CHAPTER II

THE CONCEPTUAL FOUNDATION

AND

ANALYTICAL FRAMEWORK
2. The Conceptual Foundation and Analytical Framework

2.1. Legal Education in India.

Legal education in India is predominantly regulated by the Bar Council of India in furtherance of powers vested in it under the Advocates Act, 1961. Legal education has been imparted by different Law Colleges in India, which includes those funded and managed by the Government; financially aided by the Government but privately managed; privately managed Colleges receiving no government aid; and University Law Colleges managed by the University Departments receiving government aid.

However, in the latter category, most of the University departments are disassociating from imparting LL.B. instruction and focusing exclusively on postgraduate instruction and research. In many regions, legal education was imparted by Law Departments in Arts, Science and Commerce Colleges, wherein the head of the institution, namely the Principal, would in most cases be a non-law teacher. Traditionally, legal education has been offered as a three-year graduate degree that could be pursued after completing at least a

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1 Advocate Act, 1961 Section: 7 [(1)] The functions of the Bar Council of India shall be- (h) to promote legal education and to lay down standards of such education in consultation with the Universities in India imparting such education and the State Bar Councils;

Section 49 [(1)] The Bar Council of India may make rules for discharging its functions under this Act and particular, such rules may prescribe.

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

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

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

(d) The standards of legal education to be observed by University in India and the inspection of Universities for that purpose;
bachelors’ degree in any stream of education. However, with the last two decades beginning with a path-breaking initiative in the form of the National Law School of India University, there is a growing trend towards a five-year integrated LL.B course which may be pursued after higher secondary studies.

This novel experiment evolved out of, among other things, concern about the quality of legal education expressed in several conferences and reports, which advocated structural changes in legal education and suggested introduction of a five-year integrated law course. As a first step, the Bar Council of India established the National Law School of India University (herein after referred to as NLSIU), a deemed Law University in Bangalore under a similarly titled special statute.

A few pertinent features of the said Act, which lent a unique identity to the institution, include “complete administrative and academic autonomy together with flexibility for innovation and experimentation in the pursuit of excellence.” In a novel and bold move, the management of the institution was largely vested with the organized legal profession in the country.

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2 The National Law School of India Act (Karnataka Act 22 of 1986)

The Chief Justice of India holds responsibility as Chancellor of the NLSIU and the Chairman of the Bar Council of India as Chairman of its General Council. A large number of retired Judges of the Supreme Court and High Courts as well as Senior Advocates have offered to assist the NLSIU in its teaching and research programs, making education at NLSIU a rare and exciting experience for the student body.\(^5\) This initiative thus presented a model of an “Academy-Bar-Bench” venture in the field of legal education in India.

Successful implementation of the five-year course design in the NLSIU, prompted many other institutions across India to follow the suit. The first two years of this course comprises of the undergraduate part of liberal education, which covers subjects such as Sociology, English, History, and Political Science.\(^6\) Some of the institutions also have a few law subjects during the first and second years of the course.\(^7\) Many Universities confer B.G.L (Bachelor of General Laws) Degree after completion of 3 years in the course. This intermediate degree is recognized as being equivalent to an undergraduate degree.

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\(^5\) See [http://www.nls.ac.in/about_history.html](http://www.nls.ac.in/about_history.html) (last visited 6-6-08).


\(^7\) For example National Law School of India University offers Constitutional Law; Contract Law, Criminal Law and Theory of Law. Detailed curriculum available at [http://www.nls.ac.in/academic_programs_undergraduate_courses.html](http://www.nls.ac.in/academic_programs_undergraduate_courses.html) (last visited 6-6-08); V.M. Salgaocar College of Law offer General Principles of Contract, Law of Torts, and Legal Methods in first two years. For detailed curriculum visit [http://vmslaw.edu/syl5yr1.htm](http://vmslaw.edu/syl5yr1.htm) [http://vmslaw.edu/syl5yr2.htm](http://vmslaw.edu/syl5yr2.htm) (last visited 6-6-08) NALSAR University, Hyderabad offers Legal Methods, Law of Torts, Criminal Law, Family Law etc., Detailed curriculum available at [http://www.nalsarlawuniv.ac.in/academic-programes.html](http://www.nalsarlawuniv.ac.in/academic-programes.html) (last visited on 6-6-08).
Thus the students have an option of discontinuing their studies after achieving such intermediate degree and seek employment or engage in other educational pursuits. The same also enables the students to answer any competitive exams, such as the Indian Civil Services while they continue their pursuit of a professional legal qualification. This pattern thus saves one year from the traditional route to achieving a professional legal qualification and also entitles the students to reap the benefits of a three-year intermediate degree.

With the success of the NLSIU, many other States also adopted the same model and established National Law Schools. Some of such National Law Schools expanded on the experimentation process, introducing science, management and other liberal subjects in the first two years of the integrated course and offered the intermediate degree in different streams. For example, National Law University, Jodhpur offers five-year integrated law programs with intermediate degrees in three streams, namely, Bachelor of Political Science, Bachelor of Business Administration and Bachelor of Science (Life and Physical Sciences).

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The compulsory subjects prescribed by the Bar Council of India are envisaged to be taught in the comparative context of the respective streams, which could perhaps assist in grooming legal professionals skilled in the respective streams and capable of meeting the needs of corresponding clientele. Similarly, the Gujarat National Law University offers 3 integrated 5-year programs, namely, B.A., LLB (Hons), B.Sc., LLB (Hons), and B.com. LLB (Hons).

The minimum eligibility criteria for seeking admission to institutions imparting education in law, in terms of three-year as well as five-year courses are laid down by the Bar Council of India. However, there is no uniform procedure as far as the admission process is concerned. The admission procedure varies from State to State. Few States have a Common Entrance Test, whereas in the others, admissions are based on the marks obtained in the qualifying examination.

The Bar Council of India Rules, prescribe the minimum eligibility requirements for admission to the three-year law course to be a bachelor’s degree in any stream of education, with minimum 45% marks in the qualifying examination. Whereas, the five-year law course requires completion of Higher Secondary or equivalent, with minimum 45% marks. The above would be the sole criterion for admission to the five-year LL.B program where no common entrance examination is held. In case of a State-Level Common Entrance Test being held, the minimum marks in a qualifying examination are stipulated to be

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9 See, NLU-The Third Generation Experiment of Integrated Legal Education, NLU Jodhpur, available at http://www.nlujodhpur.ac.in/aboutnlu.html (last visited 6 — 6- 08)

10 See http://www.lawentrance.com/gnlu.htm (last visited 6 - 6- 8)
40%. However, in the latter case, the student would have to pass in the entrance test, securing a minimum 40% marks.

The curriculum for the three-year as well as five-year programs is prescribed by the Bar Council of India and therefore theoretically uniform throughout India, though differences exist in implementation. Such differences may be due to number of reasons including obvious differences in human and material recourses available to the educational institutions. After 1997, most of the legal educational institutions changed from the yearly pattern of instruction and examinations to the semester pattern. This could be attributed to the increase in number of subjects prescribed from 18 to 28 in three-year course and from 30 to 36, including non-law subjects in the five-year course.

Evaluation of students is mostly through theoretical examinations at the end of the year or semester, as the case may be. These examinations are generally conducted by the respective Universities to which the legal educational institutions are affiliated. Only legal educational institutions which have autonomous status or are established or deemed as Universities would be conducting examinations themselves.

After successful completion of the respective course, as discussed above, the concerned Universities would award a law degree, which, subject to meeting some other minor conditions, would entitle candidates to enroll with any State Bar Council and practice as full-fledged advocates as per the rules of the respective State Bar Councils.
Thus, unlike some countries there is currently no requirement for a special National or State-level Bar Exam to enroll at the Bar as far as India is concerned. As shall be discussed in detail in Chapter – III of this thesis, in absence of such requirement, and in order to ensure that the candidates had at least gone through a process of gaining theoretical knowledge and some amount of practical exposure before being called to the Bar, different measures have been adopted over the years.

Traditionally, candidates were required to undergo two-year program of instruction in legal educational institution followed by a year as a trainee. However, the compulsory one year training requirement was dropped under the new scheme adopted under the Advocates Act of 1961.

Thereafter, concerns on the quality of the legal education led to the introduction of a one-year apprenticeship requirement vide an order of BCI but the same came to be struck down by the Supreme Court of India as being a measure *ultra vires* to the powers vested in the BCI by the Advocates Act, 1961. Thus, prior to the order of the BCI in the year 1997\(^{11}\) regarding introduction of four practical papers, the authorities viewed an apprenticeship subsequent to completion of a degree in law as the only method of providing practical exposure to the candidates.

This is not to say that no other methods were privately suggested and initiated. In fact, as briefly stated in sub-chapter 1.3., Professor Menon demonstrated the

use of student run Legal Aid Clinics in offering legal aid to the needy and also providing practical skills to law students in late 1960’s and early 70’s.\textsuperscript{12}

2.2. Clinical Legal Education: A New Pedagogy

The concept of practical problem solving, whether by working in a laboratory or in the field, as an important means of developing skills has been in acknowledged since time immemorial. However, the concept of Clinical legal education, albeit one of the most outstanding developments, came to be incorporate in the teaching methodology only from the early twentieth century. It was in 1901, that a Russian professor, Alexander Lyublinsky, first proposed Clinical education in law on similar lines as in medicine.\textsuperscript{13}

Until Clinical programs entered the scene, skills training and social justice work were for all intents and purposes, off the legal education agenda. Legal doctrines dominated the Law School syllabi in both countries, with virtually all instruction offered through classroom courses dominated by “Socratic” dialogue and appellate-court-oriented case books in the United States and traditional lectures in India.\textsuperscript{14} Concentration on “the Law” pushed consideration of law practice to the background, to the point that any practical

\textsuperscript{12} For more details See, sub chapter 2.3.1


training seemed out of place in Law School — except when preparing for a moot court. Legal education was “Law School”, not “lawyer school.”

Clinical legal education is directed towards developing the perception, attitudes, skills and sense of responsibilities which the lawyers are expected to assume when they complete their professional education. Clinical legal education has wider goals of enabling law students to understand and assimilate responsibilities as a member of public service in the administration of law, in the reform of the law, in the equitable distribution of the legal services in society, in protection of individual rights and public interest and in upholding the basic elements of professionalism. Thus, Clinical legal education provides students with opportunities for professional and intellectual development and prepares them for the practice of law, as competent, and socially as well as professionally responsible lawyers.

The earliest reference on Clinical legal education in United States could be traced in the year of 1917. Since that time, Clinical teaching has become an integral part of legal education in most developed and developing countries. The global Clinical movement started taking hold in the late 1960s; however,

15 Ibid.


18 Ibid.
by that time Law Schools in the U.S. took the lead in providing Clinical legal education.¹⁹

The Clinical movement began to gain momentum in the United States only after the Civil Rights Movement and President Lyndon Johnson’s War on Poverty in the mid 1960’s. Since then, Clinical legal education has become an integral component of the curriculum at virtually all Law Schools in the United States of America. It institutionalized by way of Law School Clinics in several countries such as South Africa, ²⁰ East and South Asia, ²¹ Latin America, ²² Australia, ²³ Canada, ²⁴ China, ²⁵ Eastern Europe and the former Soviet Union. ²⁶

¹⁹ Ibid.


It gained momentum globally with funding from international donors. The Soros Foundation funded Clinics in Eastern Europe and subsequently expanded its activities in Latin America, Africa and Asia. From 1996 Soros-funded initiatives resulted in the establishment of more than 75 Law School Clinical Programs.27

The Ford Foundation funded several major initiatives in Clinical legal education in South Africa, Chile, Argentina, China,28 India,29 Sri Lanka and Bangladesh.

American Bar Association, Central European and Erasian Law Initiative (ABA/CRRLI) is the largest pro bono project undertaken by the ABA and

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26 For example, the nascent and largely donor-driven Clinical legal education movements in Russia and Ukraine of the mid-1990s are now undisputedly indigenous movements. Many Clinics, once thought to be unsustainable by early critics of the movement, are now fully self-sustaining, with some even serving as model Clinics and training centers for less advanced Clinics. For example, model Clinics now exist in the Russian cities of Tver, St. Petersburg, Moscow, and Krasnoyarsk and in the Ukrainian cities of Volinsk, Ostrog, and Uzhgorod. See Rule of Law Initiative, American Bar Association, available at http://www.abanet.org/rol/programs/resource_legal_education.html, last visited(02 – 06 – 08 )


28 See http://www.fordfound.org/regions/china/fields(last visited on 15-06-08)

founded in 1990. In addition to its funding in Central and Eastern Europe, it now has several programs in Asia, Africa and Latin America. One notable example of its successes is in Russia where 100 Law School Clinics operate and four text books have been written in Russian.

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 UN High Commissioner for Refugees (UNHCR) and Legal Assistance through Refugee Clinic (LARC) carried out many Refugee Law Clinics in the Central and Eastern European region. At present LARC is supporting the training of about twenty Refugee Clinics in this region.

Global Alliance for Justice Education (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.

In most of the countries initially the primary focus of Clinical legal education was on legal aid, social justice and professional responsibility. However, this

30 http://www.abanet.org/rol/europe_and_eurasia/ (last visited on 16-06-08)
33 See www.gaje.org
focus began to shift from client and community service to teaching skills, particularly in U.S. due to fading of student interest in public interest work. ³⁴

Prof. Kenneth. L. Penegar recommended following steps for a bright future for Clinical education; ³⁵

(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;

(ii) Develop suitable applications of social science findings to improve access to justice of disadvantaged or unorganized groups. For example, if we know that an organization stands more chances to win in a litigation than an individual litigant, why not the Clinic mobilize and organize such individual litigants as a influence group to seek justice;

(iii) Evolve delivery systems involving team services not only with other lawyers but with other professionals such as social workers, psychologists etc.;

(iv) Build teaching materials with the case histories of the varied matters processed in the Clinic;


(v) Expand the Clinic’s reach for clients beyond environmental law, poverty law, tax law, women’s rights etc., the Clinic can venture on service to public agencies dealing with welfare, prisons, social services etc, where the authorities may be well-disposed to receive fresh ideas, critiques and evaluations;

(vi) Help stimulate the creation of new and community-based institutions for resolution of disputes without resorting to lawyers and the courts; Consider alternatives to the traditional model of lawyer professionalism.

(vii) More experiments in Clinical courses including production of “help yourself” series in simple legal transactions without lawyer assistance and public evaluation of better distribution of legal services;

He summed up his assessment stating:

“... it seems to me the future challenge of Clinical education is not just an integration of theory with practice, as important as that idea is, it is not just service to the poor and others ill-served by 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.\textsuperscript{36}

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.

2.3. Advent of Clinical Legal Education in India

2.3.1. Informal Inclusion of Clinical Component in Legal Education Curricula

In India, the involvement of Law Colleges in legal aid activity began when the legal aid movement gained momentum in the 1960s. It was assumed that Law Schools could play a significant role in providing legal services and that they would do so through Legal Aid Clinics.\textsuperscript{37} As a result, Clinical legal education took its roots in India in the late 1960s.\textsuperscript{38} In the mid-60s, Delhi University introduced the case method in teaching law, and in 1969, the faculty and students established a Legal Service Clinic.

\textsuperscript{36} Ibid.


\textsuperscript{38} See generally, MADHAVA MENON, N.R., LEGAL AID AND LEGAL EDUCATION: A CHALLENGE AND AN OPPORTUNITY, 25 (University of Delhi, New Delhi, 1986). See also Frank S. Bloch, and Iqbal S. Ishar, supra note. 37.
The efforts made by the faculty were purely voluntary and no attempts were made for institutionalizing and integrating Clinics into the curriculum. The Clinic was setup mainly to offer legal services to prison inmates. It worked more like an investigating and referral agency rather than providing services. Delhi Legal Aid Clinic organized two Lok Adalats in 1985–86 in association with Delhi Legal Aid and Advice Board, wherein over 150 students participated in the process.

The Clinic also undertook another project of assisting victims of the Bhopal gas tragedy. The biggest achievement of this Clinic is its contribution to the learning experiences of its participating law students in a Clinical setup. The Clinic was more concerned about service oriented programs, with little supervision from the faculty and no emphasis on learning skills thereby contributing to its weaknesses. Nonetheless, and in spite of the fact that Clinical programs offered the students no credit, the Legal Aid Clinic attracted many students.

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

39 Id at 17.
40 Ibid.
Legal Aid Camps was voluntary and activities were conducted as a part of extracurricular activities.\(^{41}\)

Banaras Hindu University was the first to introduce a course on Clinical legal education in early 1970s. This was an optional course offered to a limited group of 30 students with academic credit for 200 marks. The course included court visits, participation in a Legal Aid Clinic established by the institution, and an internship in chambers of lawyers. The Legal Aid Clinic was supervised by a retired judge on a token honorarium. The entire Clinical legal education in Banaras Hindu University revolves around its Legal Aid Clinic.\(^{42}\)

Funding for the Clinical activities initially came from student’s contribution, and subsequently National Service Scheme and the University offered some financial assistance. University Grants Commission also gave a special grant to the Clinic to extend its activities to the nearby rural areas.

Students participating in the Clinic were generally required to participate in three kinds of activities. Once a week, such students were required to spend a day in court and report on the same;\(^{43}\) another day was required to be spent in the Legal Aid Office, and finally students and teachers associated with the Clinic were required to go to the villages and undertake programs of legal

\(^{41}\) Ibid.

\(^{42}\) Ibid.

\(^{43}\) In Banars Law School every student need to participate in moot courts, write judgments and case comments. In addition these, students need to attend lectures on pleadings, conveyancing and drafting of statutes and a course on legal writing. Instructions are given on legal research, moot courts and legal writing. For further details see Anandjee, Objectives of Legal Education, LEGAL EDUCATION IN INDIA: PROBLEMS AND PERSPECTIVES, 40-42 (Agarwal, S.K., ed., N.M. Tripathi Private limited, Bombay 1973).
literacy, social surveys for implementation of welfare programs, and attempt to facilitate settlement of disputes through Legal Aid Camps.

Evaluation of the Clinic work was divided into two parts. The court work was jointly evaluated by the faculty member with a lawyer for 50 marks and the Clinic work would be evaluated by the concerned teacher for another 50 marks. Though it was an encouraging step towards development and implementation of Clinical education, it afforded this opportunity to only a limited number of students in the final year of their LL.B studies.

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. The Clinic received financial support from Committee for Implementing Legal Aid Scheme (CILAS), New Delhi and the Rajasthan State Legal Aid and Advice Board, Jaipur.

Noticeable success came to the Clinic in settling matrimonial disputes. In association with the District Judge, Jodhpur, the Clinic conducted a Reconciliation Camp in matrimonial disputes. With the inspiration from matrimonial reconciliation, students in the Legal Aid Clinic undertook to help accident victims and their families in cases before the Motor Accident Claims Tribunal. They extended their legal services to laborers working in a famine relief project, and also conducted various Legal Literacy Programs. Again, this

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was a voluntary effort made by the faculty and further, unlike the Banaras Hindu University, no academic credit was given to students participating in the Clinic.

NLSUI introduced both compulsory and optional Clinical courses. Three compulsory Clinical courses were introduced in the year of 1992. Students were given an option to choose any one of the course in each trimester of final year. First trimester students were given an option to choose any one course from three Clinics namely Family Law Clinic, Labour Law Clinic, and Public Interest Law Clinic.

In second trimester students were required to choose one Clinic from Constitutional Litigation, Criminal Advocacy, and Legal Journalism. In third trimester students could choose any one from Legislative Drafting, Commercial Arbitration, and Computer Application in Law. Thus by the end of final trimester, students would participated in three Clinics which carried 300 marks for evaluation.

In 1994 – 95 the Clinical courses were reorganized and two Clinical courses namely Client Interviewing and Alternative Dispute Resolution Clinic, and Trial Advocacy and Appellate Advocacy Clinic were made compulsory. Students could choose third Clinical course from several Clinics such as Corporate Clinic, Criminal Law Clinic and Labour Law Clinic.

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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.46

In addition to the above initiatives, NLSIU in cooperation with Shakti, a women’s social welfare organization, established a Mediation Center cum Legal Aid Office using law students under the supervision of members of the faculty.47 Participation in this Clinic was also voluntary and students received neither academic credit nor pay for their efforts.48

In addition to the above efforts, other Colleges, though without the establishment of Legal Aid Clinics, organized few Legal Literacy Camps and some Colleges also used their N.S.S. units for the above purpose.49

Though 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. Further, the

46 Id at 244–46.
47 This office was called as Ramanagram Rural Mediation Centre.
49 For example Renukacharya Law College in Bangalore conducted several legal literacy camps. See Narasimha Swamy. M.G., Legal Education and the Law Clinic, LEGAL AID AND LEGAL EDUCATION A CHALLENGE AND AN OPPORTUNITY 72 (Madhava Menon, ed., University of Delhi, New Delhi, 1986).
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.

Nevertheless, the efforts in developing and employing Clinical legal education programs in a voluntary manner in infrastructurally deficient conditions at least resulted in sensitizing student in socio-economic issues hitherto alien to class room discussions in the teaching of law. 50

Further, though it was only a few Universities, such as the Banaras Hindu University, Delhi University, and Rajasthan University that took a lead in promoting Clinical legal education, the same was discussed and sought to be promoted as a viable concept in the field of legal education across the country. 51

50 Kenneth S. Gallant, supra note 48.

2.3.2. Formal Inclusion of Clinical Component in Legal Education Curricula

The issues of raising the standards of legal education in India also found place in the items taken up for discussion at the Conference of Chief Justices in December 1993. It was resolved therein that the Chief Justice of India be requested to constitute a Committee to examine the same and suggest appropriate steps. Pursuant to this a Three Member Committee headed by Justice Ahmadi was constituted in 1994. The Committee, in its report, 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.52

The Committee has recommended that every law graduate undergo one year of training under a senior advocate with a minimum of 10 years experience at the District Court or High Court. Subsequent to this, such law graduate would be eligible to appear for an examination to be conducted by the Bar Council and would be eligible for enrolment at the Bar inter alia on securing at least 50 or 60 per cent marks at such examination.

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After reviewing these recommendations, the BCI introduced a one-year training rule\(^{53}\) but discarded the suggestion for introduction of entrance examination. However, the BCI received a setback when this rule was challenged in the Supreme Court. In *V. Sudheer v. Bar Council of India*,\(^ {54}\) the Supreme Court struck down the rule as *ultra vires* to the Advocates Act and held that the Bar Council of India was not competent to make such a rule. Further, it held that such a rule could be introduced only by the legislature.

While declaring the training rule as *ultra vires*, the Supreme Court recognized the crying need for improving the standards of the legal profession. It recognized the value of equipping lawyers with adequate professional skills and expertise, and held that "a right thing must be done in the right manner."\(^ {55}\) The apex court shared the anxiety of the BCI for developing suitable methods for improving the standards of legal education and legal profession. It suggested that these recommendations should be put into practice using appropriate methods.\(^ {56}\) Unfortunately till now, no efforts have been made by the government of India to amend the Advocates Act to incorporate these recommendations.

\(^{53}\) Bar Council of India Training Rules, 1995 – Rule 2 to 15

\(^{54}\) 1999 (3) SCC 176

\(^{55}\) *Id* at 180

\(^{56}\) It was felt by the Bar Council of India itself before the Committee that for providing pre-enrolment training to prospective advocates, relevant amendments to the Act were required to be effected. Therefore, the Court strongly recommended appropriate amendments to be made in the Act in this connection. The amendments can be effected only by Parliament. Till the Parliament steps in to make suitable statutory required amendments to the Act for providing pre-enrolment training to prospective advocates seeking enrolment under the Act, the Bar Council of India by way of an interim measure can also consider the feasibility of making suitable rules providing for in-practice training to be made available to enrolled advocates.
The setbacks in implementing the Ahmadi Committee’s recommendations, including by virtue of the Supreme Court setting aside the BCI’s one year training rule, motivated the BCI to introduce four practical papers to improve standards in legal education. These papers are aimed at providing practical training to law students. Until these papers were introduced in the curriculum, very little effort was made by Law Schools to train students in advocacy skills. Law Schools felt that training law students to work in the legal profession was not the job of the schools but of the Bar. With the introduction of these papers, it is now mandatory for all institutions imparting legal education to introduce Clinical component in the curriculum.

The four practical papers are as under.

*Paper I: Moot-court, Pre-trial preparations and Participation in Trial Proceedings.*

a) Moot Court.

The purpose of making every student participate in moot court is to develop advocacy skills. Students are required to do research to prepare for moot court, which develops research skills. Further, students are required to submit written briefs of their arguments, which develops their writing ability.

b) Pre-trial Preparations.

Students are required to observe at least two sessions of client interviews in a lawyer’s office. This provides an opportunity to learn interview techniques.
Further, the students are required to participate in preparing various documents that are required to be filed with the court, thus enabling students to understand the filing procedures and the preparation of documents.

c) Trial Preparations.

Students are expected to observe one civil and one criminal trial in order to become familiar with trial advocacy and court proceedings. This exposes the student to the court environment in which they may witness how the court proceedings take place.

*Paper II: Drafting, Pleading and Conveyancing.*

This paper aims solely at developing drafting skills and gives students an opportunity to learn how to draft plaints, written statements, sale deeds and the like.

*Paper III: Professional Ethics, Accountancy for Lawyers and Bar-bench Relations.*

This paper focuses on ethical issues in the legal profession and a mandatory 30 day internship in a lawyer's office. It focuses on various rules on professional ethics formulated by BCI under S. 49 (1) (C) of Advocates Act, 1961. These ethics include duties towards – Court, clients, opponent, and colleagues. Students are expected to understand the intricacies of professional misconduct and the disciplinary proceedings for such misconduct.
Paper IV: Public Interest Lawyering, Legal Aid and Para-legal Services.

This paper is flexible. It aims at providing various services to society. Course content can be designed by Law Schools according to local needs. Law Schools can use programs like Lok Adalat, Legal Aid Camp, Legal Literacy and Paralegal Training to involve the students with the community. These courses also provide instruction on negotiation and legal research. They also provide for legal research to support public interest litigation, writing of case comments, editing of law journals and law office management. These activities involve students in community service so that they can learn the difference between law in books and law in practice.

2.4. Social Justice Mission for Legal Education in India

The connection between law and society is a complex one, albeit very important. Each society must, therefore, identify the goals of the legal system it adopts, more so in case of a legal system, which is expected to transform the concept of a welfare state into reality. The conceptualization and operation of law in terms of rights and duties and in terms of mechanisms, judicial and otherwise, for enforcing such right and duties is essential.

However, law and legal processes cannot exist in abstract but need to be attuned to the needs of and cater to society. Hence, conceptualization of law and its operation sans a clear understanding of its goal and role in social control and the development and its pitfalls. Further, when we speak of achieving a
welfare state, we speak of a goal in common, for the betterment of society. Thus, such goal ought to be reflected in the law and legal processes.

Legal professionals, be they at the Bar or Bench or even as policy makers, are agents in the legal process. Thus the legal education system, which creates these professionals, should itself have substantially identical social goals and ensure that such social goals are reflected in the content as well as methods of teaching. If legal education devotes its time exclusively to train students with an emphasis on their role of advising, advocating and adjudicating in an adversarial legal setup, it would produce lawyers highly competent but without serving any social purpose.

This narrowly focused technocratic legal education may no longer be realistic in view of the varied roles law graduates are playing in society. Surveys suggest that very few law graduates actually enter into private practice, and that a majority of them seek employment with private businesses, as well as governmental and non-governmental organizations, including in positions where they could influence and even shape the policies. Thus, taking these facts into account, legal education needs to transform itself from a technocratic legal education to a socially relevant legal education.

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57 Not more than 25% of law graduates in India stick to the profession. See Anandjee, Objectives of Legal Education, LEGAL EDUCATION IN INDIA: PROBLEMS AND PERSPECTIVES, 37 (S.K. Agarwal ed., N.M. Tripathi Private limited, Bombay, 1973). The percentage of students passing L.L.B. examination comes to 14% as compared to students appearing in first year L.L.B. examination. 42% of students completing legal education in the Universities are not interested in the professional career at the Bar but they prefer outside employment. See M.B. Mehre, Reconstruction of Legal Education, 20 J.I.L.L. 281 (1978).
2.4.1. Social Justice: Necessity, Origin and Relevance in Contemporary Times

To understand the Indian legal education system and construct a mission or a goal thereof, it is necessary to trace the roots of legal education in British-India. The legal system introduced by the British was created to serve British commercial interests. One can witness this even in criminal law, which placed special emphasis on property offences. Very little concern was shown for social justice, such as protecting the rights of the children, women, the poor and the workers. In the words of Justice Krishna Iyer, [the] "British legal culture fertilized the Indian legal elite and sterilized the spirit of the people." 58

When India became a free country, legal education acquired importance, as rule of law became a fundamental doctrine for the governance of the country. Since the Constitution of India adopted a democratic form of Government, it became necessary that the legal system of the country should be brought in tune with socio-economic and political needs of the society.

Due to this change in law and focus on social needs, legal education was required to change and reform its structure and pattern. The direction of such a change was required to be in tune with the constitutional philosophy of

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ushering in the socio-economic transformation of the Indian society in to a just society. 59

The Indian Constitution aims to secure social, economic and political justice, but the Indian legal profession, the legislative process and the administration of justice are restrained by feudalistic and pro-British colonial laws.60 The transformation of state philosophy from laissez-faire to welfare state is well recognized by the Constitution of India.

The Preamble and Directive Principles of State Policy show that legal aid is aimed at providing equal access to justice. Therefore, reducing socio-economic and political inequality is the prime target of law. 61 The Indian Constitution echoes this aim in the Preamble which articulates justice in all its forms: “Social, economic and political”.62

Competent and affordable legal services are pre requisites for a just society. Competent legal services would be available only when legal education produces competent lawyers. But producing lawyers possessing legal acumen and skill would fulfill only half of the requirements for achieving a just society.

Thus, additionally, legal education must be able to inculcate the right perspectives of the societal goals of law and legal system, including legal

59 Anand A.S., Legal Education in India – Past, Present and Future, (1998) 3 SCC (Jour) 1
60 Justice Krishna Iyers. supra note 58.
62 WE, THE PEOPLE OF INDIA, ... and to secure to all its citizens:
JUSTICE, social, economic and political;
professionals. It should also be able to sensitize students to socio-economic concerns and aspirations. Therefore, a sound system of legal education properly perceived and utilized, can make an important, positive contribution to national development and also determine the quality of the lawyers, which will ultimately determine access to legal services.

2.4.2. Developing a Social Justice Mission for Legal Education in India

Legal education in India suffers from what Paulo Friere calls "narration sickness." "The teacher talks about reality as if it were motionless, static, compartmentalized and predictable. Or else he expounds on a topic completely alien to the existential experience of the students. His task is to 'fill' the students with the contents of his narration – contents which are detached from reality, disconnected from the totality that engendered them and could give them significance."

He related this "narration sickness" in education with the "banking concept" of education where "Education...becomes an act of depositing, in which the students are depositaries, and the teacher is the depositor. Instead of communicating, the teacher issues communiqués and 'make deposits' which the students patiently receive, memorize and repeat."  


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

On the other hand, explaining the role of legal education Prof. Madhava Menon observed that:66

(i) Legal education has an important role in directing and moderating social change; and in this regard, it has to operate as conscience – keeper of society.

(ii) Legal education, shall manifest higher moral values, maintain high degree of competence and discipline, and ensure that no section of society is denied of access to its services because of poverty or social status.

(iii) All type of legal education is supposed to influence governmental policies on social justice and to prevent distortions. It should play the role to correct governmental wrongs, increase efficiency of excellence and achievement in all spheres of its activities.

Further, the Committee of Legal Education of the Harvard Law School lays emphasis on the double purposes of a Law School:67

(i) to train men for the legal profession

(ii) to provide a centre where scholars might contribute to an understanding of law and government and participate creatively in their growth and improvement.


67 PRELIMINARY STATEMENT OF THE COMMITTEE ON LEGAL EDUCATION OF THE HARVARD LAW SCHOOL (1947)
Legal education binds within its ambit the knowledge of the theory and philosophy of law and its role of social engineering in the modern democratic society.\textsuperscript{68} Though legal education should primarily aim at furnishing skills and competence, the basic philosophies and ideologies for creation and maintenance of a just society cannot be ignored.

In fact, these philosophies and ideologies shape skills and competence. Therefore, the concern for justice and just society differentiate Law from other subjects. Thus, the purpose of legal education is not only to produce professional lawyers with lawyering skills but also to ensure social and economic justice through the rule of law.

Clinical legal education provides opportunity to address both these tasks. It is a globally recognized fact that Clinical legal education has reached a point where it is going to influence legal education immensely. But the greatest concern of a global Clinical legal education mission of social justice is in defining the Social Justice Mission of legal education and in identifying the challenges that legal education must face in implementing the Social Justice Mission.

An effort was made towards this end at the inaugural meeting of the Global Alliance for Justice Education in 1994;\textsuperscript{69} however, no consensus could be drawn due to varying needs of each country because social justice is a


multifaceted concept which may include many aspects such as securing equality, redistribution of wealth, and procuring social order.\textsuperscript{70}

Therefore, each country must develop its own Social Justice Mission of legal education keeping the pressing needs of the country in mind. Thus, it is natural that the social justice mission of legal education varies from country to country. Legal education in each county may adopt any one or all of the aspects of social justice.

For example, Clinical education in African countries aims to play a key role in democratization and development. Clinics in South Africa focus on a variety of issues including street law, democracy education, educating rural community about voting, civil society, and strengthening rule of law and rural development.\textsuperscript{71}

Clinical education in South American countries, particularly in Chile, concentrates on socio-economic order. Mostly Clinical programs in Chile are aimed at serving the poor rather than imparting legal skills to students. The work of Legal Clinics focuses on family violence and child abuse, in addition to the traditional field of criminal law. Some Clinics offer services on complex financial crimes.\textsuperscript{72}


In China, Clinical education strives to secure rights of disadvantaged citizens. As a result of international efforts in providing legal aid to the poor in China, the Centre for the Protection of the Rights of Disadvantaged Citizens was established in 1992 by Wuhan University. Its focus is on women’s rights, administrative litigation, environmental protection, rights of disabled, juvenile rights, and elder’s rights.

Though there are more Legal Clinics operating in China, Clinical legal education is still in its infancy. An interesting observation on Clinics in China is that they have failed to have local involvement in Clinical education. They are more rooted in international legal education.

In Australia, Clinical legal education through Community Centers strives to achieve structural changes on behalf of the poor through the legal system. In Sri Lanka, there is no Clinical education in the strict sense but legal educators facilitate socio legal studies on disadvantaged groups.

73 Wuhan Center receives financial support from Ford Foundation.

74 For example Center for Women’s Law Studies and Legal Services of Peking University (Bedia Center) deals with women related issues.


76 Mary Anne Noone, EDUCATION FOR JUSTICE: SOCIAL VALUES AND LEGAL EDUCATION , AUSTRALIAN COMMUNITY LEGAL CENTRES – THE UNIVERSITY CONNECTION (Jeremy Cooper and Louise G. Trubek ed., Ashgate1997).

77 Jane E. Schukoske, EDUCATION FOR JUSTICE: SOCIAL VALUES AND LEGAL EDUCATION , FACING REALITIES: SOCIO-LEGAL STUDY IN SRI LANKA (Jeremy Cooper and Louise G. Trubek ed., Ashgate1997).
In 1996, a Workshop on Clinical legal education was held in Addis Ababa, Ethiopia.\textsuperscript{78} At this event, deans and educators from various African countries showed keen interest in adapting Clinical legal education to the specific needs of African countries. They expressed hope that lawyers would play a pivotal role in democratization and development and that Clinical legal education is expected to fulfill this obligation by providing the necessary training to law students.

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

Approaches to achieving social justice must take into account not only those legal matters involving litigation but also assist people in understanding and responding to legal matters,\textsuperscript{79} and in securing their simple legal entitlements to improve the quality of life.\textsuperscript{80}


\textsuperscript{80} For e.g., Helping in obtaining ration cards, senior citizen cards, drafting affidavits, elections cards even filling applications for welfare schemes etc.
In 1976, the 42nd Amendment of the Indian Constitution gave a constitutional status to legal aid by inserting Article 39A in the Constitution.\textsuperscript{81} The purpose of this amendment is to promote justice on the basis of equal access. It imposes an imperative obligation on the state to provide free legal aid to the needy. The Supreme Court extended this provision, read with Article 21,\textsuperscript{82} and held that the State should provide grants-in-aid to all recognized private Law Colleges on par with Government Law Colleges so that the private Colleges are able to function effectively and turn out a sufficient number of well-trained or properly trained law graduates.\textsuperscript{83}

The Court opined that "[i]n order to enable the State to afford free legal aid and guarantee speedy trials, a vast number of persons trained in law is essential. Legal aid is required in many forms and at various stages for obtaining guidance, for resolving disputes in Courts, tribunals or other authorities... Legal education should be able to meet the ever growing demands of the society and should be thoroughly equipped to cater to the complexities of the different situation..."\textsuperscript{84}

In spite of these directions from the Supreme Court of India, little was done to provide financial aid to Law Schools. Due to heavy deficits in state budgets,

\textsuperscript{81} Article 39 A of Constitution of India provides that "The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities."

\textsuperscript{82} Article 21 of the Constitution of India provides that "No person shall be deprived of his life or personal liberty except according to procedure established by law."


\textsuperscript{84} \textit{Ibid.}
the majority of Indian states expressed their inability to provide financial aid to Law Schools. If the Court insists on compliance with its judgment, there is a chance that the states may pressure the Universities to refuse permission to establish new private Law Schools. Universities may yield to such pressure from state governments as they largely depend on state financial aid.

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

The Criminal Procedure Code of 1973, under sec.304, provides that an accused person facing a trial in the Court of Sessions and not represented by a pleader for want of sufficient means should be assigned a pleader at the cost of the state. Order XXXIII of the Code of Civil Procedure, 1908, provides that indigent persons may institute suits and are not liable to pay any court-fee or

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85 AIR, 1986 SC 1322.
86 *Id* at 1323
88 Criminal Procedure Code Section 304 states that “where in a trial before the Court of Session, the accused is not represented by a pleader, and where it appears to the court that the accused has not sufficient means to engage a pleader, the court shall assign a pleader for his defense at the expense of the state. The state government may, by notification direct that this provision shall apply in relation to any class of trials before other courts in the state.”
89 A person is an indigent person ---a) If he is not possessed of sufficient means (other than property exempt from attachment in execution of a decree and the subject matter of the suit.) to enable him to pay the fee prescribed by law for the plaint in such suit. Or b) where no such fee is prescribed, if he
fees payable for service of process in respect of any petition, appointment of a pleader or other proceeding connected with the suit.

Several Committees too stressed the need for institutionalization of legal aid and establishment of an autonomous body at the national level. Thus, the Legal Services Authorities Act was enacted to give a statutory base to legal aid programs throughout the country on a uniform pattern. This Act became effective on November 9, 1995. The Hon. Mr. Justice R.N. Mishra, the then Chief Justice of India, played a singular role in the enforcement of the Act. This Act constituted Legal Service Authorities at the national, state and district level to provide free and competent legal aid services and to organize Lok

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is not entitled to property worth one thousand rupees other than property exempt from attachment of a decree, and subject matter of suit.

Persons who satisfy all or any of the criteria specified in section 12 shall be entitled so receive legal services.

Sec. 12: Criteria for giving legal service:

Every persons who has to file or defend case shall be entitled to legal services under this Act if that persons is-

(a) a member of a Scheduled Caste or Schedule Tribe;

(b) a Victim of trafficking inhuman beings or beggar as referred to in article 23 of the Constitution of India;

(c) a woman or a child;

(d) a person with disability as defined in clause (i) of section 2 of the persons with disabilities (Equal opportunities Perfection of Rights and full participation) Act, 1995. (As amended)

(e) a person under circumstances of undeserved want such as being a victim of a mass disaster, ethnic violence, caste atrocity, flood, draught, earthquake or industrial disaster; or

(f) an industrial workman; or

(g) in custody, including custody in a protective home within in the meaning of clause (g) of section 2 of the Immoral traffic (Prevention) Act, 1956 or in a juvenile home with in the meaning of clause (j) of section 2 of the Juvenile Justice Act, 1986 in psychiatric hospital or psychiatric nursing home within the meaning of clause (g) of section 2 of the Mental Health Act, 1987; or

(h) in receipt of annual income less than rupees nine thousand or such other higher amount as may be prescribed by the State Government, if the case is before a court other than the Supreme Court and less than rupees twelve thousand or such other higher amount as may be prescribed by the Central Government, if the case is before the Supreme Court.
Adalats to ensure that the operation of the legal system promotes justice on the basis of equal access.

Further, though every person is accorded a fundamental right to petition the Supreme Court of India for protection of fundamental right, strict interpretation of the rule of *locus standi* denies equal access to justice to those who cannot afford to approach the courts on account of poverty or social and economic disadvantage. To resolve this problem, the Supreme Court of India in 1975 relaxed the traditional rule of *locus standi* and developed the concept of public interest litigation. Under this new concept, any member of the public or a social group or organization could invoke the writ jurisdiction of the Supreme Court or any High Court for violation of fundamental rights.

Moreover, the Supreme Court and High Courts have relaxed the procedural aspects of initiating proceedings before them in matters concerning fundamental rights. Courts are thereby acting even on ordinary letters addressed to the court, and also initiating actions *suo moto* on the basis any

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93 Indian Constitution Art. 32 (1) declares that “the right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.”
information in public domain by way of print and electronic media or such other means.  

Since many letters were received by the Chief Justice of the Supreme Court, the need was felt to establish an institution to provide legal aid. With great initiative from Justice Krishna Iyer in 1979, the Free Legal Aid (Supreme Court) Society was formed under the Chairmanship of Justice D.A. Desai. In 1981, this Society was renamed the Supreme Court Legal Aid Committee. Currently only those persons whose income is less than rupees 12,000/- per annum are eligible to receive legal aid from this Committee. Thus, a large section of the population does not qualify for legal aid from the Committee.

To provide legal aid for middle income groups, the Supreme Court of India created a Middle Income Group (MIG) Scheme. The benefit under this scheme is extended to persons whose income is between rupees 12,000 – 1,20,000 per annum. The novelty of this scheme is that the aid given under MIG is not free; the costs of legal services must be paid, but at reasonable rates fixed under the scheme.

It is apparent that the Bar and the Bench are the “two wheels of the judicial administration” and that these two branches are the result of the number of Law

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95 Justice Ranganath Misra, Supreme Court Legal Aid Committee, New Delhi Its Aims, Activities And Achievements, 5 SCC(JOUR), 1 (1995).

96 Resolution No. F.6(34)/81-I.C., Dated 9-7-1981.

97 Justice Ranganath Misra, supra note 95.
Colleges spread over the length and breadth of the country. 98 In a country like India, a sizable percentage of people still live below the poverty line. 99 For millions, school is a distant dream and the discrimination on the basis of sex, race, religion and caste still exists. 100

In these conditions, the society hopes that the legal fraternity will play a major role in building the nation by promoting social justice. Essentially, the starting point of the legal profession is the place of acquiring legal education. Legal education must aim at preparing budding lawyers to accomplish the social justice mission of providing socio-economic justice.

All the members directly or indirectly involved in the legal profession, therefore, have a very important role to play in providing social justice, which is one of the chief goals of the Constitution of India. This is one of the reasons why initially the legal aid programs gave more importance to Legal Literacy Camps, legal awareness and publicity campaigns about legal aid services and schemes rather than traditional dispute resolution. They aim at ensuring that no one suffers injustice because of ignorance or lack of means. 101


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

There is no doubt in the minds of the members of the various Committees on legal aid that this is a daunting task in view of the vastness of the country. They must structure a legal system that can deliver justice to a billion people. As a result, law students are expected to share part of the obligation of legal aid, i.e., provision of legal literacy, legal awareness and paralegal services.

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

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

In this scenario, the Government and the Bar have fallen short in discharging their legitimate responsibilities of facilitating legal aid services to the poor. Legal Aid Clinics operated by Law Schools can provide opportunities for law students to extend legal aid to the poor, disadvantaged, and the oppressed. In this growing materialistic world, the interests of the disadvantaged groups are
being ignored. Thus, taking the socio-economic conditions in India into consideration, the social justice mission of legal education in India should be, to provide “a fair, effective, competent, and accessible legal system.” To secure its mission, it is extremely important for Clinical legal education to institutionalize and implement a social justice oriented curriculum.

2.4.3. Conceptual Placement of Issues Addressed in this Thesis

The research questions addressed in this, as in any thesis, do not arise out of abstractness but stem from the central theme of the thesis, namely the Role of Clinical legal education in Social Justice Mission in India, in the present thesis.

As concisely discussed in the preceding subchapters and elaborated in the subsequent chapter; Clinical legal education has been developed with different, albeit at times overlapping objectives, namely improving the quality of legal education and enhancing access to justice, in its various facets, in society. In India, Clinical legal education came to be adopted as an experimental tool to increase the access to the justice.102

In the year 1998, with the objective of improving the standards of legal education and fulfilling the requirements for new entrants to the legal profession, the Bar Council of India introduced a one-year mandatory

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102 For example Legal Aid Clinic was established in Delhi University by the faculty and the students after accidentally they involved in providing legal aid to an under trial prisoner by name Ratnavelu in Tihar Jail. Prof. Menon Writes’’’... with the experience of the Rathnavelu episode it was decided to institute a Legal Aid Clinic in the Delhi Law School on an experimental basis.” See MADHAVA MENON N.R., Students Legal Services Clinic the Delhi Experience in LEGAL AID AND LEGAL EDUCATION A CHALLENGE AND AN OPPORTUNITY 110 (Madhava Menon N.R. ed, Delhi University, New Delhi 1986).
traineeship as a pre-requisite for enrolment at the Bar. However, the said order was struck down by the Supreme Court of India in *V. Sudheer v. Bar Council of India,* on the basis that the Bar Council of India had exceeded the statutory powers vested in it. Thus, the Bar Council of India appears to have instead sought to tap the usefulness of Clinical legal education in order to enhance the quality of legal training imparted by the legal institutions in India through exposure to real life situations while being students. As discussed in 3.4.1 below, though not explicit, the inclusion of Clinical component in legal education curriculum provided an opportunity to sensitize the students to socio-economic issues in the country and at the same time provide a direct service to society.

A decade has passed since the formal introduction of Clinical legal education in India and it is vital to examine the current status and determine ways in which it could be strengthened. Thus is the conceptual foundation of the research questions presented in this thesis.

2.5. **Assessment of Role of Clinical Legal Education in Social Justice Mission.**

This part of the thesis lays down the framework for the doctrinal and empirical analysis undertaken in this study. It attempts to lend a clear structure to the process of identifying and analyzing the various documents relevant to this

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103 See BCI Order dated 19th July, 1998
104 1999 (3) SCC 176
study. It also charts the process of empirical analysis employed in this thesis, including the different empirical studies and their respective objectives as well as methods used therein.

2.5.1. Framework for Doctrinal Analysis of Role of Clinical Legal Education in Social Justice Mission

The core doctrinal analysis of this thesis is primarily comprised in Chapter – III here in below. The preceding sub-chapters 2.1 to 2.4 also present a prelude or rather a background to this core doctrinal analysis. This analysis comprises of principally four parts.

The first part is aimed at examining the formal introduction of legal education in the colonial era in India and the setting in which it is introduced. The second part analyzes the transformation of legal education in free India through the lens of the drivers, agents, and measures, which brought about this transformation including the formal introduction of a Clinical component in legal education.

The third part of this analysis explores the implementation of the Clinical component in legal education introduced by the Bar Council of India. It attempts to deduce the express as well as implied objectives in introducing the Clinical component, and how the same could have taken shape in the complex and varied legal educational systems that exist in India, with great disparities in terms of human and material resources.
The fourth part forms the bridge between the first three parts of the doctrinal analysis and the subsequent empirical analysis, attempting to test the hypotheses and research questions presented in this thesis. It identifies issues and approaches in determining the status of Clinical legal education in India as well as lacunae, if any, therein. Taking into consideration the results in empirical investigation, it seeks concrete ways of addressing lacunae and failures in the system. In doing this it puts forth evidence backed suggestions and also draws from a comparative analysis of literature principally from the United States of America.

2.5.2. **Empirical Assessment of Clinical Legal Education in Social Justice Mission: Identification of a Representative Sample and Methods Employed.**

Drawing from the fourth part of the doctrinal analysis discussed above, the empirical analysis has two distinct objectives and thus, two major components. The first objective is to examine the status and reasons for the strengths and weaknesses of the Clinical legal education in India. The second objective is to examine the role and potential of Clinical legal education in social justice mission.

As discussed in 1.2.4. herein above, in view of the constraints of the time as well as human and material resources, it would not be possible to undertake an effective a countrywide study on the issues presented for empirical analysis
herein. Thus, the researcher adopted a sample study approach for undertaking the various surveys on the basis of which conclusions were drawn.

A preliminary assessment was undertaken by the researcher to identify the representative states in India, which provided opportunity for research in the first part of the empirical analysis; and on a preliminary assessment, at least one of them could afford an opportunity for research in the second part of the empirical analysis. Further, one of the very important considerations within this was the possibility of conducting effective research to obtain meaningful empirical data to assist in achieving the objectives of this study.

Based on these primary criteria and preliminary assessment there on, the researcher selected the States of Andhra Pradesh, Goa, and Karnataka. These three States were chosen, firstly because in the researcher’s preliminary assessment, some educational institutions in each of these States have adopted some initiatives to implement the Bar Council of India’s order on practical papers.

Secondly, the researcher was in a position to undertake effective sample surveys and data collection in these States. Finally, another important factor in including the State of Goa is that the V.M. Salgaocar College of Law in Goa, where the researcher is currently teaching, has an established legal aid setup and thus, held potential for research in the second part of the empirical analysis.
The first part of the empirical analysis primarily involved questionnaires, including institutional and student questionnaires. The second part of the empirical analysis involved surveys to collect data on the legal aid establishments including their geographical coverage, clientele as well as human and material resources.

It also involved the use of research methods, primarily questionnaires and surveys, to examine the different legal aid services provided by the legal aid setup and their contribution to students-skills and social sensitization as well as to social justice.
2.6 Analytical Framework: Pictorial Representation.

**DOCTRINAL ANALYSIS**

- Formal Legal Education in the Colonial Era and its Setting
- Transformation of Legal Education in Free India: Its Drivers, Agents, and Measures – Clinical Component
- Objectives and Implementation of Clinical Component in Legal Education in India

**Level – 1: Status and reasons for strengths and weaknesses of Clinical Legal Education in Andhra Pradesh, Goa, and Karnataka**

- Institutional Questionnaire

**Level – 2: Clinical Legal Education in Social Justice Mission - Surveys in Goa, focusing on the V.M. Salgaocar College of Law, Legal Aid Setup**

- Data on Establishment: Society – Clinics
  - Clinic Surveys: Client & Geographical Coverage
- Legal Aid Services
  - Contributing to Students Skills & Social Sensitization Questionnaire
  - Social Justice: Clinic Data Pre & Post Program Surveys

**EMPIRICAL ANALYSIS**

- Results of Analyses, including those of Hypotheses-Test
  - Suggestions, including a set of draft working guidelines to implement the Bar Council of India’s Order on practical papers

**RESULTS & SUGGESTIONS**

- Identifying issues and Approaches in Determining Status of Clinical Legal Education in India, and Lacunae/Failures if any.

- Addressing Lacunae/Failures: Reassessing Contemporary needs, Infrastructure, and Optimal use and Development thereof.