

## SKILL LEARNING IN LEGAL EDUCATION: DESIGNING A SYSTEMATIC INSTRUCTIONAL DESIGN FOR LAW SCHOOLS IN INDIA

*Nirmal Kanti Chakrabarti\**

### Abstract

Legal education has evolved to meet changing needs and visions and has changed significantly over time. The objective of legal education is to give opportunities of practical training emphasized in their professional study and also to provide opportunities to apply their acquired skills and knowledge in working life. Clinical legal education to some extent be used to refer to programs where students act for real clients in the handling of their real legal problems. Law curriculum to be changed according to the needs of the time. The instructional design for law curriculum should seek to attain selected learning experiences as set by the school. The Global Law Deans Forum in 2013 adopted Singapore Declaration which says outcomes of legal education should be – knowledge, skills and values. As regards skill learning *Mac Crate* Report emphasized that the professional development of lawyers begins in law school. Hence, the law schools must focus more on skills training on what lawyers actually do. In India the LL.B. programme should address the gaps in the existing five-year integrated course in getting graduates ‘practice ready’ and to equip the graduates to the emerging challenges in a technology driven, specialization-based, globally competitive legal practice slowly emerging in the 21<sup>st</sup> Century professional paradigm. To combat this challenge the author has suggested five cluster of specialized practical training subjects considering the present dynamics of legal implications day to day social transactions and to widen the scopes of employability.

### I Introduction

THE OBJECTIVE of practical training or skill learning is to give the student opportunities to experience under supervision the essential practical tasks emphasized in their professional skills and also to provide opportunities to apply their acquired skills and knowledge in working life. The practical training period deepens students’ expertise, allows them on-the-job learning, supports and compliments the undergraduate degree programme’s courses. It also offers students the opportunity to recognize and analyze the development needs of the field.<sup>1</sup> In ancient education system in India, the pupils learned by observation and practical methods in their Gurukuls.<sup>2</sup> And at the end of their course they were required to offer a Gurudakshina to the teacher. Hence the main objective of teaching since the ancient era has been to make the pupil capable of earning a livelihood in the real world. And hence the *Acharya*’s emphasized more on the practical learning. The report of the Education Commission

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\* Vice Chancellor, West Bengal National University of Juridical Sciences, Kolkata.

1 Jari Hahkonen, available at: <https://www.kamk.fi/loader.aspx?id=001a873c-6405-4cf3-b740-e2238c7f5daa> (last visited on Mar. 22, 2020).

2 Altekar A. S., *Education in Ancient India* 226 (Nand Kishore and Bros., 1994).

1964-66 in stating the educational system identified three criteria for evaluating standards. According to the report standards must be:<sup>3</sup>

adequate in relation to the tasks for which they are intended;

-dynamic, and should keep on rising with the demands for the higher levels of knowledge, skill or character which a modernizing society makes; and

-internationally comparable, at least in those key sectors where such comparison is important.

In this paper the author has attempted to examine the need of skill learning or practical training in the form of lawyering skills and craftsmanship in the law teaching. The question is not only whether the legal education should include skill learning or not but also to what extent the skill learning be included in the LL.B. curriculum.

## II Skill learning - an advancement of clinical legal education

The need of clinical legal education has already been acknowledged in our LL.B. curriculum. A preliminary question is: What is clinical legal education? In simple terms it is one of the methods of learning and teaching law. The phrase has evolved in Australia over the last few decades and has different connotations.<sup>4</sup> In order to differentiate clinical legal education from simulated practical legal training, Campbell wrote in 1991 that the term “clinical legal education” should properly be used only to refer to programs where students act for real clients in the handling of their real legal problems. In this respect we may note observation of Professor N.R. Madhava Menon on the condition of skill learning in India. He observed, “It is not far from truth to say that we still do not know what are the various skills which future lawyers require to service a fast changing society.”<sup>5</sup> According to him “Clinical experience in law school thus offers a unique opportunity for students to learn, under supervision, not only about professional skills used by lawyers but also about many aspects of the ‘hidden curriculum’ essential for preparation to think and act like a lawyer.”<sup>6</sup>

In 1999 Giddings commented that: “the term clinical legal education has been used quite loosely in Australia...Students and practicing lawyers tend to relate clinical legal education to work with real clients or to ‘skills’...Other law teachers usually give clinical legal education a broader meaning focusing on the use of teaching methods other

3 Report of the Education Commission 1964-66, “Education and National Development” 72-73(NCERT 1970).

4 Simon Rice and Graeme Coss, *A Guide to Implementing Clinical Teaching Method in the Law School Curriculum* 9 (Centre for Legal Education, Australia 1996).

5 N.R. Madhava Menon, *Clinical Legal Education* at Preface VI (Eastern Book Company 2003).

6 *Id.* at 1.

than traditional lectures and seminars”.<sup>7</sup> A first major evaluation of legal education in United States (US) had been done by Alfred Z Reed in 1921 and he characterized legal education as “narrow, shallow and sluggish”.<sup>8</sup> In response to this criticism many have urged for reform of legal education throughout the 20<sup>th</sup> Century, namely, Frank, Cohen, Carrington, Cramton and White.<sup>9</sup>

American Bar Association Section on legal education set up a task force in 1989 with Justice Rosalie Wahl as Chairperson to examine the relation between the law schools and the profession with a view to improve the teaching of skills and values necessary for a lawyer to assume professional responsibilities. The task force published a report in July 1992 titled Legal Education and Professional Development- An Educational Continuum. This report identified 10 fundamental lawyering skills, such as, problem solving, legal analysis and reasoning, legal research, factual investigation, communication, counselling, negotiation, litigation and alternative dispute resolution (ADR) procedures, organization and management of legal work and recognizing and resolving ethical dilemmas.<sup>10</sup>

Ralph W Tyler described curriculum development as a four-stage process:<sup>11</sup>

Stage 1: Identifying educational objectives which the school or course should seek to attain.

Stage 2: Selecting learning experiences which are likely to be useful in attaining those objectives.

Stage 3: Organizing the selected learning experiences for effective instruction.

Stage 4: designing methods for evaluating the effectiveness of the selected learning experiences.

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7 Jeff Giddings, “A Circle Game: Clinical Legal Education in Australia” 10(1) *Legal Education Review* 34-35 (1999).

8 Alfred Z Reed, *Training for Public Profession of Law* 274 (New York, 1921).

9 Jerome Frank, “Why not a Clinical Lawyer School?” 81 *Pa Law Rev.* 907 (1933); Maxwell Cohen, “The Condition of Legal Education in Canada” 28 *Can. Bar Rev.* 267 (1950); *Carrington Report, Training for the Public Profession of the Law* (1971); American Bar Association, Report and Recommendations of the Task Force on Lawyer Competency, “The Role of Law Schools” (popularly the *Crampton Report*) (1979); James Boyd White, “The Study of Law as an Intellectual Activity” 32 *J. Legal Educ.* 1(1982).

10 *Supra* note 4 at 41-43.

11 Ralph W. Tyler, *Basic Principles of Curriculum and Instruction* (Chicago, University of Chicago Press, 1949)

Jonathan Rose in “The Mac Crate Report’s Restatement of Legal Education: The Need for Reflection and Horse Sense,<sup>12</sup> has stated the following:

Since Christopher Columbus Langdell set its course, legal education has evolved to meet changing needs and visions and has changed significantly over time. Its objectives have been multiple, or even ambiguous has been the extent to which it should focus on the skills necessary for actual law practical.

Global Law Deans’ Forum was organized by the International Association of Law Schools, Washington at National University of Singapore during September 25-27, 2013<sup>13</sup> and developed principles of outcomes of legal education in the form of Singapore Declaration. It says that there will be three main outcomes of legal education. These are broadly- knowledge, skills and values. As regards skills, it declares that a law graduate should be proficient in:

- i. General academic skills, including critical analysis and reasoning;
- ii. Researching, reading and analyzing legal materials;
- iii. Problem solving, planning, strategizing, and how to comply with legal requirements; and
- iv. Constructing a legal position, and effectively communicating, orally and in writing, within a legal context.

Thus, it is observed the transition of clinical legal education in the form of practical training and skill learning during last few decades. Clinical legal education was confined among selective subjects only. But the essence of clinical legal education, *i.e.*, ‘learning by doing’ is applicable irrespective of subjects and learning through skills and practice. According to Jon Dubin, clinical legal education promotes the essentials of social justice primarily by three ways:<sup>14</sup>

- i. By promoting access to justice for the under privileged through representing them in various forums
- ii. By exposing law students to the responsibility for public service or *pro bono* work

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12 Jonathan Rose, “The Macc Rate Report’s Restatement of Legal Education: The Need for Reflection and Horse Sense” 44(4) *Journal of Legal Education* 548-565 (Dec.1994).

13 *Singapore Declaration on Global Standards and Outcomes of Legal Education*, available at: <http://www.ialsnet.org/wp-content/uploads/2015/10/Singapore-Declaration-2013.pdf> (last visited on Mar. 15, 2020).

14 See Jon C Dubin, “Clinical Design for Social Justice Imperatives” 51 *S.M.U.L. Rev.*1461, 1475-1476 (1997-1998).

- iii. By creating an understanding of the relationship between law and social justice among the law students.

Thus, skill learning activities and clinical legal method of learning are both aimed at making the students responsive to the needs of the society. That is why we may say that skill learning is a modified or advancement of clinical legal education.

### **III Historical conspectus on development of legal education in India**

#### **Initiatives by various universities and institutions**

Among the various prominent initiatives the following are commendable: The Workshop on Clinical Education and Social-Legal Research held at University of Delhi, Delhi;<sup>15</sup> The Dharwad Workshop on Teaching of Jurisprudence, 1973; The University Grants Commission (UGC) Workshop on Legal Education held at Madras University, Madras;<sup>16</sup> The UGC Regional Workshop on Legal Education held at Punjab University, Chandigarh;<sup>17</sup> The Third UGC Regional Workshop on Legal Education held at University of Poona, Pune;<sup>18</sup> The UGC Regional Workshop on Legal Education held at University of Patna, Patna;<sup>19</sup> and The UGC Workshop held at University of Delhi, Delhi.<sup>20</sup>

#### **IV Legal education reports and recommendations in India**

Among the various important reports some are worth mentioning:<sup>21</sup> The Report of the Bombay Legal Education Reforms Committee, 1935; The Report of the Bombay Legal Education Committee (Chagla Committee) 1949; The Report of the Rajasthan Legal Education Committee, 1955; The Law Commission of India, 14<sup>th</sup> Report on reforms of Judicial Administration, 1958; The Report of the Committee on Legal Education (All India Law Conference of the Indian Law Institute), 1959; The Report of the Inter-University Board on Legal Education, 1961; The Report of the Committee on Re-Organization of Legal Education (Gajendragadkar Committee) in the University of Delhi, 1964; The Report of the Kerala University State Commission, 1964; The Report of the Academic Council Committee on the Teaching of Law, 1965, Patna; Patna University; The Report on the Role of the Legal Profession in Asia (Kandy Conference), 1968. The Thirteenth Conference of the All India Law Teacher

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15 Held on Dec. 31, 1972.

16 Held on Dec. 20-23, 1975.

17 Held on Mar. 2-14, 1976.

18 Held on May, 28-30 1976.

19 Held on Dec. 11-14, 1976

20 Held on Jan. 3-4, 1977.

21 Gurjeet Singh, "Revamping Professional Legal Education: Some Observations on Revised LL. B Curriculum of Bar Council of India" 41 (2) *Journal of the Indian Law Institute* 237-238 (April-June 1999).

Association (Bombay Conference), 1973; The All India Law Teachers Conference (Ranchi Conference), 1978; Towards Socially Relevant Legal Education- A Report of the University Grants Commission's Workshop on Modernization of Legal Education, 1979, New Delhi; University Grants Commission; S.K. Agrawala and Mohammed Ghose (eds.), 1981; Report on the Status of Teaching and Research in the Discipline of Law, New Delhi: University Grants Commission; and The Report of the Committee on Reforms in Legal Education and Regarding Entry into Legal Profession (Ahmadi Committee), 1995.<sup>22</sup>

### Emphasis on professional skills in various reports

Following reports emphasized the importance of professional skills: The Report of the UGC Workshop on Post-Graduate Legal Education and the CDC Report (1996), Bangalore: National Law School of India University; The report of the All India Consultative Meeting of Bar Councils, Universities, UGC and state governments on Reforming Professional Legal Education (1996), Bangalore: National Law School of India University; The report of the UGC Workshop on Post-Graduate Education in Law (1997), Gorakhpur; University of Gorakhpur, All India Law Teachers Congress, (1999) Faculty of Law, University of Delhi.<sup>23</sup>

Several committees in India have also emphasized on the practical aspects of law. In the recent time the emphasis abroad is also on the practical aspects of law and the recent report in US on the subject is the celebrated *Mac Crate* Report<sup>24</sup> (also called the Report of the Task Force of the American Bar Association on 'Law Schools and Profession: Narrowing the Gap' 1992). Numerous steps have been taken from time to time for improving the standards of legal education. The 14<sup>th</sup> Report of the Law Commission headed by M.C. Setalvad is one of the best and elaborate reports on legal education. The UGC Curriculum Development reports 1988-90 are also of great importance. They were prepared by eminent professors, including Prof. Upendra Baxi. The Ahmadi Committee Report contains extracts of letters of the Chairman, BCI and Chairman, University Grants Commission, and views of Chief Justices of various high courts in the matter of Legal education. Numerous suggestions were given regarding the courses of study, attendance, entrance, entrance examination, final examination, the lecture method, case method, problem method, constitution of committees and membership, and need for apprenticeship and Bar examination. The commission emphasized on the legal skills and values as adumbrated in the *Mac Crate*

22 Gurjeet Singh, "Revamping Professional Legal Education: Some Observations on the LL.B. Curriculum Revised by the Bar Council of India" in A.K. Koul, V.K. Ahuja (ed.) *Legal Education in 21st Century: Problems and Prospects*, Faculty of Law, University of Delhi 300 (1999).

23 *Id.* at 301.

24 *Supra* note 12.

Report of US. The three day All India Consultative Meeting of Bar Councils, Universities, UGC and governments organized by the National Law School of India University, Bangalore on Reforming Professional Legal Education held during October 12-14, 1996. This meeting suggested to Bar Council of India to introduce four compulsory clinical papers for LL.B. course throughout the country.

The *Mac Crate* Report refers to the following 'Fundamental lawyers' skills':<sup>25</sup>

- i. Diagnosing a problem, generating alternative solutions and strategies, developing a plan of action, implementing the plan and keeping the planning process open to new information and new ideas.
- ii. Identifying and formulating legal issues, formulating relevant legal theory, elaborating legal theory, evaluating legal theory and criticizing and synthesizing legal argumentation.
- iii. Knowledge of the nature of Legal Rules and Institutions, knowledge of and ability to use the most fundamental tools of legal research, understanding of the process of devising and implementing a coherent and effective research design.
- iv. Determining the need for factual investigation, planning a factual investigation, implementing the investigative strategy, memorializing and organizing information in an accessible form, deciding whether to conclude the process of fact gathering, evaluating the information that has been gathered, assessing the perspective of the recipient of the communication; using effective methods of communication.
- v. Establishing a counselling relationship that respects the nature and bounds of a lawyer's role; gathering information relevant to the decision to be made; analyzing the decision to be made; counseling the client about the decision to be made, ascertaining and implementing the client's decision.
- vi. Preparing for negotiation, conducting a negotiating session, counseling the client about the terms obtained from the other side in the negotiation and implementing the client's decision.
- vii. Advise the clients about the options of litigation and alternative dispute resolution, and have a fundamental knowledge of
  - a. litigation at the trial-court level
  - b. litigation at the appellate level
  - c. advocacy in disputes between and executive forms
  - d. proceedings in other dispute resolution forums

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25 *Id.*, Ch. V(b) of the *Mac Crate* Report.



- viii. Skills of efficient management such as formulating goals and principles, developing systems and procedures to ensure that time, effort and resources are allocated efficiently; develop system to ensure work is completed at the appropriate time; develop system or procedures to work effectively with other people, develop system and procedures for efficiently administering the law office.
- ix. Keep familiar with nature and sources of ethical standards, the means by which ethical standards are enforced, the processes for recognizing and resolving ethical dilemmas.

#### **V Role of Bar Council of India in recommending practical/skill learning papers**

The Advocates Act, 1961 was enacted primarily to provide and consolidate the law relating to legal practitioners and to provide for establishment and constitution of Bar Council of India (BCI), State Bar Councils and defined powers and functions of the Bar Council. However, by amending the said Act in 1973 by means of adding subsection (gg) of section 6 State Bar Councils have been authorized to visit and inspect universities in accordance with the direction given by the BCI. In pursuance with sections 7 (1)(h) and (i), 24 (1)(c)(iii) and (iiia), 49 (1)(af), (ag), and (d) of the Advocates Act, 1961 the BCI prescribed rules in consultation with universities and State Bar Councils Rules on standards of legal education and recognition of degrees in law for the purpose of enrollment as advocates and inspection of universities for recognizing its degrees in law. Moreover entry 66 in List I (Union List) of the VII Schedule of the Constitution relates to “Co-ordination and determination of standard in institutions for higher education or research and scientific and technical institutions”. Thus, it is clear that the BCI has ample power and authority to prescribe rules on standards of legal education. Accordingly, the BCI prescribed syllabus for the LL.B. course from time to time. In the first phase (roughly 1950-65) the endeavor was to transform legal education from colonial heritage and in the way to Indianize it. In the second phase (roughly 1965-84) BCI emphasizes to develop curriculum and pedagogy towards professional legal education. In the first two phases BCI not mentioned any specific guidelines regarding practical training or skill learning except moot court practice. In the third phase (roughly 1984-96) the focus shifted to modernization of law curriculum and to make it more professional. In the fourth phase (roughly 1997-2007) the revised curriculum for LL.B. course as recommended by the BCI is as follows. There shall be 21 compulsory papers, 15 optional papers out of which six to be chosen and 4 practical clinical papers.

In the BCI rules, Part IV (as amended up to November 30, 1998) dealing with the subject of ‘Standards of Legal Education and Recognition of Degrees in Law for admission as advocates’, Section A refers to five-year law course after 10+2 or 11+1.



Section B relates to three-year law course after graduation, and section c refers to rules regarding inspection of law colleges by State Bar Councils. Also, schedule 1 contains a list of the directives issued under rule 21 in section a or under rule 14 in section B. Schedule-II is the questionnaire to be answered by any college which is seeking affiliation. Schedule III deals with *proforma* for inspection of law colleges and Schedule IV with the form of annual return to be submitted by the law colleges

The four practical papers have been accepted *in toto* as recommended in the Bangalore meeting. However, in the fifth phase (from 2008 onwards) the BCI prescribed four compulsory clinical courses mainly; (i) drafting, pleading and conveyance; (ii) professional ethics and professional accounting system; (iii) alternate dispute resolution system; (iv) moot court exercise and internship which include interviewing techniques, pretrial preparations and internship diary.<sup>26</sup>

#### **VI Initiative by National Law School of India University, Bangalore**

Establishment of National Law School of India University leading to major reforms in professional legal education in India. The curriculum of the NLSIU includes some elective clinical courses such as Legal Research and Writing; Trial Advocacy; Moot Court and Appellate advocacy; Family Law Clinic; Labour Law Clinic; Constitutional Law Clinic; Criminal Law Clinic; Judicial and Legal Internship; Lawyering in Public Interest; Legal Representation of the Poor; Legal Counselling; Poverty Law Clinic *etc.*<sup>27</sup> Thus, importance of clinical and practical papers was recognized by NLSIU, Bangalore.

#### **VII UGC curriculum development centre in law**

The UGC in order to promote under graduate and post graduate legal education established curriculum development centers (CDC) program in law. The first CDC was instituted at the University of Delhi in 1966. The committee suggested 32 papers for LLB and 26 for LLB honors but in all such papers there was no place of any practical / clinical or skill learning papers.

#### **VIII All India consultative meeting of bar councils, universities, UGC and state governments at Bangalore on reforming professional legal education**

All India Consultative meeting of bar councils, universities, UGC and state governments at Bangalore on reforming professional legal education held in October, 1996 at National Law School of India University Bangalore. The meeting identified and discussed mainly two issues; (i) Whether there should be a uniform law course in professional legal education and (ii) How many subjects must be taught in LL.B. course as compulsory and optional papers. The meeting identified 24 compulsory papers and 15 optional papers out of which six to be chosen. The four practical papers are as follows:

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26 See Bar Council of India Rules of Legal Education, 2008 at 24-25(2008).

27 See The National Law School of India *Bulletin 1988-89* at 22.

- (i) Moot court, pretrial preparations and participation in trial proceedings
- (ii) Drafting, pleading and conveyancing
- (iii) Professional ethics, accountancy for lawyers and bar bench relations
- (iv) Public interest lawyering, legal aid and para legal services

### **IX Role of Law Commission in prescribing a skill learning/practical learning in LLB course**

Law Commission of India in its various reports mentioned about the importance of practical knowledge and skill learning. Let us note the observations:

The Commission analyzed the Ahmadi Committee report as follows:<sup>28</sup>

5.4 The Ahmadi Committee Report dealt elaborately with the methods of teaching. It referred to the “case method” introduced by Prof. Langdell of Harvard University and to the “problem method” pioneered by Prof. Carl Llewellyn and Judge Jerome Frank and the Notre Dame Law School. The Report referred to Rule 21 of the Rules and to Sch. I dealing with the 5-year course which contains the following directive:

Every university shall endeavor to supplement the lecture method with the case method, tutorials and other modern techniques of imparting legal education.

The report also recommended as follows:

This Rule must be amended in a mandatory form and we should include problem method, moot courts, mock trials and other aspects in this Rule and make them compulsory.

In tune with the above recommendations, we find in the five-year course syllabus that Rule 2(c) says as follows: “2(c): That the course of study in law has been by regular attendance for the requisite number of lectures, tutorials, moot courts and practical training given by a college....”

5.6 Rule 9(1) lists 6 subjects for part I (compulsory), Rule 9(2) lists 21 subjects for part II (compulsory), Rule 9(3) lists 15 subjects (optional) out of which three have to be selected. Rule 9(4) refers to 6 months practical training which will include the following compulsory papers:

Paper I: Moot-court, pre-trial preparations and participation in trial proceedings – 10 marks for each, total 30 marks. Observance of trial in two cases, one civil and one

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28 Law Commission of India, “184<sup>th</sup> Report on The Legal Education and Professional Training and Proposals for Amendments to the Advocates Act, 1961 and the University Grants Commission Act, 1956” at 41(2002).

criminal case (30 marks). Interviewing techniques and pre-trial preparations (30 marks). Viva-voice (10 marks).

Paper II: Drafting, pleading (15 exercises) and conveyancing (15 exercises)

Civil, criminal, writ petition and drafting sale deed, mortgage etc.

Paper III: Professional ethics, accountancy for lawyers and Bar-Bench relations – 80 marks. Viva-voice 20 marks.

Paper IV: Deals with public interest lawyers, legal aid and para legal services (100 marks).”

5.7 The Law Commission of India<sup>29</sup> also referred to certain skills aspect of standards of Legal Education. Professional skills and professional values – the Mac Crate Report: 54 5.8 on legal skills, we will be referring to the Mac Crate Report of USA (1992) which is the Report of the “Task Force on Law Schools and the Profession: Narrowing the Gap”, prepared by the American Bar Association.

“5.9 There are 10 chapters in the Mac Crate Report in Parts I to III. Chapter 5 of the Report refers to the ‘Statement of Fundamental Lawyers Skills and Professional Values’, Chapter 7 refers to ‘Professional Development during Law School’, Chapter 8 to ‘Transition from Law Student to Practitioner, Chapter 9 to ‘Professional Development after Law School’, Chapter 10 refers to the Need for a National Institute to Enhance the process of Professional Development

5.10 Under chapter V(A) thereof, the legal skills referred are (i) legal research, (ii) factual investigation, (iii) communication, (iv) counselling, (v) negotiation, (vi) skills required to employ or to advise a client about the options of litigation and alternative dispute resolution mechanisms, (vii) the skill to identify the administrative skills necessary to organize and manage legal work effectively and (viii) finally, the skill of analyzing the skills involved in recognizing and resolving ethical dilemmas.<sup>30</sup>

Each law school, the report says, should determine how its school can best help its students to begin the process of acquiring the skills and values that are important in the practice of law. Law schools should be encouraged to develop or expand instruction in such areas as ‘problem solving’, ‘fact investigation’, ‘communication’, ‘counselling’, ‘negotiation’, and ‘litigation’.”<sup>31</sup>

Law Commission also recommended the following:

- (i) Teaching must focus on building up the student, skills of analysis, language, drafting and argument. [Para 5.18]

29 Law Commission of India, “14th Report, Reforms of Judicial Administration, 1958” (1958).

30 *Supra* note 25.

31 *Ibid.*

- (ii) Alternative Dispute Resolution systems – mediation, conciliation, arbitration etc. must be and remain as a compulsory subject. [Para 5.19]
- (iii) The curriculum should not make the mandatory element too large but subjects which are in need in the bulk of the courts in the mofussil, in the civil and criminal law, must be mandatory. While subjects mostly in use in the courts at the grass-root level must be mandatory and some new subjects can also be made mandatory, care must be taken to give more choice to the students in the optional subjects. [Para 5.20]<sup>32</sup>

Again, in *Mahipal Singh Rana v. State of U.P.*<sup>33</sup> the apex court stated that the regulatory mechanism governing the advocates is not satisfactory. And hence Law Commission of India undertook the task of recommending the importance of practical training as part of law curriculum in its 226<sup>th</sup> report. The Law Commission invited suggestions from all stakeholders on the issue under examination and as to how the system could be improved. The registrar general of all high courts, the State Bar Councils, Supreme Court Bar Association and Supreme Court Advocates on Record Association were requested to send their suggestions.

The *Mac Crate* Report also focuses on the educational and professional developments needs of a lawyer. The report laid emphasis on the following:

It begins with a proposition that the professional development of lawyers begins in law school. Hence, the law schools must focus more on skills training on what lawyers actually do.<sup>34</sup> It also identifies 10 fundamental lawyering skills and four fundamental values of the profession. The report also identified that by way of clinics, externships, and simulations, there has been a clear pattern of growth in the numbers and sophistication of skills offerings. The report recommends that law schools should increase skills and values instruction and also finds out that the challenge is to make skills instruction broadly available to students and attorneys during and after law school.

### **X Steps taken by countries across the world to develop skill learning programs in US**

In late 1970s to 1980s guidelines for clinical legal education was developed due to the growing importance of clinical legal education.<sup>35</sup> By the early 1990s, clinical faculty compiled data on reported practices of in-house clinics in areas such as student–faculty ratios, hiring criteria for clinicians, and structures for in-house clinics. The 2007

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32 *Supra* note 28.

33 AIR 2016 SC 3302.

34 *Supra* note 12 at 552.

35 Report of the Association of American Law Schools and American Bar Association Committee on Guidelines for Clinical Legal Education, *Guidelines for Clinical Legal Education* (1980).

US *Best Practices for Legal Education*<sup>36</sup> addresses all of legal education, devoting a chapter to ‘Best Practices for Experiential Courses’, which include simulation courses, in-house live client clinics and externships, and another separate chapter to ‘Best Practices for Assessing Student Learning’.

In the US there are formal accreditation standards for law schools promulgated by the American Bar Association (ABA). One standard and its interpretations address requirements for externships, another standard defines a ‘law clinic’, and another standard and its interpretations require that the terms and conditions of employment for full-time clinical faculty members be reasonably similar to those for other full-time academic faculty.<sup>37</sup> Because the ABA standards address conditions of employment for clinical faculty, the best practices in the US do not include all of the requirements for externships found in the ABA standards, though they do cover many, and include some best practices for externships not in the ABA standards. The chapter also drew on the work of a joint committee of the AALS and the ABA that published *Guidelines for Clinical Legal Education* in 1985 reinforcing the work on best practices in the US and it was the publication in 2007 of a study by the Carnegie Foundation for the Advancement of Teaching that called for the integration of student learning of theoretical and practical legal knowledge and professional identity.<sup>38</sup>

### **In Australia**

In Australia, the development of best practices responded to the need to integrate clinical legal education better into the academic focus of law schools, as well as to promote better unity between the academic and clinical dimensions of legal education.

*Best Practices: Australian Clinical Legal Education*<sup>39</sup> addresses clinical legal education through in-house live client clinics, external live client clinics (‘agency clinics’), externships and clinical components of doctrinal law courses. In Australia, the Council of Australian

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36 Peter A Joy, “Evolution of ABA Standards Relating to Externship: Steps in the Right Direction” in 10 *Clinical L. Rev* 681(2003-2004).

37 In US regulation is likely to remain highly structured unless law schools demonstrate that sufficient instructing resources will be devoted to make externship quality educational experiences.

38 There are two dominant forms of live client or real client. Clinical courses in which students provide legal assistance to real clients with legal problems is called live client. There are in-house clinics (in India also most of the Law Schools established such a Clinic physically) whose students are primarily supervised by full time law faculty.

39 Adrian Evans, Anna Cody, Anna Copeland, Jeff Giddings, Mary Anne Noone, Simon Rice Ebony Booth, “Best Practices: Australian Clinical Legal Education: The Final Report of the Project Strengthening Australian Legal Education by Integrating Clinical Experiences: Identifying and Supporting Effective Practices.” Office of Learning and Teaching, Department of Industry, Innovation, Climate Change, Science Research and Tertiary Education. (2013).

Law Deans (CALD) has adopted voluntary standards addressing matters related to the operation of law schools and law courses.

### **In United Kingdom**

In 2007 UK *Model Standards for Live-Client Clinics*<sup>40</sup> addresses live client clinical legal education that occurs in-house or through an external agency. The 2007 version partially relied upon work published in 2004 by Richard Grimes and Hugh Brayne identifying and mapping best practices in clinical legal education through a project funded by the UK Centre for Legal Education.

In contrast to the US, there is no overarching regulatory body for law schools in the UK, nor is there voluntary regulation similar to the CALD standards in Australia. As a result, one of the authors of the 2007 UK *Model Standards for Live-Client Clinics* refers to the document as largely consensual and ‘a description of a range of good practices rather than necessarily best practices. In the UK, the Clinical Legal Education Organization (CLEO) developed an initial set of standards for live client clinics in 1995 at a time when some law schools were considering implementing clinical courses.

Eventually, a general consensus was reached and CLEO adopted the *Model Standards for Live-Client Clinics* in 2007.<sup>41</sup> These revised best practices standards state that they ‘are intended to provide a benchmark for those active in or setting up clinics, and reflect the wide experience of those already running clinics both in the UK and abroad’.<sup>42</sup>

Therefore, each country employed a different process for identifying best practices, although the goals in each country were largely the same—to identify existing practices that are generally accepted as preferable ways of organizing and delivering clinical legal education. The best practices developed in all three countries share a focus on best practices for live client clinics—that is, clinics in which students represent, or assist in the representation of, real clients with legal problems.

### **XI Challenges of legal education today**

Legal education in India has been improved in India since establishment of National Law School of India University in 1988. But there are many criticism and questions about the outcome and its impact of legal education on legal profession in general and particularly contribution of law graduates of National Law Universities (NLUs) in justice delivery system in more than 20 states in India during last 30 years. The criticisms revolve on the issue of learning objectives of legal education. The questions raised: are the law colleges, NLUs becoming “academic sandboxes” where students are being allowed to carry on same finger printing exercises throughout the entire period of

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40 Available at: [www.perma.cc/HR7y5](http://www.perma.cc/HR7y5) (last visited on Mar. 15, 2020).

41 *Supra* note 25.

42 *Supra* note 28.

three years or five years? Is our curriculum dominated by ‘doctrinal organization’ within “the sterile classroom situation”? Do our teaching method promotes” rote memorization”? Are we encouraging students to be “superficial, authoritarian, close-minded, and amoral”? Is our pedagogy taking into account ‘individual learning styles and capacities? Are we preparing our graduates practice ready in diverse areas of profession like transactional works in corporate law firms, in-house counsels in private sectors, community lawyering in rural India, litigation practice in trial and appellate courts, judicial and civil services, teaching and research or specialized problem solving skills needed in family courts, juvenile justice boards, lokadalat, gram nayalayas, commercial courts, green tribunals, arbitration and mediation practice, regulatory bodies and quasi-judicial bodies in the areas of economy, World Trade Organisation dispute and many others.<sup>43</sup>

The integrated LL.B programme is conceived (i) to address the gaps in the existing five-year integrated course in getting graduates “practice-ready” and (ii) to equip the graduate to the emerging challenges in a technology driven, specialization-based, globally competitive legal practice slowly emerging in the 21<sup>st</sup> century professional paradigm. Even the annual internship-programme now institutionalized in most of the leading law schools are not properly organized, supervised and integrated with the total learning outcomes of the students to be able to make them practice ready.

The law firms say that they have to train them again to undertake the task involved in corporate legal practice. Similar is the assessment of the senior lawyers and judges of graduates joining litigation practice. In early times, this gap was sought to be addressed by the mandatory apprenticeship prescribed by the Bar Council under the Advocates Act. With the amendment of the Advocates Act and the Bar Council not being able to give continuing education training for the new entrants. We have a situation in which the quality of legal services available to common citizens is far too inferior to those available to the rich in the litigation game. This is violative of the “Equality before law” and “Equal justice for all”, promises of the Constitution. The gap responsible for this situation is more pronounced in respect of skills and attitudes rather than on knowledge of the law.

## **XII Assumptions of learning objectives**

It is important for the prospective users and consumers of the model to be in the agreement with the assumptions and principles on which the model is mounted in order to avoid and overcome operational difficulties and challenges. The assumptions are:

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43 These questions were raised by N.R. Madhava Menon in his key Note address in the Workshop on Skill Learning in Legal Education on July 26, 2018 in his paper circulated in the Workshop titled “Getting Law Graduates Practice Ready: A Blueprint for Curriculum Reform”.



- i. It is possible to complete all the predominantly knowledge based mandatory and optional subjects in the curriculum excepting the four Practical Training Courses in the first four years leaving the fifth year for experiential learning on skills, attitudes, ethics and professionalism.
- ii. Law school adopting the model will be able to group the optional subjects into three or more clusters which reflects the career choices of the students. This is to help customize the field training and to equip the student with domain knowledge relevant to the training. Thus, student seeking corporate law career will take majority of the optional subjects he or she is expected to study under the rules from the commercial law cluster. Students looking for litigation practice will take the majority of optional from the litigation cluster. Students want to take up community-lawyering in rural and tribal areas will choose their optional subjects on laws related to land, water, forest, agriculture, environment, bio-diversity, rural credit, consumer protection *etc.* The number of clusters in optional curriculum will depend on the career choices of the students and resources available to the law school in organizing teaching and training in different legal careers.
- iii. Every law school desirous of producing practice ready graduates shall have at least one or two full-time clinical faculties who have rich and varied practice experience and familiarity with developments in the profession.
- iv. The law school shall also have a Legal Service- cum – Legal Practitioners’ Incubation Clinic (LSLPIC). The clinical professor shall be its director who will keep a directory of lawyers, law-firms, companies, administrative departments, non-government organisations legal aid committees, judicial chambers, media offices *etc.* which are willing to associate with the law schools in its field training programmes of fourth and fifth year students.
- v. The LSLPIC has the responsibility to ascertain the career choices of the students when they complete the third year of their five year LLB course, mentor them on their internships in the fourth and fifth year, liaison with the placement offices and the officers responsible to supervise the work of internees in those offices for work assignments, supervision and evaluation, integrate the field assignments with the total curriculum with a view to maximize the training benefits to the students and help resolve problems in discipline, professionalism *etc.*
- vi. The law school will be justified in charging an additional amount from the students towards the cost of field placement, training and supervision. This amount may vary according to the career choice of the student and the expenses involved in organizing the same.

vii. The principles that underlies this model is:

- (a) that skills and ethics are better learnt in practice through experience;
- (b) that classroom teaching can only give supportive assistance in understanding the theory behind the skill sets and ethics;
- (c) supervision and assistance are essential to learn and imbibe expertise and professionalism;
- (d) legal practice is serious business that it requires nothing less than a year (2 semesters) of hard work and reflective study to gain the confidence and competence to do it responsibly by oneself.<sup>44</sup>

viii. Finally, the most important function of LSLPIC is to design a set of activities in consultation with the placement offices which will impart to the trainee comprehensive abilities to do the work involved in that area of legal practice responsibly and professionally. On making an inventory of such activities the LSLPIC has to organize it under eight or ten semester – long courses in the final year LLB programme as clinic–cum–seminar courses. Each such course may carry 3 or 4 credits and may have a small classroom component at the beginning, at the middle and at the end of the semester, intended to introduce the training, make mid-term correction cum – evaluation and to do final assessment of performance. The LSLPIC center will prepare practice manuals and protocols for each branch of training for use by the trainees and supervisors.<sup>45</sup>

It is important to distinguish the final year training from the short-term placements that many law schools arrange for the students during vacations in the initial four years. They are mostly unguided exposure to the different work scenarios intended to give a feel of the range of activities that lawyers are called upon to undertake. At least, it will help them to make career option intelligently and prepare themselves to the hard and sustained work involved in the profession. Such short-term internships are mostly study by observation rather than learning by doing.<sup>46</sup>

### **XIII Practical or skill learning: An illustrative curriculum model**

Though the BCI curriculum prescribes a total of 400 marks for Practical Training, law schools may like to double the credits to 800 marks distributed in eight semester-long

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44 All these propositions were proposed by Menon in his Keynote address in the Workshop on Skill Learning in Legal Education held on Mar. 4, 2018.

45 The Bar Council of India may take the initiatives to prepare these manuals and protocols for each area of specialized practical training in collaboration with some National Law Universities

46 There is a need for developing a structured internship diary involving the legal professionals under whom such Internship will be performed which should be minimum of one month at a time and should be repeated in the same place, preferably under same person.

subjects in the ninth and tenth semesters *i.e.*, one training courses each semester. The four courses of the ninth semester may be mandatory for all career options as certain skill sets are necessary for all legal practitioners whether they work in litigation, transaction, community-lawyering or in-house legal practice. The four courses in the tenth semester may be customized to the specific requirements of the type of legal practice to be chosen by students.

Much democratization of norms in the governance mechanism across the globe has set the overtone of legal skills in almost every segment of social transactions and legal literacy without skill-learning would be meretricious. Considering the present dynamics of legal implications day to day social transactions and to widen the scopes of employability the broad themes that may be characterized within five clusters as follows:<sup>47</sup>

**(i) Transactional lawyering**

This domain implicates predominantly the ‘in-house legal practice’ much operative in the field of commercial laws are intellectual property rights and the corporate wherein some papers like –

*i. Drafting of contract –I* that would spread over contract creation like term sheets, indentures, operative clauses, performance guarantee clause, dispute resolution clause, risk mitigation clause, penalty clause, limit of liability clause, shareholders’ agreement, hire-purchase, hypothecation, indemnity clause, joint venture agreement, product agreement, service agreement, leave and license agreement, subscription agreement, non-disclosure agreement, etc.

*ii. Drafting of contract –II* This may involves the legal instruments like single proprietorship, partnership, limited-liability partnership, company formations, one-person company, due-diligence, MoA, AoA, promoters’ agreement, BOT, trusts, societies, agencies, agreement relating to employment, service contracts, retainership agreement, hiring agreement, agreement relating to merger, acquisition, take-over, amalgamation, independent contract, trade secrets and know-how, non-compete agreement, business transfer agreement.

*iii. Due diligence-issues and perspectives* – that may be comprised of offer letter, appointment as probationer, apprentice, management trainees, leave rules, rights-responsibilities under labour laws, ownership agreement, assignment clauses, employment opportunities and limitation clauses, termination clause, sexual harassment at workplace, legal practices under Factories Act, Trade Union Act, Payment of Bonus Act, Equal Pay and Equal

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47 The details descriptions of the papers under different clusters have been taken from the draft prepared by Puranjoy Ghosh, Assistant professor of Law, KIIT School of Law, KIIT Deemed to be University, which was placed for consideration in the Workshop on Skill Learning in Legal Education held during July 26-27, 2018 at KIIT Deemed to be University, Bhubaneswar.

Remuneration Act, Maternity Benefit Act, Provident Fund Act, Gratuity Act, Employees State Insurance Act, Employees Compensation Act, Limitation Act, *etc.*

## **(ii) Banking and financial sectors and securities market practices**

*i. Corporate drafting:* This part may involve like securities valuation in IPOS, documents relating to private placements, underwriting, forward rate agreement, agreements on repurchase or redeem of assets, interests rate swap, drafting of resolution, red-herring prospectus, swap agreement, moratorium, disclosure obligations, corporate governance issues, one-time-settlement agreement, stand-alone agreement, re-payment plan, asset-servicing agreement, pass-through certificate, bonds, notes, debentures, asset reconstruction, credit-risk enhancement agreement, comprehensive disclosure of solvency statements to shareholder-investors-creditors-creditors-credit rating agencies, stamp duty implications, *etc.*

*ii Drafting of loan documents:* This may consist of hire-purchase, hypothecation, bank guarantee, warranty, indemnity bond, set-off, personal loan document, consumer loans document, letter of credit, pledge, mortgage, charge, registration of charge, lien, factoring, pre-shipment credit, bill discounting, consortium loan documents, trade finance, export finance, commercial papers, draft prospectus, charging of securities, collateral securities, notice to take over possession, auction and sale documents, releases of title to goods, land and buildings on discharge of debt, corporate guarantee, *etc.*

*iii Practices before judicial and quasi-judicial authorities:* may involve the practices in drat relating to debt recovery proceedings, enforcement of securities interests proceedings, recovery proceedings, attachment of properties, release of properties, take over physical possession of the collateral, settlement of claims, deceased depositors', unclaimed deposits, proceedings under section 138 of Negotiable Instrument Act, 1881 certificate cases, money suit, foreclosure of mortgage, redemption of mortgage, proceedings before National Company Law Tribunal, ombudsman, Lok Adalat, civil judicial magistrate, civil court, rent controller *etc.*

## **iii Counselling practice**

### *i Introduction to criminal practice*

This paper may cover the initiation of criminal proceedings of public character like – general diary, FIR., cognizable-non cognizable offence, petition under section 156(3), Criminal Procedure Code, 1973 Cr PC (memo of arrest, forwarding note, preliminary report, power (vakalatnama), court fees, bail petition, bail-bond, police-custody, put-up petition, preliminary investigation, non-cognizable report to magistrate, documentation during investigation, medical examination, seizure, statement under section 161, Cr PC., case diary, autopsy report, forensic report, final reports of investigation, charge-sheet, petition praying for supplementary investigation, supplementary charge-sheet, documents available to accused for facing trial, charges,

petition for alteration – addition – modification of charge, summoning to prosecution witness, examination-in-chief, cross-examination, re-examination, recalling of witnesses, petition under section 313, CrPC, defence witnesses, argument, declaration of sentence, judgment, acquittal, conviction, appeal ancillary proceedings – bail petition under section 439, Cr PC., rejection of bail, quashing of FIR., charges, revision, release of goods and property, application under section 482, Cr PC., petition under section 174, compounding of offences, plea-bargaining and approval, *etc.* initiation of criminal proceedings of private character – complaint, court fees, substance of accusation, issue of process, serving summons, appearance, bail-petition, before charge hearing, framing of charges, examination of prosecution witnesses, adducing of witnesses by respondent, argument, judgment, *etc.*, proceedings before executive magistrate and other tribunals – like proceedings under section 97, 107, 133, 144, CrPC, *etc.* proceedings before railway tribunal, proceedings under Foreign Exchange Management Act, proceedings drawn pursuant to intervention of Central Bureau of Investigation agency, *etc.*

#### *ii Introduction to civil practice*

Institution of civil proceedings – notice under section 80, Civil Procedure Code, 1908 under section 106, Transfer of Property Act, legal notices – caveat – power of attorneys, framing of suit, interlocutory petitions, *ad-interim* injunction, local inspection, petition under section 80(2), Civil Procedure Code, 1908 petition for exemption of court fees, suit valuation, court fees, affidavit, verification, list of documents, power (vakalatnama), service return of summons, appearance, time petition, petition/written objection, written statement, set-off, counter-claim, jurisdiction transfer petition, petition urging maintainability, interrogatories, petition for impounding documents, settlement of issues, petition for compromise, out-of-court settlement, receiver appointment petition, examination of parties, summoning to witnesses, commissioning of witnesses, examination of witnesses, re-call of witness, re-examination of witness, petition for adducing additional evidences, written arguments, judgment, decree, appeals – execution proceedings, section 47 petition, attachment, *garnishee* order, auction, discharge, release of property, summary proceedings under order 37, ancillary proceedings – petition for imposing costs under sections 35a, 35b, Civil Procedure Code, 1908 adjournment petition, petition for attachment before judgment, miscellaneous cases under order 1 rule 10, order 6 rule 17, order 9 rules 4, 9, 13, order 39 rule 2-a, order 26, *etc.* miscellaneous appeal against appealable order, review, revision, reference, *etc.*

#### *iii Subsidiary laws in counselling practice*

Registration Act relating to various deeds and documents, Stamp Duty Act relating to various individual and commercial transactions, Court Fees Act, 1870 and Suit Valuation

Act, 1887 relating to various judicial and quasi-judicial proceedings, Limitation Act, 1963 *etc.*

**(iv) Higher studies and competitive services**

*i. Writing skill development:* This course may include research process, research papers writing, research project, sop, different citation formats, research methods, case briefing for example Indian Penal Code, 1860 CrPC cyber laws, law of evidence, juvenile justice, Narcotic Drugs and Psychotropic Substances Act, 1985 law of contract, law of torts, transfer of property, Indian Succession Act, 2005 land acquisition, land reforms, consumer protection *etc.*, case analysis, case briefing, summarizing process, issue framing, locate and synthesize legal authority, careful judgment evaluation *etc.*

*ii. Contemporary socio-legal issues and revision of basic public laws:* This may consist of Constitution of India, 1950 administrative laws, environmental laws, Indian Penal Code, 1860; human rights, humanitarian laws, law of torts, consumer protection laws, protection of property rights, law of contracts, Specific Relief Act, 1963 Companies Act, 1956 CPC, Cr PC. Evidence Act, 1872 Limitation Act, 1963 *etc.*

*iii. Document translation* may involve translation of document from vernacular to English language, practices of multiple choice questions applying inductive and deductive reasonings *etc.*

*(iv) Developmental or community lawyering*

Community lawyering<sup>48</sup> or developmental advocacy is not necessarily adversarial, but collaborative, problem-solving and strategic. It is not court-centric but people and governance-centric. In fact, it is a new style of advocacy structured to meet the demands of constitutional goal on justice- social, economic and political. It is important that law schools desirous of being agents of change introduce community lawyering as a novel idea to reach justice to the unreached and persuade some students of every batch to take to community legal practice and provide them the support services locally through NGOs, legal aid authority, panchayat institutions and corporate social responsibility funds. Moreover, to empower communities this developmental or community lawyering often focus on group representatives rather than individuals. They center on the “social or structural problems” of “the poor and vulnerable groups”.

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48 Community lawyering is a term used for legal services delivery to the people living in rural and tribal areas whose legal services needs are different from the urban middle class and whose problems are shared by a whole group of similarly placed citizens. In this sense, it may also be called social justice lawyering. Here the lawyer is an activist who participates in the gathering of evidence, mobilizing the resources, educating the community and empowering them while seeking remedies for their justice needs. In most cases, it is lawyering for a cause rather than a client and the remedies are not limited to judicial remedies but include legislative, administrative and political as well.

Along with the representation of the groups, a primary goal is empowerment in the social, economic, and political sphere.<sup>49</sup>

This course may include the following areas like:

*i. Legal aid and pro bono practice:* which have the spread over *forma pauperis*, consumer protection through voluntary consumers' organization, legal services authority act, Indira Gandhi national old age pension scheme, *jnnurm* scheme, national pension scheme, public provident fund, unorganized workers' social security, NAREGA scheme, *etc.*

*ii. Land rights protection practice:* covering provisions of the Panchayats (Extension to Scheduled Areas) Act, 1996; Forest Rights Act, 2006; Land Reforms Act in different states; Consolidation Of Land holdings Act, 1962 Land Acquisition Act, 2013 Environment Protection Act, 1986 *etc.*

*iii. Access to justice for rural & vulnerable sections:* This include Environment Protection Act, 1986; Wild Life Protection Act, 1972; Bio-diversity Act, 2002; Acts relating to child rights, national women's commission act, Persons with Disabilities Act, 1995; Food Safety and Standards (Prohibition and Restrictions on Sales) Regulations, 2006 *etc.*

The broad themes of the four mandatory courses in the eighth/ ninth semester in place of existing BCI four clinical papers can be as follows:

- (a) Legal Research and Legal Writing<sup>50</sup>
- (b) Appellate and Constitutional Law Practice<sup>51</sup>
- (c) Mediation Practice<sup>52</sup>

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49 Bruce Avery Lasky and ShuvroPrasunSarker , "Introduction: Clinical Legal Education and Its Asian Characteristics" in Shuvro Prasun Sarker (ed.) *Clinical Legal Education in Asia :Accessing Justice for the Underprivileged* 7 (Palgrave Macmillan, New York, 2015).

50 In the age of huge internet and digital sources students should know as much as possible the legal internet sources and also to practice legal writing with proper documentation and referencing.

51 Now a days a sizable number of students are joining in high courts practice and for them during their studies they should be given opportunity of constitutional law practice, particularly drafting of writ petitions, pil, appeals *etc.* Ten rules of appellate advocacy should also be learned during this training. these are- know the court, know the law, use the opening, conceptualize the case, watch the Bench, substance over elegance, cite authority with care, honesty at all times, courage under fire, explain policy and principle.

52 We are now already recognized the need for alternative dispute resolution which refers four methods, such as negotiation, mediation, conciliation and arbitration. Mediation is recognized under s. 89 of Civil Procedure Code 1908 added as an amendment in 2002. Mediation is a dispute resolution process where the parties discuss the subject matter in presence of the third party called mediator who tries to bring out an amicable settlement between the parties. Hence to become a mediator we have to arrange proper training to student, so that they may be motivated to mediation work and become expert in that area.



(d) *Arbitration practice*<sup>53</sup>

Each of these four themes can have several modules organized around research and drafting skills, fact gathering and evidence leading skills, advocacy and communication skills, problem solving skills, analytical and organizational skills, time management skills, decision making skills, negotiation and mediation skills etc. In real life, lawyers negotiate in many contexts in addition to the final negotiation of disputes and transactions. These contexts include a range of negotiations with clients, opposite lawyers, service providers and even judges. Because most law students probably not exposed to these activities in other courses, it is appropriate to include them in negotiation courses within mediation.<sup>54</sup>

Along with the skill sets, an inventory of soft skills associated with court and case management, inter-personal relation and mannerisms, ethics and professionalism, accounting and office management may also be prepared and linked with appropriate learning modules by credit course system. The classroom component at the beginning of each of the four subjects may carry introductory lessons on theory and available literatures to enable the students understand each component in perspective and in relation to one another. The classroom interaction in each of these courses may be restricted to twenty five percent of the course content so that maximum time of the semester is spent on the field practice learning.

Law school regulations may prescribe the specific activities to be done in a time-bound manner, the credit assigned to each activity, the method of record keeping of students learning, the method of supervision and evaluation *etc.* There is no need for anyone to be failed in practice learning unless the student has totally abstained from the field assignments. The record would show what he or she has learnt or not learnt in terms of skills, attitudes and ethics.

The broad themes of practical training for the final semester will naturally vary according to the career options of the students. Broadly three or four career options can be offered by each law school which may be changed every year on the basis of resources available and student interests.

#### XIV Conclusion

Every change in curricular reforms involves some degree of imagination, experimentation and creativity. There are risks and challenges in implementation. If

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53 In India commercial arbitration has a long tradition and also the students must learn the Arbitration and Conciliation Act, 1996, during their graduation as part of their clinical paper prescribed by Bar Council of India. But the author is inclined to make it a clinical teaching learning method and compulsory for all. However, some students may further learn international commercial arbitration as optional paper.

54 John Lande, "Lessons From Teaching Students To Negotiate Like a Lawyer" in 15(1) *Cardozo J. of Conflict Resolution* 1 (2013).

the team involved is well informed and motivated the task will be easier than otherwise. There is need to budget some fund for operationalizing the practical training scheme. Career-minded students will welcome the initiative and they will become more serious and devoted to studies. It exposes the students to the necessity, challenges and reality of the field. Hence, they get real life reference points for learning the law.<sup>55</sup> In the proposed papers mentioned in different clusters may be taught through clinical method. Clinical legal education also invites students to see the wider context and everyday realities of accessing an imperfect legal system, enabling them to integrate their learning of substantive law with the justice implications of its practical operation.<sup>56</sup> "Clinical legal pedagogy involves a system of reflection, self-critique and supervisory feedback by which law students will get the opportunity how to learn from their experiences and observation and, at its most effective level, how to take personal responsibility for clients and their legal problems."<sup>57</sup> It is said that learning is deeper and more meaningful when a student is participating as a lawyer, rather than as an observer or assistant.<sup>58</sup> The students also come across clients who have faced injustice in the legal system and understand the role and importance of a lawyer and find ways to make legal system more just. It also enables the students to understand and interpret the enactments in a better way.

Development of the legal profession to be globally competitive and socially relevant to the conditions in India, is too complex a job to be left to Bar Council alone. National Law Universities are a new phenomenon now entrenched in the system which can take responsibility for restructuring legal education to meet the emerging demands if they are duly empowered by a central statute in the line of IITs and IIMs since their management is shared by the bar, the bench, the academia and the governments. Meanwhile, the law schools desirous of preparing their graduates to be practice ready can experiment with this model proposed herein without coming into conflict with the prevailing Bar Council of India framework for the fiveyear integrated LLB programme.<sup>59</sup>

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55 Adrian Evans, Anna Cody, Anna Copeland, Jeff Giddings, Peter Joy, Mary Anne Noone, Simon Rice, *Australian Clinical Legal Education: Designing and operating a best practice clinical program in an Australian law school*, ANU Press (2017).

56 Adrian Evans, Anna Cody, Anna Copeland, Jeff Giddings, Peter Joy, Mary Anne Noone, Simon Rice, Ebony Booth, *Best Practices: Australian Clinical Legal Education (2013) Government of Australia, Office of Learning and Teaching* (2013).

57 *Supra* note 50.

58 Roy Stuckey and others, *Best Practices for Legal Education: A Vision and a Road Map*, Clinical Legal Education Association, 190(2007).

59 N.R. Madhava Menon, "Getting Law Graduates Practice Ready: A Blueprint for Curriculum Reform" Keynote Address at the Workshop on Skill Learning in Legal Education held at KIIT School of Law, Bhubaneswar, during July 26-27, 2018.