THINK INDIA (Quarterly Journal)

ISSN: 0971-1260
Vol-22-Issue-3-July-September-2019

An Analysis On Clinical Legal Education In India

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Abstract

Legal education is an instrunment for social design. It is a technique, arena and platform for rational, orderly and non-violent settlement of disputes and handling of conflicts. The establishment of high quality legal education is a pre requisite condition to produce high quality advocates, Judicial officers and Government law officers. The need for such education is felt not only in the developing and underdeveloped countries but also in the developed nations who have deemed it necessary to assess and revise curricula and methodologies of law courses with an objective to update them for meeting new challenges and needs of their societies. Though Indian legal education has seen rapid growth after independence, there still exist a large gap in the need for and the availability of legal representation. In cases where parties cannot afford a lawyer and are provided legal services by the state, the quality of that legal representation is often questionable. Therefore the need for clinical legal education, or establishing legal aid clinics at law schools, where law students can provide legal advice to indigent people cannot be over emphasized. Under this model, law students would be trained to be the productive members of the community to address the pressing demand for social justice in the country. Therefore, law schools in India do have legal aid clinics but the major challenge is that there is a lack of an institutionalized approach towards clinical legal education. There is an urgent need to formalise clinical legal education programs in Indian law schools both for purposes of providing social justice as well as to enhance skill-based training to law students and much-needed legal services to the poor. This paper highlights the issues involved in providing clinical legal education to law students as part of academic curricula and also suggest remedies to overcome such challenges.

Key words: clinical legal education; challenges; remedies; India

Introduction:

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In a democratic country like India, where rule of law is the driving force of the Government, legal education assumes great significance. Excellence in legal education is extremely important, because it will help in shaping the quality of the rule of law. Legal education makes men law- abiding and socially conscious. It also paves the way for achieving socio-economic justice. In other words, legal education is the heart and the very soul of the society. In ManubhaiVashiVs. State of Maharashtra[1]Hon'ble Supreme court held that the legal education should be able to meet the ever growing demands of the society and should be thoroughly equipped to cater to the complexities of different situations.The invaluable experiences that legal education can offer to future advocates are several. Primary among them is exposure. There is always close relationship between legal education, public interest and social justice because lawyers use their education for the benefit of the society. They render their services to those who are unable to afford legal services and in addition, challenge injustice under legal system. In the present era of information capitalism, economic liberalization and WTO regime, legal profession in India has to cater to the needs of a new brand of legal consumer/client requirements and also permitting foreign companies or collaborations into India. Hence, the additional roles that are to be played by legal professionals include policy planner, business advisor, negotiator among interest groups, expertise in articulation and communication of ideas, mediator, lobbyist, law reformer etc.

But unfortunately law colleges in India adopt traditional method of teaching wherein students are confined to classroom environment. As a result, students are not exposed to real life situations. When once a law student completes his/her course of study, he/she comes out with theoretical knowledge and they are unable to understand and many a time are not in a situation to get acquitance with complex legal procedures. Many are not in a position to draft basic documents in spite of their academic excellence. By the time, when students comes out with their degree, they are not in a position to draft basic commercial contracts. It would have been nice if colleges taught practical skills like contract drafting, due diligence, compliances, negotiation, how to handle court registries, strategize litigation, how to draft various kinds of applications before different forums or even how to write a memo advising the clients.Access to justice is the hallmark of a civilised society. There is no access to justice where members

[1]AIR 1989 Bom 296.

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of a society (especially marginalised groups) fear the system, see it as alien and do not access it, where the justice system is financially inaccessible, where individuals have no lawyers, where they do not have information or knowledge regarding rights, or where there is a weak justice system. It has been stated that a predictable and accessible legal environment, with an objective, reliable and independent judiciary, is an essential factor for good governance and the realisation of human rights. In India, provisions for legal aid to poor have been incorporated by the legislature through Legal Services Authority Act, 1987 but in reality,many are not able to have recourse to Legal aid and justice due to untrained advocates. Injustice, inequity and inefficiencies in the legal system of a country obstruct development.

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. Indian law students are not properly trained to provide legal assistance as an arbitrator or negotiator. During the course of study, students are made to read tons of case laws, memorize notes for the exam and perhaps even made the students to read the statutes to an extent as well. Even then, students know nothing about how to do client work.The reason behind for all these problem is traditional teaching methods adopted in law colleges. The complexities of modern life require lawyers to play multiple roles like advisors, negotiators, arbitrators, mediators, and administrators. The present day legal profession calls for much more skills than what was required for an advocate a decade or so back. The field of lawyering is becoming highly competitive in that sense. Therefore, every law college has to structure in such a way to offer those skills that are required to make students to meet the demands of the modern society. So, to increase social and professional responsibilities and to render services to indigent people, law students have to be trained by utilizing the techniques of clinical legal education

Clinical Legal Education- Meaning:

Clinical legal education is a progressive educational ideology and pedagogy through which theory and practice can be brought together. Clinical Methodology is most often described as "learning through doing". The concept is borrowed from medical education where medical students learn diagnosis and treatment around sick patients in a hospital under the direct supervision and guidance of hospital doctors. The unique aspect of the clinical method is the active participation of the students under faculty guidance and supervision. In

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the context of legal education, it refers to any law school course or programme in which law students participate in doing what lawyers usually do including representation of clients under the supervision of a lawyer/teacher. It also includes teaching and guiding students to look at issues from diverse points of view in order understand the legal process in the social policies and processes. Thus, Clinical Legal Education is directed towards developing the perceptions, attitudes, skills and sense of responsibilities which the lawyers are expected to assume when they complete their professional education.[2]

History of Clinical Legal Education in India:

The roots of clinical legal education can be seen both in the Legal Aid and Legal Education Reform Movements in India. The quality of legal education was quite uneven in the colonial era. After the establishment of British rule, calls for reform in legal education were made in 1855. For the development of clinical legal education, many committees and commissions were established during British rule. For almost a century from 1857 to 1957 a stereotyped system of teaching compulsory subjects under a straight lecture method and the two year course continued. The need for upgrading legal education has been felt for long. Numerous committees were set up periodically to consider and propose reforms in legal education such as:

- Calcutta University Commission [1917-1919];
- University Education Commission, was set up in 1948-49;
- In the year 1949 the Bombay Legal Education Committee was set up to promote legal education. It recommended that practical courses should be made compulsory only for those students who choose to enter into the legal profession and at the same time, teaching method should include seminars or group discussions, moot court competitions etc.

The 14th Report of the Law Commission (Setalvad Commission) of India[3]has recognized the need for reform in the system of legal education and recommended that the principal method of teaching being lecture to be supplemented by tutorials, seminars, moot courts, and

[2]Prof. N. R. MadhavaMenon's "Reflections on Legal and Judicial Education", edition 2009, p. 137.
[3]Law Commission of India, 14th Report on Reform of Judicial Administration (1958).

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case methods.[4]Thus, although the Commission's Report didn't deal directly with improving practical skills, it did so indirectly by supporting the use of teaching methods that could be more helpful in developing various other skills. There were demands for improved training in skills and professional ethics in law school. As a result, in 1977, the Bar Council of India (BCI) has recommended introduction of practical training papers into the curriculum. The Reports of University Grants Commission (UGC) has also played vital role in the history of Clinical Legal Education.The report has emphasized the role of legal education in developing law as a hermeneutical profession, explaining that lawyers must be taught a variety of skills and sensibilities. It outlined the objectives of reformed teaching as making students more responsive to learning and making them demonstrate their understanding of law.The next important step in the evolution of Clinical Legal Education began at the conference of Chief Justice of India in 1993 in which it has been decided to constitute a committee which shall suggest apt steps that need to be taken to assure that law graduates acquire sufficient experience before they become entitled to practice in the courts. It found that the general standard of law colleges in country was deteriorating and that the syllabus should be revised to include practical subjects so that the students could get professional training.[5]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.[6] Later, the Bar Council of India issued a circular in1997 using its authority under the Advocates' Act 1961 directing all universities and law schools to revise their curriculums. It included 21 compulsory courses and 2 optional courses, leaving Universities free to add more courses. The circular also mandated the inclusion of 4 practical papers. Law schools have been required to introduce these 4 practical papers since academic year 1998-99, which was viewed as a big step toward introducing Clinical Legal Education formally into the curriculum. Also, the report of the Law Commission of India in 2002 stated that "the Commission considers that Clinical Legal Education may be made mandatory subject".

[4]http://www.legalserviceindia.com/legal/article-199-legal-education-system-in-india.html. Last visited on 17.08.2019.
[5]http://www.lawyersclubindia.com/articles/Clinical-Legal-Education-An-Overview-2332.asp. Last Visited on 24.08.2019.
[6]Report of Justice Ahmadi Committee, 1994.

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Clinical Legal Education is only one way in which theory and practice can be brought together.The first hand experience method will really educate the law students in understanding the practical aspects of law. Clinical legal education provides an effective and sustainable solution to two-fold problem: one is to provide legal knowledge to marginalized and disadvantaged groups who does not have understanding or financial means to access the law and their rights and on the other hand, it makes the students to understand and to be aware of challenges faced by indigent people to get social justice. Clinical programmes and methods engage the student in a whole range of learning objectives necessary to think and act like a lawyer, particularly when the student deals real life situations in a legal aid clinic. Interests are cultivated, attitudes are developed, skills are imported, value clarification is provided, ethical decisions are made and confidence and responsibility experienced by the student in a clinic setting.[7] The learning is internalized both at the "cognitive level" as well as in the "affective domain".Thus the clinical method helps law schools to venture on subjects like law reform, social policy and professional responsibility. Perhaps, the clinical method also offers better scope to teach substantive areas which non-clinical methods attempt less effectively. Thus substantive areas such as relationship between substantive and procedural rules and the early development of a case through facts of social relationships can be learnt better through practice in a clinical setting than by lectures or discussion method. Many other activities such as law reform projects, legislative drafting clinics and law enforcement assistance programmes in association with police, prosecuting and correctional agencies are also possible areas for clinical experience.

Challenges in executing Clinical Papers:

Introducing mandatory four practical papers was viewed as a big step in offering practical layering skills. As the Clinical Legal Education has been formally introduced into legal education, the biggest challenge which hascome ahead was of developing legal pedagogy to offer the four practical papers in meaningful way. There are many challenges which comes on the way of its execution.

[7]MadhavaMenon "Designing a Simulation-Based Clinical Course: Trial Advocacy" (in) A Handbook On Clinical Legal Education P. 178.

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1. One of the components in clinical paper- I is Moot Court. Moot Court participation give students a chance to hone their speaking, advocacy, and critical thinking skills. Moot court competitions benefit every law student. It provides an opportunity for students to build advocacy skills, sharpen public speaking skills, and engage in legal analysis in a variety of areas of law. The skills are not only beneficial for future trial attorneys but also enhances the ability to speak persuasively and think on their own which is invaluable in all types of legal careers.In recent years, as part of the academic activity law schools organize national and international moot court competitions every year. Participation and winning the competition is the prestigious for law students. Students have to be properly trained before sending them to the competitions. Few students take initiative on their own and participate in the competition. Many students participate only in the compulsory moot courts conducted by their respective law schools as part of their clinical paper. Most of the law schools/colleges in India neither have time nor human resource to train the students. So, for their clinical paper, students have been provided with same cases year after year or sometimes, they have been provided with decided cases. As a result, students neither work for the enhancement of their skills nor understand the sanctity of moot courts. The reason for introduction of moot court as clinical paper is to enhance communication skills, drafting skills, articulation skills etc. of the students. Thus, the ultimate purpose of introduction of moot court as clinical paper has not been properly utilized.

With regard to pretrial preparation, the Law schools/colleges have neither expertise nor human resources to monitor the students in lawyers' chamber. As it is practically impossible for the faculty to assess the work done by students in lawyers' chamber, assessment was carried on only on the basis of the diary maintained by the student. There was simply no mechanism to monitor even the attendance of the students in lawyers' chambers. A certificate from the concerned lawyer that the student underwent training suffices. Same thing continued in case of third component, of Court Observation. Observation of one criminal and once civil trial in trial courts received no attention from the faculty as they do not have enough human resource to physically monitor the student's attendance. As there is no mandatory obligation on the Bench to supervise the attendance and involvement of the students in the proceedings before them. Evaluation of this component was carried out based on the diary maintained by the students. Very often students used to copy the diary from other students or simply copy from the known advocates files.

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2. 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.

3. Training in Legal Aid as Practical Paper - IV is largely confined to teaching Legal Service Authorities Act and public interest litigation based on some text materials. Many law colleges ask students to write comments on important Supreme Court judgments and thereby award marks based on it.

Thus, the introduction of clinical papers has not given expected result. In other words, clinical legal education has failed in its mission of offering services to the society and skills to the students. Even an honest effort by law colleges to offer effective Clinical Legal Education to the students faces several serious challenges. These challenges range from amending laws, restructuring financial resources, changing mind sets, and geographical, cultural and language differences.

Globalization has brought tough competition for Indian advocates. India is not supposed to prevent the entry of foreign lawyers into its territory. Indian advocates has to compete with the knowledge of foreign lawyers. The legal profession, today to a large extent, requires lawyers to represent clients not only withinbut also outside national frontiers. But, regrettably, our nation's law schools are failing to prepare graduates adequately for the practice of law that is actually required to face global challenges. Providing students with the analytical skills necessary to "think like lawyers" by teaching them to read and dissect appellate decisions may no longer be sufficient to meet the demands of the legal marketplace. Drastic steps have to be taken to address the numerous challenges in legal education because law and legal education has an important role to play in protecting rule of law andthe democracy as a whole. Lawyers are the backbones of the society and they are social engineers. Some of the reforms like providing more practical skills training for law students and adopting innovative teaching practices that focus more effectively on simulated client experiences may solve the issue to a considerable extent.

Suggestions:

Though the BCI has made it mandatory to have clinical legal education in the

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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 suggestions:

1. Collaboration:

Law schools can do a job of preparing students to work collaboratively. Group projects and presentations should be routinely incorporated into course requirements, as it has been commonly done in business schools. It has been said by Professor Gerry Hess, working in a group increases a student's appreciation for diversity, decreases their sense of isolation, and helps them learn to mediate conflict[8]. It is vital for law students to learn how to collaborate with non-lawyers because client problems are rarely purely "legal" in nature.[9] The pursuit of client's requirements or the resolution of their disputes often requires lawyers to work collaboratively with professionals from other disciplines like paralegals, social workers, accountants, and expert witnesses, such as doctors, scientists, and engineers etc.

For example, a course titled "Advising the Business Planner" can be developed, wherein MBA students can be instructed to develop a business plan for a new venture and for the same, law students can be paired with them to serve as legal advisors to the fictional new company. A similar collaborative model can be developed in many other courses; for example, in a Forensic Evidence course, law students could be paired with graduate nursing students to develop medico-legal protocols for the collection of evidence samples in criminal cases. This collaborative work may bring change in law students who are typically doing assignments, paper works without any practical knowledge and this in turn help them to understand the practical aspects of law on their own.

2. Oral Examination

[8] Gerald F. Hess, *Heads and Hearts: The Teaching and Learning Environment in Law School,* 52 J. Legal Educ. 75, 94-95 (2002).

[9] See Alexis Anderson, Lynn Barenberg& Paul R. Tremblay, *Professional Ethics in Interdisciplinary Collaboratives: Zeal, Paternalism and Mandated Reporting,* 13 Clinical L. Rev. 660 (2007).

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Effective communication skills are essential to the practice of law. Yet law schools primarily teach, reinforce, and evaluate only one form of communication, i.e., written communication. Other than moot court and advocacy courses, no much emphasize has been laid on oral presentations. Whether lawyers are communicating in the courtroom, in the boardroom, or in individual meetings with their prospective clients, their success depends on effective oral expression. Oral communication and listening skills are especially relevant to interviewing and counseling clients.

One of the most effective vehicle for emphasizing oral communication across the law school curriculum is to incorporate oral presentations and examinations in smaller classes. Written essay examinations are not helping law schools to predict students' understanding of the material or their ability to apply what they have learned to do in new contexts. It is a general view that multiple assessment formats provide students with a better opportunity to demonstrate their ability and knowledge and allow them to practice responding to unanticipated questions—which is an essential lawyering skill. Many National Law School faculty use oral evaluation techniques in seminars, whereby students are instructed to present draft research papers as part of their academic curriculum.A similar objective could be accomplished in smaller lecture classes and therebythe final grades must be based on a mixture of oral and written examinations.

3. Working through Problems

It has been identified that problem solving is one of the most important skills for attorneys. Problem solving is "the process by which one starts with a factual situation presenting a problem or an opportunity and figures out the ways in which the problem might be solved or the opportunity might be realized. "Lawyers solve problems, and they work with raw materials much more complex and variable than judicial opinions".[10]

Yet, the traditional law school pedagogy is based on the case method which teaches a very specific and particular type of analytical reasoning. The case method can study appellate decisions to uncover legal principles, classify and organize these principles, and then develop a structure that will allow them to apply the doctrines to a more general set of facts in order to

[10]See Am. Bar Ass'n, Legal Education and Professional Development—An Educational Continuum, Report of the Taskforce on Law Schools and the Profession: Narrowing the Gap 259-60 (1992); William M. Sullivan et al., The Carnegie Found, for the Advancement of Teaching, Educating Lawyers: Preparation for the Profession of Law at 302 (2007).

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reach a solution to legal questions. This process of conceptualization and categorization has been heavily emphasized in law schools since British rule and thereby employed an inductive form of reasoning and teaches students to reason from specific examples (i.e., appellate decisions) to universal propositions. On the other hand, a problem-oriented approach to law teaching forces students to employ a more deductive reasoning strategy. Rather than being presented with an end product of a case— the appellate decision—students are given the raw material of facts and are asked to identify objectives, strategies, and potential solutions. Faculty members can present students with problems at the end of each section of the syllabus to help them process the material studied to date and review these problems with the students either in class or in smaller study groups. For example, in a Criminal Law course covering homicide, students might be provided with a detailed police report and asked to place themselves in the shoes of the prosecutor to determine what charges to be presented to the Judge and thereby making the students to distinguish between degrees of murder and culpable homicide. In a property course, students might be presented with an intake interview from new clients outlining a couple's assets and objectives and asked to make recommendations about ways to structure legal instruments that would accomplish the clients' financial and personal goals. Through these techniques, students can develop problem-solving skills throughout the semester.

4. Stress on Practical Judgment

Faculties must utilize the services of practitioners to model practical judgment. For example, in a Civil Procedure course, a faculty member could invite to class a panel of distinguished practitioners involved in a recently settled mass tort action to discuss how the plaintiff class was structured and certified and what considerations went into negotiating an acceptable settlement. Similarly, in a Mergers and Acquisitions course, a faculty member can invite class counsel for two recently merged companies to discuss how the deal was structured and, in particular, what factual and financial considerations guided the companies' choice of legal alternatives. Certainly there are costs and complications associated with such panels like difficulties of planning and scheduling, trade-offs with respect to lost lecture time, so on and so forth. What the researcher is suggesting, however, is that we all should be sensitive to the value of such experiences in training future professionals, and be willing to incorporate them in our teaching where feasible and appropriate.

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5. Career Paths Course

The legal profession has become increasingly mobile. This is the right time where the law school has to respond to this sharp rise in advocate mobility. Firstly, faculties must help law students to make thoughtful choices about their job decisions, so that they are less likely to be surprised or disappointed about the law practice environment in which they start their careers. Secondly, faculties must expose law students to a broader conversation about career trajectories in legal profession, which will better equip them to assess professional opportunities as they arise throughout their careers.

The above mentioned objectives can be accomplished by offering a "Career Paths" course (e.g., "Planning and Managing a Legal Career") which enable students to construct a framework for assessing their professional skills and values. The goal of this course would be to have students engage in a self-assessment process that will help them to clarify their professional interests, skills, and values. After such a self-assessment, students willbe able to study the demographics of the legal profession, career options in different labor markets etc. They would also examine work-life balance issues in various sectors of the legal profession.

Conclusion:

As the world has become a 'global village', the concept of 'local practice' widened to that of 'transnational practice'. In the present day, an innovative programme of integrated interdisciplinary legal learning and in the new areas such as comparative Law, information technology, intellectual property, corporate governance, human rights, environment, and international trade law, investment, and commerce, transfer of technology, alternative dispute resolution and space is important. Comparative legal education for professional excellence is needed in these and other areas on a global basis. If teaching is to give only knowledge and capacity to re-call information whenever needed, the lecture method can substantially meet the goal. However, if law teaching must give the student further intellectual abilities for organizing and processing that information to achieve particular results, it is obvious that the law curriculum and the teaching methods should be informed with specific learning objectives (skills, policy determination and evaluation) and a careful of teaching techniques

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(lecture, group discussions, problem solving and role playing).[11]All the above mentioned suggestions are pedagogical approaches that shall be undertaken by law school faculty members to a wide range of legal subjects like procedure, contracts, torts, criminal law, evidence, constitutional law, corporate law, property law, administrative law, jurisdiction, labor law, commercial law and on and on and on. Experimenting with new methodologies will not only improve the educational experience for students, but it will also reinvigorate and reenergize teachers. The goal of the researcher in this paper is to suggest some of the modest and interim reforms that are perfectly attainable in the short run and shall be undertaken to prepare law students for the practice of law. Individual faculty members and administrators must undertake these initiatives immediately, without waiting for the results of faculty studies and fundraising initiatives. None of the above mentioned suggestions require substantial new resources or major structural changes to the law school program.

[11]The Year-long apprenticeship system as a pre-requisite for enrolment is brought back by the Apprenticeship Rules 1995.