CHAPTER 4
Clinical Legal Education: Concept and Concern

4.1 Introduction

Clinical Legal Education (Practical training is a more familiar expression though the two are not necessarily synonymous) is directed towards developing the perceptions, attitudes, skills and sense of responsibilities which the lawyers are expected to assume when they complete their professional education. It can, therefore, be as broad and varied as the law school would accommodate; certainly it is not limited to the mere training in certain skills of advocacy. Clinical Legal education has wider goals of enabling law students to administration of the law, in the reform of the law, in the equitable distribution of the legal services in society, in the protection of individual rights and public interests and in upholding the basic elements of ‘professionalism’. Clinical experience in law school thus offers a unique opportunity for students to learn, under supervision, not only about the professional skills used by lawyers but also about many aspects of the ‘hidden curriculum’ essential for preparation to think and act like a lawyer. In this connection, it is necessary to clarify the proclaimed and hidden goals of legal education itself.

The bar Council of India, constituted under the Indian Advocates Act, 1961, is endowed with the responsibility by Parliament to prescribe and maintain the standards of legal education in consultation with Bar Council and Universities teaching law. In exercise of this power, the Council has been laying down rules from time to time giving the broad goals of the law curriculum, its content and methods for the University and law schools to follow. The Rules which the Council brought into from June 1982 distinguish professional education from other forms legal education. Recognizing the importance of dissemination of legal knowledge for promotion of democracy and constitutional government the Council exhorted Universities to devise ways and means appropriate to their situations for liberal legal education. However, the Council insists
on strict standards in professional legal education, for which it has laid down a required curriculum with some possible adjustments in details for accommodating local needs and requirements.

4.2 Goals and Components of Professional Legal Education

The obvious goal of professional legal education is to equip students to perform the variety of roles which lawyers are expected to play in our society. The fact the new curriculum of a 5-year integrated LL.B. course includes nearly two years of instruction in law related social science subjects and humanities underline the modern emphasis on humanistic and policy oriented goals in legal education. Law is naturally conceived in a broad perspective as one several instruments of social control to be understood in relation to other social institutions and processes. The lawyer is not to be mere craftsman manipulating advocacy skills in the traditional role of conflict resolution in courts. There are other concurrent curricular goals and roles for legal education, some of which may be more important than litigation in the context of our society. The inclusion of subjects relatively alien to the traditional law curriculum like ‘Law and Poverty” and ‘Law and social Change” indicates that the Bar Council expects the future lawyer to be equipped for policy planning and advisory roles. The emphasis given to practical training (400 marks programmers extending over a six-month period) in the new pattern of 5-year integrated legal education displays a concern on the part of the Bar Council for the inadequate training now provided in layering skills and professional responsibilities. The demands of the new curriculum therefore, are new varied and exacting both at the doctrinal (theoretical) and at the empirical (practical) level of inquiry. To organize these demands around a practical scheme of teaching /learning experience requires a great deal of initiative, experimentation and adoption. Hopefully, many laws will be pioneering different schemes in this regard in the course of imparting professional legal education. Meanwhile the clinical component of legal education, which has been the most neglected aspect so far, requires some priority attention if a fair balance is to be achieved between the doctrinal and empirical goals of the new curriculum.
Identification of the elements in the making of the lawyer that the Bar Council envisages and the country needs is an exercise which deserves to be done repeatedly if curricular goals are to inform teaching programmes and methods. In this connection it is interesting to look at a catalogue developed by an American law teacher.¹

4.3 Role of Clinical Education in the New Law Curriculum

Given the above range and breadth in the curriculum, ethical education offers unique opportunities for students’ professional and intellectual development. Clinical programmes can be conceived much more broadly and imaginatively than conventional patterns of legal education. The perceptual instrumental and operational aspects of the lawyering process and the legal system are all presented in clinical work. Moreover, the inter-relationships among these aspects and the need to look at each in the context of the role and purpose of law and the legal profession in the society can be understood.

Clinical legal education is bound to become central to legal education of the future for another reason as well. The concepts of professionalism and professional responsibility are being subject increasingly to public scrutiny and evolution. The social implications of whatever a lawyer does or professes to do are now under constant audit. Vague arguments of social service, assistance in dispute resolution and support in the delivery of justice are not as such accepted without scrutiny by larger sections of the people outside the profession, some of whom believe, hopefully without basis, that the profession serves only the rich and advances Jurisprudence inimical to the social justice goals of our Constitution. The role of the lawyer in adversary litigation is now being transformed, though almost imperceptibility, with consequent changes in professional duties and perceptions. Legal aid to the poor and public interest litigation force the lawyer, whether for the Government or the petitioners, to assume roles in adjudication and administration, which come close to policy making, policy evolution and value-based decision making. The value free, partisan posture of the lawyer in the adversary litigation appears to militate against this new ethic of the profession. The former Chief Justice of India, Mr.Y.V. Chanrachud, in an address to a Bar Conference in February, 1984 at Bombay gave expression to the possible changes in the lawyer’s role

particularly in criminal proceedings where, according to him, the public interest is “least protected.” He felt that “profit” motive should not govern the examination of issues in criminal proceedings and attack on police should not from the easy and automatic strategy of every defense lawyer”. In fact, what the former Chief Justice was questioning was the contemporary relevance of the professional ethics which assumes that every lawyer who guards his client’s interest zealously will have served automatically the public good as well. It is this moral and social dilemma which tends to challenges the established notions of professionalism, the response to which will have to emerge through the class of interests and values competing for recognition in society. How else can be building lawyer be educated of this interaction excepting through the clinical legal education is expected to have in the scheme of things in the future.

In a thoughtful address to the Annual Meeting of the Association of American Law Schools in 1981, Prof Kenneth –L Penegar found a bright future for clinical education in law and recommended to his American colleagues the following steps to facilitate the transition:

(1) More experiments in clinical courses including production of “help yourself” series in simple legal transactions without lawyer assistance and public evolution of better distribution of legal services;
(2) 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;
(3) Develop suitable applications of social science finding to improve access to justice of disadvantaged or unorganized group. For example, if we know that an organization stands more not the clinic mobilize and organize such individual litigants as an influence group to seek justice?
(4) Evolve delivery systems involving team services not only with other lawyers but with other professionals such as social workers, psychologists etc;
(5) Build teaching materials with the case histories of the varied matters processed in the clinic;
(6) Expand the clinic’s reach for clients environmental law, poverty law, tax law, women’s right etc., clinic can venture on service to public agencies dealing with welfare, prisons, social services etc., where the authorities may by well-disposed to receive ideas, critiques and evolutions;

(7) Help stimulate the creation of new and community based institutions for resolution of disputes without resorting and the courts;

(8) Consider alternatives to the traditional model of lawyer professionalism.

Prof. Penegar summed up his assessment stating;” It seems to the future challenges of clinical education is not just an integration of theory with practice, as important as that ideas is, it is not service to the poor and others to the poor and ill-served by lawyers and legal institutions, as that is; rather it is to find and develop new definitions, new conceptions of practice and professionalism in which 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 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.”

Prof. Penegar’s observations and recommendations, it is submitted, apply with equal or greater relevance to the objects of legal education in India and the status of clinical programmes in the law school curriculum. The task for law teachers in India today is to respond constructively to the Bar Council of India’s prescription for 400 marks and six month of clinical education as a challenges and an opportunity to stimulate desirable changes for meaningful legal education. Practical training through legal aid activity and other clinical programmes can give experience not only in traditional skills of advocacy essential for every lawyer, but more importantly, in direct involvement in delivery of legal services to the people. Practical training can also give education in approaching ethical and moral issues and in intelligent use of value choices in professional work. Further, it tends to promote a humanistic, people oriented

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public-interest based professionalism which the society legitimately expects from its lawyers.

4.4 Independence of Goals and Methods in Law Teaching

To determine the status to be assigned to clinical legal education in the curriculum, one has to appreciate the dominant goals of legal education in the curriculum; one has to appreciate the dominant goals of legal education itself. Here we find differences in approach and emphasis. While one group emphasizes the goal of professional training, others point out the need for liberal education law study. The least set of legal education rules adopted by the Bar Council of India tries to distinguish between two types of legal education (academic and professional) and declares that the Bar Council of India rules are relevant only in respect of education for enrolment to the Bar. Despite this effort to limit the scope of the rules of the Bar Council of India in respect of legal education, the confusion in respect of goals prevails in the academic community leading to a dilution of standards in professional training of prospective lawyers.

A view been expressed that law schools should not be burdened with purely professional training of advocates, as the job can be performed better by the Bar Councils themselves after the aspirants to the Bar receive their University education in law. Clinical experience essential for the new entrant to the Bar, it is argued can meaningfully be given during apprenticeship with a senior advocate rather than in academic institutions which are starved for resources. While the logic of this argument is unexceptionable, it ignores the many inadequacies of on the job training of lawyers and betrays a lack of understanding of the historical development of legal education in India and its status under the Advocates Act today. There is hardly any choice any real available expect for the Universities teaching law the Bar councils to collaborate with mutual understanding for the betterment of the quality and content of legal education.
which may advance the professional goals while serving liberal concerns of University education in law\(^3\).

In the context of the present state of knowledge and the role of law in society, there can be no doubt that law cannot be studied meaningfully in isolation on the basis only of doctrinal principals and philosophical inquiries. Law is to be conceived in the social context and studied in terms of social dynamics. This demands a variety of approaches and skills from legally trained persons, the teaching of which should be an objective of legal education, professional or otherwise.

The need for lawyers and other legal professionals to be able to construct policies evaluate them and integrate them with social processes is evident today more than ever before. The doctrinal method of legal inquiry and analysis is by itself becoming irrelevant to the situations of progressive societies. Inter-disciplinary and empirical approaches have become imperative to the study of law and the curriculum must reflect these goals of law study.

Teaching legal doctrines and precedents continues to be a major goal of the traditional law curriculum. Even here, the conventional lecture and discussion methods have proved themselves inadequate and are being supplemented in good law schools by the “case method” and its variations. There is indeed a great than on the basis of the subject-matter context. One can think of subject matter areas or a substantial portion of it like contracts, being taught in terms of new titles such as “Law and Economic Development” or “Law and Industrial Development”, given emphasis to the functional role of law in society. Today, doctrines cannot be taught only with statutes and judicial decisions, as much of law is being administered and outside the traditional courts and tribunals.

Further, ability to undertake doctrinal analysis will not necessarily enable one to make policy choices essential to lawyer–role in administration, legislation, legal planning and social defense. Social sciences and social science research methods have enriched our knowledge of human behavior in conflict and non-conflict situations, and as a result, those working in the legal system increasingly need the skills of empiricism.

\(^3\) Prof. N. R. Madhava Menon’s “Reflections on Legal and Judicial Education”, edition 2009, p. 137.
and systems analysis with empirical data. How can one understand the dimensions of poverty, urban problems, pollution of the environment, bonded labour, atrocities against Harijans, child exploitation, gender injustice etc, much less attack them through the instrumentality of law, if the law-trained person is unable to absorb empirical data or appreciate field studies? The case of policy-oriented courses in the curriculum such as “Law and Poverty” Law and development, women and the Law etc, and the need for clinical education at the field level are apparent for a socially legal education for the future.

The ability to undertake doctrinal analysis and policy evolution is not exhaustive of the goals of legal education, though they are basic to the understanding of the tasks which law-trained persons are expected to fulfill in future. For practicing lawyers, the need for training in a variety of advocacy skills (ability in oral written communication, in reasoning and persuasion, and in making ethically permissible decisions) and in other layering skills such as convincing etc., cannot be over-emphasized. It is in sphere that the existing law curriculum is woefully inadequate and the teaching methods significantly lacking.

This is the area where clinical methods are recommended though its status and scope in the curriculum may vary depending upon the resources available, demands of legal conditions and the extent of legal aid involvement of the faculty and students. To a large extent this component of legal education was met in earlier times through the compulsory apprenticeship of the law graduate in the office of a senior advocate for over a year after University education. After the Amendment of 1969, the rules relating to legal education transferred this function to Universities teaching law without comparable changes in the curriculum and teaching methods. The impact of this is increasingly felt today in the standard of the Bar and the quality of services provided to the litigant public. Can clinical legal education provide the answer, and if so, how? How does it fit into the existing law curriculum in its substantive and mythological aspects? It is necessary to have some clarity on the clinical method and its application in the clinical programmes and experiences.
4.4.1 Clinical Method of Law Teaching

Andrew Patter, in a thoughtful analysis of the learning process in relation to law school curriculum, identifies two distinct educational objectives namely, (a) \textit{Subject-matter objectives} (what subject areas in the law the student should be familiar with) and (b) \textit{the learning objectives} (the manner in which the teacher wishes a student to be able to deal with the subject-matter, naturally dictated by the goals of legal education).\(^4\) For most law teachers in India, there, are not enough opportunities to appraise instructional/learning objectives in terms of curriculum development and with teaching methods. Perhaps this is a drawback which legal education shares with higher education generally and professional education in particular. Nevertheless, it is clear that teachers will be able to facilitate the learning process of their student if they try in their own minds specific goals of particular lessons and how they are like to influence students’ learning behavior.

If teaching is to give only knowledge and capacity to re-call information whenever needed, the lecture method can substantially meet the goal. However, if law teaching must give the student further intellectual abilities for organizing and processing that information to achieve particular results, it is obvious that the law curriculum and the teaching methods should be informed with specific learning objectives (skills, policy determination and evaluation) and a careful of teaching techniques (lecture, group discussions, problem solving and role playing).\(^5\)

Clinical programmes and methods engage the student in a whole range of learning objectives necessary to think and act like a lawyer, particularly when the student deals real life situations in a legal aid clinic. Interests are cultivated, attitudes are developed, skills are imported, value clarification is provided, ethical decisions are made and confidence and responsibility experienced by the student in a clinic setting. The learning is internalized both at the “cognitive level” as well as in the “affective domain”.

\(^5\) The Year-long apprenticeship system as a pre-requisite for enrolment is brought back by the Apprenticeship Rules 1995. The impact of this is yet not known.
These higher levels of learning are unfortunately not addressed by the conventional law curriculum and the lecture method of teaching. The Bar Councils effort to super-imbue a certain amount of what is called “Practical Training” in the law curriculum remains either totally neglected or marginally at the level of Moot Courts, Courts visits and legal research and writing. It is in this context one has to appreciate the relevance of clinical method to the curriculum goals which it attempts to achieve through specific clinical programmes.

Clinical education is a much new methodology as it is a vehicle for teaching new subject–matter in law. Many teachers welcome clinical education because of the opportunity it offers to the student to teach more substantive subject–matter content than the lecture or case–method of instruction can provide. Thus the clinical method helps law schools to venture on subjects to venture on subject like law reform, social policy and professional responsibility. Perhaps, the clinical method also offers better scope to teach substantive areas which non-clinical methods attempt less effectively. Thus substantive areas such as relationship between substantive and procedural rules and the early development of a case through facts of social relationships can be learnt better through practice in a clinical setting than by lectures or discussion. Properly devised and implemented, the clinical method of law teaching will give law students a deeper and more meaningful understanding of the legal profession, the layering process and role of law in social engineering than method be possible if these same subjects were taught with traditional methods in the class room.

Before proceeding with a discussion of the clinical methodology, the question arises whether a separation of the subject–matter or content of clinical legal education from the clinical method of law teaching can and should be attempted. Certainly, these two aspects of clinical legal education can be separated: the subjects sought to be taught in a clinical course or programme can be presented in a traditional format and clinical teaching method can as well be utilized in courses outside the usual clinical subject areas (such as Advocacy; Negotiation etc.).

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6 For a fuller discussion on teaching methods and objectives see N.R. Madhava Menun “the Canadian Law Teaching Clinic”. Indian Bar Review (editorial), vol. XI (3) 1984
Nonetheless, content of clinical courses and clinical methodology are ordinarily dependant and interrelated, and therefore are rarely discussed or evaluated separately. In fact, the separate study of clinical methodology not only benefit legal education but can also lead one to consider the scope of expanding its use at various stages of law study outside the established clinical courses.

Clinical education can in the future open up the social action role of legally trained person. In the Indian context, this aspect is to critical importance and the social action goal of clinical legal education has to be clearly indentified and reiterated. This goal is a developing one and its impact on legal education and legal profession promises to be the major single factor in the institutionalization of clinical legal education in India in the coming years.

4.5 Clinical Methodology

Clinical Methodology is most often described as “learning through doing”. The concept is borrowed from medical education where medical students learn diagnosis and treatment around sick patients in a hospital under the direct supervision and guidance of hospital doctors. The unique aspect of the clinical method is the active participation of the students under faculty guidance and supervision. In the context of legal education, it refers to any law school course or programme in which law students participate in doing what lawyers usually do including representation of clients under the supervision of a lawyer/teacher. It also includes teaching and guiding students to look at issues from diverse points of view in order understand the legal process in the social policies and processes.

The formulation of an academically sound and professionally responsible clinical methodology for legal education must begin with an examination of the setting in which legal education takes place. The most important factor in this educational environment is the status and position of the learner. An average law student may be taken to be a relatively mature and independent person compared to other college student, particularly in the later years of both the 3-year and 5-year LL.B. programmes. Although their motivation and commitment to the profession are varied, it may be generally assumed that are being prepared in the law school for entry into professional
career. Thus status of law students is related to their desire to make their own decisions and facing the consequences to a degree much more pronounced than other college students. It has another to clinical method. It is said unlike children, young adults tend to seek applying learning immediately and a clinical setting provides them the opportunity to do so under proper guidance.\(^7\)

A second factor which should be taken note of in formulating a clinical methodology is the changing role of the legal profession and the new tasks and challenges it is confronted with. Apart from litigation oriented activities, lawyers are involved at the professional level in the social, political and economic life of the country influencing the course of development and, in turn, influenced by them. Students have to be exposed to the complexity and dynamics of this situation to make their own professional choices in an informed and intelligent manner. The teaching of professional skills and responsibility at to a basic level is the legitimate concern of University education in law.

Finally, the relationship between the academic and practicing wings of the profession set parameters on the institutional role of law schools in the development of the profession. Does legal education influence the manner in which law is practiced or the direction of social policies and administration? Whether it does or not to the desired degree, no one can deny the role of legal education in influencing the law student possibility in these directions.

The clinical method of law teaching seeks to accommodate each of these factors for maximizing educational opportunities for the student. The legal aid clinic with its wide variety of projects ranging from socio-legal surveys to Lok Adalats and public interest litigation presents the students with rich experiences on the actual working of the legal system and on how and where it needs to be reformed; moreover clinical programmes further provide linkages with the community where the law school is located and abiding relationship for the law schools with the practicing profession.

4.5.1 Implementing the Clinical Methodology

The above discussion helps us to understand the place of clinical methodology in legal education and its prospects for making legal education more socially relevant and professionally significant. Student involvement in real-life, law-related situations is the central element of clinical legal education. Of course, it is not entirely a trial and error for the student’s left to themselves. The teacher, by sharing the experience of and responsibility for clinical projects, creates the proper atmosphere for the student’s learning experience. The teacher helps to structure and refine students ‘clinical experiences’ and supplements them with instruction in points of law, alternative methods of practice and insight into further lines of inquiry. Admittedly the contemporary legal education scene is not entirely helpful for initiating such a responsible training exercise. Depending on the resources available including teaching staff and support services and material, and the traditions in educational standards, each university or college imparting legal education will have to make its decision as to how and when it should venture into a clinical methodology approach in its system of legal education. The desire on the part of legal aid authorities to use law students and teachers in the implementation of State financed legal aid schemes provides an excellent opportunity for learning and service.

In implementing clinical methodology one may recommend for consideration certain parameters and gridlines with a view to maximize opportunities for learning for the students. It is by now clear that the clinical methodology assumes a certain degree of commitment to learning on the part of students and a desire for facilitating it in a meaningful way on the part of teachers. Given the large number of non-viable, part-time colleges and institutions teaching law with a large body of “absentee student” and indifferent teachers, one must question whether any responsible clinical programme is feasible or even desirable at such schools. The tragedy of legal education today is the inability of the smaller number of colleges maintaining some level of educational standards to carry the large number of so called “teaching shops” exploiting the hunger for degrees on the part of a growing number of young adult populations. It is distressing to find that the economics and politics of legal education are successfully thwarting the academic and professional goals in a large of educational institutions today.
The advocates of clinical legal education will have therefore to take account of the educational environment of given institution before planning implementation of serious clinical courses, particularly involving legal aid to poor. Legal aid is in many respects a more serious business than legal education and the interests of the poor cannot be allowed to be compromised on experiments of teaching and learning the law by indifferent teachers and recalcitrant students.

In sounding a word of a caution in implementing clinical methodology, it is not be understood the discussion is intended to create ‘elitism’ or ‘hierarchy’ amongst institutions teaching law, nor to say that clinical education is not possible in part-time law colleges. All that intended to be conveyed is that clinical education demands increased commitment on the part of teachers and students in terms of time, resources, preparation, responsibility, service, integrity and orientation to learning. Many part-time colleges do have such an educational climate in sufficient measure and can profitably undertake clinical programmes. Besides, there are different levels of clinical methodology which each institution can invoke depending on its own resources and interests.

4.6 Selection of Clinical Programmes

One of the most important factors to be taken note of in implementing the clinical methodology is the careful selection of activities which provides clinical experiences. Ranging from socio-legal surveys and legal literacy projects to the organization and conduct of Lok-Adalats and public interest litigation, the legal and scheme now obtaining in the country provides a variety of opportunities for selecting clinical projects for law students. Direct representation of clients in courts and tribunals through a college based aid clinic highest form of clinical experience that professional education can offer. Many other activities such as law reform projects, legislative drafting clinics and law enforcement assistance programmes in association with police, prosecuting and correctional agencies are also possible areas for clinical experience. The challenges are in selecting the appropriate field work all those available.

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8 The Indian Bar Review, Special Issue on the Legal Profession in India, Vol. XIII (3 & 4) 1986, Bar Council of India Trust, New Delhi
The first principal of programme selection in clinical methodology is that the activity chosen must present suitable and adequate work for the students. Keeping in mind the goal of responding to law student’s maturity and orientation towards their future professional status and expectations, the activity must allow the students to become real participants in the process involved and to assume a role that enhances their sense of professional identity. Having act as mere observers or glorified or clerks is not productive of clinical learning. At the same time, the students’ real limitations must be recognized as well. Tasks must be chosen which are both intellectually challenges and are within the students; grasp.

Selecting the clinical activity is not complete by identifying the programme and the major tasks in it. Selection is complete only when the specific tasks that each student will perform individually or in groups have been identified, justified and organized. A student may not be able to assume primary responsibility for a Public Interest Litigation; but student can take important assignments such as investigations the facts or planning the strategies.

Another related principal in selecting the clinical activity is identifying its educational potential. It is important for the teacher to identify specific instructional objectives related to each of the clinical experiences. It is obvious that depending upon what the student is to be taught, certain experiences will be more suited to achieve those purpose than others. Of course, the specific teaching objectives will vary from course, resulting in different criteria for selection of clinical activities. For example, a clinical course seeking to concentrate on pre-litigation and Alternative Dispute Resolution techniques will greater use of Lok Adalats, legal aid camps and conciliation cells than would a course seeking to concentrate on trial or appellate advocacy⁹.

Nonetheless, one general observation concerning choice of clinical experiences for their educational value can be made: choosing activities to teach a specialized area of legal practice attempts both too much and too like. Producing a fully competent practitioner in even one specialized area cannot be achieved in law school and should not be attempted. At the same clinical methodology should attempt to introduce the

⁹ This is a revised version of a Working Paper on clinical legal education prepared by the author for discussion at the twelfth conference of the All India Law teachers’ Association held at Delhi in December, 1972. P. 432
students to the full complexity, limitations and potential of law and its practice. Teaching fundamentals of the layering process need not necessarily be in a specialized setting. These considerations are real and complex; clinical teachers must address them in planning clinical programmes.\footnote{This is a revised version of a Working Paper on clinical legal education prepared by the author for discussion at the twelfth conference of the All India Law teachers’ Association held at Delhi in December, 1972. P. 432}

It is equally important that teaching professional responsibility issues is to be taken as a basic concern of all clinical activities. This is the most difficult area of clinical methodology, and more so when legal aid activity is chosen. Policy undertakes responsibility for consequences of one’s conduct and to search for alternative courses of action. Policy-oriented, non-clinical courses in the curriculum can provide supplementary support to the teaching of professional responsibility issues.

In the final selection of the clinical activities in a given college there will have to be necessarily a balancing of these principals and guidelines. This exercise is again conditioned by the location, resources available and educational goals of the college/university concerned.

Generally, these principals and guidelines do not some with each other so that each one of the above can be accommodated to some extent. It is also expected that in the light of experiences gained, the activity will undergo constant revision and adaptation. It is in this context that clinical methodology requires much more flexibility in content, methods and evolution than the traditional curriculum. A pre-determined pattern unrelated to the unique nature of individual students learning process may into a copying exercise of the experiences of earlier batches of student.

### 4.7 Preparing Students for Fieldwork

Although activities can be chosen keeping the guidelines discussed above, student still must prepare adequately their field work. Indeed much of what is gained by putting law work on real legal projects will be lost if the students are unable to respond to the challenges and are incompetent to undertake the responsibility. His does not mean, that students should be briefed exhaustively on every their clinical assignment;
they should be prepared sufficiently to allow to take on their work with a sense of confidence and competence. Preparation in this context is not intended as a means for teaching the content of the clinical activity; instead, it has the limited but important purpose of enhancing the learning potential available in the clinical work assigned.\textsuperscript{11}

The nature and extent of the preparation will depend of course, on the background of the students and the type of activity selected. At a minimum, students should be provided an overview of the relevant substantive law and the procedural framework that will be used. Thus, before students are assigned \textit{Lok Adalat} work, they must be prepared with material and discussion on the institution of \textit{Lok Adalat}, its objectives and limitations, its methods and procedures. Even sufficient knowledge of the substantive law relating to disputes to be processed in the \textit{Lok Adalat} has to go into the preparation package. Thus, when students are assigned work in specialized institutions, more detailed preparation may be needed in order to maximize the learning opportunities of the students concerned.\textsuperscript{12}

\section*{4.7.1 Supervision of Field Work}

One of the unique contributions of clinical education is its ability to blend practical experience into a structured setting appropriate to learning goals. An unsupervised clinical experience, no matter how carefully selected, really offers students nothing more than what they can learn through trial and error during their first year of law practice. Proper supervision transformation and \textit{ad hoc} learning experience into a learning experience well integrated into the rest of the law school curriculum. Given proper guidance and supervision from the faculty, student is able to function in a professional role retaining the benefit of their status as students. Causal or unplanned supervision, on the other hand, can waste this opportunity. The challenge here is to provide sufficient guidance without undermining the students’ sense of independence,

\textsuperscript{11} This is a revised version of a Working Paper on clinical legal education prepared by the author for discussion at the twelfth conference of the All India Law teachers’ Association held at Delhi in December, 1972. p- 144.

\textsuperscript{12} Madhava Menon “Designing a Simulation-Based Clinical Course: Trial Advocacy” (in) A Handbook On Clinical Legal Education P. 178.
professionalism and personal commitment created by their clinical work, which goes to the heart of the clinical methodology.\(^\text{13}\)

The two important goals of supervision are to ensure that the student performs the task completely and to assist the student in drawing the maximum possible educational benefit from the clinical experience. Extensive and direct supervision may be needed in certain circumstances in order to ensure competent work. Similarly thorough critique of student performances may be necessary in order to draw the students into serious reflection on their experience. At the same time, care must be taken not to over-supervise and stifle and the potential of self-learning. Many indirect methods of supervision, such as preparing students to supervise and critique themselves and each other, may be more effective in some situations. This also helps in the efficient use of scarce faculty resources. To the extent that direct supervision and participation in a project by the teacher is needed, this supervision or participation should undertake to the extent possible as a colleague, in order to avoid placing the student back into the traditional passive role.

The above comments on supervision of clinical work warrant some discussion of the kind of faculty available to a given college embarking on clinical legal education. In most institutions this is the serious handicap coming in the way of introducing clinical programmes. To develop and maintain a cadre of trained clinical law teachers in the present situation is a tall order. Nevertheless, the need for identifying faculty members interested and capable of undertaking the clinical methodology and for providing them the facilities and incentives necessary for effective clinical teaching cannot be over-emphasized. Although practicing lawyers who work as part-time teachers are suitable for supervision certain clinical activities, the responsibility for the total programmes has to be entrusted to full-time teachers who preferably have some practice experience and are teaching substantive subjects related to the clinical programmes chosen for the college. The faculty may consider evolving some agreed norms for supervision and assignment of work which ensures accountability on the part of the teacher. Association of retired judicial personnel as visiting faculty has been

found useful in certain clinical pregrammes, particularly when they have an inclination toward education or social work. Periodic conferences of law teachers involved in clinical teaching may promote exchange of experiences and standardization of supervisory practices in different settings.  

4.7.2 Supplementing Field Work for Total Learning Experience

In view of the limitations of time on project design, as well as situational constraint, it may be necessary to supplement clinical learning of individual students. This supplementary teaching can take place in at least two ways consistent with the clinical methodology. Depending on the nature of the activity involved, one can give supplementary instruction through written materials, exercise and assignments designed to assist students in preparing for the clinical work or reviewing their experiences. For activity-specific, on-going clinical projects, this type of supplementation may take the form of orientation, seminars, and group exercises either in the preparatory stage or at specific intervals in the course of the execution of the project.

The second type of supplementation is intended to cover areas relevant to the clinical course but not likely to be presented to the students in their field work. By their very nature, clinical experiences are sometimes unpredictable: a planned project may never develop fully so that expected tasks may not be made available, or a project planned to present one limited set of tasks may develop in a different direction providing greater learning challenges than anticipated. Workshops, seminars and group discussions may be appropriate to fill the gap and link the clinical experiences with appropriate legal contexts and curricular goals.

The important thing in this regard is to keep supplemental instruction only supplementary. Just as preparation for clinical work is intended to enhance but not substitute for the clinical experiences; class-room based supplemental work should be designed for and limited to the completion of a clinical work, and not to replace it with another course.

15 Id at P. 146.
Supplemental instruction in clinical work should follow the clinical method as far as possible, avoiding the use of conventional lectures. Instead, material can be assigned to students for discussion and analysis among groups of students, sometimes assisted by senior students employed as teaching assistants.

Clinical education is essentially self-directed learning. Teachers are participants in this learning experience and, as such learning does not flow exclusively from the teacher to the student. In giving an active, professional role to the law student, the clinical activity expects to promote the natural professional future of the student in a way in which he himself takes the primary responsibility. In order to advance this self-directed professional development, it is desirable to give a decisive role to the students even in the planning and implementation of the activity. If students participate in choosing the activity, designing the implementation strategies and consciously pursuing the educational goals, the learning experiences are bound to be greater than otherwise. Of course, this is not to belittle the importance of faculty guidance and supervision; as shown above they are indeed the elements which make a clinical experience a real learning experience.

The usefulness of the clinical methodology in professional legal education and the scope of guidelines for its effective implementation are evident from the above discussion. Certainly more specific teaching objectives and implementation guidelines have to be developed for particular clinical courses and programmes. There, can be significant variations in detail depending upon the educational environment, local needs and socio-political climate of different law schools Nonetheless, the fundamental principles of clinical legal education and the broad implementation strategies have so much in common that it is not difficult to conceive of a more complete and institutionalized clinical methodology which will help serve the professional and educational needs of law teaching in India. Towards this end, the introductory exposition of clinical methodology presented here may hopefully serve a useful purpose.
4.8 Clinical Legal Education in India: A Historical Overview

Clinical Legal education, broadly conceived, includes not only the clinical courses strictly so called, but also practice-oriented courses and activities included in or offered outside the curriculum. Before the Advocates Act came into force, law students were required to complete certain courses on procedural subjects offered by the State Bar Council of acquire training for over an under apprenticeship in the chamber of senior advocate. The arrangement was unsatisfactory because of the lack of integration between the University education in law and the practical training. The Bar examinations and the system of apprenticeship were not organized in a manner to provide the best educational and professional experiences to the new entrant to the Bar. The Council of India, therefore, in consultation with the universities, devised a new curriculum uniformly applicable throughout India under which the necessary practical training was to be universities themselves in the course of the 3-year law education. The intention was good; but the performance has been again very unsatisfactory.

Under the scheme of legal education introduced in the late 1960s, practical training as such was not included as a compulsory part of LL.B. programme. Courses such as Civil Procedure, Criminal Procedure, Evidence, Minor Acts, Convincing and Pleading were taught mainly through the lecture method and examined through annual written examinations like other courses. It was possible that a practice-orientation was given to the teaching of these subjects by the sheer accident of being taught by a practicing lawyer employed as a part-time teacher.

However, part-time teachers also adopted generally the lecture method and the student had no active, participatory role obtaining in clinical courses. There was hardly any exposure to legal research and legal writing. In the absence of the case method of teaching and class discussion, even opportunities for developing analytical and reasoning capabilities were inadequately provided in the curriculum. The term education was not even talked about in academic or referred to in the literature pertaining to law study. Because of the traditional between legal education and training, the first remaining with the universities and the second with the Bar, it did not appear necessary for law teachers to develop a clinical methodology and integrate it with the
law curriculum. The structure and status of legal education obtaining during this time also did not permit the same to be taken as professional training for the Bar.

The Bar Council of India, while adopting the rules under the Advocates Act for restructuring legal education in 1982, did not appear to have given clear thinking to the nature, content and method of practical training it desired the universities to give through its recommended curriculum. Nevertheless, some universities did make an honest effort to impart clinical experiences to LL.B. students by organizing moot courts, mock trials, legal writing exercise, advocacy courses and court visits as optional, co-curricular activates.

**4.8.1 Delhi University**

In the mid-1960s, Delhi University introduced the case method of teaching followed by a few other universities. In 1969, a legal clinic was set up by some teachers and students of Delhi Law Faculty as a purely voluntary activity mainly to provide legal services to inmates of prison and custody institutions. The programmes were developed on *ad hoc* basis and faculty supervision was marginal. The clinic acted more as an investigating and referral agency rather than as a centre for delivery of services. Student participation was neither consistent nor was the programme supported by the prescribed curriculum of the LL.B. degree. There was no attempt to integrate the clinic with the curriculum excepting perhaps some support derived through the introduction on an optional called “Law and Poverty” in the second year which carried a clinical orientation. The clinic continued to attract some students every year and it diversified its programmes creating a lively interest in clinical programmes amongst an increasing number of faculty members and students. Every year the clinic organizes a week- long orientation course informing the students of the clinical programmes and encouraging them to participate voluntarily. The programme continues to the voluntary and extra-curricular even body today.\(^{16}\)

Delhi Legal Clinic, despite being a purely extra-curricular activity, did accomplish some impressive results during the recent past. Two *Lok Adalats* were...

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\(^{16}\) Madhava Menon “*Designing a Simulation-Based Clinical Course: Trial Advocacy*”. (ed.) A Handbook On Clinical Legal Education P. 150.
organized in Delhi in 1985-86 by the clinic in collaboration with Delhi Legal Aid and Advice Board. Over 150 students were involved in this project. Another set of students assisted in reaching legal services to the victims of the Delhi gas tragedy. In collaboration with the Department of Audit and Continuing Educations, students and teachers of Campus now support literacy projects amongst the students of several under-graduate colleges of Delhi University and through those students in as many communities in the Union territory. These activities cannot be called clinical education as such. They are not structured that way; nor are they included in the law curriculum. Supervision is marginal. Though they do contribute to the learning of few law students in a clinical setting, they lack the academic framework for self-directed educations. They are more service-oriented programmes which desperately seek academic recognition from the faculty and curricular planners.

4.8.2 Aligarh Muslim University

Aligarh Muslim University introduced in its third-year LL.B. class a course on “Advocacy” which introduces students to fact investigation, legal research and writing, court procedures, litigation strategies and issues of professional ethics. However, it does not go far in introducing clinical methodology in terms of self-directed learning on the part of students. In 1985-86, AMU organized few legal aid camps and helped organize a Lok Adalat. A legal aid clinic in the law school is said to be working with limited programmes.

4.8.3 Banaras Hindu University

On the recommendation of a faculty Committee, Banaras Hindu University Law School introduced an optional course of “clinical Legal Education” in the Vth and VIth Semester with academic credit for a maximum of 200 Marks. The course is open for 30 students each year who are selected on the basis of aptitude and performance in written tests. The method of teaching is through lectures and fieldwork. Fieldwork includes court visits, assignment in the law school legal aid clinic, socio-legal surveying on specific problems and internship in the chamber of lawyers. A faculty committee headed by the Dean manages the clinical course and programmes. The Legal Aid Clinic was set up in the law school under the supervision of retired judge who was taken as
part-time Professor of the school on a token honorarium. Presently there is faculty member designated as director of the clinic. Funds for clinic activities initially came from students’ contribution, then from the National service Scheme of the University and later from the University itself. The University Grants Commission provided a special grant for the clinic to expand its legal aid activities to the neighboring rural areas. The clinic has own bus to transport students on fieldwork.

Students share the required time between the court, the field and the legal aid clinic’s office. Each week the students are expected to spend at least one day in court and required report at the office of the assigned lawyer on two occasions. Another day they are required to spend in the legal aid office doing the work assigned by the teacher-in-charge. The students and teachers associated with the clinical legal programme go to the village around the city and undertake programmes of legal literacy, socio-legal surveys on the implementation of welfare legislation and attempt conciliated settlement of disputes through legal aid camps. The students keep separate diaries in which they record their experiences, do the written assignments and get the comments of the teacher/lawyers. The court work is jointly evaluated by the teacher and the lawyer for a maximum of 50 marks. The teacher-in-charge of the legal aid clinic grades the work of the students in the clinic for a maximum of 50 marks.

It is interesting to note that clinical legal education at Banaras Law School revolves almost entirely around the legal aid clinic and it projects. Although it continues to function with some success it reflects the troubles from which legal aid schemes generally and it does not receive full faculty support. Further the clinical opportunities provided are limited to a small section of final year students.

4.9 Bar Council’s New Pattern of Legal Education

The Bar council of India gave a fresh a look to legal education at an All India Seminar held at Bombay in 1977 attended by the Universities and State Bar Council. On the basis of the recommendations of this Seminar, a dialogue was initiated by the Council with the Universities teaching law which eventually, in 1982, resulted in a new 5-year integrated professional programme after 10+2 school education. The important features of the new pattern of legal education which was to come into force from the
year 1987-88 are the introduction of a two-year Pre-law Study consisting of several social science course and a six–month intensive compulsory clinical education Practical training programme in the final two year comprising of course equivalent to four papers of 400 marks. The Rules framed by the Council by the suggested to the universities that law schools and law colleges should provide adequate teaching and examination on practical aspects of lawyering. It recommended that these skills may be imparted through exercise in pleading and convincing Legal Method courses, Court visits and moot Courts and through active participation in Legal aid clinics. The Bar Council of India desired every college of law imparting professional legal education to set up a Legal Aid Clinic according to the model proposed by the committee for Implementing Legal aid Scheme (CILAS) of the Government of India.

The Bar Council also introduced a course on “Law and Poverty” as an optional subject in the revised curriculum for which it took initiative, in collaboration with CILAS, put together teaching materials

4.10 Committee for Implementing Legal Aid Schemes

While the Bar Council of India was in the process of restructuring legal education giving a prominent place to ‘Practical Training’, another parallel development on the legal aid brought about fresh thinking on the role of law school in the delivery of legal services, particularly to the weaker sections of the community. Two major reports on legal aid submitted by Government–appointed expert committees in 1973 and 1977 called for extensive involvement of law teachers and students in the legal services programmes outlined in them. Both reports devote a full Chapter to “Legal Aid clinics in Law School” and have advanced convincing arguments on why law students should be exposed to clinical methods of learning law in order to impart better education and to develop better professional services. The following observations extracted from these reports makes it clear that clinical

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methodology supported by legal aid-related activities provide the most viable and effective strategy for improving standards of professional legal education.

There is a continuing controversy among legal educators in India regarding the goal of legal education. One section holding it to be strictly concerned with producing legal practitioners who are experts in litigation-oriented skills, while another section advocating a wider role in which the lawyer is equipped with divergent skills, perspectives and tools with a view to making him a policy maker, administrator or social engineer. The latter group contends that with the fast changing socio-economic structure and methods of social ordering and conflict management, the traditional role of the lawyer is of diminishing value and the new role of the lawyer in the society calls for skills, knowledge and techniques far more diverse and comprehensive than those possessed by the traditional lawyer. This divergence in objectives is bound to produce difference in the content and methodology of legal education. But one thing is certain, and there are no two opinions about it that there is need to reform the system of legal education in the direction of making it poverty-oriented, multi-disciplinary and related to actual social conditions. The introduction of legal service clinics in law schools as part of curricular instruction in professional education is the natural answer to the vexed question of building up a cadre of poverty lawyers competent to run nation-wide legal services programme.

The programme of student participation in the legal services clinics would ordinarily involve interviewing applicants for legal aid, preparing detailed reports on these interviews, research into legal issues raised, drafting of pleading and such further pre-trial preparations as the programme director may think fit. The student gains exposure to actual cases and to the lawyers’ problems in dealing with litigants. He gets opportunity to develop skills of interviewing and a critical analysis of legal problems. He becomes familiar with the intricacies of court procedure and court-craft by taking part in pre-trial preparations, such as drafting of pleading and watching actual conduct of cases. In addition, litigation strategy, the crucial skills of examination and cross-examination of witnesses, the handing of evidence, the skills or oral advocacy—all these come within the scope of his education. It is true that these practical skills could be learnt by him when he starts practice, but that would be by a process of trial and error,
and at the cost of the litigant. But in a programme of clinical legal education in legal services clinics, these skills are acquired by the law students under proper supervision by experienced law teachers and practitioners whose primary task is to educate the law student while at the same time guaranteeing that the clients served by the law student receive the highest standard of professional services. The essence of a clinical education programme is supervision so that the student learns and acquires the practical skills in a proper and satisfactory manner. It is better that a law student should acquire the skills necessary in the legal market place and also develop his personal outlook towards his role as a lawyer while he is still a student when he can draw upon the advice and experience of the law teachers and practitioners in a relatively quiet and untroubled atmosphere, instead of acquiring such skills and developing such outlook in the market place under the pressures of economic necessity and professional rivalry.

The above excerpts from the National Juridicare report submitted by two eminent judges of the Indian court read like a memorandum prepared by a curriculum reform committee of an Indian law school. The Report further presents many persuasive arguments why and how clinic legal education and student work on legal aid clinics can help develop a professionally significant and socially relevant legal education. As clinical legal education since 1977 has been influenced and patterned of the lines recommended by the Report, it is appropriate to recall some of the other observations of the Committee on clinical legal education:

The legal services clinic would be able to develop social and humanistic attitudes and motivations in the law student which would equip him to be a better lawyer of the poor when he comes out of the University.

It would, therefore, be seen that the establishment of legal services in law schools is absolutely imperative both from the point of view of imparting clinical legal education to the law students as also from the point of view of creating a service-oriented cadre of lawyers who will be dedicated to the cause of juridicare. There has been almost unanimous opinion on the country in favour of participation of law

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students in the legal services programme through legal services. We fully endorse this opinion and strongly plead for establishment of legal services clinics in law schools.

The legal Aid Committee not only canvassed for the establishment of clinics in law schools but also recommended that funds be provided from the State and Central Legal Aid Boards/Committees for the effective functioning of law school legal aid clinics. Funding law school clinics was considered very much the function of the legal aid authority inasmuch as it served a dual purpose of clinical legal education: creating a socially sensitized cadre of lawyers and delivery of a variety of legal and Para-legal services to people who would otherwise be denied the benefits of laws. The Committee in this regard was so impressed by the results of the few experiments initiated at Delhi and Banaras law school that it recommended the amendment of the Advocates Act to allow senior students under supervision to represent clients in courts in certain matters, According to the Committee. 20

One of the important reasons for the quick expansion of the student’s legal services programme in the United States is the statutory adoption of students Practice Rules in most of the States enabling law students to appear in courts on behalf of poor clients. Even in India suitable provisions can be made in the Advocates Act so that students of third year LL.B. class who are participating in the activities of the legal services clinic and who have been certified by the Dean or the Principal, shall be entitled to appear in any court or tribunal on behalf of a poor person, provided, of course, that such representation shall be under the supervision of lawyers associated with the legal services clinic and with the approval of the judge in whose court the student appears. We feel that a person, somewhat on the following lines, may be added after section 37 in the Advocates Act:

“Section 37A: Legal Aid by Law Teachers and Students- Notwithstanding anything contained in the preceding section, the following categories of persons may appear in any court or tribunal on behalf of an indigent person, if the person on whose behalf an appearance is to be made has requested in writing to that effect:

20 National Juridicare Report, 1977, P. 72
I. Teachers of a law school which provides full-time instruction for the professional LL.B. degree and which maintains a legal aid clinic as part of its teaching programme where poor persons receive free legal aid, advice and related services:

II. Students of third year LL.B. class of law school as aforesaid who are participating in the clinic’s activities and who have been certified by the Dean/Principal of the law school under rules made therefore by the law school.

Provide that such representation in the case of students shall be under the supervision of lawyers associated with the said legal aid clinic with the approval of the judge in whose court the student appears.

The Report anticipated the need for a cadre of clinical law teachers throughout the country and asked for crash programme for such training. For proper coordination and maximization of the educational experience of law students the Report recommended the creation of a National level council for legal services clinics, preparation of a manual for law school clinics and exchange of clinical law professors amongst different law schools. The national Council would have consultative status with the legal aid authority and would be financed by it. The Report also made another proposal under which the, law students may be compulsorily required to do six months’ internship in a legal aid organization on a monthly honorarium of Rs.250 in order to be eligible for enrolment as an Advocate.

The legal aid movement acted as a catalyst in the evolution of clinical programmes as part of law school activity, and the *Bahgawati-lyer Committee Report* provided the desired legitimacy and institutional support. The impact has been wide and decisive Between 1979 and 1986 over sixty Universities/Colleges teaching law have set up legal aid clinics, some of them purely as voluntary, extra-curricular programmes and some others as part of the curriculum.

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4.11 Issues in Implementing the Clinical Curricula prescribed by the Bar Council of India

Introducing mandatory four practical papers was viewed as a big step in offering practical layering skills. As the Clinical Legal Education has been formally introduced into legal education, the biggest challenge which lay ahead was of developing legal pedagogy to offer the four practical papers in meaningful way. Keeping this challenge in view this part will analyze how those Law Colleges responded to this challenge.

One of the components in Paper-I is Moot Court, and a fair amount of Law Schools excelled in offering moot court. This is evident from the several national and international level Moot Court Competitions being conducted in India. Participation in these competitions becomes prestigious to the law students. But unfortunately, few students would be able to participate in the competitions. Remaining students participated only in compulsory moot courts conducted by the Law School as a part of Practical Paper-I. Internal moot courts in many schools are conducted by giving the same cases year after year, or merely providing a decided case. In both these instances students either copy from their seniors' work or from the law journal. No training is given to the students regarding research and moot court presentation. Some Universities do take serious steps like framing different cases every year and evaluation of moot court presentation by a practicing lawyer. Most of the Law Schools have failed to supervise the work of the students in lawyer's chambers and court observation. This has resulted in the submission of either fake cases or merely copying from others' journals.

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

Practical papers II and III i.e. Drafting, Pleading and Convincing, and Professional Ethics are mostly taught by practicing lawyers and are confined to mere classroom teaching. The method of evaluation is mostly by a written examination.

Training in Legal Aid as Practical Paper - IV is largely confined to teaching Legal Service Authorities Act and public interest litigation based on some text materials. Some Law Schools do provide marks for attending and participating in Lok Adalats and conducting legal literacy programs etc. Others, ask students to write comments on important Supreme Court judgments.

In comparison with the other schools, National Law Schools have a fair amount of success in implementing Clinical Legal Education. This success can be attributed to several factors like flexibility in curriculum, availability of funding source, flexibility in evaluation, quality of students, residential system of education, adequate exclusive faculty and easy accessibility to Bench and Bar. These schools have the luxury of experimenting with Clinical courses.

Overall, every Law College is compelled to offer Clinical Legal Education without any direction and preparation. Except few premier institutions, Clinical Legal Education in other Law Schools has failed in its mission of offering services to the society and skills to the students.

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22 All together there are 18 National Law Schools in India.
Apart from prescribing the title of these four papers, the Bar Council has not specified the nature, contents and the method of teaching and evaluation of these four papers. The Law faculty all over India is totally clueless as to what are the skills that are to be developed by these Practical Papers, what is the methodology of training or developing the skills is and what are the criteria for evaluation.

This difficulty is compounded by the fact that the faculties in most of the colleges are ill equipped to train the students, for they themselves do not know what these skills are, apart from not possessing those skills.

No attempt was made by the Bar Council to identify the purpose of the papers, pedagogical skills that these papers could offer to the students, or to train the trainers. As the Bar Council failed to provide any guideline except providing titles of the papers, the whole concept of Clinical Legal Education through practical papers looks ineffective.

Even an honest attempt to prepare Law Schools in India to offer effective Clinical Legal Education to the students faces several serious challenges. These challenges range from amending laws, restructuring financial resources, changing mindsets, and geographical, cultural and language differences.

The major problem faced by the Law Schools is the rule of barring full-time faculty and students from representing clients. The BCI Rules prohibit fulltime faculty and the students from representing clients even in pro bono litigation. These impediments essentially restrict the scope of Clinical teaching in India.

Law Schools that are either operated or aided by the government, struggle financially. There is no private funding for any program in these schools. Due to financial constraints, Law Schools are unable to promote schemes like Legal Aid, Legal Literacy and Legal Research. As far as Private Law Schools are concerned, except for a few National Law Schools, the average annual fee is between rupees 3,000 to 5,000. Private Law Schools cannot afford to increase their fees, as there is low demand for law programs. To attract more students, as a matter of fact, some Law Schools lower their fees. Thus, Law Schools are not in a position to spend even a fair amount of money on Clinical courses.
Further, the stringent rules for qualifying to become a law teacher discourage many advocates from involving in Clinical teaching.\textsuperscript{24} Meager salary packages for adjunct teaching faculty put a damper on enthusiastic advocates. Due to a shortage in fulltime faculty, clinical hours, though technically countable as teaching hours, are not recognized as such. Thus, clinical teaching becomes an extra burden for many faculty members.

Further, the lack of trained faculty to offer Clinical Courses in Law Schools has compounded the problem. Most of the fulltime faculty members had no practical experience in both litigative and non-litigative dispute settlement. Due to unattractive pay package it is almost impossible to hire services of good lawyers for promoting clinical education in Law Schools. As the offering of Clinical education to every student is mandatory, providing quality Clinical experience to the huge number of student community becomes a Herculean task.

As the Bar Council has not specified any particular syllabi requirement, the Universities treat the Practical Papers differently. Some Universities prescribe that the examinations and marks be incorporated in the final mark sheet, while others do not have examinations, and neither is the marks indicated. Even within the University systems, there are disparities in the Colleges as to the methods of teaching and evaluation of Practical Papers.

Some Colleges try to organize the Practical Papers in a planned manner. Many others merely certify that the student have undergone the practical training some do maintain records like students journals, records etc. For example in V. M. Salgaocar College of Law, Goa, the Practical papers are spread over all three years. The students are required to maintain a journal for each paper and evaluation is a continuous process. Marks are awarded only at the end of the final semester.

But most of the Law Schools in India offer all practical papers during the last semester of the course. This practice makes it impossible to offer quality Clinical

\textsuperscript{24} To become a law teacher one is required to complete Masters in Law. Masters Program is two years after LL.B. After masters he/she has to qualify the National Eligibility Test conducted by UGC or State Eligibility Test conducted by the State. If a law teacher qualifies only State Eligibility Test then he/she is eligible for teaching only in that particular State.
education. As there are no proper criteria identified to evaluate, even in institutions where the Practical Papers are taught with all sincerity, the method of evaluation is a major concern. When the requirements are not identified and the skills are not specified, it is natural that evaluation remains subjective and thus differs from institution to institution.

To overcome such situations a new trend in offering and evaluation of practical papers was started by University of Pune. University of Pune made all the practical papers into theory papers like any other law subject, and all these papers were taught in class room just like substantive subjects. At the end of the semester students appear for written examination.

Thus, it is evident that the Law Schools are not able to cope with the new curriculum requirements. Since evaluation is internal, all students tend to pass with high grades. The practical paper on Moot Court is almost impossible for the faculty to implement, due to the large number of students. Supervising the work of each student, in Court observation and pre-trial preparations, has become a daunting task, without a full-fledged faculty equipped in teaching clinical aspects.

Keeping these issues in mind, the legal education in India needs to design a curriculum that creates competent, dedicated and highly motivated faculty; outstanding, socially sensitive students; and skillful and socially responsible lawyers who can lead the profession towards fair, effective, competent, and accessible legal system. The legal academy and the profession should look to Clinical Legal Education to lead this effort, since Clinical education is in a unique position in India to realize these goals.

4.11.1 Rationale in Introducing the Clinical Curricula

It is with the pronounced objective of improving the skills of law students that the Bar Council of India has introduced the four Practical (compulsory) papers in the LL.B. curriculum. Apart from prescribing the title of these four papers the Bar Council has not specified the nature, contents and the method of teaching, and evaluation of these four papers.
Thus, the whole concept of skill training is immersed in the universe of total darkness. This could be attributed to the fact that no attempt was made as to identify the purpose for which the practical papers were introduced by the BCI. Even though, the obvious reason for introducing practical papers is to offer skills training to the students, the BCI neither identified the skills that are going to be offered by each component of the practical papers, nor an attempt was made to identify the same. Therefore, if at all one has to work out a practical formula; the only way is to identify what kind of skills each component of the four practical papers would offer. A humble attempt in this regard would highlight some of the skills, which are listed paper wise.\textsuperscript{25}

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

\textbf{a) Moot Court.}

Possible skills to be developed:

1. \textbf{Legal Analysis and legal reasoning}
   - Identifying and formulating legal issues
   - Formulating, developing and evaluating legal theory
   - Synthesizing legal argumentation.

2. \textbf{Legal Research}
   - Knowledge of legal rules and institutions
   - Knowledge and ability to use fundamental legal research tools
   - Preparing an effective research design.

3. \textbf{Communication.}
   - Oral and written communication
   - Effective methods of communication.

4. \textbf{Competent Representation}
   - Attaining a level of competence
   - Representing clients competently

\textsuperscript{25}While identifying the skills that each paper would offer, these listed skills were taken from the Mac Crate Report and arranged paper wise.
b) Pre-trial Preparations.

Possible skills to be developed:

1. Problem solving:
   - Identifying and diagnosing the problem (understanding the dynamics of the problem.
   - Generating alternative solutions and strategies.
   - Developing a plan of action.
   - Implementing the plan
   - Open mind to new information and new ideas.

2. Legal Analysis and legal reasoning
   - Identifying and formulating legal issues
   - Formulating, developing and evaluating legal theory
   - Synthesizing legal argumentation.

3. Communication.
   - Oral and written communication
   - Effective methods of communication.
   - Assessing the perspective of the recipient of the communication

4. Factual Investigation
   - Collection of facts
   - Plan for factual investigation
   - Organizing and memorizing information
   - Evaluation of factual information

5. Counseling
   - Gathering information relevant to the decision to be made for counseling
   - Analyzing the decision to be made
   - Counseling the client
   - Ascertaining and implementing the Client's decision.

6. Resolving Ethical Dilemmas
• Identifying the ethical issues
• Understanding ethical standards
• Process of recognizing and resolving ethical dilemmas.

c) Interviewing and Pre-trial Preparations.

Possible skills to be developed:
• Skills of listening
• Identifying and formulating legal issues
• Knowledge of the nature of legal rules and institutions.
• Recognizing and resolving ethical dilemmas

Paper II: Drafting, Pleading and Convincing.
Possible skills to be developed:
1. Memorializing and organizing the factual information gathered
2. Written communication
3. Effective methods of communication.

Paper III: Professional Ethics, Accountancy for Lawyers and Bar-bench Relations.
Possible skills to be developed:
Ethical Dilemmas:
• The nature and sources of ethical standards
• The means by which ethical standards are enforced
• The process of recognizing and resolving ethical dilemmas.

Paper IV: Public Interest Layering, Legal Aid and Para-legal Services.
Possible skills to be developed:

1. Legal Analysis and legal reasoning
• Identifying and formulating legal issues
• Formulating, developing and evaluating legal theory
• Synthesizing legal argumentation.
2. Legal Research
- Knowledge of legal rules and institutions
- Knowledge and ability to use fundamental legal research tools
- Preparing an effective research design.

3. Communication.
- Oral and written communication
- Effective methods of communication.

4. Competent Representation
- Attaining a level of competence
- Representing clients competently.

5. Problem Solving:
- Identifying and diagnosing the problem (understanding the dynamics of the problem.
- Generating alternative solutions and strategies.
- Developing a Plan of Action.
- Implementing the plan
- Open mind to new information and new ideas.

6. Factual Investigation
- Collection of facts
- Plan for factual investigation
- Organizing and memorizing information
- Evaluation of factual information

7. Counseling
- Gathering information relevant to the decision to be made for counseling
- Analyzing the decision to be made
• Counseling the client
• Ascertaining and implementing the client's decision.

8. Negotiation
• Preparing for negotiation
• Conducting negotiation
• Counseling the client about terms obtained from the other party
• Implementing client decision.

9. Litigation and ADR techniques
• Mediation techniques

10. Ethical Dilemmas:
• The nature and sources of ethical standards
• The means by which ethical standards are enforced
• The process of recognizing and resolving ethical dilemmas.

4.11.2 Initiatives in Augmenting Clinical Curricula

In devising teaching and evaluation methods, the BCI has provided considerable flexibility. Each University or Law College is permitted to adopt appropriate teaching and evaluation programs suitable to the conditions prevailing in their local region. The Law Colleges also identify local resources in adopting a particular kind of program to teach these papers. This flexibility allowed the Law Colleges to experiment while offering Clinical experience to the students, conducting the Moot Court Competition at the state and national level, gained momentum. Along with moot courts, the Law Colleges started experimenting in conducting other competitions such as Client Counseling Competitions, Negotiation Competition, and Competition on Cross examination, Trial Advocacy Moot, etc.  

26 Louis M. Brown International Client Counseling Competition was held every year to select a team representing India in international competition. Kerala Law Academy conducts every year National
These competitions generated a lot of interest among the law students. They served the purpose of not only popularizing the concept of Clinical Legal Education but also gave impetus to realize the value of Clinical curricula. Particularly, client interviewing and counseling which was never a part of Law College curricula and simply left to the students learn from the senior lawyers, become the thrust of Law College Clinical component. Law teachers realized the importance of interviewing and counseling and were convinced that they can be taught in the college setup.

Several Law Colleges established Legal Aid Clinic on and off the campus. Legal literacy and para-legal services became the main thrust of these Clinics. Law Colleges excelled in offering legal literacy in association with local Legal Services Authorities. In State of Karnataka, the Law Colleges became more vibrant with forging collaboration with Karnataka Institute for Law and Parliamentary Reform (KILPAR). With the active involvement of KILPAR, the Law Colleges organized workshops and seminars aiming at redesigning the Clinical curricula, and law reform.

Students' involvement in legal literacy, legal aid and para-legal services opened a new dimension to Clinical education in India in the form of public interest litigation. Disturbed by the instances of injustice, the students resorted to public interest litigations. Internships which were confined to premier Law Schools earlier slowly entered the traditional colleges. Special Clinics were established in some colleges, focusing on specific areas like child rights, consumer law, and Alternative Dispute Resolution.

In 2004, the United States Education Foundation in India (USEFI) in association with Vanderbilt Law School introduced a Fulbright Vanderbilt Scholarship in Clinical Legal Education. Under this scheme every year one person involved in legal

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27 KILPAR is a registered Society established by the Government of Karnataka in the Law Department in 2005. It is an innovative design of the Government of Karnataka to bring about reform in Law and Parliamentary Practices in the State.

28 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.

29 For example ADR Clinic in NALSAR, Consumer Clinic & Prison Clinic in V.M. Salgaocar College of Law and e Legal Aid Clinic at NUJS.
aid would be send to Vanderbilt Law School to study the Clinical education in USA. This program had given the much needed exposure to the Indian faculty to advance Clinical programs that are successfully running in USA.  

Several initiatives for assessing and strengthening the Clinical curricula have been undertaken by organizing workshops and conferences. The Conference on Clinical Legal Education organized in Goa resolved to establish a Forum of South Asian Clinical Law Teachers. Accordingly the Forum was established and the Forum in association with Menon Institute of Legal Advocacy and Training has conducted five regional workshops to train the law faculty involved in Clinical Legal Education.

The first regional training program was conducted in association with Christ Law College at Bangalore in 2006. Second training program for Central region was conducted at National Law University, Bhopal. The third training was conducted at the Symbiosis Law College, Pune for Western Region. The Fourth training program was conducted in association with Indira Gandhi National Open University, Delhi. The last training program was conducted at National University of Juridical Science, Kolkata.

These training programs are designed with the help of known Clinicians from India and United State of America. The Training programs are aimed at structuring practical papers and exploring Clinical pedagogy and financial resources. It is heartening to note that Clinicians from USA, Prof. Frank Bloch, Clark Cunningham, Martin Gere and Jane Schukoske volunteered to share their expertise.

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30 The author was the first recipient of Fulbright-Vanderbilt Scholarship. Till now six members benefited by this scholarship, out of which 4 are faculty members.
31 First National Consultative Conference of the Heads of Legal Educational Institutions on Indian Legal Education: Charting the Future held at National Law School of India University, Bangalore (August 2002); Clinical Legal Education: First South Asian Conference of Law Teachers on Skills Ethics Education, International Workshop held at V.M. Salgaocar college of Law, Panaji, Goa (2005); Commonwealth Legal Education Association Regional conference on Access to Justice: A Shift from Letter of law to Spirit of Law held at Indian Law Institute, New Delhi, (2006); International Seminar on Community Layering held at Symbiosis Law School, Pune (2008); National Seminar on Revamping the System of Legal education held at SDM Law College, Mangalore (2009); Conference on Legal Education in India: Challenges Ahead held at National Law University, Delhi (2009).
32 First Regional Training Program at Bangalore 40 faculty members from southern region i.e. from Kerala, Tamil Nadu, Karnataka and Andhra Pradesh participated. Second Regional Training Program at National Law University, Bhopal 45 law faculty participated. The Third Regional Training Program at Symbiosis Law College, Pune 30 faculty members was trained. The Fourth Regional Training Program at Indira Gandhi National Open University, Delhi 35 law faculty participated. Fifth Regional Training Program at National University of Juridical Science, Kolkata 20 law teachers was trained.
In April 2007, in association with the American Centre Mumbai, 3 works Hopson Alternative Dispute Resolutions were organized in Bhopal, Mumbai, and Goa. The Workshop in Goa, in association with the V. M. Salgaocar College of Law, exclusively focused on the teaching of Negotiation and Mediation in Law Colleges. In this five day extensive workshop, 30 faculty members from the States of Kerala, Karnataka, Goa, Maharashtra and Gujarat participated. The faculty from USA and India, who are involved in teaching Negotiation and Mediation, demonstrated the subject through interactive and simulation based teaching.

It is hoped that with introduction of the national legal services scheme by the Government of India, the climate for legal education will improve considerably and students will become active agents in the delivery of legal services to the poor while improving the content and methods of legal education in the process. The above problems are therefore needs to be addressed in a proper manner in an appropriate from by all concerned, be it the BCI, U.G.C., Central and State Governments for evolving an effective clinical methodology. This need has been emphasized by Professor Madhava menon, the pioneer of clinical legal education movement in India, in the following words ‘clinical education can in the future open up the social action role of legally trained persons’.