THE GAP: CLINIC AND THE ACCESS TO JUSTICE DILEMMA

Elaine Campbell and Victoria Murray¹

ABSTRACT

It is clear from the extensive literature that there is a deficit in the provision of legal services to the poor.² In recent years, access to justice has further deteriorated due to the global recession. In particular, in England and Wales substantial cuts to both civil and criminal legal aid provision were imposed as part of a series of austerity measures. This reduction in state funding has had devastating effects. This article examines whether there is an obligation on clinical legal education to fill the gap where there is inadequate legal service provision. Two clinicians will respectively argue whether law students, particularly through the medium of law clinics, should fill the void.

INTRODUCTION

Legal aid was introduced in England and Wales in the late 1940s, at a time when Europe was still feeling the deep residual effects of World War II. Since its inception the system has evolved to fund both civil and criminal disputes subject to qualification criteria and limitations. It has been acknowledged as one of the most generous legal funding schemes in existence.³ In a speech to the Centre for Crime and Justice Studies, the then justice minister stated,

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² See for example *Tackling the Advice Deficit: A strategy for access to advice and legal support on social welfare law in England and Wales*, Report of the Low Commission on the future of advice and legal support, Legal Action Group 2014.

³ Spending on legal aid in England and Wales in 2010 was five times higher than the European average. See Evaluation Report on European Judicial Systems. 4th Report Edition 2012 (2010 data), available at http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2012/Rapport_en.pdf.

“Our legal aid system has grown to an extent that we spend more than almost anywhere else in the world. France spends £3 per head of the population. Germany; £5. New Zealand, with a comparable legal system, spends £8. In England and Wales, we spend a staggering £38 per head of population.”⁴

Therefore when the global recession hit in 2008, this generosity suddenly became unsustainable. In 2009 the annual cost of legal aid in England and Wales was in excess of £2billion (US \$3billion) so it was an obvious target for austerity measures.⁵ Despite access to justice being an accepted mainstay of democracy, legal aid did not escape swingeing cuts, with the Government announcing that it needed to achieve savings of £450 million per year from the legal aid budget.⁶

The vehicle responsible for this extensive cost cutting measure was the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO), which reduced the types of disputes eligible for public funding, in itself saving £270 million.⁷ There was widespread criticism of LASPO from all corners of the legal profession and from organisations involved with indigent citizens. As a consequence of the cuts it is estimated that some 650,000 individuals are unable to access legal representation and assistance in civil cases alone.⁸ Although the cuts promised £350 million in savings in 2014/15,⁹ other parties estimate that some £600million will have disappeared from the legal aid budget by 2015.¹⁰ However, legal quarrels do not dissipate simply because the funding disappears. In fact, disputes often worsen in correlation with the financial downturn. Where the economy shrinks, industry decreases, jobs are lost, debt and housing problems inevitably deteriorate, the need for welfare benefits increases, social and mental health problems¹¹ rise. By its own admission, the

⁴ *LEGAL AID: controversy surrounding the government's plans for reform*, Standard Note SN/HA/5640, House of Commons Library, Jan. 26 2011.

⁵ Graham Cookson, *Unintended Consequences: the cost of the Government's Legal Aid Reforms, a report for the Law Society of England and Wales* (Department of Management, King's College London, 2011), at 6. <http://www.lawsociety.org.uk/policy-campaigns/research-trends/research-publications/unintended-consequence-of-legal-aid-reforms/>

⁶ *Ibid.*

⁷ Cookson, note 5, at 12.

⁸ *The Real Impact of Legal Advice Cuts*, Legal Action Group, March 2010, available at <http://www.lag.org.uk/policy-campaigns/the-real-impact-of-legal-aid-advice-cuts.aspx>.

⁹ Kenneth Clarke Statement to the House of Commons, 15 November 2010, Hansard Column 660, available at <http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm101115/debtext/101115-0001.htm#10111511000003>.

¹⁰ Sadiq Khan, *The Government's Legal Aid Cuts Are Leaving Vulnerable People With Nowhere to Turn*, Huffington Post, May 18, 2014.

¹¹ According to an LSRC report, *Mounting Problems*, 66% of respondents sought medical help for a physical problem arising from their legal disputes. See Cookson, note 5, at 25.

Government acknowledged that LASPO reforms would adversely affect social cohesion and levels of crime.¹²

In contrast to the decline in legal aid, pro bono and clinical initiatives within Higher Education have continued to grow dramatically in England and Wales. According to the 2014 LawWorks Law School Pro Bono and Clinic report, in 2006 at least 46% of law schools were involved with pro bono and clinical activity. By 2010, this had risen by 33%. The 2014 report shows a further increase with at least 70% of all law schools engaged in pro bono or clinical work.¹³

Where there is an undeniable shrinkage in legal services available through legal aid, and an exponential growth of universities offering pro bono opportunities, should law students step in and fill the gap?

In Part I Murray argues the case for bridging the ever growing access to justice divide. She contends that if law clinics fail to react to the pressing situation this would have significant repercussions for those unable to access legal services. She further posits that inaction would produce dire consequences for the future of our legal systems, particularly in respect of public interest lawyering.

In Part II Campbell opposes the use of clinicians and law students to fill the justice gap. She declares that just because it can be done, this doesn't mean that it should be done. Clinical legal education, Campbell argues, is first and foremost a pedagogic tool, and we are in danger of damaging our students' welfare if we start to use them solely as a replacement for legal aid.

PART I: THE CASE FOR BRIDGING THE GAP

In *Pro Bono is great education for law students but they shouldn't fill the gap*¹⁴ Campbell argues that law schools are not a replacement, or indeed sticking plaster, for legal aid. For many years I used to share this view. However, as the devastating effects of LASPO and wider austerity measures across the globe become ever more apparent, the statistics demonstrate we can no longer stand by and

¹² Cookson, note 5, at 8.

¹³ It is estimated that this figure is actually higher since 96% of institutions which responded to the survey were engaged in clinical/pro bono work.

¹⁴ Elaine Campbell, *Pro bono is great education for law students, but they shouldn't fill gap left by legal aid cuts*, THE CONVERSATION, Nov. 19 2014. <https://theconversation.com/pro-bono-is-great-education-for-law-students-but-they-shouldnt-fill-gap-left-by-legal-aid-cuts-34323>.

naively hope governments perform policy U turns.¹⁵ The warnings were well publicised before LASPO was introduced¹⁶ and the dire consequences continue to be highlighted post enactment.¹⁷ We must be galvanised into action.

According to Robert E. Rodes, Jr,

*“Social justice is that branch of the virtue of justice that moves us to use our best efforts to bring about a more just ordering of society - one in which people's needs are more fully met. It ... is something due from everyone whose efforts can make a difference to everyone whose needs are not met as things stand... I do not owe any poor person a share of my wealth, but I owe every poor person my best effort to reform the social institutions by which I am enriched and he or she is impoverished.”*¹⁸

I am a champion of clinic and recognise the wide ranging and empowering work that it already does. However, taking Rhodes to heart, we must act now to halt the significant damage inflicted on our legal systems by redoubling our *best efforts*. We must intervene and revolutionise from the bottom up. Our duty to step into this breach stems from our ethical and moral duties as lawyers, and not least the statistical reality.

The Statistical Case

Prior to the introduction of LASPO, a survey showed that only half of respondents sought legal advice, over 10 percent abandoned attempts to resolve their dispute, whilst others tried to tackle the problem alone.¹⁹ Readers may be surprised to learn that even at a time of generous provision only half of those with issues sought legal assistance. This is a poor yardstick of how litigants will approach their problems in the face of the legal aid lacuna, and this concern is borne out by the statistics. For example, post LASPO we know that significantly fewer parties are legally represented in family cases than before the cuts took effect.²⁰ Further, according to the Legal Action Group

¹⁵ The Conservative party, which initiated the cuts, was elected for a further 5 years of government in 2015 so no change in policy is on the horizon for England and Wales.

¹⁶ See Cookson, note 5.

¹⁷ See e.g Catherine Baski, *Civil Legal Aid: Access Denied*, The Law Society Gazette, Apr. 7 2014, and Andrew Caplen, *The Law Society President's Access to Justice Day address* (Breakfast speech at The Law Society for Access to Justice Day, Sept. 8 2014).

¹⁸ Robert E. Rodes, Jr., *Social Justice and Liberation*, 71 NOTRE DAME L. REV. 619, 620–21 (1996).

¹⁹ See Cookson, note 5.

²⁰ See Baski, note 17. According to CAF/CASS figures cited in Baski, in family disputes prior to the legal aid cuts one party legally was represented in 60% of cases, in 22% of cases both parties were represented and in 18% of cases neither party was represented. After the cuts, these figures have dramatically reduced with neither party represented in 42% of cases, and both parties are represented in only 4% of cases.

(LAG), there was a particularly high funding deficit (and resultantly advice and representation shortage) in 77% of discrimination cases and 68% in debt disputes.²¹ Some law firms now report rejecting 50% of enquiries as a result of lack of legal aid funding.²²

The Government expected other agencies to fill the gap left by legal aid cuts. However, with a lack of state funding several law centres have been forced to close²³ or have placed staff at risk of redundancy.²⁴ Worryingly, some pro bono organisations have begun charging fees.²⁵ Even with the level of resource available to charities and Citizens Advice Bureaux (CABs), there is not enough resource to fill the gap. National housing charity Shelter only has capacity to answer 60,000 of the 140,000 telephone calls it now receives per year.²⁶ Similarly the CAB reported only being able to answer 45% of telephone enquiries.²⁷ The Bar Pro Bono Unit has experienced double the volume of applications for assistance since LASPO.²⁸

Despite almost half of practicing solicitors in England and Wales providing pro bono services in the last year, this is still not enough to cater for the level of unmet need.²⁹ The Law Society of England and Wales has clearly reiterated its position, stating that the profession will not plug the gap via pro bono provision.³⁰ Yet there is a clear appetite for legal assistance. Some 89% of individuals expressed an intention to seek help from alternative sources if publicly funded representation is not available.³¹

²¹ See Baski, *ibid*.

²² See Baski *ibid*. The situation has now deteriorated as criminal legal aid lawyers are refusing to handle cases on the new lower payment scheme. See *Legal Aid Work Refused by Law Firms in Cutback Protest*, BBC News, July 1, 2015 <http://www.bbc.co.uk/news/uk-england-33336651>.

²³ At least nine law centres have closed since the introduction of LASPO. See <http://www.lawgazette.co.uk/analysis/features/law-centres-picking-up-the-pieces/5042728.fullarticle>. See also <http://www.legalactiongroupnews.org.uk/law-centre-closures/>.

²⁴ Natalie Byrom, *The State of the Sector: The impact of cuts to civil legal aid on practitioners and their clients*. A report by the Centre for Human Rights in Practice, University of Warwick in association with illegal, April 2013.

²⁵ See Catherine Baski, *Law centres: picking up the pieces*, The Law Society Gazette, Sept. 1 2014, available at <http://www.lawgazette.co.uk/analysis/features/law-centres-picking-up-the-pieces/5042728.fullarticle>

²⁶ See Caplen, note 17.

²⁷ *Ibid*.

²⁸ *Ibid*.

²⁹ See Caplen, note 17.

³⁰ See John Hyde, *Justice Secretary told pro bono no substitute for legal aid system*, The Law Society Gazette, Jun. 23 2015, available at <http://www.lawgazette.co.uk/news/gove-told-pro-bono-no-substitute-for-legal-aid-system/5049566.article>.

³¹ See Cookson, note 5, at 29.

If these alternative agencies are drowning under the level of demand, and there is nowhere left to turn, clinics cannot continue to elevate their educational aims and ignore their social justice function. It therefore seems appropriate that law clinics can, and should, step into the breach.

The Ethical and Moral Case

I do not dispute that as clinicians we have a clear educational function. We do, after all, predominately operate within academic institutions. However, most clinical supervisors are also licensed to practise law. We therefore have a dual function being both educators and lawyers. Until such time that the legal aid deficit is remedied, I argue that we should increasingly emphasise the *legal* in clinical legal education and ameliorate the evident shortage.

As lawyers we are tasked with ensuring access to justice and representing our clients zealously. In England and Wales the Solicitors' Code of Conduct imposes overriding principles which govern our professional endeavours. The Code stipulates that we must "uphold the rule of law and the proper administration of justice" and "behave in a way that maintains the trust the public places in you and in the provision of legal services."³² There are no doubt similar ethical obligations provided for within other legal jurisdictions.

I therefore contend that in accordance with our professional obligations we are bound to take action where we see that "proper" administration of justice is being eroded. Legal professionals must possess an unswerving adherence to a strict ethical code in compliance of the fiduciary duties arising from our position. As clinical supervisors, we are no less accountable.

Having outlined how our professional obligations require clinicians to act, what can perhaps be questioned is how our duties apply to those we supervise. Clinical students are not yet qualified or formally in practice – so are they equally compelled to act? Until recently students in England and Wales were required to enrol as a student member of the Solicitors Regulation Authority (SRA). From this it can be inferred that the SRA intended aspiring lawyers to embody the spirit of the Code and the ethics it seeks to engender *prior* to qualifying as a solicitor and whilst still completing their legal education. Therefore, both clinicians and students are obligated to step into the gaping hole left in the wake of LASPO.

³² Principles 1 and 6 of the SRA Code of Conduct 2011, as updated.

Law Students and Clinics- An Untapped Resource

Much has been made about how the profession can adapt to meet the challenges presented by LASPO and access to justice. However, very few voices acknowledge the role to be played by clinicians and law clinics in addressing the legal services gap. On the whole, the legal sector has overlooked the value of law clinics which could be harnessed in addressing the current social justice gulf. Whilst in post as President of the Law Society, Andrew Caplen adopted a narrow approach arguing the solution lay with the Government or members of the profession. We should not need reminding that clinicians are members of the legal profession and many clinical students are aspiring to enter that same profession. Therefore, we must increase our best efforts and meet our responsibilities.

We cannot continue to occupy the moral high ground and watch the system implode whilst hiding behind clinical legal education's pedagogic objectives. I endorse Carasik's view that

“Law schools have a moral obligation not only to raise awareness of unequal access to justice, but to identify and implement strategies aimed at ameliorating these pervasive inequities.”³³

We have an army of clinics growing year on year. With at least 70% of law schools engaged in pro bono or clinical work,³⁴ a figure which continues to expand³⁵, this rich and extensive resource is much too powerful to hover around the perimeter of legal provision simply because we choose to focus on its *educational* function. It has a *legal* function too that must increasingly be engaged in the losing battle of access to justice. We need to use all of the tools at our disposal to better support marginalised and vulnerable members of our community who face almost insurmountable barriers to access to justice. Law students and clinics are some of the most powerful instruments we have. We can take a creative approach to our delivery models and work collaboratively, as has been achieved by countries with a strong clinical tradition, such as the United States.

³³ Lauren Carasik, *Justice in the Balance: An Evaluation of One Clinic's Ability to Harmonize Teaching Practical Skills, Ethics and Professionalism with a Social Justice Mission*, 16 Southern California Review of Law & Social Justice 23 (2006).

³⁴ Damian Carney et al., *The LawWorks Law School Pro Bono and Clinic Report 2014*. Available at: <http://lawworks.org.uk/index.php?CID=49&cType=news>.

³⁵ Pro bono in law schools increased by 33% from 2006 to 2011.

The Case for Securing the Future of Social Justice Lawyering

Much of the press around the LASPO cuts has centred on the impact for the *recipients* of legal aid. Less attention has been paid to the consequences for those *delivering* legal services. If the trend for law centre closures and turning cases away continues, then social welfare practice areas will all but disappear.

As social justice advocates including Wizner have loudly espoused, if we fail to expose students to public interest legal work and the harsh realities faced by underrepresented clients and vulnerable communities, the future of our legal profession is undermined.³⁶ If clinics do not step into the chasm left by legal aid cuts, there is an inherent risk that we will singularly churn out commercial lawyers since there will be no future in public interest lawyering. The future already looks bleak. According to a 2014 survey, only 4% of junior lawyers were interested in working in legal aid fields, which echoes the previous year's findings.³⁷ This is yet another reason why clinics must bridge the gap and help avoid public interest lawyers becoming a "dying breed."³⁸

Concluding Thoughts

It is clear to me that we must try to fill the gap, albeit as part of a complementary and collaborative approach. How can we claim to educate our students about justice, the legal system and instil a sense of ethics if clinicians or our clinics stand back in the face of an access to justice crisis? We have a body of knowledge, expertise and resources which could make a much greater contribution to the provision of legal services. There is no plan B, no legal knight in shining armour coming to the rescue of underrepresented clients. We can be part of the solution to the present crisis. At the very least we can contribute a significant resource to the ever deepening problem. We must grasp the opportunity to provide a bottom up remedy, until such time as there is a return to financial buoyancy which floods the legal system with much needed restorative funds.

³⁶ Stephen Wizner, *Beyond Skills Training*, 7 CLIN. LAW REV 327 (2001), at 331: "We need...an agenda that exposes students to the maldistribution of wealth, power and rights in society, and that seeks to inculcate in them a sense of their own ability and responsibility for using law to challenge injustice by assisting the poor and the powerless."

³⁷ Junior Lawyers Division Early Career Work Experience Survey, The Law Society (2014) at 6. Available at <http://www.lawsociety.org.uk/Law-careers/documents/JLD-early-career-work-experience-survey-2014/>.

³⁸ *Legal Aid Lawyers "a dying breed"*, The Law Society, Press Release Dec. 1 2014. Available at <http://www.lawsociety.org.uk/news/press-releases/legal-aid-lawyers-a-dying-breed/>.

PART II: JUST BECAUSE WE CAN DOESN'T MEAN THAT WE SHOULD

Murray puts forward a persuasive and passionate argument for clinic to be a knight in shining armour, ready to ride to the aid of those who no longer have access to free legal advice and representation. On the face of it, how can we say no to this call? The legal aid cuts have been deeply felt. Law Centres and other pro bono resources are either turning clients away or shutting down.³⁹ There has been a significant increase⁴⁰ in the number of people being forced to represent themselves in court, and this - coupled with lost access to civil legal aid⁴¹ - makes for gloomy reading. Unfortunately, the situation appears to be getting worse. This was evident in July 2015, when, faced with yet more cuts, criminal legal aid lawyers made the difficult decision to boycott any cases paid at lower legal aid rates.⁴² For us to take off our armour, put our horse back in the stable, and watch from the side-lines appears at best nonchalant and at worst cruel. Nevertheless, in this section I intend to defend the view that clinics should not rush to fill the justice gap.

What Do We Want To Emphasise – Legal Or Education?

The rejection of education as the main driver behind clinic is a dominant feature of Murray's piece. Linked to this is the idea that, as clinicians, we have a dual role – we are educators, but remain lawyers. The argument seems to be that as lawyers we have a professional duty to ensure access to justice. However, there are two problems with this proposal. First, it presupposes that we put lawyering above our duties as teachers. We have made a choice to leave private practice and enter the world of academia. That means that our duty should be the students that have chosen to study at our institution. Our role is to give those students the best educational experience that we can. Given that students in the UK can be charged up to £9000 a year to study law, it is all the more important to provide quality, meaningful and innovative teaching. Secondly, it separates clinicians from private practice lawyers and places a greater burden upon them. Whilst the new Lord Chancellor Michael Gove has suggested that legislation could be put in place to require lawyers to provide more work

³⁹ See notes 23 and 25.

⁴⁰ See note 20.

⁴¹ See note 8.

⁴² Owen Bowcott, *Legal aid cuts: lawyers to begin boycott that could see courts grind to a halt*, THE GUARDIAN, Jun. 30 2015. Available at: <http://www.theguardian.com/law/2015/jun/30/criminal-lawyers-promise-boycott-legal-aid-cases-lower-rate>

*pro bono*⁴³, currently practitioners in fee-paying practices are not required to undertake any free legal work. If the idea is that all lawyers have a professional requirement to promote access to justice, then this should be applied across the board. Clinicians should not be forced to pick up the slack.

More importantly, we need to consider the needs of our students. Students come to law school for a wide range of reasons - to learn, to meet new people, to develop skills, to be part of a community. They do not sign up for a law degree in order to combat the deficit inflicted upon our legal system by Government policy. In my view, there are three reasons why utilising students to make up a shortfall is problematic:

1. Not all students want to work in the areas hit by legal aid cuts

Murray states that if we fail to expose students to public interest work then the risk is that law schools will merely produce commercial lawyers. I agree with the sentiment. We do not want to ‘churn out’, as she says, one type of lawyer. Indeed, The Law Society reports that solicitors who hold practising certificates work in exceptionally varied areas of law⁴⁴. Although “Business Affairs” is a dominant area⁴⁵, 10,000 to 15,000 solicitors identified their area of law as “Advocacy”, “Crime – General, Motor and Juvenile”, “Employment”, “Family”, “Landlord and Tenant – Residential”, “Mergers and Acquisitions”, “Personal Injury” and “Wills and Probate”.⁴⁶ Commercial law is not all encompassing, nor should it be.

My concern is that if we focus entirely on the areas worst hit by legal aid cuts then we fail our students by limiting their exposure to a whole host of lawyering areas and skills. For the past 5 years, I have led a specialist business and commercial law clinic. It sits within a wider clinic⁴⁷ and has between 18 and 24 students attached to it. Those students typically assist clients with company, commercial and intellectual property including choosing a business structure, corporate governance⁴⁸, reviewing and drafting commercial contracts⁴⁹, drafting website terms and conditions,

⁴³ David Barratt, *Michael Gove: Wealthy lawyers should do more free work for the justice system*, THE TELEGRAPH, Jun. 23 2015. Available at: <http://www.telegraph.co.uk/news/uknews/law-and-order/11693145/Michael-Gove-Wealthy-lawyers-should-do-more-free-work-for-the-justice-system.html>.

⁴⁴ See e.g. <http://www.lawsociety.org.uk/policy-campaigns/research-trends/fact-sheets/>.

⁴⁵ Over 15,000 solicitors work in that area.

⁴⁶ See note 44.

⁴⁷ The Student Law Office. See <https://www.northumbria.ac.uk/about-us/academic-departments/northumbria-law-school/study/student-law-office/>.

⁴⁸ e.g. understanding directors’ duties, constitutional issues, advice on administrative and filing requirements and penalties for non-compliance.

⁴⁹ e.g. commercial agreements and terms and conditions of sale and/or purchase.

terms of use and privacy policies for e-businesses, advising on data protection and confidentiality issues, advising on the existence/protection of intellectual property rights including copyright, designs, trade marks and patents, and advising on disputes such as intellectual property infringement.⁵⁰ The clients range from small to medium commercial enterprises to large charitable organisations.⁵¹ The business and commercial clinic (as with the wider clinic itself) does not mean test or enquire into clients' financial position. The advice, including the commercial documentation drafted and registration documents completed, is free. Critics have argued that clinical legal education must avoid assisting businesses and concentrate on the poor and unrepresented lest it lose its "soul".⁵² This is exemplified in the work of Wizner, who proposes that clinic must remain firmly planted in its social justice foundations as this is "a lesson that students should - and deserve to - learn".⁵³ Such statements are unsatisfactory because they fail to recognise that students also deserve to have a varied experience and to feel welcome whatever type of law they wish to practice or client they would like to act for.

2. Students as an untapped –and unpaid - resource

I recently heard a clinician express the view that law students were privileged and it was therefore their duty to help those less fortunate than themselves. The idea that all of our students have all had a certain type of upbringing is one which I question. The students that I have encountered have had a diverse range of socio-economic backgrounds. I can recount multiple examples of students telling me how they are struggling to pay their rent, or trying desperately to combine study with caring responsibilities, or deal with difficult family circumstances. Gone are the days (thankfully) when a university place was reserved for a privileged demographic. Our students can often have the same problems as those for which they are providing free advice.

We have a duty, as educators, to provide pastoral care for our students. This means not overloading them with numerous legal cases which are often complex, urgent or subject to short deadlines, and/or require specialist expertise. As lawyers we often talk about client care, but rarely – in a clinical context – do we reflect on student care. If we utilise our 'army' of students, as Murray

⁵⁰ For more detail about the business law clinic at the Student Law Office see Elaine Campbell, *A dangerous method? Defending the rise of business law clinics in the UK*, 49 THE LAW TEACHER 2 (2015).

⁵¹ It does act for larger corporations, though these are fewer in number.

⁵² Stephen Wizner & Jane Aiken, *Teaching and Doing: The Role of Law School Clinics in Enhancing Access To Justice*, 73 FORDHAM L. REV. 997 (2004), at 1008.

⁵³ Stephen Wizner, *Is Social Justice Still Relevant?*, 32 B.C. J.L. & SOC. 345 (2012), at 355.

suggests, how many cases are we going to expect them to take on? Will they be permitted to use their Winter and Summer breaks? Will clinic work take priority over other university (and external, voluntary and paid) work? One of my former students suggested that in paying his university fees for the year which he worked in the clinic he was in fact subsidising the local community's free legal advice; he paid his fees and others received advice *pro bono*. It is not difficult to see other students starting to come to this conclusion if they become overloaded with a new role – a free workforce to plug a hole which they did not create.

3. Giving students room to learn

Wizner and Aitken declare that clinicians spend too much time dealing with pedagogic issues not directly related to clients' cases. They ask, "Have we sacrificed supervised student representation of disadvantaged clients in favor of clinical pedagogy – classroom teaching, simulations, skills training, journal writing, and guided reflection?"⁵⁴ I find it interesting that Wizner and Aitken place live client work in direct opposition to pedagogy. In doing so, they overlook how rich pedagogic practice intertwines with clinical experience. You can enhance a student's ability to write a coherent and accurate letter to a client by preparing them for that experience through skills training, giving them that experience and then guide them through a reflective process where they consider what they learned and what they might do differently next time. Lose the pedagogy then we are merely farming out students as free workers without any meaningful space to hone their practical legal skills or reflect on their personal strengths and weaknesses.⁵⁵ We need to give our students the room and the time to learn.

The morality of replacing CABs and Law Centres

The Law Society states that "affordable access to legal advice to a basic right for everyone".⁵⁶ Clearly, this is a laudable statement. But who is going to provide that access? Well, until recently we had a stretched but working system of law centres and citizens advice bureaux. We also had a number of law firms which concentrated on legal aid work. Clinics were part of that ecosystem. They supplemented the network. Today, the network has fragmented and the ecosystem has been destroyed.

⁵⁴ Wizner and Aitken, note 52, at 1002.

⁵⁵ See Campbell, note 14.

⁵⁶ The Law Society, May. 21 2015, at <http://www.lawsociety.org.uk/policy-campaigns/campaigns/access-to-justice/affordable-legal-services/>.

Clinicians, like Murray, feel a moral duty to step up and be counted. However, what about the morality of replacing organisations and other lawyers who were already doing a perfectly good job? I was listening to a radio news programme which had a story about a library that was in line to be closed due to government cuts. Retired members of the community decided that they would undertake of the roles – cleaning, shelf stacking, loans, stock updates, events for children – free of charge. The library remained open. Whilst admiring the efforts of the community, I couldn't help but think of the staff who had worked at the library prior to its takeover. Staff had lost their jobs to be replaced by well meaning, free labour. Spurred on by the emergence of 'community libraries', the government now has a webpage with details as to how volunteers might like to maintain their local service.⁵⁷ I see clear parallels with the legal aid cuts.

We are in danger of creating new law centres populated by students and academic staff, rather than fighting for services that already exist and which are provided by experts in their field. Instead, we should be concentrating on critiquing government policy and putting pressure on the government to reverse the decisions which have led to this situation.

CONCLUSION

It is perhaps unsurprising that there has been no clear, unified strategy emanating from the clinical community when, as this article has shown, two clinicians operating from within the same clinic cannot agree on the appropriate way to deal with the access to justice deficit. As funding for legal services waxes and wanes in correlation with financial prosperity, clinics should review their services to ensure maximum impact. Only by best meeting the needs of the communities it serves can clinics contribute to the seemingly never ending deficit in legal service provision. Finally, as society evolves, we should consider taking a wider view of social justice. By doing so we might recognise that providing services to businesses can inculcate more responsible, legally compliant and ethical practices within employers and organisations, which more often than not employ those individuals who we typically represent. To that end, we might reduce the need for legal assistance in many common disputes.

⁵⁷ See e.g. <https://www.gov.uk/government/get-involved/take-part/create-a-community-library>.

Regardless of whether readers take the view that clinics should bridge the gap temporarily, attempt to fill the void completely or resist stepping in at all lest the government use clinics as a crutch, it is clear that clinics have a role to play in providing legal services to the poor and vulnerable.

NO CLINIC CAN BE BETTER THAN ITS TEACHERS

Central European Experience with Sustainable Running of Legal Clinics, Including Gathered Best Practices

Michal Urban¹

Every dean of every law school in the world has a long list of tasks that need to be done. If they seriously want to support legal clinics at their law school – which a growing number of them claim they intend to do- they should not focus on equipment of classrooms nor obtaining clinical literature for their library, but on the people who run the clinics. They are the heart of clinical programmes and once they leave, lose motivation or even burn out, clinics will not thrive. This essay offers an experience with running clinics in Central Europe, especially Faculty of Law at Charles University in Prague, Czech Republic. It describes the experience with founding and maintaining legal clinics and maps to what extent is their success dependable on concrete people. After a short outline of Prague clinical history and its Street Law programme, it concentrates on struggles that clinicians face due to number of external as well as internal reasons. Towards the end, it offers number of concrete tips how clinicians might receive support they no doubt deserve.

ORIGINS OF LEGAL CLINICS IN PRAGUE

Prague Law School is an old and noble institution. It was founded already in the 14th century (1348) and represents the oldest faculty of law in Central Europe. With its over three thousand undergraduate students, it is also the biggest law faculty in the Czech Republic. For many years, it has thus enjoyed a position of the leading law school in the country, choosing from the largest pool of applicants, offering its students more opportunities to study abroad than other law schools, employing the most-respected legal experts. All of that not only added to the reputation of the school, but also created an atmosphere in which it might appear that the school does not need to change the way it teaches law, since the interest of the applicants and long tradition of teaching provide high quality legal education. In this regard, the Czech experience copies the development from other countries, including the United Kingdom and United States, where also the older, larger

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and more traditional legal institutions tended to be more reluctant to new trends in law teaching, unlike smaller and younger law schools. In the Czech Republic, a smaller and far younger law school in Olomouc firstly successfully implemented clinical teaching methods on a broader scale.

Over the years, this situation at Prague law school has changed and nowadays it runs number of legal clinics. They include externships (at courts, offices of public prosecutor, ministries and municipalities), legal awareness clinics (Street Law programme), simulations (courses developing soft skills, presentation and rhetoric skills, moot court skills, academic and legal writing) and an external life-client clinic (asylum clinic). Clinics differ in their size, but all together nevertheless provide around half of the students a clinical experience during their studies. Some of the students manage to attend several clinical courses, which turns their traditionally rather theoretical education into a very practical one.

PRAGUE STREET LAW

When we look more closely at how and why these clinics came into existence and has remained in operation, we can observe number of interesting stories, which all share a common denominator: there were the people running the clinics who proved to be a crucial element in the establishment, development and especially sustainability of the clinics. External as well as internal funding² were helpful and managed to ease or speed up the process, and so did supportive deans, but they would not bring about the change without individual devoted teachers.

One of the clear examples of it is the Prague Street Law programme,³ the oldest running Street Law programme in the Czech Republic. First attempts to establish it took place in 1990s and were initiated by experts from the United States, who were willing to spread their successful programme in post-communistic countries in Central and Eastern Europe.⁴ They did not succeed to persuade the management of the faculty to grant excessive support to the programme, so they started to cooperate with an NGO supporting democracy and human rights. The NGO managed to establish partnership with one of the student union at the law school and number of law students received

² Most importantly, Prague law school received an EU grant, which helped to open many new clinics (mostly simulations).

³ Street Law programme has been chosen as an example not because it is necessarily the best clinic in Prague, but because the author of this essay runs the programme and is thus closely familiar with its history, current situation and challenges it faces.

⁴ The first Street Law programme was opened at Georgetown University in Washington, D.C. See: <http://www.law.georgetown.edu/academics/academic-programs/clinical-programs/our-clinics/dc-street-law-program/index.cfm>.

training in methodology of teaching law to lay people and taught lessons at Czech public schools. For some time the programme enjoyed popularity among law students and leaders of the student union, but once the composition of the union changed (students turned older and graduated from the law school) and the funds of the NGO dried up, the cooperation with an NGO stopped and the programme ceased to exist.

Almost a decade later, in 2009 the programme opened again and has been in operation since then. The fact that it has been running for much longer than the previous one results from number of differences between the programmes. It was not initiated by a student union, but a faculty member employed by the law school. Moreover, it was offered to students as an accredited course, which brought students credits and was a part of the curriculum. Accreditation is an important step which adds to the sustainability of any course. Initially, there was no funding needed (but the time of the faculty member).⁵ However, even six successful years of operation of the course do not automatically guarantee the sustainability of the course. Prague Street Law course is still only a voluntary course, opened for about 15 students every semester and relies on the initiative of its teacher. If he left the school, the programme would most probably terminate. It is therefore heavily dependable on the will of the concrete teacher.

STRUGGLES OF TEACHERS RUNNING THE CLINICS

The Street Law programme serves only as an illustration, the asylum clinic or some externships are also based on initiatives of concrete faculty members and build on their personal relationships with people from an NGO or public institution. Their role for running the clinics is thus crucial, yet they are discouraged from teaching clinics by number of ways. Their origin is either in the clinics themselves (internal reasons) or outside of them (external reasons).

To start with the external ones, we must firstly mention that teaching clinics is typically far more demanding than teaching more traditional subjects, especially when lecturing is a norm. While in clinics close attention is paid to every student and meetings of a teacher with one student or a small group of students are typical, teaching of other classes typically comprises of delivering the lectures or seminars, sometimes being accompanied by an offer of the teacher to the students to see them in their consultation hours. Clinicians above that communicate with cooperating institutions and

⁵ The course later received some monetary support (notebooks, data projectors, judicial robes etc., money for publications), but it would run without it, too.

sometimes also with clients, check or proofread some of the documents prepared by the students, supervise students on their externships etc.

Secondly, in most of the countries including the Czech Republic, to pursue an official academic carrier, one needs far more to publish papers than to teach. The more time clinicians devote to teaching, the less time they can invest into writing, which leaves them more harmful when competing over higher academic positions or seeking promotion. It is not true that clinical work does not provide them material to write about, but the loss of time in comparison with their colleagues who teach couple of hours a week and devote the rest of their working time to reading and writing is considerable. Clinicians need to turn this obvious disadvantage into a benefit by making use of the energy and topics that clinic generate, as well as publication opportunities that provide various clinical and other journals.

Thirdly, teaching a clinic is still among general legal public considered less prestigious than teaching e.g. Criminal Law or Legal Theory, probably because these subjects are key elements of the legal system, traditional components of legal education and compulsory for everybody, therefore hundreds of students study them every semester. The respect for clinical work comes slowly with the growth of clinical movement, spreading the knowledge about its achievements and increased number of students who participated especially in more intensive clinics. The experience from the United States and other countries show that it lasts decades.

Last but not least, the salaries of academics are relatively low in comparison with the legal market, especially in Prague, the capital, where there are offices of many large legal firms. To certain extend these conditions apply to all members of the faculty, but many of them work outside of the law school as lawyers, public officers or teachers. Clinicians devoting far more of their time to teaching find themselves in a disadvantage and might sometimes feel the pressure of the “material world” to invest their time more efficiently from an economic point of view.

To turn our attention to internal reasons, we might yet again mention time constraints on the first place. Clinical work tends to expand and consume more time than even experiential clinicians would like to, also because they seek innovations of their work which break down the routine of the work and improves the service for the clients and learning opportunities for the students. Too much work might however lead to overworking, loss of motivation or even burning out. Clinicians are more prone to burning out since they often consider their clinic more than work and seek to reach higher

goals through running a clinic (increase legal literacy of the general public, help to underprivileged group of people, educate lawyers more sensitive to social justice etc.). Once these goals get covered by the cloud of everyday tasks or other duties and the work does not generate considerable amount of money, which might serve as an external indicator of the appreciation of the work, it is easier to start doubting the overall meaning of one's work.

Secondly, their work might be surprisingly lonely. Despite they deal with people all the time (students, clients etc.), they remain in a professional relationship with them and can share only limited number of concerns, thoughts and frustrations with them. While teaching a class, supervising a student or communicating with a client, they still find themselves "in the first line", which is very demanding and tiresome. Unless they can enjoy a comfort of teaching a clinic with their colleague, share their experiences with their fellow clinicians or have an access to a skilled tutor, they might suffer from loneliness, which may slowly turn into a frustration.

Thirdly, they have to handle a lot of emotional stress. Arguably, the most demanding are life-client clinics, where the clinician has to deal with the emotions of the client, the student and their own feelings. Additionally, they might meet with emotionally difficult stories of their clients or students (refugees, people suffering long-time discrimination etc.). However, even other clinicians engage with the stories of their students and are confronted e.g. with the environment of public schools and stories of students they meet there.

HOW TO SUPPORT CLINICIANS?

To begin with, it is necessary to emphasize that although it makes sense to support clinicians financially, it is not the monetary support which they need the most. As has been shown above, teachers in clinics more than in most other subject find themselves lonely in many situations.⁶ What they would certainly benefit greatly from is to have the opportunity to have a co-teacher, be it only for one clinic or a limited time. The possibility to share feelings, ideas, concerns as well as workload with a fellow-teacher might bright up the sky for a long time, not to mention that co-teaching often helps to improve the course.

Where time and money constrains will not allow to double – at least for some time – the staff, networking is a helpful idea. Even though some clinicians tend to think that their clinic and teaching

⁶ We may, nevertheless, say that teaching as such is a lonely profession. However, clinical teaching is in many regards a more demanding teaching, especially in terms of law teaching.

methods are unique, it is rarely the case. Throughout the world, there exist hundreds of clinics and many share number of their features. Luckily, there do already exist many clinical associations on the global and local scale⁷ that promote networking, sharing of experience and even organize training of clinicians. Some welcome all clinicians, some specialize in certain type of clinics. Especially further training might reduce both stress and time demand of teaching a clinic, since it might reveal better strategies of running a clinic. Among the global generally oriented association, the leading role belongs to GAJE – Global Alliance of Justice Education.⁸ To certain degree, experience of others might be gathered also from following clinical journals, such as International Journal of Clinical Legal Education and others.⁹

Even better than travelling to conferences to meet with your fellow clinicians is to have a tutor, senior clinician available at your institution or not too far away. Their presence might of course reduce travel costs, but especially allow the clinician to consult on a more permanent basis and invite the tutor into the clinic to see the clinician while working. A help of a more experienced colleague might spot number of troubling issues and contribute to establishing a well running and not excessively demanding clinic.

Some workload can however not be avoided even in a smoothly running clinic. But not all the work has to be done by the clinician themselves. Many tasks might be done either by an administrative staff of the law school, or students, especially graduates of the course, who know the clinic and can also pass on their knowledge, skills and attitudes. The key issue is to offer them participation in the clinic early enough (before they are busy with other school duties or start having a job of their own), not to be afraid to make an initiative and invite them to join you in running a clinic, assign them concrete rather than general tasks, offer them adequate space and let them grow into their own responsibility for the clinic. Sometimes it makes sense to offer the participation to more students and build a larger team, where students motivate themselves, that however requires time and more energy from the teacher, since the team only rarely come into existence by itself. Sometimes it makes sense to grant participating students small scholarships, sometimes they only appreciate to have some official position (e.g. assistants of the clinics), which often increases their responsibility for the clinic. Their involvement will most likely motivate also the teacher, not only reduce his workload or

⁷ If the local associations do not exist, it might be a good idea to create them.

⁸ For more information, please see <http://www.gaje.org/>.

⁹ For more information, see <http://www.northumbriajournals.co.uk/index.php/ijcle>.

provide a space for expansion of the clinic. Furthermore, should the clinician need for whatever reason to leave the clinic, participating students are good candidates for overtaking the clinic.

Especially for life-client clinics also a partnership with an organization outside of the law school might help the clinician to run the clinic. Prague asylum clinic cooperates with an NGO specializing in supporting asylum seekers and some features of a life-client clinic might Prague law students experience at several institutions which offer them externships, such as municipalities or ministries. Street Law programme cooperates with an NGO specializing in consumer rights, which provides the students substantive knowledge of consumer law, while the faculty equips them with interactive methodology of law teaching.

Another considerable help for clinicians would be to recognize that teaching a clinic is generally more demanding than teaching a standard law course and that their teaching workload in terms of number of subjects they are required to teach should be reduced.¹⁰ An alternative is to provide them external funding to compensate their extra work and reduce their need to seek further sources of income elsewhere.

CONCLUSIONS

All of the ways of supporting clinicians are by no means unique either for the Prague law school or the Czech Republic. To a large extent, they are shared by most of the countries, although they are most probably more pressing when the clinical movement is still relatively weak, which is the case of the Czech Republic.

Clinics undoubtedly bring many examples of an inspirational, energizing and even life-changing experience – both for the students and the teachers. The easiest way to validate this statement is to interview literally any experienced clinician. This essay does neither overlook nor deny this experience, if not for any other reason than because its author works as a clinician himself. The aim of the essay was however to draw attention to another aspect of clinical legal education and suggest concrete ways of dealing with the heavy load that clinicians necessary have to bear.

Many of the above-described steps might or even has to be taken by clinicians themselves. All they need is an inspiration, encouragement, liberation from some of their duties and not excessive

¹⁰ We may find a parallel with educational systems in some countries. At some levels, teachers of different subjects (e.g. Maths, languages etc.) have reduced number of lessons they have to teach every week in comparison with teachers of other subjects.

financial support. Let's hope that an increasing number of law deans and donators will understand it and invest less in new facilities and more into the people, for without them even high-tech modern classrooms will not bring too much an improvement of law teaching.

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