

Legal Aid Clinics in India as a part of Law School Curriculum: An Overview

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Abstract

The values of justice are the bedrock of legal systems and are critical to the study of law. Moreover, a healthy and effective justice system is a core value in any democratic society. Article 39A of the Constitution of India entrusts the state with the responsibility of ensuring that the legal system operates in a manner which promotes justice based on equal opportunity. Legal Aid is the vehicle through which this constitutional pledge is fulfilled in both letter and spirit and equal justice is made available to people who are most vulnerable, deprived and marginalized. Law schools being the recruiting grounds for the legal profession, there is a need to inject a spirit into the content of legal education to make the law students socially responsible in order to secure the constitutional mandates of access to justice. If law students at the formative stage of their career are exposed to legal aid services, they become motivated to deliver the service when they enter into professional life. The students are not adequately motivated through academic exercise to use 'Law' as a device for the poor people as a result, they learn to become mere lawyers to fight legal cases without acquiring adequate mind-set to serve the poor people of the community. The question of improving legal education by involving law students in the delivery of legal services, did not occur to or find favour with educational reformers for a long time. In the year 1994, a three member bench comprising of Justice A.M. Ahmadi, Justice B.N. Kirpal and Justice Jaganaddha Rao analysed in detail the law school teaching methods. In its report, the Committee made a recommendation for including problem methods, moot courts and mock trails in legal education curriculum. The Bar Council of India in 1997 made Legal Aid a compulsory practical paper as a part of curriculum in all the Law Colleges in India in order to give the deprived sections and the poor people of the community a new ray of hope. However, despite all the efforts there are still various lacunas which hamper the proper implementation of legal aid clinics in the law schools. The paper shall focus on the meaning,

brief historical background, challenges and suggestions for a brighter future of Legal Aid Clinics as a part of Legal Education in India.

Key words- Legal Education, Article 39A, Legal Aid, Access to Justice, Bar Council of India.

“Like slavery and apartheid, poverty is not natural. It is man-made and it can be overcome and eradicated by the actions of human beings.”

Nelson Mandela.¹

I. INTRODUCTION

The notion of justice according to law, the rule of law and independence of judiciary are different sides of the same coin envisaging the philosophy of equality before law and that law is no respecter of the person, however high he is.² A healthy and effective justice system is a core value in any democratic society. Access to justice enables individuals to resolve disputes effectively and aids in enforcing their legal rights.³ The values of justice are the bedrock of legal systems and are critical to the study of law.⁴ In ancient India law and ‘Dharma’ were analogous concepts consistent with truth, morality and justice. The law was not created or made by the King, but the ideal and object of law was to promote justice.⁵

The principles which come from the basic structure of the Constitution of India, including the Rule of Law, makes it imperative that every citizen has the equal right to have an access to justice. However, till date there are many people who are deprived of

¹Nelson Mandela, *Make Poverty History*, (July 15, 2017, 17:43 PM), <http://www.makepovertyhistory.org/extras/mandela.shtml>.

² S.N. DHYANI, JURISPRUDENCE AND INDIAN LEGAL THEORY, 156 (4th ed. Central Law Agency 2010).

³ DHARAMVEER SINGH, THE OUTSOURCING OF LEGAL SERVICES- TRENDS, CHALLENGES & POTENTIAL, Abstract (Promoculture-Larcier 2015).

⁴ Access to Justice for Marginalized People- A Study of Law School Based Legal Service Clinics, GOVERNMENT OF INDIA AND UNITED NATIONS DEVELOPMENT PROGRAMME (UNDP), Foreword (July 2, 2017, 09:45 AM), http://www.in.undp.org/content/india/en/home/library/democratic_governance/a_study_of_law_schoolbasedlegalservicesclinics.html.

⁵ DHYANI, *supra* note 2, at 155.

this constitutional guarantee and are facing problems of poverty, economic deprivation and want of education.

Legal education plays a vital role in the maintenance of Rule of Law.⁶ The legal profession is expected to play a dynamic role in the administration of justice. Law schools being the recruiting grounds for the legal profession, need to inject new spirit into the content of legal education to make the lawyers and the legal professionals socially relevant and professionally competent to secure the constitutional mandate of access to justice.⁷ In the review of legal education undertaken by the University Grants Commission (UGC), Professor Upendra Baxi discussed the expression “social relevance” with insight that still holds significance today.⁸ Interpreting the term in the light of the societal condition of many people in the nation, Professor Baxi stated,

“Social relevance requires at least that a curriculum cognizes the principal contemporary problems and corresponding tasks before law and lawyers. Can a law curriculum be socially relevant and yet ignore the fact that India is an overwhelmingly a rural economy? Or that it is a country full of underprivileged, exploitation and destitution.”⁹

Therefore, it would be correct to say that the main ethical responsibility of the law schools is neither to the students nor to the profession. Rather, it is towards the citizens who depend upon law, and derivatively upon lawyers to provide a fair, coherent and efficient framework within which to live their lives.¹⁰ The objective of global legal education is not to create lawyers who can “practice” in a number of jurisdictions but it should have an incidental effect. The objective is to create trained minds who can settle cross border issues efficiently.¹¹

⁶ SUSHMA GUPTA, HISTORY OF LEGAL EDUCATION 2 (Deep & Deep Publication (P) Ltd., 2006).

⁷ *Supra* note 4, at 1.

⁸ RAMAN MITTAL & K.V. SREEMITHUM (EDS.) LEGAL AID- CATALYST FOR SOCIAL CHANGE 179 (Legal Aid Society Campus Law Centre University of Delhi, Satyam Law International).

⁹ Upendra Baxi, *Notes towards a Socially Relevant Legal Education- A working Paper for the UGC regional Workshop in Law 1975-1976*, (July 3, 2017, 10:34 AM), <http://upendrabaxi.in/documents/Notes%20towards%20a%20socially%20relevant%20legal%20education.pdf>.

¹⁰ David B. Walkins, *The Professional Responsibility of Professional Schools to study and teach about the profession*, 49 JLE 79, 86 (1999).

¹¹ Amit K. Kashyap, *Professional Legal Education in India: Challenges and the Way Forward*, 7 IJEASS 141, 144-145 (2016).

II. LEGAL AID- MEANING

Access to justice narrowly can be described as providing legal aid which makes judicial remedies available to those with inadequate financial resources by meeting up the cost of lawyers and other incidental expenses of the administration of justice.¹² The essence of free India was well summed up in Article 14 of the Indian Constitution which entitles every person, equal protection of law to guarantee the enjoyment of justice, liberty, equality and fraternity; the four paramount aspirations of the Constitution.

Article 39A¹³ of the Constitution of India directs the state to ensure that the operation of the legal system promotes justice, on the basis of equal opportunities and shall in particular provide free legal aid by suitable legislation or schemes in any other way to ensure that the opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.¹⁴

Therefore, legal aid serves as the contact point between the law and the people who are living in poverty and is crucial to ensuring access to justice.¹⁵ The United Nations also assists in the development and reform of national policies and frameworks on legal aid and supports capacity building of state and non-state actors who provide legal aid services in civil, criminal and family matters.¹⁶ The United Nations system also supports the provision of legal aid by strengthening capacities of right holders, enhancing legal aid programmes empowering right holders and supporting legal awareness and legal aid clinics and public outreach campaigns.¹⁷

Legal Aid, is thus an essential element of a fair, humane and an efficient criminal justice system that is based on the Rule of Law. It is the foundation for the enjoyment of other rights including the right to a fair trial.¹⁸ The United Nations Principles and

¹² Francesco Francioni, *The Development of Access to Justice*, 20 EJIL 729, 731 (2009).

¹³ Article 39A of the Constitution of India deals with Equal justice and free legal aid. It was added to the Constitution of India through The Constitution (Forty-Second Amendment) Act, 1976.

¹⁴ DR. J.N. PANDEY, *THE CONSTITUTIONAL LAW OF INDIA* 415 (48th ed., Central Law Agency 2011).

¹⁵ Gabriela Knaul, *Report of the Special Rapporteur on the Independence of Judges and Lawyers*, UNITED NATIONS (June 30, 10; 15 AM), <http://www.ohchr.org/EN/Issues/Judiciary/Pages/IDPIndex.aspx>.

¹⁶ United Nations and Rule of Law- Access to Justice, UNITED NATIONS (June 30, 2017, 09:56 AM), <https://www.un.org/ruleoflaw/thematic-areas/access-to-justice-and-rule-of-law-institutions/access-to-justice/.html>.

¹⁷ *Id.*

¹⁸ United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (June, 2013), UNITED NATIONS (June 30, 2017, 10:20 AM), https://www.unodc.org/documents/justice-and-prison-reform/UN_principles_and_guidelines_on_access_to_legal_aid.pdf.

Guidelines on Access to Legal Aid in Criminal Justice System provides the internationally agreed definition of the term, 'legal aid' to include,

“legal advice, assistance and representation for victims and for arrested, prosecuted and detained persons in the criminal justice process, provided free of charge for those without means or when the interests of justice so require.”¹⁹

Access to justice is therefore, fundamental to the protection of human rights as is evidenced in numerous Human Rights instruments and recognizing legal aid is an essential element for the functioning of any legal system that is based on Rule of Law.²⁰ The states, should therefore, guarantee the right to legal aid in their national legal systems at the highest possible level, including where applicable in the Constitution.²¹

III. SIGNIFICANCE OF LEGAL AID CLINICS

The Legal Aid Clinic as a device in the field of legal education has aroused much interesting discussion. The word, 'clinic' in both ecclesiastical and medical vocabularies involves the idea of bedside treatment.²² The use in law of the word 'clinic' differs materially from the meanings found elsewhere.²³ R. Grimes, a well-known author in the field defines “law clinic” as:

“A learning environment where students identify, research and apply knowledge in a setting which replicates, at least in part, the world where it is practiced...It almost inevitably means that the student takes on some aspect of

¹⁹ Para 8 of United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (June, 2013), UNITED NATIONS (June 30, 2017, 10:20 AM), https://www.unodc.org/documents/justice-and-prison-reform/UN_principles_and_guidelines_on_access_to_legal_aid.pdf.

²⁰ Para 14 of United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (June, 2013), UNITED NATIONS (June 30, 2017, 10:20 AM), https://www.unodc.org/documents/justice-and-prison-reform/UN_principles_and_guidelines_on_access_to_legal_aid.pdf.

²¹ *Id.*

²² John S. Bradway, *The Legal Aid Clinic as an Educational Device*, 7 ALSR 1153, 1153 (1934).

²³ *Id.*

a case and conducts this as it would be conducted in the real world.”²⁴

The legal aid programme which is meant to bring social justice to the people cannot remain confined to the traditional or litigation oriented programme, but it must take into account the socio-economic conditions prevailing in the country and adopt a more dynamic approach.²⁵ The Supreme Court of India, the highest judicial authority in the case of *State of Maharashtra v. Manubhai Pragaji Vash*²⁶ opined that:

“in order to enable the State to afford free legal aid and guarantee speedy trials, a vast number of persons trained in law are essential. Legal Aid is required in many forms and at various stages for obtaining guidance for resolving disputes in courts, tribunals or other authorities... Legal Education should be able to meet the ever growing demands of the society and should be thoroughly equipped to cater to the complexities of the different situations.”²⁷

Therefore, in a democratic country, governed by rule of law, the main concern should be to have a proper legal system. Poverty, being the root cause of many evils in the society, the biggest challenge to the legal profession in India is of providing constitutional mandate of access to justice to the poor. The enactment of the Legal Services Authorities Act, 1987²⁸ entitled more than 60% of the Indian population to free Legal Aid. With such a huge number of claimants it is highly impossible for the State to offer quality legal aid.²⁹ In this scenario, the legal profession is expected to play a dynamic role. The Principles and Guidelines on the Access to Legal Aid in Criminal Justice systems particularly mentions that legal aid is intended to include the concepts of legal education, access to legal information and other services provided for persons through alternative dispute resolution mechanisms and restorative justice processes.³⁰

²⁴ J. WEBB & C. MAUGHAM (eds.), R. GRIMES, THE THEORY AND PRACTICE OF CLINICAL LEGAL EDUCATION 138 (Teaching Lawyers skills 1996).

²⁵ PANDEY, *supra* note 14.

²⁶ A.I.R. 1996 S.C. 1 (India).

²⁷ *Id.*

²⁸ The Legal Services Authorities Act, 1987, No. 39, Acts of Parliament, 1987 (India).

²⁹ Section 12 of the Legal Services Authorities Act, 1987 provides for the criteria of providing legal services.

³⁰ *Supra* note 19.

Such a scheme enables the students to provide free legal assistance, assist in the preparation of cases and even represent client in court proceedings usually under the supervision of a qualified lawyer or faculty staff member.³¹

Therefore, the positive and relevant role that the law schools could play in the field of access to justice is an ever expanding canvas whose boundaries though not defined has its midrib running through the areas of poverty, lack of awareness and the existence of many incompetent and ill trained lawyers who have become more or less parasites on the society rather than being a saviour of the needy and the harbinger of justice to the people.³²

Michelle Obama, while talking about the importance of Legal Aid Clinics in Law schools opined:

“And in my own life, in my own small way, I have tried to give back to this country that has given me so much. That’s why I left a job at a law firm for a career in public service, working to empower young people to volunteer in their communities. Because I believe that each of us- no matter what our age or background or walk of life- each of us has something to contribute to the life of this nation.”³³

The structure of legal education represents a combination of the State’s public policy as well as academic self-interest of the intending lawyers.³⁴ Therefore, legal education must mobilize the necessary legal personnel to serve a wider public and a broad range of interests on one hand and improving the quality of legal services to the poor on the other.³⁵

IV. LEGAL AID CLINICS AS A PART OF LAW SCHOOL CURRICULUM IN INDIA

³¹ Farzana Akter, *Integration of Legal Aid Activity in Law School Curriculum; An Overview of Bangladesh and India*, 23 IJCLE 173, 175 (2016).

³² *Supra* note 4, at 8.

³³ Michelle Obama’s “One Nation” speech at Democratic Convention, (July 7, 2017, 12:54PM), <http://edition.cnn.com/2008/POLITICS/08/25/michelle.obama.transcript/>.

³⁴ D.L. RHODE, *IN THE INTERESTS OF JUSTICE: REFORMING THE LEGAL PROFESSION* 187 (Oxford University Press 2001).

³⁵ RHODE, *supra* note 35, at 185.

The history of our own independence movement, if impartially written, will devote more pages to lawyers than to the votaries of any other vocation.³⁶ It is well accepted proposition that the Profession of Law is a noble calling and the members of the Legal Profession occupy a very high status.³⁷ One role of the lawyer in a common law system is to be a balance wheel, a harmonizer, and a reconciler. He must be more than simply a skilled legal mechanic. In a larger sense he must also be a legal architect, engineer, and builder and, from time to time, an inventor as well.³⁸

Legal aid activity is integrated into law school curriculum as a part of the clinical legal education programmes in order to cultivate professional skills and service orientation among the potential lawyers.³⁹ If law students at the formative stage of their career are exposed to legal aid services they become motivated to deliver the service when they enter into professional life. Legal Aid Clinics, enables law students to comprehend and assume the responsibilities for the protection of individual rights, reform of the law, equitable distribution of legal services in society and for the protection of public interest.⁴⁰ Thus, clinical legal education provides the students with opportunities not only for the professional and intellectual development, it also prepares them to practice law as a socially and professionally responsible lawyers.⁴¹

R.J. Wilson, states that law students in clinics provide legal services to the poor and it allows them to get into close contact with the problems of such segment of the society.⁴² Clinics expose students to the impact that the practice of law has on people. No one should pretend that they are prepared to practice without a sense of this impact and a constructive way to think about it. It is responsibility of the law schools that they must foster a contextual understanding of what lawyers should do to meet the needs of the country. This means connecting students with communities and involving them in creative solutions that focus on common good.⁴³

³⁶ V.R. KRISHNA IYER: THE SOCIAL DIMENSIONS OF LAW AND JUSTICE IN CONTEMPORARY INDIA – THE DYNAMICS OF A NEW JURISPRUDENCE: PROBLEMS, PERSPECTIVES AND PROSPECTS 1 (All India Reporter, 1979).

³⁷ *Id.*

³⁸ C. RAMA RAO, VIJAYA LAKSHMI TAYARU & Y.NAGESHWARA RAO, PROFESSIONAL ETHICS & ADVOCACY 68 (Gayatri Books 1987).

³⁹ A. Klijn, *Dutch Legal Services Quality Incentives: The Allegedly “perverse” effects of 1994 Legal Aid Act*, 33 UBCLR 438 (2000).

⁴⁰ N.R.M. MENON, CLINICAL LEGAL EDUCATION: CONCEPT AND CONCERNS- A HANDBOOK ON CLINICAL LEGAL EDUCATION 1 (Eastern Book Company 1998).

⁴¹ S.P. Sarker, *Empowering the Underprivileged: The Social Justice Mission for Clinical Legal Education in India*, 19 IJCLE 321 (2013).

⁴² R.J. Wilson, *Training for Justice: The Global Reach of Clinical Legal Education*, 22 Penn SILR 423 (2004).

⁴³ M. Barry, *Clinical Legal Education in the Law University: Goals and Challenges*, 27, 28 IJCLE 30 (2008).

In simple words, a legal aid clinic is a device in the field of legal education to bridge the gap between theory and practice.⁴⁴ Students are brought in contact with real clients under conditions approximately those of actual practice by reputable lawyers.⁴⁵ They are encouraged to see a case through the eyes of a lawyer rather than through those of a judge or a legal scholar.⁴⁶ Legal aid activity has become part of the curriculum in Indian law schools through clinical legal education programmes. At present clinical legal education is a mandatory part of India's legal education that traces its origin in both the legal aid and legal education reform movements with a view to improving the quality of law practice as well as making lawyers aware of their professional and public responsibility.⁴⁷

During the British rule, legal education in India followed the general colonial model of producing clerks, not managers or advocates. The primary goal was to support the existing financial interests of England certainly not to reform the local legal profession.⁴⁸ After independence, legal education was expected to bring the legal system in tune with the social, economic and political desires of the country.⁴⁹ For the first time in 1949, The Bombay Legal Education Committee⁵⁰ recommended that practical courses should be made compulsory only for students who choose to enter the profession of law and the teaching method should include seminar or group discussions, moot court competitions, etc.

In the year 1958, the 14th Report⁵¹ of the Law Commission of India recognised the importance of professional training and for a balance of both academic and vocational training. It recommended that University training must be followed by a professional course concentrating on practical knowledge to those who chose to practice in the Courts.⁵² The Commission's report concentrated on institutionalizing and improving the overall standards of legal education. The report also discussed the various teaching methods and suggested that seminars, discussions, mock trials and simulation exercises should be introduced.

⁴⁴ Bradway, *supra* note 22.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Sarker, *supra* note 41.

⁴⁸ Archana K., *Practicability of Clinical Legal Education in India- An Overview*, 4 JEP 157, 157-58 (2013).

⁴⁹ *Id.*

⁵⁰ Report of the Legal Education Committee, Bombay, 1949, SOUTH ASIA ARCHIVE (July 10, 2017, 12:10 PM), <http://www.southasiaarchive.com/Content/sarf.140321/200825.html>.

⁵¹ Law Commission of India Report, *Reforms of Judicial Administration*, LAW COMMISSION OF INDIA (July 10, 2017, 12:30 PM), <http://lawcommissionofindia.nic.in/1-50/index1-50.html>.

⁵² *Id.*

The idea of involving law school in legal aid can be seen as the first attempt to introduce some kind of framework in India.⁵³ The legal aid movement of the 1960's in India assumed that law schools would have a significant role in dispensing legal services.⁵⁴ Reform was considered to be necessary to foster the country's nascent democracy and help achieve the goals of good governance expressed in the Constitution of India by developing competent legal minds.⁵⁵ The number of Legal Aid Clinics set up in India was 18973 till January 2016.⁵⁶ The top 10 states in terms of the number of Legal Aid Clinics set up were: Uttar Pradesh, Himachal Pradesh, Rajasthan, Kerala, Madhya Pradesh, West Bengal, Gujarat, Andhra Pradesh, Karnataka and Tamil Nadu till January 2016.⁵⁷

A. GROWTH OF LEGAL EDUCATION IN INDIA

Legal Education through legal aid clinics in India has gone through many stages of development before a formal inclusion was made in the curriculum. Some of these stages are:

- (i) In the mid-60's, Delhi University introduced the case method in teaching law, and in 1969, the faculty and students established a Legal Service Clinic.⁵⁸ The efforts made by the faculty were purely voluntary and no attempts were made for institutionalizing and integrating Clinics into the curriculum.⁵⁹
- (ii) Banaras Hindu University was the first to introduce a course on Clinical Legal Education in early 1970's. The course included court visits, participation in a Legal Aid Clinic established by the institution, and an internship in chambers of lawyers. The Legal Aid Clinic was supervised by a retired judge on a token honorarium. The entire Clinical legal education in Banaras Hindu University revolves around its Legal Aid Clinic.⁶⁰
- (iii) In 1983-84, a Legal Aid Clinic was established in the Faculty of Law, University of Jodhpur. This Clinic was actively involved in the dissemination of information

⁵³ Sarker, *supra* note 41.

⁵⁴ Frank S. Bloch, *Access to Justice and the Global Clinical Movement*, 28 WUJLP 111, 111-112 (2008).

⁵⁵ A.S. Anand, *Legal Education in India — Past, Present and Future*, (1998) 3 SCC (Jour) 1.

⁵⁶ Data collected from community.data.gov.in, GOVERNMENT OF INDIA (July 12, 2017, 15:32 PM), <https://community.data.gov.in/legal-aid-clinics-set-up-till-january-2016/>.

⁵⁷ *Id.*

⁵⁸ MADHAVA MENON, N.R., *LEGAL AID AND LEGAL EDUCATION: A CHALLENGE AND AN OPPORTUNITY* 25 (University of Delhi, New Delhi, 1986).

⁵⁹ *Id.*

⁶⁰ *Id.*

about social welfare legislation, helping in settling cases in accident and matrimonial disputes.⁶¹

- (iv) After five years of debate over a 3 year v/s 5 year LLB course, which began during a 1977 National Seminar on Legal Education at Bombay, the Bar Council of India unanimously agreed to introduce the new 5 year course from July, 1982 open to students after completing their senior secondary education. In this curriculum also the Bar recommended practical training.
- (v) National Law School India University (NLSIU) introduced both compulsory and optional Clinical courses. Three compulsory Clinical courses were introduced in the year of 1992. In 1994-95 the Clinical courses were reorganized and two Clinical courses namely Client Interviewing and Alternative Dispute Resolution Clinic, and Trial Advocacy and Appellate Advocacy Clinic were made compulsory. Students could choose third Clinical course from several Clinics such as Corporate Clinic, Criminal Law Clinic and Labour Law Clinic.⁶²
- (vi) In 1996-97 the Clinical programs were further revised to integrate them with legal aid extension services. Three Clinics offered in the final year have now been spread over to earlier year namely third and fourth year of study. In addition to these compulsory Clinical courses students have optional Clinical courses like Moot Court, Community base Law Reforms Competition, and Legal Services Clinic.⁶³
- (vii) In 1994, a three-member Committee made comprising of Justice A.M. Ahmadi, Justice B.N. Kirpal and Justice Jaganaddha Rao dealt in detail with law school teaching methods. The Committee, in its report,⁶⁴ among other things recommended inclusion of the problem method, moot courts, and mock trials in legal education curricula. Further, it also recommended that the suggested new methods of teaching be made mandatory. There were demands for improved training in skills and ethics in law school. Concerns arose about maintaining the quality of law practice when apprenticeship requirements were eliminated in the

⁶¹S.S. SHARMA, *LEGAL AID TO THE POOR: THE LAW AND INDIAN LEGAL SYSTEM*, 234 (Deep & Deep Publications, New Delhi, 1993).

⁶² N.R. MADHAVA MENON & V. NAGARAJ, *CLINICAL LEGAL EDUCATION: CONCEPT AND CONCERNS, A HANDBOOK ON CLINICAL LEGAL EDUCATION*, 241(N.R.Madhav Menon, ed., Eastern Book Company, Lucknow, 1998).

⁶³ *Id* at 244-46

⁶⁴ Law Commission of India 184th Report, *Legal Education and Professional Training and Proposal for Amendments to the Advocates Act, 1961 and the University Grants Commission Act, 1956*, LAW COMMISSION OF INDIA (July 10, 2017, 4:55 PM), <http://lawcommissionofindia.nic.in/reports/184threport-parti.pdf.html>.

early 1960's. The Bar Council of India reintroduced a one-year training requirement after graduation from law school in 1994, based on recommendations of the Ahmadi Committee.⁶⁵

Thus, the committee's proposals worked as the starting point for the introduction of clinical teaching curriculum into the modern Indian Legal education system. It was after this committee's report that the Bar Council of India introduced four practical papers into the curriculum, which was viewed as the big step towards introducing clinical legal education formally into the curriculum and the law schools have been required to introduce the four papers since the academic year 1998-99.⁶⁶ The four papers are:

- i) Paper I - Moot-court, Pre-trial preparations and Participation in Trial Proceedings.
- ii) Paper II: Drafting, Pleading and Conveyancing.
- iii) Paper III: Professional Ethics, Accountancy for Lawyers and Bar-bench Relations.
- iv) Paper IV: Public Interest Lawyering, Legal Aid and Para-legal Services.

However, the Bar Council of India's mandatory directive to introduce the four practical papers into the curriculum was welcomed only half-heartedly by law school authorities as their staff lacked the skills and experience necessary to teach the course properly or 'simply put, law faculty neither had a vision for, nor properly understood, the value of these papers.'⁶⁷

Reports of University Grants Commission (UGC) also played an important role in the history of Clinical Legal Education by outlining the objectives of reformed teaching as making students more responsive to learning and making them demonstrate their understanding of law. The 2nd UGC report of particular interest to Clinical Legal Education was prepared by a Curriculum Development Committee, which was asked to upgrade the syllabi of the LL.B. course. Primary focus of Clinical legal education of the proposed curriculum is on legal aid, social justice, and professional responsibility. The basic model of clinical legal education promotes professional skills training and law school involvement in social justice. Typically, clinic students are engaged in experiential learning through active involvement in some type of social justice activity,

⁶⁵ *Id.*

⁶⁶ Bar Council of India Resolution No. 04/1997.

⁶⁷ Frank S. Bloch and MRK Prasad, *Institutionalizing a Social Justice Mission for Clinical Legal Education: Cross-national Currents from India and the United States*, 13 CLR 165, 171 (2006).

such as a legal aid clinic. Bar Council of India rules that require credit for clinical work seem to contemplate some measure of specific skills training.⁶⁸ The entire idea and structure of clinical legal education is based on American Bar Association task force report, namely, the Mac-Crate Report,⁶⁹ which is relevant to the Indian experience. The Law Commission Report of 2002 also emphasized further the professional skills and values future lawyers need to develop at law school.⁷⁰ The Bar Council of India adopted a resolution, based on the recommendations of the Supreme Court's three member committee, to set up legal aid clinics in every law school to provide inexpensive and speedy service to underprivileged groups in society.⁷¹

In 2008, the Council approved the rules on "Standards of Legal Education and Recognition of Degrees in Law". The rules mandated all law colleges to "establish and run a legal aid clinic under the supervision of a senior faculty member".⁷² In 2010, the Bar Council reiterated the same in its Inspection Manual 2010. The National Legal Services Authority (Legal Aid Clinics) Scheme, 2011⁷³ is also relevant and requires law colleges and law universities to set up permanent legal aid clinics attached to their institutions that function with the co-ordination of State Legal Service Authorities.⁷⁴

Thus, an important part of the clinical methodology is its emphasis on experimental learning and other interactive teaching techniques that give students a sense of participating in the process as adults and draw them into the role of a lawyer.⁷⁵

⁶⁸ *Id.*

⁶⁹ American Bar Association, *Legal Education and Professional Development -An Educational Continuum, Report of The Task Force on Law Schools and the Profession: Narrowing the Gap*, 54 AMERICAN BAR ASSOCIATION (July 14, 2017, 03:16PM)

[https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/2013_legal_education_and_professional_development_maccrate_report\).authcheckdam.pdf.html](https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/2013_legal_education_and_professional_development_maccrate_report.authcheckdam.pdf.html).

⁷⁰ *Supra* note 71.

⁷¹ Bar Council of India, *3 Member Committee Report on Reform of Legal Education (2009)* (July 14, 2017, 03:50 PM), <http://www.barcouncilofindia.org/wp-content/uploads/2010/06/3-member-Committee-Report-on-Legal-Education.pdf.html>.

⁷² Department of Justice, Government of India and United Nations Development Programme (UNDP) India, Conference Report, *International Conference on Equitable Access to Justice: Legal Aid and Legal Empowerment*, New Delhi, India (17 – 18 November 2012), (July 13, 2017, 08:20 AM), <http://www.in.undp.org/content/dam/india/docs/DG/equitable-access-to-justice-legal-empowerment-legal-aid-and-making-it-work-for-the-poor-and-marginalised.pdf>.

⁷³ National Legal Services Authority (Legal Services Clinics) Regulations, 2011, GOVERNMENT OF INDIA (July 9, 2017,18:10PM),<http://nalsa.gov.in/sites/default/files/document/NALSA%20LEGAL%20AID%20CLINICS%20REGULATIONS,%202011.pdf>.

⁷⁴ *Id.*

⁷⁵ Frank S. Bloch, *The Andragogical Basis of Clinical Legal Education*, 35 VLR. 321, 322-23 (1982).

V. PRACTICABILITY OF LEGAL AID CLINICS AS A PART OF LAW SCHOOL CURRICULUM: PROBLEMS AND SUGGESTIONS

Indian legal education places considerable emphasis on clinical legal education so that students can learn the law while acquiring professional skills. As a component of this programme, students are expected to realise the role of legal aid in the society, its beneficiaries, and the nature of their problems.⁷⁶ The legal educators in India had a responsibility to improve the quality of legal education through the legal services clinical method of law teaching, which will help to encourage a sense of justice, equity and public service responsibility among young law students but bureaucratic hassles, and the indifference of almost all legal institutions in India, have prevented these initiatives from being properly implemented.⁷⁷

A study supported by the Government of India and United Nations Development Programme (UNDP)⁷⁸ Project on Access to Justice⁷⁹ found that nearly 82 percent of the colleges have an assigned faculty to conduct legal aid activity. Yet it is not effective because legal aid activity is still a non-credit, extra-curricular activity in Indian law schools.⁸⁰ In the present times also the responsibility of training law students in practical matters is simply passed on the law books and not much importance is given to the clinical legal education. There are several factors which are responsible for the same. Some of them are:

- (i) Legal aid clinics were started merely to satisfy the mandatory requirement prescribed by the Bar Council and they do not have an appropriate functional structure or policy on the kind of services they would offer. This is the reason that most of the activities of the clinics are limited to organising a few Legal Literacy Camps.⁸¹
- (ii) It is also found that the law colleges do not make adequate effort to inform the community about their existence and the availability of services. As regards providing legal advice or participation in client interviewing, the performance of

⁷⁶ Akter, *supra* note 31, at 187.

⁷⁷ *Id.*

⁷⁸ *Supra* note 4, at 2.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.* at 3.

the colleges is far from the desired level.⁸² The situation is similar in offering paralegal services and law reform.

- (iii) Another hindrance is the inability of full-time law teachers and students to appear in courts on behalf of legal aid clients. Legal aid is not made a part of the work load for the faculty.
- (iv) Underlying all the obstacles to the growth and sustainability of Clinical Legal Education in the developing countries including India is the lack of sufficient stable funding.⁸³ As a result the staff suffers from rapid turnovers as the grants come and go.⁸⁴ In other words, their case priorities are often set by the funders rather than community needs.
- (v) The lack of practical knowledge among the law teachers is yet another hurdle in the proper implementation of Legal Aid Clinics as a part of curriculum. The method of teaching clinical and skills courses exacerbates this situation because it requires more faculty than the traditional method of teaching large number of students, a lecture method also referred to as “chalk and talk” method.⁸⁵
- (vi) There is also a feeling amongst the professionals that legal education in India is not meaningful or relevant. Due to this, there are various difficulties faced in the proper supervision and assessment of law clinics.⁸⁶

At present there is a dire need to create a platform for the law schools to introduce proper legal education so as to create a bright future in the years to come. The following steps are recommended for the proper implementation of the Legal Aid Clinics as a part of the law school curriculum:

- (i) Legal Aid Clinics, unlike other initiatives, require modest financial investment. They can be assimilated into the Law colleges as there is a mandatory requirement of the Bar Council of India that each College shall have one Clinic in the College.⁸⁷
- (ii) The students must be entitled with the responsibility to take care of all the cases coming in the law clinics including the interviewing and counselling of the client.

⁸² *Id.*

⁸³ Peggy Maisel, *Expanding and Sustaining Clinical Legal Education in Developing Countries: What We Can Learn From South Africa*, 30 *FILJ* 374, 388 (2006).

⁸⁴ *Id.*

⁸⁵ Maisel, *supra* note 83, at 390.

⁸⁶ Mohammad Ghose, *Legal Education in India: Problems and Perspective*, (Book review), 19 *JILI* (1977).

⁸⁷ *Supra* note 4, at 4.

In simple words, if any person is in need of legal aid then the law clinics can act as the bridge between the legal authority and the client by providing them with the necessary legal services.

- (iii) The University Grants Commission (UGC) should also look at some model institutions which have exceptionally good clinical activities and have trained clinical faculty members and use these models as a basis to develop a curriculum for the faculty development course in clinical education.⁸⁸
- (iv) Law Colleges can establish either 'On- Campus' or 'Off-Campus' Clinics or for their proper functioning there is a need for a proper structure. The timings of the clinics needs to be either before or after the class timings in order to ensure the proper attendance of the students.
- (v) Legal Aid Clinics must also have proper focus areas, since once the focus of the clinic is decided, then there is a need to identify the educational objectives and the utility of the services to the community.
- (vi) A proper networking also needs to be developed among the clinics and at the end of the year a Conference on Legal Aid Clinics should be organized. The purpose of this Conference would be to involve the students and faculty with other stake holders on a single platform to share the experiences and best practices among the law schools.⁸⁹

Apart from these suggestions the Report of UNDP recommended that the Government of India could direct the Legal Service Authorities to collaborate and function with the Law Colleges and ensure that there is a system of financial support and funding of activities of Law School Clinics. A system of reward and recognition of the services of those who do pro bono work and are willing to help the indigent and the needy to secure justice should be introduced.⁹⁰ National Legal Services Authority (NALSA)⁹¹ should also frame a policy on collaboration, budgeting and monitoring Law School Clinics. NALSA could give direction to all State Legal Services Authorities to use final year students in providing Legal Aid to the prisoners. Students can be grouped

⁸⁸ Sarker, *supra* note 41.

⁸⁹ *Supra* note 4, at 7.

⁹⁰ *Id.* at 5.

⁹¹ The National Legal Services Authority (NALSA) has been constituted under the Legal Services Authorities Act, 1987 to provide free Legal Services to the weaker sections of the society. The Chief Justice of India is the Patron-in-Chief and the Senior most Honourable Judge, Supreme Court of India is the Executive Chairman of the Authority.

with the Legal Aid lawyer and organize a visit to the prisons, lock ups and other correctional homes.⁹²

VI. CONCLUSION

Legal Aid Clinics as a part of the law school curriculum serves two-fold purpose, first, it provides legal services to the poor and trains the law students to learn about the skills of lawyering, and second, it creates a public minded legal profession in the future.⁹³ Students taking part in various components of legal aid programmes including the activities associated with the creation of legal awareness, paralegal work, etc. has a stronger impact on their successful operation.⁹⁴ Guidelines 11,⁹⁵ 12⁹⁶ and 16⁹⁷ of the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems⁹⁸ provide that the states should take appropriate measures to encourage the support and establishment of law clinics in universities as well as to provide incentives to allow students to practice in the Court under the supervision of a senior lawyer or a law professor.

However, only limited efforts were made to transform legal education in India to meet the challenges of the profession. The faculty participation was voluntary in nature and thus, no proper attempts were made to integrate clinics into the curriculum. The main reason for this failure was that the law schools were neither physically nor professionally ready to undertake such a huge responsibility.⁹⁹ Prof. Menon in his book has rightly point out that, “The law curriculum does not adequately reflect the changing role of law in a developing society, and law teaching does not take account of the new skills of social engineering required from the

⁹² *Supra* note 4, at 6.

⁹³ Wilson, *supra* note 42, at 424.

⁹⁴ B.B. Pande, *Moral and Ethical Issues Confronting student's legal aid clinics in the outreach of legal services to the resource less and poor* 1 JNLU, Delhi 48 (2013).

⁹⁵ Para 11 of United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems provides, “The Principles and Guidelines are based on the recognition that States should, where appropriate, undertake a series of measures that, even if not strictly related to legal aid, can maximize the positive impact that the establishment and/or reinforcement of a properly working legal aid system may have on a properly functioning criminal justice system and on access to justice.”

⁹⁶ Para 12 of United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems provides, that “Recognizing that certain groups are entitled to additional protection or are more vulnerable when involved with the criminal justice system, the Principles and Guidelines also provide specific provisions for women, children and groups with special needs.”

⁹⁷ Para 16 of United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems provides, “The State should not interfere with the organization of the defence of the beneficiary of legal aid or with the independence of his or her legal aid provider.”

⁹⁸ *Supra* note 181.

⁹⁹ I.P. Massey, *Quest for 'Relevance' in Legal Education*, (1971) 2 SCC (Jour) 17.

future lawyers.”¹⁰⁰ Legal Education through legal aid clinics in India should devote its time on training students with an emphasis on improvement of their competence in advocacy skills, and should strive to develop the perception, attitudes, skills and sense of responsibility which the lawyers are expected to assume when they complete their professional education. When this is achieved, the ultimate goal of legal education to establish a just society based on the rule of law, would become attainable. It has been rightly remarked by Justice Brennan,

“Nothing rankles more in the human heart more than a brooding sense of injustice. Illness we can put up with. But injustice makes us pull things down. When only the rich can enjoy the law, as a doubtful luxury and the poor, who need it most, cannot have it because its expense puts it beyond their reach, the threat to the continued democracy is not imaginary, but very real because democracy’s very life depends upon making the machinery of justice so effective that every citizen shall believe in and benefit by its impartiality and fairness.”¹⁰¹

¹⁰⁰ MOHAN GOPAL(ed), PROF. N.R.MADHAVA MENON’S REFLECTIONS ON LEGAL AND JUDICIAL EDUCATION, 78 (Universal Law Publishing Co, 2009).

¹⁰¹ Justice T. Mathivanan, *Legal Aid- Issues, Challenges and Solutions- An Empirical Study*, 1 (July 17, 2017, 21:30 PM), <http://www.hcmadras.tn.nic.in/legalaid-issues.pdf>.