

## Practicability of Clinical Legal Education in India- An Overview

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### Abstract

In India, Clinical Legal Education has been a significant part of legal education. The concept is fast expanding across the globe also. The Clinical Legal Education is necessary to bridge a gap between theory and practice. Various attempts were made in India, to have a sound and efficient clinical legal education program. But the all ended in vein due to the lack of forethought by the authorities. The aim of this article is to know the various types of Clinical legal Education, its necessity in curriculum and current initiatives and practices in Indian Clinical Legal Education.

**Key words:** Clinical legal education, Legal aid, Social Justice, and the Reforms

### Introduction

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." 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 (A.S. Anand, 1998). Generally, 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.

Although there are many possible ways for clinics to be structured, the Citizen Participation Clinic is an important example of a clinic that can be successful within the Indian context. In Clinic collaborates with community based non-governmental organizations (NGO) which provide access to and continuity with the communities. The nongovernmental organizations benefit from the collaboration because the program builds their capacity to use the political process and legal mechanisms to further the rights of the communities. Additionally, law students provide much-needed manpower to the non-governmental organizations. Through their participation in the Citizen Participation Clinic, students are trained in basic lawyering skills, learn about the devastating economic and social problems facing the majority of Indians, and reflect on ways they can work to improve these conditions as lawyers.

In India, the Bar Council, Law Commission, and other important government and non-governmental agencies have recognized the importance of clinical legal education, yet it has not been adequately developed. Among other things, this is so because of a lack of resources devoted by law schools to clinics, lack of trained faculty, failure to give workload credit/reductions to faculty and academic credits to students, and a regulation that prevents faculty and students from practicing before courts in India (Kuljit Kaur).

The author focuses on the meaning of clinical legal education, basic requirements of clinical legal education and the importance of Citizen Participation in such clinics. Further, the paper analyses the problems in setting clinical legal education goals by the law institution. The author ends up with few suggestions to improve the clinical legal education.

### What is 'Clinical Legal Education'?

The Clinical Legal Education is a term which encompasses learning, which is focused on enabling students to understand how the law works in action. This can be done by undertaking real or realistic simulated case work. In early days law is thought as one of the curriculum available to the students. Even though the casebook method was growing in earlier days, there were critics of this method from the beginning. The first hand experience method will really educate the law students. The legal education clinics if properly channelled will help the students to gain their knowledge. Clinical Legal Education is only one way in which theory and practice can be brought together. The term 'Clinical Legal Education' can be defined in various ways:

"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."(Richard Lewis)

“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.”(N. R. Madhava Menon, 1998)

Though the aims and objective of each type of clinics are same in principle, based on the actions to be taken, the legal clinics may be divided into three types:

1. **Simulation clinic:** 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 settlements 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.

2. **The In-house real client clinics:** 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. In this model the clinic is based in the law school. It is offered, monitored and controlled in law school. The service is given in the form of advice only or both advice and assistance. In this type of Clinics, 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.

3. **The out-house clinic:** It is a clinic that involves students in exercising legal work outside the college or university. These types 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 placements in solicitors’ office or barristers’ chambers.

#### **History of Clinical Legal Education**

During British rule, legal education in India followed the general colonial model of producing clerks, not managers or advocates. Its primary goal was to support the existing financial interests of England, certainly not to reform the local legal profession (Government of India, Calcutta 1930). After independence, legal education was expected to bring the legal system in tune with the social, economic, and political desires of the country. With 500 law schools and 40,000 law students graduating every year, law schools could play a pivotal role in promoting and providing justice, particularly through the field of legal aid.

But, until clinical programs entered the scene, skills training and social justice work were out of the legal education agenda. Legal doctrine dominated law school syllabi, with virtually all instruction offered through classroom courses dominated by traditional lectures in India. This concentration on “the law” pushed consideration of law practice to the background, to the point that any practical training seemed out of place in law school. The idea was that law graduates would learn about being lawyers once they entered practice. At various points, this policy has been implemented through required apprenticeships (Apart from clinical education, recent legal education “reform” in India has consisted mainly of efforts to replace one-way lectures with more effective.). Actual Clinical Legal Education in India has emerged only in 1960s with its roots in both the Legal Aid and Legal Education Reform Movements.

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 14<sup>th</sup> 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 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.

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 1960s (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.). As a result 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. 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.

The 2<sup>nd</sup> UGC report of particular interest to Clinical Legal Education was prepared by a Curriculum Development Committee, which was asked to upgrade the 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 (Frank S. Bloch, *et al*, 1990). The entire idea and structure of clinical legal education is based on American Bar Association task force report, namely, the Mac-Crate Report, which is relevant to the Indian experience.

#### **Need for Clinical Legal Education in Institutions of Law**

Clinical legal education is a different approach to the learning of law; it encompasses experimental learning, or "learning by doing." Practical training generates confidence in students as their success is determined by their own efforts rather than external factors. It gives opportunities for the knowledge to be applied, and also calls for reflection and self examination, so that, students will be self-motivated and highly committed to the work.

Further, Clinical Legal Education is based on practical approach and hence it helps in acquisition of skills which are very much essential to an advocate. The skills may include like Research skills, Communication skills, interviewing of clients and witnesses, Counselling, Drafting, Negotiating, and Problem Solving etc skills. A law clinic can help to these skills along with developing a rapport between the law school and the society. It can offer advice and assistance to local people and help to reduce isolation. Also the students can be able to understand the problems of different generation and background. This experience can add to their understanding of the position of others in society, and can increase their maturity and sense of responsibility.

#### **Legal Aid Programme in India - An experiment in Reforming Legal Education**

The first major report on legal aid came in 1973 from the Expert Committee on Legal Aid of the Ministry of Law and Justice, chaired by Justice V. R. Krishna Iyer. The Expert Committee was appointed to make recommendations for the creation and implementation of a comprehensive program of legal aid to the weaker sections of Indian society, including persons of limited means and socially and educationally backward classes. The Committee's report advocated creating networks of legal aid groups in various places such as court houses, bar associations, law schools, community organizations, private and public agencies, and organs of local government.

Recommendations ranged from establishing an autonomous national legal aid authority, to compulsory public service as a part of law school curricula, to giving priority to candidates' social sympathies in filling judicial and police posts. The Committee recommended introducing clinical legal education in law schools with a focus on socio-economic poverty. It opined that student exposure to real legal problems would benefit the students, the legal aid scheme, and the legal system as a whole. It also observed that students' encounters with the problems of poverty and exploitation would change their outlook when they become lawyers, and as a result they would not treat clients simply as facts but as living neighbours.

On the benefits of involving law schools in legal aid programs, the Committee pointed out that, law students would become an inexpensive and enthusiastic resource for providing meaningful legal aid to India's vast population. It recommended using law students to provide legal aid in two stages: first, in preparing a case at the preliminary stages, including interviewing clients and drafting documents; then, by appearing in court in petty cases, including examining witnesses and presenting arguments. Thus, the central idea of involving the law schools was not only to provide practical skills but also to secure adequate legal aid for the needy. (Expert Committee Report).

In 1977, the Juridicare Committee was appointed to revise, update, reevaluate, and supplement the report of Expert Committee, and its report concentrated more on the viability and working conditions of legal aid programs. The Juridicare Committee expected law schools to play a pivotal role in providing legal aid and urged them to establish legal aid clinics. It observed that student participation in legal aid would not only be helpful in acquiring the skills necessary in the legal market place, but would also provide an opportunity for the students to

develop a humanistic perspective and a social orientation. Students would realize the social role of the law, and their participation in clinical projects would reduce the burden of legal services institutions. For the first time, this report expressed the need to develop clinical law teachers, to introduce subjects such as law and poverty and law and society, and to give academic support to law school clinics. (Juridicare Committee Report).

In 1981, the Government of India appointed the Committee for Implementing Legal Aid Schemes. The Committee was headed by Justice P.N. Bhagwati, then Chief Justice of the Supreme Court of India. Like the earlier Juridicare Committee, the Committee for Implementing Legal Aid Schemes insisted that court- or litigation-oriented legal aid programs cannot provide social justice in India. The Committee concentrated more on the promotion of legal literacy, the organization of legal aid camps to carry legal services to the doorsteps of people, training of paralegals to support legal aid programs, establishing legal aid clinics in law schools and universities, and bringing class actions by way of public interest litigation.

In spite of these high expectations, only limited efforts were made to transform legal education in India to meet the challenges of the profession. The momentum gathered by the legal aid movement was confined at most law schools to student extracurricular activity, with a few exceptions. Faculty participation was purely voluntary and no attempts were made to integrate clinics into the curriculum. Although these efforts were encouraging at the time, no serious efforts were made by academics or members of the legal community or by the Bar Council of India, the primary body regulating legal education to institutionalize legal aid clinics. The main reason for this failure was that law schools were neither physically nor professionally ready to undertake such a huge responsibility. Several other factors are also responsible for the failure of first attempt of clinical legal education in India (I. P. Massey 1971).

First and foremost, most law teachers have no practical knowledge in conducting legal aid because the Advocates Act prohibits fulltime teachers from practicing law. There is also no provision for licensing law students to practice. Moreover, no efforts have been made to provide financial assistance to law schools in order to meet the expenses of providing legal aid and there are no incentives like, reducing teaching hours for teachers to engage in legal aid activities. Hence, the teaching faculty was over burdened by heavy teaching loads. Many colleges had large numbers of part-time teachers, which resulted in overloading the full-time teachers with additional administrative and committee duties. Another fundamental problem was the feeling that legal education in India is not “meaningful” or “relevant.” The curriculum was neither helpful in shaping aspiring lawyers in their traditional role of problem solving nor in their expanded roles of arbitrator, counsellor, negotiator, or administrator.

This bleak experience taught the Indian legal community that involving law schools in providing legal aid or other assistance to society needs careful planning and, most importantly, that legal education needs a facelift to cope with society’s expectation. Thus, several important initiatives have been undertaken in India recently to refocus attention on improving legal education, most notably those by the University Grants Commission (UGC), the Bar Council of India (BCI), and the Law Commission of India. The UGC is the prime body in India for regulating and maintaining the standards of higher education. There is a standing panel at the UGC to guide and standardize legal education in India, presided over by the retired Chief Justice of the Supreme Court of India. In spite of these efforts, no significant improvement in the standards of law schools was achieved due to lack of faculty expertise in the new subjects, unavailability of textbooks, and lack of flexibility in teaching and assessing in subjects like poverty and rural development.

In 1994, a Committee chaired by Justice Ahmadi dealt elaborately with law school teaching methods. The Ahmadi Committee Report recommended inclusion of the problem method, moot courts, and mock trials in law school curricula. It also suggested supplementing the lecture method with the case method, tutorials, and other modern techniques for imparting legal education. Further, it recommended that all these new methods be made mandatory (Report of Justice Ahmadi Committee, 1994).

On the basis of recommendations, the BCI issued a circular directing all universities and law schools to revise their curricula and directed them to incorporate four Practical Papers. The Bar Council’s action was viewed as a big step toward introducing clinical legal education formally into the curriculum. So far, however, most legal educators see them as providing only limited support for including instruction in social justice lawyering in the new curriculum or for providing social justice to indigent clients. Further, the Bar Council did not assume any responsibility for implementing its new directive. The responsibility for training law students in practical matters was simply passed on to the law schools.

#### **Problems in Initiating Legal Aid/ Clinical Legal Education**

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<sup>10</sup>.
- 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 (Mohammad Ghouse, 1977).

### Conclusion

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.

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