

INTERNATIONAL JOURNAL OF LEGAL SCIENCE AND INNOVATION

[ISSN 2581-9453]

Volume 2 | Issue 3

2020

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Clinical Legal Education in India

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ABSTRACT

This study presents a quantitative assessment of the clinical education in India, Clinical Legal Education has been a significant part of legal education. The concept is fast expanding across the globe also. This paper also represents that 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 paper is to know the history of Clinical Legal Education, as its necessity in curriculum and current initiatives and practices in Indian Clinical Legal Education.

Keywords: *Clinical legal education, Legal aid, Social Justice, and the Reforms.*

I. INTRODUCTION

“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.”

-Article 39-A, Constitution of India

Social justice is an integral part of our constitution and is of paramount importance. As enshrined in our preamble India is a socialistic country for which social justice is imperative. One way to promote social justice is through Clinical Legal Education.

Simply put, Clinical Legal Education is a term which incorporates experiential knowledge which is focused on enabling students to understand how the law works in practice.

(A) Definition

The term ‘Clinical Legal Education’ can be theoretically defined in various ways:

1. **By Richard Lewis** as *“Clinical Legal Education is essentially a multi-disciplined, multipurpose education which can develop the human resources and idealism needed to*

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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.”³

2. **By N. R. Madhava Menon** 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*”.⁴

(B) Etymology of Clinical Legal Education

The use of the word clinical; alludes to a budding doctor getting trained by meeting patients in. Clinical Legal Education similarly refers to a mechanism through which budding lawyers can bridge the gap between class room learning and court practice.

(C) Relevance of Clinical Legal Education

Clinical legal education provides a different and more pragmatic approach to learning the law; it encompasses experimental learning, or “learning by doing.”⁵

It gives opportunities for the knowledge to be applied, and also calls for critical evaluation, reflection and self-examination, so that, students will be self-motivated and highly committed to the work. Furthermore, 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, Counseling, Drafting, Negotiating, and Problem Solving etc. skills. This experiential, hands-on learning can add to their holistic understanding of law and prepare students for the rigors of court practice.

(D) Scope of Clinical Legal Education

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 types⁶:

- 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,

³ Richard Lewis, “Clinical Legal Education Revisited”; Professor of Law, Cardiff University, Wales, United Kingdom

⁴ N. R. Madhava Menon, 1998, Clinical Legal Education; chapter 2, Pg.25, Eastern Book Company Lucknow.

⁵ Frank S. Bloch & Iqbal Ishar(1990), Legal Aid, Public Service and Clinical Legal Education: Future Directions From India and the United States, 12 MICH. J. INT’L L. 96

⁶ Kuljit Kaur, “Legal Education and Social Transformation” available at: <http://alsonline.amity.edu/Docs/alwjlegkk.pdf> (last cited on 12.03.2013)

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. **Examples would include outreach camps held by the community legal cell in villages around Pune.**

- 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. **Examples would include the internships students must mandatorily undertake.**

- 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. **Examples would include Senior Moot Elimination (SME), ICCE and various other national and international moot court and arbitration competitions held.**

II. HISTORICAL BACKGROUND

The emergence of clinical legal education begun in the United States, tightly followed by Canada, Australia and UK. When looking at the development historically it seems clear that it was two major forces that drove the development: - an increasing need for legal aid and a need to reform the legal education and bring in a more practical approach to law practice. As we shall see these two forces worked parallel time wise and are highly dependent on each other. However, from my point of view it is fruitful to look at the development of the education and the legal aid movement separated from each other since the legal aid movement came to form the clinical legal education to a large extent and thus influenced the educational reform of legal education.

III. ANALYSIS THE HISTORY OF CLINICAL LEGAL EDUCATION

The earliest Legal Aid movement appears to be of the year 1851 when some enactment was introduced in France for providing legal assistance to the indigent. In Britain, the history of the organized efforts on the part of the State to provide legal services to the poor and needy dates back to 1944, when Lord Chancellor, Viscount Simon appointed Rushcliffe Committee to

enquire about the facilities existing in England and Wales for giving legal advice to the poor and to make recommendations as appear to be desirable for ensuring that persons in need of legal advice are provided the same by the State.

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. Bishop**⁷, says that; "The concept of seeking justice cannot be equated with the value of dollars. Money plays no role in seeking justice."

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,

Provides 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. In different states legal aid schemes were floated through Legal Aid Boards, Societies and Law Departments. 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 of this 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 of November 1995 after certain amendments were introduced therein by the Amendment Act of 1994

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

A National Legal Service Authority accountable to the parliament but protected from official control was recommended. Simplification of the legal procedure and an emphasis on conciliated settlement outside court has to be the policy of legal aid schemes. The report adopted the three-fold test laid down for determining eligibility: Means test- to determine people entitled to legal aid Prima facie test- to determine whether there was a prima facie case to give legal aid or not Reasonableness test- to see whether the defense sought by a person is ethical and moral

IV. SUPREME COURT ON LEGAL AID

The linkage between **Article 21** and the right to free legal aid was forged in the decision in **Hussainara Khatoon v. State of Bihar**⁸, where the court was appalled at the plight of thousands of under trials languishing in the jails in Bihar for years on end without ever being represented by a lawyer. The court declared that "there can be no doubt that speedy trial, and by speedy trial, we mean reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in **Article 21.**" The court pointed out that **Article 39-A** emphasized that free legal service was an inalienable element of 'reasonable, fair, and just' procedure and that the right to free legal services was implicit in the guarantee of Article 21. In his inimitable style **Justice Bhagwati** declared: "Legal aid is really nothing else but equal justice in action. Legal aid is in fact the delivery system of social justice. 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 we have no doubt that every State Government would try to avoid such a possible eventuality".

In **Suk Das v. Union Territory of Arunachal Pradesh**⁹, 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." This part of the narration would be incomplete without referring to the other astute architect of human rights jurisprudence, Justice Krishna Iyer. In

M.H. Hoskot v. State of Maharashtra¹⁰, declared: If a prisoner sentenced to imprisonment is virtually unable to exercise his constitutional and statutory right of appeal inclusive of special leave to appeal (to the Supreme Court) for want of legal assistance, there is implicit in the Court

⁸ AIR 1979 SC 1360.

⁹ (1986) 25 SCC 401.

¹⁰ AIR 1978 SC 1548

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’.

V. EVOLUTION AND DEVELOPMENT OF CLINICAL LEGAL EDUCATION IN INDIA

Until 1947 India followed the commonwealth, general colonial model of producing mechanical 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 and foster local ambition.

After independence with 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 underlying rationale was that law graduates would learn about being lawyers once they entered practice.

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 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 Report discussed teaching methods and suggested that seminars, discussions, mock trials, and simulation exercises should be introduced.

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 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 poverty¹¹.

¹¹ A. S. Anand, H.L. (1998) Sarin Memorial Lecture: Legal Education in India – Past, Present and Future, 3 SCC (JOUR) 1, 2

It recommended using law students to provide legal aid in two stages:

Firstly, in preparing a case at the preliminary stages, including interviewing clients and drafting documents;

Secondly by appearing in court in petty cases, including examining witnesses and presenting arguments.

In 1977, the **Juridicare Committee** was appointed to revise, update, reevaluate, and supplement the report of Expert Committee. This 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).

Therefore, in 1977, the BCI recommended practical training in the curriculum and as a result the subsequent 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.¹²

In 1981, the **Committee for Implementing Legal Aid Schemes** 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 1994, 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

¹² Journal of Education and Practice www.iiste.org ISSN 2222-1735 (Paper) ISSN 2222-288X (Online) Vol.4, No.26, 2013 159

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.¹³

- ❖ Paper I: Moot-Court, Pre-trial Preparations and Participation in Trial Proceedings.
- ❖ Paper II: Drafting, Pleading and Convincing.
- ❖ Paper III: Professional Ethics, Accountancy for Lawyers and Bar-bench Relations.
Possible skills to be developed:
- ❖ Paper IV: Public Interest Layering, Legal Aid and Para-legal Services

The Bar Council of India issued a circular, resulting in 21 compulsory courses and 2 optional courses, leaving Universities free to add more subjects.

However, 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.

VI. IMPLEMENTATION ISSUES

As students of Symbiosis Law School, we are fortunate to receive quality legal skills education which includes knowledge about drafting, negotiation and also practical experience through various moot courts and Arbitration competitions.

Unfortunately, an overwhelming majority of law schools across the country do not receive such clinical legal education.

The tragedy of legal education today is the inability of the smaller number of colleges maintaining some level of educational standards. *"It is distressing to find that the economics and politics of legal education are successfully thwarting the academic and professional goals in a large of educational institutions today."*¹⁴

A recent UNDP report surveying 39 law schools with legal aid cells found that although 82% of those schools had faculty designated to supervise legal aid cells, 63% of those schools did not give academic credit to students. The study further pointed out that there is no workload reduction given to faculty who are designated to supervise legal aid cells and sometimes communities are not even aware that the law schools provide free legal services.¹⁵

¹³ Bar Council of India, Circular No. 4/1997 (Issued on October 21, 1997);

¹⁴ The Indian Bar Review, Special Issue on the Legal Profession in India, Vol. XIII (3 & 4) 1986, Bar Council of India Trust, New Delhi

¹⁵ United Nations Development Programme India, Access to Justice for Marginalised People:

According to this UNDP study, the key difficulties in developing CLE in India are that:

1. There is a lack of an institutionalized approach towards clinical legal education. Most law schools have an Adhoc approach towards legal aid clinics, the success of which depends largely on the enthusiasm of the faculty and the students.
2. 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;
3. There is no workload reduction given to faculty who are designated to supervise legal aid service;
4. Communities are not aware that the law schools provide free legal services;
5. Under the Advocates Act, full-time law teachers and students are not allowed to represent clients before courts.

Other issues include-

1. Many Indian law schools do not have formal clinical legal education programs. Many schools have “legal aid cells” that are neither directly supervised nor formally incorporated into the curriculum and are often voluntary student-run organizations. Law students do not tend to receive course credit for their work in the legal aid cell.¹⁶
2. Difficulties in supervision and assessment as most of the Law Schools do not supervise the work of the students in lawyer's chambers and court observation. This has resulted in the submission of either fake cases or merely copying from others' journals.
3. Practical papers II and III i.e. Drafting, Pleading and Convincing, and Professional Ethics are mostly taught by practicing lawyers and are confined to mere classroom teaching. The method of evaluation is mostly by a written examination, which does not develop practical skills of pleading.
4. Paper - IV is largely confined to teaching Legal Service Authorities Act and public interest litigation based on some text materials, which is only theoretical in nature. More Law Schools should encourage students to attend Lok Adalats and conducting legal literacy programs etc.

A Study of Law School Based Legal Service Clinics, 2011,

¹⁶ Mohammad Ghose(1977), Legal Education in India: Problems and Perspective, 19 J.I.L.I. 337, 337-48

VII. ROLE OF JURISTS, LAWYERS & STUDENTS

To implement Clinical Legal Education across India, Jurists Lawyers and students need to collaborate.

Jurists should publish more papers and undertake more research on the state of Clinical Legal Education in the country, like Madhava Menon. They should also formulate cost effective ways to impart Clinical legal education across India bearing in mind, the porosity of resources.

Jurists must pressurize the ensure Bar Council of India to repeal the Rule which prevents practicing advocates from sharing their knowledge in classrooms. Jurists need to address the lack of social relevance and humanistic approach in law school curriculum which alienates social values, ethics, gender perspectives, views of minority etc.

The role of jurists would also entail lobbying for the integration of law curriculum with other disciplines. It is time to appreciate that the subject matter of economics, sociology, anthropology, philosophy, literature and psychology are essential to the education of the future law graduates.

Lawyers should be made Cognizant of their duty to give back to the schools of law from which they rose. Such a Positive culture will ensure a cyclical Dispersion of Clinical legal education.

Lawyers need to play the role of educator, and counselor. Students should be required to undergo the entire process of lawyering ideally by exposure to actual cases to learn the details of lawyering from the experience of being a lawyer. In interacting with the clients and confronting facts of diverse nature and presenting them in the court, the student lawyers get the real touch of the picture of the society. They understand law in the context of the problems of the society and can form opinion about the quality of a particular law and social reform.

Students should be made cognizant that to become successful lawyers along with a high GPA, legal skills are extremely valuable. These skills will remain for Life and determine whether the student becomes a successful lawyer. Instead of mechanically undertaking internships and falsifying internship certificates students should take a genuine and sincere interest in understanding the practical functioning of the Indian judicial system. Furthermore Students should be made aware of their moral responsibilities and the code of ethics of lawyers.

For the legal education to have any practical learning it is important to guide the students learn the lessons of ethics, morals, law, justice, human rights and society in them inter relationship, so that they can better identify their tasks in the service of the people and in progressive development of the society.

VIII. SUGGESTIONS AND CONCLUSION

It is necessary to emphasize that the purpose and scope of legal education must be to prepare students for the practice of the profession of law. Clinical Legal Education must be included as a part of curriculum. To promote clinical legal education in India, it is critical:

- for the Bar Council to amend its 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;
- for vice-chancellors and other administrators of Indian law schools to devote resources to hiring faculty and offering clinic classes with low student-teacher ratios;
- for law professors to develop sustainable clinics and work with law school administration to implement them;
- for non-governmental organizations to collaborate with law schools to further their work with communities and advance the social justice mission of education;
- for legal services authorities 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;
- Moreover, extra resources must be allocated to the teaching and running of the clinic and for grant making or funding agencies to fund law-school-based legal clinics to engage with communities in strengthening democracy and improving governance for the advancement of justice and the rule of law.

In conclusion only a handful of national law universities and private law schools impart clinical legal education. It is imperative that Bar Council of India along with judicial committees is as well as the government implement Clinical Legal Education across the 2000+ law schools in the country.

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