

CLINICAL LEGAL EDUCATION IN INDIA: A CONTEMPORARY LEGAL PEDAGOGY

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I. Introduction

The most popular form of Government in the modern times is Democracy. The backbone of every democracy is its judicial system which is connected with Legal Education.² Thus, the bedrock of any judicial system is the imparting of right kind of legal education as it is from the law schools that the lawyers and the judges emerge.³

The greatness and the honour of the legal relations lies in the Code of its ethics governing the relations of lawyers between themselves and with others in their professional capacity.⁴ Law has to deal with problems of diverse magnitudes and a student of law has to be trained in professional skills in order to meet the challenges of globalisation and universalisation of law.⁵

John Dewey argued that education is essential to a democratic state.⁶ He emphasised the need for the democratic citizens to understand and consider the welfare of the society as a whole.⁷ The goal of education should include the promotion of a humane, people sensitive democracy dedicated to promoting opportunities of life, liberty and pursuit of happiness to each and every person.⁸ The idea of equal access to justice has been around for a long time. Even though the access to justice movement did not take off too early, the concept of lawyers providing free legal service to the poor dates back to 1495 when King Henry VII legislated to require a judge to assign a lawyer to the poor when seeking justice. This could be said to be one of the first

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² SUSHMA GUPTA, HISTORY OF LEGAL EDUCATION 2 (Deep & Deep Publication (P) Ltd., 2006).

³ *Id.*

⁴ Honorable Mr. Justice Y. Bhaskara Rao, *Key note address delivered at the workshop on Apprenticeship Scheme*, ANDHRA TIMES, 1997, at 15.

⁵ GUPTA, *supra* note 1.

⁶ JOHN DEWEY, EXPERIENCE AND EDUCATION (Simon and Schuster 2007).

⁷ JOHN DEWEY & M.L. ROGER (ed), THE PUBLIC AND ITS PROBLEMS: AN ESSAY IN POLITICAL INQUIRY (2012).

⁸ MARTHA C. NUSSABUM, NOT FOR PROFIT: WHY DEMOCRACY NEEDS THE HUMANITIES 25 (Princeton University Press, 2010).

efforts to strive for equality before the law and practice was adopted in most parts of the British colonial empire.⁹

In an interview about legal education reform, Professor Upendra Baxi expressed his concern that there is no new generation of lawyers coming up in India who will work to help the underprivileged get an access to justice.¹⁰ The reason behind this according to Professor Baxi is that there might be a lack on the part of the law schools to inculcate the proper curriculum, to make both Public service and Social service stand together at the centre of young law student's education instead of encouraging the growth of corporate culture.¹¹ He was of the view:

“What do generations signify? Growth in self-reflection and wisdom and capacity to serve the underprivileged.”¹²

Clinical Legal Education, thus aims at this sort of teaching method in order to inculcate the spirit and zeal of public as well as social service amongst the law students. The objective of global legal education is not to create lawyers who can “practice” in a number of jurisdictions but it should have an incidental effect. The objective is to create trained minds who can settle cross border issues efficiently.¹³ Therefore, with the globalization of legal education and research becoming a universal trend, promoting Clinical Legal Education through institutional mechanisms is the need of our times.¹⁴

II. Clinical Legal Education- Meaning

The concept of practical problem solving whether by working in a laboratory or in a field, as an important means of developing skills has been acknowledged since time immemorial.¹⁵ Research can contribute significantly towards the improvement in teaching and more importantly, addressing numerous challenges relating to law and justice.¹⁶

⁹ Lovely Dasgupta, *Reforming Indian Legal Education: Linking Research and Teaching* (Jan. 20, 2017, 03:17 PM) <http://jle.aals.org/cgi/viewcontent.cgi?article=1271&context=home.html>.

¹⁰ Interview of Professor Upendra Baxi, *What is Experimental Education-Crafting Justice*, YOUTUBE, (Jan. 25, 2017, 03:30 AM), <https://www.youtube.com/watch?v=fboJoRZodPU.html>.

¹¹ *Id.*

¹² *Id.*

¹³ Amit K. Kashyap, *Professional Legal Education in India: Challenges and the Way Forward*, 7 IJEASS 141, 144-145 (2016).

¹⁴ *Id.*

¹⁵ Mandava Rama Krishna Prasad, *Legal education in India: Role of clinical legal education in developing, institutionalizing and implementing a social justice mission for law schools*, SHODHGANGA (June 5, 2017, 05:30 PM), <http://hdl.handle.net/10603/12649.html>.

¹⁶ Kashyap, *supra* note 12, at 145.

The term, “Clinical Legal Education” or law clinic traditionally refers to a non-profit law practice usually serving a public interest or a group in the society that are in an underprivileged or exposed situation and lack access to legal system.¹⁷ It is a term which encompasses learning which is focused on enabling students to understand how the law works in action.¹⁸ The use of the word ‘clinic’ prompts the analogy of trainee doctors meeting real patients in their medical clinics. Clinical Legal Education is the only one way in which theory and practice can be brought together.¹⁹

Law clinic or Clinical Legal Education is not a term of art, it can mean different things in different contexts. R. Grimes, a well-known author in the field defines “law clinic” 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.”²⁰

According to Professor N.R. Madhava Menon, Clinical Legal Education does not aim to create future lawyers who are mere craftsmen manipulating advocacy skills in the traditional role of conflict resolution in court.²¹ He refers to Clinical Legal Education as:

“Clinical Legal Education as a pedagogic technique has its focus on the learners and the process of learning.”²²

Richard Lewis²³, also defines the concept as:

“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

¹⁷ Emil Winkler, *Clinical Legal Education-A Report on the concept of law clinics*, (June 16, 2017, 10:10 AM), http://law.handels.gu.se/digitalAssets/1500/1500268_law-clinic-rapport.pdf.html.

¹⁸ Archana K., *Practicability of Clinical Legal Education in India- An Overview*, 4 JEP 157, 157-58 (2013).

¹⁹ *Id.*

²⁰ J. WEBB & C. MAUGHAM (eds.), R. GRIMES, THE THEORY AND PRACTICE OF CLINICAL LEGAL EDUCATION 138 (Teaching Lawyers skills 1996).

²¹ *Id.*

²² N.R. MADHAVA MENON, FOREWORD, IN A HANDBOOK ON CLINICAL LEGAL EDUCATION (N.R. Madhava Menon ed., 1998).

²³ Professor of Law, Cardiff University, Wales, United Kingdom.

able to contribute to national development and social change in a much more constructive manner.”²⁴

Thus, it can be said that the foundation of Clinical Legal Education is experimental learning or “Learning by Doing”.²⁵ In a typical legal clinic, students actively represent clients in cases or work on projects on behalf of the clients. Through this process they interact deeply with individuals. They learn to communicate with people who may not share their racial, caste, ethnic, religious or caste backgrounds. This window into the lives of marginalised and poor communities gives law students the ability to formulate and promote more inclusive policies in their own practice as lawyers as well as in their roles as judges or legislators.²⁶

Types of Law Clinics: Based on the actions to be taken, the legal clinics can be divided into three types:

- (i) **Simulation Clinics:** Students can learn from variety of simulations of what happens in legal practice. Cases can be acted out in their entirety, from the taking of initial instructions to a negotiated settlement or Court hearing. Such sessions can be run as intensive courses or spread through all or part of the academic year in weekly slots. Other simulations can range from negotiation exercises, client interviewing exercises, transaction exercises etc.²⁷
- (ii) **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. In this type of Clinic, Clients are interviewed and advised orally or in writing and also helped with the preparation of their cases. The clinic may operate as a paralegal services or a fully-fledged solicitor’s practice.²⁸
- (iii) **The out-house clinics:** It is a clinic that involves students in exercising legal work outside the college or university. These types

²⁴ Richard Lewis, *Clinical Legal Education Revisited*, (June 10, 2017, 02:13 AM), <https://orca.cf.ac.uk/27655/1/CLINICED.pdf.html>.

²⁵ Sital Kalantry, *Promoting Clinical Legal Education and Democracy in India*, MANUPATRA (Jan. 25, 2017, 5:00 PM), <http://docs.manupatra.in/newsline/articles/Upload/A1118F0B-B14A-42AE-95E9-879491F34FCB.pdf.html>.

²⁶ *Id.*

²⁷ Archana, *supra* note 17, at 158.

²⁸ *Id.*

of clinics may operate on the basis of advice giving only. Such agencies are run by trade union councils and other non-statutory bodies. The clinic might take the form of placement also in solicitors' office or barristers' chambers.²⁹

III. Emergence of Clinical Legal Education

Teaching students that they are responsible for their actions and society has always been at the heart of Clinical Legal Education.³⁰ The concept of Clinical Legal Education came to be incorporated in the teaching methodology only from the early 20th century. It was in 1901 that a Russian Professor Alexander Lyublinsky, first proposed Clinical Legal Education in Law on similar lines as in medicine.³¹ The emergence of Clinical Legal Education began in United States, tightly followed by Canada, Australia and United Kingdom.³²

When looking at the development historically, it seems clear that there were two major forces that drove the development:

- (i) An increasing need for legal aid, and
- (ii) A need to reform the legal education and bring in a more practical approach to law practice.

Concentration on law pushed the consideration of law practice to the background, to the point that any practical training seemed out of place in law school- except when preparing for a moot court. Legal Education was "Law School" and not a "Lawyer School".³³ Already in the beginning of 1900, voices from practicing lawyers in US had been raised regarding the perception that training given to the lawyers was insufficient in terms of practical experience.

In 1921, Carnegie Foundation for the Advancement Teaching³⁴ noted that Legal Education were lacking practical training in comparison to

²⁹ *Id.*

³⁰ Norman Redlich, *The Moral Values of Clinical Legal Education: A reply*, 33 JLE 613, 613-618 (1983).

³¹ Richard J. Wilson, *Training for Justice: The Global Reach of Clinical Legal Education*, 22 PSILR 421, 421-431 (2004).

³² Winkler, *supra* note 16.

³³ Frank S. Bloch and MRK Prasad, *Institutionalizing a Social Justice Mission for Clinical Legal Education: Cross-national Currents from India and the United States*, 13 CLR 165, 171 (2006).

³⁴ The Carnegie Foundation for the Advancement of Teaching is committed to developing networks of ideas, individuals, and institutions to advance teaching and learning. We join together scholars, practitioners, and designers in new ways to solve problems of educational practice. Toward this end, we work to integrate

technical or medical education. This can be said to be the starting point for the educational reform that led to the incorporation of Clinical Legal Education in many US law schools during the 1960's and 1970's. The modern clinical legal education can be said to be the outcome of social issues such as demands of poverty and civil rights, women's rights and the Vietnam War which became a catalyst for providing legal services. During the same time the Ford Foundation³⁵ decided to fund the Council of Legal Education and Professional Responsibility which built the foundation of the clinical legal education as it is today by distributing monetary resources to the law schools to set up clinical legal education programs.

Clinical programs in American Law schools burgeoned in the 1960's alongside the civil rights movement and the national focus on eliminating poverty.³⁶ The then President of U.S.A, Lyndon Johnson declared a war against poverty and in 1964 as a hands of activity he launched the Equal Employment Opportunity Act, 1964.³⁷ As a result of this Act, Office of Economic Opportunity³⁸ funded several legal aid programs in 1970 consisting of law firms placed in poor neighbourhoods with employed lawyers and paralegals as staff.

Since then, Clinical Legal Education has become an integral component of the curriculum in almost all the law schools in USA. There, the clinics are generally small law school classes taught by full time faculty where the students learn lawyering skills through undertaking legal services, typically on behalf of poor or marginalised people and communities.³⁹ To give their law graduates better tools to succeed in practice, some law schools require students to participate in clinics or allow students to satisfy certain graduation requirements.⁴⁰

The Ford Foundation also funded several major initiatives in Clinical Legal Education in South Africa,⁴¹ Chile,⁴² China,⁴³ India,

the discipline of improvement science into education with the goal of building the field's capacity to improve.

³⁵ In 1936, Edsel Ford established the Ford Foundation with an initial gift of \$25,000. Since the founding charter stated that resources should be used for "scientific, educational and charitable purposes, all for the public welfare," the foundation made grants to many kinds of organizations.

³⁶ C.E. Ares, *Legal Education and the Problems of the Poor*, 17 JLF (1965).

³⁷ Economic Opportunity Act, United States Public Law 88-452(1964).

³⁸ *Id.*

³⁹ Kalantry, *supra* note 24.

⁴⁰ *Id.*

⁴¹ David Mc-Quoid- Mason, *Clinical Legal Education and Role of Law Clinics in South Africa* (Jan. 25, 2017, 09:10 AM), <http://clarkcunningham.org/LegalEd/SouthAfricaMason2.pdf.html>.

Bangladesh⁴⁴, etc. American bar Association,⁴⁵ Central and Eastern European Law Initiative⁴⁶ is the largest project undertaken by the American Bar Association funded in 1990.

The World Bank, International Development Bank and Other International Financial Institutions have funded a number of Clinical legal education initiatives, under the heading of “access to law and Justice” or “law reform” activities. The United Nations High Commissioner for Refugees⁴⁷ (UNHCR) and Legal Assistance through Refugee Clinic⁴⁸(LARC) carried out many Refugee Law Clinics in the Central and Eastern European region. At present LARC is supporting the training of about

⁴² Richard J. Wilson, *Three Law School Clinics in Chile, 1970-2000: Innovation, Resistance and Conformity in the Global South*, 8 CLR 515, 515-582 (2002).

⁴³ Pamela N. Phan, *Clinical Legal Education in China: In Pursuit of a Culture of Law and a Mission of Social Justice*, 8 YHRDJ 117, 117-152 (2014).

⁴⁴ Review of Legal Education in Bangladesh, (Jan. 25, 2017, 10:45 AM), www.lawcommissionbangladesh.org/.../Review%20of%20Legal%20Education%20in.html.

⁴⁵ The American Bar Association was founded in 1878 and is committed to supporting the legal profession with practical resources for legal professionals while improving the administration of justice, accrediting law schools, establishing model ethical codes, and more. The main Headquarters are in Chicago and another office in Washington D.C.

⁴⁶ The Central and Eastern European Law Initiative Institute is an independent, not-for-profit, international provider of post-graduate, professional legal education headquartered in Prague, Czech Republic. Our mission is to develop an international, professional community of reformers committed to the rule of law. Through innovative training programs and other activities, we work with judges and reformers in countries in transition to support fair, transparent, and effective judicial systems, strengthen democratic institutions, build respect for human rights, and promote the continuing development of market economies.

⁴⁷ The Office of the United Nations High Commissioner for Refugees was established on December 14, 1950 by the United Nations General Assembly. The agency is mandated to lead and co-ordinate international action to protect refugees and resolve refugee problems worldwide. Its primary purpose is to safeguard the rights and well-being of refugees. It strives to ensure that everyone can exercise the right to seek asylum and find safe refuge in another State, with the option to return home voluntarily, integrate locally or to resettle in a third country. It also has a mandate to help stateless people.

⁴⁸ Legal Assistance through Refugee Clinics (LARC) was a project of the Hungarian Helsinki Committee operating between 2001 and 2005. Supported by the United Nations High Commissioner for Refugees (UNHCR), it was created to strengthen the effective legal protection of refugees and asylum seekers in Central and Eastern Europe by building the capacity of refugee law clinics, their professionals, and students. To achieve this goal, LARC organized skills development events and professional consultations, as well as facilitated a network of clinicians.

twenty Refugee Clinics in this region. Global Alliance for Justice Education⁴⁹ (GAJE) focuses on broader agenda of transformation of legal education to justice education. It brings Clinical legal educators from all over the world to its bi-annual conferences.

Thus, the concept of Clinical legal education has evolved and contributed a new pedagogy in the teaching of law. It, to a large extent, also plays a crucial role in bridging the gap between the theory and real-life practice of law, or at least the environment in which they operate.⁵⁰

IV. Clinical Legal Education in India- Evolution

Spurred by desires to make law school experience more educational and relevant for the 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 the developing countries in the last twenty years.⁵¹ In ancient India, law was understood as a branch of Dharma. The Vedas were considered to be the original sources of law and the Smritis announced the message of Vedas and Smritikars were considered to be great jurists.

The concept of Dharma in the Vedic period can be seen as the concept of legal education in India. Justice was done by the King or through the appointees who in turn were persons of known integrity and reputation of being fair and impartial. Legal historians record instances of legal practitioners known as ‘Pleaders’ or ‘Niryogis’ representing parties in litigation at least from the time of Manu Smriti. According to Dr. Kane, a person well versed in Dharma Shastra and procedure of law could be appointed as a representative.⁵² Formal legal education started in 1855, when the first professorship of law was introduced in the Government Elphinstone College.⁵³ In 1857, three Universities in Bombay, Madras and Calcutta, bearing the respective names, formally introduced legal education.⁵⁴

⁴⁹ GAJE was founded in 1996 and has worked to promote justice through education by convening five worldwide meetings on justice education: in India (1999), South Africa (2001), Poland (2004), Argentina (2006), and the Philippines (2008). It serves as a clearing house of teaching methods and materials and also administer funds to support the development of innovative justice education, especially in developing countries.

⁵⁰ Prasad, *supra* note 14, at 26.

⁵¹ Wilson, *supra* note 30.

⁵² PANDURANG VAMANKANE, HISTORY OF DHARAMASAstra (ANCIENT AND MEDIEVAL RELIGIOUS AND CIVIL LAW) 288 (1st ed. 1946).

⁵³ In the year 1827 a resolution was passed that an institution for the promotion of education should be established under the Bombay Native Education Society and be designated as Elphinstone College. The enlightened citizens of Mumbai collected a sum of Rs. 2, 29,636.00, for teaching English Language, the Arts and

During the British rule, legal education in India followed the general colonial model of producing clerks, not managers or advocates. The primary goal was to support the existing financial interests of England certainly not to reform the local legal profession.⁵⁵ After independence, legal education was expected to bring the legal system in tune with the social, economic and political desires of the country.⁵⁶ For the first time in 1949, The Bombay Legal Education Committee⁵⁷ 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 seminar or group discussions, moot court competitions, etc.

In the year 1958, the 14th Report⁵⁸ of the Law Commission of India recognised 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 to those who chose to practice in the Courts.⁵⁹ The Commission's report concentrated on institutionalizing and improving the overall standards of legal education. The report also discussed the various teaching methods and suggested that seminars, discussions, mock trials and simulation exercises should be introduced.

The evolution of Clinical Legal Education gained momentum in the 1960's. The idea of involving law school in legal aid can be seen as the first attempt to introduce some kind of framework in India.⁶⁰ The legal aid movement of the 1960's in India assumed that law schools would have a significant role in dispensing legal services.⁶¹ Reform was considered to be

Literature of Europe. This was a tribute to the departing Governor of Bombay, Mountstuart Elphinstone (1819-27). The Elphinstone Institution was formally constituted in 1835.

⁵⁴ A.S. Anand, *Legal Education in India — Past, Present and Future*, (1998) 3 SCC (Jour) 1.

⁵⁵ Archana, *supra* note 17, at 158.

⁵⁶ *Id.*

⁵⁷ Report of the Legal Education Committee, Bombay, 1949, SOUTH ASIA ARCHIVE (June 10, 2017, 12:10 PM), <http://www.southasiaarchive.com/Content/sarf.140321/200825.html>.

⁵⁸ Law Commission of India Report, *Reforms of Judicial Administration*, LAW COMMISSION OF INDIA (June 10, 2017, 12:30 PM), <http://lawcommissionofindia.nic.in/1-50/index1-50.html>.

⁵⁹ *Id.*

⁶⁰ SP Sarker, Empowering the Underprivileged: The Social Justice Mission for Clinical Legal Education in India, NORTHUMBRIA JOURNALS (June 12, 2017, 04:30 PM) www.northumbriajunctions.co.uk/index.php/ijcl/article/view/33/481.html.

⁶¹ Frank S. Bloch, *Access to Justice and the Global Clinical Movement*, 28 WUJLP 111, 111-112 (2008).

necessary to foster the country's nascent democracy and help achieve the goals of good governance expressed in the Constitution of India by developing competent legal minds.⁶²

Clinical Legal Education in India has gone through many stages of development before a formal inclusion was made in the curriculum. Some of these stages are:

- (i) Clinical legal education took its roots in India in the late 1960's. In the mid-60's, Delhi University introduced the case method in teaching law, and in 1969, the faculty and students established a Legal Service Clinic.⁶³ The efforts made by the faculty were purely voluntary and no attempts were made for institutionalizing and integrating Clinics into the curriculum.⁶⁴
- (ii) Banaras Hindu University was the first to introduce a course on Clinical Legal Education in early 1970's. 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. The entire Clinical legal education in Banaras Hindu University revolves around its Legal Aid Clinic.⁶⁵
- (iii) In 1983-84, a Legal Aid Clinic was established in the Faculty of Law, University of Jodhpur. This Clinic was actively involved in the dissemination of information about social welfare legislation, helping in settling cases in accident and matrimonial disputes.⁶⁶
- (iv) After five years of debate over a 3 year v/s 5 year LLB course, which began during a 1977 National Seminar on Legal Education at Bombay, the Bar Council of India unanimously agreed to introduce the new 5 year course from July, 1982 open to students after completing their senior secondary education. In this curriculum also the Bar recommended practical training.
- (v) National Law School India University (NLSIU) introduced both compulsory and optional Clinical courses. Three compulsory Clinical courses were introduced in the year of 1992. In 1994-95 the Clinical courses were reorganized and two Clinical courses namely Client Interviewing and Alternative Dispute Resolution Clinic, and

⁶² Anand, *supra* note 53.

⁶³ MADHAVA MENON, N.R., *LEGAL AID AND LEGAL EDUCATION: A CHALLENGE AND AN OPPORTUNITY*25 (University of Delhi, New Delhi, 1986).

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ S.S. SHARMA, *LEGAL AID TO THE POOR: THE LAW AND INDIAN LEGAL SYSTEM*, 234 (Deep & Deep Publications, New Delhi, 1993).

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.⁶⁷

(vi) In 1996-97 the Clinical programs were further revised to integrate them with legal aid extension services. Three Clinics offered in the final year have now been spread over to earlier year namely third and fourth year of study. In addition to these compulsory Clinical courses students have optional Clinical courses like Moot Court, Community base Law Reforms Competition, and Legal Services Clinic.⁶⁸

Although the number of Law Colleges involved in Clinical education grew in this period, their programs remained fairly small, isolated and voluntary and they were compelled to work with limited financial resources.⁶⁹ Further, the Clinics suffered due to lack of supervision, absenteeism and dearth of trained faculty. Almost all such initiatives aimed at serving the poor and no proper emphasis was laid on the skills that the law students required in order to work in the Legal Aid Clinics or the skills that they could develop by working in the same.⁷⁰ Nevertheless, the efforts in developing and employing Clinical legal education programs in a voluntary manner in infrastructural deficient conditions at least resulted in sensitizing student in socio-economic issues hitherto alien to class room discussions in the teaching of law.⁷¹

V. Formal Inclusion of Clinical Legal Education in the Curriculum

In 1994, a three-member Committee made comprising of Justice A.M. Ahmadi, Justice B.N. Kirpal and Justice Jaganaddha Rao dealt in detail with law school teaching methods. The Committee, in its report,⁷²

⁶⁷ N.R. MADHAVA MENON & V. NAGARAJ, CLINICAL LEGAL EDUCATION: CONCEPT AND CONCERNS, A HANDBOOK ON CLINICAL LEGAL EDUCATION, 241(N.R. Madhav Menon, ed., Eastern Book Company, Lucknow, 1998).

⁶⁸ *Id* at 244-46

⁶⁹ Nigel Duncan, *Ethical Practice and Clinical Legal Education*, NORTHUMBRIA JOURNALS (June 09, 2017, 07:50 AM), www.northumbriajournals.co.uk/index.php/ijcle/article/download/93/407.html.

⁷⁰ *Id.*

⁷¹ KENNETH S. GALLANT, LEARNING FROM COMMUNITIES: LESSONS FROM INDIA ON CLINICAL METHOD AND LIBERAL EDUCATION, EDUCATING FOR JUSTICE AROUND THE WORLD: LEGAL EDUCATION, LEGAL PRACTICE AND THE COMMUNITY, 222 (Louise G. Trubek ed., Ashgate Publishing Company, USA).

⁷² Law Commission of India 184th Report, *Legal Education and Professional Training and Proposal for Amendments to the Advocates Act, 1961 and the University Grants Commission Act, 1956*, LAW COMMISSION OF INDIA(June 10,

among other things recommended inclusion of the problem method, moot courts, and mock trials in legal education curricula. Further, it also recommended that the suggested new methods of teaching be made mandatory. There were demands for improved training in skills and ethics in law school. Concerns arose about maintaining the quality of law practice when apprenticeship requirements were eliminated in the early 1960's. The Bar Council of India reintroduced a one-year training requirement after graduation from law school in 1994, based on recommendations of the Ahmadi Committee.⁷³

Thus, the committee's proposals worked as the starting point for the introduction of clinical teaching curriculum into the modern Indian Legal education system. It was after this committee's report that the Bar Council of India introduced four practical papers into the curriculum, which was viewed as the big step towards introducing clinical legal education formally into the curriculum and the law schools have been required to introduce the four papers since the academic year 1998-99.⁷⁴ The four papers are:

- i) Paper I - Moot-court, Pre-trial preparations and Participation in Trial Proceedings.
- ii) Paper II: Drafting, Pleading and Conveyancing.
- iii) Paper III: Professional Ethics, Accountancy for Lawyers and Bar-bench Relations.
- iv) Paper IV: Public Interest Lawyering, Legal Aid and Para-legal Services.

However, the Bar Council of India's mandatory directive to introduce the four practical papers into the curriculum was welcomed only half-heartedly by law school authorities as their staff lacked the skills and experience necessary to teach the course properly or 'simply put, law faculty neither had a vision for, nor properly understood, the value of these papers.'⁷⁵

Reports of University Grants Commission (UGC) also played an important role 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. The 2nd UGC report of particular interest to Clinical Legal Education was prepared by a Curriculum Development Committee, which was asked to upgrade the

2017, 4:55 PM), <http://lawcommissionofindia.nic.in/reports/184threport-parti.pdf.html>.

⁷³ *Id.*

⁷⁴ Bar Council of India Resolution No. 04/1997.

⁷⁵ Bloch, *supra* note 32, at 169.

syllabi of the LL.B. course. Primary focus of Clinical legal education of the proposed curriculum is on legal aid, social justice, and professional responsibility. The basic model of clinical legal education promotes professional skills training and law school involvement in social justice. Typically, clinic students are engaged in experiential learning through active involvement in some type of social justice activity, such as a legal aid clinic. Bar Council of India rules that require credit for clinical work seem to contemplate some measure of specific skills training.⁷⁶ The entire idea and structure of clinical legal education is based on American Bar Association task force report, namely, the Mac-Crate Report,⁷⁷ which is relevant to the Indian experience. The Law Commission Report of 2002 also emphasized further the professional skills and values future lawyers need to develop at law school.⁷⁸ The Bar Council of India adopted a resolution, based on the recommendations of the Supreme Court's three member committee, to set up legal aid clinics in every law school to provide inexpensive and speedy service to underprivileged groups in society.⁷⁹

Thus, an important part of the clinical methodology is its emphasis on experimental learning and other interactive teaching techniques that give students a sense of participating in the process as adults and draw them into the role of a lawyer.⁸⁰ The legal educators in India had a responsibility to improve the quality of legal education through the legal services clinical method of law teaching, which will help to encourage a sense of justice, equity and public service responsibility among young law students but bureaucratic hassles, and the indifference of almost all legal institutions in India, have prevented these initiatives from being properly implemented.⁸¹

⁷⁶ *Id.*

⁷⁷ American Bar Association, *Legal Education and Professional Development -An Educational Continuum, Report of The Task Force on Law Schools and the Profession: Narrowing the Gap*, 54 AMERICAN BAR ASSOCIATION (June 20, 2017, 03:16 PM)

https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/2013_legal_education_and_professional_development_maccrate_report.authch.eckdam.pdf.html.

⁷⁸ *Supra* note 71.

⁷⁹ Bar Council of India, *3 Member Committee Report on Reform of Legal Education* (2009) (June 20, 2017, 03:50 PM), <http://www.barcouncilofindia.org/wp-content/uploads/2010/06/3-member-Committee-Report-on-Legal-Education.pdf.html>.

⁸⁰ Frank S. Bloch, *The Andragogical Basis of Clinical Legal Education*, 35 VLR. 321, 322-23 (1982).

⁸¹ *Id.*

VI. Practicability of Clinical Legal Education in India: Problems and Suggestions for Improvement

Clinical Teaching has become an integral part of legal education in most developed and developing countries. Legal Education of India has been described as a ‘sea of institutionalized mediocrity with a few islands of excellence.’⁸² It is always to be borne in mind that law cannot grow until and unless it engages with the society and interacts with the other branches of law. The Law Commission of India in its 184th Report (2002)⁸³ discussed the issues of legal education as:

“revolutionary changes which have come into legal education by reason of development in information, communication, transport technologies, intellectual property, corporate law, cyber law, human rights, alternate disputes resolution, international business, comparative taxation laws, space law, environment laws, etc. This very nature of law, legal institutions and law practice are in the midst of paradigm shift.”

The complexities of present-day life require the lawyers to play multiple roles and therefore it has become necessary for the legal institutions to impart proper legal learning to them. Law schools and practicing Bar Council were established with different missions and to accomplish different tasks. Clinical Legal Education currently faces serious challenges around the world. The way in which the legal profession has operated up to now has resulted in a general distrust towards the lawyers and a perception has been created that the profession has lost its purpose and social obligation. Even if Legal education in India could produce highly talented, skill-oriented legal professionals, society may not benefit from such professionals because the Indian society needs bot only highly technical and skill-oriented lawyers but also lawyers who are socially sensitive and have socially relevant lawyering skills.⁸⁴ In other words, engagement with social problems and movement make legal education more relevant and contextual and to make this happen a liberal, holistic and decentralised approach to curriculum planning and development of clinical teaching is necessary.

In 1981, the Government of India appointed a Committee for implementing Legal Aid schemes which was headed by Justice P.N. Bhagwati, the then Chief Justice of India. It was formed for implementing

⁸² N. R. Madhava Menon, *To Go From Mediocrity To Excellence*, The Hindu, June 18, 2010.

⁸³ *Supra* note 71.

⁸⁴ N.L. Mitra, *Legal Education in India*, Conference of International Legal Educators, Florence, Italy (2000), (June 20, 2017, 06:40 PM)), <http://www.aals.org/2000international/english/India.html>.

Legal Aid Schemes and concentrated more on the promotion of legal literacy, organisation of legal aid camps, establishing legal aid clinics in law schools and universities. However, only limited efforts were made to transform legal education in India to meet the challenges of the profession. The faculty participation was voluntary in nature and thus, no proper attempts were made to integrate clinics into the curriculum. The main reason for this failure was that the law schools were neither physically nor professionally ready to undertake such a huge responsibility.⁸⁵

In the present times also the responsibility of training law students in practical matters is simply passed on the law books and not much importance is given to the clinical legal education. There are several factors which are responsible for the same. Some of them are;

- i) Underlying all the obstacles to the growth and sustainability of Clinical Legal Education in the developing countries including India is the lack of sufficient stable funding.⁸⁶ As a result the staff suffers from rapid turnovers as the grants come and go.⁸⁷ In other words, their case priorities are often set by the funders rather than community needs.
- ii) No credit is given to the students who undertake these activities which is distinctive to students to conduct them and discourage them to follow through on their commitments.⁸⁸
- iii) The lack of practical knowledge among the law teachers is yet another hurdle in the proper implementation of Clinical Legal Education. The method of teaching clinical and skills courses exacerbates this situation because it requires more faculty than the traditional method of teaching large number of students, a lecture method also referred to as “chalk and talk” method.⁸⁹
- iv) There is also a feeling amongst the professionals that legal education in India is not meaningful or relevant. Due to this, there are various difficulties faced in the proper supervision and assessment of law clinics.⁹⁰

⁸⁵ I.P. Massey, *Quest for ‘Relevance’ in Legal Education*, (1971) 2 SCC (Jour) 17.

⁸⁶ Peggy Maisel, *Expanding and Sustaining Clinical Legal Education in Developing Countries: What We Can Learn From South Africa*, 30 FILJ 374, 388 (2006).

⁸⁷ *Id.*

⁸⁸ Archana, *supra* note 17, at 161.

⁸⁹ Maisel, *supra* note 85, at 390.

⁹⁰ Mohammad Ghousie, *Legal Education in India: Problems and Perspective*, (Book review), 19 JILI (1977).

- v) A legal clinic offering free legal work may hamper the relationship of the law schools with the local legal professionals.⁹¹

After a detailed analysis of the nature and status of Clinical Legal Education in India, it is quite evident that its primary objective in India is to secure social justice. It offers the students an opportunity to gain practical legal skills and trains and facilitates the delivery of legal services for the poor communities who may otherwise be unable to afford legal representation.⁹² Though the Bar Council of India has made it mandatory to have Clinical Legal Education in the curriculum, the institutions have not shown much interest towards the same. At present there is a dire need to create a platform for the law schools to introduce proper legal education so as to create a bright future in the years to come.

The following steps are recommended for a bright future for Clinical Legal Education in India:

- i) Creation of more coherent information about the law and its institutions in different communities so that people can easily know where to go, to get what type of services.⁹³
- ii) Law clinics should be established in each law school or institution in the rural or semi-urban areas which is made easily accessible to the members of the community.
- iii) The students must be entitled with the responsibility to take care of all the cases coming in the law clinics including the interviewing and counselling of the client. In simple words, if any person is in need of legal aid then the law clinics can act as the bridge between the legal authority and the client by providing them with the necessary legal services.
- iv) Build teaching materials with the case histories of the varied matters processed in the Clinic.⁹⁴
- v) The University Grants Commission (UGC) should also look at some model institutions which have exceptionally good clinical activities and have trained clinical faculty members and use these models as a basis to develop a curriculum for the faculty development course in clinical education.⁹⁵

⁹¹ *Id.*

⁹² Kalantry, *supra* note 24, at 11.

⁹³ Kenneth L. Penegar, *Clinical Education in its Prime*, *Alumni Head notes*, 10 AALS, Issue 1(1981).

⁹⁴ *Id.*

⁹⁵ Sarkar, *supra* note 59.

- vi) The Bar Council of India must also take recourse to proper measures for the efficient working of the Clinical Legal Education. For example a Committee must be formed which would work towards the implementing, inspecting and monitoring of clinical programs in various institutions.

VII. Conclusion

The Clinical Legal Education in India has its roots in both the legal aid and legal education reform movements, as part of an effort to improve the quality of law practice, and to increase awareness among lawyers about professional and public responsibility. Prof. Menon in his book has rightly pointed out that, “The law curriculum does not adequately reflect the changing role of law in a developing society, and law teaching does not take account of the new skills of social engineering required from the future lawyers.”⁹⁶ Clinical Legal Education should devote its time on training students with an emphasis on improvement of their competence in advocacy skills, and should strive to develop the perception, attitudes, skills and sense of responsibility which the lawyers are expected to assume when they complete their professional education. When this is achieved, the ultimate goal of legal education to establish a just society based on the rule of law, would become attainable. As summed up by Kenneth L. Penegar:

“... 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 lawyers and legal institution, as important as that is; rather it is to find and develop new definitions and conceptions 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 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 several years of Law School.”⁹⁷

⁹⁶ MOHAN GOPAL (ed), PROF. N.R. MADHAVA MENON’S REFLECTIONS ON LEGAL AND JUDICIAL EDUCATION, 78 (Universal Law Publishing Co, 2009).

⁹⁷ Penegar, *supra* note 92.