CHAPTER V

ADDRESSING THE SHORTCOMINGS IN CLINICAL LEGAL EDUCATION THROUGH REASSESSMENT OF VALUES, SKILLS, CONTEMPORARY NEEDS AND INFRASTRUCTURE.
5. Addressing the Shortcomings in Clinical Legal Education through Reassessment of Values, Skills, Contemporary Needs and Infrastructure.

The complexities of modern life require lawyers to play multiple roles such as advisors, negotiators, arbitrators, mediators, and administrators. The present day legal profession calls for much more skills than what was required of a legal practitioner a decade or so back. The field of lawyering is becoming highly competitive in that sense. Therefore, it is incumbent upon the institutions of legal learning to ensure that these skills which are now required for the profession are inculcated in the alumni. In addition to the above, one cannot envisage single role of training prospective practitioners to the Law Colleges.

Law Colleges, if they desire to be relevant in the present scenario of legal education, need to realize their role in a socio-economic welfare milieu. They need to take up multiple roles to act as effective instruments participating in the socio legal changes that are happening in the nation. The changes brought by globalization and privatization, demands, rather commands new skills from a lawyer.

To play such roles, the students of law are required to secure several skills during their education in Law Colleges. Law Colleges share the entire responsibility of such skill training, as law graduates directly enter legal profession without any further training or any Bar examination. Therefore,
there is an urgent need to review the present curriculum to identify how far it provides skills that are required to be acquired by a lawyer.

5.1. Primacy of Identifying Values and Skills

Law Schools and the practicing Bar were established with different missions and to accomplish different tasks. The system, work environment, culture, goals may vary for a law student and a practicing lawyer. But both these institutions are interdependent. Prospective lawyers first undergo studies in law during which they are exposed to the legal system and after which they enter the profession. Thus, Law Schools assume a great responsibility in training young students to become qualified to practice.

With this kind of responsibility, the Law Schools are under tremendous pressure to create a suitable curriculum to train the students. The Law Schools worldwide, often struggle to cope in creating suitable curriculum that maintains a balance between substantive law teaching, and offering skills and imparting values that are required for legal profession. The appointment of the MacCrate Commission in USA was a step towards this goal. The American Bar Association, a leading professional body in law, felt the need for such a Commission, and its findings warrant attention. The very fact that such Commission was appointed to recommend improvements for legal education, itself shows the importance of the Report.

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1 AMERICAN BAR ASSOCIATION, SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSION DEVELOPMENT — AN EDUCATIONAL CONTINUUM, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP, 3 (ABA 1992) [hereinafter MacCrate Report].
5.1.1. The MacCrater Report: Plausibility of Reliance Thereon

Legal education currently faces serious challenges round the world. The way in which the legal profession has operated up to now has resulted in a general distrust towards lawyers and a general perception that the profession has lost its sense of purpose and social obligation.

Regard for lawyers among the public is disgracefully low. The majority, view the profession in the U.S., as "self-serving, directionless, and in disarray". Anti-lawyer expressions have become more widespread and stronger than ever before. Though these perceptions are particularly strong in the U.S. they have a global flavor irrespective of whether they occur in developed, developing, or underdeveloped countries.

Members of the legal profession in the U.S. often lament that law students entering the profession "... can't draft a contract, they can't write, they've never seen a summons, the professors have never been inside a Court room." The imperative question for legal academicians, then, is not which course to follow, but how to identify their roles and design curricula to rejuvenate the profession and to restore its standing.

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3 MACCRATER REPORT, *supra* note 1 at 4.

Various studies and symposia over the years have stressed the need to improve lawyer competence.\(^5\) With these goals in mind, the MacCrate Task Force was formed in 1989 to identify measures to improve the professional competence and ethical character of budding lawyers.

In 1992, the ABA Task Force submitted its report popularly known as MacCrate Report. This highly contentious document has redefined the scope of the modern debate on what and how the Law Schools should teach, and what skills and values the legal education should emphasize.\(^6\) Naturally, the competence of lawyers with respect to traditional skills and values is the main focus of the MacCrate Report.

The Report calls for Law Schools and the legal profession to play a greater role to improve the competence of incoming lawyers and overall professional fitness of the practicing Bar. The skills and values pointed out in the Report, constitute a noble vision of professionalism towards which all lawyers should aspire.\(^7\)

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\(^7\) Maureen E. Laflin, supra note 2 at 57.
The Report puts forwards certain guidelines on satisfying the demands of the legal profession in producing skilled and competent lawyers. It declares that in addition to acquiring a doctrinal knowledge, acquiring lawyering skills and professional values aimed at providing competent lawyers, are essential to prepare lawyers to represent the clients.

With these goals in mind, the Task Force developed the Statement of Fundamental Lawyering Skills and Professional Values (SSV) that recognize a “compendium of skills and values” fundamental to the practice of law. The SSV examines ten fundamental lawyering skills and four values that represent the moral foundation of legal practice. The Task Force recognized that several of the suggestions put forward above would require designing new modes of teaching, training and development of new teaching materials.  

The Task Force viewed the Statement of Skills and Values as “a work in progress.” The document is intended to serve as a stimulus and a beginning point for an unending exchange within the profession about the skills and values that a legal practitioner should acquire and about the kind of education and training that prospective lawyers should receive at different stages of their careers. The Task Force hoped that these skills and values would be revised from time to time to fulfill its intended purpose of preparing new lawyers for practice.  

8 MacCrate Report, supra note 1 at 130.  
9 Id at 131.  
10 Ibid.
Further, the Task Force, while stressing on the avoiding of abuse of the Statement, emphasized that “the statement is not, and should not be taken to be, a standard for a Law School curriculum. The Statement of Skills and Values is concerned with the limited goal of ensuring practice at a minimum level of competency.”\(^{11}\) Therefore, the skills and values mentioned in the Report are not comprehensive but rather express desired goals of narrowing the professional gap between Law Schools and the practice of law.

The MacCrate Report makes an effort to draft a new agreement between Law Schools and the legal profession. The foundation of this new agreement is that “legal educators and practicing lawyers should stop assuming themselves as separated by a gap and realize that they are employed in a common endeavor, i.e., professional development of the members of the legal education and revitalizing the strength, vigor, and reputation of the profession.”\(^{12}\)

The Report emphasizes that attaining in the proposed skills and values ought to transpire on a continuum, starting prior to Law School, fortified there, and continuing throughout a lawyer’s career.\(^{13}\) Therefore, the Report rightly points out that the Bar, Law School teaching faculty, and the Judiciary ought to share the responsibility of providing skills-and-value oriented legal education to the new lawyers entering into the profession.

\(^{11}\) Id at 132.

\(^{12}\) Peter A. Joy, Clinical Scholarship: Improving the Practice of Law, 2 CLINICAL L. REV. 385 (1996).

\(^{13}\) Maureen E. Laflin, supra note 2 at 5.
Skills:

The Statement of Fundamental Lawyering Skills and Professional Values first explore the skills that are required to provide competence to lawyers. These skills are categorized into 5 groups:

i. Foundational Skills.

This first group contains two skills; dealing with problem solving and legal analysis and reasoning. These are the basic abstract skills for legal practice. Any form of training a lawyer or evaluating his competence involves problem solving, and every problem solving activity should be backed by a sound legal analysis and reasoning. All the sub skills mentioned under the first and second skills, aim to fulfill the minimum requirements for a lawyer to practice the profession. Thus, these skills are absolutely necessary for any kind of legal practice, whether it is client oriented or justice oriented.

\[14\] Details of first two skills are as follows:

**Skill § 1:**
In order to develop and evaluate strategies for solving a problem or accomplishing an objective, a lawyer should be familiar with the skills and concepts involved in:
1.1 Identifying and Diagnosing the Problem;
1.2 Generating Alternative Solutions and Strategies;
1.3 Developing a Plan of Action;
1.4 Implementing the Plan;
1.5 Keeping the Planning Process Open to New Information and New Ideas.

**Skill § 2:**
In order to analyze and apply legal rules and principles, a lawyer should be familiar with the skills and concepts involved in:
2.1 Identifying and Formulating Legal Issues;
2.2 Formulating Relevant Legal Theories;
2.3 Elaborating Legal Theory;
2.4 Evaluating Legal Theory;
2.5 Criticizing and Synthesizing Legal Argumentation.
ii. Specific Skills for Legal Practice.

The next four skills aim at providing a wide range of skills that are required to practice the profession. These skills broadly deal with legal research, factual investigation, communication, counseling and negotiation. A close look at these four skills reveals that they play a central role in preparing competent

\[15\] The details of four skills are

Skill § 3:
In order to identify legal issues and to research them thoroughly and efficiently, a lawyer should have:

3.1 Knowledge of the Nature of Legal Rules and Institutions;
3.2 Knowledge of and Ability to Use the Most Fundamental Tools of Legal Research;
3.3 Understanding of the Process of Devising and Implementing a Coherent and Effective Research Design.

Skill § 4:
In order to plan, direct, and (where applicable) participate in factual investigation, a lawyer should be familiar with the skills and concepts involved in:

4.1 Determining the Need for Factual Investigation;
4.2 Planning a Factual Investigation;
4.3 Implementing the Investigative Strategy;
4.4 Memorializing and Organizing Information in an Accessible Form;
4.5 Deciding Whether to Conclude the Process of Fact-Gathering;
4.6 Evaluating the Information That Has Been Gathered.

Skill § 5:
In order to communicate effectively, whether orally or in writing, a lawyer should be familiar with the skills and concepts involved in:

5.1 Assessing the Perspective of the Recipient of the Communication;
5.2 Using Effective Methods of Communication.

Skill § 6:
In order to counsel clients about decisions or courses of action, a lawyer should be familiar with the skills and concepts involved in:

6.1 Establishing a Counseling Relationship That Respects the Nature and Bounds of a Lawyer's Role;
6.2 Gathering Information Relevant to the Decision to Be Made;
6.3 Analyzing the Decision to Be Made;
6.4 Counseling the Client About the Decision to Be Made;
6.5 Ascertaining and Implementing the Client's Decision.
lawyers. These skills bridge the gap between conceptual and practical aspects of lawyering skills.

iii. Skills required for ADR.

The eighth skill is necessary either to provide ADR or advice clients about the various options available to resolve disputes under ADR. It provides practical knowledge about fundamental litigation, i.e., litigation in trial and appellate Courts, and alternative dispute resolution. The report recognizes the fact that many lawyers may not engage in traditional litigation or ADR; however, it insists upon acquiring fundamental skills in both, litigation and ADR, since lawyers often are required to decide whether to choose litigation or use ADR to resolve disputes.

iv. Administrative Skills to Organize Legal Work.

The ninth skill is intended to develop the ability to organize and manage legal work effectively. The basic focus of this skill is on the effective use of time

\[\text{Details of the skill are}\]

\textbf{Skill § 8:}
In order to employ-or to advise a client about-the options of litigation and alternative dispute resolution, a lawyer should understand the potential functions and consequences of these processes and should have a working knowledge of the fundamentals of:

8.1 Litigation at the Trial-Court Level;
8.2 Litigation at the Appellate Level;
8.3 Advocacy in Administrative and Executive Forums;
8.4 Proceedings in Other Dispute-Resolution Forums.

\textbf{Skill § 9:}
In order to practice effectively, a lawyer should be familiar with the skills and concepts required for efficient management, including:

9.1 Formulating Goals and Principles for Effective Practice Management;
for completing the work. It also aims at cooperating with other members of the profession and proper administration of a law office.

v. Skills to Recognize and to Resolve Ethical Dilemmas.

The tenth skill enumerates the essential skills that are required to identify and resolve ethical dilemmas. This skill familiarizes future practitioners with ethical rules and standards. These are absolutely necessary for a healthy profession. The main emphasis is on self-scrutiny and identifying and solving ethical problems in one’s own practice.

Values:

The Report identified the following four fundamental values:

i. Provision of competent representation.

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9.2 Developing Systems and Procedures to Ensure that Time, Effort, and Resources Are Allocated Efficiently;

9.3 Developing Systems and Procedures to Ensure that Work is Performed and Completed at the Appropriate Time;

9.4 Developing Systems and Procedures for Effectively Working with Other People;


Details of the skills are

Skill § 10:

In order to represent a client consistently with applicable ethical standards, a lawyer should be familiar with:

10.1 The Nature and Sources of Ethical Standards;

10.2 The Means by Which Ethical Standards are Enforced;

10.3 The Processes for Recognizing and Resolving Ethical Dilemmas

Value § 1:

As a member of a profession dedicated to the service of clients, a lawyer should be committed to the values of:

1.1 Attaining a Level of Competence in One's Own Field of Practice;

1.2 Maintaining a Level of Competence in One's Own Field of Practice;
ii. Striving to promote justice, fairness, and morality.20

iii. Striving to improve the profession.21

iv. Professional self-development.22

The first value can be cultivated by providing effective skills training. The third value is so general that it can be achieved in various ways, including active participation of the bar in legal academics. The fourth value can be accomplished by effective continuing legal education.

But the second value, which is the most important among the four values, is less obvious than the other three — and thus more difficult to accomplish.23

1.3 Representing Clients in a Competent Manner.

20 Value § 2:

As a member of a profession that bears special responsibilities for the quality of justice, a lawyer should be committed to the values of:

2.1 Promoting Justice, Fairness, and Morality in One's Own Daily Practice;

2.2 Contributing to the Profession's Fulfillment of its Responsibility to Ensure that Adequate Legal Services Are Provided to Those Who Cannot Afford to Pay for Them;

2.3 Contributing to the Profession's Fulfillment of its Responsibility to Enhance the Capacity of Law and Legal Institutions to Do Justice.

21 Value § 3:

As a member of a self-governing profession, a lawyer should be committed to the values of:

3.1 Participating in Activities Designed to Improve the Profession;

3.2 Assisting in the Training and Preparation of New Lawyers;

3.3 Striving to Rid the Profession of Bias Based on Race, Religion, Ethnic Origin, Gender, Sexual Orientation, or Disability, and to Rectify the Effects of These Biases.

22 Value § 4:

As a member of a learned profession, a lawyer should be committed to the values of:

4.1 Seeking Out and Taking Advantage of Opportunities to Increase His or Her Knowledge and Improve His or Her Skills;

4.2 Selecting and Maintaining Employment That Will Allow the Lawyer to Develop As a Professional and to Pursue His or Her Professional and Personal Goals.

Surprisingly, less attention has been paid to this issue. All the skills mentioned in the SSV are directed at fostering the first value and to some extent the third. Though the ten Skills identified by the Report are useful in fostering the value of promoting justice, fairness and morality, too much emphasis on the client-oriented and traditional problem solving role of lawyers makes the ten skills insufficient in achieving the goal of the second value.

Shortcomings of MacCrate Report

The Report has drawn several criticisms on its Fundamental Lawyering Skills and Fundamental Values. These criticisms include, missing the humane element of lawyering; more emphasis on traditional role of problem solver; over emphasis on skills; little attention to the social justice goal; failure to recognize the importance of subject matter of the study of law; no attention to community based advocacy; ignoring the importance of the alternative role of lawyers; and changes in the relationship between lawyer and client due to the “economic of law practice.”

Prof. Carrie Menkel-Meadow mainly focuses her criticism of the Report on the missing element of humane lawyering. She observes that MacCrate’s

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25 Menkel-Meadow, supra note 24 at 595.
declaration on lawyering skills visualizes the lawyer largely as a litigator, a
"means-ends" thinker who can accomplish the client's goals. However, the
Report fails to recognize the most important aspect of the legal profession: the
"art of lawyering," i.e., the necessity of being a caring human being who uses
professional work to make the world better.

The Report pays little attention to the humane aspects of lawyering, in
individual as well as group representation. It fails to "explore the emotional,
emphatic, and human side of lawyering." Terming the lawyer as "a problem
solver," all the ten lawyering skills laboriously try to deal with traditional role
of lawyer as a litigator. The Report envisages traditional litigation-oriented
legal professionals.

Menkel-Meadow believes that in the 21st century, lawyers will have to solve
problems synthetically as well as analytically. She argues that the legal
profession also needs basic understanding of socio-economic concepts and
statistics to analyze the empirical effects of lawmaking and law enforcing. To
promote social justice, the lawyers need to understand these socio-economic
dimensions of a problem.

Thus, mere analytical skills of problem solving will not be sufficient to solve
broader socio-legal problems. There are several situations in which a social
problem may become a legal problem.26 Hence, every member in the legal
profession has a professional obligation to utilize the law to transform social

26 For example, issues such as sati, dowry, and bonded labor.
problems into legal problems. The traditional role of lawyer as problem solver would not fit this purpose. Members of the law profession need to play the role of educator, planner and counselor. Therefore, skills which provide broader understanding of various facets of legal problems are necessary.

But one should not forget that both the traditional aspect of lawyering, i.e., defending clients, and the contemporary roles of educator, planner, counselor and policy maker are equally necessary for achieving social justice. Incompetence in any form itself is a form of injustice. Therefore, fundamental lawyering skills are important to provide social justice. But these skills are meaningless if they are confined only to traditional methods of problem solving.

Despite the Report’s stated aim, to improve both skills and values, it mainly focuses on skills. It indirectly indicated that the values are subordinate to skills, by listing the four fundamental values after the ten fundamental skills. It is therefore, logical to endorse Russell G. Pearce’s view that the Report makes values less important than skills. To achieve the Report’s aim, first the goals are identified and then the skills needed to achieve those goals. If “the values are the goals” and the values are not identified, it is pointless to talk about skills.


29 Id at 586.
By placing skills before values, the Report encourages Law Schools to place greater emphasis on fundamental skills and ignore fundamental values. This can be witnessed by the fact that both law students and new practitioners are conferred major awards solely on the basis of skills. Though a demonstration of extremely negative values may be grounds for disqualification, an individual’s values, whether excellent or mediocre, play no role in academic or professional incentives.\footnote{Id at 587}

In general, lawyers view themselves as advocates representing their clients, and their duty is to attain what the client wants. By placing skills ahead of values, the Report strengthens this belief. Values and skills are the two wheels of social justice. If they are to complement each other, then the skills must be developed according to the values.

The Report also fails to consider issues such as the methods and content of teaching in Law Schools. Whether the Case Method, Socratic Method or Lecture Method is used, all focus on adversarial dispute resolution. In the Socratic Method, students are encouraged to understand legal doctrines to resolve future disputes with little regard to justice. The main emphasis is to understand the viewpoint of the judges rather than the process of justice.

Further, the Report overlooks the importance of the content of teaching. The need to introduce socially relevant legal subjects has also been ignored. The
Report focuses on individual rights, and little attention is given to community based or society oriented lawyering.

These shortcomings in the Report justify its stand that the skills and values are not comprehensive. The acknowledgement in the Report that the Statement of Fundamental Skills and Values is not comprehensive but only a stimulus, or, more precisely, a "work in progress," allows members of legal profession to invent, expand, elaborate and refine the so-called Fundamental Skills to foster the said values.

Therefore, in spite of several criticisms against the Report, it provides considerable flexibility to all the members involved in building the legal profession to change or redefine the skills that are needed to accomplish fundamental values. And in spite of the reliance on the Bar and the Bench, the Report relies highly upon Law Schools in providing training in skills and values. Hence, each Law School must develop its own model of teaching the kind of skills needed – keeping in view the role of lawyers in providing social justice and shaping public policy, and the social consequences of choosing clients and the way lawyers represent them.

Justice, fairness and morality can be taught in the classrooms. But the end result of such discussion in classrooms depends on what methodology is used in the classroom. Therefore, a careful design of curriculum is necessary to inculcate a sense of social justice among law students. To accomplish this task,

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31 Jane Harris Aiken, supra note 23 at 9.
the students must be exposed to several facts which indirectly influence the client.

For example, in India victims of crimes tend to settle the matter with the accused, for monetary benefits, although this practice is illegal. If students are exposed to the factors of poverty of the client and to the Indian legal system, which does not provide for victim compensation in most criminal cases, then the students will understand why their clients may be more interested in settlement than in pressing for punishment to the accused.

Before reforming legal education in India, there is an urgent need to identify the values to be achieved by such reform. Legal education must focus not only on what lawyers actually do but on what lawyers ought to do. Members of the Indian legal profession have the comfort of assessing the strengths and weaknesses of the Report.

The Fundamental Skills and Values enunciated by the Report should be analyzed carefully and implemented in keeping with the local needs in India. Blindly adopting the recommendations of the Report to Indian conditions is not advisable. Thus, the MacCrate report can be used as a learning model to identify the goals of legal education in India; however, without creating

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Civil law provides private compensation. As far as criminal law is concerned, only in few crimes such as defamation, public nuisance, rash and negligent driving, compensation can be claimed. Other crimes such as murder, grievous hurt no compensation can be claimed from the convict. However Section 377 of Cr.P.C. authorizes the magistrate to award compensation but it is only discretionary. Only in case of plea bargaining under Section 265 A to C compensation in criminal cases is allowed and again it is restricted only to offences punishable for less than seven years.
appropriate goals, any changes proposed to improve legal profession, would be a futile exercise.

5.1.2. Tailoring the Values and Skills Towards a Social Justice Mission

Legal skills are the foundation for legal education. The traditional outlook for the appraisal of these skills is that they can be acquired by practice in Courts rather than by studying in classroom. The Mac Crate Report poses a serious challenge to this thought. To a larger extent, Law Schools in the U.S. succeed in teaching skills in classrooms. Various methods, such as simulation exercises, live client interviews, and clinical teaching are able to provide skills to prospective lawyers.

The reason that these cannot be adopted in India is that the Law Colleges in India are differently situated from Law Schools in the U.S. There are striking differences in resources, capacities, autonomy, grading systems, teaching methods, cultural and legal set ups. Strict rules for practice, eligibility criteria for teaching in Law Schools, and over dependency on government funding makes changes in India, difficult.

Further, changing or adapting a new curriculum is centralized, and only BCI and UGC are authorized to do so. The centralized examination system, a by-product of the British contribution to Indian education, makes it very difficult for individual faculty members to experiment with course syllabi and teaching methods.
Moreover, India's status as a developing country makes the main aim of the law to promote social justice. The objectives of social justice is removing all inequalities and providing equal opportunities to all citizens in both social and economic activities.33 Considering socio-economic and political conditions in India, the Indian Constitution promulgates equality and justice—social, economic and political, as higher social values.34 Articles 14, 15, 16, and 17 in Part – III of the Indian Constitution mandates the State to provide equal opportunities, where as Articles 38, 39, 39 A, 41, 43, 43 A and 46 in Part IV of the Constitution of India directs the State to make efforts to provide social justice.

The constitutional goals of equality and justice will be accomplished by enacting a number of “socially oriented legislations.”35 Therefore, legal education must focus more on implementing socially oriented legislation and social welfare programs to support the teeming millions of poor in India. In such a situation, mere lawyering skills confined to traditional problem solving are not enough to meet this challenge.

Thus, for the purpose of achieving socio-economic and political justice, new skills must be developed. Even if legal education in India could produce highly talented skill-oriented legal professionals, society may not benefit from such
professionals\textsuperscript{36} because Indian society needs not only highly technical and skill-oriented lawyers, but also lawyers who are socially sensitive and have socially relevant lawyering skills.

In this regard, the first task is to identify the values that legal education must foment and accordingly identify the skills that are necessary to implement the identified values. Identified values should be meaningful, and to be meaningful they should be socially relevant. While identifying values, member of the legal profession should consider India’s social, economic and cultural needs.

**New Values and Skills for Indian Legal Profession**

Due to socio-economic and political distinctions between Indian and American society and the varying needs of the two countries, the mere adoption of the skills and values identified by the MacCrate Report will not improve the Indian legal profession. They can be used as models, but cannot be confined to them. Indian society needs socially sensitive and community-oriented lawyers and a legal education system with a social justice agenda. Keeping in mind these needs, the model values for the Indian legal profession may be identified as follows.

Values

i. Provision of Effective Resolution of Disputes.

The quality of human life in any country depends on the accessibility of justice. Article 14 of the Indian Constitution is a positive affirmation of equal access to the justice system in India. Even the plain reading of expressions of “equality before law” and “equal protection of laws” used in Article 14 denotes fair, effective and accessible legal system. The mere fact that a person cannot access the justice system due to his financial difficulties envisages denial of the constitutional goal of equality.

Thus, providing free legal aid to an indigent person is not only a statutory obligation, but a constitutional obligation on the part of the State. “State obligation” does not mean that only the State has an obligation. Every member of the legal profession is under a professional and legal obligation of providing free legal aid. To achieve this, a nationwide program is required. Naturally,

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37 Various Acts makes it mandatory to provide legal aid to the indigent person. For e.g., C.P.C., Cr.P.C., the Legal Services Authorities Act, 1987.

38 Bar Council of India Training Rules, 1995 Section VI Rule 46 Imposes a duty on every lawyer to render legal aid. Rule 46 reads as follows:

Every advocate shall in the practice of the profession of law bear in mind that anyone genuinely in need of a lawyer is entitled to legal assistance even though he cannot pay for it fully or adequately and that within the limits of an Advocate’s economic condition, free legal assistance to the indigent and oppressed is one of the highest obligations an Advocate owes to society.

The legal Services Authorities Act, 1987 Section 4 (e) imposes an obligation on National Legal Services Authority to “organize legal aid camps, especially in rural areas, slums or labor colonies with the dual purpose of educating the weaker sections of the society as to their rights as well as encouraging the settlement of disputes through Lok Adalats;”

This obligation has to be carried by Chief Justice of Supreme Court at national level

Section 7 (C) imposes an obligation on State Legal Services Authority to “undertake preventive and strategic legal aid programs.” This obligation has to be carried by the Chief Justice of High Court in every state.
the Law Schools are the starting point of inculcating free legal aid as a value in the legal community.

It is also equally important to provide a fair, effective, quick, and inexpensive justice dispensation system. It is the primary duty of the members of the legal community to assist in improving the legal profession. Easy access to justice is meaningless unless there is a guarantee of fair and effective justice. Lawyers should also take responsibility for quick disposal of disputes. Law Schools should take effective steps to imbibe this sense of responsibility among students. In fact, this is the most important value, considering the volume of pending cases in Court.39

Thus, the provision of effective resolution of disputes, involves two values; first, providing fair, effective and accessible legal system, and second, providing quick and inexpensive dispute resolution.

ii. Striving for Social Justice.

India is a country with rich resources concentrated in the hands of a few, and there are a large number of poor people. Thus, the immediate concern of the nation after independence was to provide social welfare and to bring social order. This concern was well expressed in the Preamble and the Directive

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Section 10 imposes similar obligation on District Judge at each district and Section 11(b) on Senior Civil Judge at Taluka (County) level.

As far as members of faculty is concerned they are under mandatory obligation of extending legal aid services as part of curriculum under Practical Paper – IV Public Interest Lawyering, Legal Aid and Para-legal Services.

39 In Supreme Court 19,806 cases are pending at the year 1998. In High Courts 3.18 million cases are pending (Year 1997). In subordinate Courts 20 million cases are pending. Ministry of Home Affairs Government of India (1997) available at http://mha.nic.in/justi.htm
Principles of State Policy in the Indian Constitution. Various enactments that followed after independence, show ample evidence that the urgent concern of the Government is to provide basic amenities to the poor.

Free India, expected the law to play a vital role in bringing social order. To secure the rule of law in any nation, effective implementation of social welfare legislation is not only necessary but mandatory. Satisfying human needs is the basic function of any just society. Unlike India, in many countries social welfare cannot be implemented through constitutional provisions. The Supreme Court of India has a rich history of judicially enforcing socio-economic rights by liberal interpretation of fundamental rights. The main objective behind the Directive Principles of State Policy in Part IV of the Indian Constitution is to establish a welfare state and to provide socio-economic justice. They aim at social reconstruction and economic enlightenment of the masses.

Therefore, the entire emphasis is to develop a legal system which will secure social order by promoting social justice. Social justice is the ultimate goal of

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40 See generally, Part IV of Indian Constitution, specifically articles 38, 39, 39 A, 42, 43, 46.
41 Various enactments in the field of land ceiling, agricultural tenancy, rent control, minimum wages etc., are aimed at securing social order.
law in India. To achieve this goal, socially relevant legal education is necessary to transform the legal process and the legal profession, to secure social justice.

In accordance with these needs and objectives, the value of striving for social justice focuses on making the legal process an instrument of social development; on developing the legal profession as a vehicle for social justice; on providing socially relevant legal education to meet the constitutional goal of providing socio-economic and political justice; on promoting the legal profession to meet the need of the common person in India; on securing social order by promoting the rule of law; and on promoting welfare of the people by securing progressive social order.

iii. Promotion of Alternative Role of Lawyer.

The transition of state philosophy from *laissez faire* to a welfare state requires that lawyers learn to deal with law as part of larger system of social control. Lawyers are expected to be sensitive to the needs of the poor and the destitute. Therefore, promoting the role of the lawyer as a champion of individual rights, is no longer the primary goal of legal education. Lawyers need to play a vital role in the justice dispensation process. They cannot be mere spectators of judicial process; they must be an integral part the process of providing justice. Thus, they must change their traditional role from problem solver to dispensers of justice.

Alternative dispute resolution is an outstanding development in 20th century law. ADR, as a form of dispute settlement was an important trend in conflict
management and judicial reform. The necessity of ADR as an alternative to the traditional justice dispensation system was globally recognized. In fact, various forms of ADR such as negotiation, mediation, arbitration and conciliation were the traditional methods of dispute resolution in ancient India. The present Indian justice dispensation system of adversarial justice dispensation is largely influenced by the British model. The complexities and technicalities imposed by the British model need to be simplified. Therefore, a system which provides a non-judicial forum and informal proceedings to satisfy natural justice, involving little cost and speedy disposal, is the need of the hour.\(^44\)

Recognizing this need, ADR was given statutory status in the form of Lok Adalats in India.\(^45\) The National Legal Service Authority established under the Legal Services Authorities Act of 1987, acts as an apex and nodal authority for prescribing rules and framing policies for effective implementation of Lok Adalats. Conducting Lok Adalats proved cost effective, simple, and easy — and, more importantly, speedy-justice.\(^46\)

Socio-economic conditions in India necessitate more ADR programs. India's ancient culture and philosophy of simple living, require the lawyers to shift their traditional role of problem solving to the roles of negotiator, mediator,


\(^{46}\) Justice Jitendra N.Bhatt, *A Round Table Justice Through Lok-Adalat (Peoples’ Court) – A Vibrant-ADR-In India*, 1 SCC (JOUR) 11 (2002).
counselor and public policy maker. The legal profession must change its purpose from providing client-centered legal services, to securing the Social Justice Mission of providing fair justice. The legal profession should recognize the truth that the lawyers are loyal to justice rather than just to their clients.

Apart from ADR, it is also necessary to make citizens aware of both their rights and duties. "Knowledge is divine" is an old saying. "Applied knowledge is divine," goes the present saying. With the literacy rate at 68.4%, disseminating necessary legal knowledge is as important as any other function of the members of the legal profession.

Legal literacy is a condition precedent to making the law relevant and meaningful. All members of the legal profession have a moral and professional responsibility to impart legal literacy by way of simplifying legal rules that one may encounter in day-to-day life. Further, they should make efforts to have laws translated into vernacular languages, as laws are customarily written in English.

The agenda of promoting an alternative role of lawyers thus includes shifting the traditional role of the lawyer from problem solving to justice dispensation; promoting loyalty towards justice rather than the client; and disseminating necessary usual knowledge to the common person.

47 Census of India 2001, T 00-006, available at http://www.censusindia.net/t_00_006.html
iv. Provision of Judicial Independence and Accountability

India is ranked as low as 84th out of 180 countries in the Corruption Perceptions Index.\textsuperscript{48} In any developing country, when public life is corrupted, legality is the first casualty. In the recent past, the Indian judiciary has emerged as a powerful institution. The judiciary enjoyed the faith and esteem of a billion people due to low level of corruption in its members.

The Supreme Court of India, which arguably commands great respect and power in India, needs to shield the judiciary from corrupting influences. When the other two organs of the modern state are held in low esteem, the Judiciary is expected to play a role of guardian of the common person’s interests. In such a scenario, the common person seeks the help of the judiciary in fighting against corruption. Therefore, it is very important to protect the independence of Judiciary from the influence of Legislature and Executive.

To protect the Judiciary's independence, it is imperative to have a transparent legal profession. In addition to transparency, all members of Bar, Bench, and law faculty must be accountable to their profession and to society in general. Thus, this value stresses the need to promote and preserve judicial independence and develop accountability among lawyers, judges and law teachers.

The aforesaid values are the ideal standards required to make the legal profession meaningful in India. But these values are neither comprehensive nor exhaustive. They are mere guidelines. These proposed values are not the final answers for the problems faced by the Indian legal profession; they only set the tone. The purpose of this paper is not to provide answers but to stimulate the debate in the legal fraternity about the need for a national debate over these issues. One option would be the appointment of a highly sophisticated and intellectual professional body – an Indian MacCrate Task Force counterpart – to conduct such a debate and to find the answers.

Skills

After identifying the values, skills are required to be developed in order to implement them. Almost all of the skills identified in the MacCrate Report are required for securing these values; however, special emphasis should be give to certain skills enumerated by the Report in securing specific values.

For securing the first value, i.e. ‘effective resolution of disputes’, the following skills enumerated in the Report are helpful: legal research (Skill # 3), communication (Skill # 5), litigation and alternative dispute resolution procedures (Skill # 8), and organization and management of legal work (Skill # 9). Similarly, for securing the second value, i.e. ‘striving for social justice’ following skills are important: generating alternative solutions and strategies (Skill # 1.2), elaborating legal theory (Skill # 2.3), evaluating legal theory (Skill # 2.4), and identifying and evaluating other possible legal theories (Skill
Finally, in promoting the third value, i.e. 'alternative role of a lawyer', the following skills may play significant role: methods of effectively tailoring the nature, form, or content of the written or oral communication (Skill # 5.2.c), counseling (Skill # 6), negotiation (Skill # 7), and knowledge of the fundamentals of proceedings in other dispute-resolution forums (Skill # 8.4).

New Skills.

Though these skills are helpful in promoting the proposed values, new skills are required to be developed in order to secure them in a meaningful way. New skills may be developed along the following lines:

i. Innovative/Alternative Problem-Solving Techniques.

In order to provide fair, effective and accessible justice, the mere achievement of minimum competency in analyzing and applying legal rules and doctrines is not sufficient. Lawyers need to develop the skills to invent innovative techniques to provide alternatives to the adversarial process. They need to be creative in developing new methods of problem solving to provide a quick, fair and cost effective justice dispensation process.

ii. Skills to Invent New Options beyond the Established Norms.

To secure the constitutional goal of bringing social order, lawyers need to think about options beyond traditional norms. They need to be able to handle group actions and community or social-oriented litigation, and they must hone strong
interpretative skills to convince judges to recognize the need for considering socio-economic conditions of the litigants in analyzing and disposing legal problems.


Encouraging skills in mass communication for disseminating legal literacy is an absolute necessity in view of India’s high rate of illiteracy in general, and legal illiteracy in particular. Lawyers must play the role of leaders. They need solid skills to communicate not only with Judges and clients, but with the society as well. To influence public policy making, the public must be convinced to put pressure on the government for required policy changes. Good communication is the only way to convince the public as well as the government of the need for a change.

iv. Skills to analyze the Socio-economic Background of Legal Problems.

In a developing country like India, most legal problems are related to social relations and poverty. To deal with these problems, skills in understanding the broader social and economical issues behind the problem are essential.

v. Skills in Research with a sense of Responsibility to serve the Society.

In achieving all the aforesaid objectives, sound research skills are needed. However, a mechanical application of research findings will do no good for such a cause. Researchers need to have a sense of commitment and desire to
serve the society. Thus, the goal of developing research skills is to serve the society rather than simply applying legal rules mechanically to problems.

vi. Skills of Translation.

All the laws are made in English, and therefore the dismal legal literacy rate mandates those in charge of law enforcement, to make efforts to have those laws translated into vernacular languages. Law Colleges should develop sound translation skills among the student community.

Again, these skills are not comprehensive. They provide only an outline of skills to be developed. Further, these skills may vary from place to place, and from time to time, depending on the local community needs. Each Law School may need to identify and prioritize skills that are well suited to its purpose.

The effort to provide these skills to lawyers, heavily lies on Law Schools, particularly in India. The reasons behind this heavy burden on Law Schools are several folds. The primary reason is that the entire law learning process takes place in Law Schools; the secondary reason is that once the students graduate from the Law School, they can straightaway enter the legal profession. There is no requirement in India for apprenticeships or to take Bar exams as in most other countries.

Thus, in highlighting the need for quality legal education, Justice Anand said that "the quality of education has a direct impact on the prestige of the legal
profession. We must therefore identify the areas of default and initiate corrective action to repair the damage.\textsuperscript{49}

Further, the Supreme Court of India in \textit{State of Maharashtra v. Manubhai Pragji Vashi and Others}\textsuperscript{50} held that the State Government, in concurrence with the concerned University, the Bar Council of India and the State Bar Council and other competent bodies or persons, should take the necessary steps to ensure high standards to achieve excellence in legal education. Therefore, to ensure the standards in legal education and to promote the values and skills that are identified, needs reassessing the contemporary needs of the Indian society.

\textbf{5.2 Reassessing Contemporary Needs}

Transformation of legal education from the colonial period which is predominantly feudalistic, to industrial and egalitarian society in free India, is a big challenge. Role of the lawyer in the colonial past is predominantly adversarial. When India adopted its Constitution and choose to be a welfare state, the role of legal profession was required to transform from adversarial to social engineering.

The Constitution of India envisaged the goal of establishing a socialist, secular, democratic republic based on equality of status and non exploitation of class by class. It is pertinent to note that the lawyers took the leadership of the freedom


\textsuperscript{50} AIR 1996 SC 1.
struggle. With given high expectation from the Constitution of India, Justice D.A. Desai says “…while people’s expectations rose high, the instrument for satisfying the expectations were inadequate, imperfect and out-moded.” He argues that our justice dispensation system being adversarial, is “archaic, non-functional and not result oriented” and laws passed by the Parliament are “so clumsy and productive of wasteful delay that it has become counterproductive.”

As the transformation of legal profession from colonial to free India, poses several problems, these problems get complicated with the present globalization trends. Therefore, the question is how to make legal profession socially relevant? To answer such a question we need to reassess the role of lawyers keeping in mind the contemporary needs of the society.

Lawyers are foremost a skilled legal practitioner. Legal education needs to augment the skills that are required to be a legal practitioner. The quality of legal education must improve drastically to inculcate those skills. Skills training should be one of the important tasks of the legal education. In India enrolling as an advocate makes a person professional, and the person so enrolled gets a privilege of representing the clients.

This privilege is conferred by the BCI and has the sanction of the State. This in turn results in monopolizing the profession. In such a situation the members of

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51 Desai D.A., Role and Stricture of Legal Profession, XXII IBR, 1(1995)
the profession assume higher responsibility and accountability to the society.\textsuperscript{52}

Therefore, creating smart lawyers without any responsibility and accountability is of no value. Society needs not only smart lawyers but also socially sensitive lawyers.

Society, calls for lawyers who can think out of the box and who do not over depend on the age old principle of precedent. Principles of precedents impede the growth of new methods of delivering justice. Therefore, the lawyers need to look beyond the established norms, to bring justice to the masses. To fulfill the constitutional goal of equality before law and equal protections of law, easy access to justice delivery system must be made to the lowest of the low.

Professions are different from occupations and business. In the words of Prof. Baxi, professions have "more explicit pursuit of, and greater fidelity to, certain basic societal values."\textsuperscript{53} Therefore, he says that lawyers as professionals are learned to achieve justice in society. As the lawyers are professionals governed by a professional body, they are bound by the Code of Ethics promulgated by the BCI.\textsuperscript{54} Prof. Baxi gives a detailed account of these ethics and point out that they are vague and expresses his doubt about enforcing such Code.\textsuperscript{55}

One of the examples he quoted is Rule 41 which deals with the obligation of lawyers to offer legal aid. Rule 41 describes legal aid as one of the "highest

\textsuperscript{52} \textit{Id} at 3.

\textsuperscript{53} Upendra Baxi, \textit{The Pathology of the Indian Legal Professions}, XXII IBR, 67(1995).

\textsuperscript{54} Code of Ethics was formulated by the BCI in Part VI, Chapter II of the Bar Council of India Rules made under section 49 of Advocate Act 1961 as Standards for Professional Conduct and Etiquette.

\textsuperscript{55} See Upendra Baxi, Supra note 53.
obligation" but comes with a rider that it is subject to "limits of an Advocates' economic condition". He categorically points that "even superstar lawyers, whose economic condition is unconsciously affluent, even refuse summarily to see an indigent person with urgent need for legal assistance. We also know that most senior lawyers stay away from the legal aid programs of the State".

To make legal professional responsible and accountable, the professional standards must be set high, and sufficient emphasis must be made on following those standards.

Learning the law in the present context is based on the book, and the students either mechanically memorize the principles or may absorb them. Explaining the consequences of over reliance on the book, T.K. Oommen says: (T)he excessive reliance on the book severely limits the capacity of lawyers and judges to deal with crisis situations which may arrive unannounced and there may not be any solution provided for them in the book."^56

Therefore, in such a situation he points out that the lawyer/judge needs to undertake field investigation to fill the gap. Even if the Book provides solutions, they may not give enough exposure to the problem, as the solutions given by the book is always context based. Therefore, the lawyers as well as judges need to look beyond the Book and the investigation may require a field work which necessitates sound research skill to be inculcated among the legal professionals.

Legal profession is becoming more and more an urban phenomenon and its mission is to provide affordable access to justice. But more lawyers are required in the rural areas. Society does not need highly educated, but under professionalized legal personnel. To meet the contemporary needs, the legal education must produce sufficient number of barefoot lawyers.

Law Colleges must provide professional education by inculcating skills and values that are needed by the profession. Lecture method emphasizing on analysis of doctrines and rules must give way to clinical teaching. Exposing the students to the civil, criminal and other trials in the Court must become part of the curriculum.

In the light of socio economic and political conditions prevailing in India, the legal profession requires to raise its current position in order to promote social justice. Several factors peculiar to the Indian society, expect lawyers to play different roles as compared to the other developed nations. The Indian Parliament has become a factory of producing plethora of legislations. Sheer number of amendments to the highest law of the land, shows ample evidence in legislative mood of the Indian Parliament. What happens to these legislations? Roger Cotterrell answers that such laws give work to lawyers to digest and comprehend the changes brought by new rules.\footnote{Roger Cotterel, \textsc{The Sociology of Law: An Introduction}, 1 (Oxford University Press, London, Indian Edition 2007).} He also points out that the new law may be published, may find way to a library, and may become
registered in digest of legislations, periodicals. Then what happens? Does this law ever reach the people for whom it is meant?

Every law passed by the Legislature may not reach the Courts. Even if it reaches the Court, they may either hold it unconstitutional or may give altogether different interpretation in such a way that the purpose of such legislation is lost. Even if the Courts enforce such law, every judgment given, may not have an effect on public life. Reasons may be two fold; first, the judges and lawyers know very little about the “potential or actual social effects”, and second, the role of lawyer ends at the stage of getting judgments but judgments themselves do not provide justice. They need to be implemented and the Courts have no executive mechanism of their own to do so.

Therefore, analyzing the law purely on ‘legal logic’ interpretation, would be disastrous in understanding the link between law and society. For example, the interpretation of legislations in the field of family, labour and welfare laws requires understanding of several factors such as local customs, socio economic conditions of the country, etc. Society expects the lawyers and legal professionals to be competent to understand these intricacies between the law and society.

Further, in a country like India where majority of the people live in poverty and illiteracy, numerous legislations provide high risk of being a weapon in the hands of a few, to control and exploit the masses. As all the legislations and the
proceedings before the Courts are in English, legal literacy becomes the foremost requirement in India. Procedural technicalities and legal jargons in welfare schemes create invisible barricades to the masses in accessing justice. Society expects a simple and easy accessible legal system, and the responsibility to make the legal system simple and accessible, lies on legal professionals.

Therefore, to make the administration of justice effective the society needs the following things:\textsuperscript{58}

i. Structuring of the Profession for Easy Access.

The services of the lawyer are mean for the needy. But the way the presently the legal profession is structured; it keeps the lawyers from the away needy. The services of the lawyers are available only to the persons who can afford, but not to those who need them the most. It is not only the financial constraints that impede the services, but even the geographical conditions play a key role in getting the required legal services. Therefore, the profession needs to be restructured, to make services of lawyers available to all the needy.

\textsuperscript{58} These are some of the recommendations made by Prof. Madahava Menon. See Madhava Menon N.R., \textit{Restructuring the Legal Profession for Strengthening Administration of Justice}, XXII, IBR 235 - 241(1995).
ii. Quality of Legal Services

Though some kind of variation in the quality of legal services offered, is inevitable, the decreasing standards of the legal profession particularly at trial Courts level, is alarming. These poor professional standards effect the administration of justice. Therefore, the legal education should take effective steps in arresting the decline in professional standards.

iii. Effective Dispute Settlement Mechanism

It is a known fact that the dispute settlement in India is woefully slow. The efforts made to ease the pending litigation in the Courts by several alternative dispute resolution methods has being witnessing stiff protest from the lawyers. Though unfounded, the fear of losing income is the biggest fear among the lawyers, for such resistance. Hence, legal education must inculcate the value of alternative dispute resolution among the students, so that they would be more receptive to the idea of early settlement.

iv. Involvement of Public Sector in the Profession

To provide access to justice, the present legal aid schemes have proved to be ineffective. Providing legal aid, though is the paramount obligation of the State, in many cases the service provided by the State is inadequate. The quality of legal service provided under the legal aid
schemes is really unsatisfactory. Therefore, introducing the public defender system that is followed in several western countries would increase the access to justice. Legal education should strive to encourage the students to join in such an initiative.

The role of the law teachers or the academicians, requires them to raise their professional standards. Devotion, accountability, commitment, strict probity and honesty are the minimum standards a law teacher must possess. The faculty must develop legal pedagogy in providing clinical experience to the students. They need to strive for academic excellence and be a source of inspiration to the students.

“Good character, academic honesty, integrity, devotion to duty, commitment to academic excellence, continuous active involvement in academic and research pursuit, fighting for the cause of justice to poor and the lowly, working for high academic and moral standards, upholding the dignity and good traditions of the profession, and striving for the promotion of democratic and secular values,” are the ten commandment of the academicians as observed by Jaganmohan Rao.

To prepare the legal professionals to be social engineers, the faculty is required to play an important role in encouraging and shaping the young students pursuing legal education.

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To sum up, the society expects legal professionals to play the role of social engineers and devise strategies to provide social justice. To play such a role, new structures such as "[l]awyer’s Collectives, Public Interest Law Firms, Poor Peoples’ Lawyers, barefoot lawyers, Lawyers’ Public Sector, National and State Free Legal Services Authorities and so on" are required. So, when the service to the people becomes the end of the professions, means to match, must bloom into existence structurally and technique-wise.

5.3. Reassessing Infrastructure: Shortcomings, Optimal use and Development Thereof.

It is evident that several efforts were made in reforming the legal education in India and most of the efforts were focused mostly on the physical infrastructure of the Colleges and on improving the curriculum. Introducing clinical component by way of four practical papers nearly a decade back, could be described as a first step in making legal education more relevant to the profession.

In spite of several problems and drawbacks faced by the Law Colleges in implementing the practical papers; in devising teaching and evaluation methods, the BCI has provided considerable flexibility. Each University or Law School is permitted to adopt appropriate teaching and evaluation programs suitable to the conditions prevailing in the local region. Law Schools may also

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61 Ibid.
identify local resources in adopting a particular kind of program to teach these papers.

If the faculty is committed, they can employ various methods in imparting these practical papers in a more meaningful manner. They could offer quality clinical education without making any changes in the present curriculum. Following are a few suggested models to provide clinical experience to the students; they are of course not exhaustive.62

5.3.1. Model Clinical Methods

i. Internship with Lawyers

In spite of the ban on representing clients, the students can be assigned to an Advocate willing to work with them. Students can be encouraged to conduct legal research pertaining to a particular case assigned by the advocate under the supervision of the faculty member. Though students may not be able to acquire skills of advocacy, nonetheless, they can acquire many other useful skills.

ii. Public Interest Lawyering/Litigation

Students can be encouraged to conduct legal research on issues of public importance, and the findings can be placed before the concerned Officer (who is responsible for its effective implementation). In case of inaction by the Officer concerned, the students can approach either the High Court or the

62 Most of the examples cited were successfully implemented through Legal Aid Clinics by V.M. Salgaocar College of Law, Panaji, Goa.
Supreme Court for redress in the form of Public Interest Litigation. In all appropriate public interest litigation, students can appear before the Court. In the process, they learn all the skills including advocacy.

iii. Legal Literacy Camps/Street Law Programs

In a country like India, where about 260 million people live below the poverty line and some two-third of the population of more than a billion is dependent on agriculture, focus on legal literacy programs is extremely important. Law Schools can play a major role in sensitizing the public about their legal rights and duties. Legal literacy campaigns are suitable for Law Schools in India, as far as organization is concerned. They require neither large financial resources nor special expertise. These programs help students in developing important organizational skills, research, oratory, public speaking and translation skills.

iv. Legal Entitlement Programs

With a large number of families living below the poverty line in India, students can be trained to conduct legal research on welfare benefits floated under various Social Welfare Schemes by State and Federal Governments. This kind of research will be necessary to identify the beneficiaries under various schemes and to help them in submitting applications.

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63 Students of V.M. Salgaocar College of Law successfully filed eleven public interest litigations on various issues like sanitary facilities in slums, implementing costal regulation zones, protection of rights of disabled persons, parking space in newly constructed residential flats.


65 Most of the laws in India are in English. So students need to translate them into the local language to disseminate legal information.
Proper research on these beneficial provisions is more than a necessity, to identify the beneficiaries and to see that these measures actually reach the needy. This kind of work develops a sense of social responsibility in students and will expose them to the plight of their country's poor. This program has a potential to offer several skills like fact investigation, research, legal analysis and interviewing skills.

v. Free Legal Advise Clinics

Law Schools can also establish free Legal Advise Clinics in schools. In the Clinic, the students and teachers can guide people in identifying their problems and make them aware of the remedies available. These services are invaluable not only because they save the time and money of the prospective clients, but also because they can reduce unnecessary litigation. These Cells give ample opportunity to the students to learn interview techniques, fact finding and research skills.

vi. Para Legal Services

Students can provide paralegal services such as drafting affidavits, assisting in registration of marriages, births and deaths, electoral rolls, and filling out various forms. Law Schools can do this easily by associating with Local Self-Governments, such as, Panchayats (counties) and Municipalities. These kinds of services also would help to develop several skills such as drafting, research, interviewing, and fact finding skills. At the same time para-legal services provide greater help to the public in securing their basic legal entitlements.
vii. Open Forums:

Another option for Law Schools is to adopt a village and encourage students to conduct a survey to identify the problems that the people in that particular village face. After identifying the problems, the students can approach the concerned authorities and arrange a public forum. Villagers can be duly informed about the program and encouraged to participate in the forum. People can meet the concerned officers on that particular day and settle their grievances in public.

Students can be instrumental in the smooth functioning of the entire program, and they can follow up the matter with the concerned officers. These kind of programs are very effective in settling problems, as the officers give an assurance publicly and thus it is less likely that they would not fulfill those promises. This kind of program will help in developing skills of legal research, survey techniques, organizational skills, problem solving skills, drafting and communication skills. 66

viii. Theater Art:

Law Schools also can encourage and train the students in street plays, skits and public performances for legal literacy and to advertise the free legal aid available at their colleges. Law Schools can take the help of various NGOs in training the students. Various issues such as untouchability, gender

66 By using this method the students of V.M. Salgaocar College of Law solved several problems faced by the local community like transport, water supply, and garbage disposal.
discrimination, domestic violence, children rights, and environmental issues, can be the subjects for such plays. Students can even go to nearby schools and educate the school children about the legal issues that concern them. Skills that could be impacted by this method is oratory, communication, public performance, drafting and analytical skills.

ix. Pro bono Representation in Quasi-Judicial Bodies

Restriction on students to represent clients was viewed as one of the major hindrance in development of clinical education in India. This being the reason, clinical movement in India is confined more on legal literacy and paralegal services. But quasi judicial bodies such as the Consumer Dispute Redressal Forums provide an opportunity to develop live client clinics in colleges. As the Consumer Forums allow any person to represent the parties in resolving consumer disputes, the Consumer Clinics have the potential to offer all the skills that a lawyer requires in the profession. Therefore, establishing Consumer Clinics in the Law Colleges, become a viable option for both the faculty and the students.

Above methods show that Clinical Legal Education can play a crucial role in offering both; skills to students and service to the society. With the limited opportunities available in India, a whole hearted attempt to provide quality clinical education can reap rich dividends. This was evident from the

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67 Consumer Law Clinic was started at V.M. Salgaocar College of Law in the year 2006 and 20 students were actively involved in dealing with 3 cases pending before North Goa District Consumer Dispute Redressal Forum.
experiences of V. M. Salgaocar College of Law, Goa. As already noted, the fourth practical paper on Legal Aid provides considerable flexibility to Law Schools in its implementation. The activities undertaken by the Legal Aid Clinics in Goa amply illustrate how to utilize paper four in institutionalizing quality clinical education in India.

5.4. Model Blue Print for Evaluation

To make Clinical Legal Education move ahead, there is a need for scientific supervision by the faculty. It also requires developing an appropriate and accurate assessment scheme. Scientific supervision and objective assessment is an integral part of improving the quality of clinical education. Developing an apt systematic supervision and evaluation design is a genuine concern globally. Since, there is no effort made in India in this regards, any attempt to make such a design is a worthwhile endeavor.

A scientific evaluation necessarily involves three aspects. First of all there is a need to concentrate on how to organize practical papers. This includes logistics of organizing curriculum, division of marks, number of modules, methods of avoiding plagiarism, and controlling supervision which are otherwise known as policing. The main purpose of the first aspect is to avoid dilution of quality.

The second aspect of evaluation, focuses on what is intended to be taught. This includes identifying the rationale of offering the course to the students and constituents to be offered. The last and the third aspect of evaluation is how to
assess. This includes identifying the criteria to assess the work of the students to allot marks/credits.

As a component of scientific evaluation, it is suggested that certain percentage of marks should be allotted to Viva for all four papers.\textsuperscript{68} The purpose of viva is to monitor the actual work done by the students. Unlike National Law Schools and few autonomous Law Colleges, most of the Law Colleges follow central assessment. In the central assessment, concerned University conducts the examination and appoints a panel of faculty members from different Law Schools and Universities for paper setting and assessment. This method was adopted to avoid bias and to improve educational standards.

As all the clinical papers are suggested to be internally assessed by the faculty offering the courses, and a neutral panel of faculty members would conduct viva to assess the clinical work undertaken by the students. Considering the three aspects of scientific evaluation this part offers a paper wise blue print for evaluation.

\textit{Paper I: Moot-Court, Pre-trial Preparations and Participation in Trial Proceedings.}

a) Moot Court

Moot Court needs to be introduced in the first year of LL.B. course. A faculty has to be designated, who will initially explain the need, necessity and

\textsuperscript{68} Viva is an oral examination in which panels of faculty members assess the involvement of students in the practical papers.
importance of the Moot Court. Students should be trained as to how to conduct research, find relevant laws, case laws and manner of citing cases, drafting, framing issues, identifying important facts from the case, and Court manners. A small Course on using library and internet will be advantageous.

Evaluation: Each student may be required to participate in 3 Moot Courts during their course. Each Moot Court may be evaluated for 10 marks of which 3 marks are for the written submission and 7 marks for the orals. Students may be required to submit their written arguments in a journal. To avoid plagiarism, the Moot Court cases should be framed on hypothetical problems. Faculty shall avoid framing cases that are already decided by Supreme Court. Each year sufficient number of cases may be framed by the faculty, depending on the number of the students. Allotting the same case to all the students should be avoided. At any given point of time, the same case should not be given to more than 5 students.

Marks should be disclosed to the students immediately and feedback should be given to each student to improve. Faculty should encourage culture of Mooting by conducting inter class Moot Court Competitions. The criteria to evaluate Moot Court may be based on student's knowledge and use of facts, correct articulation of facts, factual analysis and use of evidence, correct articulation of legal issues and legal analysis, knowledge of law and its interpretation, use of authorities and citations to support the arguments, response to questions, skills of advocacy and persuasiveness, language, clarity, brevity and ingenuity, and Court manners.
b) Counseling/Pre-trial Preparation.

Faculty could use simulation exercises to offer counseling experience to the students. Faculty may identify suitable hypothetical problems. They should train some students to act as clients. Other students can interview them with the supervision of the faculty after which the faculty can give a general feedback to the students.

If the college has a facility to record the proceedings they can record one of the proceedings and display it to all the students and then ask the students to make their observations. This can be followed by, the faculty giving his observations. An experienced advocate may be requested for this purpose, if the faculty is not having sufficient expertise.

Evaluation: 30 marks. (3 interviews x 10): The whole proceedings need to be recorded by the student in a journal kept separately for the purpose. Students are also required to write the advice they give to the client. The evaluation should be based on eliciting facts, active and passive listening and appropriate questioning, identification of legal issues, analysis of issues, applying facts to legal provisions, identification of moral and ethical issues, confidence building, legal advice including suggestion of alternative remedies, effective communication, and post interview reflections.
C) Participating in Trial Proceeding

For a meaningful participation in trial proceedings there should be a cooperation and co-ordination between Bench, Bar and the College so that a particular group of students can be allotted to a specified Court. In consultation with the Judge and the lawyers, the faculty could select a case and allot it to the students. Before the beginning of the trial, the Presiding Officer and the advocates should brief the students about the case. Students should be given an opportunity to interact with the Presiding Officer and the advocates of either side to fully understand and appreciate the proceeding. The students need to keep a record of their attendance and the proceedings. This record has to be authenticated by an officer of the Court.

Evaluation: 20 marks. Evaluation should be based on student's attendance, understanding of Court procedures and their observation of the trial proceedings.

Twenty marks may be reserved for viva. A panel of three members of the faculty, possibly one external faculty, may conduct viva on all three components of this paper.

*Paper II: Drafting, Pleading and Conveyancing*

In addition to the class room teaching and training, introducing trial advocacy is desirable too. Purpose of introducing trial advocacy, provides an opportunity to the students to get the feeling of actual participation in a case. Such situation
makes students more serious. Students may be divided into several groups, and two groups should be given one hypothetical problem. One group will draft all the documents that are required in a trial proceeding on behalf of Plaintiff/Complainant, and another on behalf of Defendant/Accused.

Evaluation: Three simulations, one in civil, one in criminal and the other one on Conveyancing may be given. (3 X 25 = 75 marks). Evaluation should be based on identification of parties, indentifying nature of the documents to prepare, correct recital order, using proper operative terms, articulation, language, clarity, and compliance of legal formalities.

Twenty five marks may be reserved for viva. A panel of three members may be constituted to conduct the viva, out of which at least one member should be either an experienced counsel or a Judge. Feedback to the students from panel members is desirable.

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

Teaching of professional ethics should not be limited to the mere teaching of relevant provisions of Advocates Act or a discussion of a few cases pertaining to ethical issues. This paper should necessarily involve sensitizing the students on various social justice issues and public accountability and certain issues like Maintenance and Champerty under Indian Contract Act, Prohibition of advertisement by advocates, and restrictions on law firms, etc.
Seminar method will be suitable for this kind of paper. Students may be asked to take topics pertaining to legal ethics, conduct research and present a paper. Students may also be asked to comment on recent judgments on professional ethics. Each student is required to undergo an internship in a lawyer’s or a judge’s office for 30 days and maintain a day-wise journal for record and evaluation.

Evaluation: 40 marks for the seminar (30 marks for written submission and 10 marks for oral presentation), 20 marks for Review of cases on professional ethics and 20 marks for internship. Seminar evaluation may be based on research, articulation, clarity, brevity communication, language and the evaluation of review of case may be based on identification of ethical issues, and evaluation of judgment on ethical matters.

Internship in lawyer’s office may be evaluated by the lawyer concerned. Law Colleges require to identify a few good lawyers who are willing to take the students for internship and a proper criteria needs to be developed by the faculty member to guide the lawyer in evaluation. The criteria may be based on active and passive listening, identification of legal issues, analysis of issues, applying facts to legal provisions, identification of moral and ethical issues, legal research and post interview reflections.

Twenty marks may be reserved for viva. A panel of three members may be constituted to conduct viva out of which at least one member should be either
an experienced counsel or a Judge. Feedback to the students from panel members is desirable.

**Paper – IV Alternate Dispute Resolution**

This is a new subject added in the practical paper in place of Legal Aid. This subject contains three components namely Negotiation, Conciliation and Arbitration. Previously Arbitration and Conciliation was offered as an optional course in Five years course, and as a compulsory course in 3 years LL.B. Course. But in both the streams this paper was offered like other substantive subjects. Introducing ADR as a practical subject necessitates adoption of clinical methodology. BCI requires all the Law Colleges to conduct this subject by simulation and cases studies. Therefore, the faculty needs to prepare simulation problems to give clinical experience in negotiation, conciliation and arbitration.

Evaluation

Negotiation: 30 marks for Negotiation (10 marks for Pre-negotiation preparation and Plan of Action, 20 marks for actual Negotiation). Evaluation may be based on identification of issues, identifying common interests, identifying conflicting interests, prioritization of issues, generating options, rapport building, convincing power, balancing common and conflicting interest using common advantages for continuation of negotiation, legitimacy of the claims and the outcome of negotiation.
Conciliation: 30 marks may be allotted for Conciliation (10 marks for Pre-Conciliation Preparation and 20 marks for actual conciliation). Evaluation may be based on maintaining neutrality, confidentiality, ability to separate people from the problem, motivating parties to negotiate, counseling skills, and providing scope for venting emotions, rapport building, helping the parties in identifying interests and formulating tentative and drafting final settlement.

Arbitration: 30 marks may be allotted for arbitration (10 marks for Pre-arbitration preparation and 20 marks for actual Arbitration). Evaluation may be based on aptitude for speedy disposal, promoting the interest of the parties, efforts made to sensitize the parties for effective arbitration, maintaining neutrality, framing of rules for conducting arbitration, interpretational skills, unitization of arbitral procedure and drafting arbitral award.

Ten marks for viva. A panel of three members may be constituted to conduct viva out of which at least one member having experience in negotiation, conciliation and arbitration. Feedback to the students from panel members is desirable.

The legal process of transforming the society into a just society would depend upon the performance potential of the legal profession. Social justice through legal action would be possible only when competent and socially sensitive legal professionals serve the society. Therefore, reforming the legal education to implement and institutionalize Social Justice Mission requires focusing the
reforms to improve competency of the legal professionals and developing special skills towards achieving the mission of social justice.

Identifying the values of such mission and accordingly identifying skills that are required to carry on the values, becomes part of creating socially sensitive lawyers. Identifying the methods to improve such skills and scientific evaluation of students involving in such methods is necessary to improve the competency of the budding lawyers.