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“CLINICAL LEGAL EDUCATION – A PRESSING PRIORITY”

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ABSTRACT

Education is one of the paramount virtues of human life. While the theoretical aspects of education equip one with the necessary knowledge, its practical component familiarises a person with the nuances and intricacies of the field. Talking about the legal sphere in particular, the lessons are better inculcated in a student, who is a prospective law practitioner, by combining the appropriate amounts of both theoretical and practical pedagogy, which in turn serves the best interest of the society.

This article delves into the subject matter of clinical education and discusses its evolution, prevalence and potential. The author in pursuance of the same has elucidated its concept and significance and has suggested the various roles a person belonging to the legal fraternity can play in the same. It further entails suggestions and remarks which if looked into, can contribute in flourishing the system of clinical education in the country.

INTRODUCTION TO CLINICAL LEGAL EDUCATION

Good lawyers are persons, whose intelligence, broad liberal education combined with a lawyer's direction, especially equip them for leadership at every level of society.¹

William Stoebeck

¹William Stoebeck, [Back to the Crib](#), 69 Wash L Rev 618 (1994).

A clinical education system is one where the environment is conducive for practically applying the theoretical knowledge of the respective profession. It essentially replicates or imitates the real-world practice in order to prepare the students for the future. In this environment, future professionals apply their knowledge and get engaged in an incumbent case.

The first picture to come to anyone's mind by the word 'clinic' is that of a medical clinic. Their popularity is credited to the pervasiveness of medical or healthcare clinics throughout the country. Even if we look at the etymology of the word, it is derived from the Greek word *Klinein*, which means to recline.² It connotes a person who is reclining or leaning due to deprivation of something. Now, this doesn't necessarily mean that the person is in need on medical aid. It might be emotional, professional or legal aid. This paper specifically focuses on the latter, i.e., clinical legal education. In one way or the other, it is an experience with the absolute practicality of the world outside the educational institutes and academics per se. This system helps a clinical legal student encounter difference. The difference in practice and the difference in perspective. They gradually try to absorb it. Everything and everyone is not quite the same as what they have ever experienced, at any rate in law school; the clients, the neighbourhoods, the courtrooms, and even the professors are different. Legal education for the 21st century must be about critique — both practical and theoretical.³ The only way in which we will have lawyers who will make law meaningful to a large majority of the world's population is by constantly confronting law students with the present limitations of their own profession. The author in pursuance of the same has strived to delve into the subject matter and analyse its development, implementation and relevance in the contemporary time.

THE EMERGENCE AND EVOLUTION OF CLINICAL LEGAL EDUCATION IN INDIA

The first wave of clinical education started in the United States.⁴ Its history dates back to 1960 with the Access to Justice Movement, where inter alia, the practice of providing legal services

²Partridge, Eric. Origins: A short etymological dictionary of modern English. Book Club Associates, 1966

³ Arvind Narrain, Towards a Better Legal Education for the new Century, (2013) NLSIR (Spcl Issue) 1

⁴ Emil Winkler, A Report on the Concept of Law Clinics, https://law.handels.gu.se/digitalAssets/1500/1500268_law-clinic-rapport.pdf.

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to people was interwoven with inculcating skill-based instructions to law students.⁵ These exchanges help the future lawyers to generate empathy and knowledge among themselves which will in all probability be beneficial in their future endeavors. They learn to recognise other people as equals and to formulate policies that will improve the welfare of society in general.⁶ Gradually, this practice started becoming prevalent in the West and after the United States, it was followed by Canada, United Kingdom and Australia too. Hence, the genesis of clinical legal education can be attributed to the United States and in fact, the American Bar Association task force report, namely, the MacCrate Report is quite relevant to the Indian scenario as we have drawn quite a lot of inspiration from the same.

Delving into the history of clinical legal education in India, till the time of independence, legal education was not taken very seriously in the country, however, after the constitution was drafted, it essentially became a document for the lawyers. Eventually, law schools started being established in the country and the study of law as seen today is much in vogue. With almost five hundred law colleges in India in the present time, the study of law has immensely gained popularity.⁷ Whatever be the individual reason for taking up legal studies, a law school is a means to achieve the end of justice, equity and good conscience ultimately. And for this, it is essential that theory must be intertwined with practicality to produce great lawyers. In fact, the Bar Council of India has incorporated in the Rules of Legal Education, the need for imparting practical legal education under the curriculum of Legal Aid Clinic.⁸ This need has also been recognized internationally as the International Association of Law Schools has emphasised the need to generate lawyers who will not only be the advocates of justice, but also who will be legal experts to further public good.⁹ Law school shouldn't only be treated as an instrument of imparting legal knowledge but also as an instrument of social change.

The development of clinical legal education in this country can be accredited to many commissions and committees. In the Bombay Legal Education Committee Report, the

⁵ David Udell, Building the Access to Justice Movement, Fordham Law Review Online, Fordham University School of Law, Vol. 87, Art. 20, <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1036&context=flo>

⁶ Sital Kalantry, Promoting Clinical Legal Education and Democracy in India, (2015) 8 NUJS L Rev 1.

⁷ Archana K., Practicability of Clinical Legal Education in India, Journal of Education and Practice, Vol.4, No.26, 2013.

⁸ Rules of Legal Education, Inspection of a University, Bar Council of India, <http://www.barcouncilofindia.org/wp-content/uploads/2010/05/BCIRulesPartIV.pdf>

⁹ IALS, The Role of Law Schools and Law School Leadership in a Changing World (2009), <http://www.ialsnet.org/the-role-of-law-schools-and-law-school-leadership-in-a-changing-world/>

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emphasis was placed on including moot courts, group discussions, seminars, conferences and the practical aspects of gaining legal education which would be fruitful in the profession.¹⁰ This was proposed as a mandate and not as an option for the students who wished to venture into the legal profession.

Furthermore, according to the 14th report of the Law Commission of India, the Bar Council emphasised on maintaining the standard of professional legal education in the country.¹¹ A multi-disciplinary understanding of law was held to be quite significant for the budding lawyers and the same has been emphasised in the case of *Bar Council of India V Bonnie FOI Law College*.¹²

Also, in the 184th Report of the Law Commission, it was opined that the vocational and academic courses of law should go hand in hand for the students who would like to get into the field of litigation.¹³ Since litigation is no cakewalk, it takes time, effort as well as immense practice to establish oneself in that area.

As the years unfolded several new developments in the sphere of clinical legal education, the next turn came when in the early as well as the late 1970s, the scenario progressed. In 1970, the Ministry of Law and Justice enunciated the relationship between legal aid and legal education reform. One of the milestones in this regard is the report published by the Expert Committee on Legal Aid of the Ministry of Law and Justice presided over by Justice V.R.KrishnaIyer. This committee was specifically appointed in order to make recommendations to implement schemes and programmes on legal aid for the weaker section of the society.¹⁴ In fact, after a prolonged debate over the course structure in the law schools in the country, finally in 1982 it was decided that a five year integrated course which consisted of practical training among other things, would be initiated for the undergraduates.¹⁵ Eventually, clinical courses like client counselling, mock trial, professional ethics and moot court started being incorporate in the course.

¹⁰ Government of Bombay, Report on the Legal Education Committee, Bombay -1949, <http://hdl.handle.net/10973/33646>

¹¹ Shri M.C. Setalvad, 14th Report on Reform of Judicial Administration, 1958, Bar Council of India, www.barcouncilofindia.org/

¹² Bar Council of India v. Bonnie FOI Law College, (2017) 11 SCC 185

¹³ Justice M. Jagannadha Rao, 184th Report on The Legal Education & Professional Training and Proposals for Amendments to the Advocates Act, 1961 and the University Grants Commission Act, 1956, December 2002, Law Commission of India, <http://lawcommissionofindia.nic.in/reports/184threport-parti.pdf>

¹⁴ Nabeela Siddiqui, Clinical Legal Education in India, Open Justice, <http://www.open.ac.uk/blogs/openjustice/?p=71>

¹⁵ Shweta Durge, Clinical Legal Education- An Overview, <http://www.lawyersclubindia.com/articles/Clinical-Legal-Education-An-Overview-2332.asp>

The 184th Report of the Law Commission also states in the light of the clinical legal education being imparted in the Delhi University, that this course may be made mandatory in all the law schools in India. This way, the students will be able to provide certain amount of legal assistance to under trial prisoners and inmates of custodial institutions.¹⁶ And very importantly, they will get a chance to reflect upon how they would be contributing to serve the ends of justice.¹⁷

This system if well implemented will go a long way in producing better lawyers in the country and strengthening the legal system.

ISSUES WITH REGARDS TO IMPLEMENTATION

The first and foremost impediment that comes on the way of implementation of this system is the financial crunch.¹⁸ India, which is a country comprising a huge and diverse population, is struggling with budgetary problems every day. In a nation where education itself cannot be guaranteed to the mass, achieving widespread clinical legal education is merely an aspiration. Faced by long running socio-economic issues, making provisions for implementing the recommendation of the 184th report of the Law Commission to make clinical legal education mandatory is no less than an arduous task.

Moreover, a lot of groundwork is needed to implement this system. A proper curriculum along with the goals of the programme, the teaching methods and materials, academic administration and concerns regarding its overall effect on the law students who are already burdened with the theoretical subjects is to be considered.¹⁹ Conceptualising the thought of setting up a legal aid clinic along with every law school is a great move and has really good potential to go a long way in serving the ends of justice; however, materialising this concept itself is not an easy task. It is bound to take a lot of perseverance, determination and vision.

In addition to this, there may arise certain logistical problems. The flow of the whole process has to knit together the judicial institutions in the vicinity. The country's judiciary has to be

¹⁶ Id. at 12.

¹⁷ V.M. Salgaocar College of Law, Access to Justice to Marginalized People - A study of Law School Based Legal Services Clinic, Published by GOI and UNDP India, https://www.undp.org/content/dam/india/docs/a_study_of_law_school_based_legal_services_clinics.pdf

¹⁸ Juraj Brozovic, The Financial Challenges of Clinical Legal Education, Academia, <https://www.academia.edu/33082615/>

¹⁹ T.O Ojienda, Reflections on the Implementations of Clinical Legal Education, MOI University, Kenya, <https://pdfs.semanticscholar.org/332e/43ad6e202b17888f2240064362d8e2caf9f5.pdf>

kept in the loop with regard to the activities carried on in the clinic. Also, the amount of time consumed in being engaged in the work of the clinic per student should be limited. Clinical legal education should be well balanced with the theoretical subjects which should not be ignored completely. After all, it is better to apply in practice what we have already learnt in theory.

ROLE OF JURISTS, LAWYERS AND STUDENTS

*A lawyer is not just a seller of services but a professional who renders services to maintain the rule of law.*²⁰

This statement not only holds true for lawyers, but anyone who is enrolled into the legal profession, including the jurists and the future professionals, i.e., the law students as well. Hence, they can take a step into fulfilling their roles in the following ways:

BUILDING PROFESSIONAL ETHICS

It is important that students who will be getting into this field are prepared to make informed decisions and learn the virtue of rectitude. The students are not only expected to master the skills of lawyering and become great researchers and orators but also to hone their moral values and professional ethics. Law is one of the noble professions and it directly deals with the life of the people.

Through clinical legal education, the students would be exposed to an inter-disciplinary comprising of various facets of the legal profession and thus they will play a big role in dispensing justice.

Jurists and lawyers on the other hand, who are the officials of the court, should encourage the establishment of such an institution in the interest of justice. Their supervision and guidance would be extremely helpful in making it work. Any question on the importance of ethics in the legal profession is a question on integrity.

INCULCATING SOCIAL VALUES

The legal sphere is not restricted to mere books and legislation. It runs much deeper than that. It has the power of turning people's lives upside down and vice-versa and hence every activity

²⁰Mohn. Shahan Ulla, Role of Lawyers and Jurists in Establishment and Functioning of Clinics, Academia, <https://www.academia.edu/10837482/>

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carried out in this domain should be meticulous. This should be carried on in the most humanistic approach. Lack of sensitivity or complete stoicism may give a rigid outline to the case and leave no scope for incorporating changes. A student is expected to inculcate the social and moral values early in his or her life at a law school itself to quickly assimilate into the skin of a great lawyer as soon as he or she enters the field.

Lawyers and jurists themselves need to be endowed with social values. They are a part of a myriad of cases each day and hence it is necessary for them to possess these values as well. Had they been bestowed with this learning in the law school itself, the road would have been much smoother to them. Hence, this also reflects the necessity to have a legal education clinic in law colleges.

PRACTICING PROFESSIONALISM AND DEVELOPING SKILLS

A lawyer, jurist or law student, although may specialize in one or a few arenas, is expected to be aware of all the aspects of law. Fundamental skills of practicing law are a mandate to have and these skills could be inculcated in the early stages of legal education by providing for a legal aid clinic. This helps to instill a sense of moral as well as professional responsibility. Since practice makes a man perfect, this would result in adding feathers to the cap of the law student and will go a long way in making him or her a legal luminary. However, one thing must not be forgotten, that it ultimately depends on the students and their perceptions of how they reflect the things taught to them in the clinic.

For jurists and lawyers, they do learn professionalism and its ethics; however, it comes after years of practice in the profession. For a person whose whole life would be dedicated to ensure that justice is being served, it is very crucial that such learning starts at the very beginning of his or her education.

ANALYSIS AND CONCLUSION

As a law student, the author encourages setting up a legal aid clinic in the college itself. Having known its importance to the students as well as to the general public and in specific, the weaker sections of the society, it is in the best interest of justice, equity as well as good conscience to establish such an institution. Clinical Legal Education has two major goals to serve. Firstly, it aims at training the law students to tackle real life cases in the future by giving them a taste of it in the law school itself and secondly, it seeks to provide legal services to the disadvantaged members of the society. It is a platform to share knowledge and hold discussions with the aim

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to secure the rights of the people in the country. It will ensure that every person has access to justice.

Moreover, the author finds it pertinent to mention that after attending moot courts, mock trials and witnessing mock client counseling sessions in the college, the author finds an intellectual as well as behavioral change in herself. These not only imparted a plethora of knowledge, understanding and proficiency but also inculcated a sense of responsibility to the society at large.

Before embarking on the journey to become a lawyer, the author had aspirations to become a great corporate lawyer and live an affluent life. However, by the time of the inception of the third year, the perspective has undergone a severe change. Now, the question of justice surfaces above in the pedestal than the question of career and lifestyle. Internships have gone a long way in this realisation and in fact, in the remaining two years of law school, this view is surely going to be strengthened.

If such sporadic visits and first hand experiences can play a big role in moulding a budding lawyer's mindset, a regular legal aid clinic in the college itself can achieve milestones. If this institution is actually established in the law school, the author will be more than willing to contribute in every possible way to make justice accessible to each and every person.

Law, after all, is not merely a profession. It is an honourable and virtuous profession. Everyone's life is intertwined with one or the other aspect of law and hence lawyers have a duty towards the society to oversee that justice is being served to one and all. As emphasised numerous times in this article, the importance of a legal aid clinic can never be underestimated.