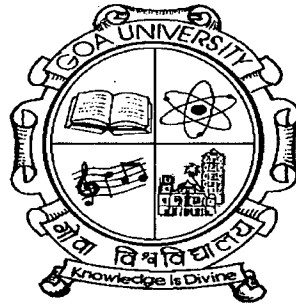


**LEGAL EDUCATION IN INDIA:  
ROLE OF CLINICAL LEGAL EDUCATION  
IN DEVELOPING, INSTITUTIONALIZING AND  
IMPLEMENTING A SOCIAL JUSTICE MISSION  
FOR LAW SCHOOLS**



**A Thesis  
Submitted to Goa University  
for the Award of the Degree of**

**DOCTOR OF PHILOSOPHY  
IN  
LAW**

340.07  
MAN/leg

By

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**April 2010**

VIVA VOCE  
Concluded on  
13/5/2011  
Final Comm  
13/5/2011  
13/5/2011

S.M. Calcut  
13/05/2011  
(External Exam)

13.5.2011  
Guided Tutor  
Exam

T-523

## DECLARATION

I hereby declare that this thesis titled, “**LEGAL EDUCATION IN INDIA: ROLE OF CLINICAL LEGAL EDUCATION IN DEVELOPING, INSTITUTIONALIZING AND IMPLEMENTING A SOCIAL JUSTICE MISSION FOR LAW SCHOOLS**” submitted for the award of the Degree of Doctor of Philosophy in Law, to Goa University, Panaji, is an original research work done by me.

I also hereby declare that this thesis or any part of it has not been submitted to any other University for the award of any Degree or Diploma or Fellowship.

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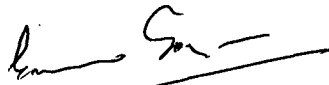
## CERTIFICATE

This is to certify that the thesis titled, "LEGAL EDUCATION IN INDIA: ROLE OF CLINICAL LEGAL EDUCATION IN DEVELOPING, INSTITUTIONALIZING AND IMPLEMENTING A SOCIAL JUSTICE MISSION FOR LAW SCHOOLS" submitted for the award of the Degree of Doctor of Philosophy in Law, is a record of the research work done by Mr. Mandava Rama Krishna Prasad under my guidance and supervision during 2005 - 2010.

I certify that this is a *bonafide* work of **Mr. Mandava Rama Krishna Prasad.**

Date: 24/4/2010

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## ACKNOWLEDGEMENTS

At the outset, I wish to express my sincerest and heartfelt gratitude to my guide (Dr.) Carmo D'Souza, Associate Professor, V.M.Salgaocar College of Law, Goa University, for immense and immaculate help extended. I am deeply indebted to him, a person who is simple in living and high in thinking, for his precious guidance.

I express my profound gratitude to Professor (Dr.) M. Pinheiro, Dean Faculty of Law, Goa University and Principal of V.M. Salgaocar College of Law, for being a constant source of encouragement and fountain of inspiration to me in shaping the aglowing thoughts which shaped into this thesis.

I remain thankful for sincere and unforgettable help extended by Prof. Frank S. Bloch, Vanderbilt Law School, Nashville, USA in completing this thesis. I express my sincere thanks to my colleagues B.S.Patil, Mrunmayi M. Vaidya and Sandhya Ram for their invaluable academic inputs and editing the thesis. I also thank Chetan Hiremath for his valuable help in tabulation and analysis of data.

I am grateful to Prof. A.S. Nadkarni, Principal, Kare Law College for his kind co-operation and help in completing this thesis. I am extremely thankful to Vishwanath M., Lecturer, University College of Law, Dharwad, J.M. Mallikharjunaiah, Principal, K.L.E.'s Law College Bangalore, Sri Hari, Lecturer, K.V.Ranga Reddy Law College, Hyderabad, and my colleagues Girish K.C. and Nagesh C. Colvalkar for their help in collecting the data from colleges in State of Karnataka, Andhra Pradesh and Goa.

I also thank Julius Naik for his valuable help in formulation of research design. I express my deep sense of love and gratitude to my wife Neelima who has been a constant source of inspiration to me, and my daughter Nishita whose virtuous presence is an inspiration for completing the thesis. Without their genuine support and persuasion, it would not have been possible for me to complete this research work.

I am equally grateful to scores of Faculty Members, Librarians, and well wishers for their support and encouragement in completing this work.

**Mandava Rama Krishna Prasad**

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## MODE OF CITATION

For generations, legal researchers, students of law, lawyers, scholars, judges, and other legal professionals have relied on *The Bluebook's* unique system of citation in their writings. As the legal profession is changing rapidly, *The Bluebook* continues to maintain a systematic and uniform standard of citations, to communicate important information and the sources and legal authorities upon which they rely in their research work.

The researcher has followed “**the Bluebook: A Uniform System of Citation, Harvard Law Review Association**” standards in the citations, in this thesis.

## ABBREVIATIONS

1.	A.A.L.S	Association of American Law Schools
2.	ABA	American Bar Association
3.	AILTC	All India Law Teachers Congress.
4.	AIR	All India Reporter
5.	Am. J. Comp. L.	American Journal of Comparative Law
6.	BCI	Bar Council of India
7.	Cal.	Calcutta
8.	Clinical L. Rev.	Clinical Law Review
9.	CULR	Cochin University Law Review
10.	Fordham Int'l L.J.	Fordham International Law Journal
11.	Gonz. L. Rev	Gonzaga Law Review
12.	Harv. L. Rev.	Harvard Law Review
13.	Hasting L.J.	Hastings Law Journal
14.	IBR	Indian Bar Review
15.	Ill. L. Rev.	Illinois Law Review
16.	ILR	Indian Law Review
17.	J.I.L.I.	Journal of Indian Law Institute
18.	Marq. L. Rev.	Marquette Law Review
19.	Mic. J. Int'l. L.	Michigan Journal of International Law
20.	N. Dak. L. Rev.	North Dakota Law Review
21.	NKC	National Knowledge Commission
22.	Pace L. Rev.	Pace Law Review
23.	Penn St. Int'l L. Rev.	Penn State International Law Review

24. SC Supreme Court
25. S.C. L. REV. South Carolina Law Review
26. SCC Jour. Supreme Court Cases Journal
27. SMU L. Rev. SMU Law Review
28. Stan. J. Int'l. L. Stanford Journal of International Law
29. U. Det. Mercy L. Rev. University of Detroit Mercy Law Review
30. U. Pa. L. Rev. University of Pennsylvania Law Review
31. U.B.C.L. Rev. University of British Columbia Law Review
32. UGC University Grants Commission
33. Vanderbilt L. Rev. Vanderbilt Law Review.
34. W.Va. L. Rev. West Virginia Law Review
35. Wake Forest L. Rev. Wake Forest Law Review
36. Wash. L. Rev. Washington Law Review
37. Y.B. Year Book.

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3. Code of Civil Procedure, Act no. 05 of 1908.
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5. Indian Bar Councils Act, Act no.38 of 1926.
6. Juvenile Justice (Care and Protection of Children) Act, Act no. 56 of 2000.
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8. Persons with disabilities (Equal Opportunities Protection of Rights and Full Participation) Act, 1995, Act no. 01 of 1996.
9. The Constitution of India 1950.
10. The Immoral Traffic (Prevention) Act, Act no. 104 of 1956.
11. The Indian Contract Act, Act no. 09 of 1872.
12. The Indian Evidence Act, Act no. 01 of 1872.
13. The Indian Penal Code, Act no. 45 of 1860.
14. The Legal Practitioners Act, Act no. 18 of 1879.
15. The Legal Services Authorities Act, Act no. 39 of 1987.
16. The National Law School of India Act.
17. The Transfer of Property Act, Act no. 04 of 1882.
18. The University Grants Commission Act, Act no. 03 of 1956.

# CHAPTER – I

# INTRODUCTION

## **1. Introduction:**

Law is one of the most faithful mirrors reflecting the fundamental social, economic and political values, at a particular period.<sup>1</sup> This being a truism, the content of law may not necessarily translate into benefits for all segments of the society. It is as, if not more, important to examine how these fundamental values shape the access to meaningful justice for different segments of society and how the different agents in the system assimilate and reflect the said values.

The legal profession, including the Bench and the Bar, plays the most significant role in shaping and operating the legal system and its effects in securing justice in a society. Thus, it becomes pertinent to explore the said core values, or rather a Social Justice Mission in the educational system, which prepares them to play such a fundamental role in society.

### **1.1 Objectives of the Study**

The primary objective of the study is to examine the role of Clinical Legal Education in developing, institutionalizing and implementing a Social Justice Mission for legal education in India. In this, it attempts to crystallize the concept of Social Justice Mission and the potential of Clinical Legal Education,

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<sup>1</sup> SHARMA, S.S., LEGAL AID TO THE POOR: THE LAW AND INDIAN LEGAL SYSTEM, 1 (Deep & Deep Publications, New Delhi, 1993).



primarily through the practical papers introduced by the Bar Council of India, in achieving the same.

It defines and explores the need for crystallizing a Social Justice Mission for legal education in India, drawing on the socio-economic conditions and the social justice goals of the Indian Constitution. It traces the development of legal education, including its clinical aspect and examines the conceptual foundations and status of Clinical Legal Education in India. It studies the drivers and agents responsible for these developments and the measures affecting the same. It thereafter attempts to assess the status of Clinical Legal Education, mainly through the said practical papers, on the basis of specific criteria. Having examined the status and the reasons thereof, it examines and suggests ways to further the Social Justice Mission of legal education.

## **1.2. Scope of the Study**

### ***1.2.1. Identification of Problem(s)***

It is rational to believe that a system of professional education, aspiring to cater to a particular profession, would have a clear policy taking into account the purpose and operational environment of the profession. Surprisingly, one finds lack of unanimity on this aspect in the legal education. Though legal profession is one of the most important instruments of bringing about social justice, the

legal education system in India has no stated Social Justice Mission. This is not to say that there have been no initiatives in this direction.<sup>2</sup>

The state of legal education has been the subject matter of several Commissions and Committees of Inquiry particularly in recent years.<sup>3</sup> Piecemeal initiatives aimed at improving the quality of legal education, so as to produce competent legal professionals, seem to have been impaired by the lack of a unified vision and coordinated efforts.

Further, the grooming of students into competent legal professionals, sensitive to and capable of addressing socio-economic concerns, appears to be suffering from an underlying dichotomy in stated objective of such initiatives. For example, as will be analyzed in Chapter – III, the initiatives introduced by different regulatory bodies over the years, on legal education and related areas, have generally focused either on improving the quality of legal education or on the role of legal education in providing legal aid.

No initiative expressly advocates a comprehensive policy and implementing structure for the use of Clinical Legal Education to embed social sensitiveness in professional competence. Even the Bar Council of India Order introducing practical papers, as analyzed in Chapter – III over looks this aspect and does not provide any such express linkage. It merely requires the concerned educational institutions to implement the practical papers. In absence of the

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<sup>2</sup> See, *Infra* Note 3 in Part 2.1.

<sup>3</sup> SHELAT J.M., DEFINING THE PURPOSES OF LEGAL EDUCATION, LEGAL EDUCATION INDIA: PROBLEMS AND PERSPECTIVES, 1, (Agarwala S.K., ed., N. M. Tripathi Private Limited, Bombay, 1973).

linkage and implementing guidelines, there is no certainty that all institutions will read such dual objectives into the Order and design comprehensive practical papers to achieve them.

In this scenario, it is important to crystallize an express Social Justice Mission for legal education in India and assess and strengthen the role of Clinical Legal Education in developing, institutionalizing and implementing the same.

### *1.2.2. Research Questions*

The principal questions addressed in this study in line with the objectives and the problems highlighted above, are as under;

- (i) What is the need, potential and status of Clinical Legal Education in implementing a Social Justice Mission for legal education in India?
- (ii) If viable yet lacking in practice, what measures can be taken to harness Clinical Legal Education for developing, institutionalizing and implementing a Social Justice Mission for legal education in India?

### *1.2.3. Hypothesis(es)*

The hypotheses of the study are as under:

- (i) Clinical Legal Education has the potential of implementing a Social Justice Mission for legal education in India but the same has not

been achieved primarily due to the lack of working guidelines to implement the Bar Council of India's Order on practical papers.

- (ii) In absence of working guidelines, there are wide disparities in the design of practical papers, thereby diluting the objectives with which they were introduced.
- (iii) Issues such as lack of faculty expertise, training for faculty, restriction on client representation, restriction on faculty to practice in Court of Law and lack of involvement of Bar Council and limited financial resources, contribute to the impediments in implementing the practical papers.

#### ***1.2.4. Limitations of the Study***

The conceptual endeavors presented in this study holds a potential for an exhaustive study of Clinical Legal Education in India and its various facets and effects, including the larger goals of assisting in the achievement of social justice. However, the immediate purpose of undertaking this study and more importantly, the time, human and material restrictions by which the researcher was bound, presented compelling reasons to take a sample study approach for undertaking the various surveys on the basis of which conclusions were drawn.

Further, it is acknowledged that when examining issues of social justice and ways of addressing them, one has to bear in mind the different socio-economic conditions in the country. Thus, one has to be careful in extending or

extrapolating the results from a sample survey undertaken in a sample area to another or larger area which may have different socio-economic conditions. In an attempt to address the above difficulties in extending or extrapolating the results of sample surveys in different socio-economic conditions, this study examines various issues, their status and solutions thereto with a lowest common denominator approach to the causes of social injustice which may be addressed through a generic set of measures. Further, it encourages the customization of these measures as well as the tailoring of a new set of measures on similar or different principles to address different socio-economic conditions.

Nonetheless, one would have to be careful, as indicated above, in extending or extrapolating the results and conclusions drawn from the study.

### **1.3. Importance of the Study**

It is not uncommon that a simple yet extremely important idea may not find favor with policy makers and practitioners in a field for a long time due to a number of reasons. Eminent Professor Shri. N.R. Madhava Menon championed the use of Clinical Legal Education in India from the late 1960's. However, this idea as well, took decades to fructify in whatever form, as in the Bar Council of India's order of 1997, requiring introduction of practical papers in legal curriculum from 1998.

Thus, as Prof. Menon forthrightly states, the question of improving legal education by involving law students in the delivery of legal services, particularly to indigent and weaker sections in society, did not occur to or find favor with educational reformers for a long time.<sup>4</sup> Similar failure appears to have been shown by the Legal Aid Authorities, who failed to recognize the potential of using legal educational institutions and students to reach the benefits of law to the poor, thereby aiding social justice and progress.<sup>5</sup>

A decade has passed since the formal introduction of Clinical Legal Education in India. It is essential to ensure that the implementation of an idea is so done, as to achieve its objectives; else all action thereon could be futile. The researcher is not aware of any comprehensive study examining the functioning of Clinical Legal Education in India.

Further, in view of the central role of the legal profession in bringing about social justice, it is imperative to formally crystallize a Social Justice Mission in India. The Clinical Legal Education holds great potential for transforming legal education and addressing socio-economic concerns in the country. It is thus necessary to examine the role of Clinical Legal Education in developing, institutionalizing and implementing a Social Justice Mission for legal education in the country. This study is precisely aimed at the same, and hence its importance.

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<sup>4</sup> See, MADHAVA MENON, N.R., LEGAL AID AND LEGAL EDUCATION: A CHALLENGE AND AN OPPORTUNITY, 25 (University of Delhi, New Delhi, 1986)

<sup>5</sup> See, *Ibid.*

#### 1.4. Methodology

This study employs a combination of qualitative and quantitative methodology. The qualitative approach examines the supra-level law and policy instruments on Clinical Legal Education and social justice, their fundamental basis, legal and otherwise, as well as the different implementation mechanisms and frameworks in institutions offering legal education.

The quantitative approach in this thesis primarily has enabled the gathering and assimilation of data through various methods in order to test the hypotheses and present evidence based conclusions in the study. Thereafter, in the event of finding lacunae in the implementation mechanisms and frame works for Clinical Legal Educations in the institutions, the study adopts a prescriptive approach, prescribing a set of draft guidelines that could possibly be adopted for implementing the Bar Council of India's order concerning the introduction of the four practical papers in legal education curricula.

The doctrinal propositions in this study find basis in the Constitution of India, 1950 and judicial enumeration of components of Fundamental rights and Directive Principles of State Policy there under;<sup>6</sup> Legal Services Authorities Act, 1987;<sup>7</sup> Civil Procedure Code, 1908;<sup>8</sup> Criminal Procedure Code, 1973;<sup>9</sup>

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<sup>6</sup> See, Preamble, Part III and IV of the Constitution of India.

<sup>7</sup> See, particularly Section 4 (e), Section 7 (C), 10, 11(b), 12 and Chapter VI A of Legal Services Authorities Act, 1987.

<sup>8</sup> Order XXXIII of the Code of Civil Procedure

<sup>9</sup> Section 304 of Criminal Procedure Code

Advocates Act, 1961;<sup>10</sup> Reports of Committees constituted by the Government of India and other agencies,<sup>11</sup> Law Commission,<sup>12</sup> University Grants Commission,<sup>13</sup> Bar Council of India,<sup>14</sup> as well as Reports of various other governmental and non-governmental initiatives.<sup>15</sup>

The empirical analysis in the study involved different analytical research methods including number of structured questionnaires, interviews, collection and analysis of data to assist in the determination of status of various issues identified in the study and solutions thereto. Specific details on the analytical research methods employed and the corresponding demarcation of research samples are presented in Chapter II of this thesis.

### **1.5. Structure of the Thesis**

This thesis is structured into six chapters including the Introduction. The second chapter lays down the Conceptual foundation and analytical framework of the thesis. In laying down the conceptual foundation it examines the system of legal education in India including the advent of Clinical Legal Education. It examines the doctrinal underpinnings of the concept of social justice and of developing a Social Justice Mission for legal education in India. Thereafter, it

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<sup>10</sup> Section 9A of Advocates Act, 1961 and Section VI, Rule 46 of the Bar Council of India Training Rules, 1995

<sup>11</sup> See *Infra* Part 3.3. d.

<sup>12</sup> See *Infra* Part 3.3. c.

<sup>13</sup> See *Infra* Part 3.3. b.

<sup>14</sup> See *Infra* Part 3.3. a.

<sup>15</sup> See *Infra* note 3 in Part 2.1.



proceeds to explore the role, including status and potential of Clinical Legal Education in furthering such a Social Justice Mission.

The exploration of the status of Clinical Legal Education, being an empirical process, this chapter also presents a roadmap for the same. It explains the research methods employed as well as the process of identification of samples, and their implications, for each individual sample study. It thereafter, lays down the methodology for exploring ways to address the shortcomings in enhancing social justice through Clinical Legal Education. It ends with a blueprint of the analytical frame work.

The third chapter traces the reforms in legal education in India with emergence of an emphasis on clinical education. Beginning with a concise presentation of historical developments leading to the transformation of legal education in India, it moves on to the study of the growth of legal education in free India and the drivers, agents and measures thereof. It follows with a process of identification of issues in implementing the clinical curricula prescribed by the Bar Council of India including the rationale in introducing the clinical curricula and initiatives in augmenting clinical curricula.

Chapter four describes the process, presents the results and the inferences that can be drawn from the empirical investigation undertaken in this study. It examines the status of Clinical Legal Education and the issues faced in implementation of the Bar Council of India's order concerning introduction of four practical papers. Thereafter, it assesses the role of Clinical Legal

Education in developing, institutionalizing and implementing a Social Justice Mission for legal education and attempts to find out reasons for shortcomings identified therein.

Chapter five undertakes reassessment of values, skills, contemporary needs and infrastructure in legal education in order to address the weaknesses of the present system of Clinical Legal Education in developing, institutionalizing and implementing a Social Justice Mission for legal education in India.

Chapter six presents the Conclusions of the study, including a set of draft guidelines that could possibly be adopted for implementing the Bar Council of India's order concerning the introduction of the four practical papers in legal education curricula.

# CHAPTER – II

THE CONCEPTUAL FOUNDATION

AND

ANALYTICAL FRAMEWORK

## 2. The Conceptual Foundation and Analytical Framework

### 2.1. Legal Education in India.

Legal education in India is predominantly regulated by the Bar Council of India in furtherance of powers vested in it under the Advocates Act, 1961.<sup>1</sup> Legal education has been imparted by different Law Colleges in India, which includes those funded and managed by the Government; financially aided by the Government but privately managed; privately managed Colleges receiving no government aid; and University Law Colleges managed by the University Departments receiving government aid.

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

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

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

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

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

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

(d) The standards of legal education to be observed by University in India and the inspection of Universities for that purpose;

bachelors' degree in any stream of education. However, with the last two decades beginning with a path-breaking initiative in the form of the National Law School of India University,<sup>2</sup> there is a growing trend towards a five-year integrated LL.B course which may be pursued after higher secondary studies.

This novel experiment evolved out of, among other things, concern about the quality of legal education expressed in several conferences and reports, which advocated structural changes in legal education and suggested introduction of a five-year integrated law course.<sup>3</sup> As a first step, the Bar Council of India established the National Law School of India University (herein after referred to as NLSIU), a deemed Law University in Bangalore under a similarly titled special statute.<sup>4</sup>

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

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<sup>2</sup> The National Law School of India Act (Karnataka Act 22 of 1986)

<sup>3</sup> See: REPORT OF FIRST REGIONAL WORKSHOP ON LEGAL EDUCATION, Madras, 1975; REPORT OF SECOND REGIONAL WORKSHOP ON LEGAL EDUCATION, Punjab, 1976; REPORT OF THIRD REGIONAL WORKSHOP ON LEGAL EDUCATION, Poona, 1976; Report of Fourth Regional Workshop on Legal Education, Patna, 1976; REPORT OF THE U.G.C. WORKSHOP ON SOCIALLY RELEVANT LEGAL EDUCATION, 1977; REPORT OF THE LEGAL EDUCATION SEMINAR, Bombay, 1977; FIRST NATIONAL CONVENTION ON LEGAL EDUCATION, New Delhi, 1979; NATIONAL CONFERENCE ON LEGAL EDUCATION, Hyderabad, 1981; REPORT OF ALL INDIA LAW TEACHERS' CONFERENCE, Aurangabad, 1981; REPORT OF BAR COUNCIL OF INDIA ACT, 1982

<sup>4</sup> The National Law School of India Act (Karnataka Act 22 of 1986), which came in effect vide Notification dated August 29, 1987 in the Official Gazette of the Government of the State of Karnataka.

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

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

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<sup>5</sup> See [http://www.nls.ac.in/about\\_history.html](http://www.nls.ac.in/about_history.html) (last visited 6 -6 -08).

<sup>6</sup> N. L. Mitra, *Legal education in India*, Conference of International Legal Educators, Florence, Italy (2000) available at <http://www.aals.org/2000international/english/India.htm> (last visited on Aug. 20, 2006).

<sup>7</sup> For example National Law School of India University offers Constitutional Law; Contract Law, Criminal Law and Theory of Law. Detailed curriculum available at [http://www.nls.ac.in/academic\\_programs\\_undergraduate\\_courses.html](http://www.nls.ac.in/academic_programs_undergraduate_courses.html) (last visited 6 - 6- 08) ; V.M. Salgaocar College of Law offer General Principles of Contract, Law of Torts, and Legal Methods in first two years. For detailed curriculum visit <http://vmsslw.edu/syl5yr1.htm> <http://vmsslw.edu/syl5yr2.htm> (last visited 6 - 6- 08) NALSAR University, Hyderabad offers Legal Methods, Law of Torts, Criminal Law, Family Law etc., Detailed curriculum available at <http://www.nalsarlawuniv.ac.in/academic-programes.html> (last visited on 6 – 6 – 08)

Thus the students have an option of discontinuing their studies after achieving such intermediate degree and seek employment or engage in other educational pursuits. The same also enables the students to answer any competitive exams, such as the Indian Civil Services while they continue their pursuit of a professional legal qualification. This pattern thus saves one year from the traditional route to achieving a professional legal qualification and also entitles the students to reap the benefits of a three-year intermediate degree.

With the success of the NLSIU, many other States also adopted the same model and established National Law Schools.<sup>8</sup> Some of such National Law Schools expanded on the experimentation process, introducing science, management and other liberal subjects in the first two years of the integrated course and offered the intermediate degree in different streams. For example, National Law University, Jodhpur offers five-year integrated law programs with intermediate degrees in three streams, namely, Bachelor of Political Science, Bachelor of Business Administration and Bachelor of Science (Life and Physical Sciences).

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<sup>8</sup> There are 12 National Law Schools at present. National Law School of India University, Bangalore, Karnataka, [www.nls.ac.in](http://www.nls.ac.in); The West Bengal National University of Juridical Sciences, Kolkata, West Bengal, [www.nujs.edu](http://www.nujs.edu); National Law Institute University, Bhopal, Madhya Pradesh, [www.nliu.org](http://www.nliu.org); National Law University, Jodhpur, Rajasthan, [www.nlujodhpur.nic.in](http://www.nlujodhpur.nic.in); National Academy of Legal Studies and Research University (NALSAR), Hyderabad, Andhra Pradesh, [www.nalsarlawuniv.org](http://www.nalsarlawuniv.org); Gujarat National Law University, Gandhinagar, Gujarat, [www.gnlu.ac.in](http://www.gnlu.ac.in); Hidayatullah National Law University, Raipur, Chhattisgarh, [www.hnlu.ac.in](http://www.hnlu.ac.in); National University of Advanced Legal Studies (NUALS), Kaloor, Kerala, [www.nials.ac.in](http://www.nials.ac.in); Dr. Ram Manohar Lohiya National Law University, Uttar Pradesh, Lucknow, Uttar Pradesh, [www.rmlnlu.ac.in](http://www.rmlnlu.ac.in); The Rajiv Gandhi National University of Law, Patiala, Punjab, [www.rgnupatiala.org](http://www.rgnupatiala.org); Chanakya National Law University, Patna, Bihar, [www.chanakyalawuniv.org](http://www.chanakyalawuniv.org); National Law School of Delhi, Delhi, [http://delhigovt.nic.in/admission\\_notice\\_2008\\_2009.pdf](http://delhigovt.nic.in/admission_notice_2008_2009.pdf)

The compulsory subjects prescribed by the Bar Council of India are envisaged to be taught in the comparative context of the respective streams,<sup>9</sup> which could perhaps assist in grooming legal professionals skilled in the respective streams and capable of meeting the needs of corresponding clientele. Similarly, the Gujarat National Law University offers 3 integrated 5-year programs, namely, B.A., LLB (Hons), B.Sc., LLB (Hons), and B.com. LLB (Hons).<sup>10</sup>

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

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

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

<sup>10</sup> See <http://www.lawentrance.com/gnlu.htm> (last visited 6 - 6- 8)



40%. However, in the latter case, the student would have to pass in the entrance test, securing a minimum 40% marks.

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

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

After successful completion of the respective course, as discussed above, the concerned Universities would award a law degree, which, subject to meeting some other minor conditions, would entitle candidates to enroll with any State Bar Council and practice as full-fledged advocates as per the rules of the respective State Bar Councils.

Thus, unlike some countries there is currently no requirement for a special National or State-level Bar Exam to enroll at the Bar as far as India is concerned. As shall be discussed in detail in Chapter – III of this thesis, in absence of such requirement, and in order to ensure that the candidates had at least gone through a process of gaining theoretical knowledge and some amount of practical exposure before being called to the Bar, different measures have been adopted over the years.

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

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

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

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<sup>11</sup> Bar Council of India Circular No:4/1997.

use of student run Legal Aid Clinics in offering legal aid to the needy and also providing practical skills to law students in late 1960's and early 70's.<sup>12</sup>

## 2.2. Clinical Legal Education: A New Pedagogy

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

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

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<sup>12</sup> For more details See, sub chapter 2.3.1

<sup>13</sup> Richard J. Wilson, *Training for Justice: The Global Reach of Clinical Legal Education*, 22 Penn St. Int'l L. Rev.421(2004).

<sup>14</sup> Frank S. Bloch & M.R.K. Prasad, Institutionalizing a Social justice Mission for Clinical Legal Education: Cross-national Currents from India and the United States, 13 Clinical L. R., 167-168(2006).

training seemed out of place in Law School – except when preparing for a moot court. Legal education was “Law School”, not “lawyer school.”<sup>15</sup>

Clinical legal education is directed towards developing the perception, attitudes, skills and sense of responsibilities which the lawyers are expected to assume when they complete their professional education. Clinical legal education has wider goals of enabling law students to understand and assimilate responsibilities as a member of public service in the administration of law, in the reform of the law, in the equitable distribution of the legal services in society, in protection of individual rights and public interest and in upholding the basic elements of professionalism.<sup>16</sup> Thus, Clinical legal education provides students with opportunities for professional and intellectual development and prepares them for the practice of law, as competent, and socially as well as professionally responsible lawyers.

The earliest reference on Clinical legal education in United States could be traced in the year of 1917.<sup>17</sup> Since that time, Clinical teaching has become an integral part of legal education in most developed and developing countries.<sup>18</sup>

The global Clinical movement started taking hold in the late 1960s; however,

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<sup>15</sup> *Ibid.*

<sup>16</sup> See Madhav Menon N.R., CLINICAL LEGAL EDUCATION: CONCEPT AND CONCERNS, A HANDBOOK ON CLINICAL LEGAL EDUCATION, 1( N.R. Madhav Menon, ed., Eastern Book Company, Lucknow, 1998).

<sup>17</sup> The earliest academic reference is William V. Rowe, *Legal Clinics and Better Trained Lawyers – A Necessity*, 11, Ill. L.Rev. 591(1917). Most cited reference for the conceptual origins of Clinical legal education in the United State comes from Jerome Frank, *Why Not a Clinical Layer – School?*, 81, U. Pa. L. Rev. 907(1933)

<sup>18</sup> *Ibid.*

by that time Law Schools in the U.S. took the lead in providing Clinical legal education.<sup>19</sup>

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

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<sup>19</sup> *Ibid.*

<sup>20</sup> See David McQuoid-Manson, *Access to Justice in South Africa*, 17 Windsor Y.B. Access Just. 230 (1999). McQuoid D.J. Mason (1979): "Clinical Legal Education: Its Future in South Africa." In: THRHR, Vol. 42, pp. 346-58.

<sup>21</sup> See Malee Pruekpongsawalee, Thammasat, *Clinical Education and the Delivery of Legal Services: A HISTORICAL AND PERSONAL PERSPECTIVE, EDUCATING FOR JUSTICE AROUND THE WORLD: LEGAL EDUCATION, LEGAL PRACTICE AND THE COMMUNITY*, 118 (Louise G. Trubek ed., Ashgate Publishing Company, USA 1997).

<sup>22</sup> Stephen Meili, *Legal Education in Argentina and Chile, EDUCATING FOR JUSTICE AROUND THE WORLD: LEGAL EDUCATION, LEGAL PRACTICE AND THE COMMUNITY*, 138. (Louise G. Trubek ed., Ashgate Publishing Company, USA 1997). See also Richard J. Wilson, *Three Law School Clinics in Chile, 1970-2000: Innovation, Resistance and conformity in the Global South*, 8 Clinical L. Rev. 515 (2002); Richard Wilson, *The New Legal Education in North and South America*, 25 Stan. J. Int'l L. 384 (1989).

<sup>23</sup> Mary Anne Noone, *EDUCATION FOR JUSTICE: SOCIAL VALUES AND LEGAL EDUCATION, AUSTRALIAN COMMUNITY LEGAL CENTRES – THE UNIVERSITY CONNECTION* (Jeremy Cooper and Louise G. Trubek ed., Ashgate 1997). See also J.R. Peden, *The Role of Practical Training in Legal Education: American and Australian Experience*, 24 Journal of Legal Education, 533-55 (1972); A. Tarlo, *Clinical Legal Education- A Commentary*, 50 Australia Law Journal, 139-52(1976); D. Derham, *An Overview of Legal Education in Australia*, LEGAL EDUCATION IN AUSTRALIA, 72-79 (R. Balmford ed., Melbourne, (1978); and M. Batchler & K. Malko, *Evaluating Clinical Learning Experience: The Changing Face of Professional Education*, (M. Bezzine and J. Butecher, eds., Collected Papers of the Australian Association for Research in Education, Annual Conference, (1990).

<sup>24</sup> Susan McDonald, *Beyond Case law-Public Legal Education in Ontario Legal Clinics*, 18 Windsor Y.B. Access Just, 3 (2000). See also Roy McMurtry, *Celebrating a Quarter Century of Community Legal Clinics in Ontario*, 35 Osgoode Hall L.J. 425 (1997); Fairbairn "Legal Aid Clinics for Ontario Law Schools." 3 Osgoode Hall L.J., 316-29(1965); Fridman J.C., *Legal Education in Canada*, 120 New Law Journal, 901-20 (1970); Lederman, *Canadian Legal Education in the Second Half of the Twentieth Century*, 21 University of Toronto Law Journal, 141-56(1971); Lowry, *A Plea for Clinical Law*, 50 Canadian Bar Review, 183-89(1972); Dale Gibson, *Legal Education -*

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

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

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

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*Past and Future*, 6 Manitoba Law Journal, 21-38(1974); Edward Vink & Edward Veitch *Curricular Reform in Canada*, 28 Journal of Legal Education, 437-48(1977); Neil Gold *Legal Education, Law and Justice: The Clinical Experience*, 44 Saskatchewan Law Review, 97-122(1979); Leon E. Trakman: *Canadian Law Schools: In Search of Excellence*, 6 The Dalhousie Law Journal, 303-11(1980); and M.J. Mossman *Community Legal Clinics in Ontario*, 3 Windsor Yearbook of Access to Justice, 375-87 (1983).

<sup>25</sup> Weidong Ji, *Legal Aid in the People's Republic of China: Past Present and Future*, EDUCATING FOR JUSTICE AROUND THE WORLD: LEGAL EDUCATION, LEGAL PRACTICE AND THE COMMUNITY, 93 (Louise G. Trubek ed., Ashgate Publishing Company, USA 1997); See also Michael William Dowdle, *Eleventh Annual Philip D. Reed Memorial Issue Partnerships across Borders: a Global forum on access to Justice April 6-8, 2000: Essay Preserving Indigenous Paradigms in an of Clinical Legal Aid in China*, 24 Fordham Int'l L.J. 56 (2000).

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

<sup>27</sup> Richard J. Wilson, *Training for Justice: The Global Reach of Clinical Legal Education*, 22 Penn St. Int'l L. Rev, 425 (2004).

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

<sup>29</sup> See *Forty Years: A Learning Curve: The Ford Foundation in India 1952-1992* available at <http://www.fordfound.org/archives/item/0136/text/48> (last visited on 15-06-08)

founded in 1990.<sup>30</sup> In addition to its funding in Central and Eastern Europe, it now has several programs in Asia, Africa and Latin America. One notable example of its successes is in Russia where 100 Law School Clinics operate and four text books have been written in Russian.<sup>31</sup>

The World Bank, International Development Bank and Other International Financial Institutions have funded a number of Clinical legal education initiatives, under the heading of “access to law and Justice” or “law reform” activities.

The UN High Commissioner for Refugees (UNHCR) and Legal Assistance through Refugee Clinic (LARC) carried out many Refugee Law Clinics in the Central and Eastern European region. At present LARC is supporting the training of about twenty Refugee Clinics in this region.<sup>32</sup>

Global Alliance for Justice Education (GAJE) focuses on broader agenda of transformation of legal education to justice education. It brings Clinical legal educators from all over the world to its bi – annual conferences.<sup>33</sup>

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

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<sup>30</sup> [http://www.abanet.org/rol/europe\\_and\\_eurasia/](http://www.abanet.org/rol/europe_and_eurasia/) (last visited on 16-06-08)

<sup>31</sup> Richard J. Wilson, *Training for Justice: The Global Reach of Clinical Legal Education*, 22 Penn St. Int'l L. Rev, 427 (2004).

<sup>32</sup> See, <http://www.larc.info> Last visited (16 – 6 – 08 )

<sup>33</sup> See [www.gaje.org](http://www.gaje.org)

focus began to shift from client and community service to teaching skills, particularly in U.S. due to fading of student interest in public interest work.<sup>34</sup>

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

- (i) Creation of more coherent information about the law and its institutions in different communities so that people can easily know where to go, to get what type of services;
- (ii) Develop suitable applications of social science findings to improve access to justice of disadvantaged or unorganized groups. For example, if we know that an organization stands more chances to win in a litigation than an individual litigant, why not the Clinic mobilize and organize such individual litigants as a influence group to seek justice;
- (iii) Evolve delivery systems involving team services not only with other lawyers but with other professionals such as social workers, psychologists etc.;
- (iv) Build teaching materials with the case histories of the varied matters processed in the Clinic;

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<sup>34</sup> Jon C. Dubin, *Clinical Design for Social Justice Imperatives*, 51, SMU L. Rev. 1461 (1998) See also Frank S. Bloch & M.R.K.Prasad, *Institutionalizing a Social justice Mission for Clinical Legal Education: Cross-national Currents from India and the United States*, 13 CLINICAL L.R. 167-168 (2006).

<sup>35</sup> Kenneth L. Penegar, *Clinical Education in its Prime, Alumni Head notes*, 10 A.A.L.S, Issue 1 (1981)



- (v) Expand the Clinic's reach for clients beyond environmental law, poverty law, tax law, women's rights etc., the Clinic can venture on service to public agencies dealing with welfare, prisons, social services etc, where the authorities may be well-disposed to receive fresh ideas, critiques and evaluations;
- (vi) Help stimulate the creation of new and community-based institutions for resolution of disputes without resorting to lawyers and the courts; Consider alternatives to the traditional model of lawyer professionalism.
- (vii) More experiments in Clinical courses including production of "help yourself" series in simple legal transactions without lawyer assistance and public evaluation of better distribution of legal services;

He summed up his assessment stating:

"... it seems to me the future challenge of Clinical education is not just an integration of theory with practice, as important as that idea is, it is not just service to the poor and others ill-served by lawyers and legal institution, as important as that is; rather it is to find and develop new definitions and conceptions give proper scope, proper reflection to the complexities of our age. To put the idea differently, it seems to me the Clinical educator is in a unique position, and because of that position, has a unique

responsibility to bridge the gap between law and its traditional conservatism on the one hand and the frankly pragmatic, spiritual idealism of many of its practitioners including the future lawyers who sit at your feet through several years of Law School.”<sup>36</sup>

Thus, the concept of Clinical legal education has evolved and contributed a new pedagogy in the teaching of law. It, to a large extent, also plays a crucial role in bridging the gap between the theory and real-life practice of law, or at least the environment in which they operate.

### 2.3. Advent of Clinical Legal Education in India

#### 2.3.1. *Informal Inclusion of Clinical Component in Legal Education Curricula*

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

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<sup>36</sup> *Ibid.*

<sup>37</sup> Frank S.Bloch & Iqbal S. Ishaq, *Legal Aid, Public Service and Clinical Legal Education: Future Directions From India and the United State*, *Mic. J. Int'l. L.*, 96 (1990).

<sup>38</sup> *See generally*, MADHAVA MENON, N.R., *LEGAL AID AND LEGAL EDUCATION: A CHALLENGE AND AN OPPORTUNITY*, 25 (University of Delhi, New Delhi, 1986). *See also* Frank S.Bloch, and Iqbal S. Ishaq, *supra* note. 37.

The efforts made by the faculty were purely voluntary and no attempts were made for institutionalizing and integrating Clinics into the curriculum.<sup>39</sup> The Clinic was setup mainly to offer legal services to prison inmates. It worked more like an investigating and referral agency rather than providing services. Delhi Legal Aid Clinic organized two Lok Adalats in 1985–86 in association with Delhi Legal Aid and Advice Board, wherein over 150 students participated in the process.

The Clinic also undertook another project of assisting victims of the Bhopal gas tragedy. The biggest achievement of this Clinic is its contribution to the learning experiences of its participating law students in a Clinical setup. The Clinic was more concerned about service oriented programs, with little supervision from the faculty and no emphasis on learning skills thereby contributing to its weaknesses. Nonetheless, and in spite of the fact that Clinical programs offered the students no credit, the Legal Aid Clinic attracted many students.<sup>40</sup>

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

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<sup>39</sup> *Id* at 17.

<sup>40</sup> *Ibid.*

Legal Aid Camps was voluntary and activities were conducted as a part of extracurricular activities.<sup>41</sup>

Banaras Hindu University was the first to introduce a course on Clinical legal education in early 1970s. This was an optional course offered to a limited group of 30 students with academic credit for 200 marks. The course included court visits, participation in a Legal Aid Clinic established by the institution, and an internship in chambers of lawyers. The Legal Aid Clinic was supervised by a retired judge on a token honorarium. The entire Clinical legal education in Banaras Hindu University revolves around its Legal Aid Clinic.<sup>42</sup> Funding for the Clinical activities initially came from student's contribution, and subsequently National Service Scheme and the University offered some financial assistance. University Grants Commission also gave a special grant to the Clinic to extend its activities to the nearby rural areas.

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

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<sup>41</sup> *Ibid.*

<sup>42</sup> *Ibid.*

<sup>43</sup> In Banars Law School every student need to participate in moot courts, write judgments and case comments. In addition these, students need to attend lectures on pleadings, conveyancing and drafting of statutes and a course on legal writing. Instructions are given on legal research, moot courts and legal writing. For further details see Anandjee, Objectives of Legal Education, LEGAL EDUCATION IN INDIA: PROBLEMS AND PERSPECTIVES, 40-42 (Agarwal, S.K., ed., N.M. Tripathi Private limited, Bombay 1973).

literacy, social surveys for implementation of welfare programs, and attempt to facilitate settlement of disputes through Legal Aid Camps.

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

In 1983 – 84, a Legal Aid Clinic was established in the Faculty of Law, University of Jodhpur. This Clinic was actively involved in the dissemination of information about social welfare legislation, helping in settling cases in accident and matrimonial disputes.<sup>44</sup> The Clinic received financial support from Committee for Implementing Legal Aid Scheme (CILAS), New Delhi and the Rajasthan State Legal Aid and Advice Board, Jaipur.

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

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<sup>44</sup> SHARMA, S.S., LEGAL AID TO THE POOR; THE LAW AND INDIAN LEGAL SYSTEM, 234 (Deep & Deep Publications, New Delhi, 1993).

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

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

In second trimester students were required to choose one Clinic from Constitutional Litigation, Criminal Advocacy, and Legal Journalism. In third trimester students could choose any one from Legislative Drafting, Commercial Arbitration, and Computer Application in Law.<sup>45</sup> Thus by the end of final trimester, students would participated in three Clinics which carried 300 marks for evaluation.

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

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<sup>45</sup> Madhava Menon N.R. & Nagaraj V., Development of Clinical Teaching at the National Law School of India: An Experiment in Imparting Value Oriented Skills Training, CLINICAL LEGAL EDUCATION: CONCEPT AND CONCERNS, A HANDBOOK ON CLINICAL LEGAL EDUCATION, 241( N.R. Madhav Menon, ed., Eastern Book Company, Lucknow, 1998).

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.<sup>46</sup>

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

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

Though the number of Law Colleges involved in Clinical education grew in this period, their programs remained fairly small, isolated and voluntary and they were compelled to work with limited financial resources. Further, the

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<sup>46</sup> *Id* at 244 – 46.

<sup>47</sup> This office was called as Ramanagram Rural Mediation Centre.

<sup>48</sup> Kenneth S. Gallant, Learning from Communities: Lessons from India on Clinical Method and Liberal Education, EDUCATING FOR JUSTICE AROUND THE WORLD: LEGAL EDUCATION, LEGAL PRACTICE AND THE COMMUNITY, 222 (Louise G. Trubek ed., Ashgate Publishing Company, USA).

<sup>49</sup> For example Renukacharya Law College in Bangalore conducted several legal literacy camps. See Narasimha Swamy. M.G., Legal Education and the Law Clinic, LEGAL AID AND LEGAL EDUCATION A CHALLENGE AND AN OPPORTUNITY 72 ( Madhava Menon, ed., University of Delhi, New Delhi, 1986).

Clinics suffered due to lack of supervision, absenteeism and dearth of trained faculty. Almost all such initiatives aimed at serving the poor and no proper emphasis was laid on the skills that the law students required in order to work in the Legal Aid Clinics or the skills that they could develop by working in the same.

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

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

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<sup>50</sup> Kenneth S. Gallant, *supra* note 48.

<sup>51</sup> Gurjeet Singh, Relevance of Clinical Education in the Law Curricula: Some Observations on the Imparting of Clinical Legal Education at Guru Nanak Dev University, Amritsar, Paper presented at Conference on Clinical legal education. Organized by V.M.Salgaocar College of Law, Goa, India, 2005; See, for example: Anandjee *Practical Training in Law: A Plea for Policy Oriented Approach*, Jaipur Law Journal, 64-69 (1964); A.T. Markose *A Brief History of the Steps Taken in India for Reform of Legal Education*, 68 Journal of the All India Law Teachers Association, 75-82(1968); P.K. Tripathi, *The Quest for Better Legal Education*, 10 Journal of the Indian Law Institute, 469-91 July-September (1968); Vijay Kumar Bansal *Need to Strengthen Moot Courts in India*, Law Review, 226-35(1968); D.C. Mukherjee, *Practical Side of Law Teaching*, 2 Journal of Bar Council of India, 533-41(1973); K.C. Dholakia, *Law College and the Program of Legal Aid*, 2 Delhi Law Review, 250-57(1973); M.G. Narsimhan Swamy, *Legal Education and the Law Clinic*, 2 Delhi Law Review, 241-45(1973); R.K. Gupta, *Legal Aid and Legal Education: Work Brain Teasers*, 2 Delhi Law Review, 246-49(1973); S. Rangarajan, *Some Perspective Concerning Clinical Legal Education*, Agra Law Reporter, 145-49(1973); Upendra Baxi, *Notes Towards Socially Relevant Legal Education: A Working Paper for the UGC Regional Workshop in Law*, 51 Journal of the Bar Council of India, 23-55(1975-76); R.P. Dhakolia: *Law School Clinic: Centre for Information and Advice*, 18 Gujarat Law Review, 10-11(1977); R.V. Kelkar, *Integration of Legal Aid Activities With the Statutory Structure and Functioning of the Law Faculty*, 6-7 Delhi Law Review, 90-



### *2.3.2. Formal Inclusion of Clinical Component in Legal Education Curricula*

The issues of raising the standards of legal education in India also found place in the items taken up for discussion at the Conference of Chief Justices in December 1993. It was resolved therein that the Chief Justice of India be requested to constitute a Committee to examine the same and suggest appropriate steps. Pursuant to this a Three Member Committee headed by Justice Ahmadi was constituted in 1994. The Committee, in its report, among other things recommended inclusion of the problem method, moot courts, and mock trials in legal education curricula. Further, it also recommended that the suggested new methods of teaching be made mandatory.<sup>52</sup>

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

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98(1977-78); K.D. Gaur, *Legal Education in a Changed Context*, 7 *Journal of Bar Council of India*, 90-97(1978); and Satish Chandra, *Legal Education in India: A Contemporary Perspective*, 5 *Indian Socio-Legal Journal*, 146-53(1979).

<sup>52</sup> LAW COMMISSION OF INDIA, 184<sup>TH</sup> REPORT ON THE LEGAL EDUCATION AND PROFESSIONAL TRAINING AND PROPOSAL FOR AMENDMENTS TO THE ADVOCATES ACT 1961 AND THE UNIVERSITY GRANTS COMMISSION ACT 1956, 54.

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

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

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<sup>53</sup> Bar Council of India Training Rules, 1995 – Rule 2 to 15

<sup>54</sup> 1999 (3) SCC 176

<sup>55</sup> *Id* at 180

<sup>56</sup> It was felt by the Bar Council of India itself before the Committee that for providing pre-enrolment training to prospective advocates, relevant amendments to the Act were required to be effected. Therefore, the Court strongly recommended appropriate amendments to be made in the Act in this connection. The amendments can be effected only by Parliament. Till the Parliament steps in to make suitable statutory required amendments to the Act for providing pre-enrolment training to prospective advocates seeking enrolment under the Act, the Bar Council of India by way of an interim measure can also consider the feasibility of making suitable rules providing for in-practice training to be made available to enrolled advocates.

The setbacks in implementing the Ahmadi Committee's recommendations, including by virtue of the Supreme Court setting aside the BCI's one year training rule, motivated the BCI to introduce four practical papers to improve standards in legal education. These papers are aimed at providing practical training to law students. Until these papers were introduced in the curriculum, very little effort was made by Law Schools to train students in advocacy skills. Law Schools felt that training law students to work in the legal profession was not the job of the schools but of the Bar. With the introduction of these papers, it is now mandatory for all institutions imparting legal education to introduce Clinical component in the curriculum.

The four practical papers are as under.

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

a) Moot Court.

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

b) Pre-trial Preparations.

Students are required to observe at least two sessions of client interviews in a lawyer's office. This provides an opportunity to learn interview techniques.

Further, the students are required to participate in preparing various documents that are required to be filed with the court, thus enabling students to understand the filing procedures and the preparation of documents.

c) Trial Preparations.

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

*Paper II: Drafting, Pleading and Conveyancing.*

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

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

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

*Paper IV: Public Interest Lawyering, Legal Aid and Para-legal Services.*

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

**2.4. Social Justice Mission for Legal Education in India**

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

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

welfare state, we speak of a goal in common, for the betterment of society. Thus, such goal ought to be reflected in the law and legal processes.

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

This narrowly focused technocratic legal education may no longer be realistic in view of the varied roles law graduates are playing in society. Surveys suggest that very few law graduates actually enter into private practice,<sup>57</sup> and that a majority of them seek employment with private businesses, as well as governmental and non-governmental organizations, including in positions where they could influence and even shape the policies. Thus, taking these facts into account, legal education needs to transform itself from a technocratic legal education to a socially relevant legal education.

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

### *2.4.1. Social Justice: Necessity, Origin and Relevance in Contemporary Times*

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

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

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

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<sup>58</sup> Justice V.R. Krishna Iyer, *Inaugural Address at the Second State Lawyers' Conference, Andhra Pradesh at Rajahmundry*, 2 SCC 1 (JOUR) (1976).

ushering in the socio-economic transformation of the Indian society into a just society.<sup>59</sup>

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

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

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

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

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<sup>59</sup> Anand A.S., *Legal Education in India – Past, Present and Future*, (1998) 3 SCC (Jour) 1

<sup>60</sup> Justice Krishna Iyer. *supra* note 58.

<sup>61</sup> Justice S.B.Sinha, *Judicial Reform in Justice-Delivery System*, 4 SCC (JOUR) 35(2004).

<sup>62</sup> WE, THE PEOPLE OF INDIA, ... and to secure to all its citizens:

JUSTICE, social, economic and political;



professionals. It should also be able to sensitize students to socio-economic concerns and aspirations.<sup>63</sup> Therefore, a sound system of legal education properly perceived and utilized, can make an important, positive contribution to national development and also determine the quality of the lawyers, which will ultimately determine access to legal services.<sup>64</sup>

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

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

He related this “narration sickness” in education with the “banking concept” of education where “Education...becomes an act of depositing, in which the students are depositaries, and the teacher is the depositor. Instead of communicating, the teacher issues communiqués and ‘make deposits’ which the students patiently receive, memorize and repeat.”<sup>65</sup>

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<sup>63</sup> See e.g., Sathe S.P., *Access to Legal Education and the Legal Profession in India*, Rajeev Dhavan Ed, Access to Legal Education and the Legal profession, Butterworths, London, 1989

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

<sup>65</sup> Freire, quoted in Upendra Baxi, *Notes Towards a Socially Relevant Legal Education: A Working Paper for the UGC Regional Workshops in Law 1975 – 77* p. 9 – 11

On the other hand, explaining the role of legal education Prof. Madhava Menon observed that<sup>66</sup>

- (i) Legal education has an important role in directing and moderating social change; and in this regard, it has to operate as conscience – keeper of society.
- (ii) Legal education, shall manifest higher moral values, maintain high degree of competence and discipline, and ensure that no section of society is denied of access to its services because of poverty or social status.
- (iii) All type of legal education is supposed to influence governmental policies on social justice and to prevent distortions. It should play the role to correct governmental wrongs, increase efficiency of excellence and achievement in all spheres of it activities.

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

- (i) to train men for the legal profession
- (ii) to provide a centre where scholars might contribute to an understanding of law and government and participate creatively in their growth and improvement.

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<sup>66</sup> Madhava Menon N.R., PROFESSIONS FOR THE PROFESSIONALS OR FOR THE PEOPLE?, LAW AND JUSTICE, 273-274 (1994).

<sup>67</sup> PRELIMINARY STATEMENT OF THE COMMITTEE ON LEGAL EDUCATION OF THE HARVARD LAW SCHOOL (1947)

Legal education binds within its ambit the knowledge of the theory and philosophy of law and its role of social engineering in the modern democratic society.<sup>68</sup> Though legal education should primarily aim at furnishing skills and competence, the basic philosophies and ideologies for creation and maintenance of a just society cannot be ignored.

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

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

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

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<sup>68</sup> Gajendragadkar, J, REPORT OF THE COMMITTEE ON THE REORGANIZATION OF LEGAL EDUCATION IN THE UNIVERSITY OF LAW, DELHI, (1964).

<sup>69</sup> See generally GAJE Conference Report (1999) available at <http://www.gaje.org/>

multifaceted concept which may include many aspects such as securing equality, redistribution of wealth, and procuring social order.<sup>70</sup>

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

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

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

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<sup>70</sup> See generally GAJE Conference Report, 10 – 11 (1999) available at <http://www.gaje.org/>

<sup>71</sup> See David McQuoid-Manson, *Access to Justice in South Africa*, 17 Windsor Y.B. Access Just. 230 (1999).

<sup>72</sup> Richard J. Wilson, *Three Law school Clinics in Chile, 1970-2000: Innovation, Resistance and conformity in the Global South*, 8 Clinical L. Rev. 515 (2002).

In China, Clinical education strives to secure rights of disadvantaged citizens. As a result of international efforts in providing legal aid to the poor in China, the Centre for the Protection of the Rights of Disadvantaged Citizens was established in 1992 by Wuhan University.<sup>73</sup> Its focus is on women's rights, administrative litigation, environmental protection, rights of disabled, juvenile rights, and elder's rights.

Though there are more Legal Clinics operating in China,<sup>74</sup> Clinical legal education is still in its infancy. An interesting observation on Clinics in China is that they have failed to have local involvement in Clinical education. They are more rooted in international legal education.<sup>75</sup>

In Australia, Clinical legal education through Community Centers strives to achieve structural changes on behalf of the poor through the legal system.<sup>76</sup> In Sri Lanka, there is no Clinical education in the strict sense but legal educators facilitate socio legal studies on disadvantaged groups.<sup>77</sup>

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<sup>73</sup> Wuhan Center receives financial support from Ford Foundation.

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

<sup>75</sup> Michael William Dowdle, *Eleventh Annual Philip D. Reed Memorial Issue Partnerships across Borders: a Global forum on access to Justice April 6-8, 2000: Essay Preserving Indigenous Paradigms in an of Clinical Legal Aid in China*, 24 *Fordham Int'l L.J.* 56 (2000).

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

<sup>77</sup> Jane E. Schukoske, *EDUCATION FOR JUSTICE: SOCIAL VALUES AND LEGAL EDUCATION , FACING REALITIES: SOCIO-LEGAL STUDY IN SRI LANKA* (Jeremy Cooper and Louise G. Trubek ed., Ashgate1997).

In 1996, a Workshop on Clinical legal education was held in Addis Ababa, Ethiopia.<sup>78</sup> At this event, deans and educators from various African countries showed keen interest in adapting Clinical legal education to the specific needs of African countries. They expressed hope that lawyers would play a pivotal role in democratization and development and that Clinical legal education is expected to fulfill this obligation by providing the necessary training to law students.

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

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

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<sup>78</sup> Grady Jessup, *Symbiotic Relations: Clinical Methodology – Fostering New Paradigms in Africa Legal Education*, 8 *Clinical. Rev.* 377&391 (2002).

<sup>79</sup> Francis Regan, *Legal Aid Without State: Assessing the Rise of Pro Bono Schemes* 33 *U.B.C.L. REV.* 386 (2003).

<sup>80</sup> For e.g., Helping in obtaining ration cards, senior citizen cards, drafting affidavits, elections cards even filling applications for welfare schemes etc.

In 1976, the 42<sup>nd</sup> Amendment of the Indian Constitution gave a constitutional status to legal aid by inserting Article 39A in the Constitution.<sup>81</sup> The purpose of this amendment is to promote justice on the basis of equal access. It imposes an imperative obligation on the state to provide free legal aid to the needy. The Supreme Court extended this provision, read with Article 21,<sup>82</sup> and held that the State should provide grants-in-aid to all recognized private Law Colleges on par with Government Law Colleges so that the private Colleges are able to function effectively and turn out a sufficient number of well-trained or properly trained law graduates.<sup>83</sup>

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

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

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

<sup>82</sup> Article 21 of the Constitution of India provides that “No person shall be deprived of his life or personal liberty except according to procedure established by law.”

<sup>83</sup> *State of Maharashtra v. Manubhai Pragaji Vash*, AIR. 1996 SC 1.

<sup>84</sup> *Ibid.*

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

In *Centre for Legal Research and another v. State of Kerala*,<sup>85</sup> the Court recognized the necessity of the people's participation in the success of legal aid programs. The Court said, "a legal aid program is not charity or bounty but it is a social entitlement for the people."<sup>86</sup> Further, it advocated the adoption of "a strategic legal aid program consisting of promotion of legal literacy, organization of legal aid camps, encouragement of public interest litigation and holding of *lok adalats* or *niti melas*..."<sup>87</sup>

The Criminal Procedure Code of 1973, under sec.304, provides that an accused person facing a trial in the Court of Sessions and not represented by a pleader for want of sufficient means should be assigned a pleader at the cost of the state.<sup>88</sup> Order XXXIII of the Code of Civil Procedure, 1908, provides that indigent persons<sup>89</sup> may institute suits and are not liable to pay any court-fee or

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<sup>85</sup> AIR, 1986 SC 1322.

<sup>86</sup> *Id* at 1323

<sup>87</sup> *Ibid.*

<sup>88</sup> Criminal Procedure Code Section 304 states that "where in a trial before the Court of Session, the accused is not represented by a pleader, and where it appears to the court that the accused has not sufficient means to engage a pleader, the court shall assign a pleader for his defense at the expense of the state. The state government may, by notification direct that this provision shall apply in relation to any class of trials before other courts in the state."

<sup>89</sup> A person is an indigent person ---a) If he is not possessed of sufficient means (other than property exempt from attachment in execution of a decree and the subject matter of the suit.) to enable him to pay the fee prescribed by law for the plaint in such suit. Or b) where no such fee is prescribed, if he



fees payable for service of process in respect of any petition, appointment of a pleader or other proceeding connected with the suit.

Several Committees too stressed the need for institutionalization of legal aid and establishment of an autonomous body at the national level. Thus, the Legal Services Authorities Act was enacted to give a statutory base to legal aid programs throughout the country on a uniform pattern.<sup>90</sup> This Act became effective on November 9, 1995. The Hon. Mr. Justice R.N. Mishra, the then Chief Justice of India, played a singular role in the enforcement of the Act. This Act constituted Legal Service Authorities at the national, state and district level to provide free and competent legal aid services and to organize Lok

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

<sup>90</sup> Persons who satisfy all or any of the criteria specified in section 12 shall be entitled so receive legal services.

**Sec. 12: Criteria for giving legal service:**

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

- (a) a member of a Scheduled Caste or Schedule Tribe;
- (b) a Victim of trafficking inhuman beings or beggar as referred to in article 23 of the Constitution of India ;
- (c) a woman or a child;
- (d) a person with disability as defined in clause (i) of section 2 of the persons with disabilities (Equal opportunities Perfection of Rights and full participation) Act, 1995. (As amended)
- (e) a person under circumstances of undeserved want such as being a victim of a mass disaster, ethnic violence, caste atrocity, flood, draught, earthquake or industrial disaster ; or
- (f) an industrial workman ; or
- (g) in custody, including custody in a protective home within in the meaning of clause (g) of section 2 of the Immoral traffic (Prevention) Act, 1956 or in a juvenile home with in the meaning of clause (j) of section 2 of the Juvenile Justice Act, 1986 in psychiatric hospital or psychiatric nursing home within the meaning of clause (g) of section 2 of the Mental Health Act, 1987 ; or
- (h) in receipt of annual income less than rupees nine thousand or such other higher amount as may be prescribed by the State Government, if the case is before a court other than the Supreme Court and less than rupees twelve thousand or such other higher amount as may be prescribed by the Central Government, if the case is before the Supreme Court.

Adalats to ensure that the operation of the legal system promotes justice on the basis of equal access.

Further, though every person is accorded a fundamental right to petition the Supreme Court of India for protection of fundamental right, strict interpretation of the rule of *locus standi* denies equal access to justice to those who cannot afford to approach the courts on account of poverty or social and economic disadvantage. To resolve this problem, the Supreme Court of India in 1975 relaxed the traditional rule of *locus standi*<sup>91</sup> and developed the concept of public interest litigation.<sup>92</sup> Under this new concept, any member of the public or a social group or organization could invoke the writ jurisdiction of the Supreme Court or any High Court for violation of fundamental rights<sup>93</sup>.

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

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<sup>91</sup> Hundreds of public interest litigations were filed in the apex court and in several high courts. Few important judgments are S.P.Gupta v. Union of India, AIR 1982 S. 149; People's Union for Democratic Rights v. Union of India, AIR, 1982 SC 1473; Olga Tellis v. Bombay Municipal Corporation, AIR, 1986 SC 180; Vishaka v. State of Rajasthan, AIR, 1997 SC 3011; M.C.Mehta v. Union of India AIR, 1998 SC 186.

<sup>92</sup> Bar Council of Maharashtra v. M.V. Dabholkar AIR, 1975 S.C. 2092; Mumbai Kamgar Sabha v. Abdulbhai A.I.R. 1976 SC 1455.

<sup>93</sup> Indian Constitution Art. 32 (1) declares that "the right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed."

information in public domain by way of print and electronic media or such other means.<sup>94</sup>

Since many letters were received by the Chief Justice of the Supreme Court, the need was felt to establish an institution to provide legal aid. With great initiative from Justice Krishna Iyer in 1979, the Free Legal Aid (Supreme Court) Society was formed under the Chairmanship of Justice D.A. Desai.<sup>95</sup> In 1981, this Society was renamed the Supreme Court Legal Aid Committee.<sup>96</sup>

Currently only those persons whose income is less than rupees 12,000/- per annum are eligible to receive legal aid from this Committee. Thus, a large section of the population does not qualify for legal aid from the Committee.

To provide legal aid for middle income groups, the Supreme Court of India created a Middle Income Group (MIG) Scheme. The benefit under this scheme is extended to persons whose income is between rupees 12,000 – 1,20,000 per annum. The novelty of this scheme is that the aid given under MIG is not free; the costs of legal services must be paid, but at reasonable rates fixed under the scheme.<sup>97</sup>

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

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<sup>94</sup> For e.g., See *Olga Tellis v. Bombay Municipal Corporation*, AIR, 1986 SC 180, *Parmanand Katara v. Union of India*, AIR 1998 SC 1703, *Bandhua Mukti Morcha v. Union of India* AIR 1984 SC 802, *Sunil Batra v. Delhi Administration* AIR 1978 SC 1675.

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

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

<sup>97</sup> Justice Ranganath Misra, *supra* note 95.

Colleges spread over the length and breadth of the country.<sup>98</sup> In a country like India, a sizable percentage of people still live below the poverty line.<sup>99</sup> For millions, school is a distant dream and the discrimination on the basis of sex, race, religion and caste still exists.<sup>100</sup>

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

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

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<sup>98</sup> M.B.Mehere, *Reconstruction of Legal Education*, 20 J.I.L.I. 280(1978).

<sup>99</sup> 22% of the population lives below poverty line. Estimates by National Sample Survey available at <http://www.dailypioneer.com/179280/Counting--the-poor.html> (last visited 09 - 02 - 2010).

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

<sup>101</sup> Justice S.P.Bharucha Judge Supreme Court and Executive chairman, NLSA, *From the desk of the Executive Chairman*, News Letter, at <http://causelists.nic.in/nalsa/index.html>. (last visited 24 - 07 - 2007)

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

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

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

In this scenario, the Government and the Bar have fallen short in discharging their legitimate responsibilities of facilitating legal aid services to the poor. Legal Aid Clinics operated by Law Schools can provide opportunities for law students to extend legal aid to the poor, disadvantaged, and the oppressed. In this growing materialistic world, the interests of the disadvantaged groups are

being ignored. Thus, taking the socio-economic conditions in India into consideration, the social justice mission of legal education in India should be, to provide “a fair, effective, competent, and accessible legal system.” To secure its mission, it is extremely important for Clinical legal education to institutionalize and implement a social justice oriented curriculum.

### *2.4.3. Conceptual Placement of Issues Addressed in this Thesis*

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

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

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

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<sup>102</sup> For example Legal Aid Clinic was established in Delhi University by the faculty and the students after accidentally they involved in providing legal aid to an under trial prisoner by name Ratnavelu in Tihar Jail. Prof. Menon Writes”... with the experience of the Rathnavelu episode it was decided to institute a Legal Aid Clinic in the Delhi Law School on an experimental basis.” See MADHAVA MENON N.R., Students Legal Services Clinic the Delhi Experience in LEGAL AID AND LEGAL EDUCATION A CHALLENGE AND AN OPPORTUNITY 110 (Madhava Menon N.R. ed, Delhi University, New Delhi 1986).

traineeship as a pre-requisite for enrolment at the Bar.<sup>103</sup> However, the said order was struck down by the Supreme Court of India in *V. Sudheer v. Bar Council of India*,<sup>104</sup> on the basis that the Bar Council of India had exceeded the statutory powers vested in it.<sup>105</sup> Thus, the Bar Council of India appears to have instead sought to tap the usefulness of Clinical legal education in order to enhance the quality of legal training imparted by the legal institutions in India through exposure to real life situations while being students. As discussed in 3.4.1 below, though not explicit, the inclusion of Clinical component in legal education curriculum provided an opportunity to sensitize the students to socio-economic issues in the country and at the same time provide a direct service to society.

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

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

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

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<sup>103</sup> See BCI Order dated 19th July, 1998

<sup>104</sup> 1999 (3) SCC 176

<sup>105</sup> *Ibid.*

study. It also charts the process of empirical analysis employed in this thesis, including the different empirical studies and their respective objectives as well as methods used therein.

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

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

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

The third part of this analysis explores the implementation of the Clinical component in legal education introduced by the Bar Council of India. It attempts to deduce the express as well as implied objectives in introducing the Clinical component, and how the same could have taken shape in the complex and varied legal educational systems that exist in India, with great disparities in terms of human and material resources.



The fourth part forms the bridge between the first three parts of the doctrinal analysis and the subsequent empirical analysis, attempting to test the hypotheses and research questions presented in this thesis. It identifies issues and approaches in determining the status of Clinical legal education in India as well as lacunae, if any, therein. Taking into consideration the results in empirical investigation, it seeks concrete ways of addressing lacunae and failures in the system. In doing this it puts forth evidence backed suggestions and also draws from a comparative analysis of literature principally from the United States of America.

### ***2.5.2. Empirical Assessment of Clinical Legal Education in Social Justice***

#### ***Mission: Identification of a Representative Sample and Methods Employed.***

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

As discussed in 1.2.4. herein above, in view of the constraints of the time as well as human and material resources, it would not be possible to undertake an effective a countrywide study on the issues presented for empirical analysis

herein. Thus, the researcher adopted a sample study approach for undertaking the various surveys on the basis of which conclusions were drawn.

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

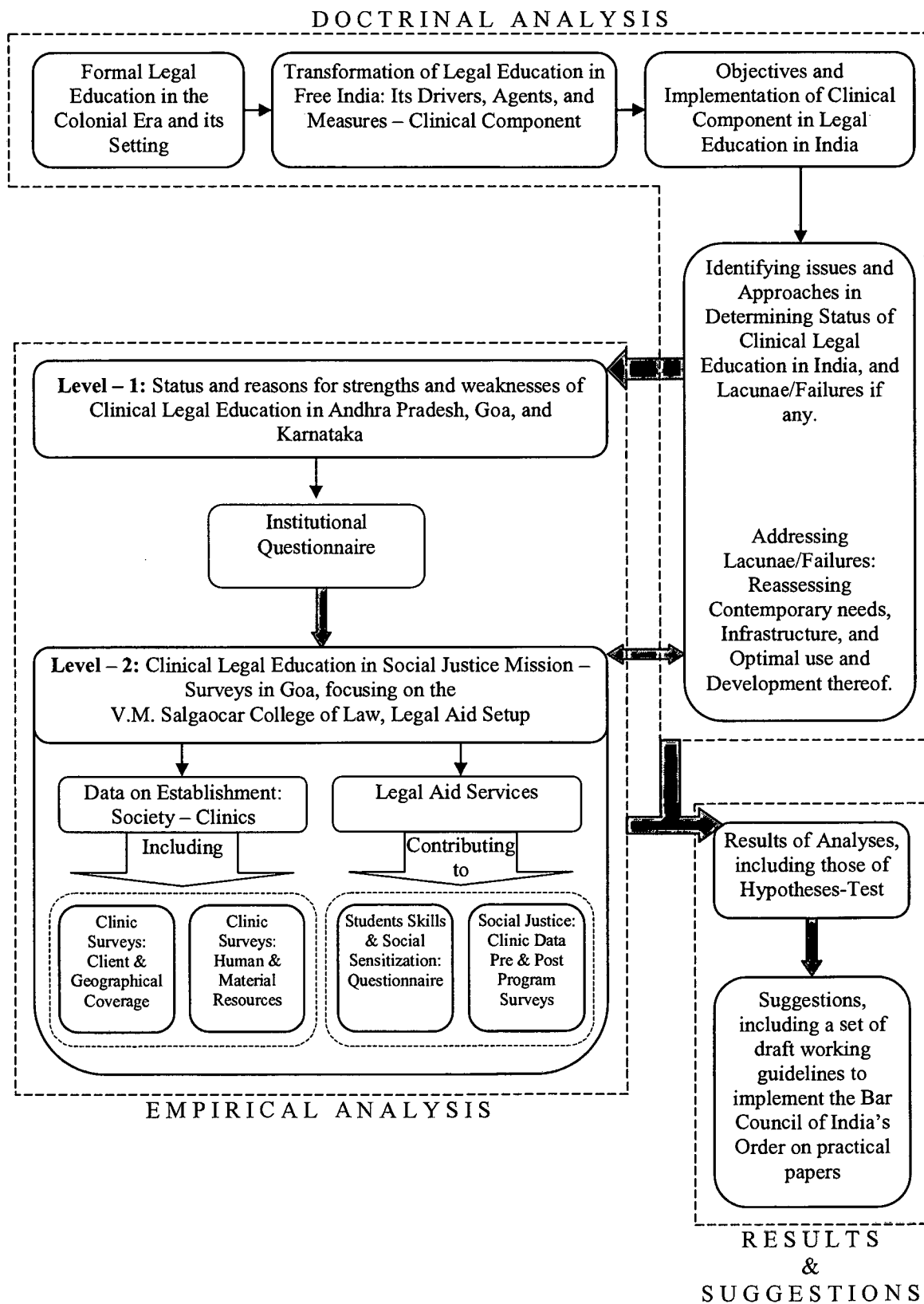
Based on these primary criteria and preliminary assessment there on, the researcher selected the States of Andhra Pradesh, Goa, and Karnataka. These three States were chosen, firstly because in the researcher's preliminary assessment, some educational institutions in each of these States have adopted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

Secondly, the researcher was in a position to undertake effective sample surveys and data collection in these States. Finally, another important factor in including the State of Goa is that the V.M. Salgaocar College of Law in Goa, where the researcher is currently teaching, has an established legal aid setup and thus, held potential for research in the second part of the empirical analysis.

The first part of the empirical analysis primarily involved questionnaires, including institutional and student questionnaires. The second part of the empirical analysis involved surveys to collect data on the legal aid establishments including their geographical coverage, clientele as well as human and material resources.

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

## 2.6 Analytical Framework: Pictorial Representation.



# CHAPTER – III

## REFORMS IN LEGAL EDUCATION IN INDIA: EMPHASIS ON CLINICAL EDUCATION

### **3. Reforms in Legal Education in India: Emphasis on Clinical Education**

Clinical Legal Education in India has its roots in both the legal aid and legal education reform movements, as part of an effort to improve the quality of law practice and to increase awareness of a lawyers' professional and public responsibility.

This chapter traces the history of Legal Education in India during the pre-colonial era and transformation of legal education in colonial era, with particular reference to the evolution of its teaching mission and how that mission should be framed for the future. It then provides an overview of current initiatives and measures of reforms in Indian Legal Education with an emphasis on Clinical Legal Education.

#### **3.1. Manifestations and Trends in Legal Education during the Pre-colonial Era in India**

In examining the trends in legal education in the pre-colonial era, this part highlights two important eras, namely Pre-Mughal and Mughal. These two periods represent distinct religious ideologies with peculiar features which influenced the society's perception of law and need for trained legal professionals.

i. *Pre-Mughal Era*

Legal Education in India could be traced from as early as the Vedic age, when it was essentially based on the concept of Dharma. However, there is no hint of any formal legal education offered at that time. The training in law was self-learning and mostly the kings themselves dispensed justice. Occasionally, judges were appointed to administer justice. These judges were not formally trained in administration of justice but were well known for their “righteousness and justness” and for following Dharma.<sup>1</sup>

The Vedas were the original sources of law, and the *Smritis* announced the message of the Vedas. The *Smritikars* were great jurists,<sup>2</sup> of which, Gautama, Bondhayana, Apastambh, Harita and Vaishta were particularly respected for their Dharmasutras,<sup>3</sup> which were considered most ancient expositions on law. Life in India during this period was simple and the form of judicial procedure was less complicated than that of western countries.<sup>4</sup>

The basic concept of education in ancient India was to provide correct direction in the various spheres of life.<sup>5</sup> Education was aimed at teaching Dharma

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<sup>1</sup> Dr. Justice A.S.Anand, *H.L. Sarin Memorial Lecture: Legal Education in India – Past, Present and Future*, (1998) 3 SCC (JOUR) 1.

<sup>2</sup> Sharma S.K, *LEGAL PROFESSION IN INDIA, SOCIOLOGY OF LAW AND LEGAL PROFESSION: A STUDY OF RELATIONS BETWEEN LAWYERS AND THEIR CLIENTS*, 43 (ed., Rawat Publications, Jaipur, 1984).

<sup>3</sup> Dharmasutras are theoretically a part of Vedic literature, which entails that they are considered to be revealed texts transmitted to humans by ancient sages (Rhushi). See Gavin D. Flood, *THE BLACKWELL COMPANION TO HINDUISM*, 104 (Blackwell, 2003) .

<sup>4</sup> Abbe J.A.Dubois, *HINDU MANNERS, CUSTOMS AND CEREMONIES*, 662 (Reprint, Book Faith, New Delhi, 1999)

<sup>5</sup> See KATHA UPANISHAD (iii, 6) available at [http://www.tributetohinduism.com/Education\\_in\\_Ancient\\_India.htm](http://www.tributetohinduism.com/Education_in_Ancient_India.htm) (last visited 24 – 07 – 07).

(righteousness), recognizing that "Man is potentially divine, but is the victim of his ignorance, passions and immoral tendencies, created by his own past actions (*karma*)."<sup>6</sup> Thus, the goal of education, as well as the Hindu religion, is to overcome these weaknesses.

The notion of Dharma was not confined to religion, but was understood to have two facets; religion and law.<sup>7</sup> It is well known that "Hunger, sleep, fear and sex are common to all animals; human and sub-human. It is the additional attribute of *dharma* that differentiates man from the beast."<sup>8</sup>

*Dharma* being the central idea of the Hindu religion, separate training akin to modern legal education was not felt to be necessary. During the ancient period, legal disputes were settled by mediation, negotiation and some form of arbitration. Thus, what we perceive to be modern alternative dispute resolution mechanisms were the usual methods for resolving dispute in ancient India. Further, the law was believed to be very clear to all, requiring no complex human interpretation. Thus, there can be no doubt that parties to a dispute in ancient Hindu law had a right to represent<sup>9</sup> but such representatives do not

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<sup>6</sup> Manu 7.2.

<sup>7</sup> Msson-Oursel, Paul; De willman-Grabowska, Helena; and Stern, Philippe, ANCIENT INDIAN AND INDIAN CIVILIZATION, 71 (M.R. Dobie, Trans., Kegan Paul, Trench Trubner & Co. London 1934).

<sup>8</sup> See, Bansi Pandi, HINDU DHARMA, 55, (B & V Enterprises, Inc., Illinois, 1996), citing, Manu 7.3 and 7.14.

<sup>9</sup> Ludo Rocher, "Lawyers in Classical Hindu Law", XIII (3 & 4) Indian Bar Review, 353 (1986).



appear as independent trained third persons corresponding to the Advocates, Vakeel.<sup>10</sup>

Therefore, in absence of a need for trained legal professionals, there was no institutionalization of legal education as a separate branch but the same could be said to have been imparted as a part of general education which revolved around the notion of *Dharma*.

### ii. *Mughal Era*

The Mughal period in India began with the invasion by Babar in 1525 and extended till the ascendancy of British dominion in India. During this period the Emperor was the head of the judiciary. As Islamic jurisprudence is derived from the Quran, it is treated as immutable by any human agency. Further, the *Sunna*, which helped in explaining the *Quran* also became a major source.<sup>11</sup>

A system of courts, following formal procedures, to adjudicate criminal and civil cases, came to be established with Mughal rule. The adoption of rules of evidence, introduced further complexities in administration and seeking of justice. These changes in the legal system necessitated the involvement of

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<sup>10</sup> P.V. Kane says, "so far the *smritis* are concerned, there is nothing to show that any call of persons whose profession was the same as that of modern counsel, solicitors or legal parishioners and who were regulated by the Sate, existed. See Kane, P.V, HISTORY OF DHAMASASTRA, 288 (1948). See also Sarkar U. C, EPOCHS IN HINDU LEGAL HISTORY 37 (1958); Abbe says "the Hindus have neither barristers nor solicitors; neither are they compelled to submit to those long proceeding..." See Abbe J.A.Dubois, *supra* note 4 at 661. For opposite view See, Jolly J., HINDU LAW AND CUSTOM, 299 (B.K. Ghosh Transl. 1928).

<sup>11</sup> Sushma Gupta, HISTORY OF LEGAL EDUCATION, 51 (Deep & Seep Publications (P) Ltd., New Delhi, 2006).

legal experts, who were addressed as *Vakils*.<sup>12</sup> Also, two Mughal Codes, the *Figh-e-Firoz Shahai* and the *Fatwa-e-Alamgiri* were adopted to deal with the duties of *Vakil*.<sup>13</sup>

Thus, legal professionals began to play an important role in the administration of justice. Though the Mughal legal system was extended mostly to the towns, in religious matters, disputants were allowed to settle their disputes in accordance with their religious, including Hindu, customs.<sup>14</sup> Further, at the village level, *Panchayats* continued to exercise their powers to adjudicate on most disputes except those involving serious crime. However, an unsatisfied party could prefer an appeal from the decision of the *Panchayat* before the court established under the Mughal law.

Thus, legal assistance became increasingly necessary as the administration of justice became more complex. Further, such situation also meant that disputants without sufficient financial resources were placed in disadvantageous situation. Thus, particularly during the reigns of Muslim emperors Shahjahan<sup>15</sup> and Aurangzeb,<sup>16</sup> legal aid was provided to financially

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<sup>12</sup> This term was used in Muslim India in the sense of an agent or ambassador who represented his principal for varied reasons. Even *Vakils* were used for clearing an arrear of revenue or other miscellaneous deeds. Thus the term *Vakil* did not specify the class of legal practitioner. See Misra B.B. *THE INDIAN MIDDLE CLASSES*, 162-163 (Oxford University Press, Bombay, 1961)

<sup>13</sup> Sujan Singh, *LEGAL AID: HUMAN RIGHT TO EQUALITY*, 72 (Deep and Deep 1996).

<sup>14</sup> Philips B. Calins, A Note on Lawyers in Muslim India, XIII (3 & 4) *Indian Bar Review*, 373 (1986). See also Saran S. *THE PROVINCIAL GOVERNMENT OF THE MUGHALS*, Chapter IX, 317 as cited in Sushma Gupta, *supra* note 11.

<sup>15</sup> Shahjahan reigned from 1628 to 1658.

<sup>16</sup> Aurangzeb reigned from 1658 to 1707.

weak disputants at no charge. The Vakil(s) appointed by the State for this purpose were known as *Vakil-e-sarkar*.<sup>17</sup>

Though a system of third-party representation was formalized in Mughal era, people who could function as such representatives do not appear to have the required specialized legal education and there is no evidence of formal legal education system.

### **3.2. Legal Education and its Transformation in Colonial Era [British and Portuguese].**

#### *i. British Period*

Although some sort of representation before the adjudicating authorities, existed in the pre-colonial era, the modern Indian legal profession dates from British rule with the establishment of law courts in Madras, Bombay and Calcutta in the year 1726. However no specific qualifications were laid down for persons who act or plead as legal practitioners before these courts. This trend seems to have continued even after passing subsequent Charter in 1753 and the Regulating Act, 1773.<sup>18</sup>

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<sup>17</sup> GOVERNMENT OF INDIA, MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS, DEPARTMENT OF LEGAL AFFAIRS, REPORT OF EXPERT COMMITTEE ON LEGAL AID : PROCESSUAL JUSTICE TO THE PEOPLE 43 (1973).

<sup>18</sup> For example, Regulating Act was passed in 1773 and a Supreme Court was established in Fort William in Bengal on 26<sup>th</sup> March, 1774, under the Kings Charter. The Charter empowered the Supreme Court to approve, admit and enroll such and so many advocates and attorneys to appear and plead and act for the suitors at law court. These so called advocates were English, Irish Barristers, Members of the Faculty of Advocates in Scotland; the Attorneys referred to were the British attorneys and solicitors. Thus, Indian lawyers had no right to appearance in the Courts. For details see Sushma Gupta, *supra* note 4 at 55

For the first time, the Bengal Regulation VII of 1793 established regular legal profession for the East India Company's Courts. This Regulation controlled the appointment of *Vakils* in civil judicature courts in the provinces of Bengal, Orissa and Bihar and conferred special powers on the *Sudder Dewani Adalat*<sup>19</sup> to enroll pleaders.<sup>20</sup> The Regulation was enacted with a view to strengthen the legal profession in the best interests of the litigant public, members of the bar serving as trustees of their clients and thus helping in the sound administration of justice. The regulation created for the first time a regular legal profession for the Company's *Adalats*.<sup>21</sup>

The subsequent Bengal Regulation, XXVII of 1814,<sup>22</sup> extended the power of *Sudder Dewani Adalat* to Provincial Courts and it further empowered the pleaders to act as arbitrators and provide legal advice for a fee.<sup>23</sup> The profession gained momentum in the first half of the 19th century by virtue of the Bengal Regulation XII of 1833 and the Legal Practitioners Act, 1846, which allowed persons with prescribed qualifications to enroll as pleaders irrespective of their nationality and religion.<sup>24</sup>

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<sup>19</sup> These Adalats came into existence in the year of 1772. See JAIN, M.P. OUTLINES OF INDIAN LEGAL HISTORY 118 (Wadhwa & Co, Nagpur, Reprint, 1999)

<sup>20</sup> Mehta P.L., & Sushma Gupta, LEGAL EDUCATION AND PROFESSION IN INDIA, 42 (2000)

<sup>21</sup> This Regulation was introduced by Lord Cornwallis with a view to create and organize the profession of lawyers/*vakeels* on a regular and sound basis. For the details of the Regulation see Jain, M.P., OUTLINES OF INDIAN LEGAL HISTORY, 145 – 147 (5<sup>th</sup> Edition, Wadhwa & Co., Nagpur 1999).

<sup>22</sup> This Regulation came into force on 1 February 1815. But rules prescribed by this Regulation do not apply to pleaders appearing in the *Munsifs' Adalats*. For details see Jain, M.P., *supra* note 19 at 673.

<sup>23</sup> Mehta P.L. *supra* note 20 at 42.

<sup>24</sup> Legal Practitioners Act was the first enactment that applied to all pleaders in the Mofussil Courts in India. Section 4 of the Act made all persons irrespective of nationality and religion to practice

New phase in the development of legal profession in India began with the East India Company's rule in 1857 and setting up of a unified judiciary under the Indian High Courts Act of 1862.<sup>25</sup> The Legal profession became distinct in 1883 when a Law Commission was established to codify the laws in India.<sup>26</sup> The Letters Patent of 1865 conferred powers on High Court established under Royal Charter to make provisions with respect to the enrolment of legal practitioners. Accordingly, the High Court of Judicature at Fort William in Bengal was empowered to admit, approve and enroll such persons as Advocates, Vakils and Attorneys as it deemed fit.

Other High Courts, established other than by Royal Charter, were empowered to make rules regarding admission of persons as advocates of the court by the Legal Practitioners Act, 1879.<sup>27</sup> However, women could not be enrolled as pleaders.<sup>28</sup> Subsequently the Legal Practitioners (Women) Act, XXIII of 1923, removed this disability of women.<sup>29</sup>

In 1923, the Indian Bar Committee was constituted under the Chairmanship of Sir Edward Chamier to consider establishment of an All India Bar and a Bar

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before the Company's Courts. Section 7 permitted the Vakils to enter into agreement with their clients for their fee for professional services. See Jain, M.P., *supra* note 21 at 673.

<sup>25</sup> Madhava Menon N.R., *Bar Councils and Management of Legal Profession*, XIII (3 & 4) Indian Bar Review, 419 (1986).

<sup>26</sup> Sharma S.K., *supra* note 2 at 48.

<sup>27</sup> Kailash Rai, *HISTORY OF COURTS, LEGISLATURE & LEGAL PROFESSION IN INDIA*, 340 (Allahabad Law Agency, Faridabad, 1977).

<sup>28</sup> *In Re Regina Guha*, ILR 40 Cal. 290.

<sup>29</sup> Madhava Menon N.R., *supra* note 25 at 421.

Council for High Courts.<sup>30</sup> This Committee recommended the establishment of a Bar Council at each High Court, and suggested that the Bar Council so established should be empowered to enquire into matters on disciplinary action against a lawyer. However the idea of establishing a Bar Council of India, at the national level, did not find favour with the Committee.<sup>31</sup>

In 1926, the Indian Bar Councils Act was passed to give effect to some of the recommendations suggested by the Indian Bar Committee. This Act mainly focused on the constitution of Bar Councils at High Courts. The Act empowered the Bar Councils to make rules, subject to approval of the same by the concerned High Court. In spite of this enactment, the power to enroll advocates was still with the High Court and the function of the Bar Council was merely advisory in nature.

In the beginning to become Vakils they were required to study at the Hindu College in Benares, or the Calcutta Madrassa.<sup>32</sup> Though knowledge of Persian was mandatory for every Vakil till 1826; English gradually replaced Persian as an official language in courts. During this period training of Vakils was largely focused on regulations, and the principles of law were completely ignored. Formal legal education started in 1855, when the first professorship of law was introduced in the Government Ephistone College. In 1857, three Universities

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<sup>30</sup> The other members of the Committee were: Justice Courts Trotter, Judge of the Madras High Courts; S.E. Das, Advocate – General, Bengal; Col.Stanyona, Barrister; T.Rangachari, Vakil, Madras High Court; Sitaram Sundar Rao Patkar, Government Pleader, Bombay; and Lalit Mohan Bannerjee, Government Advocate, Allahabad.

<sup>31</sup> Kailash Rai, *Supra* note 27.

<sup>32</sup> Samuel Schmttheener, A Sketch of the Development of the Legal Profession in India, 22 Indian Bar Review, 42 (1995).

in Bombay, Madras and Calcutta, bearing the respective names, formally introduced legal education.<sup>33</sup> The formalization of legal education became necessary due to the institutionalization of British legal system.

However, the language of British statutes being English, anyone who learnt English, was eligible to study law and thus qualified to become a legal representative.<sup>34</sup> The early legal education emphasized practical training, due in part to the need for more judges and lawyers resulting from the passing of the governance of India to the Crown in 1858. Legal education during the British India period continued as a two-year program with traditional lecture method.<sup>35</sup> Attendance would be taken but never enforced. Students used to study only abbreviated pamphlets and everyone used cribs and aids to pass the examinations.<sup>36</sup>

Calls for reform in legal education were made as early as 1885, when Justice Muthuswami Iyer stressed the need for a formal college setup to impart legal education on a scientific basis. Along the same lines, the First Indian University Commission recommended in 1902 that a Bachelors degree either in science or arts be required as a qualification to join the LL.B degree course.

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<sup>33</sup> Anand A.S., *Legal Education in India – Past, Present and Future*, (1998) 3 SCC (Jour) 1.

<sup>34</sup> Iqbal Ali Khan, *State of Legal Education in India*, LEGAL EDUCATION IN INDIA IN 21<sup>ST</sup> CENTURY EDUCATION IN INDIA: PROBLEMS AND PERSPECTIVES, 173 (Koul A.K. ed., All India Law Teachers Congress, Delhi University, Delhi, 1999).

<sup>35</sup> REPORT OF 14<sup>TH</sup> LAW COMMISSION OF INDIA REPORT ON REFORM OF JUDICIAL ADMINISTRATION, Chapter 25 Para 32 (1958).

<sup>36</sup> *Id.* at 44

It also recommended the use of tutorial and case methods to teach law. In 1910, the Chagla Committee concluded that a law student should spend at least 6 years in legal education before qualifying as a lawyer. It also advocated for pre-legal education, with the idea that only those who passed a pre-law exam would be admitted to the LL.B. course.<sup>37</sup>

The quality of legal education was quite uneven in the colonial era, as summed up by the Unemployment Committee appointed by the UP government in 1935: “[O]ur own view is that so far as Universities in these provinces are concerned legal education has not occupied the place to which its importance entitled it; and we are not prepared to say that the standard of legal education has risen to the extent to which it has risen in certain other departments.”

Thus, a number of committees assessed the status of legal education and recommended reforms. One of the common recommendations of these committees was that a comprehensive legislation should be introduced to regulate the legal profession and legal education. Accordingly several legislative attempts were made in this direction, including the Sri Anugraha Narain Siha Bill, 1936; Sri Akil Chandra Bill, 1939; and T.T. Krishnamachari Bill, 1944.

These efforts resulted in the constitution of the Radhakrishna Commission in 1948 – 49. This Commission highlighted the lack of internationally known expounders of jurisprudence and legal study in Law Colleges and opined that

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<sup>37</sup> Sushma Gupta *supra* note 11 at 70.



the Law Colleges existing at that time held neither a place of high esteem nor profound scholarship nor enlightened research. Therefore, the Commission called upon the legal profession to take stock of this situation to contribute to wide social changes taking place in the country.<sup>38</sup>

Thus, the history of legal education during British period reveals lack of seriousness in offering quality legal education. There is no unified legal education system prevailing during this period. Several differences in the duration of the course, subjects taught and even the eligibility to undertake law course made legal education ineffective.

The beginning of formal legal education in 1855 and the call for reforming legal education made as early as 1885, clearly shows lack of seriousness in offering quality legal education. The process of formalizing legal education was slow and very little efforts were made on improving the content of legal education. Imparting information rather than developing critical understanding becomes the chief goal of the legal education. Therefore, not surprisingly most of the efforts to improve legal education were confined to institutionalize and regulate legal education and completely ignored the content pedagogy of legal education.

#### *ii. Portuguese Period*

Portuguese entry to India brought their judicial system and legal concepts.

The judicial system in Goa from the entry of Portuguese i.e. 1510 to 1964

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<sup>38</sup> Sushma Gupta, *supra* note 11 at 71.

assumes importance as Portuguese were the first to establish and the last colonial power to leave Indian shores. Further, the Portuguese rule in Goa is different from British rule in the rest of the country as the former entered Goa as a representative of Sovereign King as compared to the later who entered the parts of India as a company of traders. Therefore, the administration of justice was the responsibility of the King of Portugal right from 1510. Moreover, the judicial system in Goa was based on continental jurisprudence as opposed to common law system followed by British in the rest of India.

The territory of Goa is situated on the West Coast of India in the Konkan region. It was ruled by *Kadambas* from 500 B.C. till the thirteenth century. Subsequently it was ruled by *Yadavas* of *Devagari* and finally by *Adil Shah* of Bijapur. The Portuguese conquered Goa in February 1510, lost it and re-conquered in the month of November of the same year. Till 1961 Goa was under the Portuguese rule.

Before the Portuguese, Goa was ruled by *Adil Shah*. Therefore, the administration of justice during those days was based on Sultanate system. Under this system the Sultan was the final authority and he was assisted by the *Quazi*. At the regional level, Courts such as *Vazirs* and *Amirs* enjoyed both original and appellate jurisdiction. At local level administration of justice was undertaken by *Gaonkaria*.<sup>39</sup>

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<sup>39</sup> During Portuguese rule they were known as *Comunidade*.

*Gaonkaria* is nothing but group of individuals from the concerned village communities. These *Gaonkarias* settled most of disputes at the local level and were assisted by a village clerk called as *Kulkarni*. Eight villages grouped together and formed a higher authority called *Desh*.<sup>40</sup> This body consisted of sixteen members with two members hailing from each of the villages. Mostly disputes with inter-village repercussions and inter-communities were settled by this body and it was assisted by a scribe known as *Nadkarni*.

Administration of justice during initial stage of Portuguese regime was carried out sectionally. No attempt was made to bring uniformity in this area. The main reason for this may be the varied interests and pressure groups that existed in the Goan society. Groups such as Portuguese on deputation, the settlers or the married Portuguese, neo- Christian converts, Hindus, and *Ganokarias* for the local population resulted in developing multi-faceted adjudicating machinery.

But due to several political changes in Europe, Portugal became a constitutional monarchy. This in turn resulted in bringing several judicial reforms not only in Portugal but also in its colonies. Judicial reforms in Goa, particularly from 1832 resulted in not only bringing uniformity in judicial administration but also brought much needed judicial hierarchy.

The Decree of 1832 proposed a new plan for the judiciary in Portugal and necessitated a special law for the State of India. The Decree of 1836

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<sup>40</sup> During Portuguese rule they were known as *Camara Genral*.

established a High Court in Goa. It divided Goa into three Comarcas and each Comarca had a Comarca judge. Further the Decree also created Procurator of the Crown and Revenue to look after the King's interest in the Courts. In each Comarca a Police Correctional Court and War Councils were established. In addition to creating new judicial system, the Decree abolished all offices of justice, functioning till 1836 in Goa. The Subsequent decrees of 1856, 1866, 1894 and 1927 improved the changes brought by 1836 decree and channelized the uniform judicial system in Goa.

As far as representation is concerned only the following two persons were entitled to represent clients.<sup>41</sup>

1. Bachelors formed or Licenciates in Law, and
2. Those who have provision of license to practice advocacy.

However, officials of the colony who received remuneration from the State were not permitted to practice as advocates unless a special license was obtained from the government. But they were allowed to exercise the functions of advocates in suits of their own. However, they could not appear in any case against the State, against the resolution of the State, and acts of the Government of Colony.

In the High Court and each Comarca Court a special book was kept to enter the names of the persons who could exercise functions of advocate.<sup>42</sup> Once

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<sup>41</sup> Article 84, Advocates and Judicial Procurator Decree No. 14.453 of 1927

the names were entered in the Book, they were entitled to practice before the judicial Comarca in which their name was entered.<sup>43</sup>

The license to practice law would be granted to the Bachelors simply by registering their names with the High Court. But license for advocates other than Bachelors i.e. Licenciates in law would be granted after the representative Comarca Judge heard the delegate of Procurator of Republic, and was convinced that there is no sufficient number of advocates who are Bachelor or Licenciates in law, available.<sup>44</sup> Any person aggrieved by this decision such as the delegate of Procurator of Republic, or interested parties of Bachelor or Licenciates in law from the Comarca could appeal to the President of the High Court.

Maximum number of advocate in each Comarca would be fixed by the High Court after hearing the respective judges of Comarca Courts.<sup>45</sup> This number could be altered by the High Court itself on receiving the proposal of the respective Comarca Court. Once a person obtains Licenciates for advocacy, he was required to apply to the President of High Court attaching the following documents to the application.<sup>46</sup>

1. Certificate proving that he is a major.

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<sup>42</sup> Art.85

<sup>43</sup> Art.87

<sup>44</sup> Art.89

<sup>45</sup> Art.90

<sup>46</sup> Art. 91

2. Certificate from criminal register to show that he is free from committing or involving in any crime.
3. Certificate of probity or good conduct issued by corporation or administration of respective area.
4. Certificate issued by delegate of Comarca that maximum number of provisional advocates is not filled.
5. Certificate of final decision referred in Art.89.
6. Certificate which shows that the person has completed Liceum Course or any Superior or Special Course.

After receiving the application along with the above certificate, the President of High Court would examine it. If he is satisfied that the applicant has fulfilled all the requirements, the President may order the Comarca Judge of the respective Comarca to conduct the examination of the applicant. If the President is not satisfied then he may reject the application of the applicant.<sup>47</sup>

The proposed examination would test the knowledge of the applicant on general notions of law, terms and procedural formalities. This exam would be conducted before a Jury<sup>48</sup> formed by the Comarca Judge. Jury would be presided over by the respective delegate of Procurator of Republic and the

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<sup>47</sup> Art.92

<sup>48</sup> The Jury cannot function without the presence of at least 2 Magistrate members.

Conservator of Registrar of properties. In their absence, the Jury would be presided over by first substitute of the Comarca Judge.

In a two judge Comarcas, the Jury would be constituted by both the judges and presided over by the senior most Judges. In the absence of both the judges, the Registrar of Properties and in his absence first substitute of the Civil Judge, and in his absence the delegate of Civil Judge, and in his absence the delegate of the criminal judge would preside.

After conducting the examination, the Comarca Judge would remit the certificate of the proceedings of the exam to the President of the High Court. If the applicant was approved by the Jury unanimously then the President would grant the approval to practice. However, if the applicant was approved by the majority of the Jury, it would be the discretion of the President to grant the licence.<sup>49</sup>

The license for advocacy was given in the form of a certificate called 'Alvara'. This Alvara was required to be registered in the head office of the High Court. Once this license is granted the applicant was permitted to practice in the respective Comarcas.

In essence, there was no formal legal education required to enter into legal profession in case of Licenciante of law. As far as Bachelors are concerned, legal education was offered in Lisbon University, Portugal. Therefore, it is safe to assume till Goa was freed from the Portuguese rule, the legal education

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<sup>49</sup> Art.93.

was neither introduced nor institutionalized in Goa. Even after Goa become part of India, legal education was offered in Goa only after 1973 when the first Law College was established at Panaji.

### **3.3. Drivers, Agents and Measures of Reforms in Legal Education in Free India**

Legal education gathered momentum and acquired importance in free India. India became free with a large number of its citizens being poor and illiterate. The immediate concern was to minimize inequalities and provide basic amenities to millions of people. With the adoption of a democratic form of government, legal education was expected to bring the legal system in tune with social, economic and political desires of the country.<sup>50</sup> Thus, the basic concern for the legal system in the early period of free India was to fulfill the objectives set out in the Constitution.

With the adoption of Constitution in 1949, the 'rule of law' became the basic component of the Indian democracy. The essence of free India was well summed up in Art.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.

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<sup>50</sup> Dr. Justice A. S. Anand, *supra* note 1.



Judicial trends in interpreting the Constitution particularly from Maneka Gandhi case,<sup>51</sup> made 'due process' of law a cornerstone of constitutional ideology in post independent India. With judicial activism, access to justice becomes part of due process and law is viewed as an instrument to bring progressive changes in the society. In conformity with the said ideology, several legislations were passed in order to bring the much needed social reforms in the country.<sup>52</sup>

Law and justice can no longer remain distant neighbors. To achieve the constitutional goal of access to justice, legal system should ensure moderate court fee, availability of affordable, competent and socially relevant lawyers. Further, Courts with humanistic approach are necessary to narrow the distance between law and justice. In this scenario the legal profession which is the custodian of providing justice is expected to play a dynamic role. Law Schools being recruit grounds for legal profession there was a need to inject a new spirit into the content of legal education to make lawyers and legal professionals socially relevant and professionally competent.

Today, with 740 institutions offering legal education<sup>53</sup> and 40,000 law students graduating every year<sup>54</sup> and 10,20,000 lawyers registered,<sup>55</sup> India has the

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<sup>51</sup> Narrow interpretation of the term "personal liberty" in A.K.Gopalan case was over ruled by the Supreme Court in this case and it expanded the horizons of the expression "personal liberty". Supreme Court equated the expression of "procedure established by law" in Art.21 with the expression of "due process of law" given under USA Constitution. See AIR 1978 SC 597.

<sup>52</sup> Few legislations aiming at social reforms are Hindu Marriage Act 1955, Protection of Civil Rights Act, Prohibition of Bonded Labour (System Abolition) Act 1976, and Dowry Prohibition Act 1961.

<sup>53</sup> Chairman BCI, available at <http://www.barcouncilofIndia.org/bar-council/chairman.php> (last visited 15 - 6 - 08)

second largest number of lawyers in the world, second only to the United States.<sup>56</sup> With this staggering number, it is to be expected that Law Schools would play a pivotal role in promoting and providing justice, particularly through legal aid.

Unfortunately, there is a general feeling that legal education in India is not “meaningful” and “relevant.”<sup>57</sup> The way legal education has been structured in India appears to suggest that it is intended to provide students only with some knowledge of statutes.<sup>58</sup> The curriculum is neither helpful in shaping aspiring lawyers in their traditional roles of problem solvers nor in their expanded roles of arbitrators, counselors, negotiators or administrators.

Due to prolonged neglect of legal education, numerous substandard institutions and “teaching shops,” with abnormally large number of students, grew up around the country. As a result, admissions to Law Schools became disorganized and the quality of the students was poor.<sup>59</sup> With few exceptions, the Law Colleges failed to attract brighter students to the legal profession.<sup>60</sup>

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<sup>54</sup> N.L.Mitra, *Legal Education in India*, Conference of International Legal Educators, Florence, Italy (2000) available at <http://www.aals.org/2000international/english/India.htm>.

<sup>55</sup> Chairman BCI, available at <http://www.barcouncilofIndia.org/bar-council/chairman.php> (last visited 15 - 6 - 08)

<sup>56</sup> Dr. Justice A.S.Anand, *supra* note 1.

<sup>57</sup> I.P.Massey, *Quest For 'Relevance' in Legal Education*, 2 SCC (JOUR) 17 (1971).

<sup>58</sup> *Ibid.*

<sup>59</sup> See: Mohammad Ghouse, *Legal Education in India: Problems and Perspective*, 19 J.I.L.I. 337 (1977) (Book review).

<sup>60</sup> Taylor Von Mehren, *Law and Legal Education in India: Some Observations*, 78 HARV. L. REV.1186 (1965).

The situation was exacerbated by the meager salaries paid to law teachers, because of which, the teaching profession did not attract more competent persons. Further, the teaching faculty was overburdened by heavy teaching loads.<sup>61</sup> Many colleges had and continued to have a large number of part-time teachers which resulted in overloading the full-time teachers with additional administrative and committee duties.<sup>62</sup>

The approach used in classroom teaching was the outdated lecture method. More emphasis was given in verbal analysis of a rule or a judgment. Little or no attention was paid to the underlying principles or social intricacies that resulted in the making of a particular rule. Students had no exposure to the policy underlying the law, the function of the law, or the needs of the nation and the expectations of the people.<sup>63</sup> No effort was made to understand the law in a social context. In the words of Prof. Mohammad Ghouse, "they were not alive to the dynamic role of law in the development of the country."<sup>64</sup>

By adopting the British model of external examinations, the law teacher lost control over scholarly content of his course. Further, the external examination system tested more on the memory of the student rather than his analytical ability. Also, poorly equipped law libraries made legal research by a teacher a rare phenomenon.

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<sup>61</sup> A full time teacher is required to take 18 lectures a week.

<sup>62</sup> Taylor Von Mehren, *supra* note 60.

<sup>63</sup> Mohammad Ghouse, *supra* note 59.

<sup>64</sup> *Ibid.*

In its 1958 report, the Law Commission of India painted a bleak picture of the standards of legal education: "The portals of our law teaching institutions manned by part-time teachers open even wider and are accessible to any graduate of mediocre ability and indifferent merits...there is hardly a pretence at teaching... this character is followed by law examinations... which the students manage to pass by cramming short summaries published by enterprising publishers... the result, a plethora of LL.B., half-baked lawyers, who do not know even the elements of law and who are let loose upon society as drones and parasites in different parts of the country."<sup>65</sup>

These remarks were made by the Commission when there were only 43 law institutes training 20,159 students. Today about 740 Law Schools with an enrolment of over 2,50,000 are in no better position than in 1958, barring few exceptions. Law Schools became factories, of producing ill-trained law graduates unsuitable to both the profession and society.

Realizing these problems, members of the legal community focused their attention on improving legal education in India. Though several efforts were made in this respect, those made particularly by the BCI, UGC, Law Commission of India and the State are worth mentioning.

### ***3.3.1. Efforts made by the Bar Council of India.***

Even after India became independent, the legal profession in India continued to be governed by the laws passed by the British. The Constitution of India came

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<sup>65</sup> See: THE LAW COMMISSION OF INDIA, REPORT ON REFORM OF JUDICIAL ADMINISTRATION (1958).

into force on 26th January 1950 and all High Courts of Part B States became High Courts under the Constitution. The Supreme Court of India was established under the new Constitution and had jurisdiction over the whole of India. As the Constitution of India created a uniform judicial system, concerns were raised in several meetings and conferences stressing the need for an all-India Bar and uniform system of regulating the legal profession.<sup>66</sup>

*i. Efforts to establish All India Bar Council*

In this situation and in view of the changed circumstances, a comprehensive Bill sponsored by the Government was necessary and to that end in August 1951 the then Minister of Law announced on the floor of the House that the Government of India was considering a proposal to set up a Committee of Inquiry to go into the problem in detail. To comply with that promise, the all India Bar Committee was constituted by the Government of India under the Chairmanship of Justice S.R. Das. The Committee was asked to examine and report on:-

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<sup>66</sup> In February – March 1950 the Inter University Board at its annual meeting held in Madras passed a resolution emphasizing the desirability of having uniformly high standards for the law examinations in the different Universities of the country in view of the fact that under the new Constitution a Supreme Court of India had been established and stressing the need for an all India Bar. In May 1950 the Madras Provincial Lawyers Conference held under the Presidentship of Shri S. Varadachariar resolved that the Government of India should appoint a Committee for the purpose of evolving a scheme for an all-India Bar and amending the Indian Bar Councils Act to bring it into conformity with the new Constitution. The Bar Council of Madras at its meeting held on 1st October 1950, adopted that resolution. Shri Syed Mohammed Ahmad Kazmi, M.P. who is a member of the present Committee, introduced in Parliament on April 12, 1951, a comprehensive Bill to amend the Bar Councils Act. See, S. Gopakumaran Nair, Chairman, Bar Council of India, History of Bar Council of India, available at <http://www.barcouncilofindia.org/bar-council/history.php> (last visited 20 – 08 – 09)

1. The desirability and feasibility of a completely unified Bar for the whole of India.
2. The continuance or abolition of the dual system of counsel and solicitor (or agent) which obtains in the Supreme Court and in the High Courts at Bombay and Calcutta.
3. The continuance or abolition of different classes of legal practitioners, like advocates of the Supreme Court, advocates of the various High Courts, district court pleaders, mukhtars (entitled to practice in criminal courts only), revenue agents, income – tax practitioners, etc.;
4. The desirability and feasibility of establishing a single Bar Council
  1. For the whole of India, or
  2. For each State.
5. the establishment of a separate Bar Council for the Supreme Court;
6. the consolidation and revision of the various enactments (Central as well as State) relating to legal practitioners; and
7. all other connected matters.<sup>67</sup>

The All India Bar Committee was headed by Hon'ble Shri S. R. Das, Judge, Supreme Court of India as Chairman.<sup>68</sup> The Committee submitted its detailed report on 30th March 1953.

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<sup>67</sup> *Ibid.*

The Committee found that since there was no centralized authority like an All India Bar Council, the qualifications required for enrolment as a lawyer by different High Courts were not uniform. All High Courts required a law degree from a University as a precondition for enrolment as an advocate and each High Court prescribed additional qualifications like practice in district courts or in chambers of a practicing advocate for certain period.

There was no uniformity regarding the period of practice required for a new entrant. This was compounded by different Universities prescribing different periods of study and there was no uniform syllabus. Except Calcutta and Punjab Universities, which prescribed a three-year course, other Universities required only a two-year course for law students.

Further, there was no uniformity regarding minimum qualifications for undertaking a law degree. For example, Andhra and Bombay Universities allowed students to pursue law studies after matriculation while other Universities required a bachelor's degree.

Students joining Andhra and Bombay Universities were required to study general subjects for three years and then study law subjects for two years. In

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<sup>68</sup> Other members of the Committee are M. C. Setalvd, Attorney General of India; Dr. Bakshi Tek Chand, Retired High Court Judge; V. K. T. Chari, Advocate-General of Madras; V. Rajaram Aiyar, Advocate-General of Hyderabad; Syed A. Kazmi, MP, Advocate, Allahabad; C. C. Shah, MP, Solicitor, Bombay; and D. M. Bhandari, MP, Advocate, Rajasthan High Court.

all other Universities, a candidate was required to be a graduate in science, arts or commerce to take admission in law course.<sup>69</sup>

Thus, in Andhra and Bombay a candidate could graduate in law within five years whereas in other Universities it would take six years. In Madras University, after completion of the two-year law course, the candidate was further required to work as an apprentice for a period of one year and also pass a further examination held by the Bar Council.<sup>70</sup>

The Committee also recommended the establishment of State Bar Council for each State and an All India Bar Council at the National Level as the Apex Body for regulating the legal profession. The important recommendation of the Committee was that the apex body should also supervise the standards of legal education in India. To implement the recommendations of the All India Bar Committee, a comprehensive Advocates Bill was introduced in the Parliament and the same was passed as the Advocates Act, 1961.<sup>71</sup>

#### *ii. Establishment of Bar Council of India*

The Advocates Act, 1961 was passed by the Parliament of India by virtue of powers under List I of the Constitution of India.<sup>72</sup> Under this Act, an apex body, namely, the Bar Council of India was constituted at national level. This

<sup>69</sup> Raghava Rao Koka, *Legal Education with Particular Reference to National Law School of India*, *Indian Bar Review*, 1988, vol.15 p.56

<sup>70</sup> *Ibid*

<sup>71</sup> See, S. Gopakumaran Nair, Chairman, Bar Council of India, *History of Bar Council of India*, available at <http://www.barcouncilofindia.org/bar-council/history.php> (last visited on 15 – 6 – 08 )

<sup>72</sup> See, Entries 77 and 78 of List I of the Constitution of India. See also *O.N.Mohindroo v. Bar Council* AIR 1968, SC, 888.



Act required the BCI to promote legal education and to lay down standards of such education in consultation with the Universities in India imparting such education.

In furtherance of section 49 of Advocates Act, 1961, the BCI framed Bar Council of India Rules, 1965 wherein chapter- IV exclusively deals with minimum standards of legal education. These rules were amended from time to time to improve the standards of legal education in India.

Thus, it is clear under the Advocates Act, 1961, that BCI was empowered to prescribe the minimum qualifications required for a student to get admission to a course leading to a degree in law in any recognized University and to prescribe the standards of legal education to be observed by such Universities. In 1962, following BCI orders, all Universities imparting legal education changed over from the two-year to the three-year program in law and revised the curriculum as prescribed by the BCI.<sup>73</sup>

### *iii. Legal Education Committee*

The BCI established Legal Education Committee under Section 10 (2) (b) of the Advocates Act, 1961.<sup>74</sup> The present Legal Education Committee consists of 10 members and ironically only one member Prof. N.L. Mitra, who is a former Director of the National Law School of India University, Bangalore,

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<sup>73</sup> Madhava Menon N.R, Legal Education for Professional Responsibility – An Appraisal of the New Pattern, Madhava Menon N.R Et, LEGAL EDUCATION IN INDIA STATUS AND PROBLEMS, 299 (BCI Trust, 1983 New Delhi).

<sup>74</sup> Section 10 (2) (b): a Legal Education Committee consisting of ten members, of whom five shall be persons elected by the Council from amongst its members and five shall be persons co-opted by the Council who are not members thereof.

representing the teaching faculty.<sup>75</sup> It also consists of 16 special invitees who are all advocates and has no faculty representative.

*iv. Reforming Legal Education*

In early 70's, the BCI decided to adopt a new pattern of legal education in India. In 1975, the BCI recommenced that no student shall be admitted unless he has secured 40% aggregate for Day classes and 50% for the part-time course in the evening in qualifying examination. Admission to the course should be by means of viva-voce test before a Board appointed for the purpose. Medium of instruction should ordinarily be English and it should be included as a subject in the first year. Law Colleges should provide instructions on week days for minimum 3 periods of one hour duration. New colleges should obtain permission from the BCI before starting the institution.

Further, the BCI directed that all the Law Colleges affiliated to the Universities should, by the end of three years, be independent Law Colleges and should cease to be departments attached to colleges for instruction for grant of law degrees.<sup>76</sup> Due to several objections from the Law Colleges, the BCI removed

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<sup>75</sup> The present Legal Education Committee was reconstituted on 7 - 5 - 2007. Members of the Committee being A. P. Misra, Former Judge, Supreme Court of India, Chairman, Legal Education Committee, A. K. Patnaik, Chief Justice of MP High Court, Gopakumaran Nair, Chairman, Bar Council of India, Jaganath Patnaik, Sr. Advocate, Member, Bar Council of India, Ashok Kumar Deb Advocate Managing Trustee, Bar Council of India Trust, C. K. Sharma Baruah, Senior Advocate, Member, Bar Council of India, Dr. Gopal Narain Mishra, Advocate, Dr. N. L. Mitra, Shri T. K. Viswanathan, Law Secretary, Ministry of Law, Justice and Company Affairs, Government of India, Moolchand Sharma, Vice Chairman (University Grants Commission) See: <http://barcouncilofindia.org/bar-council/committees-list.php> ( last visited 16 - 6 - 08 )

<sup>76</sup> Cir.No:LE 7/1975 Dt. 2<sup>nd</sup> July 1975.

the rule that the admission to the course should be by means of viva-voce test before a Board.<sup>77</sup>

*a. Bar Council of India Trust*

In addition to prescribing the standards for legal education, the BCI created The Bar Council of India Trust as a public charitable trust on 27th April, 1974. This trust was created to maintain professional standards and to effect improvements in legal education. In this regard, the Trust intended to establish Law Schools of excellence and to promote legal research.

The other objectives were to render legal aid to the poor, publish law reports, text books and case books for students undergoing legal training, offering scholarships to deserving students, and promote welfare of the members of the profession. The Trust is managed by a Board of Trustees. There are five Members in the Board of Trustees who are members of the Bar Council of India. The Chairman, Bar Council of India is ex-officio of the Board of Trustee. The remaining four trustees are elected from amongst the members of the Bar Council of India for a 4 year term. The Trustees elect the Managing Trustee and Associate Managing Trustee. The Managing Trustee is empowered to look after the day to day administration through its Secretary.<sup>78</sup>

The Bar Council of India Trust organizes various academic workshops for advocates under its continuing education program. The purpose of these

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<sup>77</sup> Cir.No:LE 1/1976 Dt. 11<sup>th</sup> June 1976.

<sup>78</sup> See Bar Council of India Trust available at <http://barcouncilofindia.org/bar-council-trust/constitution.php> (last visited 16-6 - 08)

workshops is to help in updating knowledge and skills of practicing lawyers, and promoting specialization in professional services. Quite a good number of volumes of reading materials on constitutional litigation, advocacy, labour adjudication, tort litigation, administrative law and adjudication, environmental laws, etc., have been assembled to support the continuing legal education.<sup>79</sup>

To promote advocacy skill of the law students, the Trust organizes National Level Moot Court Competition every year. This moot court competition was started in the year 1981. Nearly 35 to 40 Universities participate in the event.<sup>80</sup>

In late 70's the BCI undertook several consultations in nature of national seminar, workshops and debates. Finally a joint meeting was organized with the members of the BCI, Legal Education Committee, selected law teachers, UGC law panel and representatives of the Union Ministries of Education and Law. Subsequently the draft plan of new pattern of legal education was discussed in a seminar conducted at Bombay in August 1977. Several recommendations and suggestions which were made were adopted in subsequent meeting between Legal Education Committee, BCI and Government representatives.

During this period the BCI resolved that Law Colleges or Departments running both, day and evening courses shall be converted into whole-time day course latest by June, 1982. To consider whole time, the working period of the Law Colleges and Departments need to be spread over at least 6 ½ hours every

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<sup>79</sup> *Ibid.*

<sup>80</sup> *Ibid.*

working day comprising of class room lectures, contact hours with teachers, library work and other curricular and co-curricular work of a similar nature.<sup>81</sup>

The library shall remain open for at least 8 hours on every working day. The strength of part-time teachers shall not be more than 25% of the total strength of the teachers. BCI also suggested that multiple copies of the prescribed books be made available in the library and the seating arrangement in the library shall be provided for at least 15% of the students at a time in the reading hall. Further, the circular also mentioned that the teacher student ratio is at least 1:20. The maximum strength of students in each class (LL.B I, II, III) shall not exceed 350, and 80 in any section of each such class.<sup>82</sup>

*b. Introducing Five years integrated LL.B. Course*

After a prolonged deliberations finally, the BCI issued instruction in March 1979 to all Universities and Colleges imparting legal education, to adopt the new pattern of five year integrated course and three years' time was given to change over. Nearly after 5 years of deliberations with the Universities, State Bar Councils and the Legal Education Committee, the BCI recommended changing the 3 years LL.B. program to 5 years and accordingly it recommended the following changes.<sup>83</sup>

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<sup>81</sup> LE(Cir)N0. 4/1979 Dt. 6<sup>th</sup> August 1979

<sup>82</sup> *Ibid.*

<sup>83</sup> BCI: D: 1504/1982 Dt.12<sup>th</sup> May 1982.

A degree in law obtained from any University in the territory of India shall not be recognized for the purposes of enrolment as an advocate from June 1<sup>st</sup> 1982 unless the prescribed conditions are fulfilled. The following are the important measures:

1. At the time of joining the course the person concerned must pass an examination in 10+2 course of schooling recognized by Central or State government or possess such academic qualifications which are considered equivalent to 10+2 course.
2. The course of study for obtaining law degree shall be minimum 5 years out of which first two years shall be devoted to study of pre-law courses and the last 6 months of the fifth year shall include a regular course of practical training.
3. Law College shall be located at a place where there is a District Court or a Circuit District Court.
4. Professional law education shall only be through whole time day colleges or University departments from the academic year 1982 – 83. To consider as whole time, the working period of the Law Colleges and Departments shall extend to at least 5 ½ hours continuously on every working day comprising of class room teaching which shall include at least 4 periods of one hour each and the remaining 1 ½ hour of the working day devoted for other works such as library, tutorials, curricular and co-curricular activities in the campus.

5. The strength of part-time teachers may be increased from 25% to 50% of total strength of teachers.
6. The medium of instruction shall ordinarily be English. However, where the instruction and answering the exams are in a language other than English, the candidate may be enrolled as an advocate only after passing a written test on 'Proficiency in English' to be conducted by a State Bar Council. But such test is not required if the candidate has passed such a test as a part of his course of instruction in law.
7. No student shall be admitted to LL.B course unless he/she secured minimum 45% marks in aggregate in the qualifying examination. However, a relaxation of marks up to 5% in the qualifying examination may be given for the students of Schedule Castes and Schedule Tribes.
8. The teacher student ratio was increased to 1: 40. The maximum strength of students in each class (LL.B I, II, III, IV, V) shall not exceed 320, and 80 in any section of each such class.<sup>84</sup>
9. In the field of curriculum, the BCI recommended seven compulsory pre-law courses for the first two years,<sup>85</sup> and for the remaining 3 years, 12 compulsory papers and minimum 6 optional subjects from 23 subjects

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<sup>84</sup> In other words no College or University Department of Law shall have on its rolls total student strength of over 1600 students in all 5 years put together.

<sup>85</sup> 1. General English - 2 papers, 2. Political Science - 1 paper, Economic - 1 paper, History - 1 paper, Sociology - 1 paper, Legal Language including Legal Writing - 1 paper, History of Courts - 1 paper, Legislatures and Legal Profession in India - 1 paper.

mentioned in the circular. Practical Training was included as one of the compulsory subject.

10. For the practical training, the BCI recommended six months of instruction which shall include court visits, documents, rules of courts, exercise in drafting, pleading; work at Lawyer's Chamber and attendance at Professional Ethics lectures. The student shall be required to pass an examination in this course to be conducted by the University concerned.

11. New colleges approved by BCI would commence professional legal education according to the above rules from the academic year 1982- 83. However, already existing colleges may be allowed to run the existing three-year LL.B. course for a period not more than two academic years. Such colleges seeking extension of time for the change over from three years course to five years must declare their intention to switch over by the academic year 1984 – 85 and send a report within a year from 1-06-1982 to the BCI.

12. Further students who have joined the first year in any graduate course in 1982-83 or earlier would be eligible to pursue legal education under the old rules and such student could be admitted in 3 years course till the beginning of the academic year 1985–86.

13. Therefore after the academic year 1985 – 86, three year degree course would be discontinued.



14. Further the new rules are intended only for giving professional legal education to those students who desire to become advocates only. Hence, students who do not want to enter the profession of advocates can pursue their legal education under the old rules.

In 1982 many Universities expressed their inability to change over and asked for more time. Accordingly the BCI obliged the request and extended the time for another two years.<sup>86</sup> Further, the BCI after receiving several requests from the colleges, passed a resolution that it had no objection for granting an intermediate B.A. degree after completion of first 3 years of 5 years course though such a degree would not entitle the person to practice.<sup>87</sup>

Due to pressure from the Law Colleges and the State Bar Councils, the BCI further amended these Rules. Under the new amendment, the BCI divided 5 years course into two parts. Part – I would be a two year course program of pre-law study and Part – II would be a three year program of professional training in law.<sup>88</sup> Accordingly lateral entry to Part – II of the five year law course was permitted to the students who had a three year degree or a post graduate degree.

In addition to these efforts, the BCI requested the BCI Trust to undertake the preparation of text books on all pre-law subjects. BCI Trust duly agreed to

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<sup>86</sup> Madhava Menon N.R, *supra* note 73 at 303.

<sup>87</sup> LE(cir) N0.2/1984 Dated 14 – 02 – 1984.

<sup>88</sup> LE(Cir.no.3/1985) Dated. 01 – 08 – 1985.

prepare standard text books at cheap prices on the newly introduced subjects. The Trust also agreed to consider the request of organizing teacher training courses in collaboration with the Universities in teaching law related social science subjects.

The BCI even agreed to pursue the matter of grant in aid to Law Colleges with the respective state governments. It made scheme of transition in such a way that the infrastructural requirements need to be met by the Universities for the integrated course was phased over a period of 4 to 5 years in order to not to burden the Universities.<sup>89</sup> BCI Trust made efforts to set up a model deemed University and in the year 1987 National Law School of India University was established in Bangalore.

In spite of all these efforts, many Universities failed to adopt the new pattern of legal education as envisaged by the BCI. The BCI succumbed to the pressures from the institutions offering legal education and failed to phase out the three-year program. Thus, it was forced to give further extension of 3 years course due to pressures from the Colleges and State Bar Councils. Accordingly, further extension was given and 3 year course after graduation could continue up to 1986 – 87 but from 1987 – 88 all Universities were required to offer the five year law course.<sup>90</sup>

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<sup>89</sup> Madhava Menon N.R, *supra* note 73 at 303.

<sup>90</sup> *Supra* note 88.

In spite of extending time for converting the existing 3 year degree course to 5 years integrated course many colleges and Universities found it difficult to changeover. Due to pressure from the Colleges and State Bar Councils, the three year degree course continued even after 1987. As a result five year integrated course continued as a parallel course to three-year course and many institutions offer both the courses simultaneously. Only change that was brought by the BCI is that many Colleges which offered three year degree course also started offering five year integrated course.

This created a new opportunity to the Colleges to combine three year degree course with five year integrated course. Many Colleges offered only pre-law subjects for first two years for five year integrated course and third year onwards they introduced law subjects.

The lateral entry rule by BCI which permits graduate students to join five year integrated course in third year defeated the whole purpose of introducing five year integrated course. In fact, many colleges having both courses, developed a new trend of joining five year integrated course students with three year degree students.

Law Colleges designed the subjects in such a way that 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> year subjects of five year integrated course were same as 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> year of three year degree course. As the attendance was not made compulsory in private institutions, combining five year integrated course from 3<sup>rd</sup> year with 1<sup>st</sup>

year of 3 year degree course proved economically beneficial. This trend seriously undermines the purpose of introducing five year integrated course.

Involvement of the Bar with the legal education received a setback when the BCI issued a circular in 1986 clarifying the right of practicing advocates to take up law teaching under Section 49A of the Advocates Act.<sup>91</sup> The BCI resolved that only practicing Advocates can take up law teaching but a full time law teacher could not be enrolled as an advocate.<sup>92</sup> Further, the BCI imposed a restriction on practicing advocates not to engage in teaching more than three hours in a day. Any advocate employed in any educational institution for teaching law is deemed to be a part-time teacher.<sup>93</sup>

*c. One Year Apprenticeship Rule*

In 1994, the Bar Council of India introduced the one-year training rule after graduation as per recommendations of the Ahmadi Committee. The Committee has recommended that every law graduate undergo one year of training under a senior lawyer with a minimum of 10 years experience at the District Court or High Court. Students were to work for three months in a trial civil court, three months in a Magistrate's Court, and at least six months in a District Court. To enter the Bar, the students would need to obtain a certificate from the senior lawyer in whose office they worked, describing that they were fit to enter the Bar.

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<sup>91</sup> LE (Cir. No.2/1986).

<sup>92</sup> Resolution N0.4/1986 (LE).

<sup>93</sup> LE (Cir. No.2/1986).

These conditions were to be made mandatory. After fulfilling these conditions, students were required to appear for an examination for entry to the Bar; without these formalities a law student would not be eligible to sit for the Bar Council examination. The Committee also recommended that students should secure at least 50 or 60 per cent marks at the Bar Council examination to become eligible to practice at Bar.

After reviewing these recommendations, the BCI introduced a one-year training rule<sup>94</sup> while it discarded the suggestion of entrance examination. However, the BCI received a setback when this rule was challenged in the Supreme Court. In *V. Sudheer v. Bar Council of India*,<sup>95</sup> the Supreme Court struck down the rule as *ultra vires* to the Advocates Act and held that the Bar Council of India is not competent to pass such a rule. Such a rule can be introduced only by the legislature.

While declaring the training rule as *ultra vires*, the Supreme Court recognized the crying need for improving the standards of the legal profession. It recognized the value of equipping lawyers with adequate professional skills and expertise, and held that “a right thing must be done in the right manner.”<sup>96</sup>

The apex court shared the anxiety of the BCI for developing suitable methods for improving the standards of legal education and legal profession. It

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<sup>94</sup> Bar Council of India Training Rules, 1995 – Rule 2 to 15.

<sup>95</sup> 1999 (3) SCC 176.

<sup>96</sup> *Id* at 180.

suggested that these recommendations should be put into practice using appropriate methods.<sup>97</sup>

*d. Uniform syllabus and Mandatory Clinical Component*

Realizing this problem, a three day All India Consultative meeting of BCI, Universities, UGC and State Governments was held at Bangalore in the month of October 1996. The members who attended the meeting unanimously agreed that there shall be a uniform syllabus for both three-year and five-year law courses throughout India.

The members also felt the need to introduce Clinical Legal Education. As a result the members identified 24 compulsory subjects and 6 optional subjects which the concerned University according to the local needs and 4 practical papers.<sup>98</sup> These recommendations were considered by the Legal Education Committee at its meeting on 2<sup>nd</sup> November, 1996.

The Legal Education Committee made certain changes in the said curriculum recommended by the Consultative Meeting.<sup>99</sup> These recommendations were placed before BCI and in its meeting on 16<sup>th</sup> and 17<sup>th</sup> November, 1996 it

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<sup>97</sup> It was felt by the Bar Council of India itself before the Committee that for providing pre-enrolment training to prospective advocates, relevant amendments to the Act were required to be effected. Therefore, the Court strongly recommended appropriate amendments to be made in the Act in this connection. The amendments can be effected only by Parliament. Till the Parliament steps in to make suitable statutory required amendments to the Act for providing pre-enrolment training to prospective advocates seeking enrolment under the Act, the Bar Council of India by way of an interim measure can also consider the feasibility of making suitable rules providing for in-practice training to be made available to enrolled advocates.

<sup>98</sup> Gurjeet Singh, Revamping, Professional Legal Education: Some Observations on the LL.B. curriculum Revised by the Bar Council of India, LEGAL EDUCATION IN INDIA IN 21<sup>ST</sup> CENTURY: PROBLEMS AND PROSPECTS, 288 (Koul A.K., ed, AILTC, Delhi, 1999).

<sup>99</sup> *Id* at 289.

approved the curriculum prepared by Legal Education Committee with certain modification. Finally, the BCI recommended 21 compulsory papers, three optional papers to be chosen among the list of 15, and four mandatory practical papers.<sup>100</sup> It is interesting to note that Consultative Meeting at Bangalore recommended 24 compulsory papers, 6 optional and 4 Practical Papers; altogether 34 subjects in total.

However, the BCI recommended only 21 compulsory papers, 3 optional and 4 practical papers in total 28 subjects. Thus 3 compulsory papers identified by the Bangalore meeting namely; Women and Law, Intellectual Property and Law, Poverty and Development were removed from the compulsory papers and kept in optional papers. Papers on Human rights and International Law were clubbed as one paper, whereas the paper on Law and Medicine was completely removed from the lists of both compulsory and optional subjects.<sup>101</sup> Further, the UGC was informed of the prospects of additional financial need of Law Colleges which proposed to offer new pattern of five-year integrated course.

In 1997, the Bar Council of India issued a circular directing all Universities and Law Colleges to revise their three-year and five-year law curriculum and directed them to incorporate Four Practical Papers.<sup>102</sup> Law Schools have been required to introduce these papers since the 1998-99 academic year. It was decided that all together in three year course 21 compulsory papers, 3 optional

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<sup>100</sup> *Ibid.*

<sup>101</sup> *Id* at 290.

<sup>102</sup> Bar Council of India CircularNo:4/1997.

and 4 practical papers need to be offered. In five year integrated course these subjects would be offered during last three years. This was viewed as a big step towards introducing Clinical Legal Education formally into the curriculum.

*e. BCI New Curriculum*

Though new curriculum was introduced from 1998, the system of pre-law subjects in first two years and law subjects in other three years continued. The rule of lateral entry also continued without any change. Introducing B.Sc, B.Com by Jodhpur and Gujarat National Law School necessitated rethinking of Pre-law, Law and lateral entry rules.

Accordingly in 2008 the BCI issued revised rules on “Standards of Legal Education and Recognition of Degrees in Law” for admission as advocates (herein after Rules).<sup>103</sup> These Rules recognize only two law courses namely, three-year Unitary Degree course<sup>104</sup> and a Double Degree Integrated Course.<sup>105</sup>

The fundamental change brought by these Rules is that the five-year integrated course could be offered in any stream provided that the total period for completion of double degree cannot be less than one year of the total time

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<sup>103</sup> BCI letter BCI:D:1518:2008(LE/RULES-PART-IV) dated: 24/12/2008.

<sup>104</sup> Rule 4 (a) A Three-year Unitary Degree Course: A three-year course in law undertaken after obtaining a first degree from a University or any other qualification considered equivalent qualification by the Bar Council of India.

Provided that admission to such a course of study for a degree in law is obtained from a University whose degree in law is recognized by the Bar Council of India for the purpose of enrolment.

<sup>105</sup> “Integrated Degree course in law” means double degree course comprising the bachelor degree in any branch of knowledge prosecuted simultaneously with the Degree course in law in such an integrated manner as may be designed by the University concerned for a continuous period of not less than five years. Also see Rule 4 (b).



required for regularly completing the two courses one after the other in regular and immediate succession.<sup>106</sup>

With regard to eligibility for admission, the Rules prescribe 30 years as a maximum age for admission into three year degree course in law. However, in case of Schedule Caste, Schedule Tribe, and Other Backward Class the maximum age prescribed is 35 years. For integrated double degree program the maximum age is 20, whereas for Schedule Caste, Schedule Tribe, and Other Backward Class it is 22 years.<sup>107</sup>

The other change brought by the Rules is that it bars the applicants who obtain 10 +2 or graduation thorough Open University without having any basic qualification for pursuing 10 +2 or graduation.<sup>108</sup> It also further bars pursuing two degree programs at the same time except short term certificate courses and any course offered by Centre for Distant Learning of any University.<sup>109</sup>

The Rules insist on adopting semester system and each semester shall have not less than 15 weeks for unitary degree course and minimum 18 weeks for double degree course. Every week should have a minimum of 30 class hours including tutorials, moot room exercise and seminars where in at least 24

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<sup>106</sup> For example Double degree integrated course such as BA., LL.B. can be completed within (3+3-1) i.e. 5 years. But if one intends to do B.Tech., LL.B. it can be done in (4+3-1) i.e., 6 years. But in any case a double degree integrated program cannot be less than five years. For example in a University one can have a two years' graduation in any social science leading to BA degree, in that case also the composite double degree integrated course leading to BA, LL.B. would be of five years duration because double degree integrated course cannot be of less than five years' duration. See explanation 1 & 2 to Rule 4 (b).

<sup>107</sup> Schedule III, Entry 8.

<sup>108</sup> Rule 5.

<sup>109</sup> Rule 6.

lecture hours per week. Specialized and/or honours law courses requires minimum 36 class-hours per week including seminar, moot court and tutorial classes and 30 minimum lecture hours per week.

The Rules provide an option to the colleges to opt trimester instead of semester. In such a case each of the trimesters shall have not less than 12 weeks.<sup>110</sup> The Rules prescribe four class hours of one hour duration and one hour of tutorial/moot court/project work per week per subject.<sup>111</sup> The Rules also prescribe that the size of the class room shall not be more than 60 students.<sup>112</sup> In non residential institutions the classes may be conducted between 8 a.m. to 7 p.m. however this may not apply to the residential institutions.<sup>113</sup>

One more important change brought by the Rules is prohibition of lateral entry<sup>114</sup> and exit.<sup>115</sup> According to this rule a graduate cannot take admission in a five year program at 3<sup>rd</sup> year. Similarly, it prohibits awarding intermediary degree to any student undertaking five-year integrated double degree course after completing three years.<sup>116</sup>

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<sup>110</sup> See Rule 10.

<sup>111</sup> Schedule II Entry 8.

<sup>112</sup> Schedule III entry 5A.

<sup>113</sup> Schedule III entry 5.

<sup>114</sup> "Lateral Entry" is an admission given to graduate applicants at the beginning of third year in an integrated Five Year Course.

<sup>115</sup> "Lateral Exit" means opting out at the end of three year after successfully completing the courses up to the third year, from an Integrated Five year course on being awarded a Bachelor degree.

<sup>116</sup> Rule 13 Prohibition Against Lateral Entry and Exit: There shall be no intermediary degree awarded to any student in an integrated double degree course and there shall be no lateral entry during any year within the integrated course. The only entry point in an integrated double course is in the first year and only exit point for awarding an integrated degree is at the successful completion of the 5<sup>th</sup> year i.e. on the completion of entire double degree course.

With regard to academic standards, the Rules specify that English shall be the medium of instruction for both courses. If any University allows full or in part instructions other than English or allows the students to write examination in any language other than English, English should be offered as a compulsory paper.<sup>117</sup> Students of double degree program are expected to learn at least one Foreign Language.

As far as number of subjects are concerned, Schedule II of the draft rules prescribes that students of three-years unitary course or under the integrated double degree course required to take not less than 28 papers (subjects) in all including 18 compulsory papers,<sup>118</sup> 4 Clinical papers<sup>119</sup> and 6 optional papers<sup>120</sup> and also of any additional papers prescribed by the University from time to time.

In case of double degree program in addition to these law papers students need to opt one major subject and two minor subjects or such number of compulsory

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<sup>117</sup> Schedule II Entry 1.

<sup>118</sup> The following are the compulsory subjects: 1. Jurisprudence (Legal method, Indian legal system, and basic theory of law); 2. Law of Contract; 3. Special Contract; 4. Law of Tort including M V Accident and Consumer Protection Laws; 5. & 6. Family Law (2 papers); 7. Law of Crimes Paper I : Penal Code 8. Law of Crime Paper II : Criminal Procedure Code; 9. & 10. Constitutional Law (two papers); 11. Property Law; 12. Law of Evidence; 13. Civil Procedure Code and Limitation Act; 14. Administrative Law; 15. Company Law; 16. Public International Law 17. Principles of Taxation Law; 18. Environmental Law; 19. & 20. Labour and Industrial Law (2 papers)

<sup>119</sup> The four practical papers are 1. Drafting, Pleading and Conveyance; 2. Professional Ethics & Professional Accounting system; 3. Alternate Dispute Resolution; and 4. Moot court exercise and Internship.

<sup>120</sup> Optional papers can be opted from any of the following seven groups: 1. Constitutional Law Group; 2. Business Law Group; 3. International Trade Law; 4. Crime & Criminology; 5. International Law; 6. Law & Agriculture; and 7. Intellectual Property Law.

subjects as prescribed by the University concerned and English. There shall be 6 papers in major and three papers each in minor and in languages.<sup>121</sup>

The syllabus for non law subjects in double degree program must be comparable to the syllabus prescribed by leading Universities in India in three year bachelor degree program in BA, B. Sc, B.Com, BBA etc. Such syllabus must satisfy the standard prescribed by the UGC/AICTE and any other respective authority for any stream of education.

For specialized or Honors course, a student has to take not less than 36 papers in all including 18 compulsory, 4 Clinical course, 6 optional papers and 8 papers in specialized/Honors course in any Group indicated in Schedule II.<sup>122</sup>

However if eight papers are taken from multiple groups, Honors can be given in general law without specialization.<sup>123</sup>

#### *Changes in Mandatory Clinical Component*

Though the practical paper on Legal Aid has been replaced by ADR, each Law College is under an obligation to establish and run a Legal Aid Clinic under the new Rules.<sup>124</sup> This Clinic shall be supervised by the senior faculty member with final year students with the help of Legal Aid Authorities, pro bono

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<sup>121</sup> Schedule II point 6

<sup>122</sup> For list of subjects and groups see Schedule II

<sup>123</sup> For Example, "A" takes eight honours papers selected as follows: two from Constitutional Law, three from Business Law, one from International Law and two from International Trade Law, his Honours shall be in Law. "B" takes eight papers from Constitutional Law group; his honours shall be mentioned in Constitutional Law.

<sup>124</sup> Point 11 Schedule III.

lawyers and NGOs. However, the Rules are silent about the academic credit for the legal aid work.

In addition to legal aid work, every student shall complete minimum of 12 weeks internship for the Three Year Course and 20 weeks in case of Five Year Course. This internship could be undertaken with any NGO, Trial and Appellate Advocates, Judiciary, Legal Regulatory Authorities, Legislatures and Parliament, other Legal Functionaries, Market Institutions, Law Firms, Companies, Local Self Government and other such bodies as the University shall stipulate, provided where law is practiced either in action or in dispute resolution or in management.

However, the internship in any year cannot be more than Four Weeks continuously. Students must undertake internship at least once with Trial and Appellate Advocate in their entire academic period. During the period of internship, the students are expected to maintain a diary and the same may be evaluated by the Guide in Internship and also by a Core Faculty of the staff. Marks for internship shall be assessed in final semester and allotted in the Clinical Course IV.<sup>125</sup>

The Rules impose an obligation on State Bar Councils to prepare district wise list of senior lawyers having at least 10 years practice and who are willing to take the students for internship during the vacation period. The BCI shall

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<sup>125</sup> Schedule III entry 25.

publish this list in the web-site and also make the list available with the institutions.<sup>126</sup>

The Rules authorize Bar Council of India to establish a Directorate of Education. The Directorate of Education would undertake organizing, running, conducting, holding, and administering;<sup>127</sup>

- (a) Continuing Legal education,
- (b) Teachers training,
- (c) Advanced specialized professional courses,
- (d) Education program for Indian students seeking registration after obtaining Law Degree from a Foreign University,
- (e) Research on professional Legal Education and Standardization,
- (f) Seminar and workshop,
- (g) Legal Research,
- (h) any other assignment that may be assigned to it by the Legal Education Committee and the Bar Council of India.

The Directorate of Legal Education shall function under the guidance of Director of Legal Education appointed by BCI on the advice of Legal

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<sup>126</sup> Schedule III entry 26.

<sup>127</sup> Rule 34.

Education Committee.<sup>128</sup> BCI also has the power to appoint one or more Legal Education Officer on the recommendations of Director of Legal Education and in consultation with the Chairman of the Legal Education Committee.<sup>129</sup> However, The Rules are silent about the functions and powers of the Legal Education Officer.

These new rules have raised several issues as they lack clarity. Though the efforts of the BCI in revamping the curriculum is laudable and particularly the idea of introducing specialization is worth appreciation, it appears that the entire drafting of these Rules is hasty and without application of mind on finer points and details. The BCI needs to clarify the meaning of the terms 'subjects' and 'papers' as their usage is not uniform throughout the Rules. Further, the introduction of the Double Degree Program calls for development of full-fledged curriculum of liberal arts, science and management. This necessitated the establishment of Curriculum Development Committee.

*f. Draft Report of Curriculum Development Committee 2010.*

The first Curriculum Development Committee (CDC) of the Bar Council of India was constituted for the purpose of facilitating Universities and Institutions to formulate the course design in various courses in Law, Social Sciences, English Language, Science, Management and Commerce courses for both Unitary (three Years') and Double Degree Integrated (not less than Five Years') Courses.

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<sup>128</sup> Rule 35.

<sup>129</sup> Rule 36.

This Committee consisted of Shri. N. L. Mitra, member of the Legal Education Committee of BCI as its Convener; and Mr. J.R.Beniwal, Vice Chairman of the Bar Council of India; Professor Ranbir Singh, VC of NLU, Delhi; Dr. Balraj Chauhan, VC, RMLNLU, Lucknow; Dr. Gurjeet Singh, VC, RGNLU, Patiala; M. K. Balachandran, Director, Amity Law School, Delhi; Vijayakumar, UNHCR Chair Professor, NLS, Bangalore; and Professor Amar Singh, Former Dean of H.P. University and presently Professor, NLU, Delhi as its other members.<sup>130</sup>

The Committee has emphasized the faculty autonomy in designing and conducting the courses in the University. It expects the faculty of the Law Colleges to ensure that:<sup>131</sup>

- a. The course design is up-dated each time and the study-material is kept dynamic;
- b. appropriate methodology of teaching-learning based on the object and objectives (variables) of the study is developed; and
- c. the standard achieved by the learners without unduly pressurizing only the memory level but emphasizing the skill of application of law and detailing the fact analysis with lawyers' analytical precision, is properly evaluated.

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<sup>130</sup> Report of the Curriculum Development Committee (CDC), I, Bar Council of India, 6 (BCI, New Delhi 2010) available at [www.barcouncilofindia.org/.../Preliminary\\_observationNew\\_Microsoft\\_Word\\_Document.doc](http://www.barcouncilofindia.org/.../Preliminary_observationNew_Microsoft_Word_Document.doc) (last visited 18-3-10)

<sup>131</sup> Id at 2.



CDC opined that the integrated law course with the first degree subjects is highly technical and therefore there is a need for harmonization of the curriculum. Further, the faculty of the institutions needs to make a serious effort to customize the course and develop the strategy of teaching-learning based on the local needs and resources available.

It deals with preliminary course design, especially in courses to be allocated in the first year of studies in both the Unitary and Double Degree integrated courses. With regard to other courses CDC would formulate the same in future. It also encourages development of study materials and Case-books based on the course design.

CDC emphasizes that this report is only to be considered as suggestive benchmark at the minimum level. Therefore, Universities are free to improve upon and prescribe higher standards.

CDC has categorized the role of legal education as value education and professional education. It states that emphasis of the Universities is more on legal education as a value education; and the second role as a professional education is the look out of the BCI for standardization with the help of Universities. It has also identified several unresolved contradictions that are required to be resolved by BCI. One of such important contradiction is introducing the Bar Exam for enrolment of advocates. Further it has also pointed out the problem of paucity of qualified faculty and stressed on the need for the so called National Law Schools to emphasize on Faculty Improvement

Program.<sup>132</sup> It highlights the difference in the role played by the Law Colleges and Law Universities in the following words;

“One has to clearly understand now the role-difference between a Law School/College and a Law University. A Law School/College is run to impart ‘professional legal education’ for skill-learning through the prescribed courses and instructions as laid down by the Bar Council. The School/College has to strictly adhere to the standards to make the students competent to be a legal professional. On the other hand, a Law University has wider responsibility to carry on its higher educational experiments with both low-end and high-end integration of knowledge in addition to its usual School/College functions. Law Universities are also required to develop human resources for the Law Schools/Colleges and carry on higher studies and research in legal courses.”<sup>133</sup>

It suggests that transforming legal education into justice education requires “a very high degree of integration between education relating to ‘matters of fact’ and ‘matters of law’.”<sup>134</sup> Establishing National Law Schools would possibly fulfill the first commitment. Therefore the next experiment has to start now.

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<sup>132</sup> There are [910] Law Schools in the whole country including [more than 300] University Schools including Deemed University Schools and 13 National Law Universities. These institutions are expected to bring out [about 100,000] law graduates every year of whom about 35 to 40% join the legal profession. Universities ‘pass-out’ nearly 300-400 Masters and about 15-20 doctorates annually, in a country with more than 1.2 million lawyers, country-wise the second largest law profession of the world. There are now about 15,000 applicants to take up legal studies seriously just after ‘+2’ stage and about 75,000 graduates in any subject wanting to register for legal education after graduation. See CDC Report *supra* note 130 at 9.

<sup>133</sup> CDC Report *supra* note 130 at 10.

<sup>134</sup> ‘Matters of fact’ education comes from science, social science, engineering, technology, medicine, etc. On the other hand, ‘matters of law’ education comes from value education in each branches of

With this background the CDC has attempted to “formulate the various courses of studies to facilitate high professional skills, building up of human resource with proper integration of knowledge to match the growing world standard.”<sup>135</sup>

Novelty of CDC Report is that it provides a structural design for legal education and it is only suggestive and not mandatory. The Report provides different structural design; for urban as well as rural Universities. It also suggests minimum infrastructure requirements and they differ, depending on which category the institution fits in to. These categories are based on three variables of geographical location, annual intake of students, and the courses offered.

#### Geographical Location

- (i) Local institution,
- (ii) State level, and,
- (iii) National level institution.

#### Annual intake

- (i) Annual intake of one section,
- (ii) Two sections,
- (iii) Three sections, and,
- (iv) Four sections.

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knowledge and consequently development of system of ‘procedure and proof’. See *supra* note 130 at 11.

<sup>135</sup> *Ibid.*

Course offered

- (i) Running only Unitary Law Course,
- (ii) Only integrated Double Degree Law Course, or
- (iii) Running both the Programs.

The logic behind such classification, CDC says is that only few from 3 years graduate Course join legal profession and most of them join in litigation practice. Whereas the CDC has found that the majority from five year integrated Course, join legal profession but very few of them join in litigation practice. Further, it states that the students passing out of rural Universities join trial court litigation and therefore they require different skills altogether, compared to those who practice in High Court or Supreme Court.

Accordingly the CDC has suggested that:

- (a) A rural University based on District towns with limited resource may sponsor a Law School suitable for starting a Course which is less investment oriented and call for more skills suitable for trial court litigation and also develop entrepreneurial skills for developing Non-Governmental Organization to help dispensation of justice at the grass root level. These Institutions may also focus on the aim of the making of subordinate Court judges.
- (b) The big City based Law Schools with comparatively bigger capacity of investment may run Law Schools with Honors courses to motivate

students to practice in variety of fields such as Tribunals and also in the High Court's with specialized knowledge in various branches of law.

- (c) Big Universities and National Law Schools, one of which would be located ultimately in each of the States, have to invest on a larger scale in teaching and learning to prepare in respect of legal skills for all specialized branches of law and develop excellence in legal education.

The Report then suggests that each institution needs to assess the available resources to play its role. They need to plan their academic programs based upon the role they play. CDC has framed structural requirements based on four types of Law courses that the country may develop. They are;

- i. Low cost- oriented 'Three Years' LL.B. Course with one/two/three section per year.
- ii. Medium cost oriented Three Years' LL.B. Course with Honours/Specialization and with one/two/three sections per year.
- iii. High cost oriented Five Years' integrated double degree Course with intake in one/two/three streams.
- iv. Highest cost intensive Five Years' integrated Course in One/Two/Three/ streams with Honours/Specialization, and with or without facility of 'dipos' or 'tripos' (Double or triple honours) facilities.

The first model is ideal for a rural University and the idea is to produce trial court lawyers and the judges of subordinate judiciary. The medium of

instruction could be the State's vernacular language. It is ironical that new Bar Council of India Rules have made English as a mandatory medium in Law Colleges. Though the CDC suggests that English program shall be compulsory where full time faculty in English is required, there could be practical problems when it comes to translating all relevant legal documents and cases laws in the vernacular language.

The second model is suitable for the urban Law Colleges and the CDC suggests that these colleges may offer honors education with specializations in any field such as Civil and Criminal Law, Commercial law, Taxation law, Family law, Consumer law and Human Right law & Practices. The medium of instruction in these colleges has to be English.

The third model is the 5 years integrated double degree Program and it is particularly suitable for big educational institutions in cities and metros. Colleges having different streams of undergraduate courses could afford to introduce these courses.

The fourth model is suitable for National Law Universities, University Departments and big autonomous Institutions. The purpose of these institutions is to play a role in the growth of the profession on specialization and also concentrate on intensive academic program and research.

The CDC prescribes different infrastructural requirements for all the four models. These differences are also found in number of course to be offered

and number of weeks of instruction per semester.<sup>136</sup> The CDC also made an attempt to set the guiding principles in preparing the course content. In fact it has provided quite a few models of curriculum in both; law and other subjects.

Though the Draft Report of the CDC is laudable, it raises several concerns such as using vernacular language in rural areas, officially grading the colleges on the basis of resources and geographical situations, etc. These measures if accepted, may result in further increasing the gap between the so called National Law Schools and other Law Colleges, thereby creating further hurdle to the students from other colleges an having access to better opportunities in the field of legal education.

The close look at the efforts made by BCI makes one feel that initial efforts were mostly directed towards institutionalizing legal education in India. Subsequently the attention of BCI was drawn to the curriculum. A considerable amount of time was spent on course structure, infrastructural facilities and work load. In spite of giving a limited power to the BCI by the Advocates Act, it has tried to control and regulate all kinds of legal education.

### ***3.3.2. Efforts made by the University Grants Commission***

The present system of higher education in India dates back to Mount Stuart Elphinstone's minutes of 1823. It stressed the need for establishing schools for teaching English and the European sciences. Subsequently several

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<sup>136</sup> Table I,II,III and IV provides details of requirements for model 1,2,3, and 4 respectively. See *supra* note 130 at 21 – 49.

recommendations were made regarding reforming education in India, and in 1857 three Universities namely University of Calcutta, University of Bombay and University of Madras were set up. This was followed by the University of Allahabad in 1887.<sup>137</sup>

In the year 1925, the Inter-University Board (later known as the Association of Indian Universities) was established for the purpose of promoting University activities, and sharing information and cooperation in the field of education, culture, sports and allied areas.

For the first time, formulation of a National system of education in India was mooted by the Central Advisory Board of Education on Post War Educational Development in India in 1944. This report was also known as the Sargeant Report. It recommended the formation of a University Grants Committee.

Accordingly, the University Grants Committee was established in 1945. In the beginning, the Committee was empowered to supervise the work of the three Central Universities of Aligarh, Banaras, and Delhi. In 1947, the Committee was entrusted with the responsibility of overseeing all the Universities existing in India.<sup>138</sup>

Due to socio-political changes which occurred in India as a result of independence, the University Education Commission was set up in 1948. Dr. S Radhakrishnan was appointed as Chairman of the Commission "to report on

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<sup>137</sup>See <http://www.ugc.ac.in/about/genesis.html> (last visited 16 - 6 -08)

<sup>138</sup> See <http://www.ugc.ac.in/about/genesis.html> (last visited 16 - 6 -08)



Indian University education and suggest improvements and extensions that might be desirable to suit the present and future needs and aspirations of the country".

The major recommendation made by the Committee was to reconstitute University Grants Committee on similar lines of the University Grants Commission of the United Kingdom with a full-time Chairman and other members to be appointed from amongst educationists of repute.

In 1952, the Union Government decided that all cases regarding allocation of grants-in-aid from public funds to both Central and other Universities and other educational Institutions of higher learning might be referred to the University Grants Commission. As a result, the University Grants Commission (UGC) was formally inaugurated by late Shri Maulana Abul Kalam Azad, the then Minister of Education on 28 December 1953.<sup>139</sup>

However, the University Grants Commission (here in after UGC) was established as a statutory body in November 1956 under an Act of Parliament, the University Grants Commission Act, 1956. The UGC has the unique distinction of being the only grant-giving agency in the country which has been vested with two responsibilities; that of providing funds and that of coordination, determination and maintenance of standards in institutions of higher education.

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<sup>139</sup> *Ibid.*

The UGC's mandate includes:<sup>140</sup>

- Promoting and coordinating University education.
- Determining and maintaining standards of teaching, examination and research in Universities.
- Framing regulations on minimum standards of education.
- Monitoring developments in the field of collegiate and University education;
- Disbursing grants to the Universities and colleges.
- Serving as a vital link between the Union and state governments and institutions of higher learning.
- Advising the Central and State governments on the measures necessary for improvement of University education.

In order to ensure effective region-wise coverage throughout the country, the UGC has decentralized its operations by setting up six regional centres at Pune, Hyderabad, Kolkata, Bhopal, Guwahati and Bangalore. The head office of the UGC is located at New Delhi.

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<sup>140</sup> *Ibid.*

*i. Recommendations of Baxi Committee*

The UGC was established to look after the University system and it has no expertise to deal with each branch of higher education. It established a panel on legal education which was presided over by the retired Chief Justice of the Supreme Court of India. The purpose of this panel was to guide and standardize the legal education. Unfortunately, it has done nothing significant in improving standards of legal education in India.<sup>141</sup>

However, the UGC did appoint a Curriculum Development Centre in Law at University of Delhi (here in after Baxi Committee) in 1986, to give advice on standardizing curriculum for graduate and post-graduate course with Prof. Upendra Baxi, appointed as its chairman.<sup>142</sup>

Legal education is distinct to other streams of education due to its significant contribution to society and national integration. Keeping this in mind CDC observed the reforms in legal education in three phases. In the first phase (roughly 1950 – 65), the principal theme was to transform legal education from the colonial heritage and to Indianize it; in the second phase (roughly 1965-75) the emphasis was more on sound reorganization of curricula and pedagogy towards improving professionalism; in the third phase (roughly 1976 – 88) the

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<sup>141</sup> N.L.Mitra, *Legal education in India*, Conference of International Legal Educators, Florence, Italy (2000) available at <http://www.aals.org/2000international/english/India.htm> (last visited on Aug. 20, 2006).

<sup>142</sup> The CDC consist 11 members. Apart from its Chairman, the other members of the CDC are Prof. Virendra Kumar, Punjab University; Prof, Leelakrishnan, Cochin University; Prof.R.K.Mishra, Banaras Hindu University; Prof. P.Koteswara Rao, S.V. University; Prof. S.P. Sathe, ILS Law College, Prof. D.N. Saraf, Jammu University; Prof. Lotika Sarkar, Delhi University; Prof. B.M. Shukla, P.G. Law School, Prof. B.Siraramayya, Delhi University; and Prof. Chhatrapti Singh, Indian Law Institute.

focus was on modernization of law curricula so as to make it increasingly relevant to the problems of society and state in deep throes of transition.<sup>143</sup>

The CDC recognized that the legal education faces three challenges: “Modernization of syllabi to make them socially relevant, Multidisciplinary enrichment of law curricula, and corresponding pedagogic modification.”<sup>144</sup>

*a) Modernization of Curricula:*

CDC opines that legal science is a human science and relatively independent from other human and social sciences. Besides offering techniques, Skills and competences, the legal education is also concerned with the basic philosophies, ideologies, critiques and instrumentalities, and addresses the aspect of creation and maintenance of a just society. Thus, the concern with ‘justice in society’ and ‘just society’ differentiates legal science from other social and human sciences.

When the mission of legal science is to help in building a just society, legal education needs to provide occasions of or articulation of theories of a just society. And these articulations must have a sound basis in historical realities of India and post-colonial social formations. Unfortunately the present curriculum in law is about the research and teaching moving around theories of justice and rights developed in the western world. Therefore, modernization

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<sup>143</sup> REPORT OF THE CURRICULUM DEVELOPMENT CENTRE, 2(UGC, NEW DELHI, 1988)

<sup>144</sup> *Id* at 9.

means first-hand indigenous thinking, research and teaching of justice in the Indian context.

As far as modernization is concerned the CDC considers constitutional rehabilitation of legal education as fundamental aspect. CDC advocates legal education, and the research has to draw its contents and directions from the ideology of Indian Renaissance and nationalist movement and subsequently be embodied in the Constitution of India. To make legal education socially relevant, it must draw commitment from the Preamble and Fundamental Duties enshrined in Part – IV A of the Indian Constitution.

Thus, the CDC has considered constitutional rehabilitation of legal education as an aspect of modernization. And this could only be done if curriculum and pedagogy prepare the student and the teacher for a conscientious discharge of their fundamental duties. Further, the CDC has identified that modernization also stands for the enhancement, enrichment and escalation of human sensibility of fellow-feeling.

CDC emphasized on role of legal education in developing law as a hermeneutical profession. Explaining the role of a lawyer, the CDC says, “A lawyer is not just an advocate for a client, a member of the class of ‘hired knife-thrower’.<sup>145</sup> A lawyer also plays diverse roles of a legislator (in drafting contracts, wills, and memoranda of resolution out of court) and even as a de facto judge when he advises; ‘This is not a fit case to file or appeal.’ HRD

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<sup>145</sup> *Id* at 14

through legal education should encompass development of all these role skills and sensibilities.

But it warns that, developing legal education does not mean producing efficient professionals. Though it is important to produce efficient professionals, the underlying model of professionalism is linked with struggles for social justice, the maintenance of the rule of law and of democratic development.

From this perspective, the CDC has expressed its concerns about the great social cost in producing half-backed lawyers by indifferent legal education.

Some costs are as under:

- Inefficient and wasteful utilization of the time of court, with resultant arrears which no amount of judicial manpower planning can reverse.
- Growth of insidious pathologies of the Bar (failure of self-regulation, exploitation of clients, unjustified strikes).
- Lack of adequate professionalism in counseling and advocacy.
- Indifferent drafting of law, causing prolix litigation;
- Corruption in courtroom bureaucracies.
- Cynicism and growing disenchantment with legal processes, disrepute of judges, profession and of law.
- Recourse to violence as alternative to law.

- Submission to injustice.

The CDC has attributed the deformation and decline in legal profession (widely constituted as including judging, counseling, advocacy, teaching and research) to the state of legal education, and says that such a state of affairs is simply unconscionable. Such deformation causes a threat to the credibility of democratic institutions and processes in India, to national development and overall to the unity and integrity of India. Human resource development in relation to legal education must signify a comprehensive plan to arrest these tendencies.

Therefore, the CDC believes that legal education should be designed in such a way as to promote inherent humanity of the profession. As Gandhiji urged on October 6, 1920 in Young India, “the best legal talent must be available to the poorest at reasonable rates.” Thus, the task of human resource development by legal education is to convert the practice of law from a disabling into enabling profession.

*b) Multidisciplinary enrichment of Law Curriculum:*

The CDC considered various alternatives for fundamental transformation of the LL.B. curriculum. As the CDC felt that such a radical transformation is not possible at the national level, it considered a multidisciplinary enrichment of law curriculum. For example, the traditional classification of substantive and procedural subjects results in missing the understanding of close relation between the two.

In the same way, the traditional division between public and private law, civil and criminal law, mercantile and labour law results in specialization only in one area without knowing the other part, even though both branches are interrelated. For example, a teacher in corporate law may not have knowledge of labour law, as if capital and labour are two completely different and unrelated areas. Similarly, a contract law teacher may not have any idea of special contract and transfer of property.

Therefore, the CDC advocated the regrouping of existing and additional subjects and to integrate them.<sup>146</sup> The purpose of such integration was to prescribe LL.B. curriculum, which is capable of offering a string of related core courses with specialized optional areas. This kind of integration was designed so as to enable the teachers and law students to grasp fully the interconnection of various law subjects and provide overall knowledge of law and its implementation.

Accordingly the CDC recommended twelve compulsory courses; one on practical training in law and seventeen optional courses. It felt that out of seventeen optional courses, the institutions offering legal education must offer core optional courses such as Environmental Law; Urbanization and the Law; Law, Science and Technology; Law and Rural Development; Consumer Justice; Law and Poverty.

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<sup>146</sup> For groupings of subjects see REPORT OF THE CURRICULUM DEVELOPMENT CENTRE 17 (UGC, NEW DELHI, 1988).



As far as work load is concerned, the CDC recommended that Law Colleges should have minimum 24 lectures per week as against present 18 lectures. Thus, in the semester pattern, in every semester instead of three, four subject would be offered. In case of yearly pattern instead of six, eight subjects would be required to be offered.

Further, the CDC proposed an Honors program to encourage fulltime students to more sustained effort at legal learning. For the Honors program, the CDC developed 26 separate optional courses. The proposed Honors program would be a fulltime three-year course. CDC recommended the UGC, to encourage all University departments presently offering only Master's program, to offer LL.B honors program. Further it recommended that the Law Colleges having good infrastructural facilities and full time teachers also may be considered for this Honors program. Student intake to Honors program would necessarily be small; 25 to 30 per annum. The CDC identified 11 Universities and recommended the UGC to assist in instituting the LL.B. Honors program.<sup>147</sup>

*c) Pedagogic Modification:*

Pedagogic pathologies arise from diverse varieties of underdevelopment of legal education. More number of students enrolment results in poor staff-student ratio. The low number of full-time teachers contributes to poor teaching. The lack of any organic nexus between teaching and examination is

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<sup>147</sup> Andhra University, Aligarh Mulism University, Banaras Hindu University, Delhi University, Jammu University, Jaipur University, Karnataka University, Kurukshetra University, Punjab University, Punjabi University, National Law School of India University.

another contributory factor. The indifferent motivation for legal studies on the part of law students discourages and may also serve as a disincentive for pedagogic innovation.

The CDC, has observed that a number of conferences and reports have already addressed about the adoption of new teaching methods such as case method, problem method, but it does not recommend any ideal teaching method for legal education at undergraduate level. The CDC concentrates more on encouraging students' presence and participation and sustenance of academic motivation on the part of both teacher and the taught.

For more meaningful participation of students in the learning process, the CDC proposes an orientation program for law students at the beginning. The purpose of the orientation program is to familiarize the students to Law College and legal environment, as the students join Law College from different streams. The CDC felt that this kind of orientation program would also build a rapport between the teachers and the taught. It advocates that classroom instruction should be preceded by an orientation program aimed at making law students self-reliant and autonomous in the matter of searching of legal and other materials. For the purpose of legal material, the CDC developed classification on the following lines;

- i. Statutory Materials
- ii. Case-law or Report

- iii. Periodical
- iv. Aids for searching of legal material – Digest, Indices, Manuals, etc.
- v. Law books
- vi. Other reference material – Encyclopaedias, Corpus juris, Halsbury's Laws of England, Law dictionaries etc.

The CDC proposes that the orientation program should consist of two parts; "the first five days should be utilized for familiarizing students with the legal materials and the next ten days for an action program when specific problems would be given to students to assess their performance."<sup>148</sup>

Further, the CDC recommended the use of instructional materials from mass media, audio – visual techniques of instructions and internal assessment. It recommended that 40% of marks should be assigned for internal work. It identified several ways in which internal assessment could be undertaken by the Law Colleges.<sup>149</sup> Regarding practical training, it recommended the use of legal services programs, national social service schemes and moot courts to strengthen the same.

The Baxi Committee tried to improve the Law School syllabi with an interdisciplinary approach to make them socially relevant. It also supported the

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<sup>148</sup> A detailed Scheme of Orientation was given in the Appendix of the REPORT OF THE CURRICULUM DEVELOPMENT CENTRE 48 - 51 (UGC, NEW DELHI, 1988).

<sup>149</sup> E.g. Midterm quiz, preparation on class assignments, participation in class discussions, case comments, book reviews, writing essays, library research on contemporary problems.

establishment of National Institute of Legal Education to provide teacher-training and faculty improvement programs. It also suggested a joint effort by UGC and the BCI in offering faculty improvement programs and preparation of text books and case books. The Committee recommendations are ambitious in nature, substantive in content and have a rich vision for future.<sup>150</sup>

In spite of these efforts, no significant improvement in standards of Law Schools has been achieved. Lack of faculty expertise in new subjects, unavailability of textbooks and lack of flexibility in teaching and assessing in subjects like Poverty and Rural Development made these socially relevant subjects ineffective.

*ii. Report of Special UGC Committee 2001*

In the mid 90's, the BCI revamped the LL.B. program with more academic inputs and practical courses. The BCI identified the papers essential for making a professional lawyer and made them part of the curriculum in Law Schools and Law Colleges that impart professional education. These changes were made mandatory to all Law Schools by circular dated 21st October 1997.

However, the BCI merely laid down only the number and title of papers to be offered and the details were left to be developed by the Universities. The BCI said: "The identification of the content and number of each paper in the prescribed courses is left to the discretion of the University Academic Bodies.

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<sup>150</sup> REPORT OF CURRICULUM DEVELOPMENT COMMITTEE 1 (UGC, NEW DELHI, 2000).

The CDC Report (1988) commissioned by the UGC may be followed by Universities while preparing the syllabi for the various courses."

These developments necessitated the law panel to request the UGC to convene workshops for the purpose of updating legal curriculum. In response to the request, the UGC initiated several workshops in different parts of the country in the late nineties with a view to updating the CDC syllabi. Deans of faculties of law and Chairmen of Boards of Studies participated in these workshops. The Bangalore (1996) and Gorakhpur (1997) workshops focused on LL.M. syllabi, while the Jammu (1997) seminar was focused on both LL.M. and LL.B. The Cochin and Kurukshetra meetings (1998) discussed LL.B. (Hons.) program as one to be introduced in select Universities.

Finally, the responsibility fell on the Special UGC Committee (herein after Committee), constituted by the UGC in the year 2000, to take up the venture with a view to shedding more light on the frontier areas of law. The committee also completed the updating work already started by the law panel and submitted its report in 2001.<sup>151</sup>

The Committee report observed that "[e]verything that is printed becomes out of date." This being true, there is no wonder that many a programs of legal education become outdated by the time they are introduced after long gestation period. This makes the constant revision and updating, essential.<sup>152</sup> The recommendations made by the Committee were compiled by panels of experts

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<sup>151</sup> P. Leelakrishna, Acknowledgements, UGC MODEL CURRICULUM, LAW, I (UGC, New Delhi 2001)

<sup>152</sup> *Ibid.*

drawn from across the country. The Committee attempted to combine the practical requirements of teaching with providing knowledge. As knowledge is interdisciplinary, the Committee considered this aspect and developed flexible and interactive models for the Universities to extend them further as they would like.<sup>153</sup>

The major contribution of this Committee is the development of a detailed syllabus for all the subjects suggested by the BCI. The Committee report provides objectives of the course which identifies the purpose of every subject given in the beginning, followed by the detailed syllabus divided into units. At the end of the contents of the syllabus, select bibliography has been given for the study materials.

The Committee made serious efforts to develop the LL.B Honors program conceived by the Baxi Committee. The panel, taking into consideration the recommendations of the Cochin and Kurushethra seminars, revised and finalized the LL.B. Honors program. The Committee submitted the proposal to UGC to consider a special program for improving the standards of professional education. The BCI agreed for the Honors program, and the report said that the Honors program may be offered only in select Law Schools and Law Colleges supported by UGC. The Committee identified 24 subjects for the Honors program and the detailed syllabus was dealt in Chapter – IV of its report.

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<sup>153</sup> Harisingh Goutham, Chairman UGC, Forward to UGC MODEL CURRICULUM, LAW, (UGC, New Delhi 2001).

The rationale behind the Honors program can be traced to the zonal meetings of Deans of faculties of Law and Chairpersons of Boards of Studies where the said program was strongly recommended. They observed that, besides being an instrument of revamping legal education; the LL.B (Honors) courses can be viewed as part of a long term policy for maintaining higher standards in the field of legal education in India.

Further, the program could perhaps eliminate mediocrity and is a viable alternative with better student involvement, better facilities and better pedagogy and learning. The active involvement of UGC could substantially reduce the difficulty of dual control by BCI and UGC. UGC with its statutory responsibility of maintaining standards of higher education, its financial assistance would solve the perennial problem of financial requirements for implementation of innovative curricula.

Another aspect is that the major part of curriculum reforms on courses involving social issues may usually fail to attract the financial assistance from private agencies. Therefore the socially relevant educational strategies may be defeated unless they get attention and support from the UGC, government and professional agencies. In this regard the Law Schools and colleges competent to offer the courses shall be identified for the support. Unlike the CDC report, the Committee opined that, the UGC will have to select the Law Schools on certain substantive criteria.

The Committee suggested that while identifying the Law Colleges and University Departments/Schools of Law for UGC assistance to LL.B Honors program, the UGC may take the following things into consideration;<sup>154</sup>

1. Faculty position
2. Diversity of specialization
  - a. Faculty
  - b. Optional courses
3. Courses offered
  - a. Annual
  - b. Semester
4. Research projects
5. Teacher student ratio
6. Library facilities
7. Pedagogic method
8. Doctoral degrees awarded
9. Potential for doctoral programs
10. Extension and Legal Aid Programs

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<sup>154</sup> UGC MODEL CURRICULUM, LAW, 13 – 14 (UGC, New Delhi 2001).



11. Publication of Law Journal

12. Student participation in editing law journals

13. Publication of books, articles, reviews and notes

a. by teachers

b. by students

14. Alumni Placement

The Committee while dealing with the modalities of holding the Honors Course also suggested that these matters may form part of the Regulations framed by the Universities proposing to start the LL.B Honors program.<sup>155</sup>

- (i) There shall be semesterisation of all courses and papers offered for LL.B Honors
- (ii) The relation between external valuation and internal assessment shall be 60:40.
- (iii) The students have to be asked to opt for at least six courses out of which either, 1. Implementation of Human Rights, or 2. Public Health Law shall be a seminar course. The individual Law School is free to offer a seminar course on an emerging area other than the two seminar courses given in the syllabi.

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<sup>155</sup> *Id* at.14-15

- (iv) The six courses are to be offered as courses in addition to the minimum number of papers to be studied as per the Bar Council of India Regulations in their circular dated 21.11.1997.
- (v) The maximum number of student enrolment shall be 30
- (vi) New pedagogic strategies including problem-cum-case and seminar methods and audio visual techniques including use of internet facilities are to be followed
- (vii) There should be constant performance auditing by the UGC, of the institutions helped to start LL.B Honors program.
- (viii) The LL.B Honors courses should emphasize on self-learning process by the students.
- (ix) There should be student evaluation of the program
- (x) Admission should be on the basis of entrance test, preferably at national level.
- (xi) There should be transparent continuous assessment
- (xii) There should be a Grievance Committee to look into the problems of internationalization.

The Chairman of UGC in his forward requested the Universities and the institutions offering legal education to update the curriculum latest by July,

2002 and asked the Universities to confirm that the curriculum was updated latest by July 31.<sup>156</sup>

The efforts of UGC unlike BCI, concentrate on developing curriculum and working conditions of the teachers and their qualifications. Particularly, the first CDC report by Prof. Baxi advocated for socially relevant legal education and spent considerable time on improving legal pedagogy. The second CDC laid more emphasis on making model curriculum and incorporating legal pedagogy in post graduate course in law. Many Law Colleges have been benefited by such a model curriculum, and the advantage with the second CDC report is that it contains the objectives of the subject and the books for reference. Due these special efforts, the colleges were encouraged to adopt the transition smoothly.

### ***3.3.3. Efforts of Law Commission of India.***

Law reforms dates back to over 300 years in India.<sup>157</sup> In pre-colonial period the process of reform had been ad hoc and not institutionalized like now. Concept of institutionalizing law reform agency could be traced to colonial period. First attempt to institutionalize the law reform, took place when the first Law Commission was established in 1834 under the Charter Act of 1833 under the Chairmanship of Lord Macaulay.<sup>158</sup>

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<sup>156</sup> Harisingh Goutham, *supra* note 153.

<sup>157</sup> Available at [http://www.lawcommissionofindia.nic.in/main.htm#EARLY\\_BEGINNINGS](http://www.lawcommissionofindia.nic.in/main.htm#EARLY_BEGINNINGS): (last visited 18 – 6 – 08).

<sup>158</sup> *Ibid.*

The first Commission recommended codification of the Penal Code, the Criminal Procedure Code and a few other matters. Thereafter, the second, third and fourth Law Commissions were constituted in 1853, 1861 and 1879 respectively. During the span of fifty years, the Law Commissions contributed immensely, not only codifying law but also a large variety of legislations on the pattern of the then prevailing English Laws adapted to Indian conditions.<sup>159</sup>

Post colonial period dominated by the ideology of Constitution of India with its Fundamental Rights and Directive Principles of State Policy, gave a new direction to law reform. The Constitution of India stipulated the continuation of pre-Constitution Laws.<sup>160</sup> Several demands were made in the Parliament and outside for establishing a Central Law Commission for the purpose of recommending and updating the colonial laws to meet the changing needs of the country.

Finally, the Government of India established the First Law Commission of free India in 1955 with the then Attorney-General of India, Mr. M. C. Setalvad, as its Chairman. Since then eighteen more Law Commissions have been appointed, each with a three-year term and with different terms of reference.<sup>161</sup>

Since its inception in free India, the Law Commissions played a significant role in reforming legal system in India. "The Reports of the Law Commission are considered by the Ministry of Law in consultation with the concerned

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<sup>159</sup> The Indian Code of Civil Procedure, the Indian Contract Act, the Indian Evidence Act, and the Transfer of Property Act were the products of the first four Law Commissions.

<sup>160</sup> See Art.372.

<sup>161</sup> Report of CDC see *supra* note 150.

administrative Ministries and are submitted to Parliament from time to time. They are cited in Courts, in academic and public discourses and are acted upon by concerned Government Departments depending on the Government's recommendations. The Law Commission of India has forwarded 201 Reports so far on different subjects."<sup>162</sup>

Law Commission of India not only confined its activity of recommending reforms in legal system but also to a considerable extent it recommended restructuring of legal education in India. In these endeavor, two reports of the Commission namely 14<sup>th</sup> Report of the Law Commission of India in 1958 and the 184<sup>th</sup> Report of the Law Commission of India in 2002, are worth mentioning.

*i. 14<sup>th</sup> Report of the Law Commission of India*

14<sup>th</sup> Report of the Law Commission of India in 1958 observed that law courses emphasized practice and case law over the science and principles of law and that the absence of scientific study of law and a lack of research publications undermined the importance of the study of law as a branch of learning. Thus part time institutions have been regarded as sufficient for this purpose.<sup>163</sup> Most of the students who attend these institutions were employed elsewhere and the teachers were generally the practicing advocates. Hence, part time institutions were well suited for both, the teachers and the taught.

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<sup>162</sup> Report of CDC see *supra* note 150.

<sup>163</sup> REPORT OF 14<sup>TH</sup> LAW COMMISSION OF INDIA, *supra* note 35 AT 520 - 521

The Commission did recognize the importance of professional training and for a balance of both academic and vocational training. The Commission observed that the absence of juristic thought and publications were the result of defective system of legal education. The Commission minced no words in exposing the deteriorating standards in the legal education in the following paragraph;

“There are already a plethora of LL.B’s Half-baked lawyers, who do not know even the elements of law and who are let loose upon society as drones and parasites in different parts of the country. As a member of the Union Public Service Commission, I have had occasions to interview several *first class graduates* of law from different Universities. Several of them did not know what subjects were prescribed either in the first or second LL.B; did not know the names of the books prescribed ... This is a shocking thing ... this is what may truly be described as mass production of law graduates.”<sup>164</sup>

The Commission argued that taking into the consideration of changes that had occurred and are occurring in the political, economic and social life in the society, and the emergence of India as a sovereign democratic nation, legal education requires radical alteration in its objectives, scope and the technique. Accordingly, it recommended that University training be followed by a professional course concentrating on practical knowledge, but it suggested that

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<sup>164</sup> *Id* at 523.

the professional course be made compulsory only for those who chose to practice law in the courts.

The Commission after comparing two different approaches of training law students to practice, prevailing in USA and England suggested that in India, law students should achieve mastery in legal theory and legal principles in liberal education in the University and then the students may have a choice of choosing academic or a professional career. Students who choose to enter the profession of practicing before law courts should undergo practical course in law and such practical courses should be imparted by bodies of professional people like Bar Councils.<sup>165</sup>

Regarding the qualification to enroll in LL.B course, the Committee felt that admission to LL.B course should be restricted to persons who have obtained a University degree in arts, science, commerce or other courses. As far as duration of the course is concerned, even though several committees and commissions suggested three years course, the law commission recommends two years. It justified the two years program on the basis that those who recommended three-year course of legal education seem to proceed on the basis that legal education will be continued to be imparted by part time institutions.

But the Commission suggested that legal education must be imparted only by properly equipped institutions that had the resources of offering the same full

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<sup>165</sup> *Id* at 526.

time. Further, the procedural subjects, taxation and local laws and other cognate subjects would not be part of the University curriculum and entirely left to the students who intended to take a professional career and these courses would be offered by the professional persons.<sup>166</sup>

More generally, the Commission's 1958 Report concentrated on institutionalizing and improving the overall standards of legal education. In that regard, the Report also discussed teaching methods and suggested that seminars, discussions, mock trials, and simulation exercises should be introduced—in addition to lectures. The Commission also pointed out the Indian University Commission, 1902 observation that, “the greatest evil from which the system of University education in India suffers is that teaching is subordinated to Examination and not Examination to teaching.”<sup>167</sup> It is necessary to establish a Council of Legal Education to monitor legal education. There is a need for unified Bar at the national level, and the All India Bar Council should be empowered to ascertain whether Law Colleges maintain the requisite minimum standards.

*ii. 184<sup>th</sup> Report of Law Commission of India*

The Law Commission of India, in its 184<sup>th</sup> report, felt that legal education is fundamental to the very foundation of the judicial system and took up

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<sup>166</sup> *Id* at 531.

<sup>167</sup> *Id* at 535.



reformation of legal education, *suo moto*.<sup>168</sup> The Commission followed up on a number of recommendations of the Ahmadi Report, including its recommendation that the Law Schools should supplement the lecture and case method with the problem method, moot courts, mock trials and other modern teaching methods.

It also took note of the Rules of the Bar Council of India that direct Law Schools to include practical training, including 4 mandatory practical papers. The Report also noted the need to train new lawyers in the skills of analysis, language, drafting, and argument and suggested that various studies on training lawyers, including the MacCrate Report<sup>169</sup> of the American Bar Association, could be consulted. With respect to the problem method of teaching, the Commission found that it is considered more important than either the lecture or case method, and in this regard the Report states that “the Commission considers that Clinical Legal Education may be made a mandatory subject.”

Drawing on the new Section 89 of the Code of Civil Procedure, which requires that every civil suit go through the ADR process (giving the parties the option to choose among various processes such as arbitration, mediation, conciliation, and settlement through Lok Adalats), the Report noted that the subject of ADR is not familiar to most lawyers. It therefore expressed the view that ADR procedures must become a compulsory subject in all Law Schools and noted as well that “there is urgent need for training lawyers, who are already practicing

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<sup>168</sup>The Legal Education & Professional Training and Proposals for Amendments to the Advocates Act, 1961 and the University Grants Commission Act, 1956

<sup>169</sup> For details of MacCrate Report see Chapter 5.1.1.

in the courts, in these ADR procedures.”<sup>170</sup> To this end, the Report included a separate Chapter on Alternative Dispute Resolution training for both, law students and lawyers.

Finally, consistent with the opinion expressed by the Ahmadi Committee and by others, the Law Commission Report suggests the reintroducing of a compulsory Training Program for law graduates and a Bar examination. Key recommendations in the Report therefore include:

- i. UGC and BCI to introduce a system of accreditation of Law Colleges. Section 7 (1) (h) should be amended to enable Bar Council of India to promote excellence in legal education for the purpose of accreditation system.<sup>171</sup>
- ii. Reintroduce appointment of adjunct teachers from lawyers and retired Judges on part-time basis.
- iii. It is necessary to impart professional training to the law teachers apart from the existing refresher course conducted by the UGC. Accordingly, the Commission has suggested the establishment of at least four colleges by the UGC or by the Central Government in consultation with BCI, in the four corners of the country.
- iv. ADR training must be introduced for law student and lawyers as follows:
  - (1) for students, ADR system to be made compulsory subject in LL.B.

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<sup>170</sup> *Id* at 65.

<sup>171</sup> This requires an amendment to Section 7 (1) (h) of Advocates Act, 1961.

course; and (2) for lawyers, short-term training, certificate, diploma courses on ADR to be introduced on a massive scale all over the country, for the purpose of section 89 of the Civil Procedure Code.<sup>172</sup>

- v. Training for one-year (Apprenticeship) in the Chamber of a lawyer with at least ten years standing and Bar Examination to be introduced for a law graduate before he enters the legal profession, by amendment of the Act. Power to do so to be vested only in Bar Council of India. Sections 7, 24 and 49 to be amended.
- vi. The Bar Council of India must consult a body which effectively represents all the Universities and that such a body should be constituted by the University Grants Commission.<sup>173</sup>
- vii. Membership of Legal Education Committee of the Bar Council of India must represent different classes of person. The Committee shall comprise of 5 members from the Bar Council of India, one retired Judge of the Supreme Court of India, one retired Chief Justice/Judge of a High Court, both to be nominated by the Chief Justice of India and three academicians in law to be nominated by the University Grants Commission and these three should be members of the proposed UGC Committee on Legal Education and all three of them must be in office and one of them must be

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<sup>172</sup> For detailed discussion on ADR See: Para 6.5 and 6.6 of the Report.

<sup>173</sup> This requires an amendment to the Advocates Act, 1961 and the University Grants Commission Act, 1956.

Director/Vice-Chancellor of a statutory Law University. The retired Judge of the Supreme Court shall be the Chairman of the Committee.<sup>174</sup>

- viii. The U.G.C. Committee on Legal Education to be constituted by the U.G.C. The Committee to consist of ten members, of whom (a) six shall be academicians of the level of Professors, Deans or Principals or of equal rank, (b) two shall be law teachers of similar ranks who have retired and (c) two shall be Directors/Vice-Chancellors of statutory Law Universities.<sup>175</sup>
- ix. Standards of legal education shall be laid down by the Bar Council of India in accordance with the recommendations made by the Legal Education Committee of the Bar Council of India after consultation with the State Bar Councils and the Legal Education Committee of the UGC.<sup>176</sup>
- x. The Bar Council of India can lay down minimum standards necessary for courses for students who will come into legal profession but not in respect of other law courses which do not lead to a professional career. UGC can prescribe higher standards.
- xi. Enable the Bar Council of India to lay down procedure and conditions for appointment of adjunct teachers who are to be appointed from among members of the Bar and the retired Judges. This has to be done in

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<sup>174</sup> This requires an amendment to Section (b) of sub section (2) of sec. 10 of Advocate Act, 1961

<sup>175</sup> For constitution of UGC Legal Education Committee, section 5A to be inserted in the UGC Act, 1956.

<sup>176</sup> Standards, means various matters referring to curricula etc., as detailed in para 5.24 of the Report

consultation with the State Bar Councils and the Legal Education Committee of the Bar Council of India and the Legal Education Committee of the UGC.<sup>177</sup>

xii. It is recommended that the 'problem method' be introduced in the examination system to an extent of about 75% in each paper, apart from 25% for theory. The students should obtain a separate minimum number of marks for the theory and a separate minimum in the problem part of the examination. This will enable the students to apply their mind seriously to every subject. This will also eliminate malpractices like copying or seeking help of invigilators. Attendance to classes is also bound to improve.<sup>178</sup>

xiii. It is also recommended that the Clinical Legal Education may be made compulsory in legal education.<sup>179</sup>

xiv. The Central Government should start at least four colleges in the country for providing professional training to law teachers in consultation with the Bar Council of India and the University Grants Commission.

#### 3.3.4. *Efforts by State*

It has been said that the Clinical movement is torn between its two main goals arising out of its links with both legal aid and legal education reform; teaching

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<sup>177</sup> This requires an amendment to clause (h) in sec. 7(1) of Advocates Act, 1961.

<sup>178</sup> See para 9.21

<sup>179</sup> See para 9.15

practical lawyering skills and engaging law students in legal aid and other social action projects. Ultimately, there is no conflict because a complete Clinical curriculum must address both professional skills and professional values.

*i. Early Efforts*

In the early years after freedom, the legal education reform continued to focus more on the academic study of law than on training in lawyering skills or values. Echoing the concerns expressed by Justice Muthuswami Iyer and the First Indian University Commission,<sup>180</sup> the Bombay Legal Education Committee concluded in 1949 that studying law as a science of law creates better lawyers and better judges, and that an overemphasis on practical training—as opposed to scholarly and analytical legal training—would cause more harm to society.<sup>181</sup>

The Committee thus recommended that practical courses should be made compulsory only for students who choose to enter the profession of law. With respect to the teaching methods, it recommended that the lecture method should be supplemented with seminars or group discussions, that the tutorial method should be encouraged to coach students individually, and that moot courts and moot trials should be conducted regularly.

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<sup>180</sup> This Commission was constituted in 1902. See Veeraraghawan, A.N., *Legal Profession and the Advocates Act 1961*, Vol. 14.2, 228(1972) cited in Sushma Gupta, *supra* note 11 at 70.

<sup>181</sup> REPORT OF 14<sup>TH</sup> LAW COMMISSION OF INDIA *supra* note 35 at 524.

There were, however, some early indications that legal education reform should be focused somewhat differently. In 1948, the Radhakrishna Commission stressed the need not only for high learning in Law Colleges but also for the legal profession to contribute to social change. More importantly a link between legal aid and legal education reform was expressed strongly in two influential Reports published in the 1970s.<sup>182</sup>

*ii. Report of Expert Committee on Legal Aid*

In 1973, the Ministry of Law and Justice appointed a committee called the Expert Committee on Legal Aid, under the Chairmanship of Justice V.R. Krishna Iyer. Although the Committee focused specifically on the creation of Legal Aid Programs, it recommended that this be done through a network of legal aid groups in different settings, including Law Schools.

While dealing with legal aid, the Committee observed that “[t]he spawning ground for lawyer, jurist and judge is the Law School.”<sup>183</sup> The Committee felt that the direct participation of law student in handling legal aid would not only benefit the student but also to the legal aid scheme. Moreover, as part of its larger view of India’s legal aid needs, the Committee also recommended a number of steps aimed at preparing lawyers to provide legal services to the poor.

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<sup>182</sup> Sushma Gupta, *supra* note 11 at 58.

<sup>183</sup> GOVERNMENT OF INDIA, MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS, DEPARTMENT OF LEGAL AFFAIRS, REPORT OF EXPERT COMMITTEE ON LEGAL AID : PROCESSUAL JUSTICE TO THE PEOPLE, 26.

These included the modifying of the Law School curriculum to focus on the needs of citizens; introducing Clinical Legal Education in Law Schools with a focus on socio-economic poverty; and requiring law student to engage in public service while in Law School.

No particular skills' training was contemplated, but the Committee noted that the students' exposure to legal problems related to socio-economic poverty and exploitation have a positive effect on them once they become lawyers. It therefore recommended the introduction of Clinical Legal Education in Law Schools with the idea that student exposure to real legal problems would mutually benefit the students, the legal aid scheme, and the legal system as a whole.

The recommendations suggested by the Commission ranged from establishing an autonomous national authority, reduction of court fees, financial aid to legal aid agencies, extending legal aid to legal advice, access to lawyer at any stage of police investigation, group legal insurance for organized working classes, compulsory public service as a part of Law School curricula, to giving priority to candidates' social sympathies in filling judicial and police posts.<sup>184</sup>

The Committee's report also stressed on the need to modify the curricula of legal education to focus on the needs of citizens and to provide actual legal aid service.<sup>185</sup> It recommended the introduction of Clinical Legal Education in Law Schools with a focus on socio-economic poverty. It opined that student

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<sup>184</sup> *Id* at 21-22, 34, 35, 44, 79, 90-91, 163, 234.

<sup>185</sup> *Id* at 15.



exposure to real legal problems has a mutual benefit to students, to the legal aid scheme and to the legal system as a whole. It also observed that student's encounters with the problems of poverty and exploitation would change their outlook when they become lawyers, and they would no longer treat clients as facts but living neighbors.<sup>186</sup>

*Benefits of involving Law Colleges in Legal Aid*

On the benefits of involving Law Colleges in Legal Aid Programs, the Committee pointed out that those law students will become an inexpensive and enthusiastic human source to provide meaningful legal aid to India's vast population. It identified the following benefits of involving Law Schools in Legal Aid Programs:<sup>187</sup>

- Law students can extend legal aid to remote villages;
- Students can provide legal aid and advice at a much lower cost;
- Legal Aid Cells are an excellent means of teaching professional responsibility;
- Legal Aid Cells provide an ideal platform for students to learn practical skills;
- Legal Aid Clinics are effective instruments for community education and preventive legal services programs;

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<sup>186</sup> *Id* at 26.

<sup>187</sup> *Id* at. 56.

- Involving Law Schools also improves the value and reputation of legal profession.
- There is no substitute for learning while doing;
- If the enthusiasm and zeal in the law students is properly channeled, the Law Schools can meet the demands of modern society and in fact help to transform the society and reach desirable goals.

Finally, the Committee recommended, using laws students to provide legal aid in two stages; first at preliminary processes, and then in the actual conduct of petty cases.<sup>188</sup> Thus, the central idea of involving the Law Schools was not only to provide practical skills but also to secure adequate legal aid to the needy. The creative use of law students in imparting legal aid was seen as an absolute necessity, considering the vastness of the country and the population's financial constraints. If Law Schools are properly used, they could ease the pressure on various bodies already actively involved in Legal Aid Programs.

Though the Committee was in favour of involving law students in the Legal Aid Program, it took note of the deplorable conditions in which legal education was being imparted. The Committee observed that many institutions imparting legal education become more like "teaching shops" in commercial lines with marginal social utility and little professional value.<sup>189</sup>

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<sup>188</sup> *Id* at 26.

<sup>189</sup> *Id* at 163

Keeping this in view, the Committee suggested that the involvement of Law Colleges be in a phased manner. First, the Law Colleges need to identify, basing on the organizational and financial stability of the institution, the extent of competent supervision available for the students, the nature of curricular support and academic credit given the institution for the Clinical programs. After identification of the institutions, legal aid manuals need to be prepared, covering the aspects of organization, administration, role and responsibility of the students in the proposed Legal Clinics.<sup>190</sup>

*iii. Report of Committee on National Juridicare*

The 1973 Report of Expert Committee on Legal Aid, was followed in 1977 by the report of another committee of the Ministry of Law and Justice, known as the Committee on National Juridicare: Equal Justice—Social Justice. This Report was viewed as an “extensive revision, updating, reevaluating and adding” to the Report of the Expert Committee.<sup>191</sup>

This Report also dealt primarily with Legal Aid Programs, concentrating on how they could be most effective in transforming the socio-economic structure of the country and reducing poverty through a more equal distribution of material resources. The main thrust of the Report was the recognition that a legal services program that reflected western attitudes and ideals, cannot work

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<sup>190</sup> *Id* at 164

<sup>191</sup> GOVERNMENT OF INDIA, MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS, DEPARTMENT OF LEGAL AFFAIRS, REPORT ON NATIONAL JURIDICARE: EQUAL JUSTICE – SOCIAL JUSTICE 1 (1977).

successfully in India because only a few of the problems of the poor are true legal problems.

Most of the problems faced by the poor are a byproduct of poverty, and they are common to most of the poor. Thus, the agenda of legal aid is not merely the amelioration of poverty but its removal.<sup>192</sup> The Committee believed that a Legal Aid Program should aim at radical transformation of the socio-economic structure, and the legal profession must recognize law as a potential instrument to eradicate poverty by securing equal distribution of material resources of the country.

*a) Expanding the Meaning of Legal Aid*

The Committee articulated that legal aid is not only legal representation and assistance in litigation, but it also includes other things such as legal advice, arbitration and conciliation, creation of legal awareness, promotion of meaningful communication in legal and national development and reform of law and legal process.

To achieve such objectives, India needs a cadre of professionally competent, socially sensitive, and committed lawyers. To build such a cadre, Law Schools are naturally the starting point. The Juridicare Committee urged Law Schools to participate in legal aid by establishing Legal Aid Clinics, which it believed—as had the Expert Committee—would offer the opportunity for both

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<sup>192</sup> *Id* at 25.

skills training and sensitizing students to the broader social obligations of the legal profession.

It observed that participation in Legal Service Clinics would not only be helpful in acquiring the skills necessary in the legal market place but also in providing an opportunity for the students to develop a humanistic perspective and a social orientation. Students would realize the social role of the law, and student participation in Clinical services would reduce the burden of legal services institutions.

Regarding model of Legal Services Clinic, the Committee opined that a suitable working scheme needs to be developed considering the varying the needs of the people in the locality. With a well defined model Clinic, students would be able to provide both qualitative and quantitative legal services to the clients. But to achieve this, the Committee stated that the students must be given a responsible work including appearance in courts. Further, proper and adequate supervision of the students work is necessary to maintain the quality of legal aid.

Law Colleges need to develop a curriculum that not only sustains but challenges and stimulates the student's clinical experience. In the initial stages, the Clinical Legal Education may be confined to selected students, about 20 to 30 per cent of the total students in an institution. Regarding the location of the Clinic, the Committee suggests that it should function at a place where the community would have easy access.

*b) Services to be provided by Law Students' Clinics*

The Committee identified the following services to be undertaken by the Clinics.<sup>193</sup>

- Preventing and positive service at pre-litigation stage by negotiating and conciliating disputes outside the court;
- Seeking administrative and legislative remedies against the wrongs done;
- Giving postal advice in respect of legal problems of individuals;
- Offering legal advice and counsel in court regarding litigation;
- Litigating in court, preferring appeals and review petitions and dispensation of competent legal services;
- Attending to grievances of the humble, and suggesting suitable action;
- Championing the cause of the worker, widow, consumer, tenant, tiller and victims of oppression; and
- Interviewing and counseling the clients, collecting the facts about disputes and searching the law for their benefit and developing case strategy, preparing for trial and litigation and following up their case.

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<sup>193</sup> *Id* at 71

The Committee also recognized the need to develop a cadre of Clinical law teachers, to introduce legal-aid related subjects such as Law and Poverty, Law Reform and Law and Society, and to give academic support to Law School Clinics.<sup>194</sup>

The Report strongly suggested that the establishment of Legal Clinics in Law Schools should be absolutely compulsory for imparting Clinical Legal Education to the law students and to make available legal services to the poor. To help implement its views on Clinical Legal Education, the Report also suggested amending the Advocates Act to enable both law teachers and students to represent the clients under a Legal Aid Program.

*iv. Report of Committee for Implementing Legal Aid Schemes*

Many aspects of the Expert Committee and Juridicare Committee Reports were taken up by the Committee for Implementing Legal Aid Schemes (CILAS), appointed by the Government of India in 1981 and headed by the then-Chief Justice P.N. Bhagwati. As had the Committee on National Juridicare, the CILAS too concluded that court- or litigation-oriented Legal Aid Programs could not alone provide social justice in India. He then enumerated the following tasks of a Legal Aid Program:<sup>195</sup>

- Promotion of legal literacy and creation of legal awareness among the weaker sections of the community;

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<sup>194</sup> *Id* at 72.

<sup>195</sup> Legal Aid News Letters (September 1981-March 1982) cited in Jagat Narain, *Legal Aid – Litigational or Educational: An Indian Experiment*, 28 J.I.L.I. 73-74 (1986).

- Organization of legal aid camps by the State Legal Aid Boards for carrying legal services to the doorsteps of the people;
- Training of para-legal persons for the purpose of providing support to the Legal Aid Program;
- Setting up Legal Aid Clinics in Universities and Law Colleges with a view to utilizing the untapped resources of the student community in constructive channels for providing aid to the poor;
- Introduction of the subject of law and Poverty in LL.B. curricula with the active support and co-operation of the Bar Council of India;
- Exposure of students to the socio-economic realities of Indian life and of the use of law for the improvement of the lot of the common man and as “an instrument of socio-economic change”;
- Use of law for public interest litigation through class actions.

CILAS agreed with both, the Expert Committee and the Juridicare Committee, that Legal Aid Clinics should be established in Law Schools and Universities, as a way to mobilize and motivate law students to provide legal aid to the poor.

Thus, this report concentrated more on promotion of legal literacy, organization of legal aid camps to carry legal services to the doorsteps of people, training of para-legal persons to support Legal Aid Programs, establishing Legal Aid Clinics in Law Schools and Universities, and bringing class actions by way of public interest litigation. Further, the Chairman of CILAS accepted the



significance of the educational process in its task, in the words that, "Education efforts must become a significant factor contributing to the social development of the poor."<sup>196</sup>

The legal aid movement thus provided legitimacy and institutional support for the early development of Clinical programs in Indian Law Schools, typically in the form of Legal Aid Clinics.

*v. Justice A.M. Ahmadi Committee*

The next important step in the evolution of Clinical Legal Education, and a critical step with respect to the mission of teaching skills and values, began at the Conference of Chief Justice of India in 1993, which resolved that the Chief Justice constitute a committee to suggest appropriate steps that should be taken so as to assure that law graduates acquire sufficient experience before they become entitled to practice in the courts.

Accordingly, the Chief Justice of India constituted a Committee with Justice A.M. Ahmadi as its Chairman.<sup>197</sup>

The Committee consulted widely about improving the quality of legal education, including a survey involving the Chief Justices of each High Court and discussions with the Bar Council of India. It found that most of the respondents expressed the view that the general standard of Law Colleges in

<sup>196</sup> From the Chairman, Legal Aid News letter 2 (February 1983) cited in Jagat Narain, *Legal Aid – Litigational or Educational: An Indian Experiment*, 28 J.I.L.I., 76(1986).

<sup>197</sup> This Committee is known as Committee on Reforms in Legal Education and Regarding Entry into Legal Profession. Justice M. Jagannatha Rao, Chief Justice of Kerala, and Justice BN Kripal, Chief Justice of Gujarat High Court were the other two members of the Committee.

the country was deteriorating and that the syllabus should be revised to include practical subjects so that the students could get professional training. The Committee offered suggestions covering two aspects; first at the level of the Law College and second at the stage of entrance into legal profession.

At the level of Law Colleges, the Committee suggested that the students be admitted only by entrance examination and only students with high percentage should be selected for the admission into Law Colleges. Permission for establishing new Law Colleges could be given only after proper assessment of teaching faculty and other facilities. Committee also stressed the need for training the students in drafting and pleadings and proper assessment of answer scripts of the students in the examinations.

It suggested that, for the purpose of grant of recognition to Law Colleges, a committee may be formed. It must consist of a member nominated by the BCI, and member nominated by Chief Justice of India who shall be a renowned person in the field of legal education. The committee should co-opt other members.

It also recommended that the procedural and practical subjects must be made compulsory and be taught by experienced lawyers. The Committee also suggested making Professional Ethics a compulsory subject, with a minimum of 50% marks. It highlighted that the Bar Council directive for the 5-year course that says "Every University shall endeavor to supplement the lecture method with the case method, tutorials and other modern techniques of

imparting legal education” (Schedule I, point 10) must be made compulsory for all courses.

The Committee recommended that the participation in moot courts, mock trials, and debates be compulsory, with marks; develop practical training in drafting pleadings and contracts in the last year of the study; make student visits at various levels to the courts compulsory.<sup>198</sup>

Regarding the second aspect relating to the entry into the legal profession, the Committee recommended the following:

- Every law graduate to be trained in an apprenticeship of at least 12 to 18 months with a senior lawyer with at least 10 to 15 years standing at a District Court or High Court, after which he/she must appear for an entry examination (Bar Exam).
- Students must maintain a diary and attend 3 months in lower civil Court and 3 months in a Magistrates Court, and at least 6 months in a District Court or High Court.
- This examination should be conducted under the supervision of a Supreme Court Judge or Chief Justice of any High Court. The State Bar Councils should arrange lectures on legal profession.

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<sup>198</sup> Report of Committee on Reforms in Legal Education and Regarding Entry into Legal Profession, in LEGAL EDUCATION IN INDIA IN 21<sup>ST</sup> CENTURY: PROBLEMS AND PERSPECTIVES, p. vi. (Koul A.K. ed., All India Law Teachers Congress, Delhi University, Delhi, 1999)

- Marks of the qualifying exam must be at least 60% in order to receive a license from the State Bar Councils.<sup>199</sup>

Further, the Committee suggested the establishment of premier Law Schools along the lines of National Law School of India University, Bangalore, to improve legal education. As a result, several National Law Schools were established all over India.<sup>200</sup>

Considering these recommendations, the BCI introduced a one-year mandatory training rule<sup>201</sup> while it discarded the suggestion of entrance examination. However, the BCI received a setback when this rule was challenged in the Supreme Court. In *V. Sudheer v. Bar Council of India*,<sup>202</sup> the Supreme Court struck down the rule as *ultra vires* to the Advocates Act and held that the Bar Council of India is not competent to pass such a rule. Such a rule can be introduced only by the legislature. Unfortunately, no effort has been made by the Government of India to implement these recommendations either.

*vi. Report of National Knowledge Commission*

The National Knowledge Commission (herein after NKC) was constituted on 13th June 2005. It was constituted as advisory body to the Prime Minister of

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<sup>199</sup> *Id* at xxxix

<sup>200</sup> The West Bengal National University of Juridical Science, Calcutta; NALSAR University of Law, Hyderabad; National Law Institute University, Bhopal; National Law University, Jodhpur; Hidayatulla National Law University, Raipur.

<sup>201</sup> Bar Council of India Training Rules, 1995 – Rule 2 to 15

<sup>202</sup> 1999 (3) SCC 176

India on education. The NKC was established to make an intensive study on the following:<sup>203</sup>

1. To build excellence in the educational system to meet the knowledge challenges of the 21st century and increase India's competitive advantage in fields of knowledge.
2. To promote creation of knowledge in Science & Technology laboratories.
3. To improve the management of institutions engaged in Intellectual Property Rights.
4. To promote knowledge applications in Agriculture and Industry.
5. To promote the use of knowledge capabilities in making government an effective, transparent and accountable service provider to the citizen and promote widespread sharing of knowledge to maximize public benefit.

NKC submitted its Report on 6<sup>th</sup> November 2007. Among other recommendations, it stressed the need to build a national knowledge network to connect all Universities, libraries, laboratories, hospitals and agricultural institutions to share data and resources across the country. It estimated that, to achieve this target they need to connect around 5,000 nodes which cover all major institutions in India. Considering the existing infrastructure, it proposed to do this gigantic task in a phased manner.

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<sup>203</sup> NATIONAL KNOWLEDGE COMMISSION, COMPILATION OF /RECOMMENDATIONS ON EDUCATION, 5 available at <http://www.knowledgecommission.gov.in/downloads/report2009> (last visited 18 - 04 - 2009)

Recognizing the role of education as a foundation of success in developing countries, the NKC says that few institutes of excellence in professional education though necessary, are not substitutes for providing excellence in education to people at large. Accepting that higher education had made “a significant contribution to economic development, social progress and political democracy in independent India” the NKC suggested not only increasing the number of institutions of higher education but focus on improving the quality of education.

The NKC felt that the existing multi-regulatory agencies resulted in confusion and created cumbersome procedure. As these agencies not being properly governed, they over regulate the development and quality of higher education. Therefore, it proposed to establish an Independent Regulatory Authority for Higher Education (IRAHE). According to the NKC, the IRAHE would be the sole agency that would authorize to confer powers on higher educational institutions. Further, the IRAHE would be solely responsible to set and monitor educational standards.

To improve the standards in higher education, the NKC also advocated for establishing 50 National Universities as centers of higher learning and research. It also suggested the bringing of sweeping reforms in examination system by introducing continuous internal assessment and recommended to convert the present system to credit system.

The other area on which considerable stress was laid by the NKC was the Faculty. It stressed the need to make a conscious effort to attract talented faculty and made several suggestions such as providing office space, research support, housing, incentives and rewards for performance. Further, it also addressed the problem of Universities not choosing the best faculty because of “native-son/daughter policies” which results in lowering quality and foster parochialization in Universities, the NKC suggested to encourage cross-pollination between Universities.<sup>204</sup> It also recommended evaluation of courses and teachers by students and peer evaluation.

Recognizing that research is essential in the pursuit of academic excellence, NKC proposed to make Universities the hub of quality research. To improve research activities in the educational institutes, the NKC emphasized on need to change in resource-allocation, reward-systems and mindsets. It advocated for substantial grants to be allocated for research. Though these recommendations are general for higher education, they are crosscutting in nature and applicable to any education including legal education.

The NKC also made special recommendation to improve legal education in India. It says “the vision of legal education is to provide justice-oriented education essential to the realization of values enshrined in the Constitution of India.” To fulfill this vision the legal education needs to aim at preparing legal

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<sup>204</sup> The NKC suggested that It may be worth introducing a ceiling, say one-half or even one third, on the proportion of faculty members than can be hired from within the University. This would almost certainly engender greater competition and more transparency in faculty appointments.

professionals to play different roles such as advocates practicing in courts, academics, legislators, judges, policy makers, public officials, civil society activists as well as legal counsel in the private sector, maintaining the highest standards of professional ethics and a spirit of public service.

Therefore, the challenge for the legal education is to prepare these professionals and equip them to meet the new challenges and dimensions of globalization. The NKC also laid emphasis on the need for original and path breaking legal research to meet these needs of the country and to fulfill the ideals and goals of Indian Constitution. To make concrete recommendations for improving legal education the NKC constituted a Working Group of experts.<sup>205</sup> Based on the recommendations of the Working Group and further consultations with stakeholders, NKC has proposed ten key recommendations given below:

1. Regulatory Reform: A New Standing Committee for Legal Education
2. Prioritize Quality and develop a Rating System
3. Curriculum Development
4. Examination System
5. Measures to attract and retain talented faculty
6. Developing a Research Tradition in Law Schools and Universities
7. Centers for Advanced Legal Studies and Research (CALSAR)

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<sup>205</sup> Working Group of experts, including distinguished members of the Bar, the bench and academia under the Chairmanship of Justice M. Jagannadha Rao. Other members of the working group are Justice Leila Seth, Prof. N. R. Madhava Menon, Mr. P.P. Rao, Prof. B.S. Chimni, Mr. Nishith Desai, Dr. Mohan Gopal.



8. Financing of legal education
9. Dimensions of Internationalization
10. Technology for dissemination of Legal Knowledge

### 1. Regulatory Reform: A New Standing Committee for Legal Education

The NKC recommended, creating Standing Committee for Legal Education (herein after the Committee) realizing the fact that several regulatory agencies controlling legal education are hampering its development.<sup>206</sup> It suggested that the Committee shall be given complete powers to deal with all aspects of legal education.<sup>207</sup> All the institutions imparting legal education and both Central and State Governments shall be bound by the decisions of the Committee.

The Committee may consist of 25 persons.<sup>208</sup> The concept of legal education had changed considerably due to liberalization, globalization and privatization in 90's and therefore, the Committee needs to revamp the legal education to

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<sup>206</sup> "The regulatory structure for legal education in India is currently seriously flawed and needs careful reconsideration. A typical Law College has four masters at a minimum; the University to which it is affiliated; the State Government; the University Grants Commission; and the Bar Council of India... These four agencies have varying mandates, interests and constituencies and do not provide coherent guidance for the improvement of legal education in the country" See 'First National Consultation Conference of Heads of Legal Education Institutions' held on 12.8.2002,

<sup>207</sup> This was suggested by the Work Group as there is no effective consultation between BCI and the faculty. This fact is evident as in the Legal Education Committee of the BCI constituted under Section 10 (2) (b) of the Act, there are 10 members out of whom five are lawyers- Bar Councilors, a retired Judge of the Supreme Court, a High Court Judge, the Law Secretary and the Secretary, University Grant Commission and there is only one faculty member. See Annexure II, NATIONAL KNOWLEDGE COMMISSION, *supra* note 197.

<sup>208</sup> Members of Standing Committee are as follows:

One will be a retired judge of the Supreme Court and preferably the retired judge of the Supreme Court who is the Chairman of the Legal Education Committee of the Bar Council of India; Seven members from the legal profession of which the Bar Council of India will nominate five and two will be nominated by the IRAHE; Seven from the faculty; One from the government; Two to be nominated from the industry, trade and commerce; One from civil society; Two from other professions; One from management or other institutions having a legal component; One parliamentarian; and Two students of the final year, one representing the NLSUs and the other representing the other Law Schools (Non-voting representation).

serve the needs of trade, commerce and industry. The Committee also opined that looking at the challenges ahead and the efforts of the BCI, the BCI had neither power nor the expertise to make legal education globally and domestically viable.<sup>209</sup> However BCI would continue to prescribe minimum standards required for practice in the courts.

## 2. Prioritize Quality and develop a Rating System

To improve legal education the NKC suggested, introducing an independent rating system base on a set of agreed criteria to assess the standard of all institutions teaching law. This is necessary in order to have consistent academic quality throughout the country. The criteria need to be developed by the Committee and the rating would be done by some other independent agency. Recognition of educational institutions would be based on the ratings given by the independent agencies.

## 3. Curriculum Development

The NKC made it clear that the curriculum should be made contemporary, and needs to be integrated with other disciplines. Considerable autonomy shall be given to the Colleges to decide the core and optional courses to be offered.

The curriculum may be developed by a Committee which includes faculty and

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<sup>209</sup> The Work Group identified six types of personal pursuing legal education for different purposes. They are 1. those who practice law, 2. the type which prepares them to become researchers and teachers, 3. the type which deals exclusively with academic subjects of substantive law, 4. the type which deals with public legal education or para-legal education, 5. the type that prepares law graduates to deal with legal, regulatory and ethical issues in active sectors of domestic and international business and industry, and 6. the type which professionals in engineering, medicine, management and social work may require. It will be noticed that the Bar Council's role is confined to the first category only.

practitioners. The Curriculum Committee may develop model syllabus for all core and optional course after seeking student feedback. Law Colleges are free to use such a syllabus or may depart from the model syllabus.

The curriculum also need to offer deeper understanding of professional ethics to the students and concentrate on modernizing Clinical courses, mainstreaming Legal Aid Programs and developing innovative pedagogic methods. Legal education must focus on sensitizing students on issues of social justice. The NKC also suggested that teaching should be interlinked with contemporary issues including international and comparative law perspectives.

#### 4. Examination System

New evaluation methods to be developed to test critical reasoning. The end-semester examination need to be problem-oriented and it should combine theoretical and problem oriented approaches. The overall evaluation shall consist a combination of project papers, project and subject viva, along with an end-semester examination for improving the quality of legal education.

#### 5. Measures to attract and retain Talented Faculty

The NKC suggested better incentives, improving remuneration and service conditions to attract and retain talented faculty. These measures are required as the problem of inadequate remuneration is far more acute in legal education than in other disciplines. To improve the quality there is a need to offer better incentives. Therefore, the faculty may be allowed to practice in courts and

offer consultancy. The faculty also should be given an opportunity to involve in shaping of national legal education policy.

The NKC further suggested other incentives such as fully paid sabbaticals, adequate House Rent Allowance (HRA), instituting awards to honor reputed teachers and researchers at national and institutional levels, flexibility to appoint law teacher without having an LL.M degree, who has proven academic or professional credentials; faculty exchange programs, and upgrading existing infrastructure.

#### 6. Developing a Research Tradition in Law Schools and Universities

The NKC emphasized on developing research culture. To inculcate such a culture, Law Colleges need excellent infrastructure like research friendly library facilities, computerization with internet, availability of e-library, access to latest journals and legal databases. To promote legal research, minimizing the teaching load to faculty members provide sufficient time for research, and granting sabbatical leave to faculty to undertake research are necessary. Further, the NKC also suggested offering several incentives to faculty involved in research.

#### 7. Centers for Advanced Legal Studies and Research.

The NKC suggested setting up of four autonomous Centers for Advanced Legal Studies and Research (CALSAR), one in each region. These Centers would serve as think tank for advising the Government on national and

international issues. These Centers would also act as linkages between all Law Colleges and offer continuing legal education for the faculty.<sup>210</sup> It is further suggested that each of CALSAR should be provided with an initial investment of around Rs. 50 crore to build an academic complex, conferencing facilities, a world-class library and other infrastructure. "These institutes would also need to be provided with an annual budget to the tune of Rs. 5 crore for salaries, fellowships, administrative expenses and related expenses. The initial investment and the annual budgets should be borne by the Central and respective State governments (that would host the CALSAR), but the CALSARs should gradually aim at financial self-sustenance, through innovative financial methods."

#### 8. Financing of Legal Education

The NKC recognized the importance of finance in legal education. It suggested that the Law Colleges shall decide the fee to be charged from students, but as a norm the fee charged by the college should meet at least 20 per cent of its total expenditure. But this suggestion comes with two conditions: first, students who cannot afford should be offered a fee waiver and scholarships; second, the UGC should not deduct proportionately in grant in aids to the colleges collecting higher fees. The centre and states are requested to endow chairs on specialized branches of law.

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<sup>210</sup> In addition to above roles, CALSARs would felicitate publishing a peer reviewed journal of international quality; facilitating multidisciplinary approaches to law; institutionalizing arrangements for scholars in residence; organizing workshops and undertaking in-depth research on new and developing areas of law.

It also suggested exploring the possibility of public private partnerships. The policy of tax holidays for donations by the corporate sector could also be considered. To give financial strength, the Law Colleges should be given the autonomy to develop their own methods of financing.

#### 9. Dimensions of Internationalization.

To meet the challenges of globalized legal education, the NKC highlighted the need to build international collaborations and partnerships with foreign Universities. It also suggested that the feasibility of awarding joint or dual degrees and developing transnational curricula that could be taught jointly by a global faculty either through video conferencing or any other methods may be explored. Law Colleges are also required to create international faculty, international courses and international exchange opportunities among students.

#### 10. Technology for Dissemination of Legal Knowledge

In the era of information, the dissemination of legal knowledge is necessary to improve legal education. Recognizing this fact, the NKC advocated for digitalization and networking between institutions like Indian Law Institute, Supreme Court Library, and Indian Society for International Law and all Law Schools, Universities and public institutions in the country. In addition to the networking, there is a need to develop adequate e-infrastructure, legal databases, law journals and excellent libraries in the Law Colleges.

The study of State efforts in improving legal education reveals that many Commissions and Committees have made several recommendations on improving the legal education. Out of these recommendations, those given by NKC are comprehensive, with reasonable emphasis on developing legal pedagogy and transforming legal education into social justice education.

### **3.4 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 lawyering 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 a meaningful way. Keeping this challenge in view this part will analyze how the 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 these 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 Conveyancing, 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.<sup>211</sup> 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

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<sup>211</sup> All together there are 11 National Law Schools in India.

Legal Education in other Law Schools has failed in its mission of offering services to the society and skills to the students.<sup>212</sup>

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 and what is 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 mind sets, and geographical, cultural and language differences.

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<sup>212</sup> For more details see Frank S. Bloch, M.R.K. Prasad, "*Institutionalizing A Social Justice Mission For Clinical Legal Education: Cross - National Currents From India and the United State*" 13Clinical L. Rev. 197 (2006).

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 full time 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.<sup>213</sup> Meager salary packages for adjunct teaching faculty put a damper on enthusiastic advocates. Due to a shortage in full-time 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.

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<sup>213</sup> 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.

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 are 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 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.

### *3.4.1. 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.<sup>214</sup>

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<sup>214</sup> While identifying the skills that each paper would offer, these listed skills were taken from the MacCrate Report and arranged paper wise.

*Paper I: Moot-Court, Pre-trial Preparations and Participation in Trial Proceedings.*

a) Moot Court.

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

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 Conveyancing.*

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 Lawyering, 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.

### *3.4.2. 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, Competition on Cross examination, Trial Advocacy Moot, etc.<sup>215</sup>

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.

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<sup>215</sup> 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 Level Client Counseling Competition. Similarly V. M. Salgaocar College of Law conducts National Competition in Client Counseling and Negotiation.

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).<sup>216</sup> 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.<sup>217</sup> 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.<sup>218</sup>

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

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<sup>216</sup> 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.

<sup>217</sup> Students of V.M. Salgaocar College of Law successfully filed eleven public interest litigations on various issues like sanitary facilities in slums, implementing coastal regulation zones, protection of rights of disabled persons, parking space in newly constructed residential flats.

<sup>218</sup> For example ADR Clinic in NALSAR, Consumer Clinic & Prison Clinic in V.M.Salgaocar College of Law and e Legal Aid Clinic at NUJS.

person involved in legal 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.<sup>219</sup>

Several initiatives for assessing and strengthening the Clinical curricula have been undertaken by organizing workshops and conferences.<sup>220</sup> 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 Adocacy 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

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<sup>219</sup> The author was the first recipient of Fulbright-Vanderbilt Scholarship. Till now six members benefited by this scholarship, out of which 4 are faulty members.

<sup>220</sup> 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 Sprit of Law held at Indian Law Institute, New Delhi, (2006); International Seminar on Community Lawyering 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).

National Open University, Delhi. The last training program was conducted at National University of Juridical Science, Kolkata.<sup>221</sup>

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.

In April 2007, in association with the American Centre Mumbai, 3 workshops on 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.

These initiatives succeeded in sensitizing the faculty towards the need and importance of Clinical Legal Education. One notable point in these initiatives

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<sup>221</sup> 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 were 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 were trained.



is that all the efforts are made by some individual members/institutions. There are no concrete efforts made by the BCI in either institutionalizing or developing pedagogy in Clinical Legal Education.

With this background the next chapter makes an effort to look at the implementation of the BCI directives in offering four practical papers, specifically in the States of Andhra Pradesh, Karnataka and Goa.

# CHAPTER – IV

## EMPIRICAL INVESTIGATION INTO THE STATUS OF CLINICAL LEGAL EDUCATION IN INDIA.

#### **4. Empirical Investigation into the Status of Clinical Legal Education in India**

Legal education being comprehensive, offering legal education within the four walls of the Law Colleges is not only incomplete but impossible. This necessitates introduction of mandatory clinical component in the legal curriculum. Clinical Legal Education offers a rich learning experience and combines 'Problem based learning' with 'Experimental learning'. A decade had passed since the inclusion of clinical component into legal curriculum. Now is the time to assess the impact of this inclusion. Therefore, this part deals with status of Clinical Legal Education in India with special emphasis on the State of Andhra Pradesh, Karnataka and Goa.

The findings of this chapter are based on the data collected, coupled with the researcher's personal knowledge of the functioning of the Institutions in the field of Clinical Legal Education for the last 10 years. A questionnaire was prepared and circulated to all the Law Colleges in the three States to elicit the data. Further, certain information has been obtained by telephonic interviews from the Colleges. Information has also been gathered from students and some of the alumni members of the V.M. Salgaocar College of Law, Goa.

It is quite but possible that the opinions expressed by the people of each category may suffer from bias arising out of personal and professional compulsions and the social circumstances. Further, some of the questions

contain four to five variables which make the task of tabulation and analysis more complex. Even the data collected from a sample needs to be tested to see whether the findings hold good for the larger population. However to obtain the desired level of objectivity, particular care was taken in collecting the data. The data was collected with utmost honesty and sincerity. Further, to test whether finding hold good for the larger population, Kendall's Coefficient of Concordance test was used. In spite of all these precautions there is a possibility that certain conclusions drawn on the basis of data may not fit into the whole of reality.

### *1. Profile of Andhra Pradesh.*

Soon after Indian independence, the demand for separate State of Andhra remained a distant dream in spite of several efforts toward it. The present State of Andhra Pradesh was divided between Madras State and Hyderabad State. The unprecedented violent struggle for a separate State resulted into the formation of the State of Andhra Pradesh on the 1st of October, 1953.<sup>1</sup> The formation of the State of Andhra State further strengthened the general demand for linguistic States.

Finally the present enlarged State of Andhra Pradesh was formed on 1st November, 1956 under the States' Reorganization Scheme by merging nine Telugu speaking districts of Adilabad, Nizamabad, Medak, Karimnagar,

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<sup>1</sup> See [http://www.aponline.gov.in/quick%20links/hist-cult/history\\_post.html#Emergence](http://www.aponline.gov.in/quick%20links/hist-cult/history_post.html#Emergence) last visited on (07 0 06 - 09)

Warangal, Khammam, Nalgonda, Mahabubnagar and Hyderabad, into Andhra State. It is the fifth largest State with an area of 2,76,754 sq. km.<sup>2</sup> It shares boundaries with Madhya Pradesh and Orissa to the north, the Bay of Bengal to the east, Tamil Nadu and Karnataka to the south and Maharashtra to the west. Basing on geographical position, Andhra Pradesh can be divided into three distinct regions viz. Andhra (also known as Kosta), Telangana and Rayalaseema.<sup>3</sup>

### *Legal Education in Andhra Pradesh*

In Andhra Pradesh at present there are eight Universities imparting legal education. Andhra and Telegana account for two Universities each, where as Rayalaseema for three universities. Andhra University was the first University in Andhra region which was constituted by the Madras Act of 1926.<sup>4</sup> Though Osmania University was established in 1918 in Hyderabad, it was under Nizam rule in the State of Hyderabad. It was only after 1956, that Hyderabad was merged in Andhra State and became capital of it.

#### a) Andhra University

Though Andhra University was established in the year 1926, legal education started in the year 1945 with the establishment of University College of Law in

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<sup>2</sup> See <http://www.aponline.gov.in/quick%20links/apfactfile/apfactmain.html> (last visited 07 - 08 - 09)

<sup>3</sup> See <http://andhraonline.in/Profile/Geography/> (last visited 07 - 08 - 09)

<sup>4</sup> Available at <http://www.andhrauniversity.info/history.html> (last visited 07 - 08 - 09)

Machilipatnam.<sup>5</sup> In 1949 the College was shifted to the campus of Andhra University in Walter. At that time this College was the only second Law College in the entire Presidency of Madras.<sup>6</sup>

At present 15 Law Colleges are affiliated to Andhra University in addition to the University College of Law in the campus. University College of Law offers both LL.B three year courses and LL.M. The affiliated colleges offer both LL.B three years course and Five Years integrated course.

#### b) Osmania University

Osmania University was established in 1918 in Hyderabad. This University is seventh oldest University in India and third in South India.<sup>7</sup> Unlike Andhra University, legal studies in Hyderabad started much before establishing Osmania University. Legal education in Hyderabad started in 1888 with the opening of the law and judicial test classes.<sup>8</sup> They were abolished in 1923 when the Law Department was established in Osmania University. Subsequently LL.M. Course was instituted in 1942.

At present University College of Law offers LL.B. three year course and LL.M Course. Totally nine colleges apart from University College of Law are affiliated to the Osmania University.

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<sup>5</sup> Ibid.

<sup>6</sup> Gupteswar, K. *Legal Education in Andhra Pradesh*, in LEGAL EDUCATION IN INDIA STATUS AND PROBLEMS 254 ( Dr. N.R.Madhava Menon, Ed., BCI Trust, New Delhi 1983)

<sup>7</sup> See <http://www.osmania.ac.in/>(last visited 07 - 08 - 09)

<sup>8</sup> See <http://www.osmania.ac.in/LawCollege/Indexpage1.htm>(last visited 07 - 08 - 09)

c) Sri Venkateshwara University

Sri Venkateshwara University was established in Tirupathi. The Department of Law was established in the year 1970, and shifted to Ananthapu P.G.Centre, Ananthapur in the year 1973. This P.G. Centre was later upgraded to University status, as a result of which the Law Department become part of Sri Krishnadevara University. After shifting Law College to Ananthapur, Sri Venkateswara University started a P.G. Course in Law. At present there are six Law Colleges affiliated to this University. All these Colleges offer both three year LL.B course and five year integrated course.

d) Acharya Nagarjuna University

Acharya Nagarjuna University was established on 11th September, 1976 at Guntur.<sup>9</sup> The Department of Law was established in the year 1979 and it introduced 3 year LL.B course. At present five Law Colleges are affiliated to this University. At present department discontinued the LL.B course in the campus and confined its legal education to LL.M only.

e) Sri Krishnadevaraya University

Sri Krishnadevaraya University was established on 28<sup>th</sup> June 1982 at Ananthapur.<sup>10</sup> Before establishing the University it was recognized as a P.G. Centre of Sri Venkateswara University. The Law Department of Venkateswara

<sup>9</sup> See <http://nagarjunauniversity.ac.in/profile.asp> (last visited 07 - 08 - 09)

<sup>10</sup> See <http://www.skuniversity.org/administration/vc-message-final.htm> (last visited 07 - 08 - 09)

University was shifted to Ananthapu in 1973. The same Department was continued as a Law Department after upgrading the P.G. Centre into full fledged University. At present University College of Law offers 3 years LL.B course and LL.M. Only two Law Colleges are affiliated to Krishnadevaraya University apart from University College of Law.

f) Kakatiya University

Kakatiya University was established in the year 1967 as Post Graduate College at Warangal.<sup>11</sup> The Department of Law was established in the year 1980.<sup>12</sup> At present University College of Law offers 3 years Law Course. Three Colleges in addition to University College are affiliated to the University.

g) Padmavathi Mahila University

Padmavathi Mahila University was established at Tirupathi in the year 1983 for women under the Sri Padmavati Mahila Visvavidyalayam Act of 1983. The ratio of intake is 42:36:22 in the regions of Andhra, Telangana and Rayalaseema respectively, subject to statutory reservations.<sup>13</sup> The Department of Law was established in the year 1988 and it offers three year and five year LL.B courses. This University has no affiliated Law Colleges.

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<sup>11</sup> See [http://www.kuwarangal.com/Origin\\_and\\_History.aspx](http://www.kuwarangal.com/Origin_and_History.aspx) (last visited 10- 08 - 09 )

<sup>12</sup> See [http://www.kuwarangal.com/Department\\_Law.aspx](http://www.kuwarangal.com/Department_Law.aspx) (last visited 07 - 08 - 09)

<sup>13</sup> See <http://www.indiaeducation.ernet.in/insitutions/PROFILENEW1.ASP?no=U02104> (last visited 07 - 08 - 09)



## h) National Academy of Legal Studies and Research

National Academy of Legal Studies and Research (NALSAR) was established in the year 1998. This is the second among the National Law Schools that were established in India.

### 2. *Profile of Karnataka*

The present State of Karnataka was constituted as State of Mysore under the States Reorganization Act, 1956. This Act brought together the Kannada-speaking community which was distributed in five states and consisted of the territories of the old states of Mysore and Coorg, the Bijapur, Kanara district and Kollegal taluk of the Coimbatore district in Madras. It was renamed as Karnataka on November 1, 1973.<sup>14</sup>

State of Karnataka is located in the western half of the Deccan plateau and shares boundaries with Andhra Pradesh in the east, Maharashtra in the north and Tamil Nadu and Kerala to the south. Geographically, the State of Karnataka forms a part of two regions of Indian Union; the Deccan Plateau and the Coastal plains and Islands. The State has four physiographic regions viz. Northern Karnataka Plateau, Central Karnataka Plateau, Southern Karnataka Plateau and Karnataka Coastal Region.<sup>15</sup>

<sup>14</sup> See <http://karnatakaonline.in/Profile/History/> (last visited 07 - 08 - 09)

<sup>15</sup> See <http://karnatakaonline.in/Profile/Geography/> (last visited 07 - 08 - 09)

*Legal Education in the State of Karnataka*

Government Law College was the first College to impart legal education in the State of Karnataka. This College was established in the year 1948 at Bangalore. Though R.L. Law College was established in 1939 at Belgaum, it was affiliated to Bombay University until 1950 and treated as part of Bombay State. R.L. Law College was re-affiliated to Karnataka University in the month of February 1950. Therefore, technically legal education in the State of Karnataka took shape only after independence.

At present seven Universities impart legal education and in total there are 93 Colleges imparting legal education under these Universities. Most of these colleges conduct both, Five year and three year LL.B. Programs.

a) Karnataka University

Karnataka University was initially established at Mumbai in the year 1949. The location was shifted to Dharwad in October, 1949 and Karnataka University had its official inauguration in March 1950.<sup>16</sup> University College of Law as well as the Post-Graduate Department of Studies in Law were established in the year 1962.<sup>17</sup> Initially University College of Law offered traditional three year LL.B. course. At present it offers five year integrated LL.B. and the Law Department offers LL.M and Ph. D Programs. Total 19

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<sup>16</sup>See [http://www.kud.ernet.in/about\\_kud.htm](http://www.kud.ernet.in/about_kud.htm) (last visited 07 - 08 - 09)

<sup>17</sup>See [http://www.kud.ernet.in/PG\\_Deparments/law/Dept\\_profile.htm](http://www.kud.ernet.in/PG_Deparments/law/Dept_profile.htm) (last visited 07 - 08 - 09)

Colleges including the University College of Law are affiliated to Karnataka University.

b) Mysore University

Mysore University is the first University in the Karnataka region. It was founded by the then Maharaja of Mysore, His Highness Sri Krishnaraja Wodeyar IV on July 27, 1916. The University of Mysore became the first University outside the domain of the English administration in India, the sixth University in India. It has jurisdictions over Mysore, Mandya, Hassan, and Chamarajanagar Districts.<sup>18</sup> The Department of Studies in Law was established in the year 1973. It is in the forefront in Southern India in providing higher legal education and research studies. It offers LL.M. and Ph.D. in Law.<sup>19</sup> Currently 8 Colleges imparting legal education were affiliated to this University.

c) Bangalore University

Bangalore University was established in July 1964 located in the Garden City of Bangalore. Government Law College was established on July 1, 1948 by the Government of Mysore (now the State of Karnataka). By an order dated. 19.6.1976 the Government Law College was transferred to Bangalore University and since then the College is known as University Law College, Bangalore. Initially this College offered LL.B course and subsequently the

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<sup>18</sup> See <http://www.uni-mysore.ac.in/unity/about/view> (last visited 07 - 08 - 09)

<sup>19</sup> See <http://www.uni-mysore.ac.in/unity/department/view?id=25> (last visited 07 - 08 - 09)

five-year integrated B.A.LL.B. Program was introduced in the academic year 1986-87.<sup>20</sup> University Law College also offers LL.M. course. At present 40 Law Colleges affiliated to Bangalore University apart from University Law College.

d) Gulbarga University

Gulbarga University was established in 1980 at Gulbarga. Its jurisdiction extends to the five districts of Gulbarga i.e., Gulbarga, Bidar, Raichur, Bellary and Koppal of Hyderabad Karnataka. Before 1980 it was a Post-graduate Centre of Karnataka University, Dharwad since 1970.<sup>21</sup> The Department of Law was established in the year 1988 in the name and style of Department of P.G. Studies and Research in Law. As the name suggests the Department offers only post graduation i.e., LL.M. and M. Phil and Ph.D Programs.<sup>22</sup> Twelve Law Colleges are affiliated to Gulbarga University.

e) Mangalore University

Due to growing demands for a local University, a Post graduation Centre of Mysore University was set up in late 1970's at Mangalore. This Centre was later converted into Mangalore University in the month of September 1980. The University has jurisdiction over the districts of Dakshina Kannada, Udupi

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<sup>20</sup> See <http://www.bub.ernet.in/Sub/faculty/Law/Sub/about.html> (last visited 07 - 08 - 09)

<sup>21</sup> See <http://www.gulbargauniversity.kar.nic.in/AboutUs.html> (last visited 07 - 08 - 09)

<sup>22</sup> See <http://www.gulbargauniversity.kar.nic.in/DeptLaw/DeptLaw.html> (last visited 07 - 08 - 09)

and Kodagu.<sup>23</sup> But this University has no Law Department. However, six Law Colleges are affiliated to this University.

f) Kuvempu University

Kuvempu University is relatively new University in Karnataka. It was established in the year 1987. The main campus of Kuvempu University is located at Shankaraghatta at a distance of 28 kms from Shimoga.<sup>24</sup> School of Law under Kuvempu University offers only LL.M.<sup>25</sup> Only six Law Colleges were affiliated to this University.

g) National Law School of India University

The concept of a national institution to act as a trendsetter and for experiments in legal education to improve the quality of legal profession was mooted after introducing five year integrated LL.B. course in to Indian legal education in early 1980's. The idea gained strength through the Legal Education Committee of the Bar Council of India, followed by a demand by the BCI for a deemed University status from the University Grants Commission.

Finally, National Law School of India University was established at Bangalore under the National Law School of India Act (Karnataka Act 22 of 1986). The Act provided autonomy and flexibility for innovation and experimentation in

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<sup>23</sup> See <http://www.hindu.com/2004/09/08/stories/2004090811840300.htm> (last visited 07 - 08 - 09)

<sup>24</sup> See <http://www.kuvempu.ac.in/aboutus.htm> (last visited 07 - 08 - 09)

<sup>25</sup> See <http://www.kuvempu.ac.in/ac-school.htm> (last visited 07 - 08 - 09)

the pursuit of excellence in legal education. This initiation is perhaps the best example of Academy-Bar-Bench co-operation in the field of legal education in India.<sup>26</sup> Establishment of National Law School heralded a new history in legal education in India. It strives to improve the quality of legal education and thus by the legal profession. It offered five year integrated LL.B course and adopted a trimester system. Subsequently, new courses like LL.M., M.B.L, M.Phil, Ph.D programs have been introduced.

### *3. Profile of Goa.*

Goa was liberated from Portuguese rule in 1961. It is a tiny emerald land on the west coast of India, which was a part of Union territory of Goa, Daman & Diu till 30 May 1987. In the year 1987 the territory of Goa became the 25th State in the Union of States of India. Goa covers an area of 3702 square kilometers and comprises two districts viz North Goa and South Goa. Goa shares its boundaries in the North with Maharashtra, in the East and South by Karnataka State and West by Arabian Sea.<sup>27</sup>

### *Legal Education in Goa*

Being a small State, Goa has only one University. Goa University was established in 1985 incorporating the then existing PG Centre which was affiliated to University of Bombay.<sup>28</sup> Unlike Karnataka and Andhra, the legal

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<sup>26</sup> See [http://www.nls.ac.in/about\\_history.html](http://www.nls.ac.in/about_history.html) (last visited 07 - 08 - 09)

<sup>27</sup> See <http://goagovt.nic.in/> (last visited 07 - 08 - 09)

<sup>28</sup> See [http://www.unigoa.ac.in/goa\\_university\\_introduction.php](http://www.unigoa.ac.in/goa_university_introduction.php) (last visited 07 - 08 - 09)

education in Goa started much later. In fact the first Law College was established much later to its independence from Portuguese.

The first Law College, Mahadevarao Salgaocar College of Law (now V. M. Salgaocar College of Law) was established in the year 1972 at Panjim.<sup>29</sup> Initially it was affiliated to Bombay University. Later it came to be affiliated to the Goa University when the PG Centre was elevated to the status of University. Subsequently another Law College, Govinda Ramnath Kare College of Law was established at Margao.

At present Goa University has no Law Department. Only the above two Law Colleges which are affiliated to the Goa University, impart legal education in the State of Goa. Both the Colleges offer LL.B three and five year courses, and LL.M. The V. M. Salgaocar College of Law also offers Ph. D. Program in Law.

Keeping the vastness of the study in view this Chapter has been divided into four parts. Part 4.1 traces the development of legal education in the three States; Andhra Pradesh, Karnataka and Goa. Thereafter, it deals with different designs which are used for implementing the practical papers, and the methods of the evaluation of students. This part also assesses both material and human resources used in offering practical papers.

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<sup>29</sup> See <http://vmslaw.edu/college.htm> (last visited 07 - 08 - 09)

Part 4.2 analyses various components of clinical methods used by the Colleges in three States. Part 4.3 primarily focuses on role of Clinical Legal Education in developing and institutionalizing and implementing a Social Justice Mission.

From the analysis of Part 4.1 and 4.2, the V. M. Salgaocar College of Law has been identified as a model curricula for implementing the Social Justice Mission. Therefore, this part primarily focuses on how the Clinical Legal Education has been developed in the College, and the various activities that are undertaken by both, the faculty and the students. As the prime focus was on clinical activities of the Colleges, a special questionnaire was prepared for collecting necessary data from the students to identify the transformation of the students who participated in such activities. The last of the Chapter 4.4 investigates the shortcomings in implementing Clinical Legal Education in India.

#### **4.1 Design and implementation of Clinical Legal Education**

The Clinical Legal Education offers lawyering skills to the students, and more importantly the clinical teaching generates its own resources which can be even be utilized in the teaching of substantive law, effectively. The resources that would be generated by the Clinics depend on the local conditions. Therefore, it is natural that the Clinical work in each institution may be distinct from the other. India is no exception to this phenomenon.

This perhaps justifies the present scenario in India whereas the content of the Clinical courses is uniform throughout the India, but the manner in which it has



been and is being implemented and the initiatives that are taken by the individual Universities and Colleges imparting legal education are different.

Further, the BCI while introducing the Clinical component through the practical papers has provided enough flexibility to the Colleges to adopt teaching methods suitable to their conditions. This in turn has not only resulted in different methods in imparting Clinical education but has also provided an opportunity to several Colleges to experiment in developing clinical pedagogy. With this background this part closely looks at various approaches and methods used by different Universities and Colleges in offering the practical papers.

#### ***4.1.1. Approach and Method of Conducting Practical Papers***

As it was observed earlier the local needs and the material as well human resources that are available to the Law Colleges necessitated the adoption of different methods, these differences are vary in several respects such as time frame, using part-time and full time teachers, specially designated teachers, time length of offering the papers, evaluation methods, and giving credit in final results.

Though different methods were used by the Law Colleges in offering practical papers, there is a considerable uniformity among the Law Colleges within the University region. This trend is due to the University to which Law Colleges are affiliated, which would not only prescribe curricula but also the manner in which the papers should be taught and evaluated. Thus, in evaluating the

different methods of conducting practical papers, University wise approach has been adopted.

Conducting of the practical papers in each University has been worked out in Table – 1. From Table – I it has been observed that most of the Universities conduct practical papers in final year of the course. The third column of the table shows 2<sup>nd</sup> year of 3 year degree and 4<sup>th</sup> year of 5 years integrated course whereas the fourth column shows final year of both 3 and 5 year courses.

**Table 1** *Incorporation of Practical Papers*

Sl.No	Name of the University	2/4 year	3/5 year
1.	Andhra University		All Papers
2.	Sri Venkateswara University		All Papers
3.	Osmania University		All Papers
4.	Nagarjuna University		All Papers
5.	Sri Krishnadevaraya University		All Papers
6.	Mahila University		All Papers
7.	Kakatiya University		All Papers
8.	Karnataka University		All Papers
9.	Mysore University		All Papers
10.	Mangalore University		All Papers
11.	Kuvempu University	Paper – III	Paper – I, II and IV
12.	Bangalore University	Paper – I and II	Paper – III & IV
13.	Gulbargah University	Paper – III	Paper – I, II and IV
14.	Goa University*		Paper – II & III

Source: Primary Data

\* Paper – I and IV was offered throughout the course.

**Figure 1** Arrangement of Practical Papers University wise

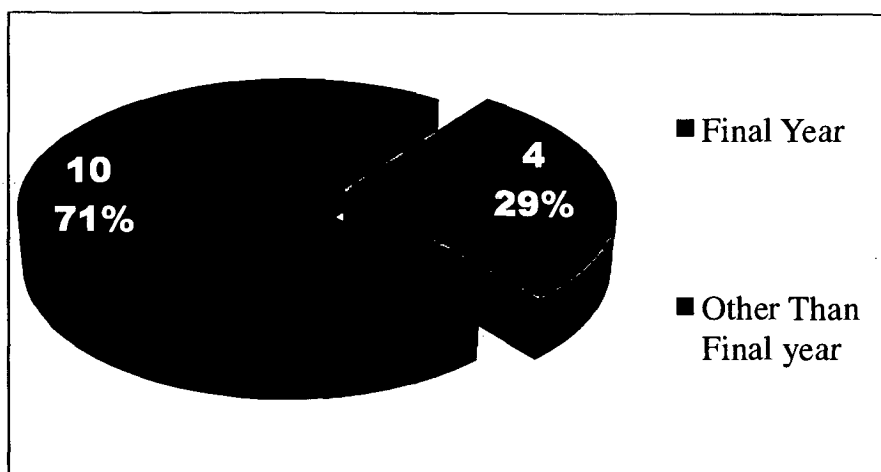


Figure 1 shows that out of fourteen Universities, ten Universities offer all the practical papers in the final year. This trend is common for both, three year and five year LL.B Program. As far as Andhra is concerned all the Universities offer practical papers in the final year. Few Universities in Karnataka offer one or two practical papers in second year, whereas in the State of Goa, the practical papers I & IV were spread all over the course, the evaluation is done in the final year.

As far as the content of the practical papers are concerned all the Colleges follow the curriculum prepared by the BCI. Further, Table – 2 shows that except a few institutions there is no intensive training given to the students in moot Court, pretrial preparation and counseling and interviewing. Most of the Colleges offer only class room teaching as a part of training.

**Table – 2** *Teaching Methods adopted in offering Practical Paper - I*

Component of Practical Paper – I	Class Room Teaching	Other Method	No training
Moot Court	45	05	--
Court Observation	47	03	--
Client Interview	43	03	04

Source: Primary Data

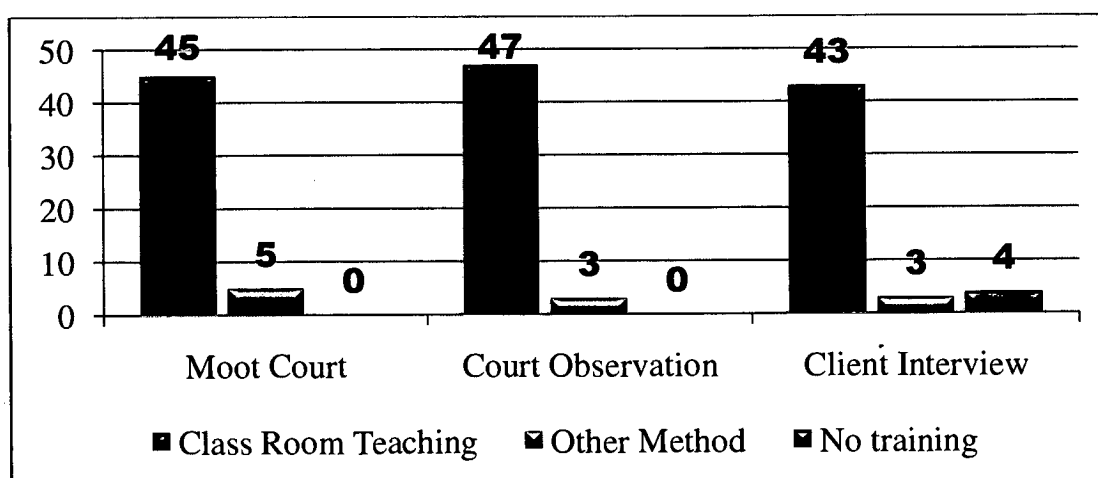
**Figure 2** *Teaching Methods adopted in offering Practical Paper – I*

Figure 2 shows that about 90% of the Colleges offer Moot Court, 94% of Colleges offer Court Observation and 86% of Colleges offer Client interviewing, by lecture method in a class room setup. Very few Colleges try other methods to train the students.

Out of the 50 Colleges, five Colleges have internal Moot Court Competition to train the students. At the V. M. Salgaocar College of Law, a special course on using library and e-journals is offered in the first year. Students are divided into groups of 20 and the faculty takes the students to the library and trains them in research, particularly the searching of case laws. After introducing them to the

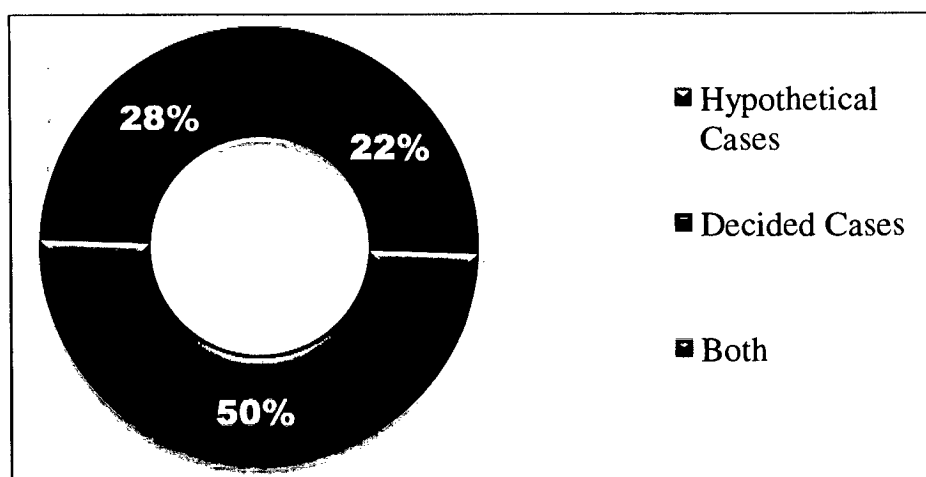
library and the reference methods, few simulation cases would be given to assess their research skills. Regarding the cases for Moot Court there is a mixed result, as some Colleges use decided cases where as others use hypothetical problems.

**Table 3** *Nature of cases given for Compulsory Moot Court*

Component of Paper - I	Hypothetical Cases	Decided Cases	Both
Moot Court Cases	25	14	11

Source: Primary Data

**Figure 3** *Cases given for Compulsory Moot Court*



The Table 3 and the Figure 3 shows that only half of the Colleges actually use hypothetical problems for compulsory moot Courts where as 22% of the Colleges use only decided cases and 28% use both hypothetical and decided cases. The trend of using decided cases seriously undermines the purpose of the Moot Court. In case of decided cases students merely copy the case from the Law Journal and simply memorize it and present it on the day of the Moot Court. This kind of practice not only discourages the students from conducting research but seriously affects their innovative thinking.

In the second component of observation of a Criminal and a Civil trial, 47 Colleges offer only class room training and then send the students to the Court to observe those cases. Three Colleges offer mock trial/trial advocacy in addition to the classroom teaching. For the purpose of Mock trial, the faculty chooses a case where the actual trial has been completed. All the facts and the stages of the trial are collected and students are assigned different roles in the trial. Each stage of the trial is reenacted and thereby students learn the intricacies of the trial. In the process, the students understand the procedure, various stages of the trial, and the different documents that are required to be drafted.

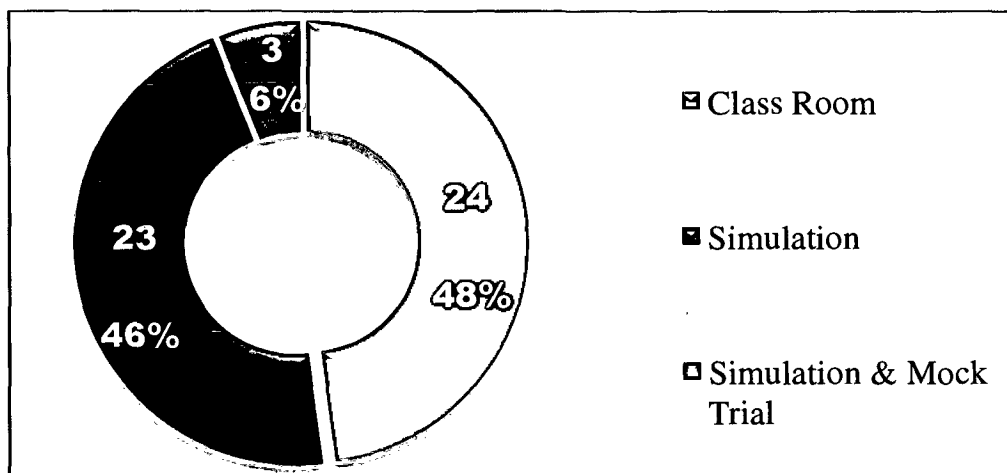
In the third component of Paper – I, i.e., Interviewing and Pre-trial Preparation, out of 50 Colleges, three Colleges do not provide any training. Among the remaining 47 Colleges, only 3 Colleges offer training beyond the classroom. They use simulation exercises to train the students in learning the interviewing and counseling techniques. At V. M. Salgaocar College of Law, in addition to the simulations, Inter-Class Client Counseling Competitions are conducted.

Table 4 reveals that Practical Paper – II on Drafting, Pleading and Conveyancing is being offered through three different methods. Most commonly used method is classroom teaching and simulation based teaching. Only three Colleges use Mock Trial in addition to classroom teaching and simulation based teaching.

**Table 4** *Teaching Methods adopted in offering Practical Paper – II*

Name of the Paper	Class Room	Simulation	Simulation and Mock Trial
Drafting Pleading and Conveyancing	24	23	03

Source: Primary Data

**Figure 4** *Teaching Methods adopted in offering Practical Paper – II***Table 5** *Teaching Methods adopted in offering Practical Paper – III*

Name of the Paper	Lecture Method	Lecture Method & Simulation
Professional Ethics	30	20

Source: Primary Data

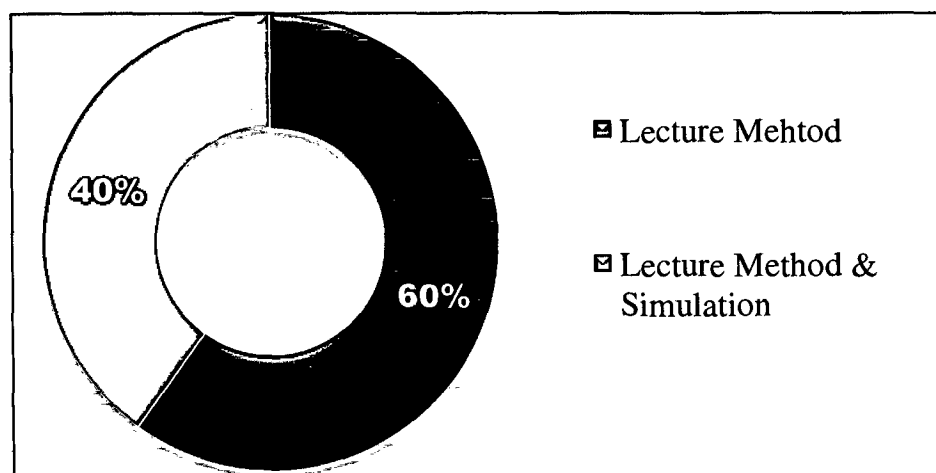
**Figure 5** *Teaching Methods adopted in Offering Practical Paper – III*

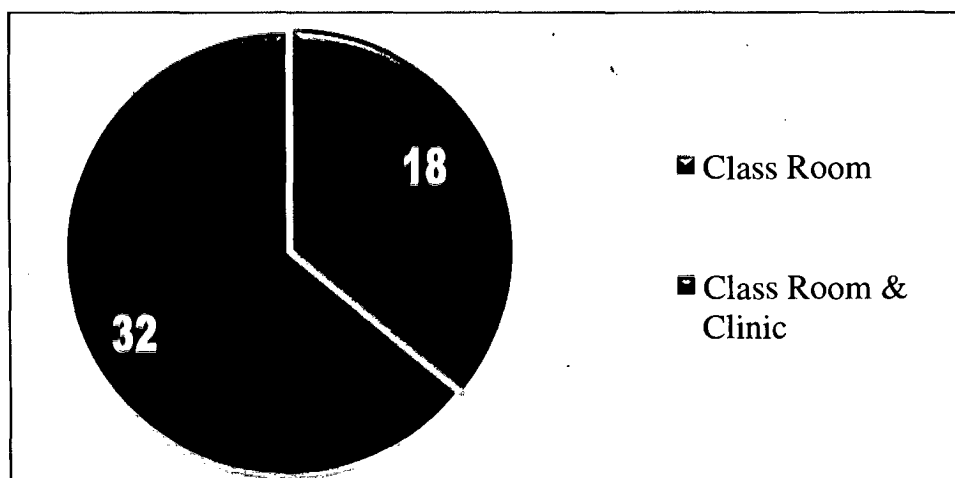
Table 5 shows that Practical Paper – III on Professional Ethics and Bar Bench Relations is predominantly offered by class room teaching. 60% of the Colleges use only lecture method, where as only 40% of the Colleges use both lecture method and simulation based teaching.

**Table 6** *Teaching Methods of Legal Aid*

Name of the Paper	Classroom	Class room & Clinic
Legal Aid	18	32

Source: Primary Data

**Figure 6** *Method of Training Students in Legal Aid*



Legal Aid in Law Colleges often involves both, the classroom and practical lessons. In the classroom, the lessons may include the teaching of the skills and values that are necessary, and the methods used for imparting such skills and values may include lecture methods and simulations, reading, discussions and seminar presentations. Practical lessons may include the actual working of the students in-campus and off the campus at the Legal Aid Clinics run by the concerned College.



Classroom lessons become the only activity, in cases where the Colleges have no Clinics. The present study reveals that one third of the Colleges do not have Clinics<sup>30</sup>. Accordingly Figure 6 shows that 18 Law Colleges use only classroom training to train students in legal aid. Colleges having Clinics offer training in both classroom as well as practical lessons.

**Table 7** *Approach in Teaching Practical Papers*

Sl. No	Name of the State	Lecture Method	Other Method	Both
1	Andhra	8	0	15
2	Karnataka	5	0	20
3	Goa	0	0	2

Source: Primary Data

**Figure 7** *Teaching Methods Adopted in Teaching Practical Papers*

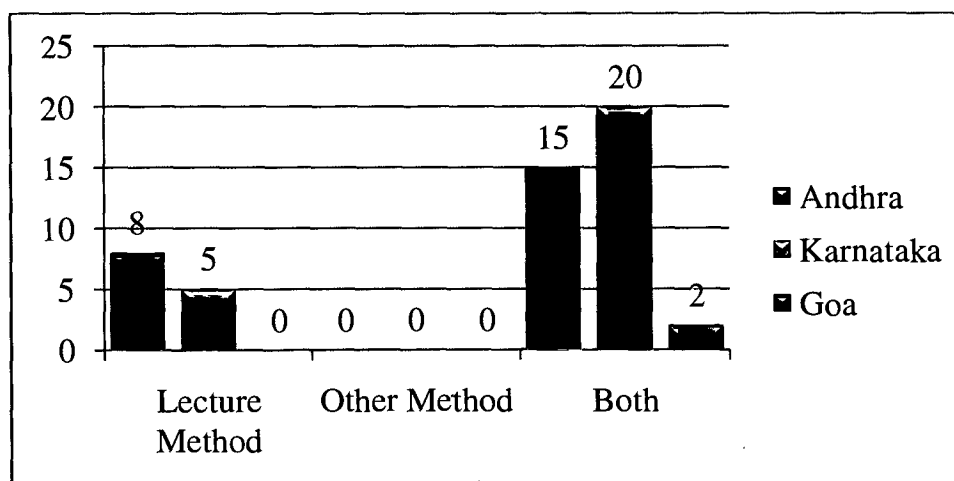


Figure no 7 shows the different approaches in offering practical papers in State of Andhra Pradesh, Karnataka and Goa. It clearly exhibits differences among the three States in methods of teaching. Further, Table no 1 to Table No 6 clearly shows the differences and disparity in designing and offering of the practical papers. These differences and disparity could be attributed to lack of

<sup>30</sup> See Figure 10

clear guidelines from the Bar Council of India. Due to the lack of clarity, each University has designed the practical papers according to their convenience which resulted in disparity not only between the States but between the Universities within the State. The difference in design and pedagogy in offering practical paper has also led to distinction in assessment and evaluation.

#### *4.1.2. Assessment and Evaluation of Practical Papers*

Again different methods are used in evaluating practical papers in Goa, Andhra and Karnataka. Table 9 shows that the evaluation also differs from University to University within the State. For example in Andhra, out of seven Universities, three Universities provide external evaluation, and again the composition of the Committees that evaluate these papers, differ in each University.

Similarly, in Karnataka four Universities provide internal assessment of the practical papers. Under Mysore University practical papers II & IV are internally assessed whereas paper I & III are assessed externally.

**Table 8** *Method of Assessment of Practical Papers*

Sl.No	Name of the University	Internal Assessment	External Assessment
1.	Andhra University	✓	
2.	Sri Venkateswara University		✓
3.	Osmania University	✓	
4.	Nagarjuna University		✓
5.	Sri Krishnadevaraya University		✓
6.	Shri Padmavathi Mahila University		✓
7.	Kakatiya University	✓	
8.	Karnataka University	✓	
9.	Mysore University	Papers II & IV	Papers I & III
10.	Mangalore University	✓	
11.	Kuvempu University		✓
12.	Bangalore University	✓	
13.	Gulbargah University	✓	
14.	Goa University	✓	

Source: Primary Data

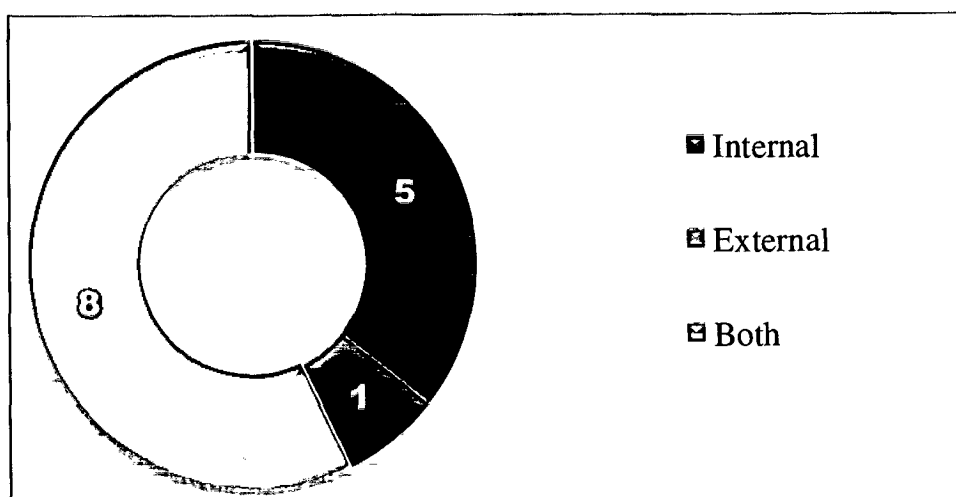
**Figure 8** *Method of Evaluation of Practical Papers*

Figure 8 shows that eight Universities follow internal evaluation and 5 Universities have External evaluation. Only the Maysore University has both external and internal evaluation.

It is interesting to note that several Universities conduct written exam for Practical paper IV which deals with Legal Aid & Public Interest Litigation. For example Sri Venkateswara University, Sri Krishna Devaraya University and Shri Padmavathi Mahila University from State of Andra Pradesh and Kuvempy University in Karantaka has a written exam for assessing Legal Aid. 50% weightage is given for the written exam conducted by the University and the remaining 50% would be evaluated internally with one external faculty.

**Table 9** *Assessment and Evaluation of Practical Papers*

Name of the State	Weightage given in Final Result	No Weightage in Final Results
Andhra	13	10
Karnataka	18	7
Goa	2	-

Source: Primary Data

**Figure 9** *Assessment and Evaluation of Practical Papers*

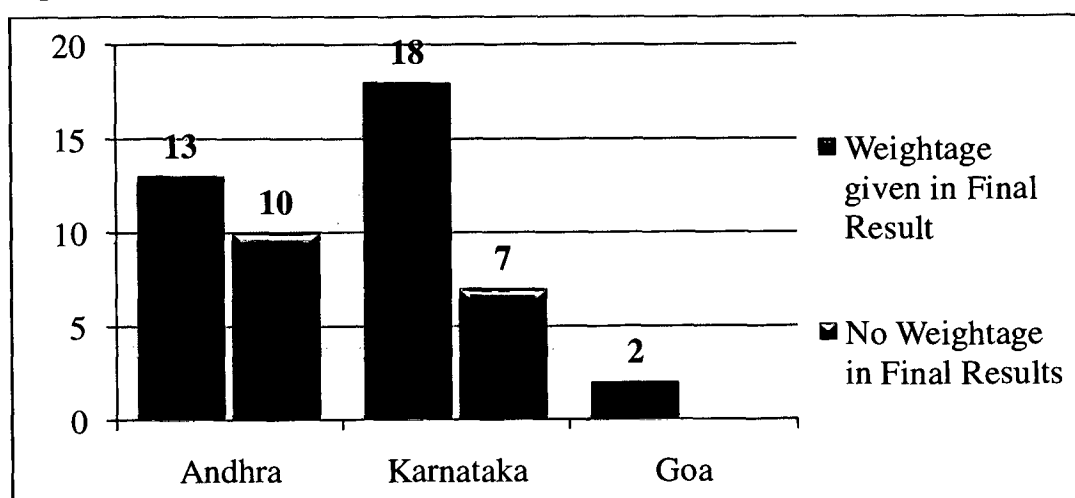


Figure 9 shows differences in assessment and evaluation of practical papers. In State of Goa both Colleges give weightage in final result where as in Andhra only 56% of the Colleges, while in Karnataka 72% of the Colleges give weightage in final results.

#### ***4.1.3. Assessment of Human and Material Resources***

The development of human resources is of vital importance for success of Clinical Legal Education. Yet not enough resources are allocated for developing human resources. Balancing material and human resources would be imperative for the robust growth of clinical education in India. It is common knowledge that the resources are not unlimited in supply therefore, they must be efficiently and appropriately allocated between the development of material and human resources. Keeping this in view this part analyzes position of human and material resources utilized in offering Clinical Legal Education.

##### **Human Resources:**

Under human resources an assessment was conducted on number of faculty involved in the offering practical papers. Table 11 shows faculty position in various Law Colleges which are involved in Clinical Education.

**Table 10** Faculty involved in Teaching Practical Papers (State wise)

Name of the State	No of Fulltime Faculty	No of Part time Faculty
Andhra	80	38
Karnataka	102	35
Goa	16	05
Total	198	78

Source: Primary Data

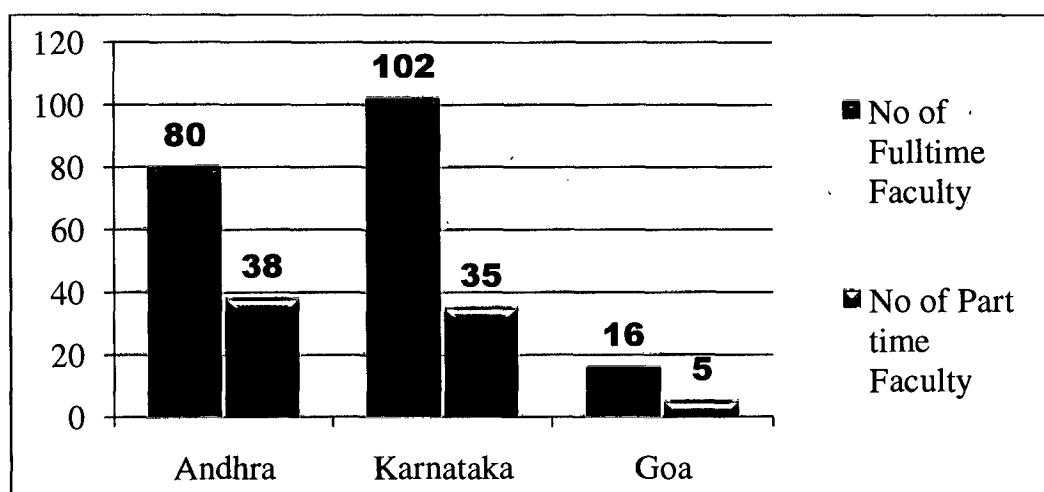
**Figure 10** Involvement of Faculty in Practical papers

Figure 10, shows a healthy involvement of fulltime faculty in teaching practical papers. Out of 276 clinical teachers from 50 Law Colleges, 72% are fulltime and 28% are part-time faculty involved in Clinical Legal Education. On an average per subject 1.38 Lecturers and per College 5.5 lecturers involved in conducting practical papers.

In Andhra Pradesh out of 23 Colleges, 118 teachers are involved in teaching practical papers out of which 68% fulltime and 32% are part time teachers. In Karnataka out of 25 Colleges 137 are involved in teaching practical papers out of which 74.5% are fulltime and 25.5% are part time teachers. In Goa out of the

2 Colleges, 21 are involved in teaching practical papers out of which 76% are fulltime and 24% are part time teachers.

Though the study reveals high involvement of fulltime faculty in clinical teaching, the reason for more fulltime faculty involvement could be attributed to the class room method used to train the students in practical papers.<sup>31</sup> Therefore, it is likely that very little effort is made on offering skills in the real sense. This could be further inferred from the fact of restriction on fulltime faculty to practice in the Court of law and the absence of any formal training in offering practical papers.

Further, these fulltime teachers are also involved in teaching other subjects. The ratio of 1.38 teachers per subject itself is not very encouraging keeping in view the number of students they need to cater. Most of the Colleges have both Three year LL.B., and Five year LL.B courses and the permitted strength per class are 80. Therefore, on an average each teacher would be training about 160 students in a semester.

#### Material Resources:

Study was conducted on how many Colleges actually have computer training facilities for the students. Further, data was also collected on how many Colleges actually have Legal Aid Clinics and their location.

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<sup>31</sup> Tables 2, 4, 5, & 6, show that most of the Colleges use lecture method to train the students.

**Table 11** *Colleges offering Computer Training*

No. of Colleges	Yes	No
50	33	17

Source: Primary Data

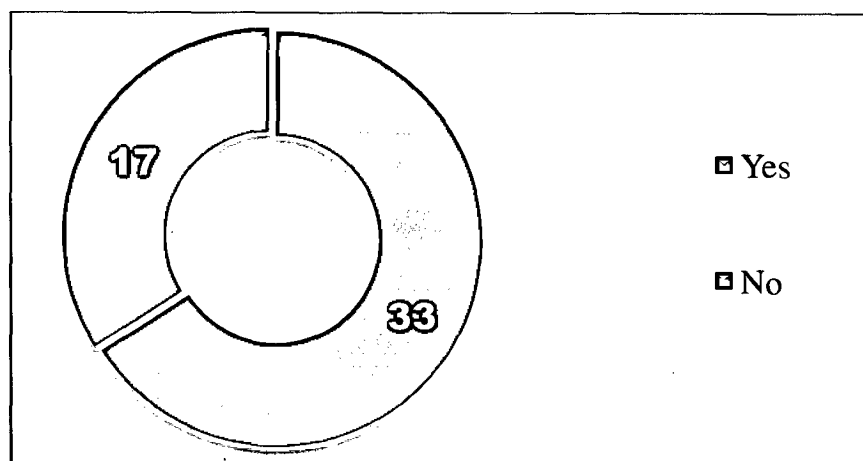
**Figure 11** *Colleges offering Computer Training*

Figure 11 shows that 33 Colleges provide computer training facilities where as 17 Colleges do not have such facility. Computer training becomes more relevant as the students come from different educational background to the Law Colleges and particularly considering the fact that the five year course students join Law Colleges immediately after their 12<sup>th</sup> standard. Further, computer training assumes importance due to the fact that most of the legal data base available today is in the electronic form. As per what the data shows, 34% of the Colleges have no formal training for the students in computer skills. This would hamper the quality of clinical education.



**Table 12** *Legal Aid Setup in Law Colleges*

Sl.No	Name of the State	Colleges Having Clinical Resources	Colleges not Having Clinical Resources
1	Andhra Pradesh	10	13
2	Karnataka	20	5
3	Goa	2	0

Source: Primary Data

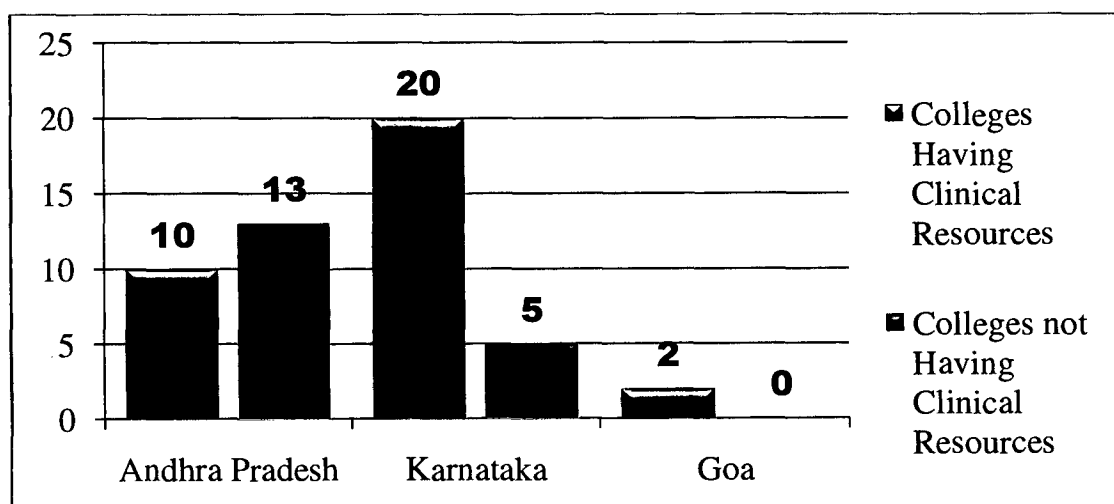
**Figure 12** *Clinical Resources.*

Figure 12 shows that majority of the Colleges have legal aid set up. Out of 50 Colleges, 32 Colleges have some kind of Legal Aid Clinics, where as 18 Colleges i.e. about one third of the Law Colleges have no Legal Aid Clinics. Again there is a disparity among the States in establishing Legal Aid Clinics in Law Colleges.

**Table 13** *Location of Legal Aid Clinics*

Total No of Colleges	In Campus	Off Campus	Both
32	24	02	06

Source: Primary Data

**Figure 13** *Legal Aid Cells Location*

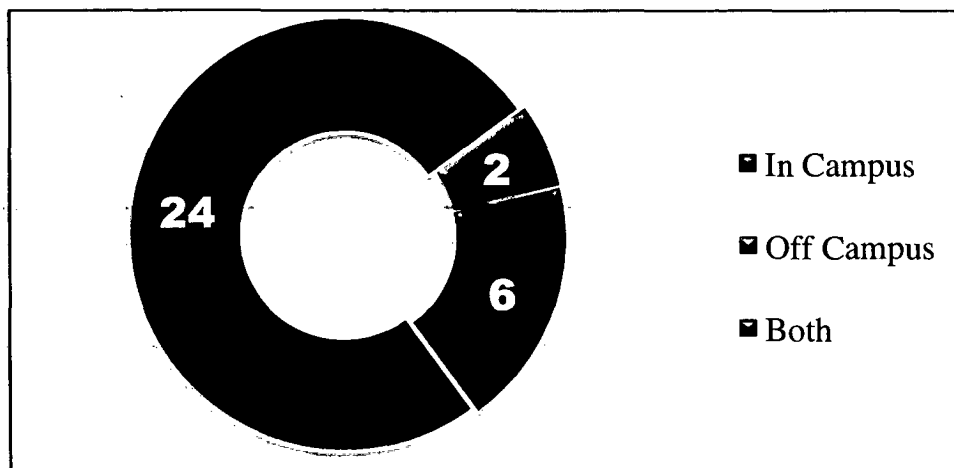


Figure 13 deals with the location of Legal Aid Clinics of the Law Colleges. Out 32 Colleges, 24 have the Clinic in the college camps itself. Only two Colleges both from State of Goa operate its clinics off the campus. Six Colleges have both in campus and off campus clinics.

The above data supports that there are disparities both, in material as well as human resources. This in turn proves the hypothesis that there are disparities among the Law Colleges in offering practical papers.

#### **4.2. Clinical Methods: Attempts at furthering the Social Justice Mission**

Generally, access to justice is viewed as a problem for the poor; but different socio economic and political conditions that are common to many developing nations like India makes even well to do families face the problem of access to justice. The reason for such a situation could be attributed to problems such as legal illiteracy, lack of information, procedural barriers, judicial apathy, delay and social stratifications. Therefore, improving access to justice thorough legal aid is multidimensional.

Though legal representation is the central idea of providing free legal aid to improve the access to justice, other aspects such as legal advice, providing para-legal services, promoting alternative dispute resolutions, legal literacy, reforming law and in suitable cases filing public interest litigations, not only become necessary but integral part of legal aid.

In providing legal aid the State cannot operate in isolation. As discussed above the wide range of activities that are integral part of Legal Aid require better resources and involvement of more human resources. These requirements necessitate involvement of Law Colleges in these activities. This part of the study deals with assessment of such activities undertaken by the Law Colleges.

In assessing the component of legal aid, two parameters have been considered. The data has been divided into Colleges having Legal Aid Clinics and Colleges having no Legal Aid Clinics

**Table 14** *Legal Aid Activities*

Activity	Colleges having Legal Aid Clinics		Colleges having No Legal Aid Clinic	
	YES	NO	YES	NO
Legal Representation	06	26	03	15
Legal Advice	29	03	09	09
Para Legal Services	24	08	09	09
Promoting ADR	14	18	04	14
Legal Literacy programs	32	0	17	01
Public Interest Litigation	04	28	01	17
Law Reform	05	27	0	18

Source: Primary Data

Table 14 shows the involvement of Law Colleges in conducting various component of legal aid. Each component was analyzed separately for better understanding.

#### 4.2.1. Legal Representation

**Figure 14** Colleges undertaking Legal Representation in Pro bono Cases

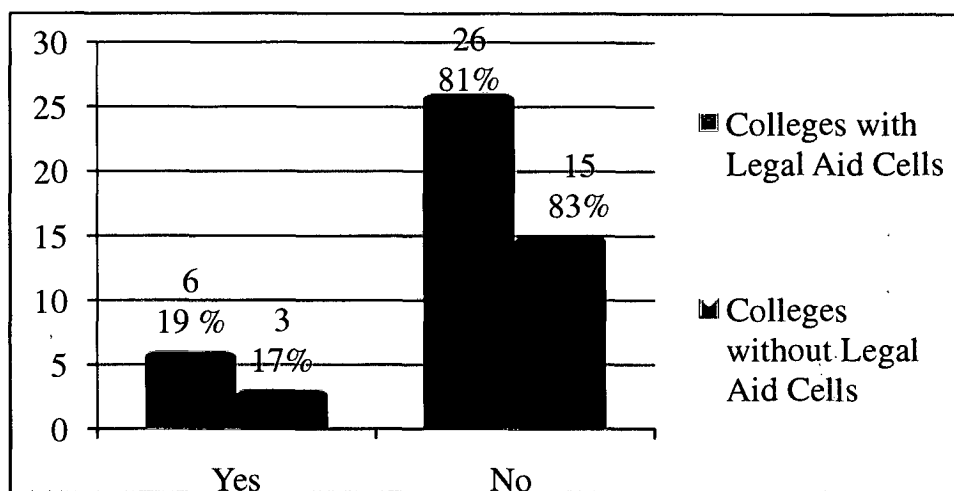


Figure 14 shows that majority of Colleges do not provide legal representation. Out of 50 Colleges 41 Colleges do not offer legal representation. In representing the clients, Colleges having Legal Aid Cells are marginally ahead. Poor record in legal representation could be attributed to prohibition on students representing clients in the Court of law.

#### 4.2.2. Legal Advice

Rendering legal advice means giving opinion relating to any problem on substantive or procedural law. It differs from mere giving of legal information. Legal information could be given in any form which may include printed materials where as legal advice includes gathering necessary information from the client and application of legal rules to such facts. In addition to such an

application, legal advice also includes counseling. A properly directed legal advice has potential of reducing unnecessary litigation. Therefore, providing legal advice becomes an integral part of legal aid.

**Figure 15** *Colleges providing Legal Advice to the Public*

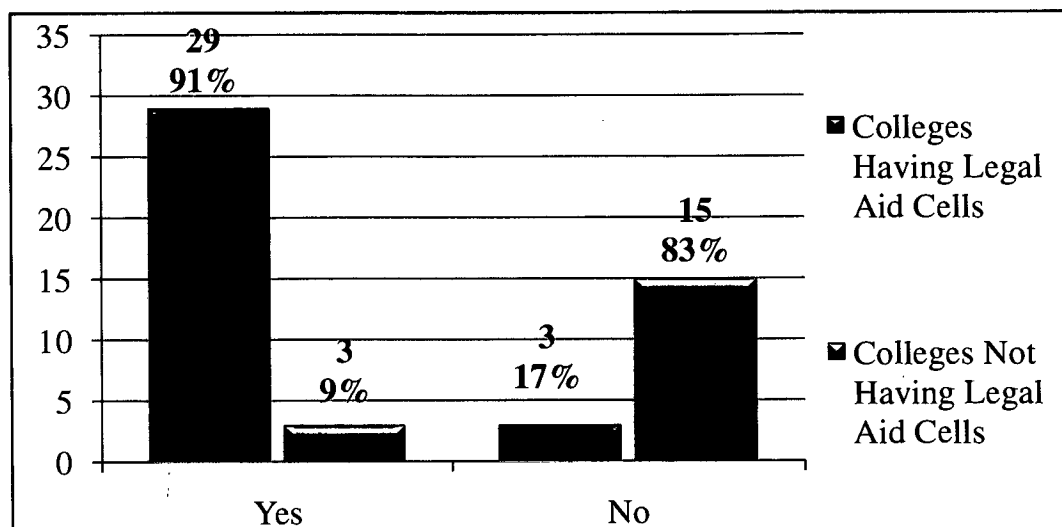


Figure 15 reveals involvement of Law Colleges in offering legal advice. There is a substantial difference between Colleges having Legal Aid Cells and Colleges having no Legal Aid Cells. Among Law Colleges having Legal Aid Cells, 91% offer legal advice, whereas it is merely 17% among the Law Colleges having no Legal Aid Cells. It means that 83% of Colleges not having Legal Aid Cells do not involve in legal advice.

Therefore, offering legal advice is directly linked with establishing Legal Aid Cells in the Colleges. These services are invaluable not only because they save prospective clients time and money, but also because they can reduce unnecessary litigation. These Cells give ample opportunity to the students to learn interview techniques, fact finding and research skills.

### 4.2.3. Paralegal services: Towards Enhancing Quality of Life for the Needy

Paralegal services includes drafting affidavits, assisting in registration of marriages, births and deaths, electoral rolls, and filling out various forms. Law Colleges undertake such activities by associating with local self governments, such as, *Panchayats* and municipalities. These kinds of services help to develop several skills such as drafting, research, interviewing and fact finding skills. At the same time Para legal services provide greater help to the public in securing their basic legal entitlements.

**Figure 16** Colleges Providing Para Legal Services

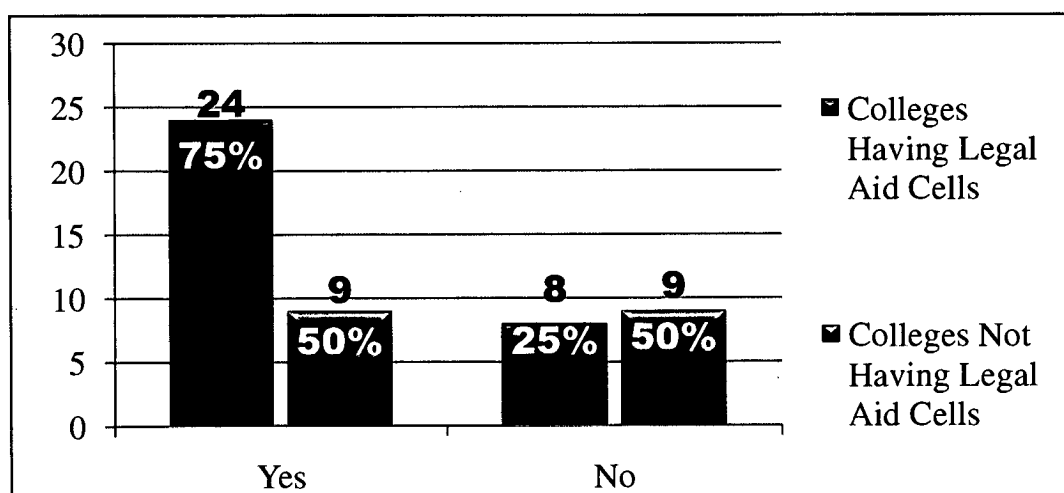


Figure 16 show that 75 % of Law Colleges having Legal Aid Cells, offer Para-legal services where as it is 50% among the Law Colleges having no Legal Aid Cells. It means that there is an increase of 25% in Colleges having Legal Aid Cells providing Para-legal services. Therefore, again establishing Legal Aid Cells has a greater impact in providing Para legal aid services to the public.

#### 4.2.4. Facilitating Alternative Dispute Resolution

Alternative Dispute Resolution methods gain momentum due to several factors such as high litigation costs, delays and limitation of Court in handling complicated disputes which requires specialization, etc. When legal education over emphasizes litigation role of the lawyer, promoting ADR becomes more difficult. As mediation has been officially recognized by the Supreme Court and is found in as a statutory provision, promoting ADR culture among the students become imperative.

**Figure 17** Colleges facilitating Alternative Dispute Resolution

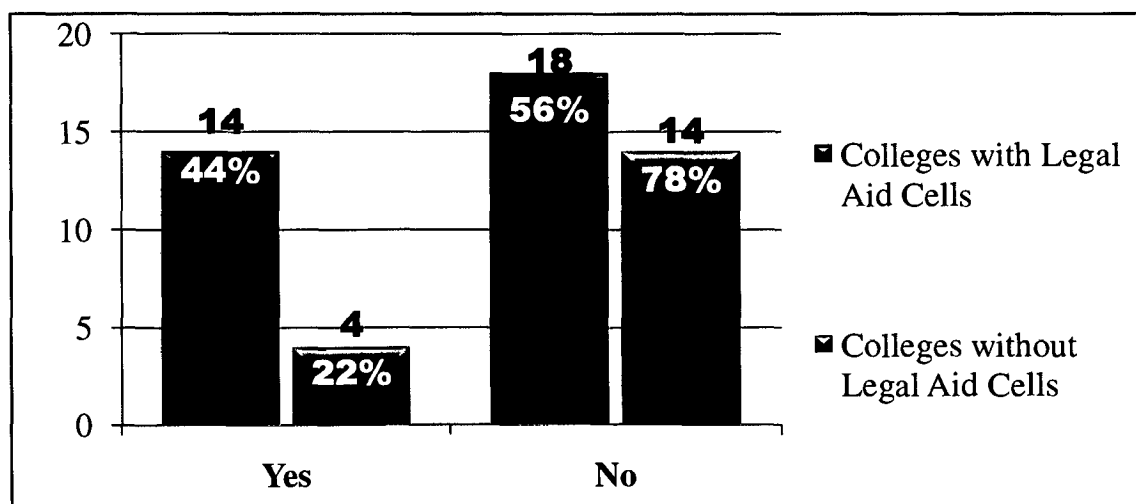


Figure 17 explains lack of enthusiasm in promoting ADR in Law Colleges. This trend seems to be common for both categories of Law Colleges. Though Colleges with Legal Aid Cells appear to have a better standing, the overall performance is not very encouraging. The study reveals that only 44% of the Colleges having Legal Aid Cells involve in promoting ADR. But the performance of colleges having no Legal Aid Cells is abysmal, at 22%. This trend could be attributed to what Charity Scott describes as traditional mode of

legal education.<sup>32</sup> She describes this trend is a byproduct of over emphasis on adversarial system, litigation role of lawyer, participation in moot Courts, and learning law through litigation cases on appeal.

#### ***4.2.5. Legal Awareness and Literacy Programs***

In a country like India, where about 260 million people live below the poverty line and some two-thirds of the population of more than a billion is dependent on agriculture,<sup>33</sup> focus on legal literacy programs is extremely important. Law Schools can play a major role in sensitizing the public about their legal rights and duties. Organizing Legal Literacy Campaigns are suitable for Law Schools in India. They require neither large financial resources nor special expertise. These Programs help students in developing important organizational skills, research, oratory, public speaking and translation skills.<sup>34</sup> Therefore, organizing Legal Literacy Programs become important and major component of providing Legal Aid.

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<sup>32</sup> She argues that Legal education stresses the role of lawyers as advocates, even zealous advocates, and downplays the equally important and historical role of lawyers as counselors (as in, "counselor-at-law"). See Charity Scott, *The Problems and Promise in Legal Education For Promoting ADR in Health Care Settings*, available at <http://www.healthlawyers.org/Resources/Academics/LawProfessors/Advice Columns/ Pages/asp.aspx> (Last visited 08 - 07 - 09)

<sup>33</sup> P.Chidambaram, Finance Minister, Economics Times, Tuesday, Mar. 1, 2005 available at <http://economictimes.indiatimes.com/search.cms>. (last visited on 10 - 09 - 2006)

<sup>34</sup> Most of the laws in India are in English. So the students need to translate them in to the local language to disseminate legal information.



**Figure 18** *Involvement of Law Colleges in Legal Literacy Programs*

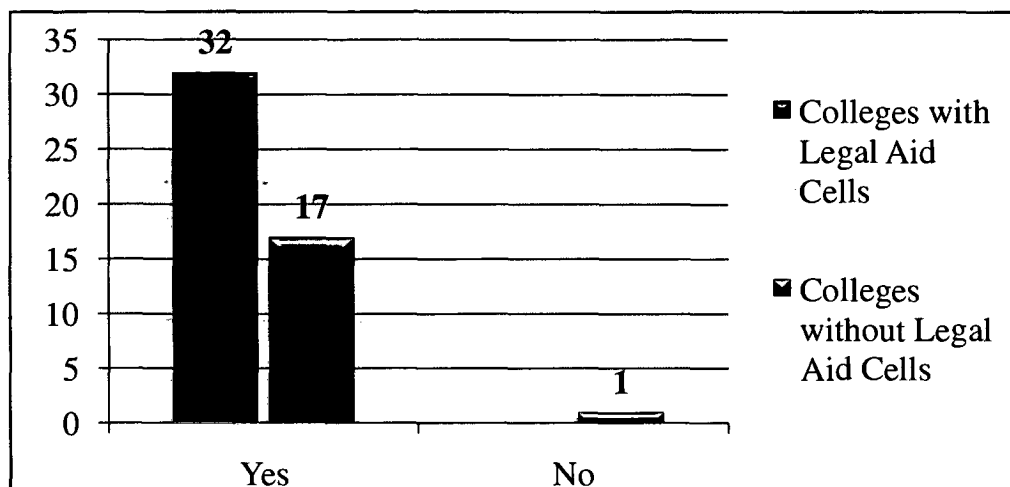


Figure 18 confirms that almost all the Law Colleges are involved in the Legal Literacy Programs. Out of 50 Colleges, 49 are involved in the Literacy Program. This could be attributed to the fact that conducting Legal Literacy Programs requires less human and material resources compared to other components of Legal Aid.

#### **4.2.6. Public Interest Litigation**

Strict interpretation of the rule of *locus standi* denies equal access to justice to those who cannot afford to approach the Courts on account of poverty or social and economic disadvantage. To resolve this problem, the Supreme Court of India in 1975 relaxed the traditional rule of *locus standi* and evolved the concept of Public Interest Litigation.<sup>35</sup>

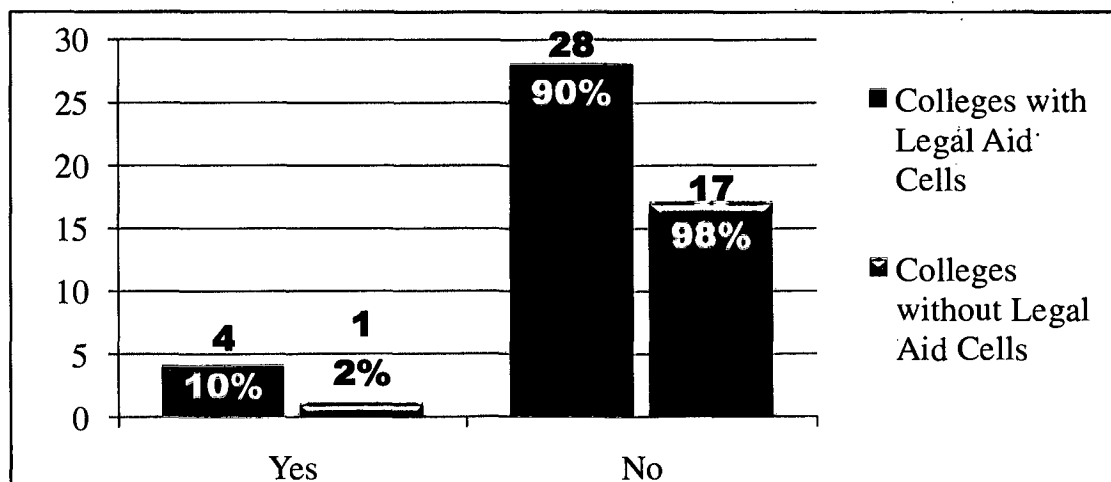
Under this new concept, any member of public or social group or organization could invoke the writ jurisdiction of the Supreme Court or any High Court for

<sup>35</sup> See. *Bar Council of Maharashtra v. M. V. Dabholkar* A.I.R. 1975 S.C. 2092; see also, *Mumbai Kamgar Sabha v. Abdulbhai* AIR 1976 SC 1455.

violation of constitutional rights.<sup>36</sup> Further, the liberal interpretation of Article 32 (1)<sup>37</sup> by the Supreme Court, by which it accepted a letter addressed to the Court as a writ petition, has allowed people to approach the Supreme Court to sort out their legal problems.<sup>38</sup>

Public Interest Litigation gives an excellent opportunity for students to use it rationally to achieve desired goals of social justice. Public interest litigations serve dual purpose; of learning all the skills of advocacy and at the same time providing justice to the public.

**Figure 19** *Involvement of Law Colleges in Public Interest Litigation.*



Public interest litigations serve dual purpose of learning all the skills of advocacy and at the same time provide justice to the public. But Figure 19 shows the low involvement of Law Colleges in Public Interest Litigation. Only

<sup>36</sup> Hundreds of Public Interest Litigations were filed in the Apex Court and in several High Courts. Few important judgments are S.P.Gupta v. Union of India, AIR 1982 SC 149; People's Union for Democratic Rights v. Union of India, A.I.R. 1982 S.C. 1473; Olga Tellis v. Bombay Municipal Corporation, AIR 1986 SC 180; Vishaka v. State of Rajasthan, AIR 1997 SC 3011; M.C.Mehta v. Union of India AIR 1998 SC 186.

<sup>37</sup> Indian Constitution Art. 32 (1) declares that "the right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed."

<sup>38</sup> Resolution No. F.6(34)/81-I.C., Dated 9-7-1981.

10% of Law Colleges are involved in Public Interest Litigation. Involvement of Colleges having no Legal Aid Cells is as low as 2%.

In fact only one College claimed to be involved in Public Interest Litigation. One reason for such a low involvement could be the hardships involved in filing public interest litigation. Further, rural Colleges though have a better position in bringing the plight of rural people to judicial notice, due to geographical and lack of resource struggle in using public interest litigation. But the amount of research required, faculty guidance, training students in drafting, and other resources contribute immensely in the success of filing public interest litigation.

#### ***4.2.7. Law Enforcement and Reforms***

Law reform involves the aspect of students researching and conducting surveys on any existing law and suggesting the required change. This helps in assessing the actual working of the law and its relevance to the society. Legal institutions cannot live in isolation from the society. They need to be conscious and concerned about existing legal and social issues, as law influences life more than any other subject. Social interactions and continuous analysis of existing laws therefore becomes imperative for Law Colleges. Further, this kind of Program helps in developing skills of legal research, survey techniques, drafting and communication skills among the Law students.

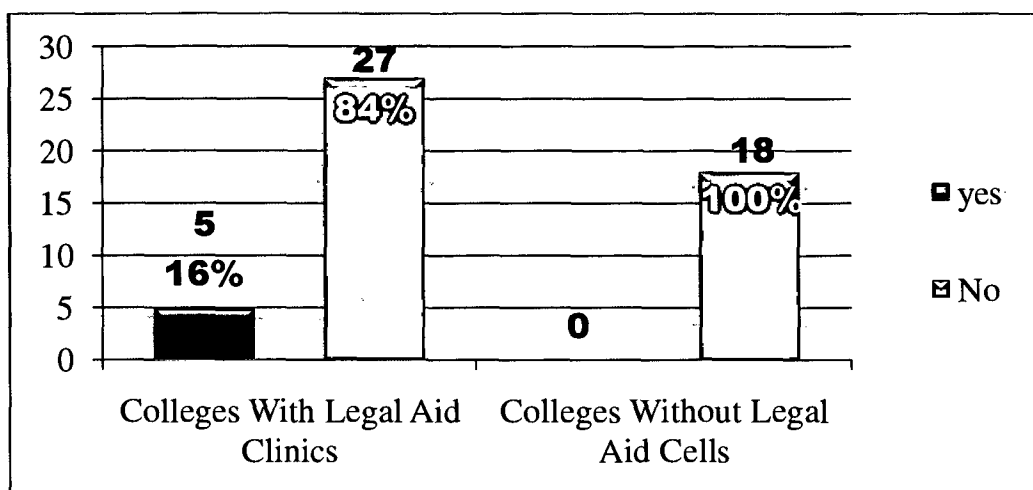
**Figure 20** Law Colleges engaged in Law Reforms

Figure 20 reveals that only five out of 32 Law Colleges having Legal Aid Cells are actually engaged in law reform. As far as Law Colleges having no Legal Aid Cells are concerned, none of them are involved in law reform.

Figures 14 to 20 reveal that having Legal Aid Cells provides distinctive advantage in offering legal aid. Colleges having legal aid setup seems to be involved more meaningfully in legal aid. A consolidated data of Colleges involved in various legal aid activities were given below in Table 15.

**Table 15** Involvement of Law Colleges in Legal Aid Activities - State Wise

Sl.No	Name of the Activity	Andhra		Karnataka		Goa	
		Yes	No	Yes	No	Yes	No
1	Legal Representation	2	21	6	19	1	1
2	Legal Advice	13	10	23	2	2	0
3	Para Legal Services	12	11	19	6	2	0
4	Promotion of ADR	4	19	13	12	1	1
5	Legal Literacy Programs	23	0	24	1	2	0
6	Public Interest Litigation	1	22	2	23	1	1
7	Law Reform	1	22	2	23	1	1

Source: Primary Data

The data in Table No 15 shows both Colleges involved and not involved in the legal aid activities. For the purpose of comparison of data between three States the Table No 16 shows only colleges involved in legal aid activities and further same data was converted into percentage for better understanding.

**Table 16** Activities undertaken by Colleges State Wise ( in Percentage)

Sl.No	Activities	Andhra	Karnataka	Goa
1	Legal Representation	8.7	24	50
2	Legal Advice	56.5	92	100
3	Para Legal Services	52.2	76	100
4	Promotion of ADR	17.4	52	50
5	Legal Literacy Programs	100	96	100
6	Public Interest Litigation	4.3	8	50
7	Law Reform	4.3	8	50

Source: Primary Data

**Figure 21** Activities undertaken By Colleges (in Percentage)

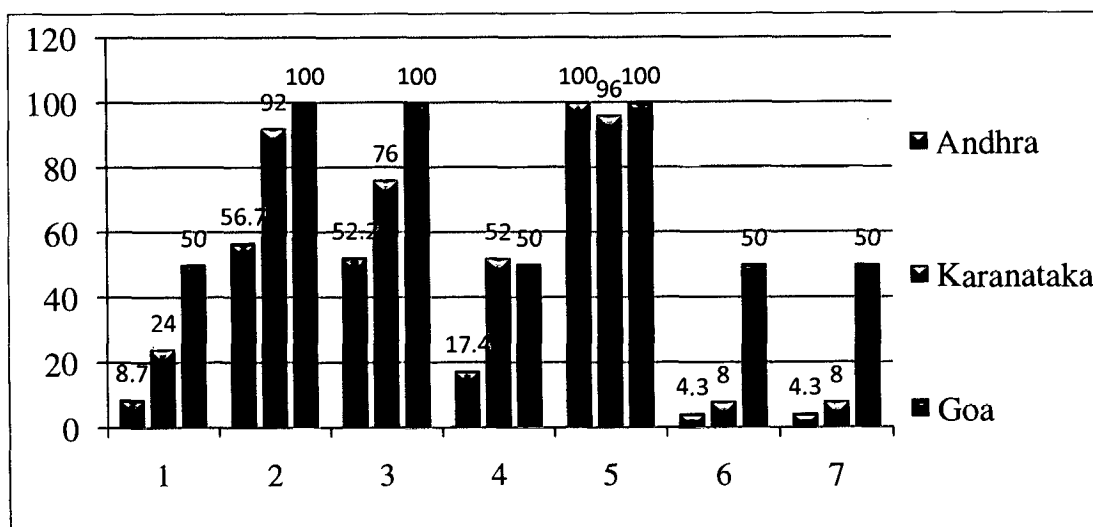


Figure 21 shows the disparity among three States regarding the range of legal aid activities undertaken by Law Colleges. Similarities can be found only in the fifth component i.e. legal literacy. Therefore, the hypothesis that there are widespread disparities among the Law Colleges in different States is proved.

### **4.3 Assessment of the Role of Clinical Legal Education in Developing, Institutionalizing and Implementing the Social Justice Mission**

#### ***4.3.1. Developing a Social Justice Mission.***

Legal profession is the cornerstone of legal system in India. The Bar plays an important role particularly in adversarial system that is adopted in India. When legal profession is monopolized and access to justice is barricaded by the law with several technicalities and procedural tangles, it may result in access bias against the downtrodden in India. Justice Krishna Iyer writes, "Access to justice is the stunted child of semi-colonial jurisprudence that we inherited from British; decentralized justice is dreaded; participative justice is a derogatory concept for the rich and elite; dispute settlement in democratic way and lobbying for law making to the benefit of poor is frowned; social audit and execution of laws, seeking justice are unknown."<sup>39</sup>

Hence reforming the lawyers would immensely help in transforming the legal system and it in turn can transform the social order. Legal profession has become self-serving and it is more concerned about protecting its monopoly on justice delivery system and has lost its prime motive of serving the public. Therefore, the legal personnel must strive to implement the Directive Principle under Art.38 and 39A.<sup>40</sup> Implementing these provisions is the duty of every lawyer as the monopoly over the legal profession is State conferred. To implement these directives, strengthening the justice delivery system through

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<sup>39</sup> Krishna Iyer V.R., SOCIAL JUSTICE SUNSET OR DAWN, 105 (Eastern Book Company, Lucknow)

<sup>40</sup> *Id* at 128

legal aid activities, such as legal literacy programs, class actions, pro bono litigation, law reform, and para legal services need to be undertaken seriously.

The major obstacle in implementing social justice is under-development of access to justice. To improve the access to justice, creating barefoot lawyers having social concern, is a condition precedent. However, to provide easy accessible justice system to a billion is a gigantic task. Therefore, using the Law students in meeting the above objective serves dual purpose. Firstly, it would help in creating socially sensible lawyers; and secondly it would also serve the purpose of meeting the number.

Utilizing the law students for providing easy access to justice, requires the developing of new methodology not only in teaching pedagogy but also in the method of running Legal Aid Clinics. Traditional method of having a Legal Aid Clinic on the campus would not serve the purpose. Legal aid for a few members of the society would not transform the legal profession toward the goal of social justice to provide access to justice. Legal aid needs to be organized like a mass movement.

To organize legal aid as a mass movement, Law Colleges need to identify and plan wide range of activities that the students will be able to undertake. Further such activities need to be designed in such a way that they help the society. To achieve such a mission the activities need to be tailor made to suit the prevailing conditions in the localities where the Law Colleges exist.

Students need to understand the law in application, and in order to have such an understanding they need to live in the community. They need to develop empathy towards the problems faced by the community. Therefore, establishing Legal Aid Clinics in the community becomes necessary to empathize, assimilate, decipher and to work out the Social Justice Mission. Community Clinics present an opportunity to interact with the community and provide a chance to have a closer look at the operation of law in real life situation.

Promoting Community Clinics would enhance achieving the mission of providing access to justice as the Community Clinics engage in both, formal and informal collaborations with clients and the community groups, to identify and address community issues, empower communities, promote access to legal systems and encourage larger economic, political, and social contexts such as problems of poverty, social exclusion, and social change.<sup>41</sup>

The V. M. Salgaocar College of Law, in the State of Goa has used Community Clinics in fostering community based legal aid. The further parts of this Chapter would analyze the establishment and working of such Clinics in the community context.

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<sup>41</sup> Karen Tokarz et al, Conservation on "*Community Lawyering: The Newest (Oldest) Wave in Clinical Legal Education*", Journal of Law and Policy, Vol 28, 363 available at <http://ssrn.com/abstract=1300469> (last visited 20 – 06 – 09)



#### *4.3.2. Institutionalizing the Social Justice Mission [Establishment of Legal Aid Society, Cells and other Mechanisms]*

With a strong desire to serve the society dually, by providing community based legal assistance to the general public, as well as by producing competent and socially sensitive legal professionals, V. M. Salgaocar College of Law established the 'V. M. Salgaocar College of Law Legal Aid Society' in 1998. Today, the Legal Aid Society of this College has grown and spread the ambit of its activities all over Goa. At present, the Legal Aid Society operates 38 Permanent Free Legal Aid Cells all over State of Goa.

##### *Permanent Free Legal Aid Cells*

The underlying ideology of Legal Aid Cells is that the legal professionals cannot live in ivory towers. They should not only see and sense social realities but also direct their activities towards promoting social justice. To execute this theme, the Legal Aid Society of V. M. Salgaocar College of Law has setup 38 permanent Free Legal Aid Cells all over the State of Goa.

Table 17 Details of Permanent Legal Aid Cells

Sl.No	Name of the Cell	Venue	Time & Day
1.	Anjuna	Government Primary School, Tembri-Anjuna	10-12 noon Sunday
2.	Arpora	Panchyat, Arpora	3-5pm Saturday
3.	Assnora	Shishu Vatika, above Urban Coop Bank	3-5 pm Saturday
4.	Banda	Panchayat, Banda	9.30 – 11.30 am Sunday
5.	Bandora	Panchyat, Bandora	3-5 pm Saturday
6.	Bastora	Panchayat, Bastora	3-5 pm Sunday
7.	Bicholim	Shantadurga Higher Secondary School	3-5 pm Saturday
8.	Brittona	Panchayat, Penn-de-Franca	3.15-5.15 pm Saturday
9.	Calangute	Panchyat	3-5 Saturday
10.	Chorao	Madel Government Primary School	3-5 pm Saturday
11.	Cortalim	Panchayat, Cortalim-Quelossim	3-5 pm Monday
12.	Duler	St Francis Xavier Chapel Hall	10-1 pm Sunday
13.	Goa Velha	St. Andrews High School	3.30-5.30 pm Saturday
14.	Majorda	St. Anthinos Church School	3-5 pm Saturday
15.	Mala	Government Primary School	3-5 pm Saturday
16.	Mandrem	Sharad Mandrekar Residence, Asghaonwaddo-Mandrem	10-1pm Sunday
17.	Marcela	Panchayat Tivrem-Orgao	3-5 pm Saturday
18.	Margao	Fatorda Lady of Rosary Church	3-5pm Saturday
19.	Merces	Government Middle School	3-5 pm Saturday
20.	Moira	Panchayat, Moira	3.30-5.30 pm Saturday
21.	Old Goa	Panchayat, Old Goa	3.30-5.30 Saturday
22.	Pernem	St Joseph High School	9-11.30 am Sunday
23.	Porvorim	Vidya Prabhodhini High School	3-5 pm Saturday
24.	Porvorim (Lions)	Lions Medical Centre	3-5 Saturday
25.	Priol	Panchayat, Priol	3-5 pm Saturday
26.	Revora	Panchayat Building	3-5 Saturday
27.	Sancoale	Classic Marbels, Plot No 41 Sancoale Industrial estate, Zuari Nagar	3-5 pm Saturday
28.	Sangolda	Panchayat Hall	2.30-5 pm Saturday
29.	Sanquelim	Progress High School	3-5 pm Saturday
30.	Shiroda	Panchayat Shiroda	2.30-5 pm Saturday
31.	Siolim	Siolim-Marna Panchayat	3-5.30 Saturday
32.	St Cruz	St High School	3-5 pm Saturday
33.	Succoro	Panchayat, Succoro	2.30-5 pm Saturday
34.	Taleigao	St.Michael Church	3-5 pm Saturday
35.	Taleigao (Durgawadi)	Damodar Temple	3-5 pm Saturday
36.	Valpoi	Church Hall, Near Our Lady Lourdes High School	3 – 5 pm Saturday
37.	Vasco	Vasco Municipality	3-5 pm Saturday
38.	Verem	Government Primary School	3-5 pm Saturday

Source: Primary Data

Table 17 shows the details of 38 Free Legal Aid Cells that operate under the banner of V.M.Salgaocar College of Law. These Cells are open to the public once a week, preferably on weekends. The Cells are open to the general public without limitation. Students carry out an awareness campaign about the setting up of the Cell and the services they can offer from the Cell.

**Table 18** *Place of Legal Aid Cell*

Sl. No	Place of Legal Aid Cells	No of Cells
1.	Panchyats	16
2.	Schools	13
3.	Temples/Churches	5
4.	Others	4

Source: Primary Data

**Figure 22** *Place of Legal Aid Cell*

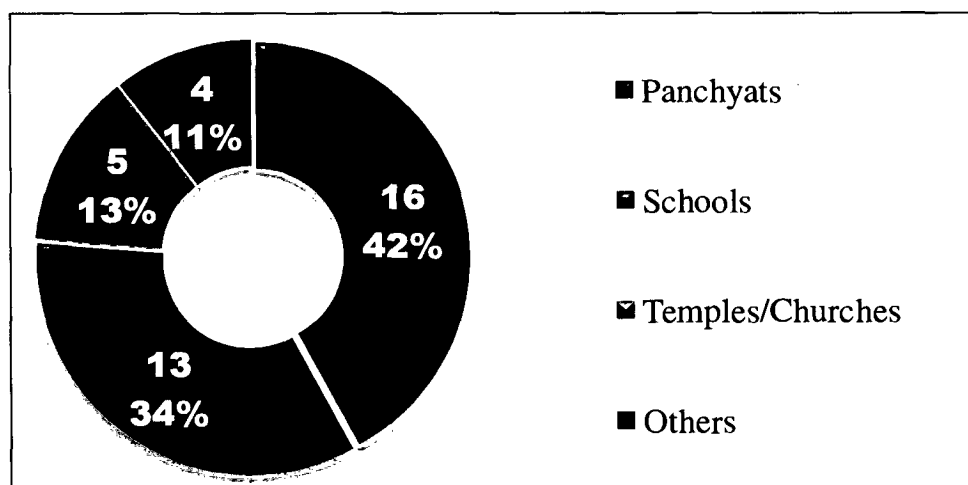


Figure 22 shows the venue of the Legal Aid Cells. These Cells are setup and housed in *Panchayai* buildings, schools, churches or temple premises. Majority of the Cells, i.e., 42% are operating from Panchayats where as 34% operate from Schools. These premises are selected on the basis of availability and easy accessibility to the public.

**Table 19** Areas and the Population covered by Legal Aid Clinics

Sl.No	Name of the Legal Aid Cell	Areas Covered	Population	Total Population
1.	Anjuna	Anjuna,	4398	8601
		Assagao,	4203	
2.	Arpora	Arpora,	4398	8212
		Parra	3814	
3.	Assonora	Assonora	5005	5005
4.	Banda	Banda	6953	6953
5.	Bandora	Bandora	12267	12267
6.	Bastora	Bastora	3833	3833
7.	Bicholim	Bicholim Municipality	14919	14913
8.	Brittona	Penha De Franca	15377	15377
9.	Calangute	Calangute,	15783	29946
		Saligao,	5559	
		Candolim,	8604	
10.	Chorao	Chodan –Madel	5788	5788
11.	Cortalim	Cortalim – Quelossim	9537	9537
12.	Duler	Mapsa Municipality		40487
13.	Goa Velho	St. Andre - Goa Velha	5459	5459
14.	Majorda	MaJorda – Utorda – Calata	6779	12761
		Betal Batim,	3207	
		Seraulim	2775	
15.	Mala	Panjim Corporation	60223	60223
16.	Mandrem	Mandrem	8022	8022
17.	Marcela	St.Estevam,	4134	21976
		Cumbharjua,	4825	
		Amona,	3452	
		Tivrem-orgao,	5792	
		Verem –Vaghurm	3773	
18.	Margao	Velim,	6238	23391
		Raia,	8862	
		Assolna,	3449	
		Ambelim,	2907	
		Sarzora,	1935	
19.	Merces	Merces	9254	9254
20.	Moirá	Aldona,	9845	22649
		Moirá,	4206	
		Nachinola,	2226	
		Gurim	6372	
21.	Old Goa	Old Goa,	5003	9856
		Corlim	4853	

Sl.No	Name of the Legal Aid Cell	Areas Covered	Population	Total Population
22.	Pernem	Agarwada – Chopdem	2004	23897
		Parsem,	4324	
		Carsvarem	1765	
		Dhargalim	4913	
		Torxem,	2491	
		Pernem Municipality	8400	
23.	Pirna	Pirna	2420	2420
24.	Porvarim	Penha De Franca,	15377	15377
25.	Porvorim lions	Penha De Franca,	15377	24085
		Ries Magos	8708	
26.	Priol	Veling – Priol,	10969	34838
		Betora –Nirankal	6004	
		Cundaim,	3970	
		Querim	3465	
		Marcaim,	6208	
		Boma –Adcolna	4222	
27.	Revora	Revora,	2501	7976
		Colvale	5475	
28.	Sancoale	Sancoale	15635	15635
29.	Sangolda	Sangolda Panchayat,	3631	9190
		Saligao Panchayat	5559	
30.	Sanqulim	Municipality	11194	11194
31.	Shiroda	Karai,	14112	18270
		Puncwadi,	4158	
32.	Siolim	Sodiem,	3721	14596
		Oxel,	3016	
		Marna	7859	
33.	St. Cruz	St. Cruz Panchayat	11830	11830
34.	Succorro	Succorro	10174	10174
35.	Talegao	Talegao	16700	16700
36.	Valpoi	Valpoi Municipality,	7917	19015
		Nagargao,	4398	
		Bhironдем	3598	
		Camurlim	3102	
37.	Vasco	Vasco Municipality	97154	97154

Source: Primary Data

Table 19 shows the areas of operation of each Legal Aid Cell. Though there are no strict barriers as to areas of operation, usually these Cells operate in a fixed area and cater to the needs of the community in that particular area.

### *4.3.3. Implementing the Social Justice Mission*

#### *i. Activities of Legal Aid Cells*

Students in the community Legal Aid Clinics use different methods to address the concerns of the members of the locality which includes mobilization of the community, using media, legal literacy campaign, social surveys, counseling and support, campaigning and generation of consensus, mobilization of Local and State Governmental machinery.

These Legal Aid Cells (LAC) are operated by a team of students who make their services available on every Saturday or Sunday, for a minimum duration of two hours per week. Any person having any sort of law-related problem can go to the Legal Aid Cells and will be helped by the students in securing justice, either by their legal advice or, when required, by a positive action such as meeting the other party, filing application before the concerned government officers, or securing free legal service under the Legal Services Authorities Act.

In addition to this, every Legal Aid Cell carries on a sustained campaign for creating legal awareness by conducting village level programs such as seminars, symposia, and talks by lawyers, police officers, Presiding Officers and members of District Consumer Forums. To ensure the attendance of the local population, in addition to releasing information through local media, the student groups visit every house and extend personal invitations.

This method has yielded such a rich dividend that even the State Legal Services Authority, for whose programs attendance is usually extremely low, has enlisted the support of the students of the College to secure the presence of the villagers for their programs. The Legal Aid Cell members also function in coordination with other NGOs and participate in any activity meant to advance the welfare of the local populace.

The Legal Aid Cells work towards achieving its stated objectives in a number of diverse ways. The foremost requirement for effective working of LAC is identifying the community and forging a relationship with the community. Therefore, the College uses the strategy of selecting the students coming from the same locality or neighboring locality to work in the LAC. By using this strategy establishing relationship with the community becomes much easier.

The next step is ascertaining the requirements of the community. This has been accomplished by undertaking of surveys by the members of LAC. Immediately after establishing the LAC, the members of the LAC conduct a general survey to identify the needs of the community. After identifying the needs of the community, LAC members share these concerns with the faculty and other LACs. Thereafter, different methods are devised to address the problems of the community.

LAC members also research the different schemes and programs particularly welfare schemes of the government that are applicable to the community. Once they identify the schemes, members of LAC conduct campaigns, literacy

programs, and camps. Many a times, LAC members even arrange the concerned government officials in charge of such schemes and work as liaison persons between the members of the public and the Government to get the benefits to the community.

The following are the main modes of operation of the LAC:

1. Legal Representation
2. Legal Advice
3. Legal Literacy
4. Para Legal Services
5. Implementing Welfare Schemes
6. Participating in Gram Sabhas
7. Public Interest Litigation
8. Public Forums



**Table 20** *Activities of LACs for the years 2007 - 2009*

Sl. No	LAC	Legal Advice	Legal Literacy	Para Legal Aid	Senior citizen Card	NREG Job Card	DSS Scheme	Other Schemes	Street play	Gram Sabha
1.	Anjuna	5	20	6	26	31	-	-	4	1
2.	Arpora	5	17	4	7	1	-	-	2	1
3.	Assnora	4	10	5	32	-	-	-	6	1
4.	Banda	16	13	4	6	-	-	-	2	1
5.	Bandora	25	26	10	45	27	-	2	12	4
6.	Bastora	8	25	9	35	-	1	-	-	3
7.	Bicholim	6	12	1	12	54	-	-	-	1
8.	Brittona	4	6	9	21	6	-	1	51	1
9.	Calangute	8	19	8	25	7	-	-	3	2
10.	Chorao	5	13	3	8	64	-	1	1	3
11.	Cortalim	-	19	10	6	6	-	2	1	1
12.	Duler	12	36	11	80	4	4	2	4	-
13.	Goa Velha	2	28	3	8	6	-	2	-	1
14.	Mala	4	36	9	23	1	-	-	6	1
15.	Mandrem	10	23	7	21	50	-	1	6	10
16.	Marcela	8	30	2	3	-	-	4	1	2
17.	Margao	24	21	-	164	-	-	-	1	-
18.	Merces	18	14	10	16	-	-	13	2	1
19.	Moirá	5	23	7	35	-	-	8	-	2
20.	Old Goa	15	23	10	5	-	-	1	2	6
21.	Pernem	5	15	3	183	41	3	30	-	5
22.	Porvorim	30	55	6	60	45	13	6	151	2
23.	Porvorim (Lions)	-	19	3	29	10	-	-	1	1
24.	Priol	13	30	3	149	06	1	-	02	1
25.	Revora	3	12	4	8	40	-	-	-	2
26.	Sancoale	30	29	2	9	-	-	7	20	3
27.	Sangolda	17	25	1	4	16	-	7	-	4
28.	Sanquelim	14	16	5	15	31	-	3	4	-
29.	Shiroda	48	30	9	200	-	-	6	13	10
30.	Siolim	35	27	10	148	15	-	-	5	6
31.	St Cruz	4	40	5	21	-	1	4	8	1
32.	Succoro	16	48	11	293	9	-	32	18	2
33.	Taleigao	3	16	7	12	-	2	2	-	-
34.	Taleigao Durgawadi	32	33	8	31	-	4	1	-	2
35.	Valpoi	2	18	1	5	60	-	-	2	-
36.	Vasco	6	31	-	10	19	4	-	4	1
37.	Verem	4	16	5	23	10	5	1	5	2
	<b>TOTAL</b>	<b>446</b>	<b>874</b>	<b>211</b>	<b>1778</b>	<b>559</b>	<b>38</b>	<b>136</b>	<b>337</b>	<b>83</b>

Source: Primary Data

**Table 21** Consolidated Activities of the Legal Aid Cell from 2007 to 2009

Legal Advice	Legal Literacy	Para Legal Services	Welfare Schemes	Attending Gram Sabhas
446	1211	211	2511	83

Source: Primary Data

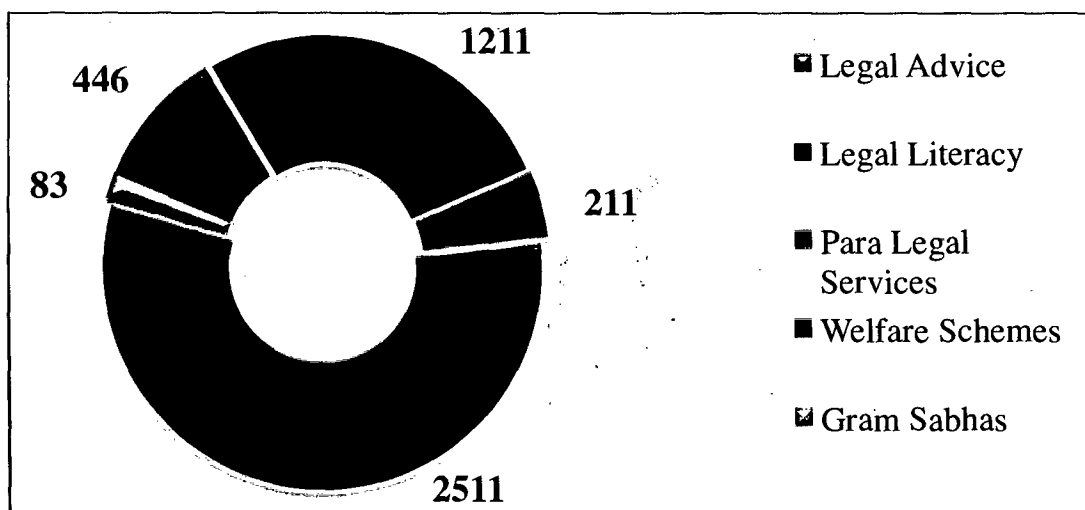
**Figure 23** Activities of the Legal Aid Cell from 2007 to 2009

Figure 23 shows various activities undertaken by the LACs from the year 2007 to 2009. It clearly indicates the significant involvement of LACs in the community empowerment. The importance of some of such activities is already mentioned. Implementation of the Welfare Schemes and participation in the Gram Sabhas need a special mention. Implementing Welfare Schemes has become one of the prime focuses of LACs from the year 2005. Though LACs generally help the community by providing information on the relevant Welfare Schemes of the government, they specially focused on few schemes

such as Identity cards for Senior Citizens,<sup>42</sup> Dayanand Social Security Scheme,<sup>43</sup> and National Rural Employment Guarantee Scheme.

Every Legal Aid Cell member is required to attend the local *Gram Sabha*.<sup>44</sup> With the association of the *Sarpanch* (elected head of the *Panchayat*) and other *Panch* members, students are required to ensure attendance of the villagers at the *Gram Sabhas*. They also take note of the proceedings of the *Gram Sabha* and the same is kept in their journals as well as supplied to the *Sarpanch* to ensure at the next meeting that whatever promises are made are fulfilled. Students also use these meetings for conducting Legal Literacy Programs. Attending *Gram Sabhas* afford an opportunity to the students to understand the problems of the community.

### *Public Interest Litigation*

The teaching of Practical Paper IV at the College, i.e., the paper on public interest lawyering, legal knowledge and legal awareness, has two dimensions. The first part, as mentioned earlier, is the intensive Legal Aid Program through the Legal Aid Cells. The second part, i.e. Public Interest Lawyering, is an area

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<sup>42</sup> Identity cards to the senior citizens (Age 60 and above) are issued through the Directorate of Social Welfare. These card holders could avail one third concession in fare in State owned transport vehicles, gets preference in State run hospitals for treatment.

<sup>43</sup> The scheme is an initiative under "Freedom From Hunger" project and was launched on 2nd Oct. 2001 and came into force with effect from 01-01-2002. The scheme provides monthly pension to Senior Citizen(60 years and above ), Disabled persons and Single Women @ Rs. 1000/- p.m. The monthly pension amount is transferred by electronic clearance system in the individual accounts. See [http://www.goasocialwelfare.com/seniorcitizens\\_schemes.htm](http://www.goasocialwelfare.com/seniorcitizens_schemes.htm) (last visited 17 - 02 - 2010)

<sup>44</sup> Grama Sabha is a mandatory meeting of elected member of the Panchayat and residents of that village. This meeting is very important as various policies of the village administration are discussed and an opportunity is given to the residents to interact and discuss their problems with the Panchayat members.

in which the College has excelled. It is pertinent to note that the students of the College have successfully filed 20 Public Interest Litigations before the Mumbai High Court (Panaji Bench) on various issues ranging from the use of helmets to violations of Coastal Regulation Zones.

During the course of regular lectures and at the legal aid meetings, the faculty exhorts the students to be sensitive to their physical and social surroundings. By this process of sensitization to the social situations and persistence of injustice in their own immediate society, the students by themselves are able to identify various areas where they feel that the intervention of the judiciary would bring in immediate succor. Thereafter, the students usually discuss with the faculty the nature of the problems that they have identified.

The faculty guides them as to how they should further investigate or research the issue to confirm that there is a real situation of injustice where a member of the public could be genuinely interested. Thereafter the students are advised to write to competent authorities who are obliged under law to remedy the injustice. If such authorities do not provide relief, the next step is to approach the media; and the students ensure that the media reports the injustice, callousness or inability of the government to rectify the issue.

Thereafter, with all the gathered information, the students themselves, with guidance from members of the profession, file the petition before the High Court, wherein the students themselves argue the case before the Court. This

process thus enables them to develop sensitivity, social concern and interest in research and most importantly involves them in providing social justice.

This is evident from a few of the experiences of students of the V.M. Salgaocar College of Law. When the State Government failed to constitute a Juvenile Board under the Juvenile Justice (Care & Protection of Children Act, 2003), two students from the College brought this to the notice of the High Court and the Court directed the government to establish the Board.<sup>45</sup>

On similar lines Public Interest Litigation was filed for establishment of Family Courts.<sup>46</sup> Another Writ Petition was filed by the students for ensuring sufficient parking spaces in newly constructed housing apartments; the Court directed the Town Planning Authority to ensure that sufficient parking spaces be reserved before sanctioning licenses for new constructions.<sup>47</sup> In a Writ Petition of far reaching importance, students succeeded in persuading the government authorities to take action against illegal shrimp farming.<sup>48</sup>

Similarly, when the State Government amended Goa Motor Vehicles Rules to water down the use of helmets by inserting Rule 273A, which exempt usage of helmets by motor cyclists riding motor bikes having capacity of less than 150cc and riding at the speed of 40 kilometer for hour, students challenged the

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<sup>45</sup> *Anjali Salkar and Others v. State of Goa & Another*, Writ Petition (PIL) No: 446/2002.

<sup>46</sup> *Savita Nelia Dias Sapeco v. Chief Sec, State of Goa* W P No. 567/2003

<sup>47</sup> *Dwijpal Patkar & Others v. Mapusa Municipal Council & Another*, Writ Petition (PIL) No: 387/2003.

<sup>48</sup> *Anand S. Kuwelkar & Others v. Chief Secretary & Others*, Writ Petition (PIL) No: 562/2003.

validity of the Rule. In its judgment the High Court struck down the said rule as invalid.<sup>49</sup>

Cases were also filed against violation of Coastal Regulation Zone Rules,<sup>50</sup> and industrial pollution.<sup>51</sup> Several cases were also filed for implementation of several laws such as implementation of Disability Act,<sup>52</sup> Scientific preservation and chemical treatment of Birth and Death records archives for records before January 1971,<sup>53</sup> establishment of State Human Rights Commission,<sup>54</sup> and regulation of scrap yards.<sup>55</sup>

Though these examples show the enthusiasm and zeal of the students to provide social justice through Public Interest Litigation, the approach of senior lawyers and the members of the judiciary was not very encouraging. In fact, the students experienced a general resentment among lawyers and judges against the idea of Public Interest Lawyering by students.

One of the main complaints from the lawyers and judges was that academic credit was given to the students for filing Public Interest Litigation. However, they did not realize that academic credit is an incidental incentive to the students. Further, they failed to recognize the role played by the students in

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<sup>49</sup> *Shane Sapeco & Others v. State of Goa & Others*, Writ Petition (PIL) NO:354/2003.

<sup>50</sup> *Siddesh Prabhugaokar and Others v. Chairman, Goa Coastal Zone Management Authority and Others* Writ Petition No. 399/2004

<sup>51</sup> *Ashish Dessai v. State of Goa* Writ Petition No 113/07

<sup>52</sup> *Charmaine A. Lobo & others v. State of Goa & Others*, Writ Petition No. 539 of 2004.

<sup>53</sup> *Shambavi Dessai v. State of Goa* W.P. 402/2002.

<sup>54</sup> *Charles De Souza v. State of Goa* PIL(WP) 05/ 2008.

<sup>55</sup> *Jatin Ramaih v. State of Goa* W.P. 12/2008

bringing the injustice to the notice of the judiciary. Ultimately, this is what the judiciary and the lawyers are required to do.

### *Law Reform*

In order to encourage and involve the students of the College in the process of thinking in terms of social justice, every year through the process of a Faculty meeting, the College identifies an area or legal issue in need of being addressed. After ascertaining the topic, the task is entrusted to two or three faculty members to divide the topic into different areas and to formulate student teams that will investigate research and study the topic chosen by them. Towards the end of the academic year, the study and findings of the students are presented as a research paper at a State Level Law Seminar. Students are guided by the faculty at every stage.

The first seminar on Personal Laws of Goa resulted in the formation of a Committee by the Government of Goa to formulate suitable legislation to incorporate the existing Portuguese Civil Code, as it exists in the State of Goa. The same seminar, which was presided by the Vice Chancellor of Goa, prompted the Vice Chancellor to formulate a Committee to translate a well-known commentary on Portuguese Civil Code by Mr. Cunha Gonsalves.<sup>56</sup>

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<sup>56</sup> Goa was a Portuguese colony and even after its liberation in 1961, though it was joined to India, Portuguese Civil Code continues to govern the Family laws in State of Goa. It causes considerable difficulties in administering the Code as it is in Portuguese language. Therefore, the seminar highlighted the problems of interpreting the Code and strongly recommended for translation of Code to English.

The seminar on Consumer Protection Law, for which the Law Secretary was the Chief Guest, resulted in the setting up of a regular Consumer Forum at the District level, which was earlier operated by a visiting Presiding Officer whose attendance was irregular.

The Seminar on Human Rights of Children, in which many of the NGOs in Goa actively participated, became a starting point whereby the government of Goa enacted a comprehensive law for the benefit of children called the Goa Children's Act, 2003. The concept of a Children's Court in the Act, not only originated at the deliberations but also the drafting of the Act as well as the rules regarding the Children's Court was done by the faculty of this College.

The seminar on Human Rights of Women, which was presided over by Mrs. Reena Ray, the then Secretary for Child and Women Welfare, Government of Goa, resulted in a group of students addressing the state officials. Their recommendation regarding the working condition of nurses was accepted by the Government of Goa.

The Seminar for academic year 2004–05 concerns the Welfare Schemes and their effectiveness in the State of Goa. The student teams are presently involved in investigating and studying the various welfare measures and their implementation in Goa.



## *ii. Financial Aid*

The success story of the Legal Aid Society is not one person's work. It is a collective effort made by the faculty and the students. Both faculty and the students work on weekends, and faculty has been working with the students without any expectation of financial benefits and without compromising their teaching hours.

Further, the College has no funding either from the government or from any private organizations. After prolonged discussions with faculty members, the Principal of the College took the initiative to convince the students to form the Legal Aid Society and made it compulsory for all students to join the society. Every student member agreed to pay Rupees 300 per annum as a membership fee.

The money collected from the students is deposited in a bank to finance all activities of the Legal Aid Society. One professor is elected by the faculty as a Co-coordinator of the Legal Aid Society, and one student as a Student Coordinator elected by the students. Every year the account of Legal Aid Society is submitted for government audit.

## *iii. Impact of Activities of Legal Aid Cells on Students:*

The preceding part illustrated various activities of the Legal Aid Cells. These activities are planned with a dual purpose of offering lawyering skills and

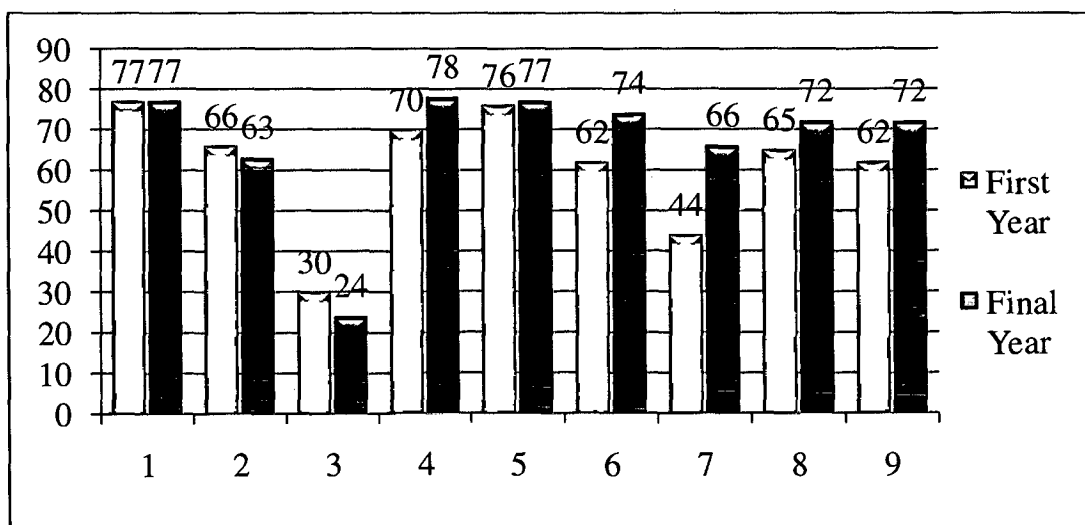
producing socially sensible legal personnel. Therefore, this part would analyze the impact of LAC on the students. To undertake such a study a structured questionnaire was used. Totally 9 questions were asked to the students. For the purpose of collecting the data equal number of students from first year and final year were taken. The reason for such study is to identify any transformation which has taken place among the students after joining the LAC.

To assess such transformation two different samples become necessary as first year students are not yet exposed to LAC whereas final year students are already actively involved with LAC activities. Therefore a comparison between these two different samples has the potential of assessing the transformation. For the purpose of collecting such data, 80 students from first year and 80 students from final year were randomly selected. The analysis of data collected from these students is given below.

**Table 22** *Impact of Legal Aid Cells - Students Response*

Sl.No	Questions	First Year		Final Year	
		Yes	NO	Yes	NO
1.	Law Students can help in providing Legal aid	77	3	77	03
2.	Law Students are capable of offering quality legal aid	66	14	63	17
3.	Lawyers' role is limited to wining the case for his/her client	30	50	24	56
4.	Lawyer has a role to ensure justice?	70	10	78	02
5.	Lawyer has an important role in bringing legal reforms?	76	04	77	03
6.	Offer free legal aid services after enrolling as an advocate	62	18	74	05
7.	Willing to associate with the College legal aid clinics after the graduation	44	36	66	14
8.	Legal aid clinics do useful work	65	15	72	08
9.	Legal aid activities help in bridging the gap between law in theory and law in practice	62	18	72	08

Source: Primary Data

**Figure 24** *Students Response*

1. Law Students can help in providing legal aid; 2. Law Students are capable of offering quality legal aid; 3. Lawyers' role is limited to wining the case for his/her client; 4. Lawyer has a role to ensure justice; 5. Lawyer has an important role in bringing legal reforms; 6. Offer free legal aid services after enrolling as an advocate; 7. Willing to associate with the College Legal Aid Clinics after the graduation; 8. Legal Aid Clinics do useful work; and 9. Legal aid activities help in bridging the gap between law in theory and law in practice.

Figure 24 shows that there is no difference of opinion between final and first year students about their role in providing legal aid. Both felt that students can be helpful in offering legal aid. On the question whether they are capable of providing legal aid there is slight difference as less number of final year students felt they are capable compared to first year students.

Whether lawyers' role is limited to win cases for his or her clients, 37.5% of first year students said 'yes', where as this is reduced to 30% in case of final year students. Similarly regarding lawyers role in ensuring justice 87.5% of first year students felt that lawyers had role in ensuring justice. This percentage is increased to 97.5% in case of final year students. 77.5% of students in first year are willing to provide free legal aid where as the percentage of students willing to provide free legal aid rose to 92.5% among the final year students. Only 55% of first year students are willing to associate with LAC after their graduation, but this percentage increased to 82.5% among the final year students.

On the question whether LAC do useful work 90% of Final year students felt LACs do useful work, where are it was reduced to 81.25 among first year students. More number of final year students believed that legal aid activities help in bridging the gap between law in theory and law in practice compared to first year students.

Therefore, based on the above observation one may conclude that final year students who undertook LAC activities become more socially sensitive than

first year students. Further, final year students are more willing to associate with both LAC and free legal aid after graduating from the College. These trends confirm that exposure to social justice initiatives as early as students of law, helps in producing more social justice oriented legal professionals.

Further, the students were asked to rank the role of lawyer to identify their understanding about the role of lawyers. The response is tabulated and analyzed below.

**Table 23** *Role of the Lawyer - Final Year Students*

Sl. No	Role of the Lawyer	Rank in order of priority				
		1	2	3	4	5
1	Social reformer	11	19	22	15	12
2	Justice Provider	33	16	20	10	01
3	Problem settler	26	31	13	09	-
4	Litigator	07	12	17	32	11
5	To win cases of his/her clients:	02	01	07	13	56

Source: Primary Data

**Table 24** *Role of the Lawyer - First Year Students*

Sl. No	Role of the Lawyer	Rank in order of priority				
		1	2	3	4	5
1	Social reformer	12	10	23	16	19
2	Justice Provider	35	27	7	3	8
3	Problem settler	15	31	18	9	7
4	Litigator	3	4	20	32	21
5	To win cases of his/her clients	13	6	10	21	30

Source: Primary Data

Table 23 and 24 shows the response received from the law students. Each question contains five levels to rank. Because of these five variables the data cannot be put directly for analyzing the transformation. It requires converting data into a single variable. Therefore, the following mathematical formula was used to achieve the desired result.

Rank 1 = 5; Rank 2 = 4; Rank 3 = 3; Rank 4 = 2; and Rank 5 = 1. By using this formula the data in table 23 and 24 has been converted into points and the same is shown below in table 25 and 26

**Table 25** *Role of the Lawyer - Final Year Students*

Sl. No	Role of the Lawyer	Rank in order of priority					Total
		1	2	3	4	5	
1	Social reformer	55	76	66	30	12	239
2	Justice Provider	165	64	60	20	1	310
3	Problem settler	130	124	39	18	0	311
4	Litigator	35	48	51	64	11	209
5	To win cases of his/her clients	10	4	21	26	56	117

Source: Primary Data

**Table 26** *Role of the Lawyer - First Year Students*

Sl. No	Role of the Lawyer	Rank in order of priority					Total
		1	2	3	4	5	
1	Social reformer	60	40	69	32	19	220
2	Justice provider	175	108	21	6	8	318
3	Problem settler	75	124	54	18	7	278
4	Litigator	15	16	60	64	21	176
5	To win cases of his/her clients	65	24	30	42	30	191

Source: Primary Data

**Table 27** *Consolidated Data from First and Final Year students*

Sl. No	Role of the Lawyer	First year	Final Year
1	Social reformer	220	239
2	Justice provider	318	310
3	Problem settler	278	311
4	Litigator	176	209
5	To win cases of his/her clients	191	117

Source: Primary Data

**Figure 25** *Role of Lawyer - Students Response*

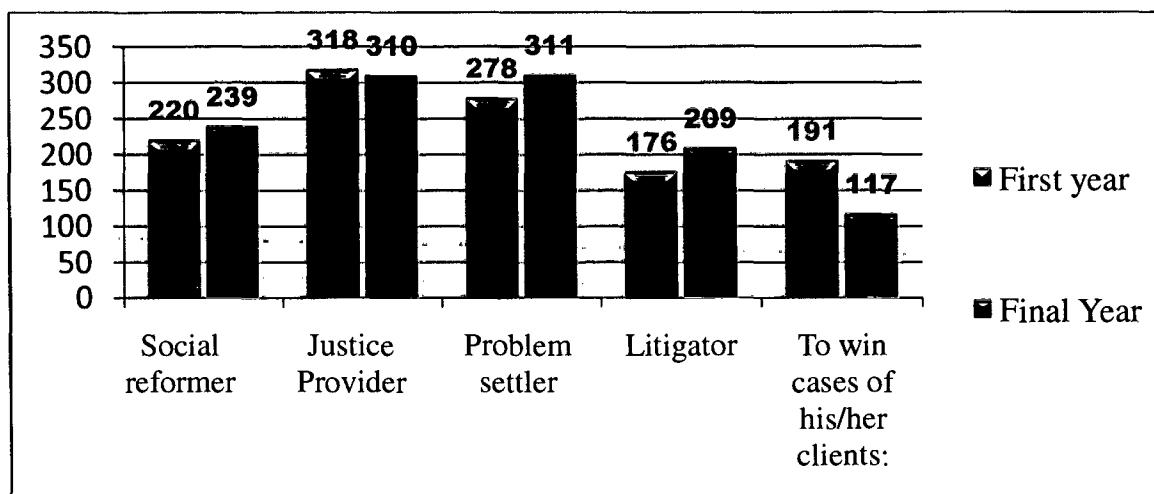


Figure 25 shows a mixed response about the role of lawyer. As far as the roles of social reformer, problem settler and winning cases of his/her clients are concerned, there is a visible change of outlook among the final year students. Joining in LAC seems to have a positive effect towards social justice. Contrastingly in case of role of justice provider final year students have marginally negative impact.

But as far as role of litigator is concerned it seems students after reaching final year view lawyers as litigators more than what first year students considered being. Further, when final year students were asked whether they are more socially sensitive because of LACs 88.75% responded positively. Therefore, it may be concluded that joining LAC had an impact on the students and the transformation of students is visible.

Continuing with the transformation that is brought by the LACs a further attempt was made in this part regarding the impact of LACs on alumni. 50 alumnae of the College were randomly selected to test the impact of LACs on

alumnae. Total seven questions were asked to the alumnae to assess the impact.

The data has been analyzed below.

**Table 28** Alumnae Response

Sl.No	Question	Not at all	May be	Yes but not substantial	Satisfactory	To a large extent	Absolutely
1.	Association with the Legal Aid Cell enhanced Your practical understanding of law	4	1	6	20	13	6
2.	Legal aid work reduced the gap between law in books and law.	3	7	14	10	12	4
3.	Paralegal services offered by cells improve the quality of life in society.	0	8	14	11	5	12
4.	Working in the Legal Aid Cell made transition from College to Profession easier	6	4	11	15	12	2
5.	Working in the legal aid cell enhanced the skills required for practice	4	5	9	14	11	7
6.	Legal aid work help in enhancing goodwill	1	6	7	19	9	8
7.	System and method of imparting legal aid the cell Appropriate	2	5	10	13	8	12

Source: Primary Data

Table 28 shows the response received from the alumnae. As each question contains six variables the data cannot be put directly for analyzing the impact of LACs. It requires converting data into a single variable. Therefore, the following mathematical formula was used to achieve the desired result.



Not at all = -3; May be = -2; Yes but not substantial = -1; Satisfactory = 1; To a larger Extent = 2 and Absolutely = 3. By using this formula the data in table 28 has been converted in points and the same is shown below in table 29.

**Table 29** *Tabulated Alumnae Response*

Sl.No	Question	1	2	3	4	5	6	Total
1.	Association with the Legal Aid Cell enhanced Your practical understanding of law	-12	-2	-6	20	26	18	44
2.	Legal aid work reduced the gap between law in books and law.	-9	-14	-14	10	24	12	9
3.	Paralegal services offered by cells improve the quality of life in society.	0	-16	-14	11	10	36	27
4.	Working in the Legal Aid Cell made transition from College to Profession easier	-8	-8	-11	15	24	6	8
5.	Working in the Legal Aid Cell enhanced the skills required for practice	-12	-10	-9	14	22	21	26
6.	Legal aid work help in enhancing goodwill	-3	-12	-7	19	18	24	39
7.	System and method of imparting legal aid Appropriate	-6	-10	-10	13	16	36	39

Source: Primary Data

To test the impact of LACs on alumnae the response to seven questions in Table 29 is further converted in to ranks. The response was ranked from 1 to 7 on the base of highest to lowest i.e. highest response would get rank 7 where as the lowest response would get rank 1. The following Table 30 shows the ranking.

**Table 30** Ranking of Alumnae Response

Sl.No	Question	Total	Rank
1.	Association with LAC enhanced your practical understanding of law	44	7
2.	Legal aid work reduced the gap between law in books and law.	9	2
3.	Paralegal services improve the quality of life in society.	27	4
4.	Working in the LAC made transition from College to Profession easier	8	1
5.	Working in the LAC enhanced the skills required for practice	26	3
6.	Legal aid work help in enhancing goodwill	39	5.5
7.	System and method of imparting LAC Appropriate	39	5.5

Source: Primary Data

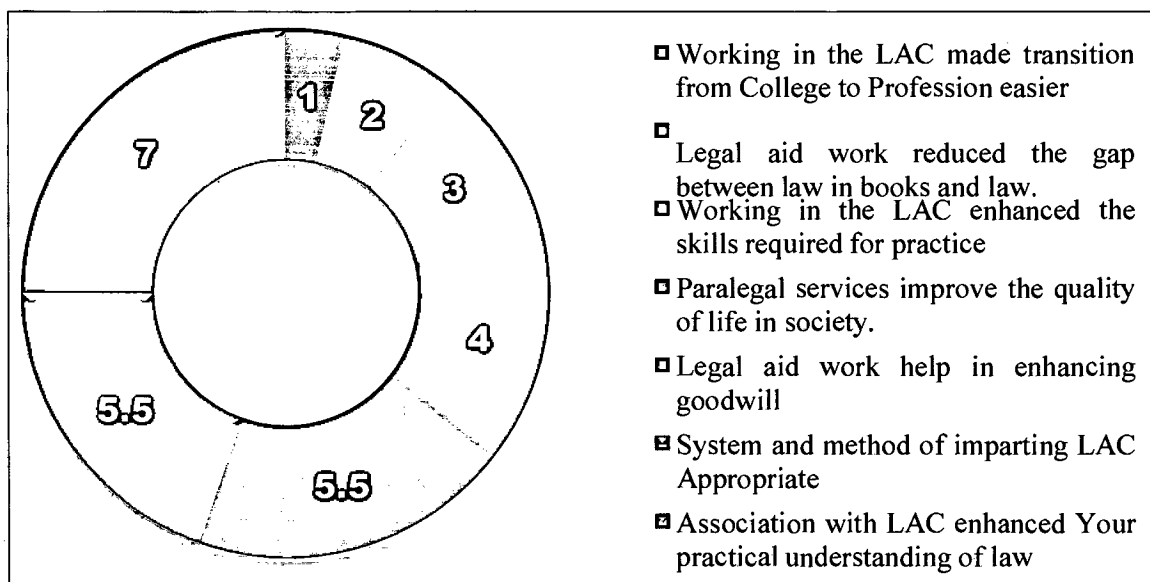
**Figure 26** Ranking of Alumnae Response.

Figure 26 shows the impact of LACs on alumnae. The majority agreed that LAC enhanced understanding of law to a greater extent. 5.5 on scale of 7 opined that the activities they have undertaken under LAC, enhanced their goodwill and they also agree the method adopted by LAC is appropriate. 4 out of 7 say that the para legal services offered by LAC, improve the quality of life in society.

But it is very important to note that only 3 out 7 felt that working in LAC actually enhanced the skills that are required to practice in the Court of law. Further only 2 out of 7 believe that working in LAC actually helped in bridging the gap between law in books and law in practice. Only 1 out 7 agree that working in LAC made their transition from College to Profession easier.

Therefore, Figure 26 reveals that, though LAC's have considerable impact on the students who passed out from the College and entered into legal profession, the impact could be seen mostly on socially sensitizing them. But the impact on improving their competence in the field of legal profession seems to be lacking. These findings necessitate further study to find out the reasons for it. An attempt was made to find out the reasons by asking the students as to what is the most effective activity that provides you better practical knowledge.

**Table 31** *Legal Aid Activity that provides better Practical Knowledge*

Sl.No	Activity	1	2	3	4	5	6	7
1	Legal Representation	16	5	14	5	4	4	2
2	Legal Advice	8	15	10	8	4	3	2
3	Para Legal Service	10	3	4	10	8	11	4
4	Promotion of ADR	-	2	4	11	10	9	14
5	Legal Literacy	9	8	11	6	8	7	1
6	Public Interest Litigation	5	9	3	9	8	11	5
7	Law Reform	2	6	4	2	8	7	21

Source: Primary Data

Table 31 shows the response received from the students. As each question contains seven variables the data cannot be put directly for analyzing. It requires converting data into a single variable. Therefore, the following mathematical formula has been used to achieve the desired result.

$1 = 7$ ;  $2 = 6$ ;  $3 = 5$ ;  $4 = 4$ ;  $5 = 3$ ;  $6 = 2$ ; and  $7 = 1$ . By using this formula the data in table 32 has been converted in points and the same is shown below in table 33.

**Table 32** Legal Aid activity that provides better Practical Knowledge - Consolidated

Sl.No	Activity	1	2	3	4	5	6	7	Total
1	Legal Representation	112	30	70	20	12	8	2	254
2	Legal Advice	56	90	50	32	12	6	2	248
3	Legal Literacy	63	48	55	24	24	14	1	229
4	Para Legal Service	70	18	20	40	24	22	4	198
5	Public Interest Litigation	35	54	15	36	24	22	5	191
6	Promotion of ADR	0	12	20	44	30	18	14	138
7	Law Reform	14	36	20	8	24	14	21	137

Source: Primary Data

**Figure 27** Legal Aid activity that provides better Practical Knowledge

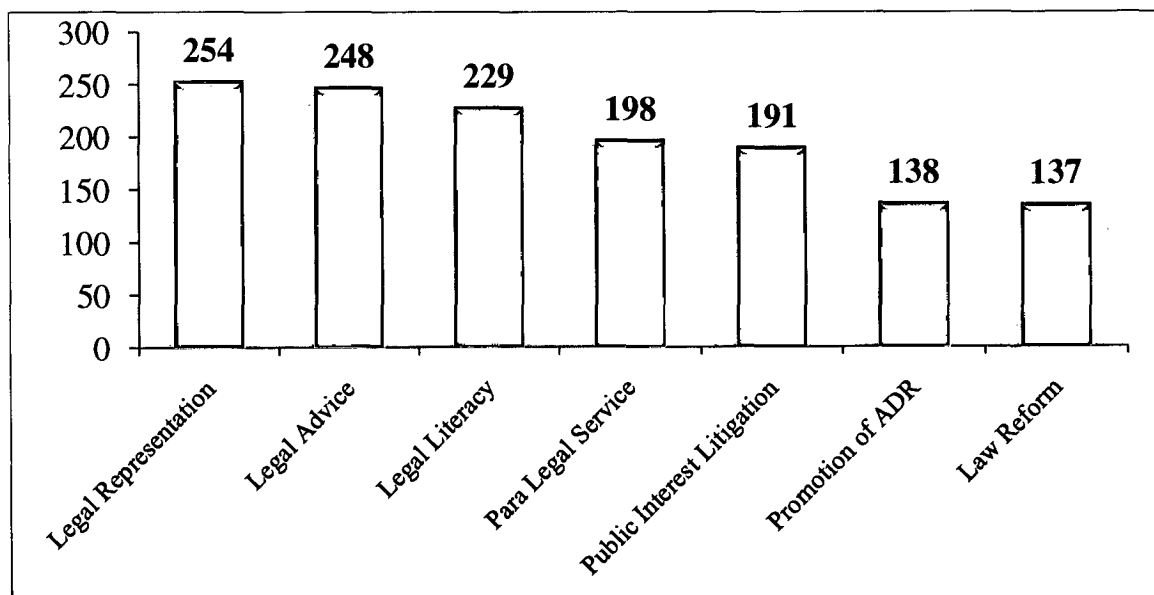


Figure 27 shows that majority of the students felt that legal representation has the potential to improve their practical knowledge about the law. Public Interest Litigation which was ranked as fifth important activity by the students also

provides similar skills to the students as Legal Representation. Combining both these activities forms 32% of the total, this is way ahead of other activities.

The analysis of Figure 27 on whether the LACs make the students transition from College to Profession easier, majority responded negatively. One of the reasons for such response could be failure of LACs in giving an opportunity to the law students to represents clients in Court of law. As figure 27 shows, the students ranked legal representation as a highest activity which they contemplated would be the activity which gives better practical knowledge, is an answer to the reason for low ranking given by alumnae to the question whether LACs made their transition from college to profession easier.

#### **4.4. Identification and Analysis of Shortcomings in the Clinical Legal Education System in India.**

The fundamental challenge faced by the Clinical Legal Education is lack of resources. Lack of resources includes both, human and material resources. Lack in human resources includes insufficient number of trained faculty, lack of expertise, lack of guidance, failure of BCI to involve the Local Bar, support staff, indifference of the judiciary and lack of public support. Problem with material resources includes financial resources, low access to computers and communication infrastructure, low pay to the part time faculty, practical difficulties such as transport for the students to the rural areas, lack of training Manuals, books on Clinical Legal Education, etc.

In addition to these problems, Clinical Legal Education in India also faces problems like mass legal education, low involvement of other faculty in clinical program, part time students, supervision and evaluation of clinical programs, language and cultural differences.

Keeping these issues in mind the assessment has been carried out of 50 Colleges imparting legal education in the States of Andhra Pradesh, Karnatak, and Goa. For this purpose ten questions were prepared after careful examination of several concerns expressed by the legal fraternity in implementing the compulsory practical papers.

These questions were asked to the faculty who are actually involved in imparting training in the practical papers and they were required to rank each question on four parameters. Data was collected from 25 faculty members from the State of Karnataka, 23 from Andhra Pradesh and 10 from the State of Goa. As it was identified earlier due to disparities in design, approach, evaluation and assessment of practical papers, the same disparities are expected in identifying the short comings of the Clinical Legal Education.

**Table 33** *Problems in implementing Practical Papers*

Sl. No	Description of the Problem	State	Major Problem	To a Larger Extent	Minor Problem	No Problem
1.	Lack of Trained Faculty	Andhra	6	4	5	5
		Karnataka	7	5	4	4
		Goa	4	3	3	-
2.	Lack of Financial Support	Andhra	3	4	4	9
		Karnataka	3	3	6	8
		Goa	3	2	3	2
3.	Poor student quality	Andhra	4	3	7	6
		Karnataka	3	4	6	7
		Goa	0	3	4	3
4.	Restriction on Faculty to practice in Court of law	Andhra	6	4	6	4
		Karnataka	8	6	4	2
		Goa	4	4	1	1
5.	Restriction on Students to practice in Court of law	Andhra	7	4	3	6
		Karnataka	7	6	4	4
		Goa	-	3	3	4
6.	Part Time students	Andhra	2	2	5	11
		Karnataka	3	4	3	10
		Goa	5	3	1	1
7.	Lack of involvement of Bar Council	Andhra	4	6	5	5
		Karnataka	6	4	2	8
		Goa	2	5	1	2
8.	Lack of involvement of Judiciary	Andhra	3	4	6	7
		Karnataka	6	3	4	7
		Goa	3	3	2	2
9.	Lack of clear guidance from Bar Council	Andhra	7	6	4	3
		Karnataka	10	5	3	2
		Goa	2	6	2	-
10	No training facilities to Faculty	Andhra	10	2	3	5
		Karnataka	12	3	2	3
		Goa	6	3	1	-

Source: Primary Data

Table 33 shows the response received from the law faculty. As earlier noted the data was collected from the faculty from three different States. Due to the varying number of faculty, the data cannot be put directly for testing the



hypothesis. Further, each question contains four levels to rank, which requires converting them into a single variable. Therefore, the following mathematical formula has been used to achieve the desired result.

Major Problem = -2;

To a Larger Extent = -1;

Minor Problem: 1; and

No Problem: 2.

By using this formula the data in table 33 has been converted in points and the same has been shown below in table 34.

**Table 34** Problems in Implementing Practical Papers

Sl. No	Description of the Problem	State	Major Problem	To a Larger Extent	Minor Problem	No Problem	Total
1.	Lack of trained Faculty	Andhra	-12	-4	5	10	-1
		Karnataka	-14	-5	4	8	-7
		Goa	-8	-3	3	0	-8
2.	Lack of financial Support	Andhra	-6	-4	4	18	12
		Karnataka	-6	-3	6	16	13
		Goa	-6	-2	3	4	-1
3.	Poor student quality	Andhra	-8	-3	7	12	8
		Karnataka	-6	-4	6	14	10
		Goa	0	-3	4	6	7
4.	Restriction on Faculty to practice in Court of law	Andhra	-12	-4	6	8	-2
		Karnataka	-16	-6	4	4	-14
		Goa	-8	-4	1	2	-9
5.	Restriction on Students to practice in Court of law	Andhra	-14	-4	3	12	-3
		Karnataka	-14	-6	4	8	-8
		Goa	0	-3	3	8	8
6.	Part Time students	Andhra	-4	-2	5	22	21
		Karnataka	-6	-4	3	20	13
		Goa	-10	-3	1	2	-10
7.	Lack of involvement of Bar Council	Andhra	-8	-6	5	10	1
		Karnataka	-12	-4	2	16	2
		Goa	-4	-5	1	4	-4
8.	Lack of involvement of Judiciary	Andhra	-6	-4	6	14	10
		Karnataka	-12	-3	4	14	3
		Goa	-6	-3	2	4	-3
9.	Lack of clear guidance from Bar Council	Andhra	-14	-6	4	6	-10
		Karnataka	-20	-5	3	4	-18
		Goa	-4	-6	2	0	-8
10.	No training facilities to Faculty	Andhra	-20	-2	3	10	-9
		Karnataka	-24	-3	2	6	-19
		Goa	-12	-3	1	0	-14

To test the hypothesis as to whether there is any disparity or disagreement about the ten short comings in implementing practical papers, the data tabulated in Table 34 is further converted in to ranks. The short comings were

ranked from 1 to 10 on the basis of highest positive response to highest negative response i.e. highest positive response would get rank 1 where as the highest negative would get rank 10.

**Table 35 Ranks State Wise**

Sl No.	Shortcomings	Andhra	Karnataka	Goa
1	Lack of trained Faculty	6	6	6.5
2	Lack of financial Support	2	1.5	3
3	Poor student quality	4	3	2
4	Restriction on Faculty to practice in Court of law	7	8	8
5	Restriction on students to practice in Court of law	8	7	1
6	Part Time students	1	1.5	9
7	Lack of involvement of Bar Council	5	5	5
8	Lack of involvement of Judiciary	3	4	4
9	Lack of clear guidance from Bar Council	10	9	6.5
10	No training facilities to Faculty	9	10	10

Source: Primary Data

**Figure 28 Lack of trained Faculty**

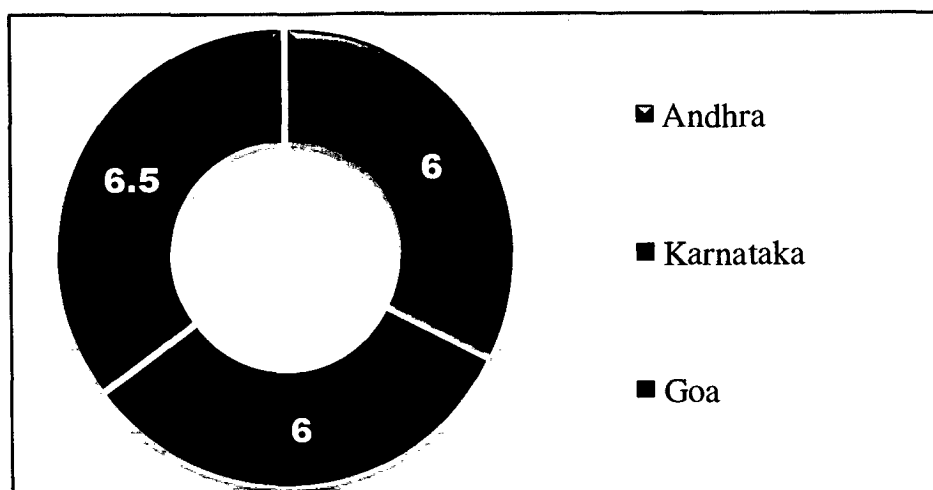
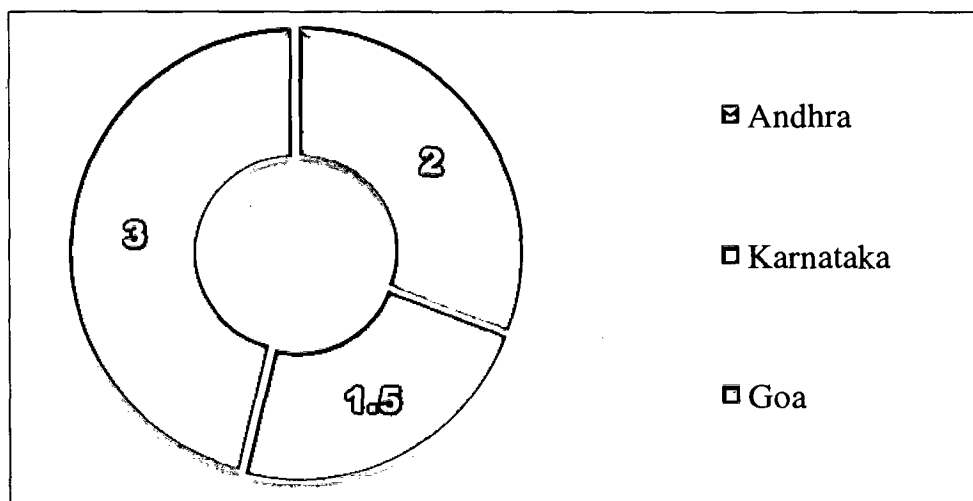


Figure 28 illustrates that the majority of the faculty as 6.2 on the scale of 10, agree that lack of trained faculty in clinical courses is a key concern. There is consensus among all the three States that non availability of trained faculty in the area of clinical education is one of the problems.

**Figure 29** *Lack of Financial Support*



Lack of financial resource is the major problem faced by the clinical movement worldwide. But it is interesting to note that the study reveals that majority of the Law Colleges do not feel that lack of financial resources is a major problem. On the scale of 10, only 2.2 felt that lack of financial resource is a problem. Again there seems to be no consensus among the faculty of three States about lack of financial resources.

Lack of financial resources is felt as a major problem in most of the Colleges worldwide as there is a special faculty designated for the clinical courses in those Colleges. Unlike, in India there is rarely any faculty specially designated

as a clinical teacher. In most of the Colleges the regular faculty undertakes the teaching of clinical courses.

Further, most of the clinical courses are offered by traditional lecture cum simulation method and therefore, they may not require large financial resources. Only Colleges offering clinical courses in real sense feel financial resources as one of the major problem in institutionalizing Clinical Legal Education.

**Figure 30.** *Poor Student Quality*

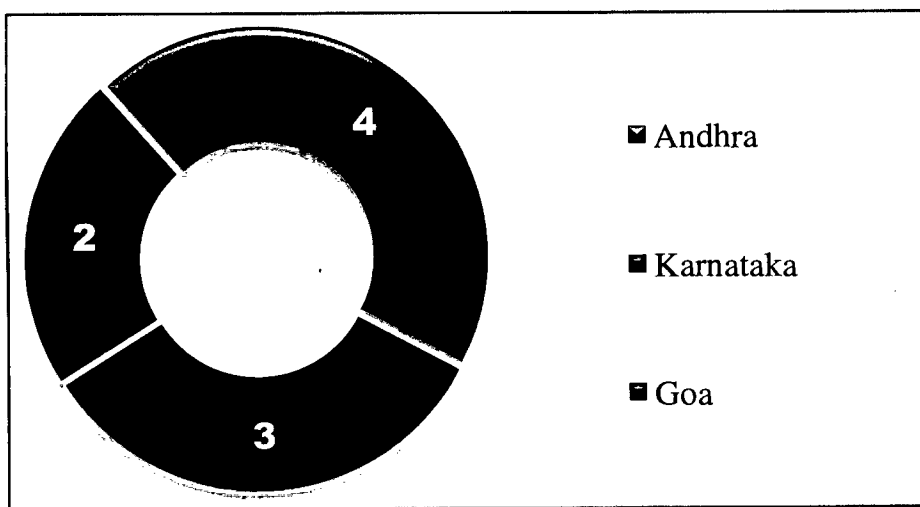
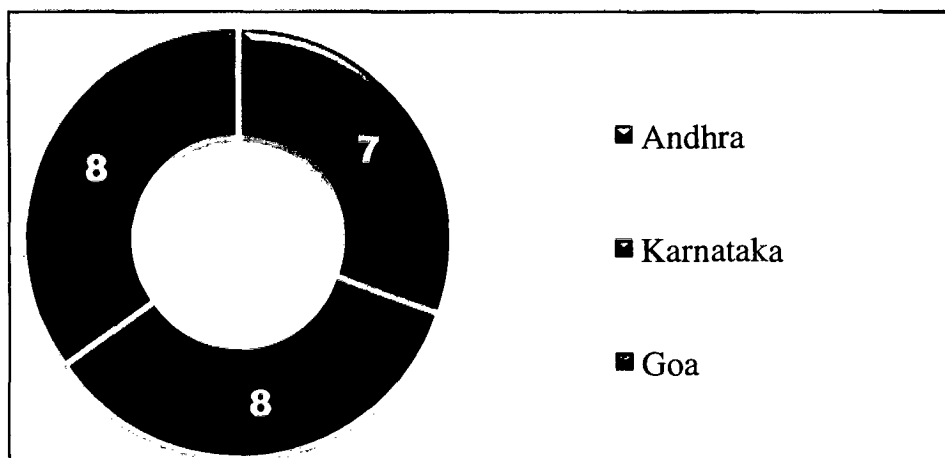


Figure 30 demonstrates that poor quality of students is not a problem in implementing the practical papers. Only 3.3 out of 10 feel that poor student quality is a problem. As many Colleges operate in the morning to accommodate working students to undertake law course particularly in Three year Degree Course, it is very interesting to note that the faculty did not feel

that it is a problem in implementing practical papers. Again there is a considerable amount of disagreement among the States.

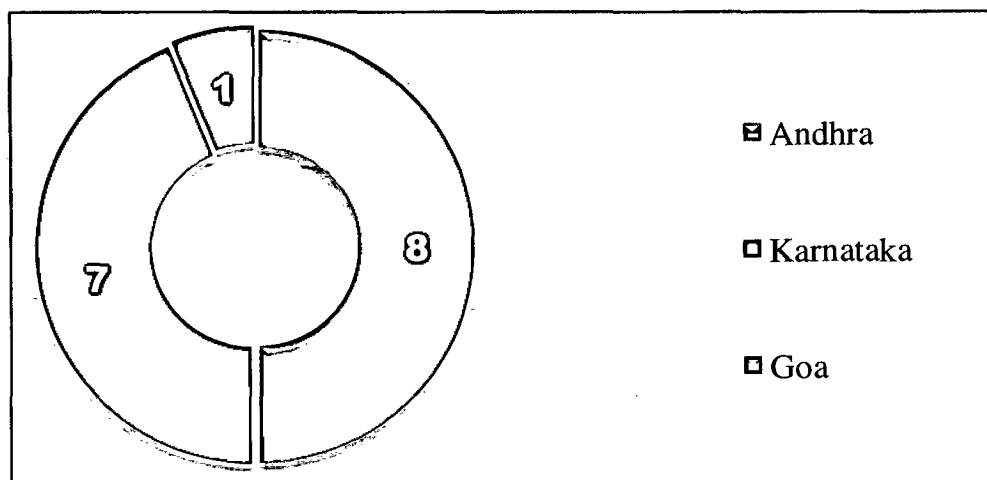
**Figure 31** *Restriction on Faculty to Practice*



Bar Council of India's restriction on fulltime faculty on representing clients in Court of law was viewed as one of the major problem in implementing practical papers. Most of the fulltime faculty has no practical experience in the Court to offer the practical papers in a meaningful way. As seen earlier in Figure 10 which shows 72% of the faculty involved in clinical education is fulltime.

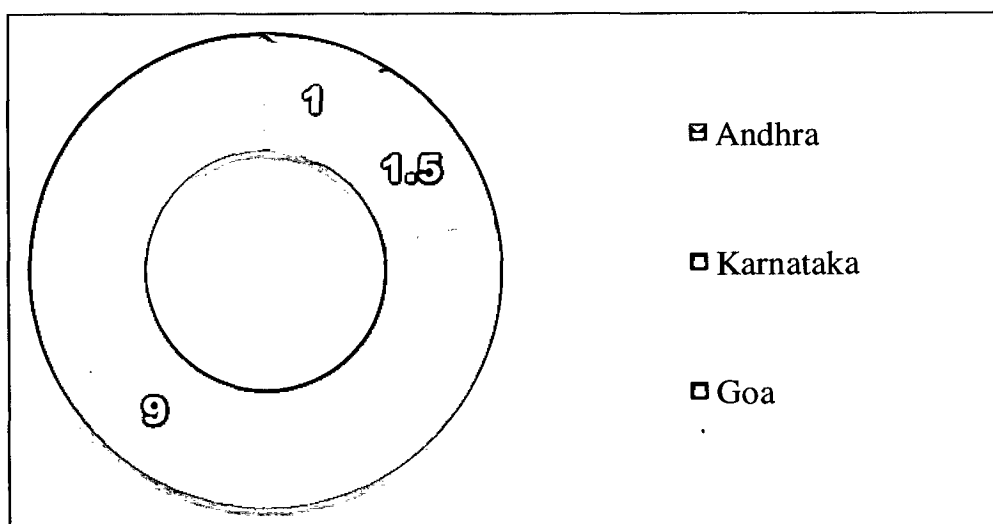
Therefore, practical experience for these faculty members is a serious concern. Figure 31 shows that the restriction on faculty to practice law, is one of the important problems in implementing practical papers according to 7.7 on the scale of 10. Further, there is a greater amount of consensus among the faculty of three States.

**Figure 32** *Restriction on Students to Practice*



In contrast to figure 31, figure 32 shows that only 5.3 on the scale of 10 feel that restriction on students to represent clients in the Court during their studentship is one of the problems. Further, there is no consensus among the faculties of the three States.

**Figure 33** *Part Time Students*

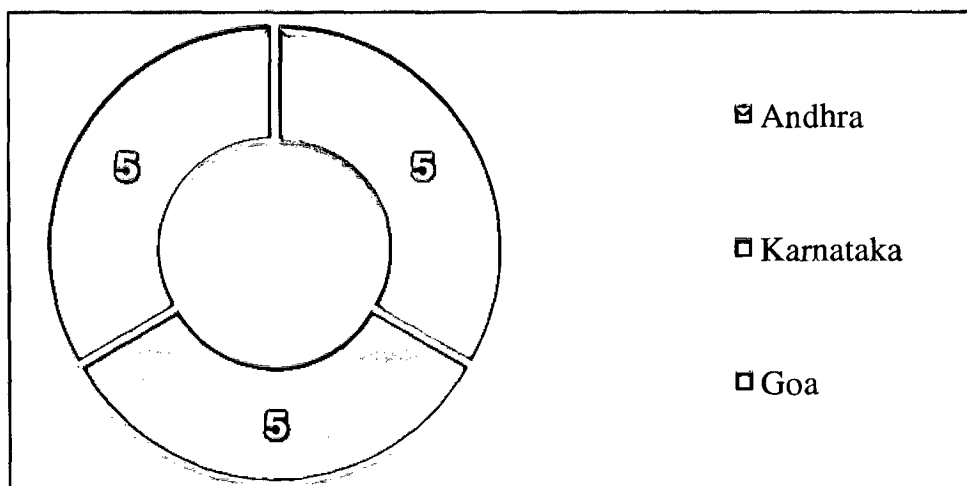


Many reports and deliberations in Conferences opined that majority of the students who undertake legal education are part time, and it reflects in the

quality of the legal profession. But opposing such opinion, figure 33 discloses that only 3.8 out of 10 feel that having part time students is one of the real problems. Both in Andhra and Karnataka, the faculty did not feel that having part time students is a problem at all.

This analysis postulates two analogies. First, even if the students are part-time, clinical courses could be effectively offered. Second, because majority of the Colleges offer clinical course like any other substantive subjects, it makes very little difference whether students are part time or fulltime. The second analogy seems more acceptable as not only 4.1.1 and 4.1.2 clearly supports the second analogy but also the fact that faculty from Goa felt that it is a major problem where clinical courses are offered more vigorously.

**Figure 34** *Lack of involvement of Bar Council of India*

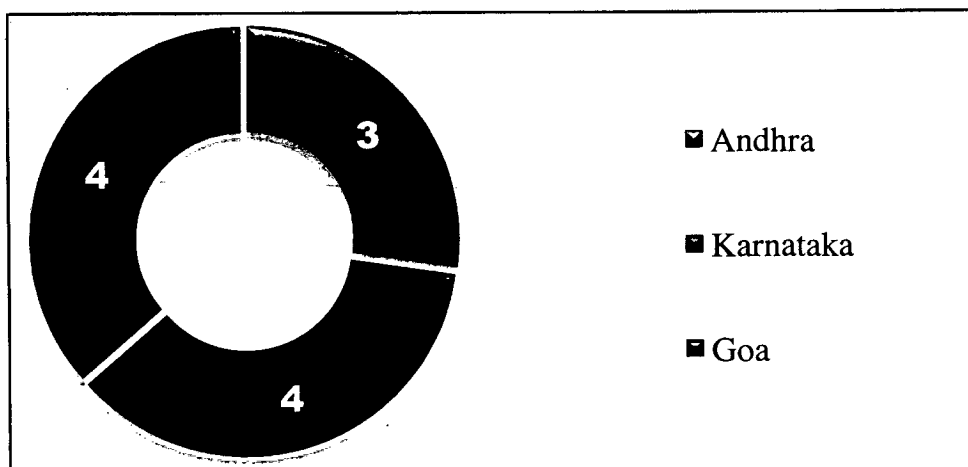


One of the strong criticisms against the Bar Council of India is that BCI simply prescribed four practical papers and never took any responsibility in equipping the Law Colleges to offer these papers effectively. But Figure 34 offers a mixed reaction to this criticism. 5 out of 10 felt that there is lack of



involvement of BCI and it is one of the main problems and there is a clear consensus among faculty across all three States.

**Figure 35** *Lack of Involvement of Judiciary*



As far as Judiciary is concerned, Figure 35 reveals that only 3.67 of the Faculty feel that involvement of judiciary is necessary for Clinical Legal Education, and that their non involvement is a problem. But the majority feels that non-involvement of judiciary is not a problem and there is a consensus among faculty on this issue.

**Figure 36** *Lack of clear guidelines from Bar Council*

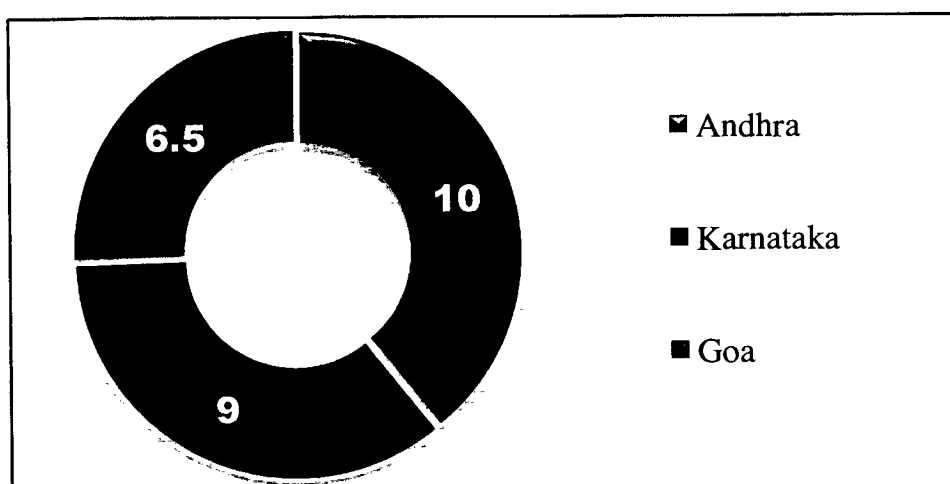


Figure 36 confirms that lack of clear guidelines from Bar Council of India is a real problem. This notion is supported by 8.5. Lack of clear guidelines also resulted in variations in methods and approaches of offering practical papers. This was evident as the study reveals in 4.1.1 and 4.1.2. This disparity in offering clinical course further diluted the quality and the quantity in both developing skills among the law students and achieving the Social Justice Mission. This is manifested in part 4.1.3 and 4.2 of this study.

**Figure 37** *Lack of Training Facilities to the Faculty*

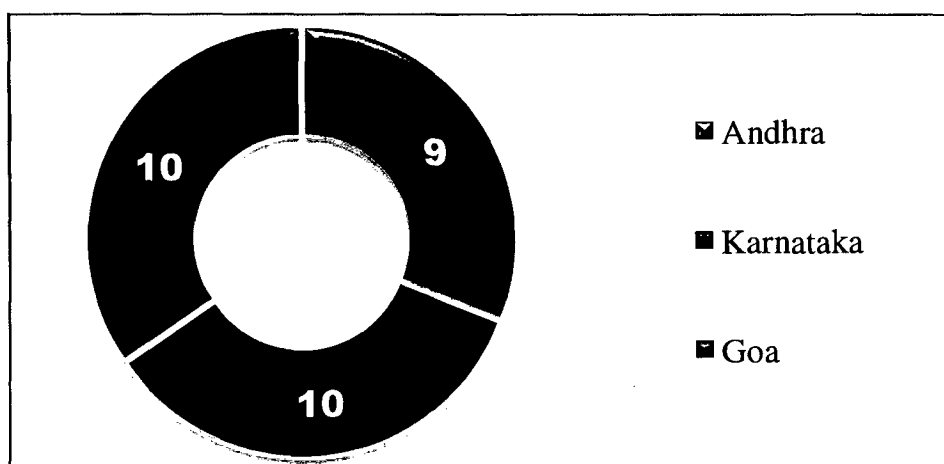


Figure 37, indicates that the lack of training facilities for the faculty in Clinical Legal Education is a major problem. 9.67 out of 10 say that lack of training is a key problem. There is a clear agreement among the faculty of three States that lack of training facilities for faculty effects the quality of offering clinical papers.

*Authentication of Data:*

Though the research in three States was conducted with utmost fairness, one cannot rule out completely the possibility of bias by the responding faculty. This bias may arise due to several factors such as personal, institutional and peculiar circumstances prevailing in the particular State. So it was quite necessary to test whether the same standards have been used by the different faculty while rating the short comings. In other words it is necessary to test whether the findings hold good for the larger population. To ensure this the Kendall's coefficient of concordance test has been used. The following is the formula for using Kendall's coefficient of concordance test.

$$W = \frac{S}{\frac{1}{12} K^2(N^3 - N)}$$

$$S = \sum (R \text{ Mean} - R)^2$$

R Mean = Sum of all Ranks divided by no. of variables (10)

R = Total of each shortcoming of all three States

K = No. of States

N = No. of variables (Short Comings)

The problem has been formulated as follows:

$H_0$ : There is no agreement between the faculties across the States

$H_1$ : There is agreement between the faculties across the States

**Table 36** Shortcomings in implementing Practical Papers (Ranks in State Wise)

Sl No.	Shortcomings	Andhra	Karnataka	Goa	Sum of the Rank	S
1	Lack of Trained faculty	6	6	6.5	18.5	4
2	Lack of Financial support	2	1.5	3	6.5	100
3	Poor Student quality	4	3	2	9	4
4	Restriction on Faculty to Practice in Court of Law	7	8	8	23	42.5
5	Restriction on Students to represent client in Court	8	7	1	16	4
6	Part time Students	1	1.5	9	11.5	25
7	Lack of involvement of Bar Council	5	5	5	15	4
8	Lack of involvement of Judiciary	3	4	4	11	30.25
9	Lack of Clear Directions from Bar Council of India	10	9	6.5	25.5	4
10	No Training Facilities to Faculty in Practical Papers	9	10	10	29	156.25

$$W = \frac{373.75}{\frac{1}{12} \times (3)^2 \times (10^3 - 10)}$$

$$W = \frac{373.75}{\frac{1}{12} \times 9 \times (1000 - 10)} = 0.503367$$

$$W = 0.50$$

When N (variables) is more than 7 the calculation is  $\chi^2$

$$\chi^2 = K (N - 1) W$$

$$\chi^2 = 3(10 - 1) 0.5$$

$$\chi^2 = 27 \times 0.5 = 13.5$$

$\chi^2$  Table value = 16.92 for 9 degrees of freedom<sup>57</sup> at 5% significance level, that means there is only 5% chance that the findings may not be proper. Since  $\chi^2$  value 13.5 is less than  $\chi^2$  table value 16.92 the null hypothesis is accepted. Therefore, the hypothesis – that there is a disagreement about the short comings of the clinical education across the State is accepted.

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<sup>57</sup>  $\chi^2$  is always calculated for (N-1) degrees of freedom. Usually researcher decides the significance level and chooses either 1% or 5 %.

*Table 37 Students Response to the Shortcomings in implementing Practical Papers*

Sl.No	Shortcomings	Major Problem	To a Larger Extent	Minor Problem	Not a Problem
1	Lack of Trained faculty	16	9	20	5
2	Lack of Financial support	5	10	9	26
3	Poor Student Quality	7	11	21	11
4	Restriction on Faculty to Practice in Court of Law	14	7	13	16
5	Restriction on Students to represent client in Court	15	12	9	14
6	Part time Students	12	13	18	7
7	Lack of involvement of Bar Council	16	15	9	10
8	Lack of involvement of Judiciary	21	11	13	5
9	Lack of Clear Directions from Bar Council of India	18	16	11	5
10	No Training Facilities to Faculty in Practical Papers	16	14	14	6

Source: Primary Data

Table 37 shows the response received from the students of V. M. Salgaocar College of Law. As earlier referred, the V. M. Salgaocar College of Law has been taken as a model College to assess feasibility of institutionalizing and implementing the Social Justice Mission through Clinical Legal Education. The students' response has been tabulated to analyze whether the students concur to the finding of the faculty from Goa. Further, as the data is collected from the faculty and the students, and the total number of faculty and students varies, the data cannot be put for testing the hypothesis. Further, each question contains four levels to rank, which require converting them into a single variable.

Therefore, the following mathematical formula was used to achieve the desired result.

Major Problem = -2; To a Larger Extent = -1; Minor Problem: 1; and No Problem: 2. by using this formula the data in table 37 has been converted in points and the same is shown below in table form

*Table 38 Students Response to the Shortcomings in implementing Practical Papers (Converted in to Values)*

Sl.No	Shortcomings	Major Problem	To a Larger Extent	Minor Problem	Not a Problem	Total
1	Lack of Trained faculty	- 32	- 9	20	10	- 11
2	Lack of Financial support	- 10	- 10	9	52	41
3	Poor Student quality	- 14	- 11	21	22	18
4	Restriction on Faculty to Practice in Court of Law	- 28	- 7	13	32	10
5	Restriction on Students to represent client in Court	- 30	- 12	9	28	- 5
6	Part time Students	- 24	- 13	18	14	- 5
7	Lack of involvement of Bar Council	- 32	- 15	9	20	- 18
8	Lack of involvement of Judiciary	- 42	- 11	13	10	- 30
9	Lack of Clear Directions from Bar Council of India	- 36	- 16	11	10	- 31
10	No Training Facilities to Faculty in Practical Papers	- 32	- 14	14	12	- 20

**Table 39** *Response to the shortcomings in implementing Practical Papers  
(Consolidated: Faculty and Students)*

Sl.No	Shortcomings	Goa Faculty Response	Students Response
1	Lack of Trained faculty	- 8	- 11
2	Lack of Financial support	- 1	41
3	Poor Student quality	7	18
4	Restriction on Faculty to Practice in Court of Law	- 9	10
5	Restriction on Students to represent client in Court	8	- 5
6	Part time Students	- 10	- 5
7	Lack of involvement of Bar Council	- 4	- 18
8	Lack of involvement of Judiciary	- 3	- 30
9	Lack of Clear Directions from Bar Council of India	- 8	- 31
10	No Training Facilities to Faculty in Practical Papers	- 14	- 20



**Table 40** *Response to the shortcomings in implementing Practical Papers  
(Consolidated: rank wise)*

Sl.No	Shortcomings	Average Rank of All Faculty	Goa Faculty Rank	Students Rank
1	Lack of Trained faculty	6.17	6.5	6
2	Lack of Financial support	2.17	3	1
3	Poor Student quality	3	2	2
4	Restriction on Faculty to Practice in Court of Law	7.7	8	3
5	Restriction on Students to represent client in Court	5.3	1	4.5
6	Part time Students	3.8	9	4.5
7	Lack of involvement of Bar Council	5	5	7
8	Lack of involvement of Judiciary	3.7	4	9
9	Lack of Clear Directions from Bar Council of India	8.5	6.5	10
10	No Training Facilities to Faculty in Practical Papers	9.7	10	8

Table 40 shows there is no consensus among the faculty and the students regarding short comings. However, there seems to be some kind of consensus about the lack of trained faculty and non availability of training facilities to the faculty. Students feel that lack of clear directions from BCI is a major impediment in implementing clinical courses. They also feel that lack of involvement of judiciary is one of the major impediments in implementation of clinical courses.

*Authentication of Data:*

Though the research was conducted with utmost fairness, one may not rule out completely the possibility of bias by the respondent students. This bias may arise due to several factors such as personal, institutional and peculiar circumstances prevailing in the LAC to which the student is associated with. So it was quiet necessary to test whether the ratings of the short comings given by the students would apply to majority of the students. In other words we wanted to test whether the finding holds good for the larger population. To ensure this the Kendall's coefficient of concordance test was used. The following is the formula for using Kendall's coefficient of concordance test.

$$W = \frac{S}{\frac{1}{12} K^2 (N^3 - N)}$$

$$S = \sum (R \text{ Mean} - R)^2$$

R Mean = Sum of all Ranks divided by no of variables (10)

R = Total of Each shortcoming of all three States

K = No of States

N = No. of variables (Shortcomings)

**Table 41** Shortcomings in implementing Practical Papers (Consolidated Response from Faculty and Students)

Sl.No	Shortcomings	Average Rank of All Faculty	Goa Faculty Rank	Students Rank	Sum of the Rank	S
1	Lack of Trained faculty	6.17	6.5	6	18.67	4.71
2	Lack of Financial support	2.17	3	1	6.17	106.71
3	Poor Student quality	3	2	2	7	9025
4	Restriction on Faculty to Practice in Court of Law	7.7	8	3	18.7	4.8
5	Restriction on Students to represent client in Court	5.3	1	4.5	10.8	32.49
6	Part time Students	3.8	9	4.5	17.3	0.64
7	Lack of involvement of Bar Council	5	5	7	17	0.25
8	Lack of involvement of Judiciary	3.7	4	9	16.7	0.04
9	Lack of Clear Directions from Bar Council of India	8.5	6.5	10	25	72.25
10	No Training Facilities to Faculty in Practical Papers	9.7	10	8	27.7	125.44

$$W = \frac{437.62}{\frac{1}{12} \times (3)^2 \times (10^3 - 10)}$$

$$W = \frac{437.62}{\frac{1}{12} \times 9 \times (1000 - 10)} = 0.589787$$

$$W = 0.59$$

When N (variables) is more than 7 the calculation is  $\chi^2$

$$\chi^2 = K (N - 1) W$$

$$\chi^2 = 3(10 - 1) 0.59$$

$$\chi^2 = 27 \times 0.59 = 15.93$$

$\chi^2$  Table value = 16.92 for 9 degrees of freedom<sup>58</sup> at 5% significance level. It means that there is only 5% chance that the findings may not be proper. Since  $\chi^2$  value 15.93 is less than  $\chi^2$  table value 16.92, the null hypothesis is accepted. Therefore, the hypothesis, that there is a disagreement about the shortcomings of the clinical education among the students and the faculty, is accepted.

Analysis of the various data that were collected during the research and the careful examination of Part 4.3 clearly exhibit the potential of Clinical Legal Education in implementing Social Justice Mission for legal education in India. It clearly indicates that properly implemented clinical curricula could result in producing socially sensitive legal personnel.

Further, several research initiatives of clinicians worldwide, support the similar notion that the Clinical Legal Education has potential of ensuring social justice. Therefore, Part 4.3 shows clear consensus about the potential of

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<sup>58</sup>  $\chi^2$  is always calculated for (N-1) degrees of freedom. Usually researcher decides the significance level and chooses either 1% or 5 %.

Clinical Legal Education. The main concern is as to what extent the clinical education in India has achieved its potential.

Stark differences among the Law Colleges in implementing the clinical curricula through four practical papers, paint a bleak picture about the achievement of Clinical Legal Education in India. The lack of working guidelines and the Bar Council of India's failure to provide such guideline has resulted in diluting the objectives of Clinical Legal Education. Table 35 and Figure 36 amply supports the hypothesis of this research that lack of working guidelines to implement practical papers is a major problem.

Lack of clear guidelines also results in variations in methods and approaches of offering practical papers. This is sufficiently evident from the study conducted and the same is mentioned in 4.1.1 and 4.1.2. Disparity is not due to local conditions but due to absence of proper guidance which has further diluted the quality and the quantity in both, developing of skills among the law students and achieving the Social Justice Mission. This is manifested in part 4.1.3 and 4.2 of this study.

The third hypothesis that several issues such as lack of faculty expertise, training for faculty, restriction on client representation, restriction on faculty to practice in Court of law and lack of involvement of Bar Council and financial resources contribute to the impediments in implementing the practical papers, has been generally proved.

Table 35 and Figure 29 in Part 4.4 shows that the issue of financial resource is not a problem in implementing the practical papers whereas there is a consensus that all other issues identified in the hypothesis are impediments in implementing practical papers. This could be attributed to the fact that in many of the Colleges, the practical papers are limited to class room teaching and do not require any additional financial resources.

Though V. M. Salgaocar College of Law has been taken as a model for conducting the study, the study reveals that the College has to a larger extent achieved its purpose of creating more socially sensitive lawyers, but it has a moderate success in transition of students from the college to profession. Therefore, the College needs to look at improving lawyering skills along with achieving the Social Justice Mission.

After identifying, what is ailing the Clinical Legal Education in India, attention needs to be drawn to the issue of how to overcome those impediments. The subsequent Chapter i.e., Chapter – V, addresses the shortcomings in Clinical Legal Education. Chapter – V would then formulate a model blueprint on offering practical papers effectively.

# CHAPTER – V

ADDRESSING THE SHORTCOMINGS IN  
CLINICAL LEGAL EDUCATION  
THROUGH REASSESSMENT OF  
VALUES, SKILLS, CONTEMPORARY  
NEEDS AND INFRASTRUCTURE.

## **5. Addressing the Shortcomings in Clinical Legal Education through Reassessment of Values, Skills, Contemporary Needs and Infrastructure.**

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

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

To play such roles, the students of law are required to secure several skills during their education in Law Colleges. Law Colleges share the entire responsibility of such skill training, as law graduates directly enter legal profession without any further training or any Bar examination. Therefore,



there is an urgent need to review the present curriculum to identify how far it provides skills that are required to be acquired by a lawyer.

### **5.1. Primacy of Identifying Values and Skills**

Law Schools and the practicing Bar were established with different missions and to accomplish different tasks.<sup>1</sup> The system, work environment, culture, goals may vary for a law student and a practicing lawyer. But both these institutions are interdependent. Prospective lawyers first undergo studies in law during which they are exposed to the legal system and after which they enter the profession. Thus, Law Schools assume a great responsibility in training young students to become qualified to practice.

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

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<sup>1</sup> AMERICAN BAR ASSOCIATION, SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSION DEVELOPMENT – AN EDUCATIONAL CONTINUUM, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP, 3 (ABA 1992) [hereinafter MacCrate Report].

### 5.1.1. *The MacCrate Report: Plausibility of Reliance Thereon*

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

Regard for lawyers among the public is disgracefully low. The majority, view the profession in the U.S., as “self-serving, directionless, and in disarray”.<sup>2</sup> Anti-lawyer expressions have become more widespread and stronger than ever before. Though these perceptions are particularly strong in the U.S. they have a global flavor irrespective of whether they occur in developed, developing, or underdeveloped countries.

Members of the legal profession in the U.S. often lament that law students entering the profession “... can’t draft a contract, they can’t write, they’ve never seen a summons, the professors have never been inside a Court room.”<sup>3</sup> The imperative question for legal academicians, then, is not which course to follow, but how to identify their roles and design curricula to rejuvenate the profession and to restore its standing.<sup>4</sup>

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<sup>2</sup> Robert A. Destro, *ABA and AALS Accreditation: What’s Religious Diversity Got to Do with It?* 78 MARQ. L. REV. 427, 439 (1995) Cited in Maureen E. Laflin, *Towards the Making of Good Lawyers: How an Appellate Clinic Satisfies the Professional Objectives of the MacCrate Report.* 33 GONZ. L. REV 1(1997).

<sup>3</sup> MACCRATE REPORT, *supra* note 1 at 4.

<sup>4</sup> Maureen E. Laflin, *supra* note 2.

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

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

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

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<sup>5</sup> See, e.g., Legal Services for an Average Citizen. (Discussion paper) (1977): ABA Press; CROMPTON REPORT, THE ROLE OF THE LAW SCHOOLS. REPORT AND THE RECOMMENDATIONS OF THE TASK FORCE ON LAWYERS COMPETENCY (1979); FOULIS REPORT, LAW SCHOOLS AND PROFESSIONAL LEGAL EDUCATION. REPORT AND RECOMMENDATIONS OF THE SPECIAL COMMITTEE (1980); Proceeding of the National Conference on Legal Education for a Changing Profession. Charlottesville, (1988); FRIDAY REPORT - FINAL REPORT AND RECOMMENDATION OF THE TASK FORCE ON PROFESSIONAL COMPETENCE (ABA Press The Friday Report) (1983); American Bar Association judicial Administration division Appellate Judges Conference (1985) *Appellate Litigation Skills Training: The Role of the Law Schools*, Reprinted in 54 CINN. L.REV. 129; Harden House III Conference, *CLE and the Lawyer's responsibilities in an Evolving Profession*, (1987); See also Maureen E. Laflin, *Towards the Making of Good Lawyers: How an Appellate Clinic Satisfies the Professional Objectives of the MacCrate Report*, 33 GONZ. L. REV 55(1998).

<sup>6</sup> Michael Norwood, *Scenes from the Continuum: Sustaining the MacCrate Report's Vision of Law School Education into the Twenty-First Century*, 30 WAKE FOREST L.REV. 293 (1995).

<sup>7</sup> Maureen E. Laflin, *supra* note 2 at 57.

The Report puts forwards certain guidelines on satisfying the demands of the legal profession in producing skilled and competent lawyers. It declares that in addition to acquiring a doctrinal knowledge, acquiring lawyering skills and professional values aimed at providing competent lawyers, are essential to prepare lawyers to represent the clients.

With these goals in mind, the Task Force developed the Statement of Fundamental Lawyering Skills and Professional Values (SSV) that recognize a “compendium of skills and values” fundamental to the practice of law. The SSV examines ten fundamental lawyering skills and four values that represent the moral foundation of legal practice. The Task Force recognized that several of the suggestions put forward above would require designing new modes of teaching, training and development of new teaching materials.<sup>8</sup>

The Task Force viewed the Statement of Skills and Values as “a work in progress.”<sup>9</sup> The document is intended to serve as a stimulus and a beginning point for an unending exchange within the profession about the skills and values that a legal practitioner should acquire and about the kind of education and training that prospective lawyers should receive at different stages of their careers. The Task Force hoped that these skills and values would be revised from time to time to fulfill its intended purpose of preparing new lawyers for practice.<sup>10</sup>

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<sup>8</sup> MACCRATE REPORT, *supra* note 1 at 130.

<sup>9</sup> *Id* at 131.

<sup>10</sup> *Ibid.*

Further, the Task Force, while stressing on the avoiding of abuse of the Statement, emphasized that “the statement is not, and should not be taken to be, a standard for a Law School curriculum. The Statement of Skills and Values is concerned with the limited goal of ensuring practice at a minimum level of competency.”<sup>11</sup> Therefore, the skills and values mentioned in the Report are not comprehensive but rather express desired goals of narrowing the professional gap between Law Schools and the practice of law.

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

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

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<sup>11</sup> *Id* at 132.

<sup>12</sup> Peter A. Joy, *Clinical Scholarship: Improving the Practice of Law*, 2 CLINICAL L. REV. 385 (1996).

<sup>13</sup> Maureen E. Laflin, *supra* note 2 at 5.

## Skills:

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

### i. Foundational Skills.

This first group contains two skills; dealing with problem solving and legal analysis and reasoning.<sup>14</sup> These are the basic abstract skills for legal practice. Any form of training a lawyer or evaluating his competence involves problem solving, and every problem solving activity should be backed by a sound legal analysis and reasoning. All the sub skills mentioned under the first and second skills, aim to fulfill the minimum requirements for a lawyer to practice the profession. Thus, these skills are absolutely necessary for any kind of legal practice, whether it is client oriented or justice oriented.

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<sup>14</sup> Details of first two skills are as follows:

#### **Skill § 1:**

In order to develop and evaluate strategies for solving a problem or accomplishing an objective, a lawyer should be familiar with the skills and concepts involved in:

- 1.1 Identifying and Diagnosing the Problem;
- 1.2 Generating Alternative Solutions and Strategies;
- 1.3 Developing a Plan of Action;
- 1.4 Implementing the Plan;
- 1.5 Keeping the Planning Process Open to New Information and New Ideas.

#### **Skill § 2:**

In order to analyze and apply legal rules and principles, a lawyer should be familiar with the skills and concepts involved in:

- 2.1 Identifying and Formulating Legal Issues;
- 2.2 Formulating Relevant Legal Theories;
- 2.3 Elaborating Legal Theory;
- 2.4 Evaluating Legal Theory;
- 2.5 Criticizing and Synthesizing Legal Argumentation.

ii. Specific Skills for Legal Practice.

The next four skills aim at providing a wide range of skills that are required to practice the profession.<sup>15</sup> These skills broadly deal with legal research, factual investigation, communication, counseling and negotiation. A close look at these four skills reveals that they play a central role in preparing competent

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<sup>15</sup> The details of four skills are

**Skill § 3:**

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

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

**Skill § 4:**

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

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

**Skill § 5:**

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

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

**Skill § 6:**

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

- 6.1 Establishing a Counseling Relationship That Respects the Nature and Bounds of a Lawyer's Role;
- 6.2 Gathering Information Relevant to the Decision to Be Made;
- 6.3 Analyzing the Decision to Be Made;
- 6.4 Counseling the Client About the Decision to Be Made;
- 6.5 Ascertaining and Implementing the Client's Decision.

lawyers. These skills bridge the gap between conceptual and practical aspects of lawyering skills.

### iii. Skills required for ADR.

The eighth skill is necessary either to provide ADR or advice clients about the various options available to resolve disputes under ADR.<sup>16</sup> It provides practical knowledge about fundamental litigation, i.e., litigation in trial and appellate Courts, and alternative dispute resolution. The report recognizes the fact that many lawyers may not engage in traditional litigation or ADR; however, it insists upon acquiring fundamental skills in both, litigation and ADR, since lawyers often are required to decide whether to choose litigation or use ADR to resolve disputes.

### iv. Administrative Skills to Organize Legal Work.

The ninth skill is intended to develop the ability to organize and manage legal work effectively.<sup>17</sup> The basic focus of this skill is on the effective use of time

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<sup>16</sup>Details of the skill are

**Skill § 8:**

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

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

<sup>17</sup>Details of the skills are

**Skill § 9:**

In order to practice effectively, a lawyer should be familiar with the skills and concepts required for efficient management, including:

- 9.1 Formulating Goals and Principles for Effective Practice Management;



for completing the work. It also aims at cooperating with other members of the profession and proper administration of a law office.

v. Skills to Recognize and to Resolve Ethical Dilemmas.

The tenth skill enumerates the essential skills that are required to identify and resolve ethical dilemmas.<sup>18</sup> This skill familiarizes future practitioners with ethical rules and standards. These are absolutely necessary for a healthy profession. The main emphasis is on self-scrutiny and identifying and solving ethical problems in one's own practice.

Values:

The Report identified the following four fundamental values:

i. Provision of competent representation.<sup>19</sup>

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

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

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

9.5 Developing Systems and Procedures for Efficiently Administering a Law Office.

<sup>18</sup> Details of the skills are

**Skill § 10:**

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

10.1 The Nature and Sources of Ethical Standards;

10.2 The Means by Which Ethical Standards are Enforced;

10.3 The Processes for Recognizing and Resolving Ethical Dilemmas

<sup>19</sup> **Value § 1:**

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

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

1.2 Maintaining a Level of Competence in One's Own Field of Practice;

- ii. Striving to promote justice, fairness, and morality.<sup>20</sup>
- iii. Striving to improve the profession.<sup>21</sup>
- iv. Professional self-development.<sup>22</sup>

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

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

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1.3 Representing Clients in a Competent Manner.

<sup>20</sup> **Value § 2:**

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

- 2.1 Promoting Justice, Fairness, and Morality in One's Own Daily Practice;
- 2.2 Contributing to the Profession's Fulfillment of its Responsibility to Ensure that Adequate Legal Services Are Provided to Those Who Cannot Afford to Pay for Them;
- 2.3 Contributing to the Profession's Fulfillment of its Responsibility to Enhance the Capacity of Law and Legal Institutions to Do Justice.

<sup>21</sup> **Value § 3:**

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

- 3.1 Participating in Activities Designed to Improve the Profession;
- 3.2 Assisting in the Training and Preparation of New Lawyers;
- 3.3 Striving to Rid the Profession of Bias Based on Race, Religion, Ethnic Origin, Gender, Sexual Orientation, or Disability, and to Rectify the Effects of These Biases.

<sup>22</sup> **Value § 4:**

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

- 4.1 Seeking Out and Taking Advantage of Opportunities to Increase His or Her Knowledge and Improve His or Her Skills;
- 4.2 Selecting and Maintaining Employment That Will Allow the Lawyer to Develop As a Professional and to Pursue His or Her Professional and Personal Goals.

<sup>23</sup> Jane Harris Aiken, *Striving to Teach "Justice, Fairness, and Morality"*, 4 CLINICAL L. REV. 4 (1997).

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

### Shortcomings of MacCrate Report

The Report has drawn several criticisms on its Fundamental Lawyering Skills and Fundamental Values. These criticisms include, missing the humane element of lawyering; more emphasis on traditional role of problem solver; over emphasis on skills; little attention to the social justice goal; failure to recognize the importance of subject matter of the study of law; no attention to community based advocacy; ignoring the importance of the alternative role of lawyers; and changes in the relationship between lawyer and client due to the “economic of law practice.”<sup>24</sup>

Prof. Carrie Menkel-Meadow mainly focuses her criticism of the Report on the missing element of humane lawyering.<sup>25</sup> She observes that MacCrate’s

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<sup>24</sup> See, Frank J. Macchiarola, *Teaching in Law School: What are We doing and What More Has to be Done?*, 71 U. DET. MERCY L. REV. 531 (1994); Menkel-Meadow, *Symposium on the 21<sup>st</sup> Century Lawyer: Narrowing the Gap by Narrowing the Field: What 's Missing From the MacCrate Report – Of Skills, legal Science and Being A Human Being*, 69 WASH. L. REV. 593 (1994); Peter A. Joy, *Clinical Scholarship: Improving the Practice of Law*, 2 CLINICAL L. REV. 385 (1996); Russell Engler, *The MacCrate Report Turns 10: Assessing Its Impact and Identifying the Gap We Should Seek to Narrow*, 8 CLINICAL L. REV. 109 (2001); Russell G. Pearce, *MacCrate’s Missed Opportunity: the MacCrate report’s Failure to Advance Professional Values*, 23 PACE L. REV. 575 (2003); Robert MacCrate, *Yesterday, Today and Tomorrow: Building the continuum of Legal Education and Professional Development*, 10 CLINICAL L. REV. 805 (2004).

<sup>25</sup> Menkel-Meadow, *supra* note 24 at 595.

declaration on lawyering skills visualizes the lawyer largely as a litigator, a “means-ends” thinker who can accomplish the client’s goals. However, the Report fails to recognize the most important aspect of the legal profession: the “art of lawyering,” i.e., the necessity of being a caring human being who uses professional work to make the world better.

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

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

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

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<sup>26</sup> For example, issues such as sati, dowry, and bonded labor.

problems into legal problems. The traditional role of lawyer as problem solver would not fit this purpose. Members of the law profession need to play the role of educator, planner and counselor.<sup>27</sup> Therefore, skills which provide broader understanding of various facets of legal problems are necessary.

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

Despite the Report's stated aim, to improve both skills and values, it mainly focuses on skills. It indirectly indicated that the values are subordinate to skills, by listing the four fundamental values after the ten fundamental skills. It is therefore, logical to endorse Russell G. Pearce's view that the Report makes values less important than skills.<sup>28</sup> To achieve the Report's aim, first the goals are identified and then the skills needed to achieve those goals. If "the values are the goals"<sup>29</sup> and the values are not identified, it is pointless to talk about skills.

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<sup>27</sup> Dinesh Khosla, *Making Law Effective: Pre-paid Group Legal Services as a Strategy*, 18 J.I.L.I. 604 (1976).

<sup>28</sup> Russell G. Pearce, *supra* note 24 at 585, 586.

<sup>29</sup> *Id* at 586.

By placing skills before values, the Report encourages Law Schools to place greater emphasis on fundamental skills and ignore fundamental values. This can be witnessed by the fact that both law students and new practitioners are conferred major awards solely on the basis of skills. Though a demonstration of extremely negative values may be grounds for disqualification, an individual's values, whether excellent or mediocre, play no role in academic or professional incentives.<sup>30</sup>

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

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

Further, the Report overlooks the importance of the content of teaching. The need to introduce socially relevant legal subjects has also been ignored. The

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<sup>30</sup> *Id* at 587

Report focuses on individual rights, and little attention is given to community based or society oriented lawyering.

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

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

Justice, fairness and morality can be taught in the classrooms.<sup>31</sup> But the end result of such discussion in classrooms depends on what methodology is used in the classroom. Therefore, a careful design of curriculum is necessary to inculcate a sense of social justice among law students. To accomplish this task,

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<sup>31</sup> Jane Harris Aiken, *supra* note 23 at 9.

the students must be exposed to several facts which indirectly influence the client.

For example, in India victims of crimes tend to settle the matter with the accused, for monetary benefits, although this practice is illegal. If students are exposed to the factors of poverty of the client and to the Indian legal system, which does not provide for victim compensation in most criminal cases,<sup>32</sup> then the students will understand why their clients may be more interested in settlement than in pressing for punishment to the accused.

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

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

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<sup>32</sup> Civil law provides private compensation. As far as criminal law is concerned, only in few crimes such as defamation, public nuisance, rash and negligent driving, compensation can be claimed. Other crimes such as murder, grievous hurt no compensation can be claimed from the convict. However Section 377 of Cr.P.C. authorizes the magistrate to award compensation but it is only discretionary. Only in case of plea bargaining under Section 265 A to C compensation in criminal cases is allowed and again it is restricted only to offences punishable for less than seven years.



appropriate goals, any changes proposed to improve legal profession, would be a futile exercise.

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

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

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

Further, changing or adapting a new curriculum is centralized, and only BCI and UGC are authorized to do so. The centralized examination system, a by-product of the British contribution to Indian education, makes it very difficult for individual faculty members to experiment with course syllabi and teaching methods.

Moreover, India's status as a developing country makes the main aim of the law to promote social justice. The objectives of social justice is removing all inequalities and providing equal opportunities to all citizens in both social and economic activities.<sup>33</sup> Considering socio-economic and political conditions in India, the Indian Constitution promulgates equality and justice—social, economic and political, as higher social values.<sup>34</sup> Articles 14, 15, 16, and 17 in Part – III of the Indian Constitution mandates the State to provide equal opportunities, where as Articles 38, 39, 39 A, 41, 43, 43 A and 46 in Part IV of the Constitution of India directs the State to make efforts to provide social justice.

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

Thus, for the purpose of achieving socio-economic and political justice, new skills must be developed. Even if legal education in India could produce highly talented skill-oriented legal professionals, society may not benefit from such

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<sup>33</sup> Gajendragadkar P.B. Law, Liberty and Social Justice 77 – 79 Op. cited Krishna Iyer V.R. SOCIAL JUSTICE SUNSET OR DAWN, 51(Eastern Book Company, Lucknow).

<sup>34</sup> Preamble of the Constitution of India.

<sup>35</sup> Dinesh Khosla, *supra* note 21 at 588.

professionals<sup>36</sup> because Indian society needs not only highly technical and skill-oriented lawyers, but also lawyers who are socially sensitive and have socially relevant lawyering skills.

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

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

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

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<sup>36</sup> N.L.Mitra, *Legal Education in India*, Conference of International Legal Educators, Florence, Italy (2000) available at <http://www.aals.org/2000international/english/India.htm>. (Last visited 12 - 3 - 05)

## Values

### i. Provision of Effective Resolution of Disputes.

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

Thus, providing free legal aid to an indigent person is not only a statutory obligation,<sup>37</sup> but a constitutional obligation on the part of the State. “State obligation” does not mean that only the State has an obligation. Every member of the legal profession is under a professional and legal obligation of providing free legal aid.<sup>38</sup> To achieve this, a nationwide program is required. Naturally,

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

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

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

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

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

Section 7 (C) imposes an obligation on State Legal Services Authority to “undertake preventive and strategic legal aid programs.” This obligation has to be carried by the Chief Justice of High Court in every state.

the Law Schools are the starting point of inculcating free legal aid as a value in the legal community.

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

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

ii. Striving for Social Justice.

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

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

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

<sup>39</sup> In Supreme Court 19,806 cases are pending at the year 1998. In High Courts 3.18 million cases are pending (Year 1997). In subordinate Courts 20 million cases are pending. Ministry of Home Affairs Government of India (1997) available at <http://mha.nic.in/justi.htm>

Principles of State Policy in the Indian Constitution.<sup>40</sup> Various enactments that followed after independence, show ample evidence that the urgent concern of the Government is to provide basic amenities to the poor.<sup>41</sup>

Free India, expected the law to play a vital role in bringing social order. To secure the rule of law in any nation, effective implementation of social welfare legislation is not only necessary but mandatory. Satisfying human needs is the basic function of any just society. Unlike India, in many countries social welfare cannot be implemented through constitutional provisions.<sup>42</sup> The Supreme Court of India has a rich history of judicially enforcing socio-economic rights by liberal interpretation of fundamental rights.<sup>43</sup> The main objective behind the Directive Principles of State Policy in Part IV of the Indian Constitution is to establish a welfare state and to provide socio-economic justice. They aim at social reconstruction and economic enlightenment of the masses.

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

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<sup>40</sup> See generally, Part IV of Indian Constitution, specifically articles 38, 39, 39 A, 42, 43, 46.

<sup>41</sup> Various enactments in the field of land ceiling, agricultural tenancy, rent control, minimum wages etc., are aimed at securing social order.

<sup>42</sup> See generally, Mark Tushnet, *Constitutional Courts in the Field of Power Politics: Social Welfare Rights and the Forms of Judicial Review*, 82 Tex. L. Rev. 1895 (2004); Peter E. Quint, *The Constitutional Guarantees of Social Welfare in the Process of German Unification*, 47 AM. J. COMP. L. 303 (1999).

<sup>43</sup> See, *Olga Tellis v. Bombay Municipal Corporation* A.I.R. 1986 S.C. 180; *Unni Krishnan v. State of A.P.* A.I.R. 1993 S.C. 2178; *PUDR v. Union of India* A.I.R. 1982 S.C. 1437; *Sodan Singh v. New Delhi Municipal Corporation* A.I.R. 1989 S.C. 1988; *Chameli Singh v. State of U.P.* A.I.R. 1996 S.C. 1051; *P.B. Khet Mazdoor Samity v. State of West Bengal* A.I.R. 1996 S.C. 2426; *Jolly George Varghese v. Bank of Cochin* A.I.R. 1980 S.C. 470.

law in India. To achieve this goal, socially relevant legal education is necessary to transform the legal process and the legal profession, to secure social justice.

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

iii. Promotion of Alternative Role of Lawyer.

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

Alternative dispute resolution is an outstanding development in 20<sup>th</sup> century law. ADR, as a form of dispute settlement was an important trend in conflict

management and judicial reform. The necessity of ADR as an alternative to the traditional justice dispensation system was globally recognized. In fact, various forms of ADR such as negotiation, mediation, arbitration and conciliation were the traditional methods of dispute resolution in ancient India.

The present Indian justice dispensation system of adversarial justice dispensation is largely influenced by the British model. The complexities and technicalities imposed by the British model need to be simplified. Therefore, a system which provides a non-judicial forum and informal proceedings to satisfy natural justice, involving little cost and speedy disposal, is the need of the hour.<sup>44</sup>

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

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

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<sup>44</sup> Justice V.R. Krishna Iyer, *Inaugural Address at the Second State Lawyers' Conference, Andhra Pradesh at Rajahmundry*, 2 SCC 1 (JOUR) (1976).

<sup>45</sup> Section 19 – 22, The Legal Services Authorities Act, 1987.

<sup>46</sup> Justice Jitendra N.Bhatt, *A Round Table Justice Through Lok-Adalat (Peoples' Court) – A Vibrant-ADR-In India*, 1 SCC (JOUR) 11 (2002).



counselor and public policy maker. The legal profession must change its purpose from providing client-centered legal services, to securing the Social Justice Mission of providing fair justice. The legal profession should recognize the truth that the lawyers are loyal to justice rather than just to their clients.

Apart from ADR, it is also necessary to make citizens aware of both their rights and duties. "Knowledge is divine" is an old saying. "Applied knowledge is divine," goes the present saying. With the literacy rate at 68.4%,<sup>47</sup> disseminating necessary legal knowledge is as important as any other function of the members of the legal profession.

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

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

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<sup>47</sup> Census of India 2001, T 00-006, available at [http://www.censusindia.net/t\\_00\\_006.html](http://www.censusindia.net/t_00_006.html)

#### iv. Provision of Judicial Independence and Accountability

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

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

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

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<sup>48</sup> Transparency International's 2003 Survey, [http://www.transparency.org/policy\\_research/surveys\\_indices/cpi/2009/cpi\\_2009\\_table](http://www.transparency.org/policy_research/surveys_indices/cpi/2009/cpi_2009_table) (last visited 06 - 02 - 2010)

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

### Skills

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

For securing the first value, i.e. 'effective resolution of disputes', the following skills enumerated in the Report are helpful: legal research (Skill # 3), communication (Skill # 5), litigation and alternative dispute resolution procedures (Skill # 8), and organization and management of legal work (Skill # 9). Similarly, for securing the second value, i.e. 'striving for social justice' following skills are important: generating alternative solutions and strategies (Skill # 1.2), elaborating legal theory (Skill # 2.3), evaluating legal theory (Skill # 2.4), and identifying and evaluating other possible legal theories (Skill

# 2.5.c). Finally, in promoting the third value, i.e. 'alternative role of a lawyer', the following skills may play significant role: methods of effectively tailoring the nature, form, or content of the written or oral communication (Skill # 5.2.c), counseling (Skill # 6), negotiation (Skill # 7), and knowledge of the fundamentals of proceedings in other dispute-resolution forums (Skill # 8.4).

### New Skills.

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

#### i. Innovative/Alternative Problem-Solving Techniques.

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

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

To secure the constitutional goal of bringing social order, lawyers need to think about options beyond traditional norms. They need to be able to handle group actions and community or social-oriented litigation, and they must hone strong

interpretative skills to convince judges to recognize the need for considering socio-economic conditions of the litigants in analyzing and disposing legal problems.

iii. Mass Communication Skills.

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

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

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

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

In achieving all the aforesaid objectives, sound research skills are needed. However, a mechanical application of research findings will do no good for such a cause. Researchers need to have a sense of commitment and desire to

serve the society. Thus, the goal of developing research skills is to serve the society rather than simply applying legal rules mechanically to problems.

vi. Skills of Translation.

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

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

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

Thus, in highlighting the need for quality legal education, Justice Anand said that “the quality of education has a direct impact on the prestige of the legal

profession. We must therefore identify the areas of default and initiate corrective action to repair the damage.”<sup>49</sup>

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

## 5.2 Reassessing Contemporary Needs

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

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

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<sup>49</sup> Dr. Justice A.S.Anand, *H.L. Sarin Memorial Lecture: Legal Education in India – Past, Present and Future*, (1998) 3 SCC (JOUR) 1.

<sup>50</sup> AIR 1996 SC 1.

struggle. With given high expectation from the Constitution of India, Justice D.A. Desai says "...while people's expectations rose high, the instrument for satisfying the expectations were inadequate, imperfect and out-moded."<sup>51</sup> He argues that our justice dispensation system being adversarial, is "archaic, non – functional and not result oriented" and laws passed by the Parliament are "so clumsy and productive of wasteful delay that it has become counterproductive."

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

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

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

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<sup>51</sup> Desai D.A., *Role and Stricture of Legal Profession*, XXII IBR, 1(1995)



the profession assume higher responsibility and accountability to the society.<sup>52</sup> Therefore, creating smart lawyers without any responsibility and accountability is of no value. Society needs not only smart lawyers but also socially sensitive lawyers.

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

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

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

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<sup>52</sup> *Id* at 3.

<sup>53</sup> Uprendra Baxi, *The Pathology of the Indian Legal Professions*, XXII IBR, 67(1995).

<sup>54</sup> Code of Ethics was formulated by the BCI in Part VI, Chapter II of the Bar Council of India Rules made under section 49 of Advocate Act 1961 as Standards for Professional Conduct and Etiquette

<sup>55</sup> See Uprendra Baxi, *Supra* note 53.

obligation” but comes with a rider that it is subject to “limits of an Advocates’ economic condition”. He categorically points that “even superstar lawyers, whose economic condition is unconsciously affluent, even refuse summarily to see an indigent person with urgent need for legal assistance. We also know that most senior lawyers stay away from the legal aid programs of the State”.

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

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

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

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<sup>56</sup> T.K.Oommen, *The Legal Profession in Independent India: A sociological Overview* XXII, IBR 109 (1995).

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

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

In the light of socio economic and political conditions prevailing in India, the legal profession requires to raise its current position in order to promote social justice. Several factors peculiar to the Indian society, expect lawyers to play different roles as compared to the other developed nations. The Indian Parliament has become a factory of producing plethora of legislations. Sheer number of amendments to the highest law of the land, shows ample evidence in legislative mood of the Indian Parliament. What happens to these legislations? Roger Cotterrell answers that such laws give work to lawyers to digest and comprehend the changes brought by new rules.<sup>57</sup> He also points out that the new law may be published, may find way to a library, and may become

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<sup>57</sup> Roger Cotterel, *THE SOCIOLOGY OF LAW: AN INTRODUCTION*, 1 (Oxford University Press, London, Indian Edition 2007).

registered in digest of legislations, periodicals. Then what happens? Does this law ever reach the people for whom it is meant?

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

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

Further, in a country like India where majority of the people live in poverty and illiteracy, numerous legislations provide high risk of being a weapon in the hands of a few, to control and exploit the masses. As all the legislations and the

proceedings before the Courts are in English, legal literacy becomes the foremost requirement in India. Procedural technicalities and legal jargons in welfare schemes create invisible barricades to the masses in accessing justice. Society expects a simple and easy accessible legal system, and the responsibility to make the legal system simple and accessible, lies on legal professionals.

Therefore, to make the administration of justice effective the society needs the following things:<sup>58</sup>

i. Structuring of the Profession for Easy Access.

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

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<sup>58</sup> These are some of the recommendations made by Prof. Madhava Menon. See Madhava Menon N.R., *Restructuring the Legal Profession for Strengthening Administration of Justice*, XXII, IBR 235 – 241(1995).

ii. Quality of Legal Services

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

iii. Effective Dispute Settlement Mechanism

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

iv. Involvement of Public Sector in the Profession

To provide access to justice, the present legal aid schemes have proved to be ineffective. Providing legal aid, though is the paramount obligation of the State, in many cases the service provided by the State is inadequate. The quality of legal service provided under the legal aid

schemes is really unsatisfactory. Therefore, introducing the public defender system that is followed in several western countries would increase the access to justice. Legal education should strive to encourage the students to join in such an initiative.

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

“Good character, academic honesty, integrity, devotion to duty, commitment to academic excellence, continuous active involvement in academic and research pursuit, fighting for the cause of justice to poor and the lowly, working for high academic and moral standards, upholding the dignity and good traditions of the profession, and striving for the promotion of democratic and secular values,”<sup>59</sup> are the ten commandment of the academicians as observed by Jaganmohan Rao.

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

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<sup>59</sup> Jaganmohan Rao, *Professional Accountability of Academic Lawyers*, XXII, IBR 214(1995).

To sum up, the society expects legal professionals to play the role of social engineers and devise strategies to provide social justice. To play such a role, new structures such as “[l]awyer’s Collectives, Public Interest Law Firms, Poor Peoples’ Lawyers, barefoot lawyers, Lawyers’ Public Sector, National and State Free Legal Services Authorities and so on”<sup>60</sup> are required. So, when the service to the people becomes the end of the professions, means to match, must bloom into existence structurally and technique-wise.<sup>61</sup>

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

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

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

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<sup>60</sup> Krishna Iyer V,R, *Professions for the People: A Third World Perspective*, XXII, IBR 161(1995).

<sup>61</sup> *Ibid.*



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

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

### *5.3.1. Model Clinical Methods*

#### *i. Internship with Lawyers*

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

#### *ii. Public Interest Lawyering/Litigation*

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

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<sup>62</sup> Most of the examples cited were successfully implemented through Legal Aid Clinics by V.M. Salgaocar College of Law, Panaji, Goa.

Supreme Court for redress in the form of Public Interest Litigation.<sup>63</sup> In all appropriate public interest litigation, students can appear before the Court. In the process, they learn all the skills including advocacy.

### iii. Legal Literacy Camps/Street Law Programs

In a country like India, where about 260 million people live below the poverty line and some two-third of the population of more than a billion is dependent on agriculture;<sup>64</sup> focus on legal literacy programs is extremely important. Law Schools can play a major role in sensitizing the public about their legal rights and duties. Legal literacy campaigns are suitable for Law Schools in India, as far as organization is concerned. They require neither large financial resources nor special expertise. These programs help students in developing important organizational skills, research, oratory, public speaking and translation skills.<sup>65</sup>

### iv. Legal Entitlement Programs

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

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

<sup>64</sup> P.Chidambaram, Finance Minister, Economics Times, Tuesday, Mar. 1, 2005 *available at* <http://economictimes.indiatimes.com/search.cms>.(last visited on September 10, 2006)

<sup>65</sup> Most of the laws in India are in English. So students need to translate them in to the local language to disseminate legal information.

Proper research on these beneficial provisions is more than a necessity, to identify the beneficiaries and to see that these measures actually reach the needy. This kind of work develops a sense of social responsibility in students and will expose them to the plight of their country's poor. This program has a potential to offer several skills like fact investigation, research, legal analysis and interviewing skills.

v. Free Legal Advise Clinics

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

vi. Para Legal Services

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

vii. Open Forums:

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

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

viii. Theater Art:

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

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<sup>66</sup> By using this method the students of V.M. Salgaocar College of Law solved several problems faced by the local community like transport, water supply, and garbage disposal.

discrimination, domestic violence, children rights, and environmental issues, can be the subjects for such plays. Students can even go to nearby schools and educate the school children about the legal issues that concern them. Skills that could be impacted by this method is oratory, communication, public performance, drafting and analytical skills.

#### ix. Pro bono Representation in Quasi-Judicial Bodies

Restriction on students to represent clients was viewed as one of the major hindrance in development of clinical education in India. This being the reason, clinical movement in India is confined more on legal literacy and paralegal services. But quasi judicial bodies such as the Consumer Dispute Redressal Forums provide an opportunity to develop live client clinics in colleges.<sup>67</sup> As the Consumer Forums allow any person to represent the parties in resolving consumer disputes, the Consumer Clinics have the potential to offer all the skills that a lawyer requires in the profession. Therefore, establishing Consumer Clinics in the Law Colleges, become a viable option for both the faculty and the students.

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

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<sup>67</sup> Consumer Law Clinic was started at V.M. Salgaocar College of Law in the year 2006 and 20 students were actively involved in dealing with 3 cases pending before North Goa District Consumer Dispute Redressal Forum.

experiences of V. M. Salgaocar College of Law, Goa. As already noted, the fourth practical paper on Legal Aid provides considerable flexibility to Law Schools in its implementation. The activities undertaken by the Legal Aid Clinics in Goa amply illustrate how to utilize paper four in institutionalizing quality clinical education in India.

#### ***5.4. Model Blue Print for Evaluation***

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

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

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

assess. This includes identifying the criteria to assess the work of the students to allot marks/credits.

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

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

*Paper I: Moot-Court, Pre-trial Preparations and Participation in Trial Proceedings.*

a) Moot Court

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

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<sup>68</sup> Viva is an oral examination in which panels of faculty members assess the involvement of students in the practical papers.

importance of the Moot Court. Students should be trained as to how to conduct research, find relevant laws, case laws and manner of citing cases, drafting, framing issues, identifying important facts from the case, and Court manners. A small Course on using library and internet will be advantageous.

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

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



b) Counseling/Pre-trial Preparation.

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

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

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

### C) Participating in Trial Proceeding

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

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

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

### *Paper II: Drafting, Pleading and Conveyancing*

In addition to the class room teaching and training, introducing trial advocacy is desirable too. Purpose of introducing trial advocacy, provides an opportunity to the students to get the feeling of actual participation in a case. Such situation

★ makes students more serious. Students may be divided into several groups, and two groups should be given one hypothetical problem. One group will draft all the documents that are required in a trial proceeding on behalf of Plaintiff/Complainant, and another on behalf of Defendant/Accused.

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

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

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

★ Teaching of professional ethics should not be limited to the mere teaching of relevant provisions of Advocates Act or a discussion of a few cases pertaining to ethical issues. This paper should necessarily involve sensitizing the students on various social justice issues and public accountability and certain issues like Maintenance and Champerty under Indian Contract Act, Prohibition of advertisement by advocates, and restrictions on law firms, etc.

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Seminar method will be suitable for this kind of paper. Students may be asked to take topics pertaining to legal ethics, conduct research and present a paper. Students may also be asked to comment on recent judgments on professional ethics. Each student is required to undergo an internship in a lawyer's or a judge's office for 30 days and maintain a day-wise journal for record and evaluation.

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

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

Twenty marks may be reserved for viva. A panel of three members may be constituted to conduct viva out of which at least one member should be either

an experienced counsel or a Judge. Feedback to the students from panel members is desirable.

*Paper – IV Alternate Dispute Resolution*

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

Evaluation

Negotiation: 30 marks for Negotiation (10 marks for Pre-negotiation preparation and Plan of Action, 20 marks for actual Negotiation). Evaluation may be based on identification of issues, identifying common interests, identifying conflicting interests, prioritization of issues, generating options, rapport building, convincing power, balancing common and conflicting interest using common advantages for continuation of negotiation, legitimacy of the claims and the outcome of negotiation.

Conciliation: 30 marks may be allotted for Conciliation (10 marks for Pre-Conciliation Preparation and 20 marks for actual conciliation). Evaluation may be based on maintaining neutrality, confidentiality, ability to separate people from the problem, motivating parties to negotiate, counseling skills, and providing scope for venting emotions, rapport building, helping the parties in identifying interests and formulating tentative and drafting final settlement.

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

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

The legal process of transforming the society in to just society would depend upon the performance potential of the legal profession. Social justice through legal action would be possible only when competent and socially sensitive legal professionals serve the society. Therefore, reforming the legal education to implement and institutionalize Social Justice Mission requires focusing the

reforms to improve competency of the legal professionals and developing special skills towards achieving the mission of social justice.

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

# CHAPTER – VI

# CONCLUSIONS



## 6. Conclusions and Suggestions

The need for improvement in legal education became a major concern during the post colonial era. These concerns were logical, in the sense that the quality of legal education is bound to impact the quality of judicial process and administration of justice in a democratic country like India.<sup>1</sup> Rapid growth of society in terms of a globalized and free market, poses serious threats to the traditional and established social norms and more so, to the system of access to justice. Therefore, legal education needs to concentrate not only on improving the competence regarding the aspect of lawyering, but also the necessity of providing legal aid to the needy.

As has been noted earlier, the Clinical Legal Education in India has its roots in both; the legal aid and legal education reform movements, as part of an effort to improve the quality of law practice, and to increase awareness among lawyers about professional and public responsibility. The dilemma of clinical movement, as to whether to teach practical lawyering skills or whether to engage law students in legal aid and other social action projects, could be solved by adopting a complete clinical curriculum which would address both professional skills and professional social justice values.

The history of Clinical Legal Education in India not only confirms that view but also sets the stage for its realization in the years to come.

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<sup>1</sup> Mathur, N.N., *Legal Education and Bar Council*, 24 (2&3), IBR 1 (1997).

The state of legal education in pre-colonial and colonial period has neither been professional nor uniform. Thus in the post-colonial era the challenge has not only been to bring uniformity in legal education throughout the country, but also to make it professional.

The few Colleges in the country which were teaching law, were mostly confined to cities and most of them operated part-time. Moreover, due to liberal admission to legal practice, the new entrants lacked both; academic excellence and professional skills. It was in 1961 that the legal education was brought under the control of the Bar Council of India by the Advocates Act 1961.

The primary task of the BCI is to bring uniformity in legal education in the country. BCI, has time and again framed several rules prescribing minimum norms to establish and run the Law Colleges. These efforts resulted in enormous growth of Law Colleges through the length and breadth of the country. Thus legal education became more affordable and assessable. However, unfortunately due to the lack of vision regarding legal education, resulted in substandard institutions, and consequently uncontrolled expansion of legal education resulted in compromising the quality of new legal professionals entering the profession.

However, later efforts such as the establishment of BCI Trust to support legal education, introducing five year integrated LL.B course and establishment of National Law School at Bangalore, boosted the reforms in legal education in 80's. But though the establishment of several National Law Schools and

similar institutions marked a new era in legal education in India, other 900 odd Law Colleges in the country continued to lag behind. Even several of the National Law Schools struggle to get qualified teaching faculty.

It is the motivated students and the qualified teachers who can considerably improve the quality of legal education. Several of the factors which are capable of improving legal education and the profession, have been overlooked for a long time. Considerable efforts have been made for this purpose by the controlling bodies such as BCI and UGC, but these efforts have been mostly aimed at improving physical infrastructures of the Colleges and to some extent modernizing the curriculum content.

Further most of the efforts made for improving legal education till today are concentrated only towards meeting the needs of the Bar and the Bench. But the present scenario requires legal personnel not only for Bar and Bench but for various other fields such as law makers, civil services, academics, corporate, trade and industry, arbitrators, negotiators, social organizations and non-governmental organizations. The change of role of the lawyer from litigator to justice provider requires new array of social skills. The present goal of legal education required to change from meeting the needs of Bar and Bench to maximizing social justice and access to justice.

There is a common feeling among the legal fraternity that there is nothing common between the legal education and the practice in the Court of law. At the best they may agree that Law Colleges provide some understanding of the

basic concepts in law, but to learn application of law in real life “one has to roam around in the corridors of the Courts.”<sup>2</sup> Very little effort has been made to remove the defects in the content and methods of offering legal education. 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 future lawyers.”<sup>3</sup>

Reforming legal education requires changes not only in the physical infrastructure but a considerable amount of resources need to be diverted towards development of human resources, developing socially relevant curriculum and teaching pedagogy, method of recruitment, funding for clinical activities and management of Colleges.

Developing substantial knowledge requires inventing new teaching methodology in addition to present lecture method and case study method. They may include teaching substantive law subject with clinical activities, using projects, research papers, internships, field visits, role plays and simulation exercises.

The lecture method which is generally adopted for the teaching of law, merely provides information and knowledge. However, the profession requires the students, not to merely recall the information they receive in Law Colleges, but

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<sup>2</sup> Mitra L.N., *A few Questions in the Beginning*, 22(4) IBR 74 (1995).

<sup>3</sup> Mohan Gopal Et, PROF.N.R.MADHAVA MENON'S REFLECTIONS ON LEGAL AND JUDICIAL EDUCATION, 78 (Universal Law Publishing Co, 2009).

to process such information in order to apply it to real life situations in the Court of law. Therefore, before beginning with the imparting of legal education, the faculty must define the learning objectives of the course that they are offering and accordingly should choose suitable teaching techniques.

Even in the clinical methodology, formulation of clear objectives is a must.

Mostly clinical activities are litigation oriented. But lawyers are not only engaged in litigation but are also involved in social, political and economic life of the country. Therefore, clinical activities need to be broad enough to provide opportunity to the students to participate in and gain a sense of responsibility towards the society. In this manner the legal education will influence the way in which law is practiced and will also guide the direction of social policies.

The functional knowledge of legal system is a condition precedent for a legal professional. Learning from the corridors of the Courts and offices of the senior lawyers though important for gaining such understanding, it would not give a complete functional knowledge. For example, for the training in the skills of interviewing and counseling, the Colleges are in fact better equipped than the lawyers' offices. Moreover, exposure to certain unprofessional practices that are followed in the corridors of the Courts and offices of the lawyers' may be counterproductive at the early stage of professional life of young advocates. Therefore, reforming at the entry level in the Law College makes more sense.

The professional education requires two kinds of inputs; knowledge input and skills input. Law being a profession, it consists of academic component which would take care of knowledge input; and the practical component that would take care of skills input. Unlike other professions, legal profession is different in both knowledge and skills content as it calls for multidimensional knowledge in other subjects also. A legal professional must be equipped with the knowledge of other subjects such as science, sociology, anthropology, forensic science, account and theology.

Furthermore, the legal profession influences the society more than any other profession. Therefore, to make legal profession meaningful, concentrating only on knowledge input and skills input would not be adequate. Due to its distinct character and capacity, the legal profession requires the third and a very essential component i.e. socially relevant or community oriented legal profession. There is a considerable consensus among the legal professional all over the world that all these three inputs can be harmonized in Law Colleges.

Harmonizing these three inputs rather becomes necessary to achieve Social Justice Mission of legal education in India. Society being complex, law becomes highly composite and technical. Therefore, legal professionals need to acquire substantial knowledge about the law and legal systems. But a highly intellectual legal professional with no knowledge of functional application of law is of no use to the society.

It is the community oriented legal education which makes the other two components meaningful. Therefore, to institutionalize Social Justice Mission of legal education, Clinical Legal Education needs to concentrate on all the three components of legal profession.

Carnegie report aptly recognized the necessity of harmonizing the three inputs in the following words “legal education requires a better balance among the cognitive, practical, and ethical social apprenticeships. To achieve this balance, legal educators will have to do more than shuffle the existing pieces. It demands their careful rethinking of both the existing curriculum and the pedagogies law schools employ to produce a more coherent and integrated initiation into a life in the law.”<sup>4</sup>

i. Knowledge Input

A legal professional is not only concerned about what law is and the application of such law, but also about the making of the law and what the law ought to be. Therefore, “law is a social science; it is a body of knowledge that underlines the value and aspiration of the society.”<sup>5</sup>

Knowledge being epistemological foundation of any profession, one cannot ignore the importance of sound knowledge input.

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<sup>4</sup> WILLIAM SULLIVAN, ANNE COLBY, JUDITH WELCH WEGNER, LLOYD BOND & LEE S. SCHULMAN, *EDUCATING LAWYERS: PREPARING FOR THE PROFESSION OF LAW*, 180 (San Francisco 2007).

<sup>5</sup> Mitra N.L., *supra* note 2 at 80.

Hence, while reforming legal education; one need to concentrate on developing sound knowledge input. This may include changes such as modernizing the curriculum, use of technology, creating and using of legal database, developing course materials, designing new courses keeping in mind the needs of the industry and the society, developing new pedagogy in teaching, modernizing the classrooms, better infrastructure to provide conducive learning atmosphere, emphasis on sound research, improving the standards of teaching faculty, and updating the course contents.

Chapter 3, particularly part 3.3 analyzes the efforts made by various bodies like UGC, BCI and Law Commission of India towards the improvement in the knowledge input. In fact, most of the efforts in revamping the legal education in India are concentrated on academic excellence. In spite of such efforts, the knowledge input in the Law Colleges has not reached the expected heights.

Though the establishment of the National Law Schools has given a considerable momentum to improving the quality of knowledge input, it has been restricted to the development of few pockets of excellence. As a whole the legal education remained underdeveloped and seems to be malnourished by lack of qualified faculty to impart the updated curriculum.

The mere designing of courses by a centralized body with a few experts in the field has done little good as far as knowledge input is concerned. New courses in the absence of course materials, lack of trained faculty and



practically no efforts from the BCI and UGC to train the existing faculty in new courses, has resulted in the offering these courses for name sake. This in turn has resulted in diluting of the standards of legal education.

To improve the knowledge input we need to develop sound educational practices in teaching and learning. Legal educators must focus on the four basic principles while designing the curriculum;<sup>6</sup>

1. Identifying educational objectives that the school or course should seek to attain.
2. Selecting learning experiences that are likely to be useful in attaining those objectives.
3. Organizing the selected learning experiences for effective instruction.
4. Designing methods for evaluating the effectiveness of the selected learning experiences.

Efforts to improve knowledge input cannot be confined to developing the curriculum. To improve knowledge output, Roy Stuckey<sup>7</sup> observes that;

- a. Law Colleges need to involve all the stake holders such as academics, practitioners, judges, licensing authorities, and the general public in legal education.

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<sup>6</sup> ROY STUCKEY, BEST PRACTICES FOR LEGAL EDUCATION, 19 (CLEA, 2007)

<sup>7</sup> *Id* at 8 – 9

- b. Law Colleges need to shift from content-focused programs of instruction, to the outcomes-focused programs of instruction.
- c. The main goal of legal education should be to develop competence. Competence means the ability to resolve legal problems effectively and responsibly.
- d. Law Colleges must help the students to acquire core knowledge and understanding of law, professional skills, and professionalism.
- e. Teaching methods must be effective and efficient to achieve desired educational objectives. Law Colleges must employ best practices when using any instructional methodology.
- f. Law Colleges need to create and maintain healthy teaching and learning environment. They must enhance the quality of instruction with the use of recent technology and using practicing advocates and judges.
- g. Law Colleges must have effective teacher development programs and establish learning centers.

There are no doubts about the need to improve the legal education, as reforming legal education is a compelling demand of the time. The only concern is how to improve and what to improve. Improving the knowledge component of legal education starts at the Law College level. Therefore,

Law Colleges are under primary obligation to improve the knowledge output, though it continues to be useful throughout the life of a lawyer.

Therefore, to improve knowledge input in Law Colleges, we need to concentrate on the above measures and the recommendations of the Knowledge Commission need to be implemented to the spirit of letter.<sup>8</sup>

Further, establishing a Centre for Excellence in Law in four regions of India is necessary to achieve excellence in knowledge input.<sup>9</sup> These Centers would take care of designing the courses and preparing course materials. Further, they would also undertake the task of training the existing faculty in the new courses and develop new pedagogy in teaching law.

## ii. Skills Input

Legal education in India is undertaken by the Universities and Colleges affiliated to the Universities. Since a law degree from these Universities is sufficient for entry into the legal profession, the obligation of preparing the law students to be suitable for practice in the Court of law lies on these Universities and the Colleges. Transformation of the students from Law Colleges to the profession calls for imparting several skills. Emphasis on

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<sup>8</sup> For recommendations see Report of the Knowledge Commission discussed in *supra* part 3.3.

<sup>9</sup> The Government of India will set up four new Schools for Law which will be Centres of Excellence with international standards. These Centres would be called as "Regional Hubs" of legal education. Central Law Minister Veerappa Moily said "We have written to the Planning Commission for approval of the plan to set up these four institutes which will match standards of best law institutes anywhere in the world," and he said, adding this move was spurred by one of the recommendations of the National Knowledge Commission. See <http://www.orissalinks.com/archives/category/other-colleges/non-traditional-colleges/law>; <http://igovernment.in/site/India-plans-to-set-up-4-model-Law-schools>; and <http://timesofindia.indiatimes.com/india/Moily-plans-4-regional-insts-of-excellence-seeks-Plan-panel-approval/articleshow/5047923.cms>.

practical knowledge about the working of administration of justice through Courts of law is necessary for such a transformation.

Though the call for skills input in legal education was made way back, it was only in 1997 that a mandatory clinical curriculum was introduced by the BCI. Before 1997 there were several efforts made by the individual Colleges in introducing clinical component, most of which were made voluntarily and operated as extracurricular activities of the Law Colleges. Introducing the four practical papers in legal education was viewed as an important step. As has been discussed in detail in Chapters 3 and 4, it has had a limited success in imparting skill training.

One major reason for such a limited success may be attributed to the fact that there was no effort made to identify the values and skills that are required for a legal practitioner. Such an exercise would have given impetus to design the clinical courses according to the skills and values that need to be imparted to the incumbents to the legal profession.

Therefore, introducing four mandatory clinical courses without identifying what kind of values and skills these courses should offer to the students resulted in the halfhearted attempt from the Colleges in implementing the curriculum. Faculty is clueless not only about the idea behind the clinical courses but also about the teaching pedagogy in offering the papers. This has resulted in failure to convince the students to take these courses seriously.

Thus, the primary task of the BCI, before introducing clinical courses would be the identification of the values and skills that are required for a lawyer to practice law in India. Further, BCI had a wonderful opportunity to look at the MacCrate Report, where such an exercise was already undertaken by MacCrate in the USA.

Though importing the Report as it is may not be useful due to the differences in the socio-economic conditions between USA and India, the MacCrate Report could be used as a base for identifying the needs of the profession in India. A humble effort towards the same has been made in Chapter – 5, Part 1.1 and 1.2. Though the skills and values that are identified in this part are not exhaustive, the BCI being the guardian of the legal profession in India should undertake such an exercise to make legal professionals more professionally competent.

As there is no effort in structuring the clinical courses, Chapter – 4 not surprisingly shows that there is a considerable difference in approach of clinical courses. Though a uniform approach is neither possible nor desirable, the study reveals that these differences are not due to local conditions but due to lack of guidelines and the lack of understanding of the need and necessity of the clinical courses in curriculum.

Therefore, one of the hypotheses of the study, that due to the lack of working guidelines to implement the Bar Council of India's Order on practical

papers, there are wide disparities in the design of practical papers thereby diluting the objectives with which they were introduced, stands proved.

This is further evident from the study which reveals that most of the Colleges offer these courses like any other substantive subjects. Classroom teaching is the most preferred method of offering clinical courses. The purpose of clinical courses to give practical training to the students and some kind of skill training to them is lost due to the way that they are being offered in the Law Colleges across India.

The reason for such approach is that the faculty has failed to understand the underlying object of clinical courses. BCI while introducing the mandatory clinical courses has identified neither the objectives of the courses nor methodology to offer the courses. Therefore an attempt has been made in Chapter –3 to identify the kind of skills that each clinical course would offer.<sup>10</sup>

This kind of exercise is important as once the skills that are expected to be learnt by the students are identified, a suitable methodology and the course content could be devised. After such an exercise, Chapter – 5 also focused on how to organize the course, the methodology to be used and the criteria for evaluation.

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<sup>10</sup> For details on what potential each practical paper has to offer skills, see *supra* Chapter – III, Part 3.4.1.

Inculcating the skills among the students, remains a distant dream even after a decade of introducing four mandatory practical papers. The Study in part 4.2 not only confirms this but also validates the other hypothesis, that issues such as lack of faculty expertise, training for faculty, restriction on client representation, restriction on faculty to practice in court of law and lack of involvement of Bar Council and financial resources, contribute to the impediments in implementing the practical papers.

The major problem in implementing clinical courses is the lack of trained faculty. The rule of debarring fulltime faculty from practice in Court of law makes things more difficult. As it has been found in the study, most of the clinical faculty are fulltime and have no practical experience, and therefore the offering of skills training through clinical courses become extremely unlikely. Moreover, the low involvement of the Bench and the Bar in legal education make skills training all the more difficult.

Therefore, there is a need to amend the practicing rules in India and the faculty must be at least allowed to undertake pro bono cases. This not only would give a chance to the faculty to understand the practical aspects of the profession but also equip them to provide skill training to the students. Further, establishing the Centre for Excellence in four regions, as recommended by the Law minister could take care of training the fulltime faculty in clinical courses.

To develop a healthy clinical curriculum in India, there is a need for in depth research. The Centers for Excellence could develop the course materials and prepare training manuals. The sharing of the best practices by the Colleges with each other can also be of great help. The websites especially designed for the study of clinical methods could also be developed and made freely accessible to the faculty. Faculty too could experiment in introducing new clinical methods. Few of such initiatives are mentioned in part 5.3 of Chapter – 5.

Though initial responsibility of preparing the law students for the legal practice is on the Law Colleges, the sole responsibility cannot be imposed on them. Involvement of other stake holder such as the Bar and the Bench is crucial for the development of the clinical courses.

Therefore, there is a need for flexible system to encourage judges and practicing lawyers to take up teaching at Law Colleges. Legal Services Authorities established under National Legal Services Act should allow students to do internship with pro bono lawyers in offering legal aid to the poor. This would not only give skills training to the students but also provide assistance to the pro bono lawyers who are otherwise busy. Involvement of the faculty and the law students with pro bono lawyers would also improve the quality of free legal aid provided to the beneficiaries.

Teaching ‘professionalism’, is a challenge for the faculty not only in law but in any course of professional education. It is also often very confronting for



students. In legal education, both students and teachers can find the concepts foreign because in the Colleges the focus is on analytical and logical skills. Lack of application to 'real life' requirements of legal practice makes teaching of professional ethics difficult.

Practical Paper – III, 'Professional Ethics, Accountancy for Lawyers and Bar-Bench Relations' is to be taught from a prescribed book in the class. Therefore, this course is being offered by classroom teaching, which involves teaching substantive rules of good conduct of a lawyer. But lawyers resolve dilemmas and conflicts of ethical issues during their work by assessing practical requirements of the situation. Ethics are not rules; they are concepts which could be properly understood only in real life situations. It would be extremely difficult for the students to understand in a classroom as to when a lawyer's conduct would become misconduct.

The intricacies of legal practice and resolving ethical dilemmas would be best addressed when the students are exposed to the real practice or live client clinics. Therefore, the Advocates Act needs to be amended to allow the students of second and third year of the three year course, and fourth and fifth year of five year course to represent the clients in the Court of law.

As has been expressed by various Committees and Commissions, the standard of legal education is low and there is a need for reform. It is the Clinical Legal Education which provides an opportunity to improve legal education and thereby the legal profession. Unfortunately the mandatory

clinical courses introduced by the BCI are actually not designed to give students the required experiential learning opportunity.

These papers have become an extension of the existing substantive law courses with the classroom teaching component. Most of the components of the practical papers are designed in such a way that the students merely become observers in most of the cases. This is true however, except for the paper on 'Public Interest Lawyering, Legal Aid and Para-Legal Services'. That is the only practical where the students are expected to 'practically' do something.

Therefore, to make these courses meaningful, instead of offering the practical papers in four different courses, Law Colleges can attempt to meet the requirements of the papers by establishing a real Client Clinic and devise a structure and place each of the practical-paper requirements within the clinical activities.

The reason for such a proposal is that a properly designed Legal Aid Clinic would expose students to the practical aspects of practice. In such a Clinic the students can witness and understand the social interactions, political influences, economic limitations and many other issues surrounding the clients and their cases. Mostly students in the Clinic would be involved in client interviewing, counseling, fact investigating, professional ethics and

trial practice skills.<sup>11</sup> Further these Clinics would inculcate lawyering skills in the students.

Lack of legal services to the poor and rural masses is a longstanding problem. The aim of creating Legal Aid Clinics in the Law Colleges is not to integrate the Clinic with the existing legal aid system. In fact the College Clinics require organizing legal aid on their own and developing an all together substitute mechanism to the existing legal aid mechanism. However, while establishing such Clinics we need to consider the following:

1. Total absence of qualified Clinical Law teachers would be a major problem to create such a substitute mechanism. Proper guidance to and competent supervision of the students in the Legal Aid Clinic is necessary to counter poor quality dispensation of legal services to the clients by the Legal Aid Clinic.
2. Therefore, intensive Training the Trainer Programs for the faculty followed by series of workshops, group discussions and facilitating the sharing of the best practices among the faculty and the students of different Law Colleges need to be arranged.
3. Creating a cadre of dedicated clinical law teachers across the country would be the primary task for institutionalizing Clinical Legal Education in India.

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<sup>11</sup> Aliza G. Organick, *Creating a Tribal Law Practice Clinic in Kansas: Carving the Peg to Fit the Hole*, 82 N. Dak. L. Rev. 849, 850 (2006).

4. The number of students required to be included in Legal Aid Clinic has to be decided upon. Further, the course content, guidelines regarding supervision and assessment need to be taken care of.
5. The legal education needs to be made fulltime and steps need to be taken to avoid part time students.
6. Each College should prepare manuals to guide the organizing and administration of Legal Aid Clinic.
7. Suitable programs should be designed after identifying the local needs. The chosen program must be capable of providing adequate work for the students. The activity must be designed to involve the students in such a manner as to augment their professional responsibility and ethical considerations.<sup>12</sup>
8. The faculty should identify specific tasks for the students and these specific tasks should be justified and organized.
9. While allotting the tasks, the faculty must consider the limitations of the students in undertaking such activities.
10. After selecting the clinical activity and before allotting the tasks to the students, the faculty must identify the educational goals of such activity and the same may be shared with the students.

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<sup>12</sup> These activities have been discussed at *supra* part 5.3.

11. Anything which is made mandatory is looked upon with disdain; therefore, convincing the students about the activity with its objectives and goals would lead to better participation from the students. For example, if the faculty selects legal literacy camp as a clinical activity, the faculty needs to identify the area of law, researching the existing law, preparing the information in simple vernacular language, identifying target group and selecting the medium of imparting the information.
12. Students need to be informed about why such an activity was undertaken? What is expected from the students? What skills students would gain by participating in such activity? How is it beneficial for the society? For example any activity on pre-trial preparation or alternative dispute resolution techniques would be beneficial if the students are going to participate in Lok Adalats or conciliation proceedings. Similarly trial advocacy could give students litigation skills.
13. The idea of Clinical Legal Education is not to make a student completely competent practitioner, but to introduce the students to all the complexities of legal profession, limitation and potential of law and its practice.<sup>13</sup>

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<sup>13</sup> Madhava Menon N.R. & Nagaraj V., Development of Clinical Teaching at the National Law School of India: An Experiment in Imparting Value Oriented Skills Training, CLINICAL LEGAL EDUCATION : CONCEPT AND CONCERNS, A HANDBOOK ON CLINICAL LEGAL EDUCATION , 11( N.R. Madhav Menon, ed., Eastern Book Company, Lucknow, 1998).

14. To give such an experience to the students, basic clinical activities which provide basic skills to the students need to be designed. For example, faculty should conduct minimum activities such as client interviewing, counseling, negotiation and conciliation, moot Courts, trial advocacy, pre- trial preparations and case analysis.
15. The major problem with the Clinical Legal Education is evaluation of clinical activities undertaken by the students. Developing a proper evaluation scheme is very important for success of Clinical Legal Education .<sup>14</sup>

These are some of the issues, though not exhaustive, that we need to concentrate on while offering skills to the students because failure of the Law Colleges in producing sufficient number of law graduates with competency seriously undermines access to justice. Further, the law graduates produced by the Law Colleges with minimum or no practical knowledge take long time to acquire professional skills to represent the clients.

In such a scenario, providing access to justice to the poor is unimaginable. Concentrating on improving competency and professional skills may create competent lawyers but would eventually lead to failure in providing a fair, effective, competent, and accessible legal system. To achieve such a goal,

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<sup>14</sup> See 5.3 of Chapter 5 for detail on supervision and evaluation of clinical courses.

the lawyers not only need to be competent in knowledge input and skill output, but also have to be socially sensitive.

*iii. Social Relevance/Community Oriented Legal Education*

Of late, there have been many suggestions about making legal education socially relevant. Does it mean that the present legal education is socially irrelevant? Answering in negative, Professor Agarwala writes, “It has to be accepted that in fact the socially relevant legal education imparted today is more personal/individual (i.e. depends upon the capabilities, outlook and training of individual teachers) rather than institutional (i.e. the whole pattern of legal education or of even one institution as a whole is not directed towards that aim).”<sup>15</sup>

Therefore, socially relevant legal education would mean that the ideology and pedagogy of legal education is to be socially relevant. In that sense, justice oriented education becomes an integral part of the socially relevant legal education. There is no clear answer as to what justice is, and we cannot also expect that there should be complete justice. What we mean by justice is that there are clearly remediable injustices around us which we want to eliminate.”<sup>16</sup>

Amartya Sen writes, that the idea of justice is not to achieve the just world but to remove clear injustices to the level we can. Identification of such

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<sup>15</sup> Agarwal, S.K., *Legal Education and its Relevance to Contemporary Indian Society*, CULR, 33

<sup>16</sup> AMARTYA SEN, PREFACE, *THE IDEA OF JUSTICE*, vii (Allen Lane, 2009).

“redressable injustice” is central to the theory of justice.<sup>17</sup> Therefore, merely focusing on establishing the right institution and drafting just rules is not sufficient. Focus should be on actual realization of such rules.

The basic function of the legal profession is to distribute legal services equally to the needy. Maintaining legitimacy of a legal system in a country depends upon its citizens’ access to justice. Access to justice becomes the essence of Indian legal system due to the following reasons:

1. Indian Constitution promotes principles of equality. Right to equality, a fundamental right under the Indian Constitution, imposes an obligation on the State to promote equality before law. Merely allowing its citizens to approach the legal system does not promote equality before law nor does it guarantee the access to justice. Art.14 necessitates that each person must have an opportunity to redress the legal grievances. To secure such an opportunity, the legal system should be free, fair and affordable to the citizens.
2. Adversarial system adopted by the legal system in India compels legal representation. Further, the law is becoming more and more complex. Complexity of law and procedural technicalities make legal assistance indispensable.
3. To practice legal profession one needs a license. Legal profession is regulated by the Advocates Act. In essence, the legal profession is

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<sup>17</sup> *Ibid.*



monopolized by the State. State confers a privilege to the lawyers to represent clients. Such an exclusive privilege comes with a corresponding duty to provide legal representation to the needy irrespective of their paying capacity.

Therefore, when the profession is unwilling to accept the notion of professional duty to meet the unmet legal needs of poor, and the legal service is virtually available to only those who can purchase it in the market place, the Clinical Legal Education is the only hope. Clinical students develop an empathetic caring and identifying relationship with the clients. The Clinics expose the students to the issues of poverty, racial, gender, ethnic and caste related discriminations.<sup>18</sup>

Therefore, a properly structured clinical course enables the students to appreciate the need for access to justice. One must remember that all indigent representations not necessarily involve litigation. Clinical courses focusing on the non-litigation support to the clients would not only benefit the clients and society but also the students both in terms of skill developing and practical application of law.

The practice of law is a public profession. Therefore, in addition to representing the clients, lawyers do play various important roles such as judges in the Courts, law makers, and law enforcers. As law influences the

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<sup>18</sup> Richard A. Boswell, *Keeping the Practice in Clinical Education and Scholarship*, 43, *Hasting L.J.* 1887(1992); Tigran W. Edward and Thomas Schoenherr, *The Lawyer's Duty of Public Service: More Than Charity*, 96, *W.Va. L.Rev.* 367 (1993 – 94).

society more than any other subject, lawyers are not only involved in Court room conflicts but they also formalize social relationships.<sup>19</sup> This kind of diversified roles of lawyer demand for making legal learning a community centered learning. To make legal profession socially relevant, the system of imparting legal education must undergo a paradigm shift.

Unfortunately, most of the Law Colleges adopt a casual approach in teaching students about how to apply theoretical knowledge in real life situations. Unlike other professions, legal education provides very little attention to training the students in professional practice. The other limitation as pointed out by Carnegie Report which applies to Indian Colleges is that the Law Colleges fail to balance the focus on skills training with ethical and social dimensions of the profession.<sup>20</sup>

The educational practices of Law Colleges are a starting point, as a Law College is not only the starting point of legal profession, but is a necessary training process to be undergone by every legal professional before he/she embarks into the legal profession.

As the Carnegie report puts it, the goal of a Law College is to create a campus culture that will have a positive nature.<sup>21</sup> This is possible if the College emphasizes more on legal aid, community work and other public work. This would have more positive influence on the young entrants to

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<sup>19</sup> WILLIAM M. SULLIVAN, *supra* note 4 at 1.

<sup>20</sup> *Id* at 188.

<sup>21</sup> *Id* at 183.

involve in pro bono work in their professional career. This was evident from the study as Figure No.24 and 25 in Chapter – 4 reveal that the early exposure of the students to legal aid activities in V.M. Salgaocar College of Law has a positive outcome of increased interest in pro bono services.

Legal education would be better served if it can be organized around a service setting which is the core idea of clinical components. Legal Clinics must become integral part of every Law College. Legal Aid Clinics provide a more humanistic perspective to the contemporary legal education. It also develops sense of responsibility among the law students and most importantly students understand the value of legal aid and this may possibly continue to influence them in their willingness to work in pro bono cases during their practice in Court of law after graduating from the Law Colleges.

As it is seen in Chapter – 4, the establishment of a clinic has a distinct advantage. It gives form and content to the clinical activity in a College setup. Most of the ‘In-campus Clinics’ tend to isolate the students from the society though not intentionally but due to urban geographical proximity. As they are away from the masses they tend to concentrate more on litigation oriented activities.

Even the attempt to reach the rural areas by organizing Legal Literacy Camps may often fail due to the lack of community partnership. Therefore, off campus Legal Aid Clinics offer better prospects to learn the needs of the

community. Further, the community involvement is more in off campus clinics, as these clinics are maintained by the students coming from the same community.

Such experiences will re-orient the spirit and direction of legal education to public service which the profession truly is about. Furthermore, it will open up possibilities for socio-economic reconstruction of the nation. Reforming the legal education and making it socially relevant, remains in the potentialities of the Legal Aid Clinic of the Law Colleges, in what they offer in legal training.

Therefore, what we need is a dynamic integrated curriculum which brings together, the three aspects of legal profession namely knowledge component, skill component and social justice component. To have such a vibrant and integrated curriculum, the Law Colleges need to develop extensive clinical courses and need to develop new teaching pedagogy in the teaching of substantive laws. Such a curriculum would encourage the students to shift their focus from mere doctrinal understanding of law to practical understanding and its social implications.

Law Colleges are the starting point of legal profession; they cannot be Centers for overall development of students' professional life. Law Colleges being the beginning point of profession, the Carnegie Report calls for the initiation into all three aspects of the development of profession. It says that the Law College

curriculum should have the following three-parts wherein each part would interact with and influence the other.<sup>22</sup>

1. The teaching of legal doctrine and analysis, which provides the basis for professional growth.
2. Introduction to the several facets of practice included under the rubric of lawyering, leading to acting with responsibility for clients.
3. A theoretical and practical emphasis on inculcation of the identity, values, and dispositions consonant with the fundamental purposes of the legal profession.

Developing legal education with an integrated curriculum, balancing three aspects of the profession is inevitable to replace the contemporary model. To bring such a curriculum reorientation, the very outlook of legal education needs to be changed. The reputation of legal profession is low. Loss of respect towards the legal profession is universal.<sup>23</sup> The common feeling that the profession is not socially relevant, necessitates refocusing on the purpose of legal education.

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<sup>22</sup> *Id* at 194.

<sup>23</sup> See W. William Hodes, *Truthfulness and Honesty Among American Lawyers: Perception Reality, and the Professional Reform Initiative*, 53 S.C.L. REV. 527, 528 (Spring 2002). AMERICAN BAR ASSOCIATION, COMMISSION ON PROFESSIONALISM IN THE SPIRIT OF PUBLIC SERVICE: A BLUEPRINT FOR THE REKINDLING OF PROFESSIONALISM (1986); REPORT OF 14<sup>TH</sup> LAW COMMISSION OF INDIA REPORT ON REFORM OF JUDICIAL ADMINISTRATION 1958.

Procedural technicalities, uncertainty, unequal competence and resources between two parties and the expensive litigation not only make access to justice, but also equal justice, a myth. The adversarial system makes lawyers manipulative and extortive. And quality of justice depends on equality in quality of dueling lawyers. In such a situation what should be the role of legal education in India where law is supposedly being used as instrument of social engineering to secure social justice?

To meet the unmet needs of unsophisticated, poor, oppressed and illiterate clients in India, legal education must synchronize the curricula, teaching methods, skills and make legal education socially relevant and professionally significant. To accomplish such a task, the legal education needs to undergo integrative transformation. Integrative transformation consists of three stages:

- i. Traditional subjects need to be integrated (need to be made more contextual)
- ii. Using integrated methodology of teaching theory into practice.
- iii. Reconciling normative law with implementation.

Merely accomplishing integrative transformation would not meet the requirement of Social Justice Mission of legal education. While in the process of integrative transformation, legal education needs to concentrate on end point justice.

Clinical Legal Education offers an opportunity to make integrative transformation of legal education and at the same time make legal profession socially relevant. To make such a transformation Clinical Legal Education should be viewed as a method of teaching and understanding law effectively rather than a component to offer mere skills.

Clinical Legal Education has a potential to achieve the Social Justice Mission of legal education. To accomplish such a goal all the subjects in Law Colleges need to be taught in clinical method. Therefore, Clinical Legal Education justifies the existence of a law school in the community context. The faculty too would be benefited by the real life situations. This enriches their experience in dealing with practical problems of the members of the society and thereby strengthens their theoretical knowledge of law. This in turn garners the benefits of teaching law in the social context to the students.

The hypothesis of this study, that the Clinical Legal Education has potential of implementing a Social Justice Mission for legal education in India, stands to be proved by the experimentations that are carried out in V. M. Salgaocar College of Law. The analysis of data in part 4.3 confirms that early exposure of the students to community lawyering not only involves them but even the alumni, in pro bono work.

Finally, the study supports the belief that, to achieve social justice, institutionalizing and internalizing Clinical Legal Education in Law Colleges is

necessary. If Clinical Legal Education is to work, the mindset of the members of legal fraternity must be changed.

The need to change the mindset stems from the facts that mostly the faculty's relationship with the student starts in the class and ends in the class, there is no extension of the relation beyond the classroom teaching. Accountability of the faculty not only in legal education but in any stream of education is unheard. There are no incentives for effective teaching leaving apart inventing innovative teaching methods. This does not however mean that there are no innovative methods adopted in the Law Colleges. But these efforts are private and should not be confined to the private sphere. Best practices adopted in various colleges need to be synchronized and shared with other colleges.

These suggestions are neither comprehensive nor exhaustive as no educational scheme can be perfect or can last for all times. The process has to continue by trial and error. Therefore, efforts to institutionalize and internalize Clinical Legal Education for realizing the mission of offering "a fair, effective, competent, and accessible legal system" is a continuing process. One needs to learn by using various methods that are appropriate.

In a country like India social and economic disparity is high. For example 22% of the population lives below poverty line,<sup>24</sup> 26.7% live on less than 1\$ per day, 41.6% live below 1.25\$ a day<sup>25</sup> and an appalling 75.6% live on less than 2\$ per

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<sup>24</sup> Estimates by National Sample Survey available at <http://www.dailypioneer.com/179280/Counting--the-poor.html> (last visited 09 - 02 - 2010)

<sup>25</sup> *New Global Poverty Estimates - What It means to India*, World Bank available at <http://www.worldbank.org.in/WBSITE/EXTERNAL/COUNTRIES/SOUTHASIAEXT/INDIAEX/>



day,<sup>26</sup> with total 71.03 national literacy rate. 369 million (about 93%) are in the unorganised sector. Of this, 237 million workers are in the agricultural sector and 17 million are engaged in construction sector. On account of their unorganised nature, these workers do not get adequate social security and welfare.<sup>27</sup> Living wage is a distant dream, when the State is struggling to secure minimum wage itself.

Further, the administration of the country is affected by rampant corruption<sup>28</sup> which makes necessities as luxuries, and legal entitlements are viewed as charities. How do we make the governance, people oriented?

The Planning Commission of India has rightly stated the features of good governance as, “The universally accepted features of good governance are the exercise of legitimate political power; and formulation and implementation of policies and programs that are equitable, transparent non discriminatory, socially sensitive, participatory, and above all accountable to the people at large.”<sup>29</sup>

In this state of affairs the need of the hour is to bring political, electoral, judicial, legal, and administrative reforms for such a people centred

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0,,contentMDK:21880725~pagePK:141137~piPK:141127~theSitePK:295584,00.html (last visited 9 - 02 - 2010 )

<sup>26</sup> See, Anuradha Dutt, *Counting the Poor*, available at <http://www.dailypioneer.com/179280/Counting-the-poor.html> (last visited 09 - 02 - 2010)

<sup>27</sup> Manoj Gupta, *Lending a Helping Hand to Unorganised Workers* [http://pib.nic.in/release/rel\\_print\\_page1.asp?relid=28432](http://pib.nic.in/release/rel_print_page1.asp?relid=28432) (last visited 6-2-2010)

<sup>28</sup> India ranked as low as 84 out of 180 countries in corruption perception index 2009. Available at [http://www.transparency.org/policy\\_research/surveys\\_indices/cpi/2009/cpi\\_2009\\_table](http://www.transparency.org/policy_research/surveys_indices/cpi/2009/cpi_2009_table) (last visited 06 - 02 - 2010)

<sup>29</sup> GOVERNMENT OF INDIA, PLANNING COMMISSION, TENTH FIVE YEAR PLAN, NEW DELHI 177.

governance. In doing so, the lawyers need to play the key role. Role of the civil society is enormous in this transformation where the legal profession may need to assume leadership.

Building a cadre of legal professionals to take the lead in shaping the society, requires developing, institutionalizing and implementing the Social Justice Mission of legal education. To secure social justice, the Clinical Legal Education should first build up a comprehensive policy and an implementing structure to embed social sensitiveness along with professional competence.

Thus the legal education in India should identify social goals and ensure that such goals are reflected in the content as well as methods of teaching. Therefore, Clinical Legal Education 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.

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## ANNEXURE – I

### Fundamental Lawyering Skills identified by MacCrate Report

#### **Skill § 1:**

In order to develop and evaluate strategies for solving a problem or accomplishing an objective, a lawyer should be familiar with the skills and concepts involved in:

- 1.1. Identifying and Diagnosing the Problem;
- 1.2. Generating Alternative Solutions and Strategies;
- 1.3. Developing a Plan of Action;
- 1.4. Implementing the Plan;
- 1.5. Keeping the Planning Process Open to New Information and New Ideas.

#### **Skill § 2:**

In order to analyze and apply legal rules and principles, a lawyer should be familiar with the skills and concepts involved in:

- 2.1. Identifying and Formulating Legal Issues;
- 2.2. Formulating Relevant Legal Theories;
- 2.3. Elaborating Legal Theory;
- 2.4. Evaluating Legal Theory;
- 2.5. Criticizing and Synthesizing Legal Argumentation.

#### **Skill § 3:**

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

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

**Skill § 4:**

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

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

**Skill § 5:**

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

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

**Skill § 6:**

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

- 6.1. Establishing a Counseling Relationship That Respects the Nature and Bounds of a Lawyer's Role;
- 6.2. Gathering Information Relevant to the Decision to Be Made;
- 6.3. Analyzing the Decision to Be Made;
- 6.4. Counseling the Client About the Decision to Be Made;
- 6.5. Ascertaining and Implementing the Client's Decision.

**Skill § 7:**

In order to negotiate in either a dispute-resolution or transactional context, a lawyer should be familiar with the skills and concepts involved in:

- 7.1. Preparing for Negotiation;
- 7.2. Conducting a Negotiation Session;
- 7.3. Counseling the Client About the Terms Obtained From the Other Side in the Negotiation and Implementing the Client's Decision.

**Skill § 8:**

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

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

**Skill § 9:**

In order to practice effectively, a lawyer should be familiar with the skills and concepts required for efficient management, including:

- 9.1. Formulating Goals and Principles for Effective Practice Management;
- 9.2. Developing Systems and Procedures to Ensure that Time, Effort, and Resources Are Allocated Efficiently;
- 9.3. Developing Systems and Procedures to Ensure that Work is Performed and Completed at the Appropriate Time;
- 9.4. Developing Systems and Procedures for Effectively Working with Other People;
- 9.5. Developing Systems and Procedures for Efficiently Administering a Law Office.

**Skill § 10:**

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

- 10.1 The Nature and Sources of Ethical Standards;
- 10.2 The Means by Which Ethical Standards are Enforced;
- 10.3 The Processes for Recognizing and Resolving Ethical Dilemmas.

## **Fundamental Values of the Profession (Identified by MaCrate Report))**

### **Value § 1:**

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

- 1.1 Attaining a Level of Competence in One's Own Field of Practice;
- 1.2 Maintaining a Level of Competence in One's Own Field of Practice;
- 1.3 Representing Clients in a Competent Manner.

### **Value § 2:**

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

- 2.1 Promoting Justice, Fairness, and Morality in One's Own Daily Practice;
- 2.2 Contributing to the Profession's Fulfillment of its Responsibility to Ensure that Adequate Legal Services Are Provided to Those Who Cannot Afford to Pay for Them;
- 2.3 Contributing to the Profession's Fulfillment of its Responsibility to Enhance the Capacity of Law and Legal Institutions to Do Justice.

### **Value § 3:**

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

- 3.1 Participating in Activities Designed to Improve the Profession;
- 3.2 Assisting in the Training and Preparation of New Lawyers;
- 3.3 Striving to Rid the Profession of Bias Based on Race, Religion, Ethnic Origin, Gender, Sexual Orientation, or Disability, and to Rectify the Effects of These Biases.



**Value § 4:**

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

- 4.1. Seeking Out and Taking Advantage of Opportunities to Increase His or Her Knowledge and Improve His or Her Skills;
- 4.2. Selecting and Maintaining Employment That Will Allow the Lawyer to Develop As a Professional and to Pursue His or Her Professional and Personal Goals.

## ANNEXURE – II

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

#### **Fundamental Values:**

##### **1. Provision of effective resolution of dispute**

- 1.1. To provide fair, effective and accessible legal system
- 1.2. To provide quick and inexpensive dispute resolution

##### **2. Striving for Social Justice**

- 2.1. To make legal process as an instrument of social development
- 2.2. To make legal profession a vehicle for social justice
- 2.3. To provide socially relevant legal education to meet constitutional goal of providing socio-economic and political justice
- 2.4. To promote the legal profession to meet the need of common man in India
- 2.5. To secure social order by promoting rule of law.
- 2.6. To promote welfare of the people by securing progressive social order

##### **3. Promotion of Alternative Role of Lawyer**

- 3.1. To shift traditional role of the lawyer from problem solver to justice dispensation
- 3.2. To promote loyalty towards justice rather than client.
- 3.3. To disseminate the necessary knowledge to a common man

##### **4. Provision of Judicial Independence and Accountability**

- 4.1. To promote judicial independence.

4.2. To be more accountable in roles of Lawyer, Judge and, a Law teacher.

### **Skills**

1. Innovative/alternative problem-solving techniques.
2. Skills to invent new options beyond the established norms.
3. Mass communication skills.
4. Skills to analyze the socio-economic background of legal problems.
5. Skills of translation.

## ANNEXURE – III

### Institutional Questionnaire

1. Name of the Institution : \_\_\_\_\_
2. Courses offered : Three Year  | Five-Year   
 Number of students : \_\_\_\_\_ | \_\_\_\_\_  
 Examination Pattern : Semester / Yearly | Semester / Yearly
3. Practical papers offered in the Institution: rudeness  
 3 year course:  YES  NO  
 5-year course:  YES  NO
4. Practical papers assessed for:  Grades  Marks
5. Are these grades or marks given weightage in the final results?:  YES  NO
6. When are practical papers offered?

Practical Papers	Three Year Course		5-year course	
	Year	Semester	Year	Semester
Paper -I				
Paper -II				
Paper -III				
Paper -IV				

7. How many teachers are involved in teaching practical papers?

Paper -I	Paper -II	Paper - III	Paper - IV	Full-time	Part-Time	Total

8. Legal Aid:

- a) Method of teaching : Class Room teaching  Legal Aid Clinic
- b) Do you have legal aid clinic:  YES  NO
- c) If yes How many: \_\_\_\_\_
- d) Legal aid clinic situated:  In Campus  Off Campus
- e) Legal aid clinic is :  Permanent  Mobile  Any other Please Specify \_\_\_\_\_
- f) Timings of Clinic: \_\_\_\_\_
- g) Activities of the clinic (even if you have no clinic but if you conduct any of the following activities, please complete this part)

Description of Activities	Yes/No	If yes, how many times in the last academic year
Legal Representation		
Legal Advice		
Para Legal Services		
Promoting ADR		
Legal Literacy/awareness		
Public interest litigation		
Law reform		
Any other( please specify)		

- h) Do you provide computer training to students:  YES  NO

- i) Do you teach negotiation to students:  YES  NO
- j) Do students required to maintain journal or record:  YES  NO
- k) If yes, those records or journals assessed: Yes No
- l) If yes please mention the weightage given for such records in the marking scheme:

9. Paper – I

1<sup>st</sup> component - Moot court:

- a) Cases given to students are based on : Hypothetical  Decided Cases
- b) Method of offering Moot court : Class room teaching   NO  
Any other method (please Specify) \_\_\_\_\_
- c) Any training given to students for moot court:  YES  NO
- d) Assessment done by : Internal Faculty  External examiners

2<sup>nd</sup> component - Observation of Criminal and Civil cases:

- e) Any introductory lectures given to students:  YES  NO
- f) Assessment done by : Internal Faculty  External examiners

3<sup>rd</sup> component - Interviewing techniques and pre-trial preparations

- g) Any introductory lectures given to students:  YES  NO
- h) Assessment done by : Internal Faculty  External examiners

Overall Viva conducted by: Internal Faculty  External examiners

10. Paper – II: Drafting, Pleading and Coveyancing

- a) Teaching Method:  
Class Room teaching  YES  NO  
Simulation  YES  NO  
Any other (specify) \_\_\_\_\_
- b) Assessment done by : Internal Faculty  External examiners

Overall Viva conducted by: Internal Faculty  External examiners

11. Paper – III: Professional Ethics, bar bench relation:

- a) Teaching Method  
Class Room teaching  YES  NO  
Simulation  YES  NO  
Any other(specify) \_\_\_\_\_
- b) Assessment done by : Internal Faculty  External examiners

Overall Viva conducted by: Internal Faculty  External examiners

12. What are the problems faced by the Institution in implementing practical papers?  
(Please tick on a scale of 1 to 4)

**1 – Major Problem 2 – To a larger extent 3 – Minor Problem 4- Not a problem**

- |  |   |
|--|---|
| a. Lack of trained faculty                               | <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 |
| b. Lack of financial support                             | <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 |
| c. Poor student quality                                  | <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 |
| d. Restriction on Faculty to practice in Court of law    | <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 |
| e. Restriction on students to represent client in Court  | <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 |
| f. Part time students                                    | <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 |
| g. Lack of involvement of Bar Council                    | <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 |
| h. Lack of involvement of Judiciary                      | <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 |
| i. Lack of clear directions from Bar Council of India    | <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 |
| j. No training facilities to faculty in practical papers | <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 |
| k. Any other please specify                              |   |

13. Any innovative methods adopted in teaching practical papers? (Please give a brief description. Use separate paper if needed)

Any Clarification Please contact:

Prof.M.R.K.Prasad, V.M.Salgaocar College of Law, Miramar, Panaji, Goa – 403001. Ph.No:  
off:0832-2461809, M:09420687880 Email:prasadmandv@gmail.com

## ANNEXURE – IV

### Faculty Questionnaire

In your opinion what restricts the effective implementation of practical papers.

(Please tick on a scale of 1 to 4)

**1 – Major Problem    2 – To a larger extent**  
**3 – Minor Problem    4- Not a problem**

- |  |   |
|--|---|
| a. Lack of trained faculty                               | <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 |
| b. Lack of financial support                             | <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 |
| c. Poor student quality                                  | <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 |
| d. Restriction on Faculty to practice in Court of law    | <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 |
| e. Restriction on students to represent client in Court  | <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 |
| f. Part time students                                    | <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 |
| g. Lack of involvement of Bar Council                    | <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 |
| h. Lack of involvement of Judiciary                      | <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 |
| i. Lack of clear directions from Bar Council of India    | <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 |
| j. No training facilities to faculty in practical papers | <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 |

## ANNEXURE – V

### Alumni Questionnaire

1. In which course did you graduate from the college?

Three-year LL.B.     Five-year LL.B

2. Year of passing LL.B.: \_\_\_\_\_

3. Name of the Legal Aid Cell you were associated with: \_\_\_\_\_

4. Duration of your association with the Legal aid cell: From \_\_\_\_\_ To \_\_\_\_\_

(give the year)

**Questions 5 to 11 be kindly marked on a scale of 0 to 5, 0 being the lowest and 5 being the highest as under:**

**0 – Not at all;            1 – May be;            2 – Yes but not substantial;  
3 – Satisfactory;        4 – To a large extent;    5 – Absolutely**

5. Did your association with the legal aid cell enhance your practical

0     1     2     3     4     5

understanding of law?

6. Do you think legal aid work reduced the gap between law in books and law in

0     1     2     3     4     5

practice

7. Do you think the paralegal services offered by the legal aid cells improve the

0     1     2     3     4     5

quality of life in society?

8. Did your experience in working in the legal aid cell made transition from College

0     1     2     3     4     5

to Profession easier?

9. Do you think working in the legal aid enhanced the skills that are needed for

0     1     2     3     4     5

practice?

10. Did legal aid work help in enhancing your goodwill?

0     1     2     3     4     5



11. Do you agree with the system and method of imparting legal aid training in

0    1    2    3    4    5

your former cell?

12. Would you volunteer to assist any legal aid cell?

No    May be    Yes

13. If any person approaches for free legal aid would you willing to extend the help?

No    May be    Yes

14. Do you have any suggestions for improving?  YES    NO

15. If yes please give suggestions \_\_\_\_\_

---

## ANNEXURE – VI

### Student Questionnaire – Final Year

1. Which law course you are pursuing?                      3 Year                       5 Years
2. Do you think Legal aid is a fundamental right?                      Yes                       No
3. In your opinion whose obligation it is to provide legal aid
- State    Court    Lawyers    All
4. Do you think Students of Law Colleges should help in providing Legal aid?  Yes    No
5. If yes, do you think they are capable of offering quality legal aid?                       Yes    No
6. Do you think lawyers' role is limited to winning the case for his/her client?                       Yes    No
7. Do you think lawyer has a role to ensure justice?                       Yes    No
8. Do you think lawyer has an important role in bringing legal reforms?                       Yes    No
9. According to you what are the roles the lawyer should play? Please rank them in order of priority.
- a. Social reformer    b. Justice Provider    c. Problem settler                      d. Litigator
- e. To win cases of his/her clients:    1.     2.     3.     4.     5.
10. If given a chance would you choose to work in:     legal aid office                       law firm
11. Will you be able to offer free legal aid services after you enroll as an advocate?
- Yes                       No
12. Are you willing to associate with the College legal aid clinics after your graduation?
- Yes                       No
13. Do you think the legal aid clinics of the College do useful work?                       Yes                       No

14. Do you think that you have become more socially sensitive because of the legal aid activities you undertook?  Yes  No

15. Do you think legal aid activities helps in bridging the gap between law in theory and law in practice?  Yes  No

\*Please tick in the appropriate box

## ANNEXURE – VII

### Student Questionnaire – First Year

**\*Please tick in the appropriate box**

1. Do you think Students of Law Colleges should help in providing Legal aid?

Yes       No

2. If yes, do you think they are capable of offering quality legal aid?  Yes       No

3. According to you what are the roles the lawyer should play? Please rank them in order of priority.

a. Social reformer

b. Justice Provider

c. Problem settler

d. Litigator    e. To win cases of his/her clients:

1.       2.       3.       4.       5.

4. Do you think there is a big gap between law in theory and law in practice?  Yes       No

5. Do you think legal aid work will help in bridging the gap between law in theory and law in practice?  Yes       No

6. If given a chance would you choose to work in:  legal aid office       law firm

7. Will you be able to offer free legal aid services after you enroll as an advocate?

Yes       No

8. Are you willing to associate with the College legal aid clinics after your graduation?

Yes       No

9. Do you think the legal aid clinics of the College do useful work?  Yes       No

## ANNEXURE – VIII

### Student Questionnaire

Please tick in appropriate box.

1. Do you think the marks given for practical papers should be considered for final rank?  
Yes  No
2. In your opinion who should assess the practical papers?  
Internal Faculty Assessment  Outside faculty assessment
3. In your opinion who is in better position to impart practical papers effectively?  
Practicing Advocates  Full time Faculty
4. Which one of the following is the most effective activity that provides you better practical knowledge? Please rank them between 1 to 7.
  1. Legal Representation
  2. Legal advice
  3. \*Prara Legal Services
  4. Promoting ADR
  5. Legal Literacy
  6. Public Interest Litigation
  7. \*\* Law Reform
5. In your opinion what restricts the effective implementation of practical papers.

(Please tick on a scale of 1 to 4)

**1 – Major Problem      2 – To a larger extent      3 – Minor Problem      4- Not a problem**

- |  |   |
|--|---|
| k. Lack of trained faculty                               | <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> |
| l. Lack of financial support                             | <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> |
| m. Poor student quality                                  | <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> |
| n. Restriction on Faculty to practice in Court of law    | <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> |
| o. Restriction on students to represent client in Court  | <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> |
| p. Part time students                                    | <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> |
| q. Lack of involvement of Bar Council                    | <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> |
| r. Lack of involvement of Judiciary                      | <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> |
| s. Lack of clear directions from Bar Council of India    | <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> |
| t. No training facilities to faculty in practical papers | <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> |

\*Para legal services means : preparing Affidavits, ration cards, filling forms of welfare schemes etc.

\*\*Law Reform: Surveying the implementation of a law and suggesting the required amendments for effective implementation.